

Decision No. 21604

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
PACIFIC MOTOR TRUCKING COMPANY for)
certificate of public convenience and)
necessity to operate motor trucks over)
the public highways as a common carrier)
of property between Eureka and South)
Fork and intermediate points.)

Application No. 21604

ORIGINAL

R. E. WEDEKIND, for Applicant and Northwestern Pacific Railroad Company.

HARRY A. ENCELL, for Humboldt Truckmen's Association, F. S. Bridges, doing business as Eureka-Garberville Truck Line; A. W. Way, doing business as Way's Ferndale-Loleta-Eureka Freight Line; and Intercity Transport Lines, Inc., Protestants.

HARRY SEE, for Brotherhood of Railway Trainmen; Brotherhood of Locomotive Engineers; Brotherhood of Locomotive Firemen and Enginemen; Brotherhood of Railway Clerks; and Order of Railway Conductors, Interested Parties.

RILEY, Commissioner:

OPINION ON REHEARING

Pursuant to an amended application therefor, filed August 22, 1938, and following a public hearing thereon before Examiner Paul, the Commission issued a certificate of public convenience and necessity to Pacific Motor Trucking Company, applicant herein, authorizing the establishment and operation of a highway common carrier service for the transportation of property moving in the custody of the Northwestern Pacific Railroad Company (hereinafter referred to as Northwestern) and the Railway Express Agency, Incorporated, and other carriers of like class using rail facilities between the rail stations of Northwestern at South Bay and South Fork and certain named intermediate rail stations. Thereafter

a petition by protestants for rehearing was granted. The rehearing was held at Eureka, on October 31, 1940, when the matter was resubmitted.

On October 15 and 23, 1940, applicant further amended its application under which it now seeks a certificate to establish and operate a highway common carrier service between Eureka and South Fork and the intermediate points of South Bay, Zerus, Beatrice, Loleta, Fernbridge, Worswick, Palmer Creek, Fortuna, Newberg, Rohnerville, Alton, Dinsmore, Stone and Scotia and within a radius of one mile of the Northwestern rail station at each of such points save and except at Fortuna and Scotia. At Fortuna it is proposed to provide service to all places within the city limits thereof, and at Scotia the proposal is to provide service within a radius of one and one-half miles of the Northwestern rail station.

Applicant requests that any certificate granted to it hereunder contain the following restrictions:

- "1. The service to be performed by applicant shall be limited to that which is auxiliary to or supplemental of the rail service of Northwestern Pacific Railroad Company and as underlying carrier for any express company duly authorized to operate between the points which applicant is authorized to serve by this certificate.
- "2. Applicant shall not render service to or from nor interchange traffic at any point not a station on the rail lines of Northwestern Pacific Railroad Company, if such point is not located within the pickup and delivery limits hereinbefore described.
- "3. Shipments transported by applicant shall be limited to those which, in addition to the movement by applicant, shall have either a prior or subsequent movement by rail."

Applicant proposes to limit its service to the transportation of rail traffic of Northwestern from and to the points

involved under joint rate arrangements with Northwestern and by concurrence in its tariffs now on file with this Commission or as they may be changed from time to time. The proposed service is to be daily except Sundays and holidays.

The Evidence as to Present Northwestern Service

At the present time Northwestern operates passenger train No. 4 which is scheduled to leave San Francisco at 8:30 P.M. and to arrive at Eureka at 7:30 the following morning. This train also carries a limited amount of less-carload freight in steel-wheeled box cars. Two of such cars carry less-carload traffic originating at San Francisco and elsewhere. One of these cars is set out at Scotia at 6:21 the next morning after leaving San Francisco. This car contains freight originating at San Francisco and at other points which is destined to Scotia and to points intermediate to Scotia and Eureka, but not to Eureka. The other car containing freight originating at San Francisco, as well as other points, destined to Eureka, is set out at Eureka at 7:30 A.M. This train also carries one steel-wheeled box car loaded with less-carload traffic originating at Oakland and destined to Eureka, where it is set out at 7:30 the following morning. The set-out cars just referred to provide early first morning delivery at Scotia from San Francisco, and at Eureka from both San Francisco and Oakland, but they do not provide satisfactory service to South Fork and to points intermediate to Scotia and Eureka from Oakland and San Francisco.

In the same territory Northwestern operates a local freight train which originates at Willits, leaving there about midnight and arriving at Scotia between 7:00 and 10:00 A.M. and at Eureka anywhere from 1:00 to 5:30 P.M. At Scotia the local freight

picks up the less-carload traffic car set out by passenger train No. 4 and makes deliveries therefrom to points intermediate to Scotia and Eureka. The service at such points, therefore, is dependent upon the operation of this train.

