

Decision No. 20806

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
PACIFIC MOTOR TRUCKING COMPANY for a
certificate of public convenience and
necessity for the transportation of
property by motor truck for other
common carriers between Suisun-Fairfield
and Vallejo and certain intermediate
points.

Application No. 20806

E. J. FOULDS and R. S. MYERS, for applicant;

DECOTO & ST. SURE, by Ezra W. Decoto, and
RUSSELL F. O'EARA for F. E. Holloway,
doing business as Vallejo Express
Company, protestant;

NATHAN F. COOMBS and CLYDE E. BROWN for San
Francisco & Napa Valley Railroad and
Napa Valley Bus Company, interested
parties.

BY THE COMMISSION:

O P I N I O N

Applicant seeks a certificate of public convenience and necessity to operate a trucking service, as a highway common carrier, between Suisun-Fairfield and Vallejo, and intermediate points, via Cordelia, over two distinct routes, viz., via the American Canyon cut-off and via Benicia. Originally, applicant sought to operate via Napa Junction, but at the hearing applicant requested that in this respect its application be dismissed.

Applicant proposes to limit its service to the transportation of freight and express in the custody of Southern Pacific

(1)
Company, Pacific Motor Transport Company, Railway Express Agency, Inc., and any other carrier of the same class moving to, from, or between the cities, towns, or stations of Suisun-Fairfield, Cordelia, Benicia, and Vallejo and intermediate stations now existing, or which may subsequently be established on the lines of Southern Pacific Company. Store-door pickup and delivery service will be furnished at such points and within such limits as may be provided by the rail or express tariffs. Traffic will move at the published rates of the rail or express carriers; they in turn will compensate applicant on the basis of cost, plus five per cent.

A public hearing was had at Vallejo before Examiner Austin, when evidence was offered, the matter submitted on briefs, since filed, and it is now ready for decision.

Southern Pacific Company now operates a rail line extending from Suisun-Fairfield in a general westerly direction through Cordelia to Napa Junction, and thence southerly to Vallejo. This branch connects at Suisun-Fairfield with the main line extending from San Francisco and the East Bay to Sacramento and points east. At present, this branch carries the freight traffic, both carload and less-than-carload, of Southern Pacific Company and also the express traffic of Railway Express Agency, Inc. Another branch line handling similar traffic also reaches Benicia.

The less-than-carload traffic originating at Sacramento, Oakland and San Francisco moves in three cars, one of which

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1. Pacific Motor Transport Company was authorized by Decision No. 30723, dated March 21, 1938, in Application No. 21599 (41 CRC 166) to discontinue operation as an express corporation. Since August 1, 1938, the transportation service formerly performed by that company has been rendered by Southern Pacific Company and the other transportation companies over whose lines that company's traffic had moved. This service is conducted under appropriate local and joint freight tariffs filed with the Commission.

(2)
originates at each of these points. The Sacramento car reaches Suisun-Fairfield about 10:30 P.M., while those from San Francisco and Oakland arrive there about 3:00 A.M. These cars are incorporated in the branch line train which leaves Suisun-Fairfield about 7:30 A.M., arriving at Vallejo about 9:30 A.M. on the morning following the date of shipment. At Cordelia, an intermediate point, the train is delayed about 35 minutes, on the average, to unload merchandise. Following the arrival of the train at Vallejo, from one hour to one hour and a half is consumed in unloading I.c.l. freight. Delivery by the local drayman commences about 11:00 A.M. and continues usually until sometime in the early afternoon. The necessity for performing industrial switching at Vallejo frequently delays the return of the train to Suisun-Fairfield, sometimes causing it to arrive too late to connect with the main line trains, thus resulting in delaying the delivery of outbound less-than-carload shipments.

