

Decision No. 30277

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
ROBERT G. ANDERSON, doing business as )  
PETALUMA & SANTA ROSA EXPRESS CO., for a )  
certificate to operate a common carrier )  
truck service between San Francisco and )  
Hamilton Field in Marin County and points )  
north thereof to and including Santa Rosa )  
and Sebastopol in Sonoma County, said )  
certificate to be in lieu of present )  
operation by applicant of express business )  
conducted under same name. )

ORIGINAL

Application No. 20083

DOUGLAS BROOKMAN, for Applicant and for J. W. Anderson, Intervenor.

H. F. HIRSCHY, for Valley Express Company, in support of Applicant.

HENRY W. HOBBS, for Pacific Motor Trucking Company, Pacific Motor Transport Company, Northwestern Pacific Railroad Company, and Sonoma Express Company (Anna L. Bezera) Protestants.

WILLIAM D. FUSSELMAN, for Marvelous Marin Incorporated, in support of Applicant.

R. S. ELLIOTT, for Railway Express Agency, Inc., Protestant.

HARRY S. GRAHAM, for Petaluma and Santa Rosa Railroad Company, Protestant.

BY THE COMMISSION:

O P I N I O N

By this application, as amended, Robert G. Anderson seeks a certificate of public convenience and necessity for the transportation of property as a highway common carrier between San Francisco, on the one hand, and San Rafael, Santa Rosa, Sebastopol and intermediate points, excluding San Rafael, on the other hand.

Applicant now transports property between the above-named points, as an express corporation, over the rail facilities of Northwestern Pacific Railroad Company and Petaluma and Santa Rosa Railroad Company as underlying carriers for applicant's line haul operations.

Applicant requests that the certificate be granted in lieu of, and not in addition to, his presently operated express corporation service which he proposes to concurrently abandon upon the establishment of the herein proposed highway common carrier service if authorized.

Petaluma and Santa Rosa Railroad Company, Northwestern Pacific Railroad Company, hereinafter referred to as the rail carriers, Pacific Motor Trucking Company, Sonoma Express Company, and Railway Express Agency, Incorporated, are all transporting property in the territory involved and protested the granting of the application. Marine Service Corporation, a highway common carrier also protested the application.<sup>(1)</sup>

The application as originally filed was heard and submitted. Thereafter, applicant sought and obtained an order of the Commission setting aside submission. An amended application was then filed and the proceeding was heard de novo at San Francisco, Santa Rosa, Sebastopol and Petaluma, and, on the record developed at such hearing, the proceeding was resubmitted. Concurrent briefs were filed by all parties and the proceeding is now ready for decision.

---

(1) By Decisions Nos. 32678 and 32756, on Application No. 23177, Marin Express Service, a corporation, was authorized to acquire all highway common carrier operative rights of Marine Service Corporation between San Francisco and Hamilton Field and intermediate points.

The amended application differs from the original application only to the extent that a plan was proposed to merge the highway common carrier operative right sought in this proceeding with a highway common carrier right now owned and operated by applicant's father, J. W. Anderson, between San Francisco and San Rafael, and intermediate points. However, no consolidation or merger is requested by the amended application and it is not necessary to discuss the evidence presented relative to applicant's future plans.

Applicant proposes two daily, except Sunday, round-trip schedules. Trucks will leave San Francisco at 12:00 noon and 6:00 P.M. and arrive at Sebastopol at 3:30 P.M. and 10:00 P.M. Santa Rosa will be served on each of these schedules.

Applicant testified, and it was admitted by protestants, that there is no present daylight common carrier service between the points involved, except a service by express carriers. In this connection, applicant testified that while he had had numerous requests to improve his service by providing a daylight service to his patrons, such improvement in service is now impossible because he is dependent solely on the services of his underlying rail carriers who provide only an overnight service.

The record shows that numerous patrons of applicant have demanded a more frequent service. The underlying rail carriers were requested to co-operate with applicant in improving the existing service, but the record shows they have refused to augment their present service.

Applicant presented shipper witnesses who testified that they desired, or needed, an improved service. The protestants, on

other hand, presented witnesses who testified that the existing services were adequate and satisfactory.

It is unnecessary to analyze, in detail, the evidence of the shipper witnesses. Suffice it to say that the record in this proceeding presents the usual conflict between a carrier who is seeking to improve its service and the carriers who are now performing, in so far as their patrons are concerned, a satisfactory and adequate service. However, there is this marked difference in this proceeding in that the rail carriers, who have been before this Commission on numerous occasions requesting certificates of public convenience and necessity to operate trucks on the highway for the purpose of improving the rail service and effecting operating economies, are here attempting to prevent applicant from accomplishing the very thing which they have heretofore sought to do and for which the Commission, on numerous occasions, has permitted them to do.

While the record in this proceeding shows that the rail carriers serving this territory are not in a healthy financial condition, they presented no evidence to show that the granting of this certificate would seriously affect them. There will probably be some loss in revenue now obtained from the express company, which will be offset to some extent by the higher rates which the rail carriers will obtain from traffic which will remain on the rails. As pointed out in brief by counsel for protestants, because of the similarity in names between applicant and the Petaluma and Santa Rosa Railroad Company there is undoubtedly some traffic, which applicant now has, that would normally be given to the rail carriers.

The record clearly shows that there is a public need for an improved service as proposed by applicant and a certificate will

be issued authorizing the establishment and operation of a highway common carrier service and the abandonment of the express corporation service now provided by applicant.

Robert C. Anderson 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, the matter having been 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 Robert C. Anderson of an automotive service as a highway common carrier, as such term is defined in section 2-3/4 of the Public Utilities Act, for the transportation of property between San Francisco, on the one hand, and San Rafael, Santa Rosa and Sebastopol and intermediate points, excluding San Rafael, on the other hand, over and along U.S. Highway No. 101 and the public highways between Santa Rosa and Sebastopol, and between Cotati and Sebastopol.

IT IS ORDERED that a certificate of public convenience and necessity therefor is hereby granted to Robert G. Anderson in lieu of, and not in addition to, any express corporation operative rights under which said Anderson is now providing a common carrier service between the points herein certificated, subject to the following conditions:

1. The authority herein granted shall lapse and be void if applicant shall not have complied with all 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 express tariffs of said Anderson now on file with the Railroad Commission 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 duplicate, and make effective within a period of not to exceed thirty (30) days after the effective date hereof, 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.

IT IS FURTHER ORDERED that applicant shall abandon his express corporation operations between the points herein certificated concurrently with the establishment of the highway common carrier service as herein authorized and the operative right therefor is hereby revoked and annulled.

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

Dated at San Francisco, California, this 3<sup>rd</sup> day of ~~January~~ July, 1940.

Ray L. Riley  
Frederick W. Miller  
Robert W. Anderson  
H. B. Hall  
Justus J. Casner  
COMMISSIONERS