There is a daily average of approximately one ton of less-carload traffic originating at Oakland and destined to Scotia and points north thereof to but not including Eureka, which moves on a freight train and is distributed by the local freight leaving Willits at midnight. There is not enough of this traffic to justify making a car which would move in passenger train No. 4, to be set out at Scotia; nor, so it was stated, could train No. 4 conveniently handle an additional freight car. Since the freight train is slower than the passenger train, the Oakland freight is distributed in the territory, Scotia to but not including Eureka, irregularly and twenty-four hours later than the San Francisco freight destined to the same territory.

The Evidence as to the Proposed Service

It was shown that under the present plan of operation applicant would base a truck at Scotia which would take from the San Francisco merchandise car set out by train No. 4 at Scotia all freight for distribution to the points between Scotia and Eureka. Arrival at Fortuna would be at 8:05 A.M., at Fernbridge at 9:00 A.M. at Loleta at 10:20 A.M., and at Eureka at 10:55 A.M., thus giving to all this intermediate territory the same first morning delivery, which Scotia and Eureka at present alone receive, instead of the present late and irregular service provided by freight train distribution. Freight destined to the off-rail community of Ferndale would receive the same expedited service through the facilities of a connecting motor carrier. Freight moving from Oakland to

points between Eureka and Scotia, which is now handled by local freight train under the present plan, would be loaded into the steel-wheeled box car which passenger train No. 4 sets out at Eureka. The truck, upon its arrival at Eureka, would take from this car all the freight destined to points south of Eureka which would be distributed on the return trip, thus providing for these stations regular first afternoon delivery from Oakland as compared with the present irregular second day delivery. The truck would arrive at Scotia at about 2:40 P.M. thence proceeding to South Fork where deliveries would be made of traffic originating at both San Francisco and Oakland, as well as other points. Upon the completion of these deliveries the truck would return to Scotia for an overnight tie-up.

It was shown that considerable quantities of butter are produced at Ferndale which is located off rail approximately five miles. This butter is transported by American Stage Line to Fernbridge where it is loaded into a box car containing milk cans filled with ice for refrigeration. During the afternoon this car is picked up by the local way freight train and hauled to Eureka, where the butter is transferred into a refrigerated baggage car for transportation to destination. Under the proposed plan the butter would be received by applicant at Fernbridge and immediately transported on its truck to Eureka. This would avoid additional handling and provide for more adequate refrigeration.

The Evidence as to Cost and Economies

At the original hearing it was shown that the estimated total cost of the proposed truck service would be approximately \$4,115. This estimate has been increased to \$6,214⁽¹⁾. The increase

(1) Exhibit No. 1 and Exhibit No. 14.

is largely the result of additional mileage involved because of termination of the proposed service at Eureka instead of at South Bay and increased tonnage to be handled under the revised plan. It was shown that Northwestern would be able to effect economies in its operations amounting to \$3,148⁽²⁾. It was further shown that it would cost Northwestern \$22,387 annually to expedite its less-carload traffic to and from the points involved by the establishment of an all-rail merchandise service comparable to the proposed co-ordinated rail-truck service.⁽³⁾

The Status of Less-Carload Traffic

It was shown that under the proposed plan Eureka and Scotia would continue to receive service for less-carload traffic by passenger train No. 4. Scotia would receive a pickup and delivery service which is now provided only at Eureka and Fortuna. The less-carload traffic now being handled to and from the other points involved amounts to approximately seven tons daily from which a revenue of slightly more than \$15 a ton is received, or approximately \$46,000 annually. Applicant contends that unless the proposed service is authorized which will enable Northwestern to improve its service such less-carload traffic is in serious jeopardy because of the superior service offered by other carriers in the field. It was stated that there has been a substantial increase of traffic to and from the communities involved due, in part, to the improvement in the lumber market, but in spite of such improved conditions Northwestern has not been able to secure its share of the added tonnage resulting from such increased activity. Applicant estimates that if the application is granted which will

(2) Exhibit No. 18.

(3) Exhibit No. 19.

enable Northwestern to improve its service it will be enabled to increase its less-carload traffic by an approximate minimum average of 1.6 tons each week day. In revenue, this will amount to a minimum increase of approximately \$9,000 annually.

