

ORIGINAL

Decision No. 32555

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of C. S. McLENEGAN and HAROLD M. HAYS for a certificate of public convenience and necessity to operate the automotive truck line herein described, and of INTERCITY TRANSPORT COMPANY, INC., a corporation, for a certificate of public convenience and necessity to operate the express services herein described.)

Application No. 20138

REGINALD L. VAUGHAN, for Applicants.

H. C. LUCAS and GUY HILL, for Pacific Greyhound Lines, Interested Party.

M. J. DALY and H. W. HOBBS, for Sonoma Express, Protestant.

W. J. CUMMINGS, for Northwestern Pacific Railroad Company, Protestant.

H. W. HOBBS, for Pacific Motor Transport Company, Northwestern Pacific Railroad Company, Southern Pacific Company, Petaluma and Santa Rosa Railroad Company and Pacific Motor Trucking Company, Protestants.

EDWARD STERN and H. W. HOBBS, for Railway Express Agency, Incorporated, Protestant.

BY THE COMMISSION:

O P I N I O N

Applicants C. S. McLemegan and Harold M. Hays, hereinafter sometimes referred to as the common carrier, and Intercity Transport Company, Inc., a corporation, hereinafter sometimes referred to as the express carrier, have filed a joint application which, as amended, seeks on behalf of the common carrier a certificate of public convenience and necessity to operate an automotive service, as a highway

common carrier between (a) San Francisco, Petaluma, Santa Rosa and intermediate points, on the one hand, and points between the northern boundary of Santa Rosa and the northern boundary of Willits, including Redwood Valley and Talmadge, on the other hand, and (b) between Santa Rosa and Willits and intermediate points. At the hearing this request was narrowed to embrace only the hauling of shipments transported by the express carrier moving between the above points. The amended application seeks on behalf of the express carrier a certificate of public convenience and necessity to transport property as an express carrier as follows: (a) between the points embraced by the aforementioned highway carrier's request; (b) between certain points located on the route of Humboldt Motor Stages, Inc.;⁽¹⁾ (c) between certain points located on the route of Sausalito - Mill Valley and San Francisco Express;⁽²⁾ and (d) between all of the above points and all other points which the express carrier now claims authority to serve.⁽³⁾ The amended application states that

(1) The points to be served on the Humboldt Motor Stages, Inc. route are enumerated by applicant as follows:

Weaverville	Strong's Station	Cobb	Ruth
Douglas City	B. W. Ranch	Ranger Station	South Fork
Hayfork	Bridgeville	Los Gap	Summitt
Rhonerville	McClellands	Jenkins	Forest Glen
Hydesville	Larrabee Valley	Johnsons	Peanut
Carlotta	Dinsmore		

(2) The points to be served on the Sausalito - Mill Valley and San Francisco Express route are enumerated as follows:

Sausalito	Escalle	Pastori	San Rafael
Mill Valley	Kentfield	Manor	Belvedere
Marin Heights	Ross	Landsdale	Tiburon
Corte Madera	San Anselmo	Fairfax	San Quentin
Larkspur	Yolanda		

(3) This express carrier claims authority to render the following services:

- (a) between San Francisco and San Jose and intermediate points;
- (b) between San Francisco and San Jose and intermediate points, on the one hand, and Watsonville, on the other;

(continued on next page)

the applicant express carrier "does not desire or contemplate any local service between San Francisco and Santa Rosa or to or from points served by the Sausalito - Mill Valley and San Francisco Express."

The Railway Express Agency, Incorporated, Northwestern Pacific Railroad Company, Pacific Motor Transport Company, ⁽⁴⁾ Pacific Motor Trucking Company, Petaluma and Santa Rosa Railroad Company, Sonoma Express Company and the Southern Pacific Company were each represented at the hearings and opposed the granting of the application.

Following public hearing held at San Francisco, Santa Rosa, Geyserville, and Ukiah, the matter was submitted on concurrent briefs. At the request of applicants, the submission was

Footnote (3) concluded.

- (c) between all East Bay points (Oakland, Alameda, Berkeley, Emeryville, San Leandro) and San Jose and intermediate points, including Livermore, Dublin, Pleasanton and Smol, on the one hand, and all points which applicant is authorized to serve as described in paragraphs (a) and (b) herein, on the other;
 - (d) between Richmond, on the one hand, and all points which applicant is authorized to serve as described in paragraphs (a), (b) and (c) excepting the said East Bay points, on the other;
 - (e) between all points which applicant is authorized to serve as described in paragraphs (a), (b), (c) and (d) herein, Petaluma, Santa Rosa and Willits, on the one hand, and all points north of Willits to and including Crescent City, Happy Camp and Burnt Ranch, on the other, and
 - (f) between all points which applicant is authorized to serve as described in paragraphs (a), (b), (c) (d) and (e) herein, on the one hand, and all points located on the highway extending from San Jose via Campbell, Los Gatos, Saratoga and back to San Jose, on the other hand.
- (4) Discontinued operation under authority of Decision No. 30723, dated March 21, 1938, as amended by Decisions Nos. 30753 and 30903, dated April 4, 1938 and May 23, 1938, respectively.

later set aside and on April 18, 1938 oral argument was heard by the Commission sitting en banc. The application was then finally submitted and is now ready for decision.

