

Decision No. 30707

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
transportation of property over the
public highways between Santa Ana,
Orange, Anaheim, Fullerton, La Habra,
Brea, Yorba Linda, Tustin, and Dyer.

ORIGINAL

Application No. 22357

ANSEL S. WILLIAMS, JR., for Applicant;
and for Southern Pacific Company and
Pacific Electric Railway Company,
Interveners in support of Applicant.

FRANK H. ORGREN, for Holly Sugar Corpn.,
Intervener in support of Applicant.

WALLACE K. DOWNEY and HUGH GORDON, by
Hugh Gordon, for Pacific Freight
Lines and Keystone Express System,
Protestants.

JACKSON W. KENDALL, for California
Storage Association, Protestant.

E. A. MAHER, for Automotive Council of
Orange County, Protestant.

G. M. HUNTON, for Valencia Truck Company,
Protestant.

H. J. BISCHOFF, for Southern California
Freight Lines, Protestant.

A. W. MERRIFIELD, for A. W. Merrifield
Trucking Company, Protestant.

J. D. SPENETTA, for Inland Transportation
Corporation, Protestant.

GEORGE W. YOUNG, for Van Dien-Young
Company, Protestant.

BY THE COMMISSION:

O P I N I O N

By application filed November 14, 1938, as amended, the
Pacific Motor Trucking Company, seeks a certificate of public
convenience and necessity authorizing operation as a highway common

carrier of property between Santa Ana, Orange, Anaheim, Fullerton, La Habra, Brea, Yorba Linda, Tustin and Dyer, but not including intermediate points.

Applicant, a California corporation, is a wholly owned subsidiary of the Southern Pacific Company, which also controls, through entire stock ownership, the Pacific Electric Railway Company. Applicant now operates in intrastate commerce as a highway common carrier of property, over numerous disconnected routes in California which generally parallel the rail lines of the Southern Pacific Company and its rail subsidiaries, primarily in a co-ordinated rail-truck service. In addition to line-haul service, applicant also performs store-door pickup and delivery service at many of the points served by its motor truck routes. The corporate history, general operations and financial position of applicant are fully described in re Pacific Motor Trucking Company, 42 C.R.C. 745, and need not be repeated here.

The instant application is another step in the general plan of applicant and Southern Pacific Company toward the development of a co-ordinated rail-truck service for the handling of less-carload merchandise traffic in the territory served by the rail lines of the latter and its rail subsidiaries. Here the proposed truck operation would provide means for in part extending such co-ordinated service to a small group of points located southeast of Los Angeles, all of which are station points located on the rail lines of either or both Southern Pacific Company and Pacific Electric Railway Company. Each point proposed to be served by the truck operation would be afforded store-door pickup and delivery service.

Applicant proposes to limit its service to the transportation of traffic now being handled by either or both of the two rail

lines moving from, to, or between the points considered, under joint rate arrangements with each of them by concurrence in their respective tariffs currently in effect and on file with the Commission.

Public hearing was had in Los Angeles before Examiner Hunter on June 7 and 8, 1939, ⁽¹⁾ evidence received and the matter submitted on briefs duly filed. Subsequently, by its order of January 16, 1940, the Commission set aside said submission and reopened the proceeding for oral argument before the Commission en banc in San Francisco which was duly had on January 30 and 31, February 1 and 6, 1940. The matter was again taken under submission and is now ready for decision.

The Holly Sugar Corporation, Southern Pacific Company and Pacific Electric Railway Company intervened in support of the application. A number of motor carriers ⁽²⁾ opposed the granting of the application.

It is represented by applicant that the existing all-rail service is inadequate at the points considered to properly meet the needs and demands of modern merchandising methods because of shipments being delayed in transit and failure to afford store-door pickup and delivery service at some of the points. To remedy this condition is the primary purpose of the authority sought herein.

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- (1) This matter was heard jointly with MC-78786 (Sub. - No. 30) filed with the Interstate Commerce Commission before Joint Board No. 75. The Interstate Commerce Commission by its Order dated February 16, 1940, granted the application with respect to movements in interstate or foreign commerce under certain restrictions.
- (2) Protestant motor carriers are: Pacific Freight Lines; Keystone Express System; Southern California Freight Lines; California Storage Assn.; Automotive Council of Orange County; Valencia Truck Co.; A. W. Merrifield Trucking Co.; Inland Transportation Corpn.; and Van Dien-Young Trucking Co. The first four protestants named offered evidence in support of their position.