To obviate these delays, applicant proposes to continue the train operation solely to accommodate carload traffic; the three cars now handling less than carload freight will continue as before, to be cut out from the main line trains at Suisun-Fairfield, but they will not move beyond that point. For the transportation of less-than-carload freight, a truck service will be established, leaving Suisun-Fairfield at 6:00 A.M. and arriving at Vallejo by 7:30 A.M. when local deliveries will commence. L.c.l. traffic not handled under rates including store-door service will

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2. At the last hearing a witness for applicant testified that freight originating at San Francisco would move via the Dumbarton Bridge to Oakland. From the testimony given at the earlier hearing, the implication appears that this freight would be barged across the bay. (Tr. pages 16, 133) The record in this respect is not clear as to the method by which this traffic will be handled.

move in a trailer which will be unloaded at the Vallejo freight station where it will be available for the consignees. Applicant, itself, will perform the pickup and delivery service, thus replacing the local drayman. Although the proposed service will provide an earlier delivery at Vallejo, it will afford no additional daily schedules.

Due to the light traffic between Sacramento and Benicia, Southern Pacific Company does not conduct a direct service between these points, such freight being carried by rail to Oakland and thence backhauled to Benicia, thereby suffering a twenty-four hour delay. To remedy this situation, applicant proposes to load Sacramento freight destined to Benicia aboard the Vallejo truck, at Suisun-Fairfield. On such occasions, the truck will operate via Benicia to Vallejo, instead of the American Canyon route. Freight will be delivered at Benicia by 7:00 A.M. and an overnight service from Sacramento will be provided. Tonnage moving in the opposite direction will likewise be accommodated. The rail traffic between San Francisco and Benicia, it appears, is now satisfactorily handled, hence no change in this operation is contemplated.

At the outset, three trucks and one trailer will be required to handle the traffic between Suisun-Fairfield and Vallejo and Benicia, respectively. The trailer, as has been stated, will be used only to transport merchandise to be unloaded at the Vallejo freight station.

Evidence was introduced bearing upon the cost of conducting the present and the proposed operations, and the savings to be effected under the latter. For its services applicant

will receive from Southern Pacific Company its cost of operation plus five per cent, from which taxes must be deducted. In overtime alone, it is contemplated Southern Pacific Company will save about \$3,100 annually. The overtime now accruing amounts to one hour and thirty-five minutes per day in train operation. To provide for morning delivery of l.c.l. freight at Vallejo, the branch line train now leaves Suisun-Fairfield earlier than it would were its operations restricted to carload traffic; at Cordelia the train is delayed for 35 minutes unloading less-than-carload shipments; and at Vallejo the crew is required to switch and load outbound traffic. Since the requirements of the shippers tend to determine the hour of departure of the train from Vallejo, the crew is required to remain on duty; a saving in this respect can be effected only by advancing the leaving time of the inbound morning train at Suisun-Fairfield, and by eliminating the delay at Cordelia. This will be accomplished under the proposed plan. Through the avoidance of delays, a saving in fuel costs alone of \$600 a year will be accomplished. Though it would be possible for Southern Pacific Company to operate the existing branch train upon an earlier schedule, thus providing 7:00 A.M. delivery at Vallejo, this could be accomplished only at a cost not justified by the traffic involved, and much greater than that now incurred in conducting the existing rail service or in providing the proposed truck service. At present, the local pickup and delivery service at Vallejo is performed by Kussey Bros., under contract with Southern Pacific Company, at an outlay to the latter of approximately \$572 per month. The total cost of conducting the truck service, applicant estimates, will not exceed \$905 per month. There will be eliminated costs aggregating approximately \$880 per month including overtime, fuel and the cost of performing the local delivery service. It would seem that the economies to be effected, though not entirely equal to the trucking cost, will closely approximate it.

F. H. Holloway, doing business as Vallejo Express Co., protestant herein, and his predecessors, have been rendering a transportation service between San Francisco and Vallejo for approximately forty years. On January 23, 1933, by Decision No. 25570, on Application No. 18526, Holloway was granted a certificate of public convenience and necessity authorizing service between these points. At each terminal, a pickup and delivery service is maintained. He now operates seven trucks, five $1\frac{1}{2}$ ton trucks in the pickup service and two 10 ton trucks for the line haul. Two round trips daily are made between San Francisco and Vallejo, one reaching Vallejo about 1:30 P.M. and the other at 10:30 P.M. Delivery starts immediately upon the arrival of the afternoon schedule, and the other commences at 7:00 A.M. on the following morning. Protestant deals with approximately 400 shippers in San Francisco, and over a thirty-day period he serves practically every store in Vallejo.

