

Decision No. 23189

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
PACIFIC MOTOR TRUCKING COMPANY, a
corporation, for a certificate of
public convenience and necessity to
operate motor vehicles for the trans-
portation of property over the public
highways between Salinas and Camp Ord,
U. S. Military Reservation.

ORIGINAL
FILED

Application No. 23189

In the Matter of the Application of
HIGHWAY TRANSPORT, INC., a corporation,
for a certificate of public convenience
and necessity to operate motor vehicles
for the transportation of property over
the public highways between all points
on its system, and Camp Ord, U. S. Mil-
itary Reservation.

Application No. 23199

ANSEL S. WILLIAMS, JR. and F. X. VIEIRA by
F. X. Vieira, for Pacific Motor Trucking
Company, applicant in Application No.
23189; for Southern Pacific Company as
intervenor in Application No. 23189; as
protestants in Application No. 23199.

J. F. VIZZARD and WARE and BEROL by E. M. Berol
for Highway Transport, Inc., applicant in
Application No. 23199 and as an interested
party in Application No. 23189.

RICHARD BENNETT and ERVIN S. BEST by Ervin S.
Best, for Jack Silva, protestant in Appli-
cations Nos. 23189 and 23199.

W. G. STONE, for Sacramento Chamber of Commerce,
Interested Party in Applications Nos. 23189
and 23199.

REGINALD L. VAUGHAN, for A. B. and Kenneth Clark,
protestants in Applications Nos. 23189 and
23199.

BAKER, Commissioner:

O P I N I O N

By Application No. 23189 Pacific Motor Trucking Company seeks authority to establish and operate an automotive service as a highway common carrier, between Salinas and Camp Ord Military Reservation (Richardson Gate) via the Hilltown Marina Highway, also known as the Camp Ord Highway, in co-ordination with the Southern Pacific Company's main line rail service through Salinas under joint rate arrangements, with provision for store-door pickup and delivery service at Salinas and Camp Ord, and providing also for service locally between said termini. Daily except Sunday and Holiday service, "on call," will be provided with equipment presently available for this operation.

By Application No. 23199 Highway Transport, Inc. seeks a clarifying order from this Commission declaring that it has the authority, under its existing operative rights, to serve Camp Ord Military Reservation, or, in the alternative, seeks a certificate of public convenience and necessity to establish and operate an automotive service as a highway common carrier, between all points on its present system, on the one hand, and the Camp Ord Military Reservation, on the other hand, including a right to serve laterally one (1) mile on either side of the highway traversed.

Public hearing in these proceedings was had in San Francisco on January 15, 1940, and March 13, 1940, where testimony was received, exhibits filed, the matters submitted, and they are now ready for decision.

During the course of the proceedings, protests on the part of Clark Bros., Southern Pacific Company and Pacific Motor

Trucking Company, were withdrawn by virtue of various amendments and stipulations agreed upon, which left only the protest of Jack Silva outstanding at the conclusion of the hearings. The Sacramento Chamber of Commerce maintained its status as an interested party throughout these proceedings, which were heard upon a consolidated record.

Camp Ord Military Reservation, focal point of interest in these proceedings, represents one phase of the development and expansion of the country's armed forces authorized by the Congress of the United States in accordance with a long-range plan for national defense. Intended and planned to be a permanent and integral part of such defense measure, Camp Ord will eventually be developed to provide complete facilities for the housing and training of some ten to twelve thousand men of the regular army military forces and their civilian components. For approximately three months during the year Camp Ord will be the center of maximum capacity activities. During the balance of the year, except during very inclement weather, some phase of military activity or training will be carried on, which insures, as a practical matter, year round use of this military reservation.

The Camp is situated in Monterey County between Highway State Route No. 1 on the west, and Highway U. S. No. 101 (Salinas-Monterey Highway) on the east, and is located entirely south and west of the Salinas River.

Applicant Pacific Motor Trucking Company proposes to serve Camp Ord from Salinas via Highway U. S. No. 101 to its point of intersection south of Salinas with the Marina Hilltown Road, thence via said Marina Hilltown Road, or Camp Ord Road, as it is now known,

to a port of entry designated as Richardson Gate, or just as Camp Ord. This port of entry is approximately seven miles from Salinas via the highway and the county road designated. Other ports of entry are Gigling and Marina, both on the westerly side of the Camp. Of these two, Gigling is closed and Marina, although used, has, on this record, apparently been considered of secondary importance to Richardson Gate as a point of ingress and egress. However, both Gigling and Marina are readily accessible for transportation use and may, at the discretion of the Federal Government, be more fully utilized at any time for this purpose. Therefore, all named ports of entry will be duly considered in the determination of the pending applications.