The Evidence as to Public Convenience and Necessity

A total of twenty-four public witnesses testified in support of the application. Thirteen testified at the original hearing and eleven at the rehearing. The testimony of these witnesses related to a need for the proposed service to and from eleven of the sixteen points involved. Many of these witnesses expressed dissatisfaction with the present rail service of Northwestern. A number of them indicated that they need an earlier service which would be a distinct convenience in their business, and that they would use the proposed service if it were established. Dissatisfaction was expressed by some of the witnesses because they are now required to travel some distance to Northwestern's stations to receive their freight.

At Scotia Pacific Lumber Company operates a large lumber mill. It also maintains a general merchandise store, butcher shop, and all enterprises normally conducted in a town of about 2,000 population, except the post office and railroad. In regard to the need for a pickup and delivery service there, it was shown that this company receives approximately 100 tons of less-carload traffic monthly, of which about 80 per cent moves over the rails of Northwestern, delivery to the company being made at the rail depot. The majority of this traffic originates in the San Francisco Bay area. The service for the remainder of this traffic is divided about equally between trucks and vessels. The traffic moving by truck is handled principally by an underlying carrier of the Intercity Transport Lines, an express corporation, which usually breaks bulk at

Fortuna on shipments northbound from San Francisco. Delivery of shipments destined to points south of Fortuna to and including Scotia is made by a southbound truck on the afternoon of the first day after shipment from San Francisco, which, the record shows, is not adequate to meet the company's needs, particularly in cases involving rush shipments. However, in some instances, so it was shown, rush shipments consigned to the lumber company have been delivered on the northbound trip. That traffic moving by vessel moves over the facilities of Hammond Shipping Company ⁽⁴⁾ to Eureka, about 28 miles north of Scotia, where it is picked up by the lumber company's trucks. The witness for this company stated that Northwestern's present method of handling the company's less-carload traffic, and especially the lack of a pickup and delivery service, does not meet its needs.

The communities at Wildwood and Rio Dell are situated within one and one-half miles of Northwestern's depot at Scotia and contiguous thereto. A milk distributor at Rio Dell stated that he receives not more than 100 less-carload shipments by rail annually which originate principally at San Francisco or Oakland. The commodities received are chiefly milk bottle caps, cases, and empty milk bottles. The latter comprises the bulk of the commodities so received. He is required to perform his own pickup service at Scotia which he stated is inconvenient. The only other witness from these communities operates a grocery store at Wildwood who stated that he has not used rail service because he would be required to perform his own pickup service at Scotia and that the present service by protestants is adequate for his needs.

Indicative of the less-carload rail traffic in the territory between South Fork and Eureka, it was shown that during June,

(4) The Commission by its Decision No. 33340, dated July 16, 1940, on Application No. 23488 authorized Hammond Shipping Company to discontinue its intrastate vessel service.

1940, 1164 less-carload shipments were transported by Northwestern which were consigned to or from 11 of the 16 rail station points proposed to be served. Included in this traffic were 293 less-carload shipments moving to or from the off-rail point Ferndale, which were handled under a joint rate arrangement with American Stage Line. The connecting point was Fernbridge. Less-carload shipments to or from Eureka were not included. By stations, the volume of this traffic was as follows: Fortuna, 420; Ferndale, 293; Scotia, 207; Loleta, 77; South Fork, 69; Fernbridge, 51; Wildwood, 22; Rio Dell and Newburg, 7 each. The shipments to and from Wildwood and Rio Dell were handled at the Northwestern station at Scotia. Eleven shipments were consigned to the remaining five stations.

The Protestants

Harold M. Hays, Traffic Manager of Intercity Transport Lines, testified that his company provides an express corporation service between San Francisco Bay Area points, on the one hand, and the points involved in this proceeding, on the other hand. Such service is provided daily except Sundays and holidays with an overnight delivery. No local service is performed by this company between Eureka and Garberville. Mr. Hays further testified that Eureka-Garberville Truck Line, a highway common carrier of which he is co-owner, provides a local highway common carrier service between Eureka and Garberville and intermediate points, subject to a restriction that "no shipment having point of origin and destination between the northern boundary of the City of Eureka and the northern boundary of the Town of Fortuna may be transported." This company is the underlying carrier for Intercity Transport Lines. Mr. Hays was the only protestant witness at the rehearing.

It was shown at the original hearing that A. W. Way is providing a limited and restricted service between South San

Francisco, San Francisco, Petaluma, Santa Rosa, Willits, Garberville and Arcata and the points involved herein, as more particularly set forth in the original decision herein (Decision No. 32601). He also provides a highway common carrier service for all classes of commodities between Eureka and Ferndale via Fernbridge.

