

**ORIGINAL**

Decision No. 37714

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of P.H. VERNAND and H.L. MORTON, a copartnership, doing business as WEST COAST DRAYAGE COMPANY, for certificate of public convenience and necessity to operate a motor truck service as a common carrier, between the Los Angeles Commercial Zone and the Los Angeles Harbor Commercial Zone as established by the Interstate Commerce Commission in MC C-4, 3 MCC 248, and Randsburg, California, and certain intermediate points.

Application No. 25471

DEWITT M. MANNING, for applicant.

WILLIAM F. BROOKS, for The Jichison, Topeka and Santa Fe Railway Company, protestant.

FRANK KARR and E.L.H. BISSINGER, by E.L. BISSINGER, for Pacific Electric Railway Company, Southern Pacific Company and Pacific Motor Trucking Company, protestants.

W.J. MARTINDALE, for Railway Express Agency, Incorporated, protestant.

JOHN S. McNEIL, for F.F. Sullivan, doing business as Red Line Express, protestant.

ARTHUR GLANZ, for E.A. Hockenhaupt, doing business as Victorville-Barstow Truck Line, interested party.

BY THE COMMISSION:

**O P I N I O N**

P. H. Vernand and H. L. Norton, partners doing business as West Coast Drayage Company, request the Commission to authorize them to conduct a highway common carrier service in general between the Los Angeles Commercial Zone and the Los Angeles Harbor Commercial Zone, on the one hand, and the Randsburg area, on the other hand.

(1) Zones established by the Interstate Commerce Commission in MC C-4 and 3 MC C-248, respectively.

A public hearing was held in this proceeding at the conclusion of which the matter was submitted.

The proposed operations would be conducted over two main routes between the Los Angeles areas and the Randsburg area. <sup>(2)</sup> The westerly route would be via Lancaster and the easterly route via Adelanto. Shipments would be picked up or delivered at points on the routes south of Lancaster, or at Adelanto or south thereof, or within ten miles laterally of such routes, including Los Angeles and the commercial zones above noted. Such pickup and delivery would be only for shipments destined to or originating at points north of Lancaster, or at Adelanto or points north thereof, or points within thirty-five miles laterally of the route between Lancaster and Adelanto via Randsburg. In addition a local service is proposed between Lancaster and Adelanto and intermediate points via Randsburg including all points within thirty-five miles of this route. No service would be provided to, from or between the towns of Berstow, Daggett and Yermo. Neither is any service proposed between the points served by Mockenhaupt. <sup>(3)</sup>

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- (2) The westerly route would be over U.S. Highways 99 and 6 via Lancaster and Mojave to a point near Cantil, thence over an unnumbered county highway through Randsburg to the intersection of said county highway with U.S. Highway 395 near Johannesburg. The easterly route would be over U.S. Highways 60, 66 and 70 to Riverside and San Bernardino. From Riverside to Johannesburg via San Bernardino and Adelanto the route of operation would be over U.S. Highway 395 to its junction with the westerly route.
- (3) Mockenhaupt's operative rights were acquired under authority of the Commission's Decision No. 34651, in Application No. 24143. It authorizes the transportation of property (1) between Los Angeles, Colton and San Bernardino, on the one hand, and Verdemont, Lucerne Valley, Yermo and Bicycle Lake and intermediate points, on the other hand; and (2) between Los Angeles Colton and San Bernardino, on the one hand, and points located laterally within nine miles of each side of U.S. Highway 66 between Millers Corners and Helendale, and/or California Highway 18 between Victorville and Lucerne Valley.

The rates proposed to be charged are those presently in effect in Highway Carriers' Tariff No. 2 and Distance Table No. 3 as established by Decision No. 31606 and orders amendatory thereof. (4)

In August 1942, applicants acquired an operative right authorizing a highway common carrier service between Los Angeles and Randsburg, Osdick, Stolia, Inn City, Hampton and Johannesburg and all points intermediate to Mojave and Randsburg, subject to the provision that no service may be rendered at any point between Los Angeles and Mojave inclusive of Mojave. This certificate granted no authority to serve any points off the defined route of operation between these points. Another operative right acquired by applicants authorized a highway common carrier service between Los Angeles and a defined area west of Rosamond, Gloster, Fleta and Mojave, subject to certain limitations. (5)

The proposed operation would be over a loop route beginning and ending at Los Angeles. North of San Bernardino and north of Lancaster, in the Mojave Desert region, the easterly and westerly routes are approximately parallel to each other, the greatest distance between them being about 35 miles. According to a map (Exhibit No. 1) the proposed 35 mile lateral area would include such off-route points and places as the Antelope Valley region, Tehachapi, Woodford, Caliente and Rodfish. It would also include

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- (4) One schedule would leave Los Angeles daily except Sundays. On Monday, Wednesday and Friday it would operate via Lancaster, Randsburg and Adelanto, returning to Los Angeles via San Bernardino. On Tuesday, Thursday and Saturday the operation would be in the reverse direction. At all off-route points service would be provided on an "on-call" basis.
- (5) These rights were created by Decision No. 20751 and Decision No. 28347 and acquired by applicants under the authority of Decision No. 35695.

a portion of the Arvin district southeasterly of Bakersfield and practically all of the Tehachapi Mountain area. In the vicinity of Randsburg the lateral area would include Inyokern and Brown, and Westend and Trona on Searles Lake. East of U.S. Highway 395 the lateral area would include such points as Calico and Hinckley and the area surrounding Barstow and Daggett. The entire territory between these two routes north of Lancaster and Adelanto would also be included.