Highway Transport, Inc., the second applicant of record herein, now and for some years past has operated as a highway common carrier ⁽¹⁾ between San Francisco, San Jose, Watsonville, Santa Cruz, Hollister, Pacific Grove, Soledad and intermediate points, under certificates of public convenience and necessity heretofore granted by this Commission to its predecessors in interest, subsequently acquired by the corporation, as well as operative rights in its own name, and consolidated and merged as one unified system. In the conduct of this operation, Highway Transport, Inc. and its predecessors have, since the inauguration of the service, used and operated over

(1) Restriction: "...for the transportation of all classes of freight (except berries, green fruits, vegetables, poultry and eggs, from Aptos, Santa Cruz and all intermediate points to and from San Francisco; also except the same commodities northbound from Aptos to Betabel and all intermediate points) between San Jose and Santa Cruz and Watsonville and intermediate points, except Los Gatos, on the line of the highway from San Jose via Los Gatos, Santa Cruz, Watsonville, Chittenden Pass and San Juan," over the route, "By main highway via Los Gatos, Santa Cruz, Watsonville, Chittenden Pass and San Juan;" Decision No. 17469, on Application No. 12134 was modified to permit Highway Transport Company to use main highway between Santa Cruz and Watsonville with right of diversion over county roads to serve Seabright, Capitola, Sea Cliff and Del Mar.

all of the various public highways between the termini named. This is in accordance with the certificates referred to which specify no particular highway routes to be traversed (Application No. 5272, Decision No. 7376).

Based upon such interpretation and practice, it is the contention of this applicant that it now has, and always has had, a right to serve Camp Ord. In support of its position, Highway Transport, Inc. introduced exhibits based upon actual shipping documents showing shipments to Camp Ord and other points in the immediate vicinity thereof since 1929. Further testimony adduced by this applicant, and unrefuted in the record, established that at no time was a shipment to Camp Ord ever refused and that all property tendered for delivery to that point had been handled.

Protestant Silva, likewise a certificated highway common carrier for the past ten years, possesses a right to operate between San Francisco and points on the highways in the territory and over certain described routes ⁽²⁾ (including a three (3) mile lateral on either side of said routes) in the vicinity of Salinas, with certain

(2) "(a) Beginning at a point in the U. S. Highway No. 101 northeasterly of Salinas where such U. S. Highway intersects the northeasterly boundary of Monterey County, thence southwesterly along such highway, to a point formed by the intersection of said U. S. Highway with the Salinas-Monterey Highway in the City of Salinas, continuing southerly along the Salinas-Monterey Highway to a point formed by the intersection of said Salinas-Monterey Highway and the Marina-Hilltown Road, including all points on all highways in the territory laterally within three miles of the route hereinabove set forth.

"(b) Beginning at a point formed by the intersection of U. S. Highway No. 101 with the Salinas-Watsonville Highway in the City of Salinas, thence northwesterly along said Salinas-Watsonville Highway to a point formed by the intersection by said Salinas-Watsonville Highway with Dolan Road just north of Moss Landing including all points on all highways in the territory for a distance of three (3) miles laterally of the hereinabove described routes."

(3)
restrictions,

Based upon the three mile lateral right above referred to, Silva claims the right to serve Camp Ord and alleged, through counsel, that service to the Camp has been carried on as a part of his regular service. However, no affirmative showing in support of this contention appears of record other than the reference to and reliance upon the lateral right described.

Thus far, the record discloses one applicant (Pacific Motor Trucking Company) seeking a new certificate; another (Highway Transport, Inc.) claiming an existing right, or, failing that, requesting a new certificate; and a third, J. W. Silva, maintaining that, under his existing certificate, he has a right to perform the service herein involved.

With respect to the public demand for the service proposed to be inaugurated, or to be continued, as the case may be, the record was indicative of future rather than present need, aside from that present demand predicated upon current construction activities. The testimony of the Army 9th Corps Area Quartermaster in charge of the transportation phase, among other duties, of Camp Ord activities, clearly showed the growth of this military reservation and definitely established the project as one of permanence and considerable magnitude. It was further stated by this witness that purchases would be made in Salinas which would require public transportation facilities

(3) "Provided, however, that no service may be given north of Dolan Road in the territory described in Route (b) herein next above described nor north of the Monterey County Line in territory (a) hereinabove described and further provided that on northbound trips only, delivery only of freight may be made to San Jose, Mountain View and Oakland."

for delivery to Camp Ord. Due to the fact that supplies, materials and equipment for the camp are allocated under bid and are further dependent upon appropriation of monies by the Congress, it was not possible to anticipate, with any degree of accuracy, a definite and particular need for any certain amount of service at any given time. However, the record does show that although fairly active in 1939, (estimated incoming tonnage figures ranged as high as 300 to 400 tons daily) considerably greater impetus has been given to this project since the beginning of 1940 and there is every indication that Camp Ord has clearly attained a status of permanency at this time which points to greater and more frequent demands for adequate and flexible transportation facilities.

