

Decision No. 38780

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application)
of NEVADA COUNTY TRUCKING COMPANY,)
a corporation, to sell, and of)
PACIFIC MOTOR TRUCKING COMPANY, a)
corporation, to purchase, all the)
operating rights and properties of)
Nevada County Trucking Company and)
Nevada Pacific Trucking Agency.)

Application No. 25865

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BY THE COMMISSION:

O P I N I O N

In this proceeding Pacific Motor Trucking Company, a corporation and a wholly owned subsidiary of Southern Pacific Company, seeks authority to acquire from Nevada County Trucking Company, a corporation, and the latter proposes to transfer to the former, certain operative rights as a highway common carrier and other property, as follows:

1. An undivided one-half interest in the operative right granted by Decision No. 28287, (1) rendered October 21, 1935 (39 C.R.C. 470), as amended by Decision No. 28356, dated November 12, 1935, in Application No. 19245, to Nevada Pacific Trucking Agency, an instrumentality (2) jointly controlled by Pacific Motor and Trucking Company,

(1) By Decision No. 28287 a certificate was granted to Nevada Pacific Trucking Agency, a joint agency for Nevada County Trucking Company and Pacific Motor Trucking Company, each of which thus became the owner of an undivided one-half interest in such certificate. Under the present application Pacific Motor Trucking Company seeks to acquire the share of Nevada County Trucking Company. If this transfer is approved Pacific Motor Trucking Company would become the sole owner of this operative right.

(2) For brevity, applicants, Pacific Motor Trucking Company and Nevada County Trucking Company, and the Nevada Pacific Trucking Agency, will be referred to, respectively, as Pacific Motor, as Trucking Company and as Agency.

authorizing operation as a highway common carrier between Sacramento, on the one hand, and points north-erly from Auburn and including Grass Valley and Nevada City, on the other hand, and between Auburn, on the one hand, and Nevada City, on the other hand, both places being included, subject to certain restrictions.

2. A highway common carrier operative right granted to Trucking Company by Decision No. 29485, rendered January 25, 1937, in Application No. 20918, authorizing the transportation of concentrates and mining supplies between Colfax and Nevada City, including the right to serve points within a lateral zone extending eight miles on each side of the highway traversed and to operate to a point eight miles beyond Nevada City, subject to certain restrictions.

3. An operative right granted to Trucking Company by Decision No. 33469, rendered September 10, 1940, in Application No. 21760, authorizing operation as a high-way common carrier between Colfax and Nevada City and intermediate points via Grass Valley; and between Auburn and Nevada City and intermediate points via Grass Valley, subject to certain restrictions.

4. Certain rolling equipment and other property owned by Trucking Company. (3)

Trucking Company is a wholly owned subsidiary of Nevada County Narrow Gauge Railroad Company, which formerly operated a narrow gauge railroad between Colfax and Nevada City via Grass Valley, connecting at Colfax with the Southern Pacific rail lines. Under authority granted by the Interstate Commerce Commission in Finance Docket No. 13687, and by this Commission, in Decision No. 35489, rendered June 16, 1942, in Application No. 24890, Nevada County Narrow Gauge Railroad Company abandoned, in its entirety, the rail service which it formerly had conducted. Following such abandonment the shareholders of that company sold their stock to persons interested primarily in the salvage of the rolling equip-ment, steel rails and bridges, for which an acute demand existed.

(3) As shown by the exhibits accompanying the application, the tangible property to be transferred comprises rolling equip-ment consisting of 5 trucks, 2 tractors, and 4 semi-trailers and trailers, and also shop equipment, shop materials and supplies, platform equipment and office equipment and supplies.

arising from the prevailing war conditions. The present shareholders, it is alleged, are not engaged primarily in the transportation business and are neither qualified for nor desirous of continuing the active management of the highway common carrier service conducted by Trucking Company and Agency.

Under the terms of an agreement between Pacific Motor and the Trucking Company, dated October 11, 1943, a copy of which accompanies the application, the purchase price for the properties described is \$30,000, which assertedly represents the reasonable value of the operative rights and other property. The total price is payable not later than the end of the calendar month following the effective date of the last approving governmental authority,⁽⁴⁾ provided such authority shall be obtained within eighteen months from the date of the agreement, failing which the agreement shall terminate. Of the purchase price mentioned the sum of \$18,456 represents the value of the physical assets, as appraised by the applicants, while the remainder, amounting to \$11,544 assertedly represents the reasonable value of the intangible properties to be acquired, including good will and going concern.

Applicant Pacific Motor, it is stated, would conduct a scheduled service with no less frequency than that presently provided by the Trucking Company, under rates conforming to those which have been established by the Commission.