By utilizing motor trucks in the manner proposed as a substitute for the present less-carload merchandise all-rail service of both Southern Pacific Company and Pacific Electric Railway Company, and as auxiliary to, and supplemental of, such rail operations, applicant can afford to the shipping public an improved and more expeditious service.

The proposed plan of operation is similar to that now furnished by applicant in other areas of the State. Inbound traffic would move in rail cars from Los Angeles to break-bulk stations at Santa Ana, La Habra and Fullerton, thence distribution of shipments made by truck to the destination points located adjacent thereto. Conversely, outbound traffic would be picked up and handled by truck to concentration stations at Fullerton and Santa Ana, for subsequent movement in rail cars to Los Angeles.

Merchandise traffic handled by the existing all-rail service is subject to delay in transit because of the inflexible nature of through and local freight train schedules. An exhibit of record indicates that a majority of the shipments which would be transported by the proposed truck operation originate at, or are destined to, points beyond Los Angeles. The present rail service is provided by local freight trains which, in so far as the bulk of the merchandise traffic moving through Los Angeles is concerned, do not make connections at the latter point with the arrivals and departures of the fast merchandise freight trains operated over the main-line rails of the Southern Pacific Company. This causes such traffic to be held over one day at Los Angeles. The delay would, in most instances, be eliminated by the co-ordination of rail and truck schedules as proposed by the applicant. This, for the reason that the proposed operation co-ordinates with the service of both railroads. Outbound

traffic picked up during the day by truck would move to the concentration station in time to be handled by rail to Los Angeles and to connect with the fast trains leaving that point the same evening. Likewise, inbound traffic arriving at Los Angeles on the fast merchandise trains during the late evening and early morning hours would leave by rail the same morning in time to arrive at the break-bulk station and be delivered by truck during the afternoon. In addition to reducing the time in transit on traffic moving through Los Angeles, traffic originating at the latter point and destined to some of the communities on the proposed truck routes would be handled more expeditiously.

In providing the co-ordinated service local freight trains would not be eliminated but would continue to handle carload business. By relieving these trains of the less-carload traffic, it will permit of the elimination of stops and the reduction of time now required in handling the traffic at way stations, thus cutting the running time and reducing operating costs through savings in overtime wages. Some of the points will be afforded more frequent and convenient schedules by the proposed truck service. Applicant will perform pickup and delivery at each of the points proposed to be served except Fullerton where a local contract drayman is now performing such service for both Southern Pacific Company and Pacific Electric Railway Company and will continue to do so. At the non-agency stations of Tustin and Dyer the pickup and delivery service will be on an on-call basis and afford these two points a merchandise service not now offered by the rail lines, shipments being presently handled through the rail stations at Santa Ana.

To render the proposed truck service, applicant would operate two trucks at an estimated cost of \$4357 per annum. One of

the trucks intended to be used is now in service performing pickup and delivery of shipments at Santa Ana and Orange. The two rail lines estimated that the economies that would be realized in their operating expenses from the proposed truck service was \$6150 per annum, or a net saving of \$1793 per annum in handling the existing traffic in a more efficient, expeditious and generally satisfactory manner. An exhibit submitted by applicant discloses that, based upon a study made of the available traffic now transported by the two rail lines for an average month, it is estimated that the proposed truck operation would handle approximately 1226 tons of less-carload merchandise annually.

In support of the applicant, five shippers and/or receivers of freight at points on the proposed truck routes involved herein testified to their need for the co-ordinated rail-truck service, in order to better meet the requirements of their respective businesses for an expedited and more satisfactory handling of their shipments, including pickup and delivery, when destined to, or originating at, points beyond Los Angeles by rail. Such testimony was limited to shipments having a prior or subsequent movement by rail.

Protestants that offered evidence contend that existing motor carrier facilities are sufficient for the performance of adequate highway transportation service between points here considered and state they are ready, willing and able to provide the truck service proposed by applicant in co-ordination with the train schedules of the two rail lines. The showing made by these protestant motor carriers as to their respective services is not persuasive that they can and will afford the degree of co-operation necessary to provide a complete and successful co-ordination of rail-and-truck services when in vigorous competition for both

long-and-short haul traffic with the rail lines. To the contrary, the record before us supports the view that the shipping public will receive the full benefit of an improved and expedited rail-truck service as here proposed by having a unity of interest between the carriers participating in the transportation and be under a common management and control. As to possible loss of traffic by competing motor carriers, the record does not show that their tonnage will be materially affected by the proposed rearrangement of the existing rail schedules in order to handle more efficiently and expeditiously part way by truck of applicant the less-carload merchandise traffic now moving wholly on the rail lines.