Protestant contends that should the application be granted he would suffer a loss in gross revenue of approximately \$5200 per annum. In this connection he testified that during 1936 his gross revenue was \$39,000 and his net revenue was between \$6,000 and \$7,000. Two-thirds of his total tonnage moved on the overnight schedule; ⁽³⁾

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3. By Decision No. 30086, in Application No. 20814, dated September 7, 1937 (40 CRC 709, 739, 746) which was consolidated with certain other proceedings, including the abandonment by Southern Pacific Golden Gate Ferries, Ltd., of its ferry service between San Francisco and Vallejo, F. H. Holloway, doing business as Vallejo Express Company, the protestant herein, was granted a certificate authorizing him to operate between Vallejo and the adjacent territory he now serves, on the one hand, and San Francisco, on the other hand, via Carquinez Bridge, Rodeo, San Pablo Avenue, San Francisco - Oakland Bay Bridge, or common carrier ferry service between San Francisco and Oakland. By Decision No. 30597, on Application No. 21723, dated February 7, 1938, protestant was also authorized to operate over an alternate route via Sears Point Road and the Black Point Cutoff over the Golden Gate Bridge between Vallejo and San Francisco.

the gross revenue derived from this amounted roughly to \$26,000. Protestant estimated that if this application were granted he would lose about 20 per cent of the tonnage moving on the overnight schedule, a diminution in gross revenue of approximately \$5200. If this occurred, his annual net revenue, so he asserted, would be reduced to approximately \$1500. On this basis protestant said he could not afford to continue in business. ⁽⁴⁾

This estimated loss, anticipated by protestant, rests upon his belief that he would not be able to control all the traffic moving to Vallejo on the overnight schedule. He testified that freight charges upon shipments moving from San Francisco to Vallejo ordinarily are paid by the consignor rather than by the consignee, hence a substantial share of this tonnage, the transportation of which the Vallejo merchants will be unable to control, will be diverted from his line to that of the applicant. Since this loss would be spread over the operation conducted throughout the year, it would not be offset, he asserted, by operating economies to be effected through curtailment in miles operated by the equipment used.

While it reasonably may be expected there will be some diversion of traffic from protestant's line to that of applicant, the record is not convincing that this will be so extensive as protestant claims. Admittedly, the figure of \$5200 rests upon a mere estimate. ⁽⁵⁾ It is clear that applicant can offer no inducements by way of lower rates or superior service, for the rates will be the same and protestant's service is conceded to be adequate. Neither can we agree with protestant's contention that the curtailment of

4. Tr. pp 149 to 155 inclusive.

5. Tr. p 150.

gross revenues will be accompanied by no reduction in operating expenses. While this saving would not be expected to equal the loss in gross revenue, it would amount at least to the direct out-of-pocket cost of providing the service in each particular instance. Obviously, protestant's estimate of his anticipated loss rests upon assumptions not supported by the facts of record. We are unable to find that protestant will be injured to the extent/^{that}his operations will be jeopardized should the proposed service be inaugurated.

On behalf of applicant, merchants and business men at Vallejo and at Benicia expressed dissatisfaction with the existing rail service, emphasized the need for an earlier delivery, and stated they would use the proposed truck service. Nine of these witnesses, exclusive of the President of the Chamber of Commerce, who spoke for that body, were engaged in business at Vallejo; in addition, two Benicia business men were called. Similarly, many shippers described the adequacy of protestant's service, and voiced their opposition to any change which would tend to impair it. Protestant called seven witnesses, and by stipulation of the parties, it was agreed that the testimony of twenty-nine other Vallejo business men would be similar in substance and effect. Substantially all of the witnesses called by protestant stated they would continue to patronize him even though applicant were permitted to establish its proposed truck service.