The scheduled operations of both applicants as outlined in the application for authority to establish service to the points covered by the highway common carrier's application provide for daily except Sunday and Holiday pickups in San Francisco up to 5:00 P.M., with deliveries at the terminal up to 6:30 P.M. A truck will then move north picking up freight at Sausalito, Petaluma and Santa Rosa and arrive at Willits, the northern terminal, at 3:30 A.M. Northbound freight will be left in the custody of express carrier's agents at Healdsburg at 10:45 P.M. and Ukiah at 2:15 A.M. for delivery after 7:00 A.M. the following morning. The southbound line haul truck will leave Willits daily except Sundays and Holidays at 6:00 P.M. and arrive at San Francisco at 2:00 A.M. the following day. Supplementing the line haul truck, a local truck will leave Willits at 6:00 A.M. and arrive at Santa Rosa at 11:00 A.M., delivering freight to local points. This truck will then return, leaving Santa Rosa at 12:30 P.M. and arriving at Willits on the return trip at 4:30 P.M.

The problem of segregating the evidence, both in support of the applications and in opposition thereto, and relating such evidence to the many points and wide territories embraced in this application will be simplified by taking up applicants' requests in the following order. The first request will be considered under the heading of Santa Rosa - Willits service; the second, the Humboldt Motor Stages, Inc. service; the third, the Sausalito - Mill Valley and San Francisco Express service; and fourth, the unified service.

It is to be noted that applicant common carrier stipulated that all the evidence it produced would be considered only in support of the express carrier's request, and to the extent that that application was granted or denied, its application should be treated accordingly.

SANTA ROSA - WILLITS SERVICE

Through the testimony of numerous public witnesses located at various points within the Santa Rosa - Willits territory and others shipping to that territory from San Francisco and Santa Rosa, the express carrier sought to show a present public need for this branch of the proposed service. It appears unnecessary to set out the individual testimony of each witness; however, a summarization of such testimony and a designation of the points to which the evidence was directed as to the public need for the proposed service, will be set forth. The testimony might be classified into six separate reasons in support of the proposed service, which in the order of their importance, as attested by the number of times they were urged by the various witnesses are:

- (1) will provide earlier delivery of shipments than is now available;
- (2) will provide a service to points off rail line; (3) will provide a service to nonagency points; (4) will provide a faster service;
- (5) will provide an added service; and (6) will provide a schedule which fits shippers' needs better. The witnesses placed more emphasis on the first three reasons than on the last three reasons. Most of this evidence was directed to a showing of a need for the proposed service from San Francisco to designated points north of

(5)

Santa Rosa to Willits, including Talmadge and Redwood Valley.
To a lesser extent, evidence indicates a need of additional transportation facilities from Santa Rosa. Little, if any, evidence was produced concerning the need of a local service between points located intermediate to Santa Rosa and Willits.

Protestants produced numerous public witnesses in support of the adequacy of the present common carrier services between most of the points to which applicants' witnesses claim a need for additional service. (6) The consensus of opinion of these witnesses, whose collective shipping needs were similar to those of applicants' witnesses, was that the present common carrier service is adequate and sufficient. Certain of the witnesses feared an impairment of the present common carrier service if the additional operations were permitted, due to inroads being made into protestants already impaired earnings. Certain others felt the proposed service would be a needless duplication of existing services.

HUMBOLDT MOTOR STAGES, INC. SERVICE

The express carrier produced no evidence showing a need for local service between points on the line of the Humboldt Motor Stages, Inc. The evidence relating to a need for service between such points located off the route will be considered under the heading of unified service.

(5) An analysis of the record shows requests for service from San Francisco to the following towns to the extent indicated by the number appearing after the town:

Mark West (1)	Italian Swiss Colony (1)	Talmadge (10)
Windsor (14)	Cloverdale (9)	Ukiah (25)
Healdsburg (15)	Preston (3)	Calpella (9)
Lytton (10)	Cumiskey (1)	Redwood Valley (7)
Geyserville (11)	Hopland (14)	Willits (18)

(6) The points covered by applicants' witnesses but omitted by protestants' witnesses are certain nonagency points and off-rail points.

SAUSALITO - MILL VALLEY AND SAN FRANCISCO EXPRESS SERVICE

No evidence was introduced showing a need for the service in the above territory, and evidence of a need for service between the points designated in the footnote No. 2 and other points will be considered under the heading of unified service.

