

Decision No. 36362

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
J. E. MILLER, doing business as M & M)
TRANSFER COMPANY, for certificate of)
public convenience and necessity to)
operate motor vehicles in store-door)
pickup and delivery service for The)
Atchison, Topeka and Santa Fe Railway)
Company between the City of Torrance,)
on the one hand, and a portion of the)
City of Los Angeles and a portion of)
the County of Los Angeles, California,)
on the other hand.)

ORIGINAL

Application No. 25521

BY THE COMMISSION:

O P I N I O N

In this proceeding the applicant, J. E. Miller, an individual doing business as M & M Transfer Company, has applied for a certificate of public convenience and necessity under Section 50-3/4, Public Utilities Act, authorizing operation as a highway common carrier, as defined by Section 2-3/4 of that Act, between the City of Torrance, on the one hand, and adjacent points, specifically described in the application, situated within the City of Los Angeles and the County of Los Angeles, respectively, on the other hand. The service would be limited to shipments receiving a prior or a subsequent rail haul over the lines of The Atchison, Topeka and Santa Fe Railway Company. At present, applicant now performs a pickup and delivery service for the Santa Fe, within

(1) For brevity, The Atchison, Topeka and Santa Fe Railway Company will be referred to hereafter as the Santa Fe.

(2)
the City of Torrance. This application is designed to permit the expansion of that service throughout the zone within which the Santa Fe pickup and delivery rates, at Torrance, are applicable. Recently, this zone has been enlarged so as to include the areas, described in the present application.⁽³⁾

Under the arrangement now existing between applicant and the Santa Fe, which is embodied in a contract between them, now on file with the Commission, applicant's charges for performing the pickup and delivery service are and will continue to be paid directly to him by the Santa Fe. The latter in turn will exact from the shippers his published rates and charges, which provide a compensation for this service. Of the common carriers now serving this territory, both by highway and by rail, only one, viz., Southern California Freight Lines, has voiced any objection to applicant's proposal; the others have expressed, in writing, their consent to the granting of the application.⁽⁴⁾

The territory to which applicant's service would be extended lies north and east of the City of Torrance. It comprises

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- (2) Applicant holds permits authorizing him to operate both as a radial highway common carrier and as a city carrier. He has never received a certificate of public convenience and necessity authorizing operation as a highway common carrier, but none was required to sanction his past operations, since they were confined wholly to the City of Torrance.
- (3) The pickup and delivery zones of the Santa Fe and Pacific Electric Railway Company at Torrance were enlarged to include these areas by Decision No. 36295, rendered April 13, 1943, in Case No. 4246.
- (4) The carriers now serving this territory, which have approved the granting of this application, comprise Pacific Electric Railway Company, Railway Express Agency, Inc., Pacific Freight Lines, City Transfer and Storage Company and Pacific Motor Trucking Company. As stated, Southern California Freight Lines has objected to applicant's proposal.

an area within the City of Los Angeles adjoining the eastern boundaries of Torrance and extending north of that community; and an area within Los Angeles County bordering the easterly boundary of the district last mentioned. ⁽⁵⁾ Within these zones are situated industrial plants which are now engaged in the production of war materials. These plants, it is alleged, rely for the delivery of their rail shipments on the rail terminal area located at Torrance. To provide an adequate pickup and delivery service the highway carrier operation for which a certificate is sought will be coordinated with the Santa Fe rail operation. This, applicant asserts, will be superior to the all-rail service now performed by the Santa Fe within the area described.

Applicant, it appears, is financially able to perform the service, and to furnish suitable equipment. At the outset he plans to use two trucks and one tractor and semi-trailer.

The objection raised by Southern California Freight Lines involves the right of Santa Fe, under its operating authority as a railroad corporation, to perform a pickup and delivery service through applicant, as its agent, beyond the municipal limits of Torrance. Assertedly, the railroad operating right would not extend beyond the boundaries of that city. In the absence of such authority, it is contended, Santa Fe cannot lawfully provide such a service whether acting alone or through the instrumentality of an agent. This objection grows out of the relationship between Santa Fe and applicant arising from their agreement under which the railroad, rather than the highway common carrier, would serve

(5) The areas referred to are described more specifically in the order which follows this opinion.

the public directly. As an alternative, it is suggested that applicant and the Santa Fe should establish joint rates applying to the pickup and delivery service to be performed, within the extended territory.