This case presents the usual conflict arising between the rail carrier which seeks to improve its service and the highway common carrier who opposes such a step because it may intensify the competition he is called upon to meet. Between the two stands the public, whose interest both carriers alike are called upon to serve. Though it is important to weigh the conflicting equities of the carriers, it is even more essential that the public be accorded full opportunity to enjoy the benefits flowing from any improvement in service effected by a carrier already in the field. By its most recent decision upon this subject ⁽⁶⁾ the Commission declared that:

" * * * Suffice it to say that public convenience and necessity is synonymous with the public interest. The public interest, in a broad sense, comprehends a utility system fully meeting the requirements of the public, each agency rendering service in the field which it can most efficiently serve at the lowest cost to the public, but at rates sufficiently high to maintain the utility system in full vigor and thus insure a continuing and enduring service to the public."

By this decision, the Commission segregated into three classes the types of operations there presented for its consideration.

6. Decision No. 31882, Supplemental Applications Nos. 18699, 18881, 19062, 19030 and Applications Nos. 19563 and 20297, dated March 30, 1939; writ of review denied May 25, 1939 (S.F. No. 16237).

The second and the third classes were thus defined:

"2. Where applicants are requesting authority to operate trucks in line haul and pickup and delivery service within reasonable distances of the break-bulk points and the major part of the traffic is incidental to a rail haul prior to, or subsequent to, the truck movement.

"3. Where applicants are requesting authority to operate trucks in the same manner as described in the preceding paragraph, but where the truck operation will, in effect, constitute placing an added carrier in a purely local territory where a substantial diversion of traffic from the existing carrier may jeopardize the continuation of his service."

Operations falling within the second class, we said in that decision, involve chiefly the distribution by motor truck of traffic that had moved, or was about to move, by rail to or from break-bulk points. Thus the railroads will be enabled to secure greater efficiencies in the loading and the use of rail cars; through the substitution of line-haul truck service substantial operating economies and improvements in service can be accomplished. Generally, the truck proportion of the total distance traversed by the traffic is small in comparison to the rail movement. In short, the truck is but an adjunct to the rail facility.

In the instant proceeding the record discloses that the merchandise will move by rail from Sacramento, San Francisco, and Oakland, respectively, and from points beyond, to Suisun-Fairfield, the break-bulk point, a distance substantially exceeding the line-haul truck movement from the break-bulk point to Vallejo and Benicia.⁽⁷⁾ The substitution of truck service for the present rail facilities,

7. From the proposed time schedule--revised Exhibit "B" submitted at the first hearing--it appears that the distance via the proposed route from Suisun-Fairfield to Vallejo is 18.5 miles, and to Benicia, 21.3 miles.

in handling less-than-carload traffic beyond Suisun-Fairfield, will result in more efficient operation. The truck service will be performed at substantially the same cost as the existing rail service; the rail service itself could not be operated under an earlier schedule except at an expense altogether prohibitive in view of the existing and the prospective revenue. By this truck service, the public will be substantially benefited through earlier delivery of less-than-carload traffic at both Vallejo and Benicia.

In Decision No. 31882, we pointed out that, in cases falling within the second class, the proposals of the rails to improve their service and to effect operating economies, generally have received our sanction. There we said:

"We believe that the public interest may best be served by continuing to follow this policy in the instant proceedings in so far as it appears that the majority of the traffic to be transported in line haul trucks is incidental to a rail haul, and where the highway distances are not excessive. It has not been demonstrated that the granting of such applications has been or would be unduly harmful to the highway carriers."

Judged by the standards applicable to operations of this type, applicant's proposal, we hold, has been justified. We shall now inquire whether it falls within the inhibitions of the third class.

Laying aside the circumstance that the truck operations proposed by applicant and those conducted by protestant do not follow parallel routes, applicant proposing to operate between Suisun-Fairfield and Vallejo via Cordelia, while protestant operates directly between San Francisco and Vallejo, and considering only the

essential fact that each service is designed to transport traffic between San Francisco and Vallejo, we are then called upon to determine whether the granting of this application (to paraphrase the language of the decision cited) would result in a "needless and unwarranted invasion of the revenues of" protestant, thus resulting in the undermining of "a public transportation service inaugurated and maintained in the public interest." Unlike the situation presented in the case cited, it does not appear here that "any appreciable diversion of traffic . . . might well unduly jeopardize protestant's chances of existence." As we have shown, the record will sustain no such finding. Hence, there is no need for imposing any restriction upon applicant's operations.

