

Decision No. 1929-13

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the Application of
HIGHWAY TRANSPORT, INC., a corpora-
tion, for a certificate of public
convenience and necessity to extend
its operations as a highway common
carrier by motor vehicle to Carmel,
California.

Application No. 21629

COMMERCIAL

J. F. VIZZARD, for Highway Transport, Inc.,
Applicant.

R. E. WEDEKIND and F. X. VIEIRA, by F. X.
Vieira for Southern Pacific Company and
Pacific Motor Trucking Company, Protestants.

EDWARD STERN, for Railway Express Agency,
Incorporated, of California and Railway
Express Agency Incorporated of Delaware,
Protestants.

F. X. VIEIRA for F. A. Wernuth, Protestant.

BY THE COMMISSION:

O P I N I O N

This is an application by Highway Transport, Inc., a corporation, for authority to establish and operate an automotive service, as a highway common carrier between Monterey and Carmel, as an extension and enlargement of its existing rights and consolidated therewith.

Public hearing in this matter was had before Examiner McGettigan in Carmel on January 4 and 5, 1940, where testimony was taken, exhibits filed, the matter submitted, and it is now ready for decision.

Southern Pacific Company, Pacific Motor Trucking Company, Railway Express Agency Incorporated of California, Railway Express Agency Incorporated of Delaware and Fred A. Wermuth, doing business as Wermuth Transportation Lines appeared in protest to the granting of this application.

Under the proposal of applicant, as described by Jos. Robertson, its president, an on-call service is to be maintained between Monterey and Carmel daily except Sundays and Holidays, from 8:00 A.M. to 5:00 P.M. This service will be performed by a 1½ ton truck (one of two pieces now in use) which will be based at Monterey and operated from applicant's terminal at that point. It is not proposed, according to Mr. Robertson, to establish terminal facilities at Carmel. To handle this business, a local agent is to be appointed in Carmel and all requests for service are proposed to be handled by telephone through this employee. Both pickup and delivery service is to be rendered and the rates to be assessed and rules and regulations therefor will be in accordance with present and future minimum rate orders of the Commission.

The contemplated operating proposal of applicant, Mr. Robertson further stated, provides for departure from San Francisco between 8:00 and 8:30 P.M.,⁽¹⁾ via San Jose, where additional freight will be loaded, arriving in Monterey about 1:00 A.M. Freight destined for Carmel will be dispatched from Monterey about 7:30 A.M., to arrive at Carmel for final store-door delivery at approximately 8:00 A.M. and thereafter as required.

(1) Applicant now operates a fleet of 49 pieces of equipment between San Francisco, San Jose, Hollister, Pacific Grove and Soledad, and intermediate points among others, and the schedule proposed is based upon the regular system schedule of this operator.

The further testimony of this witness disclosed that the bulk of the traffic involved would originate in the San Francisco Bay region and San Jose, with a negligible amount from Los Angeles. Approximately one ton of freight daily, as a minimum, was expected to be available from these points destined to Carmel, according to witness Robertson, and it was his contention that this volume of tonnage was sufficient to provide a remunerative operation over this route, involving a round trip of eight miles. It was further anticipated that an additional two miles daily would be operated in pickup and delivery service.

(2) During the course of the proceedings in this matter, eleven witnesses testified in behalf of applicant and twenty-six witnesses testified in favor of protestants collectively. In addition, it was stipulated three witnesses, if called, would testify in substantially the same manner on both direct and cross examination, as had the other protestant witnesses of record.

The case for applicant, according to the record, is dependent upon alleged demands for service by consignees in Carmel who believed that inauguration of the transportation service proposed would enable them to obtain earlier delivery and cheaper rates for those desirous of using trucks exclusively. The last named feature is proposed to be brought about by the establishment of

(2) Exhibit 4 - Excerpt from minutes of December 12, 1939 meeting of Carmel Business Association revealed 37 out of 73 members signing petition favoring applicant. Subsequently, according to record, 17 signers asked to have their names removed. With one exception, the record is silent as to the reasons therefor.

service on a through rate basis to and from Carmel, thereby replacing the present rates based on a combination of local rates over Monterey, because of no joint through rate arrangements between Highway Transport Inc. and F. A. Wermuth,⁽³⁾ the local and only operator between Monterey and Carmel. Some advantage also was allegedly to be afforded to merchants located in Monterey and Pacific Grove, or both, and having branches or business connections in Carmel in being able, under applicant's proposal, to have all their transportation services furnished by Highway Transport, Inc. However, the record with respect to purely local movements between these points, fails to show other than a negligible need for such service. This may also be said with respect to Los Angeles traffic into Carmel, as well as outbound traffic from Carmel to other points.

