

Decision No. 23061

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
OVERLAND TRANSFER COMPANY, a corpor-
ation, for authority to establish a
truck service for the transportation
of freight between Stockton and Rio
Vista and points intermediate thereto. }

Application No. 23061

WARE & BEROL by Edward M. Berol, for Applicant.

ANSEL S. WILLIAMS, JR. and A. J. GAUDIO by A.J.
Gaudio, for Southern Pacific Company and
Pacific Motor Trucking Company, Protestants.

W. G. STONE for Sacramento Chamber of Commerce,
Interested Party.

J. C. SOMMERS for Stockton Chamber of Commerce,
Interested Party.

BEVERLY GIBSON for River Auto Stages, Interested
Party.

MCCUTCHEEN, OLNEY, MANNON & GREENE by F. W. Mielke
for The River Lines, Interested Party.

BY THE COMMISSION:

O P I N I O N

By this application, as amended, Overland Transfer Company, a corporation, seeks authority to establish and operate an automotive service as a highway common carrier, between Lodi and Rio Vista serving Woodbridge, Acampo, Galt, Thornton, Walnut Grove, Ryde, Grand Island and Isleton, as an extension and enlargement of its existing operative right between Stockton and Lodi and intermediate points. The proposed extension of service further includes a request for authority to render service one (1) mile laterally on either side of the

highways traversed between termini. No service is proposed between Walnut Grove and Rio Vista and points intermediate thereto on traffic having both point of origin and destination between said points.

Public hearing in this matter was had before Examiner McCettigan in Stockton on January 19, 1940 and in San Francisco on March 8, where testimony was taken, exhibits filed and a submission entered. The matter is now ready for decision.

Southern Pacific Company and Pacific Motor Trucking Company appeared as protestants to the granting of that portion of the proposed service between Lodi and Galt and intermediate points. The Sacramento Chamber of Commerce, Stockton Chamber of Commerce, The River Lines and River Auto Stages were also represented and appeared as interested parties.

C. C. Thompson, traffic manager of applicant, testified that at the present time his company is rendering a twice-daily except Sunday and Holiday service between Stockton and Lodi and intermediate points. Under applicant's proposal, the witness stated, daily service is to be extended to Woodbridge, Acampo, Galt and Thornton with a minimum service of three times weekly proposed for Walnut Grove, Ryde, Grand Island, Isleton and Rio Vista. This is to be accomplished by the establishment of two routes designated as Nos. 1 and 2. Route No. 1, operating Tuesday, Thursday and Saturday, will serve Stockton, Lodi, Woodbridge, Acampo, Galt and Thornton. Route No. 2, operating Monday, Wednesday and Friday, will serve the same points and in addition will be extended to cover the points of Walnut Grove, Ryde, Grand Island, Isleton and Rio Vista. Such an arrangement, which provides for an 8:00 A.M. departure from Stockton, will insure that, as to all points proposed to be so served,

freight may be delivered the same day that it is dispatched or, at the latest, overnight. As to points on Route No. 1, delivery is to be made at approximately 11:00 A.M. at the extreme termini of Thornton. Points on Route No. 2, including Rio Vista, the last point named, are to be afforded delivery prior to 1:30 P.M. Returning, it was shown that points on Route No. 1 will be afforded arrival times in Stockton of 12:01 noon and 4:30 P.M. Points on Route No. 2 will be served by the 4:30 P.M. Stockton arrival. As to these return services, the witness stated that through connecting carriers at Stockton, asparagus, celery and fruit growers would have overnight service available to such outside territories as Los Angeles. Pick-up and delivery service will be afforded at all points proposed to be served either by line haul or local drayman. Terminal service is available at Stockton and Lodi and adequate and comparable arrangements will be made wherever else necessary.

(1)

The testimony of public witnesses particularly favored establishment of the proposed service to the points of Thornton, Walnut Grove, Ryde, Grand Island, Isleton and Rio Vista. As to the points of Woodbridge, Acampo and Galt, witnesses, while admitting that additional service would be of some advantage, were not particularly critical of the existing services, and could show neither a particular need for such service nor that an inadequacy of service detrimental to their interests existed. Except for complaint as to the 3:30 P.M. receiving dead line imposed on less-than-carload freight at Stockton, involving the Pacific Motor Trucking Company and directly referring to Woodbridge traffic, the Southern Pacific rail service to Acampo and Galt, with pickup and delivery by Pacific Motor Trucking

(1) Eight witnesses appeared from Stockton, three from Thornton, four from Rio Vista and one from Lodi.

Company, was generally considered adequate. The points involved are not large communities, and the amount of tonnage, moving locally between such points and Stockton, would be comparatively light, according to the record before us.

Primarily, the record shows that the proposed service of applicant is essentially for the benefit of and at the behest of Stockton merchants because of the existence of a material competitive disadvantage to them resulting from inadequate service to Thornton and the so-called "River Points" of Walnut Grove, Ryde, Grand Island, Isleton and Rio Vista. Thornton, served by Western Pacific, was alleged by witnesses to be inadequately served in so far as their particular needs were concerned. The necessity for additional service to Woodbridge, Acampo and Galt, which have both Southern Pacific Company and Pacific Motor Trucking Company service, was less apparent.