The highway routes over which applicant proposes to conduct operations are roughly parallel to the rail lines, except for a few nonparallel short-cut or alternative routes between certain of the points to be served. Use of the nonparallel short-cut highway routes will, however, permit the various rail services on the several lines of the Southern Pacific Company and Pacific Electric Railway Company in the territory to be integrated. Where, as proposed here, each point to be served is now a station on the rail lines and the truck operation is auxiliary to, or supplemental of, rail service, the use of short-cut routes appears warranted.

From what has been said, it is plain that as an auxiliary and supplemental service for the rail lines, the proposed truck operation offers many advantages and benefits over existing all-rail less-carload merchandise service and is clearly in the public interest. In this connection our observations in re Pacific Motor Trucking Company, supra, with respect to the granting of a certificate of public convenience and necessity to a railroad truck subsidiary are pertinent. We there said:

That this Commission for many years has permitted the railroads, where such public need exists, to adapt the transportation services they offer to meet modern transportation conditions by the use of motor trucks in co-ordination with rail operations, is plainly evident from what has heretofore been said. There is no doubt but that co-ordinated rail-truck service has provided the public with a more expeditious, flexible, dependable, and satisfactory means of transporting less-carload merchandise traffic. (p. 770)

*** The rail lines are the pioneer common carriers in the field and have had to meet the competition of the protestants at each of the points involved for less-carload merchandise traffic. Through the applicant they seek to improve and expedite the handling of that traffic now moving on rail freight trains by a co-ordinated rail-truck service.***

Any diversion of traffic from other agencies, including protestants, would be the result of old and established carriers offering an improved service to the shipping public, and must be regarded as incidental to and a necessary consequence of the utilization of both forms of transportation to advantage. (p. 788)

We do not believe the proposed service will be sufficient to materially injure or impair the ability of protestants to perform their duty to the public. But, in any event, the public should not be denied the benefits of an improved and expedited service merely because other carriers may lose some traffic. Had we followed that plan since being given jurisdiction over highway common carriers twenty-three years ago, obviously the vast system of motor carrier services which now gridirons the entire State would never have been developed. (p. 789)

The record warrants the conclusion that public convenience and necessity require the establishment by applicant of the proposed service supplementary and auxiliary to, and co-ordinated with, the rail service of the Southern Pacific Company and the Pacific Electric Railway Company, but it does not establish a need for service by applicant which is not required in such co-ordinated operations. The authority to operate the proposed service should be conditioned accordingly. The conditions contained in the findings and order which follow herein are similar to those we provided in re Pacific Motor Trucking Company, supra. In that proceeding the reasons for such conditions are recited at length.

The California Storage Association, protestant, urges that any certificate granted herein should provide that applicant be excluded from transporting household goods. In view of the fact that applicant will be authorized to handle only that traffic having a prior or a subsequent movement by rail and which the two rail lines hold themselves out to transport under their applicable tariff schedules, we see no reason why any commodity restriction such as that suggested is necessary to protect motor carriers operating in the territory here considered.

After fully considering the record in this proceeding, we find as a fact that:

1. The present all-rail less-carload merchandise service provided by the Southern Pacific Company and Pacific Electric Railway Company in the territory proposed to be served by applicant is inefficient and unsatisfactory to meet adequately present-day transportation needs of the shipping public.

2. Public convenience and necessity require that said all-rail service be improved and expedited.

3. The said all-rail service can be improved and expedited by operating additional local way-freight trains; that this can be done, however, only at a cost which would be so excessive as to be unwarranted by the volume of available traffic, disproportionate to the public benefits afforded, and a burden on other traffic.

4. The existing defects in the said all-rail service can be adequately and economically remedied by the use of motor trucks in co-ordination with the rail freight trains.

5. The benefits and advantages to be obtained from an improved and expeditious service by co-ordination of rail-and-truck operations are in the public interest.

6. The applicant is ready, willing and able to render properly a motor truck service fully integrated and co-ordinated with the rail service of Southern Pacific Company and Pacific Electric Railway Company within the territory here considered.