Also, at the original hearing a number of shipper witnesses testified that the services then provided by protestants were adequate and satisfactory for their needs. All such witnesses stated, however, that they would use the rail service more often if shipments could be received earlier, and expressed a desire for the continued operation of the rail line.

Summary and Conclusions

Northwestern seeks to improve its service to and from the various stations involved which it has been serving. This can be accomplished through the instrumentality of applicant as herein proposed, or through the medium of expensive additional rail facilities. The question presented for determination is whether or not the public interest will best be served by authorizing such operation. This case presents the usual conflict arising between the rail carrier who seeks to improve its service and the protesting carriers who oppose such step because of their belief that some of their traffic may be lost to the improved service of the rail carrier.

As the Commission has pointed out, while it is important to give consideration to the equities of all carriers serving the public, it is more important to consider the interest of the shipping public. Re Pacific Motor Trucking Company, 41 C.R.C. 817, 820; 42 C.R.C. 745, 776.

It was shown in this record that the rail service to and

from the points proposed to be served by applicant is not adequate to meet the public requirements. It was also shown that shippers and receivers of less-carload freight traffic are in need of an expedited and improved service including pickup and delivery of shipments. As hereinbefore stated Northwestern has a joint rate arrangement with a highway common carrier which serves Ferndale, an off-rail point, connecting with the rail service at Fernbridge.

It was abundantly shown that shippers and receivers of less-carload shipments of freight at Ferndale are in need of an improved service which can be provided under applicant's proposed operation. In this record it was clearly shown that applicant should be authorized to perform that service at all the rail stations of Northwestern as set forth in the application and within a radius of one mile thereof co-ordinated with and supplemental to the rail service for such traffic that has had a prior or will have a subsequent movement by rail in addition to the movement by automotive truck. As to Scotia the record on rehearing is not convincing that there is a need for a pickup and delivery service beyond a radius of one mile from the rail station, but on the contrary it indicates that the existing automotive truck service of protestants at Wildwood and Rio Dell (not rail stations), which are situated within a radius of one and one-half miles of the rail station of Northwestern at Scotia but more than one mile therefrom, reasonably and adequately meets the needs of the shipping public at those places.

While the record shows that the cost of the operation of the proposed truck service would exceed the savings to Northwestern by approximately \$3,000 annually, it also discloses that this increased cost would be justified amply by the additional annual revenue derived from the less-carload traffic it would recoup, estimated to amount to about \$9,000. The only alternative would be the establishment of a less satisfactory rail service at an estimated

expenditure of approximately \$22,000 annually.

In my opinion the record warrants the conclusion, and I so find, that public convenience and necessity require the establishment and operation by applicant of the proposed service for the transportation of traffic of Northwestern Pacific Railroad Company, and any express corporation authorized to operate to or from the points proposed to be served which service shall be supplemental and auxiliary to and co-ordinated with the rail service of said Northwestern Pacific Railroad Company. I, therefore, recommend the order as hereinafter set forth.

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 ON REHEARING

Pacific Motor Trucking Company, a corporation, having made an application as above entitled, a public rehearing having been held, evidence received, the matter duly resubmitted, 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 Pacific Motor Trucking Company, a corporation, of an automotive service as a highway common carrier, as that term is defined in section 2-3/4 of the Public Utilities Act, for the transportation of property for compensation between Eureka,

South Bay, Zerus, Beatrice, Loleta, Fernbridge, Worswick, Palmer Creek, Fortuna, Newburg, Rohnerville, Alton, Dinsmore, Stone, Scotia, and South Fork and no other points, over U. S. Highway No. 101 and county roads connecting such points, and within a radius of one (1) mile of the rail stations of Northwestern Pacific Railroad Company at such points, provided that at Eureka and at Fortuna said radius shall be the corporate city limits thereof, subject to the following restrictions:

1. No service shall be performed to or from the communities of Wildwood or Rio Dell.
2. The foregoing service shall be limited to that which is auxiliary to or supplemental of the rail service of Northwestern Pacific Railroad Company, and as underlying carrier for any express corporation duly authorized to operate to or from the foregoing points.
3. Applicant shall not render service to or from nor interchange traffic at any point not a station on the rail line of Northwestern Pacific Railroad Company.
4. Shipments transported by applicant by motor vehicle shall be limited to those which, in addition to the movement by motor vehicle, shall have either a prior or subsequent movement by rail.

IT IS ORDERED that a certificate of public convenience and necessity therefor 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

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 tariffs of Northwestern Pacific Railroad Company 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 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 21st day of January, 1941.

[Signature]
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 Commissioners