Southern Pacific Company, according to the record, offers a daily local freight service from Stockton to Acampo and Galt, via Lodi, with freight being received up until 5:00 P.M. at both Stockton and Lodi, the only agency points involved. This freight train leaves Stockton at 6:40 A.M. and arrives at Lodi, Acampo and Galt at 7:15 A.M., 10:30 A.M. and 10:45 A.M., respectively. Returning, this train leaves Galt at approximately 3:30 P.M. for Stockton serving Acampo and Lodi enroute. Pacific Motor Trucking Company performs all pickup and delivery service for the Southern Pacific Company at these points. The record further shows that Lodi, Acampo and Galt were given line haul service by rail only, it not being the practice of the Southern Pacific Company to utilize the northbound trip of the Pacific Motor Trucking Company, which operates between Stockton and

Sacramento, to handle freight to these points. Prior to the first hearing in this matter the record also showed that it was the operating practice of these carriers to transport Woodbridge freight from Stockton on the northbound Pacific Motor Trucking Company 4:00 P.M. schedule into Sacramento, where it was held overnight and delivered on the southbound morning truck which also performed both pickup and delivery service at the other points involved for traffic originating in Sacramento, as well as that already brought to these points by the rail service previously referred to. Subsequent to the first hearing of this application, the practice of taking Woodbridge freight into Sacramento by truck was discontinued, and instead such freight was transported from Stockton to Lodi by rail and thence by truck to Woodbridge. No reason appears of record as to why this change was made. The record does show, however, that one of the chief complaints by Stockton shippers was that they were obliged, under the previous arrangement, to have their Woodbridge freight ready at 3:30 P.M. for shipment by truck, whereas by rail, shipments would be accepted up until 5:00 P.M. Therefore, although no earlier actual delivery of freight to Woodbridge took place, Stockton shippers were given an additional receiving time of one hour and a half and were enabled thereby to obtain the same delivery service for a greater number of customers than with the 3:30 P.M. dead line referred to, in effect. Although not definitely so stated, Woodbridge freight evidently remained in Lodi overnight and was delivered the next day by the southbound truck in accordance with established operating procedure. The record further shows that truck pickups and deliveries by Pacific

(2) Leaves Sacramento approximately 11:00 A.M.

Motor Trucking Company are scheduled to be made at Galt, Acampo and Woodbridge between noon and 1:00 P.M. of the day following loading from Stockton, but may be and have been made at a later hour, depending upon the arrival of the southbound Pacific Motor Trucking Company truck from Sacramento. The applicant's schedule between these points shows that Stockton shippers will have direct first morning delivery at an earlier hour to Woodbridge, Acampo and Galt than now is available, or that could be made available under protestant's existing operating practices. This includes shippers whose freight applicant takes custody of during the day previous to departure for overnight service, as well as those who may turn over their freight to applicant on the day of departure in sufficient time to make the morning schedule of applicant and thereby obtain delivery on that day.

Stockton merchants, manufacturers and shippers have developed considerable business, according to this record, in Thornton, Walnut Grove, Ryde, Isleton and Rio Vista, principally through the use of their own and proprietary trucks, which acknowledgedly have been expensive and not always satisfactory to use. Alternatively, shipments may be made through San Francisco via The River Lines. These shippers have been obliged, they allege, to forego further development of, and suffer loss of business in this territory because no direct

(3) Partial time schedule proposed:

8:00 A.M.	Lv	Stockton	Ar	12:01 P.M.	4:30 P.M.
8:30 A.M.	Ar	Lodi	Lv	11:31 A.M.	4:00 P.M.
9:00 A.M.	Lv	"	Ar		3:30 P.M.
9:10 A.M.	Ar	Woodbridge			
9:15 A.M.	Lv	"			
9:22 A.M.	Ar	Acampo			
9:30 A.M.	Lv	"			
9:45 A.M.	Ar	Galt			

and comparable common carrier service exists to these points from Stockton.

As has already been stated, no particular complaint was made against the transportation service now provided by the existing rail carrier to and from the points Acampo, Woodbridge and Galt, excepting the situation at Woodbridge as before described. However, Pacific Motor Trucking Company, under its existing certificates of public convenience and necessity, ⁽⁴⁾ has not offered, and is not now offering Stockton a truck service northbound, comparable to applicant's proposed service to the points above enumerated. This is substantiated by protestant's statement that it is not the practice to utilize this northbound truck trip to handle any freight for "short points," apparently on the premise that no complaint has been made, nor request received, for such a service. Protestant's counsel implied that, upon request, Pacific Motor Trucking Company would give such a service if sought, but did not care to regularly pursue such a course. This may be explained through the fact that the service operated by Pacific Motor Trucking Company in this territory is for the transportation of rail and express traffic only, and appears to have been established primarily for expediting service between Stockton and points Sacramento and beyond and not for local intermediate points service except in one direction.

