

Decision No. 22324

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BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

In the Matter of the Application of)	
PACIFIC MOTOR TRUCKING COMPANY for)	
certificate of public convenience and)	
necessity to operate motor trucks over)	Application No. 21604
the public highways as a common car-)	
rier of property between Eureka and)	
South Fork and intermediate points.)	

R. E. WEDEKIND, for applicant and Northwestern Pacific Railroad Company.

HARRY A. ENCELL, for Humboldt Truckmen's Association, F. S. Bridges, doing business as Eureka-Garberville Truck Line; A. W. Way, doing business as Way's Ferndale-Loleta-Eureka Freight Line; and Intercity Transport Lines, Inc., Protestants.

HARRY SEE, for Brotherhood of Railway Trainmen; Brotherhood of Locomotive Engineers; Brotherhood of Locomotive Firemen and Enginemen; Brotherhood of Railway Clerks; and Order of Railway Conductors, Interested Parties.

BY THE COMMISSION:

O P I N I O N

In this application as amended, applicant seeks a certificate of public convenience and necessity for the establishment and operation of a highway common carrier service between the Northwestern Pacific Railroad Company ⁽¹⁾ rail station points of South Bay and South Fork and the intermediate rail station points of Zerus, Beatrice, Loleta, Fernbridge, Worswick, Palmer Creek, Fortuna, Newberg, Rohnerville, Alton, Dinsmore, Stone and Scotia and within a radius of one mile thereof, save and except the stations at Fortuna and Scotia. At Fortuna it is proposed to serve within the

(1) Hereinafter referred to as Northwestern Pacific.

corporate limits and at Scotia within a radius of one and one-half miles from the rail station.

The service proposed will be limited to the traffic of Northwestern Pacific and Railway Express Agency, Incorporated, and other carriers of like class, through participation by applicant in such carriers' tariffs, such participation to be restricted to applicant's concurrence in joint rates for the transportation of property where such property is first in the custody of such carriers and their connecting carriers. The rates to be charged by applicant are those contained in the tariffs of the carriers whose traffic it is proposed to handle.

Applicant proposes a daily service, except Sundays and holidays, between Loleta and Scotia and intermediate rail points and an "on call" service to and from the other points herein proposed to be served.

A public hearing was had at Eureka before Examiner Paul, at the conclusion of which, evidence having been offered, the matter was taken under submission on briefs which having been filed the matter is now ready for decision.

The Evidence as to the Present Northwestern Pacific Service

Northwestern Pacific now operates a rail service between Sausalito, Tiburon, and Eureka. Connection with San Francisco is provided through the operation of barges between Tiburon and San Francisco.

Less-than-carload freight destined to Northwestern Pacific rail points of South Fork and South Bay and intermediate points is received by the Northwestern Pacific at Front and Vallejo Streets in

San Francisco, and is there loaded into a box car. The box car is ferried to Tiburon. The train in which the box car is forwarded leaves Tiburon at about 11:15 P.M. Such train arrives at Willits at approximately 11:00 A.M. the next day. Less-than-carload freight lies over at Willits until approximately 11:00 P.M. of the first day after leaving San Francisco. A local freight train operates from Willits to Eureka, leaving Willits at about 11:00 P.M. The less-than-carload freight is delivered on the second day as follows: at South Fork at 7:00 A.M., at Scotia at 8:00 A.M., at Alton at 8:30 A.M., at Fernbridge at 10:00 A.M., and at Loleta at 11:00 A.M. To points north of Loleta the arrivals are still later.

Less-than-carload traffic on the return movement requires approximately the same time.

Traffic from Eureka, destined to points on the Northwestern Pacific at South Fork and South Bay and intermediate rail points, is transported on a local train leaving Eureka at 9:00 P.M., which train unloads the traffic en route, arriving at Willits at 7:00 A.M. the following morning.

Evidence as to the Proposed Service

It is proposed that less-than-carload freight destined to South Bay and South Fork and intermediate rail points will be placed in a baggage car at Sausalito on Northwestern Pacific passenger train No. 4. That train leaves Sausalito at 9:15 P.M. and will haul the baggage car containing such freight to Fernbridge, arriving there at 7:22 A.M. the morning after its departure from Sausalito where the car will be set out.

Shipments from Eureka destined to South Fork and South Bay and intermediate rail points will be moved likewise by rail to Fernbridge, and the car containing them will be set out at Fernbridge. Shipments of less-than-carload freight destined to Northwestern Pacific rail points at South Fork and South Bay and intermediate points will then be transferred from the two rail cars in question to the trucks of applicant. The truck will leave Fernbridge at 8:00 A.M. thence proceed to Loleta, where it will make deliveries. From Loleta it will return to Fernbridge, arriving at 8:30 A.M. It will then leave Fernbridge at 8:35 A.M. going south, arriving at Fortuna at 8:50 A.M., and Scotia 9:45 A.M. The service south of Scotia will be on-call. After distributing the freight to points south of Fernbridge, the truck will return to Fernbridge and will perform such distribution service as may be necessary to points beyond Loleta to and including South Bay.