7. The existing all-truck service rendered by protestants, when considered separate and apart from said all-rail service and the proposed co-ordinated rail-truck service to be provided by Southern Pacific Company, Pacific Electric Railway Company, and applicant, is adequate to meet the public need for an all-truck service at the points here considered.

8. The said co-ordinated rail-truck service can be provided and maintained most effectively and efficiently, and to the greatest public advantage, through the operation of all transportation facilities under a common control and management as proposed by applicant.

9. Protestants cannot provide and maintain a motor truck service in co-ordination with the rail service of Southern Pacific Company and Pacific Electric Railway Company within the territory here considered adequate to meet, and fully responsive to, the public need for this dual form of transportation service.

10. Public convenience and necessity require the establishment and operation by applicant as a highway common carrier, as defined in section 2-3/4 of the Public Utilities Act, over any and all available public highways only between the following named points; Santa Ana, Orange, Anaheim, Fullerton, La Habra, Brea,

Yorba Linda, Tustin and Dyer, including the right to render store-door pickup and delivery service at any and all of said points hereinabove named; subject, however, to the following conditions:

- A. The service to be performed by applicant shall be limited to that which is auxiliary to, or supplemental of, the rail service of the Southern Pacific Company and Pacific Electric Railway Company, or either of them.
- B. Applicant shall not render service to or from, nor interchange traffic at, any point not a station on the rail lines of the Southern Pacific Company or Pacific Electric Railway Company.
- C. Applicant shall be limited to the transportation of shipments which it receives from or delivers to the Southern Pacific Company and Pacific Electric Railway Company, or either of them. All of said shipments shall receive, in addition to the movement by applicant, a prior or a subsequent movement by rail.
- D. Applicant may render store-door pickup and delivery service at the points hereinabove named only within the pickup and delivery zones for each respective point as described and published in the tariff or tariffs of the Southern Pacific Company and Pacific Electric Railway Company, respectively, currently on file with this Commission and in effect.

11. Public convenience and necessity do not require service by applicant (I) from, to, or between any point or points other than those specifically named in Finding No. 10; nor (II) for the transportation of shipments solely by truck when both origin and destination are points specifically named in Finding No. 10.

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 application as above-entitled, a public hearing having been held, evidence received, briefs filed, oral argument had, the matter 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 truck service, as a highway common carrier, as said term is defined by section 2-3/4 of the Public Utilities Act, over any and all available public highways only between the following named points; Santa Ana, Orange, Anaheim, Fullerton, La Habra, Brea, Yorba Linda, Tustin and Dyer, including the right to render store-door pickup and delivery service at any and all of said points hereinabove named; subject, however, to the following conditions:

- A. The service to be performed by applicant shall be limited to that which is auxiliary to, or supplemental of, the rail service of the Southern Pacific Company and Pacific Electric Railway Company, or either of them.
- B. Applicant shall not render service to or from, nor interchange traffic at, any point not a station on the rail lines of the Southern Pacific Company or Pacific Electric Railway Company.
- C. Applicant shall be limited to the transportation of shipments which it receives from, or delivers to, the Southern Pacific Company and Pacific Electric Railway Company, or either of them. All of said shipments shall receive, in addition to the movement by applicant, a prior or a subsequent movement by rail.
- D. Applicant may render store-door pickup and delivery service at the points hereinabove named only within the pickup and delivery zones for each respective point as described and published in the tariff or tariffs of the Southern Pacific Company and Pacific Electric Railway Company, respectively, currently on file with this Commission and in effect.

IT IS HEREBY ORDERED that a certificate of public convenience and necessity therefor be, and the same hereby is, granted to said Pacific Motor Trucking Company, subject to the following conditions, in addition to those hereinabove specified:

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 twenty (20) days from the 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 tariff or tariffs of the Southern Pacific Company and the Pacific Electric Railway Company, respectively, currently on file with this Commission and in effect 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 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 HEREBY FURTHER ORDERED that said application in all other respects be, and it hereby is, denied.

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

Dated at San Francisco, California, this 17th day of December, 1940.

Ray H. Riley

H. K. K.

Justus J. Coe
COMMISSIONERS

I dissent from the foregoing opinion and order. My reasons for this dissent sufficiently appear in my dissenting opinion in Applications 21351 and 21360, Decision No. 33431.

Frank R. Downey
Commissioner.