About 26 public witnesses testified in support of the authority sought. This testimony was in regard to two general movements of traffic. One movement was between points southerly of Lancaster and Adelanto, on the one hand, and points northerly thereof, on the other hand. The second movement was between Lancaster and points in the area northerly thereof. The only evidence in regard to a need for a highway common carrier service to off-route points northerly of Lancaster and Adelanto was to Muroc Air Base and the communities of Muroc, Boron, Kramer, Trona, Cameron and Tehachapi. The testimony in regard to the movement of traffic to Trona, Cameron and Tehachapi was insignificant. There was testimony concerning a need for service between Lancaster, on the one hand, and Rosamond, Mojave, Randsburg, Johannesburg, Red Mountain, Boron, Kramer, Muroc Air Base and Muroc, on the other hand; between Los Angeles and Muroc Air Base, Muroc, Boron, Randsburg and Johannesburg; and minor testimony concerning the need between Los Angeles, Rosamond and Mojave. There was also some testimony in regard to the movement of traffic between San Bernardino and Riverside, on the one hand, and Muroc Air Base, Boron and Randsburg, on the other hand, which is presently transported by the vendor. An official of the California Electric Power Company testified to a need for service between Randsburg and Riverside.

He stated that most of this service is now provided by the company truck which would continue operation even though applicants' request should be granted. The traffic shipped by common carrier between these points now moves via Los Angeles. Another witness from Randsburg stated that he receives some traffic from San Bernardino delivered by the vendor. Ninety per cent of all his supplies originate at Los Angeles. Two witnesses from Muroc Air Base described their needs for a highway common carrier service. Each of them stated that about 90 per cent of his traffic originated at Los Angeles proper. One testified that he received a few shipments from San Bernardino and Riverside which are usually transported by the vendor. The other asserted that there is a need for service from the San Bernardino Airport Supply Depot.

There was very little testimony in regard to a need for service between the extensive area comprising the Los Angeles Commercial Zone, aside from Los Angeles proper. Such testimony referred to a need between Inglewood, Santa Monica, Glendale and Burbank, on the one hand, and Muroc Air Base, on the other hand. There was no testimony with respect to a need for service to and from the Los Angeles Harbor area.

One of the applicants in testifying stressed the need for service to and from numerous mines in the Randsburg-Johannesburg area and other parts of the Mojave Desert. The only evidence of record in this connection is the testimony of a mine operator at Randsburg who presently receives service by applicants between Los Angeles and his mine which is on the main highway. The mine operator gave vague and indefinite testimony to the effect that there were seven or eight other tungsten mines operating in the Randsburg area. The location of these mines was not established in

the record. This applicant also stated that he was chiefly interested in obtaining a certificate authorizing operations between Los Angeles and Muroc Air Base between which points the principal tonnage is now moving. The weekly average of this tonnage between Los Angeles and points north of Lancaster and Adelanto, which includes the Muroc Air Base, Boron and the Randsburg area, amounts to approximately 60 tons, of which about one-half is delivered to Muroc Air Base.

The following rail and truck common carriers protested the granting of the application: Southern Pacific Company, Pacific Motor Trucking Company, Pacific Electric Railway Company, The Atchison, Topeka and Santa Fe Railway Company, Santa Fe Transportation Company, Railway Express Agency, Incorporated, F. F. Sullivan, doing business as Red Line Express, and L. A. Mockenhaupt, doing business as Victorville-Berstow Truck Line.<sup>(6)</sup>

Pursuant to a stipulation entered into between applicants and counsel for Mockenhaupt, his protest was withdrawn.

F. F. Sullivan withdrew his protest in so far as applicants propose to transport property between Lancaster and points north thereof. Sullivan holds a certificate authorizing operation as a highway common carrier between Los Angeles and Lancaster and certain intermediate points for general commodities with a few exceptions, as more particularly defined in the Commission's decision creating such right. There is no proposal by applicants to provide service between the points covered by Sullivan's operative right.

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(6) These carriers will sometimes be referred to as Southern Pacific, Pacific Motor, Santa Fe Railway, Santa Fe Transportation and Railway Express, respectively.