In view of another objection to which the arrangement contemplated would be vulnerable, it is not necessary to determine the contention which has been advanced by Southern California Freight Lines. In the conduct of this operation Santa Fe, it is claimed, would engage in the transportation of freight over the line of applicant, another common carrier, and would thereby become an express corporation within the meaning of Section 2(k), Public Utilities Act. Under similar circumstances, growing out of the relationship existing between Southern Pacific Company and its subsidiary, Pacific Motor Transport Company, the former was held to be an express corporation. ⁽⁶⁾ In the absence of a showing, not disclosed by this record, that Santa Fe possesses authority to operate as an express corporation, the suggested arrangement cannot be sanctioned.

There remains the alternative, suggested by Southern California Freight Lines, that the service should be provided under joint rates to be established between applicant and the Santa Fe. Such an arrangement, in our judgment, not only would be unobjectionable, but it offers the most appropriate solution. It would be identical to the plan, recently authorized, ⁽⁷⁾ under which Pacific Motor Trucking Company conducts a pickup and delivery service for

(6) Re Pacific Motor Transport Company, 41 C.R.C. 166, 169, 170.

(7) A certificate authorizing the establishment of such a service was granted by Decision No. 36024, rendered December 15, 1942, in Application No. 25249.

Pacific Electric Railway Company within the latter's pickup and delivery zone at Torrance, which is co-extensive with that established by the Santa Fe. Accordingly, applicant will be authorized to operate between the points described, under joint rates between him and the Santa Fe.

O R D E R

Application having been made as above entitled; and the Commission being duly advised, and now finding, that public convenience and necessity so require:

IT IS ORDERED as follows:

(1) That a certificate of public convenience and necessity be and it hereby is granted to J. E. Miller, an individual doing business as M & M Transfer Company, authorizing operation as a highway common carrier, as defined by Section 2-3/4, Public Utilities Act, between the City of Torrance, on the one hand, and those portions of the City of Los Angeles, and of the County of Los Angeles, respectively, hereinafter described, on the other hand, both of the latter areas being included within the pickup and delivery zone of Torrance, as shown in the published tariffs of The Atchison, Topeka and Santa Fe Railway Company; and authorizing the performance of store-door pickup and delivery service within the city limits of Torrance, and within said areas, and each of them. Said areas, which are contiguous and which, collectively, adjoin the easterly boundaries of the City of Torrance, are described as follows:

- (a) That certain area, situated within the City of Los Angeles, bounded on the north by 190th Street; on the south by 220th Street; on the west by Western Avenue; and on the east by Normandy Avenue.
- (b) That certain area situated in the County of Los Angeles, bounded on the north by 190th Street; on the south by James Street; on the west by Normandy Avenue; and on the east by Figueroa and Hamilton Streets.

Said certificate is granted subject to the following limitations:

- (A) Any pickup and delivery service performed by applicant within the territory hereinabove described shall be conducted only under joint rates to be established between applicant and The Atchison, Topeka and Santa Fe Railway Company.
- (B) Applicant's service shall be limited to the transportation of shipments received from, or which may be delivered to The Atchison, Topeka and Santa Fe Railway Company, and which shall receive, in addition to the highway carrier movement by applicant, an immediately prior or subsequent movement over the rail facilities of The Atchison, Topeka and Santa Fe Railway Company.

The certificate herein granted shall be subject to the following condition:

J. E. Miller, his successors or assigns, may never claim before this Commission or any court or other public body a value, for any purpose, for the certificate herein granted in excess of the actual cost incurred by him in securing said operative authority.

(2) That in the operation of said highway common carrier service, applicant shall comply with and observe the following service regulations:

1. 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.

- 2. Applicant shall comply with the provisions of General Order No. 80 and Part IV of General Order No. 93-A by filing, in triplicate, and concurrently making effective, tariffs and time schedules satisfactory to the Commission within sixty (60) days from the effective date hereof and on not less than one (1) day's notice to the Commission and the public.
- 3. Subject to the authority of this Commission to change or modify them at any time by further order applicant shall conduct said highway common carrier operations over and along the following routes:

Over any and all streets and highways, available for motor vehicle operation, between the points herein authorized to be served.

The effective date of this order shall be the date hereof.

Dated at San Francisco, California, this 18th day of May, 1943.

Francis R. Havenner
H. L. Laker
Justin J. Casner
Richard L. Laska
Francis O. Clark
 COMMISSIONERS