The consummation of the proposed transfer, it appears, would be in the public interest. For many years, it is alleged,

(4) The parties have also sought the approval of the Interstate Commerce Commission for the transfer of the corresponding interstate operating rights.

Nevada County Narrow Gauge Railroad Company served the communities of Grass Valley and Nevada City, as well as intermediate and contiguous areas, providing a connection with Southern Pacific Company at Colfax, where through traffic was interchanged. Since the abandonment of rail operations by the former, a coordinated rail-truck service has been conducted by the Southern Pacific, the Trucking Company and the Agency, under which traffic is interchanged between them at the three common points of Sacramento, Auburn and Colfax. Should the present proposal be approved, Pacific Motor contemplates the continuance of a substantially similar service. Under this plan both through the local traffic would move under joint rail-truck rates and would be interchanged with Southern Pacific at Colfax, Auburn and Sacramento. Assertedly, a net benefit of approximately \$5,860 annually would accrue to Pacific Motor and, in addition, the acquisition by that carrier of the operative rights and properties would result in the protection of gross annual revenues accruing to the parent company, Southern Pacific, amounting approximately to \$33,000 flowing from traffic moving under through joint rail-truck rates. No other highway common carrier now serves this territory.

Under the circumstances the application will be granted and an order will be entered accordingly. In accordance with applicants' request, the authority to transfer will become effective upon the granting of similar authorization by the Interstate Commerce Commission, pursuant to the applications which have been filed with that Commission. This is not a matter requiring a public hearing.

As stated, \$18,456 of the total price of \$30,000 represents the physical assets, and the remainder, or \$11,544 covers the intangibles, including good will and going concern. Such may

be the understanding between the parties, but it should be clearly understood that the authorization hereinafter granted is not an approval of the purchase price in any respect, nor a finding of value for the purpose of rate fixing, issuance of securities, accounting, or for any other purpose. No examination has been made by this Commission, nor by its authorized representatives, of the physical assets involved in this transfer as to their existence, value or ownership.

Pacific Motor Trucking Company is placed upon notice that "operative rights" as such do not constitute a class of property which may be capitalized or used as an element of value in rate fixing for any amount of money in excess of that originally paid to the State as the consideration for the grant of such rights. 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

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

IT IS ORDERED as follows:

(1) That Nevada County Trucking Company, a corporation, be and it hereby is authorized to transfer to Pacific Motor Trucking Company, a corporation, those certain operative rights, and that certain property used in the conduct of its service to the public, described as follows:

1. An undivided one-half interest in the certificate granted by Decision No. 28287, as amended by Decision No. 28356, to Nevada Pacific Trucking Agency, authorizing operation as a highway common carrier between Sacramento, on the one hand, and points northerly from Auburn and including Grass Valley and Nevada City, on the other hand, and between Auburn, on the one hand, and Nevada City, on the other hand, both places being included, subject to certain restrictions.

2. An operative right as a highway common carrier granted to Nevada County Trucking Company by Decision No. 29485, authorizing the transportation of concentrates and mining supplies between Colfax and Nevada City, including the right to serve points within a lateral zone extending eight miles on each side of the highway traversed and to operate to a point eight miles beyond Nevada City, subject to certain restrictions.

3. An operative right granted to Nevada County Trucking Company by Decision No. 33469, authorizing operation between Colfax and Nevada City and intermediate points via Grass Valley; and between Auburn and Nevada City and intermediate points via Grass Valley, subject to certain restrictions.

4. The rolling equipment, shop equipment, shop materials and supplies, platform equipment and office equipment and supplies, more particularly described in the application herein.

(2) That said Pacific Motor Trucking Company be and it hereby is authorized to acquire from said Nevada County Trucking Company the operative rights and property described in paragraph (1) hereof and thereafter to operate a highway common carrier service pursuant to said operative rights.

(3) That the authority herein granted is subject to the following conditions:

(a) The authority herein granted is subject to the provisions of Section 52(b), Public Utilities Act, and further to the condition that Pacific Motor Trucking Company, its successors or assigns, shall never claim before this Commission, or any court or other public body, a value for said operative rights or claim as the cost thereof, an amount in excess of that paid to the State as the consideration for such rights.

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(b) The service performed hereunder by Pacific Motor Trucking Company shall be limited to that which may be auxiliary to or supplemental of, and it shall be coordinated and integrated with, the rail service of Southern Pacific Company.

(4) That applicants 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 tables satisfactory to the Commission, within sixty (60) days from the effective date of corresponding authority granted by the Interstate Commerce Commission pursuant to applications previously filed, and on not less than one (1) day's notice to the Commission.

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

Dated at San Francisco, California, this 9th day of December, 1943.

Francis A. Havens
J. J. Baker
Justin F. Caswell
Francis A. Havens
COMMISSIONERS