Both applicants alleged that considerable demand has been made upon them, individually, for service to Camp Ord. Public witness testimony, however, indicated rather irregular freight movements involving varying tonnages. From April, 1939, until January, 1940, Highway Transport, Inc., according to its Exhibit 5 compiled from actual freight bills, showed some 43 shipments transported between San Francisco and Camp Ord, ⁽⁵⁾ ranging in weight from 2 pounds up to 11,010 pounds, moving with varying frequencies ranging from 3-day to monthly and semi-monthly intervals.

Protestant Silva, as before stated, rested his case solely on statements of counsel, reference to his operative right, tariffs thereunder filed, and offered no affirmative testimony in the record to indicate any patronage of his alleged service in this territory in further substantiation of his claims as to a right therein. Furthermore, the record is silent with respect to any J. W. Silva contact

(5) Presumably, Richardson Gate which with the Marina Gate provides point of ingress and egress for approximately 90 per cent of the Camp Ord tonnage.

with the Camp. In support of Silva, the record does show an operative right as before described, which by reason of the lateral right therein, allegedly gave this carrier access to Camp Ord. Reference to the tariffs filed by Silva indicate that Salinas rates were intended to apply in this territory. Effective February 26, 1940, Silva filed an amendment to his Local Freight Tariff No. 5, C.R.C. No. 5, which named specific rates to and from a point designated as "Richardson Gate of Camp Ord Military Reservation."

In so far as Silva and Highway Transport, Inc., are concerned, the record shows that no different service is proposed to be rendered than now exists. With respect to the Pacific Motor Trucking Company's proposal, service will be afforded this area locally from and to Salinas and Camp Ord, and in addition, the co-ordination of rail and truck, whereby main line Southern Pacific traffic will be transshipped at Salinas under joint through rate arrangements for Camp Ord delivery, will serve to augment and complement rail and truck service to Marina and also Gigling located on a Southern Pacific branch line operated via Castroville, Pacific Grove and Monterey. Prime purpose of all proposals will be to afford more expeditious and faster service overnight to Camp Ord from system points (particularly San Francisco) of carriers involved. (6)

-
- (6) Pacific Motor Trucking Company, under contract with the Southern Pacific Company, operates a highway common carrier service under a certificate of public convenience and necessity, between the rail stations of the Southern Pacific Company located at Watsonville Junction, Watsonville, Castroville, Nashua, Neponset, Eapis, Bardin, Marina, Gigling, Workfield, Prattco, Seaside, Retreat, Del Monte, Monterey, Pacific Grove, Asilomar and Salinas limited to the transportation of freight previously consigned for transportation over the lines of the Southern Pacific Company and which may be delivered to Pacific Motor Trucking Company's truck at said railroad stations, to be redelivered at another of said freight stations (Application No. 18315, Decision No. 26738, dated January 15, 1934).

Based upon the record herein and the testimony adduced thereunder, I am of the opinion that the operative right of Highway Transport, Inc. as now constituted, is sufficient in scope to permit of service to and from Camp Ord Military Reservation and therefore no additional authority is required by this applicant for the continued performance of the operation in question. In so stating, it should be distinctly understood that no enlargement or extension of the existing right of Highway Transport, Inc. is contemplated or implied and nothing herein contained shall be so construed.

I am also of the opinion that J. W. Silva may, by virtue of the operative rights heretofore granted to him by the Railroad Commission, as above described, with particular reference to the three-mile lateral right set forth and contained in his certificate, be legally entitled to serve Camp Ord, notwithstanding that this operator failed to produce evidence for the record herein establishing, or tending to establish, that Camp Ord or Richardson Gate as a point of entry thereto, falls within the area of the said three-mile lateral along the highway route specified in the said certificate. Since it thus remains both uncertain and undetermined of record whether Camp Ord, or Richardson Gate, lies within or beyond the northerly line of such three-mile lateral, it is my further opinion not only that presumption appears to support Mr. Silva's contention, but that this operator be afforded the opportunity to endeavor to substantiate his claim which, if predicated upon fact, might be accomplished by and through the mere act of filing with the Commission an official county map whereon would be delineated the exact boundaries of Camp Ord with respect to the existing authorized operating routes of the said J. W. Silva, whereby it may be clearly and definitely shown that

Camp Ord is within or without, as the case may be, the lateral zone of operations now conducted by this carrier. There appears to be no question but that this operator has included Camp Ord in his holding out of service, that he has had on file and in effect rates for such service, and that he has been and now is willing and able to perform in consonance therewith. There remains, therefore, the single objective of establishing as a definite fact, by the method heretofore suggested, whether Camp Ord lies within the metes and bounds of Silva's lateral zone of operations. And as in the case of Highway Transport, Inc., nothing herein stated may be construed as in any way extending or enlarging the existing operating rights of this carrier.