The points which will be served are those hereinbefore indicated.

At the present time shippers utilizing the Northwestern Pacific from and to the territory herein involved are not accorded pick-up and delivery service at any point except Fortuna. They are not now accorded pick-up and delivery service because there is no local drayman available at any point who can be employed. It is proposed that pick-up and delivery service will be given at all rail points herein proposed to be served.

Less-than-carload traffic moving over the Northwestern Pacific, which is delivered to consignees at South Fork and South Bay and intermediate rail points on the second day after leaving San Francisco under the present method of handling, will be delivered at such points the first morning after leaving San Francisco under

the proposed co-ordinated rail and truck service. (2)

While Ferndale is not a rail point on the Northwestern Pacific, joint rates are published by it with the American Stage Line which operates between Fernbridge and Ferndale. Traffic destined to Ferndale will be hauled on the Northwestern Pacific rail cars which are to be set out at Fernbridge and there delivered to the American Stage Line.

The Evidence as to Cost and Economies

It was shown that it will cost the applicant \$4,115 annually to provide the proposed service. (3) The Northwestern Pacific will be able to effect economies in its operations amounting to \$4,059 annually. (4) It was further shown that it would cost the Northwestern Pacific \$21,756 annually to expedite its less-than-carload traffic to and from the points involved by the establishment of an all-rail merchandise service comparable to the proposed co-ordinated rail-truck service. (5)

The Evidence as to Public Convenience and Necessity

On behalf of applicant a number of witnesses expressed dissatisfaction with the present rail service of Northwestern Pacific. Some indicated a need for an earlier service and all emphasized that such earlier service would be a distinct convenience in their businesses and that they would use the proposed service if it were established.

(2) Exhibit No. 6.

(3) Exhibit No. 1.

(4) Exhibit No. 7.

(5) Exhibit No. 8.

Protestants

Harold M. Hays, Traffic Manager of Intercity Transport Lines, Inc., testified as to the daily service provided by his company from San Francisco to the points involved. He stated that shipments moving over his company's facilities leave San Francisco between 7:00 and 8:00 P.M. and arrive at Fortuna about 8:00 A.M. the following morning. Deliveries soon thereafter are made at Fortuna and all points south to and including Scotia. Deliveries to points south of Scotia to and including South Fork are made for his company's account by Eureka-Garberville Truck Line, Intercity's underlying carrier, during the afternoon as a back-haul movement from Eureka. Rush deliveries are made at Scotia on the northbound movement as early as 6:00 A.M. Otherwise deliveries are made there between 10:00 A.M. and 2:00 P.M. Between Garberville and Eureka and intermediate points Intercity Transport Lines, Inc. operates over the line of Eureka - Garberville Truck Line, owned by F. S. Bridges (more recently acquired by Harold M. Hays, C. S. McLenegan and George S. Butler; Decision No. 31836) whose certificate permits no local movement of traffic between Eureka and Fortuna. Fernbridge is intermediate to Eureka and Fortuna.

A. W. Way is providing a limited and restricted highway common carrier service between South San Francisco, San Francisco and Arcata and points in the territory involved herein. He also

(6) Intercity Transport Lines, Inc., is an express corporation, as defined in Sec. 2 (k) of the Public Utilities Act, which is providing a service over the facilities of underlying highway common carriers.

(7) Decision No. 27694, of January 21, 1935, on Application No. 19612, granted a certificate to A. W. Way for the transportation of "...cream, butter, and all cheese, meat and meat products (edible, except canned goods), edible oils, draught beer, eggs (except hatching eggs), dressed poultry, fresh fruits and fresh vegetables, and no other commodities,

(Continued on next page)

provides a highway common carrier service, unrestricted as to commodities, between Eureka and Ferndale, via Fernbridge.

His trucks leave South San Francisco at 11:30 A.M., San Francisco at about 2:20 P.M. arriving at Scotia at about 4:30 A.M. the next morning where the first deliveries are made at the warehouse of the Pacific Lumber Company. Trucks arrive at Alton at 4:50 A.M.; Fortuna at 5:15 A.M.; at Ferndale at 6:00 A.M.; and at Eureka at 7:00 A.M. Mr. Way's drivers have keys to the stores or warehouses of consignees at those points where arrivals are made before the

(Footnote (7) Concluded)

between South San Francisco, San Francisco, Petaluma, Santa Rosa and Willits and Garberville, Scotia, Alton, Ferndale, Fernbridge, Fortuna, Eureka and Arcata, and intermediate points, provided, no authority is hereby granted to move locally between any points between Willits and Arcata, said service in said area and points herein authorized to be limited to such shipments as may be tendered applicant when the origin or destination is either Willits, Santa Rosa, Petaluma, San Francisco or South San Francisco; and provided, further, that only the following commodities may be transported from and to each point, viz:

"To Willits from South San Francisco, San Francisco, only - meat and meat products (edible, except canned goods), edible oils.