UNIFIED SERVICE

While the evidence for this service is the most comprehensive of all of the requests presented by the wide scope of the application, embracing as it does a service from and to approximately 138 cities and towns extending along the coast from Watsonville on the south to Crescent City on the north, and including numerous San Francisco Bay points, applicants' witnesses testified as to the needs of only a limited part of this territory. The evidence of a need for this comprehensive unified service is confined to (1) the testimony furnished by two witnesses who stated there was a need of the proposed service from San Francisco to points on the route of Humboldt Motor Stages, Inc., (2) the testimony furnished by two witnesses who stated there was a need of service from San Rafael to points between Willits and Crescent City, and (3) certain other testimony of shippers in Oakland, who recited a need for the service to certain of the points in the last mentioned territory.

In addition to the testimony of public witnesses, protestants introduced Exhibits 18 and 19 showing, respectively, the income accounts for the Northwestern Pacific Railroad Company, and the Petaluma and Santa Rosa Railroad Company for the years of 1929 to 1935, inclusive. These exhibits purport to show that neither

company earned sufficient revenue for the last two years, covered by the exhibits, to pay operating expenses and fixed charges. Other evidence indicates that their financial position has not materially improved since 1935.

Before discussing the above evidence and its relation to the application of the express carrier, it is important to note that the express operations presently conducted by the express carrier are based on alleged prior right, rather than the grant of any certificate of public convenience and necessity to operate as an express carrier. Despite the wide scope of the rights herein sought, applicant has seem fit to introduce evidence bearing only on a very limited portion of the request outlined in its amended application. In connection with the first division of its application, the evidence only purports to show a need for service between San Francisco and Santa Rosa, on the one hand, and points between the northern boundary of Santa Rosa and Willits, on the other hand. There is some isolated testimony regarding a need of service from certain other points to the latter named points, but it is too meagre to warrant review. While it is true that applicants' witnesses testified that the new service would be welcome and some considered it as needed, on the other hand protestants' witnesses, whose shipping needs appear substantially similar to those of applicants' witnesses, testified that the services of the present carriers, pioneers in the territory with large financial investments in this region, are adequate and sufficient. They stressed the fact that available traffic fails to provide sufficient revenue to give a reasonable return for the service rendered. The evidence in support of and in opposition to this portion of the application is in direct conflict and were it not for the service which applicant express carrier proposes to

render to the nonagency and off-rail points, the application should be denied without further discussion. The Commission has held in numerous cases that where the evidence produced by an applicant seeking a certificate of public convenience and necessity for a route which would parallel an existing service, raises only a conflict of opinion in support of the request, the certificate sought has been denied. However, as noted, the applicants here propose an additional feature i.e., they offer to serve not only the agencies now served by the rail carriers, but the nonagencies and off-rail points as well.

The real question presented appears to be whether a service to nonagency and off-rail points, plus a service to the larger and more populous cities and towns justifies the granting of a certificate when the present service appears from this record to be adequate only to the latter points. Obviously, a service to the nonagency and off-rail points alone would not be justified from an operating revenue standpoint. The record is not convincing that the new service should be established even with the admitted fact that service may not now be completely adequate to certain small points. Presumably, the ideal condition from the standpoint of shippers and receivers of freight would be a shipping and a delivery system to each farmhouse, resort or nonagency station, as well as to agency stations located within this entire area. From a practical standpoint, however, this cannot be economically justified. The record shows the already unprofitable condition of the common carriers now rendering a service to this territory. The sharing of their present revenue with a carrier whom the record shows offers service to these smaller points does not appear to justify the breaking down of the transportation service to the district as a whole.

While not determinative of the issues herein involved, the stipulation entered into by the common carrier eliminates a consideration of its request for a certificate of public convenience and necessity independent of the express carrier's application. The materiality of this stipulation is apparent when it is noted that the express carrier has not shown by what means it proposes to transport freight tendered to it, other than through the services of the common carrier which has stipulated that it has no evidence to support its own application.

As heretofore indicated, the bulk of the evidence of record relates to the Santa Rosa - Willits service. The evidence supporting the balance of the express carrier's application and especially the proposal hereinbefore denominated as the unified service while not controverted, is scattered and meagre. While it may be that applicant is desirous of rendering these new services, the Commission has often times stated that an applicant's desires are insufficient to warrant the granting of a certificate of public convenience and necessity.

From a review of this record, we find as a fact that public convenience and necessity has not been shown to justify the granting of any of the certificates sought herein, and an order will be made denying the application.

ORDER

Public hearing having been had in the above-entitled proceeding, the matter having been duly submitted, and the Commission now being fully advised in the premises,

IT IS HEREBY ORDERED that the above-entitled application
be and the same hereby is denied.

The effective date of this order shall be twenty (20)
days from the date hereof.

Dated at San Francisco, California, this 14th day of
November, 1939.

Robert Quinn

Frank Deane

Ray L. Rice

M. J. [unclear]

Justus J. Cassin
COMMISSIONERS