In our judgment, public convenience and necessity require the authorization of the service proposed by applicant, and such will be the order.

Pacific Motor Trucking Company is hereby placed upon notice that "operative rights" do not constitute a class of property which should be capitalized or used as an element of value in determining reasonable rates. Aside from their purely permissive aspect, they extend to the holder a full or partial monopoly of a class of business over a particular route. This monopoly feature may be changed or destroyed at any time by the State, which is not in any respect limited to the number of rights which may be given.

O R D E R

Pacific Motor Trucking Company, a corporation, having made application as above entitled, a public hearing having been held, evidence having been received, briefs filed, the matter having been duly submitted, and the Commission being now fully advised:

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA HEREBY DECLARES that public convenience and necessity require the establishment and operation by Pacific Motor Trucking Company of an automotive truck service, as a highway common carrier, as said term is defined by Section 2-3/4 of the Public Utilities Act, for the transportation of property in the custody of Southern Pacific Company, Railway Express Agency, Incorporated, and any other carrier of the same class or classes between the railroad stations of Southern Pacific Company, located at Suisun-Fairfield, on the one hand, and Vallejo and Benicia, on the other hand, and intermediate stations now existing or which may hereafter be established, on the line of Southern Pacific Company, over and along the following route, viz.:

Between Suisun-Fairfield and Vallejo, via Cordelia and the American Canyon route, and, optionally, via Benicia or by any combination of said routes,

including the right to perform store-door pickup and delivery service at any and all of said station points, limited to said shipments, which said service may be performed only at the rates of said carriers and which said pickup and delivery service may be performed for said carriers respectively, only within the pickup and delivery zones specified and provided in the tariffs of said carriers, respectively, presently in effect and on file with this Commission.

IT IS HEREBY ORDERED that a certificate of public convenience and necessity therefor be and the same is hereby granted to the Pacific Motor Trucking Company, subject to the following provisions:

1. The authority herein granted shall lapse and be void if applicant shall not have complied with all of the conditions within the periods of time fixed herein, unless, for good cause shown, the time shall be extended by further order of the Commission.
2. Applicant shall file a written acceptance of the certificate herein granted within a period of not to exceed fifteen (15) days from date hereof.
3. Applicant shall commence the service herein authorized within a period of not to exceed thirty (30) days from the effective date hereof, and upon not less than five (5) days' notice to the Commission. It shall also file, in duplicate, within a period of not to exceed twenty (20) days from the effective date hereof, copies of any contract or contracts entered into between applicant and any carrier or carriers pursuant to the authority herein granted.
4. Applicant shall file in duplicate, and make effective within a period of not to exceed thirty (30) days after the effective date of this order, on not less than five (5) days' notice to the Railroad Commission and the public, a time schedule or time schedules covering the service herein authorized in a form satisfactory to the Railroad Commission.
5. The rights and privileges herein authorized may not be discontinued, sold, leased, transferred nor assigned unless the written consent of the Railroad Commission to such discontinuance, sale, lease, transfer or assignment has first been obtained.
6. No vehicle may be operated by applicant herein unless such vehicle is owned by said applicant or is leased by applicant under a contract or agreement on a basis satisfactory to the Railroad Commission.
7. Applicant shall, prior to the commencement of service authorized herein and continuously thereafter, comply with all of the provisions of this Commission's General Order No. 91.

IT IS HEREBY FURTHER ORDERED that said application, to the extent that it seeks authority to operate over an alternative route between Cordelia and Vallejo via Napa Junction, be and it is hereby dismissed.

For all other purposes the effective date of this order shall be twenty (20) days from the date hereof.

Dated at San Francisco, California, this 23rd day of October, 1939.

[Signature]

[Signature]

Justus F. Quince
COMMISSIONERS