"Between Santa Rosa and Eureka and Fernbridge, cream, butter, and all cheese, eggs (except hatching eggs), dressed poultry, southbound; draught beer, eggs (except hatching eggs), and dressed poultry, northbound.

"Between Eureka and Petaluma - eggs (except hatching eggs), southbound; eggs (except hatching eggs), and dressed poultry, northbound.

"Between South San Francisco, San Francisco and Arcata, Eureka, Leta, Ferndale, Fernbridge, Fortuna, Alton, Scotia, and Garberville and intermediate points - cream, butter, and all cheese, eggs (except hatching eggs), meat and meat products (edible, except canned goods), edible oils, draught beer, fresh vegetables and/or fresh fruits, dressed poultry, northbound only; eggs (except hatching eggs), cream, butter, and all cheese, fresh fruits and/or fresh vegetables, southbound only; from Arcata and Eureka to San Francisco and South San Francisco, only, meat and meat products (edible, except canned goods); and, provided, further, that such movements shall be transported only in motor equipment maintained in its interior at a temperature of not more than 40 degrees Fahrenheit,..."

regular business hours. This enables such consignees to receive early morning deliveries of the limited traffic which Mr. Way may transport under the certificate he now holds.

On behalf of protestants a number of witnesses engaged in business at points served by both Northwestern Pacific and protestants, testified that the service now provided by protestants is adequate and satisfactory. Some of them stated, however, that they would use the rail service more often if their shipments could be received earlier, and expressed a desire for the continued operation of the rail line.

Protestants claim that if the service proposed is established it will constitute a further invasion by a rail carrier of a trucking field, which in this instance is adequately served, through the instrumentality of applicant which has failed to show public convenience and necessity. They contend that there is no equity with Northwestern Pacific in this proceeding wherein in the guise of improving its service it seeks to enter into such trucking field; and that it has been demonstrated that the interest of the public does not require the granting of a new certificate when the same results to the public can be readily accomplished through existing carriers.

None of the protestants made any showing as to the probable extent of diversion of traffic from them, if any, that would result from the establishment of the proposed service.

The question now presented for determination is whether the public interest will best be served by permitting the Northwestern Pacific to expedite and improve its service through the instrumentality of the applicant which it could accomplish through the medium of expensive additional rail facilities. Involved in this is the

consideration of any prejudice which may be suffered by the protesting highway common carrier, through the authorization of this service.

The situation confronting us is not unlike that with which we have been called upon to deal in recent decisions affecting the operations of this applicant. It, therefore, seems unnecessary to restate the grounds which there impelled us to grant these applications. ⁽⁸⁾ The plan herein presented for approval contemplates the continuance of a service which has long since been established by Northwestern Pacific but upon a somewhat different ⁽⁹⁾ plan of operation to the effect that the proposed combination of rail and truck operation will afford a means of providing the public an overnight service between San Francisco and the South Bay - South Fork area instead of the present second morning delivery under the Northwestern Pacific present method of operation. The proposed operation cannot be considered as permitting a new carrier to enter the field but should be viewed as an improvement in an existing service. Obviously, the Northwestern Pacific could provide an overnight service to this area under its present rights, but to do so would require a substantial increase in its operating expenses through the establishment of a local merchandise train operation. In view of the fact that the granting of this application will result in an improved service to the public with no increase in the operating expenses and at the same time according to this record not work an undue hardship on protestant carriers, the application will be granted.

(8) Decision No. 31882, dated March 30, 1939, and Decision No. 32414, dated October 3, 1939.

(9) Northwestern Pacific and applicant are both subsidiaries of Southern Pacific Company.

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.

ORDER

Pacific Motor Trucking Company, a corporation, having made an application as above-entitled, a public hearing having been held, evidence received, briefs filed, the matter 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 service as a highway common carrier, as that term is defined by section 2 3/4 of the Public Utilities Act for the transportation of property for compensation in the custody of Northwestern Pacific Railroad Company, Railway Express Agency, Incorporated, and any other carrier of the same class or classes using rail facilities between the railroad stations of Northwestern Pacific Railroad Company at South Bay, Zerus, Beatrice, Loleta, Fernbridge, Worswick, Palmer Creek, Fortuna, Newberg, Rohnerville, Alton, Dinsmore, Stone, Scotia, and South Fork, including the right to perform store-door

pick-up and delivery service at any and all of said stations and within a radius of one (1) mile thereof, provided that as to Scotia said radius shall be one and one-half (1½) miles and further, provided, that as to Fortuna said radius shall be the corporate city limits thereof, which said service shall be performed only at the rates of said carriers respectively.

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

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 thirty (30) days from the effective 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.
8. No property may be transported by applicant unless such property has had either a prior movement, or is to have a subsequent movement, over the rails of Northwestern Pacific Railroad Company.

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 5th day of December, 1939.

Rabron King

Ray R. Rice

M. B. M.

Justin J. Cramer
COMMISSIONERS