Turning now to the application of Pacific Motor Trucking Company for a certificate of public convenience and necessity between Salinas and Camp Ord, as heretofore more specifically set forth and described, the record is convincing with respect to the necessity for the establishment of the proposed service. This contemplated service is confined to an operation along the eastern boundary of Camp Ord, terminating at Richardson Gate, and is particularly intended for an expedited movement of less-than-carload freight via Salinas in contrast with the necessarily slower carload freight movement via Southern Pacific Monterey branch serving Gigling and Marina Gates on the west or coast side of Camp Ord. Through the use of the co-ordinated rail and truck service contemplated under applicant's proposal, more direct and faster service will be made available to Camp Ord. It is the intention of applicant to use equipment now stationed at Salinas and Monterey for which full time use has not been found. Applicant alleges that free equipment, sufficient to maintain the "on call" service proposed, will be available at one or the other of these points to handle anticipated tonnage. It is further alleged that additional equipment commensurate with traffic

demands can readily be provided for this service. Pacific Motor Trucking Company, through this operative right, will afford Camp Ord overnight service via Richardson Gate, in contrast to the second morning and second afternoon service now given via Gigling and Marina. Letters urging the granting of this application were filed with the Commission by the Henry J. Kaiser Company of Oakland, producers of sand, gravel and rock; the Permanente Corporation of San Jose, the San Francisco Chamber of Commerce, the Sacramento Chamber of Commerce, the Gilmore Steel and Supply Co., Inc., the Oakland Chamber of Commerce, the Edward R. Bacon Company, and the Western Pipe & Steel Company. The office of the Corps Area Quartermaster, Presidio San Francisco, directed a letter to the Commission indicating a need for service between Salinas and Camp Ord. Primarily, the need here existing is for the transportation of property destined to Camp Ord and originating at points other than Salinas. Except for the statement of the Ninth Corps Area Quartermaster to the effect that purchase would be made locally in Salinas, no evidence was adduced in this record for traffic originating in Salinas and destined to Camp Ord. Conversely, no protest was made to the granting of such local rights to this applicant by Highway Transport, Inc., the only carrier of record in this proceeding in a position to cover this field, since Silva's certificate, in so far as northbound traffic is concerned, permits delivery of freight to San Jose, Mountain View and Oakland, only. Southbound Silva, through counsel, definitely stated that his only interest lay in traffic of San Francisco origin. Considering the situation in its entirety, I am of the opinion that the application of Pacific Motor Trucking Company should be granted and am of the further opinion that both Highway Transport, Inc. and Jack Silva should be confirmed in their respective rights as heretofore discussed. I recommend the following form of 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

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

IT IS HEREBY ORDERED that Application No. 23199 of Highway Transport, Inc., in so far as it requests a clarifying order of this Commission establishing, confirming and declaring its right to serve Camp Ord, be and it is hereby granted. In all other respects, Application No. 23199 be and it is hereby dismissed.

IT IS HEREBY FURTHER ORDERED that Jack Silva shall within thirty (30) days from the effective date of this order, prepare and file with the Commission an official map of the county of Monterey, whereon there shall be delineated the confines, boundaries and location of Camp Ord Military Reservation with respect to the existing and authorized operating routes of said J. W. Silva, for the purpose of showing that said Camp Ord Military Reservation, or more particularly its ports of entry, i.e. Camp Richardson, Gigling and Marina, is within the three (3) mile lateral right heretofore granted to said J. W. Silva.

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 such is defined in Section 2-3/4 of the Public Utilities Act, between Salinas, on the one hand, and Camp Ord (Richardson Gate) on the other hand, over and along the following route:

Via Highway U. S. No. 101 to its point of intersection south of Salinas with the Marina-Hilltown or Camp Ord Road, thence via the said Marina-Hilltown or Camp Ord Road to port of entry at Richardson Gate (Camp Ord).

IT IS HEREBY FURTHER ORDERED that a certificate of public convenience and necessity therefor be, and the same hereby is 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 shall file, in triplicate, and concurrently make effective on not less than ten (10) days' notice to the Railroad Commission and the public, a tariff or tariffs constructed in accordance with the requirements of the Commission's General Orders and containing rates and rules which in volume and effect shall be identical with the rates and rules shown the the exhibit attached to the application in so far as they conform to the certificate herein granted, or rates and rules satisfactory to the Railroad Commission.

4. Applicant shall file, in triplicate, 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.

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

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 16th day of April, 1940.

Ray L. Riley

Justice J. Coe
Justice J. Coe
COMMISSIONERS