Among the points involved herein, Santa Fe Railway now provides a rail service at all points on its line between Los Angeles, Riverside, San Bernardino, Barstow, Kramer, Muroc, Mojave and Tehachapi. Its wholly owned subsidiary Santa Fe Transportation, as a highway common carrier, provides service between Los Angeles Harbor, Los Angeles and San Bernardino and numerous intermediate points. It also provides a pickup and delivery service at the more important points served by the rail line in connection with the traffic moving over the railroad. A contract drayman performs a pickup and delivery service for Santa Fe Railway at Barstow and Mojave. No such service is performed at rail points intermediate to Barstow and Mojave. The rail movement is daily except Sundays. It was shown that Mojave Marine Air Base is within the pickup and delivery zone established in the rail tariffs. However, according to the record this Base has performed its own pickup and delivery service.

As to the points involved in this proceeding, Southern Pacific provides a rail service at all points on its line between Los Angeles, Saugus, Lancaster, Mojave, Tehachapi and Searles. Its subsidiary Pacific Motor, in connection with Southern Pacific rail service, provides certain highway common carrier service and pickup and delivery service at points from Los Angeles to Colton and Riverside and other points in this area. Pacific Motor also provides a highway common carrier service for rail traffic between Mojave and Lone Pine serving intermediate rail stations of Southern Pacific including Searles. Points from Searles to Trona are served in connection with the Trona Railway. At Mojave the pickup and delivery service is provided to and from all points within a radius of one mile of the rail station by a contract drayman. The Mojave Marine Air Base entrance is within this radius, although as before stated

this Base does not avail itself of this service. A limited service is also authorized between Snugus and Lancaster. Pickup and delivery service is provided at Lancaster by a contract drayman. The rail service and truck service is provided daily except Sundays and holidays.

It was shown that Railway Express maintains a daily except Sunday service to, from and between all rail points of Southern Pacific and Santa Fe Railway involved in this proceeding. From Mojave north it uses the facilities of Pacific Motor. The majority of its shipments to and from the points in the desert area involved herein are less than 100 pounds.

A thorough analysis of the evidence of record in this proceeding leads to the following conclusions. Applicants' proposal to serve all points within 35 miles laterally of the proposed route north of Adelanto and north of Lancaster encompasses an area approximately 85 miles in a northerly-southerly direction and approximately 110 miles in an easterly-westerly direction at the widest point. This is a desert and mountainous region which is inhabited and developed in only a few well defined places. The only evidence in this record was directed to a need for a transportation service to and from the settled and developed points. Much of the testimony was directed to a need for a service between points which applicant already is authorized to serve. The record is entirely inadequate to justify a conclusion that there is a public need to serve this vast off-route area as proposed by applicants. The same conclusion must be reached with respect to the proposal to serve off-route points lying within 10 miles laterally of the routes south of Adelanto and south of Lancaster, to and including Los Angeles, and the extensive Los Angeles Commercial Zone and the Los Angeles Harbor Commercial Zone.



Based upon the foregoing conclusions and the evidence of record we find that public convenience and necessity require the establishment and operation of a highway common carrier service by applicants (a) between Lancaster, on the one hand, and points intermediate to Lancaster and Atolia, including Atolia, via Mojave and Randsburg, on the other hand; and (b) between Los Angeles and Lancaster, on the one hand, and points intermediate to Lancaster and Kramer, including Kramer, via Muroc Air Base, Muroc and Boron, on the other hand. The application must be denied in all other respects.

P. H. Vernand and H. L. Norton are hereby 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

A public hearing having been held, evidence received and the matter having been submitted and fully considered by the Commission:

IT IS ORDERED as follows:

(1) That a certificate of public convenience and necessity is hereby granted to P. H. Vernand and H. L. Norton, partners, authorizing the establishment and operation of service as a highway

common carrier, as defined in Section 2-3/4 of the Public Utilities Act, for the transportation of property: (a) between Lancaster, on the one hand, and points intermediate to Lancaster and Atolia, including Atolia, via Mojave and Randsburg, on the other hand; and (b) between Los Angeles and Lancaster, on the one hand, and points intermediate to Lancaster and Kramer, including Kramer, via Muroc Air Base, Muroc, and Boron, on the other hand.

(2) That in providing service pursuant to the certificate herein granted, the following service regulations shall be complied with:

1. Applicants shall file a written acceptance of the certificate herein granted within a period of not to exceed 30 days from the effective date hereof.
2. 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, appropriate tariffs and time schedules, within 60 days from the effective date hereof and on not less than 10 days notice to the Commission and the public.
3. Subject to the authority of the Commission to change or modify them by further order, applicants shall conduct operations, pursuant to the certificate herein granted, over and along the following routes:

Between Lancaster and Atolia over U.S. Highway 6 to Cantil, thence over county highway to Randsburg, thence to Atolia over the direct county highway or over the county highway and U.S. Highway 395 through Johannesburg. Over the county highway between Lancaster and Muroc Air Base, thence over the county highway through the community of Muroc, continuing northerly to U.S. Highway 466, thence easterly along U. S. Highway 466 to Boron and Kramer.

(3) In all other respects the application is hereby denied.

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

Dated at San Francisco, California, this 13 day of March, 1945.

David Anderson  
Justin F. Craven  
Richard Kachse  
Thomas W. Coon  
James Lawrence  
COMMISSIONERS