The collective services of protestants apparently are based principally upon through movements between Stockton, Sacramento and

(4) Granted by Decision No. 29447, dated January 11, 1937, on Application No. 20729 as an extension and enlargement of authority to serve between Stockton and Martel via Lodi, among other points, granted by Decision No. 28927 and Decision No. 28054, dated June 10, 1935 and June 20, 1935, respectively, on Application No. 19713.

points beyond, geared to a system rather than a local operation. Depot rail service of course is given overnight to Lodi (including Woodbridge by truck) Acampo and Galt, with store-door pickup and delivery integrated with and contingent upon the operating schedule of the southbound Pacific Motor Trucking Company truck from Sacramento. This, in the main, provides these communities with a reasonably complete and adequate service. Applicant can better this service to the extent of offering an advantage in time which is not of pressing moment and not necessary, on the record, to patrons at the particular points involved. Furthermore, the amount of tonnage involved is not such as to indicate support of any greater or more expeditious service than now afforded. The record shows that applicant's original intention was to encompass service only to the so-called River Points (including Thornton) and that upon the basis of one definite complaint and intimation as to others, decided to include Galt and also the intermediate points of Acampo and Woodbridge.

With respect to the ability of this applicant to establish and operate the proposed highway common carrier service, no reasonable doubt exists. Applicant has both experience and equipment and a reasonable assurance of adequate tonnage ⁽⁵⁾ has been shown, of record, to be available particularly in so far as the "River points" are concerned.

(5) According to the witness Thompson, there are located in the territory proposed to be served, nine canneries, five wineries and one milk condensory, most of whom buy supplies in or ship to Stockton. A considerable amount of this tonnage now moves by contract or proprietary truck. In 1939, as a contract carrier, applicant moved a total of 891 tons of freight into Stockton, 428 tons of which was transported for the Thornton Canning Company, subsequent to September 21 of that year. Mr. Thompson estimated that on a full year basis this tonnage figure would be boosted to between 1,200 and 1,500 tons of freight available for truck movement. Additionally, this witness further testified that the territory proposed to be served is geographically closer to Stockton, a manufacturing and distributing center of considerable importance and size, than to any other deep water port.

A full review of the record in this proceeding clearly shows that a public need exists for the establishment and operation of a highway common carrier service between Stockton and Lodi and intermediate points, on the one hand, and Thornton, Walnut Grove, Ryde, Grand Island, Isleton and Rio Vista, on the other hand, subject to a restriction that no traffic, having both point of origin and destination between Walnut Grove and Rio Vista and points intermediate between said termini, will be transported. The record does not support the conclusion that there is a similar need for the establishment and operation of such a service between Stockton and Lodi and intermediate points, on the one hand, and Woodbridge, Acampo and Galt, on the other hand, because of a failure to show little other than a desire upon the part of applicant to serve these points and indefinite proof of a need of service other than now exists.

Southern Pacific rail service in conjunction with Pacific Motor Trucking Company and including the pickup and delivery service offered at these points, is on this record, sufficiently adequate. Applicant's request for authority to serve Woodbridge, Acampo and Galt, therefore, will be denied.

Overland Transfer 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 proceeding, evidence having been received, the matter having been duly submitted, and the Commission now being fully advised,

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA HEREBY DECLARES that public convenience and necessity require the establishment and operation by Overland Transfer 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 Stockton and Lodi and intermediate points, on the one hand, and Thornton, Walnut Grove, Ryde, Grand Island, Isleton and Rio Vista, on the other hand, as an extension and enlargement of applicant's existing rights and consolidated therewith, over and along the following routes:

Lodi to Woodbridge

West on Highway #12 to Sacramento Road,
north on Sacramento Road to Woodbridge;

Woodbridge to Acampo

North on Sacramento Road to Acampo Road,
east 9/10th of a mile to Acampo;

Acampo to Galt

West on Acampo Road to Sacramento Road,
north on Sacramento Road to Main Street,
Galt, east on Main Street to 4th Street;

Galt to Thornton

South on 4th Street to Thornton Road,
west on Thornton Road to Thornton, at
the intersection of Highway #12;

Thornton to Lodi

South and east on Highway #12 to Lodi.

Loop 2 is the same as Loop 1 from Lodi to Thornton.

Thornton to Walnut Grove

West on Highway #12 to Walnut Grove;

Walnut Grove to Ryde

South on Highway #12 to Ryde;

Ryde to Grand Island
South on Highway #12 to Grand Island;

Grand Island to Isleton
South on Highway #12 to Isleton;

Isleton to Rio Vista
South on Highway #12 to Rio Vista;

Rio Vista to Thornton
North and east on Highway #12 to Thornton;

Thornton to Lodi same as route #1,

and subject to the following restriction:

No traffic, having both point of origin and destination between Walnut Grove and Rio Vista and points intermediate between said termini, will be transported.

IT IS HEREBY ORDERED that a certificate of public convenience and necessity therefor be, and the same hereby is, granted to Overland Transfer 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 in 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.

In all other respects, Application No. 23061 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 20th day of April, 1940.

Ray L. Rice
James R. Nelson
Robert W. Adams
H. Baker
Justin F. Caenen
COMMISSIONERS