The record here reveals that Carmel is almost exclusively a consuming area. The town itself has a population of some 3,000 and is principally a resort center and art colony which doubles its population during the summer months with the influx of tourists and vacationists. There appears to be considerable building activity in Carmel and environs, and there are a number of business enterprises which engage in the distribution of the various commodities which are necessary to the construction business, including building materials, electrical appliances, plumbing supplies, fixtures, etc. In addition, there are a number of gift and antique shops, as well as the usual complement of stores catering to the residents of the community. Their stocks are representative of the type of merchandise generally moving into Carmel and upon which carriers have to

(3) Engaged in the transportation of freight and baggage under a certificate of public convenience and necessity since 1920. The certificate was granted by Decision No. 7382, dated April 8, 1920, on Application No. 4689.

depend for business. According to the testimony of various witnesses, the aggregate, as well as the individual tonnage of such shipments, except on occasion, usually is not very heavy and the demand for service varies from once or twice a month to daily movements. It was also shown by the record that a considerable number of commodities, including bread, meats and groceries, among other commodities, are now being transported in the proprietary trucks of the various companies or agencies providing and distributing such commodities. Additionally, merchants and contractors who, in the course of business, are required to travel between Carmel and Monterey and nearby points, have apparently found it convenient and economical to use vehicles normally employed in their business, to transport their shipments from and to Monterey, their principal point of pickup and delivery for main line rail and line haul truck shipments. These factors, according to the testimony of protestant F. A. Wermuth, have made serious inroads into his business, particularly in the last five years, to a point where today he is transporting on an average of from 2½ to 3 tons daily for approximately 100 consignees and is operating only one truck. This testimony was substantiated by a witness for the Southern Pacific Company, who testified that the average tonnage for the entire "Monterey branch" (includes points such as Castroville, Monterey, Pacific Grove, Del Monte, Gigling) of the company now amounted to only about five tons daily, considerably less than the fifteen ton capacity of the rail car now in use.

With respect to the service now available to Carmel, the record shows that Southern Pacific Company maintained daily overnight service from both Los Angeles and San Francisco Bay points to Monterey, leaving from points of origin named after 7:00 P.M. and

arriving in Monterey and Salinas, respectively, at 2:00 A.M. of the same night, where the freight is discharged, sorted and made available to F. A. Wermuth, with whom Southern Pacific Company and Pacific Motor Trucking Company maintain joint through rates, at 7:00A.M. at Monterey for future delivery at Carmel during the morning hours from approximately 8:30 A.M. on. Railway Express Agency, Incorporated maintains a local agency and also a branch at the Western Union Telegraph Company office and performs pickup and delivery service daily from 8:30 A.M. to 5:00 P.M., in connection with its main system service.

There was some criticism in the record with reference to time of delivery of shipments by Wermuth in Carmel, certain witnesses stating that they did not receive shipments until 10:30 or 11:00 A.M. and sometimes later (10:30 A.M. apparently the average which would satisfy consignees). Countering this testimony, Wermuth testified that he, personally, had received no complaints on this score and further stated that on occasions he was unable to make deliveries because business houses were not open prior to the hours referred to, and also alleged that certain stores did not open until afternoon. The record is not clear or definite as to this phase of the matter, no testimony being developed as to individual opening and closing hours of consignees. However, the twenty-six protestant witnesses who testified were unanimous in stating that the time of delivery by Wermuth was entirely satisfactory for them. Indeed, these witnesses stated unequivocally that the existing services of Southern Pacific Company (including Pacific Motor Trucking Company), Wermuth and Railway Express Agency, Incorporated were entirely

(4) Los Angeles freight is set out at Salinas and is thence, at 6:00 A.M., taken by Pacific Motor Trucking Company truck to Monterey for trans-shipment by Wermuth.

satisfactory and fully met their needs. They were also fully in support of Wermuth and indicated a desire that nothing be done which would tend to divert tonnage to the impairment of his service.

Thus far in this record, we can find no definite showing of inadequacy of transportation services as they now exist. Furthermore, it clearly appears that proprietary and private trucking operations have contributed materially to the allegedly unsatisfactory conditions experienced by certain shippers in that divergence of substantial traffic thereby has made it increasingly difficult for the public carrier to maintain an entirely satisfactory service. Tonnage available is rather light, applicant itself admitting that one ton a day would be expected and this based primarily on a diversion of tonnage from proprietary trucks. The record, however, will not substantiate a finding that this will actually be the fact. Furthermore, based on the record, it does not appear that any material benefit in so far as actual service is concerned, would accrue to Carmel shippers as in the long run it is highly probable that under inherent circumstances and conditions no better, or at least only slightly improved, delivery conditions would result from applicant's proposal under the most favorable circumstances. Applicant can accomplish substantially what he is here seeking by entering into joint rates with Wermuth.

The application will be denied.

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- (5) Depending on location, type and size of shipments one consignee or the other must necessarily receive his freight either earlier or later than the other, despite terminal arrival of the carrier.
- (6) Applicant's lack of terminal facilities in Carmel would necessitate an additional round trip and consequent delay were it to encounter the difficulties of delivery allegedly incurred by Wermuth due to the discrepancy of opening hours of local merchants, as well as other factors of record.

O R D E R

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

IT IS 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 13th day of February, 1940.

Ray L. Riley
Donald R. Smith
Robert W. ...
W. W. ...
Justin J. ...
COMMISSIONERS