

ORIGINAL

Decision No. 30723

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of C. S. McLENEGAN and HAROLD M. HAYS for a certificate of public convenience and necessity to operate the automotive truck line herein described, and of INTERCITY TRANSPORT LINES, INC., a corporation, for a certificate of public convenience and necessity to operate the express services herein described.) Application No. 20138

REGINALD L. VAUGHAN, for applicants.

R. E. WEDEKIND and F. X. VIEIRA by F. X. Vieira, for Pacific Motor Transport Company (1), Northwestern Pacific Railroad Company, Southern Pacific Company, Petaluma and Santa Rosa Railroad Company, and Pacific Motor Trucking Company, protestants.

EDWARD STERN and F. X. VIEIRA, for Railway Express Agency, Incorporated, protestant.

HARRY SEE, for Brotherhood of Railroad Trainmen, protestant.

H. C. LUCAS and GUY HILL, for Pacific Greyhound Lines, interested party.

M. J. DALY and F. X. VIEIRA, for Sonoma Express, protestant.

V. J. CUMMINGS, for Northwestern Pacific Railroad Company, protestant.

W. G. STONE, for Sacramento Chamber of Commerce, interested party.

BY THE COMMISSION:

OPINION ON REHEARING

Following a public hearing on the above-entitled

(1) Pacific Motor Transport Company discontinued operation under authority of Decision No. 30723, dated March 21, 1938, as amended by Decisions Nos. 30753 and 30903, dated April 4, 1938 and May 23, 1938, respectively.

application the matter was submitted on briefs. Thereafter it was reopened for further hearing and oral argument before the Commission en banc, whereupon it was resubmitted and the Commission duly issued its order denying the application (Decision No. 32555). Pursuant to a petition therefor, the matter was reopened and further hearing had, followed by oral argument, and then again submitted for decision. Following this submission a supplemental application was filed requesting the substitution of Pioneer Express Co., a highway common carrier corporation, in the place and stead of applicants C. S. McLenegan and Harold M. Hays.⁽²⁾

For a more complete description of the operation originally proposed reference is hereby made to the opinion set forth in said Decision No. 32555.

At the rehearing the application was amended in the record in such manner as to narrow to a considerable extent the scope of the proposed operations. In its amended form the application requests authority for C. S. McLenegan and Harold M. Hays, co-partners, to establish and operate a highway common carrier

(2) It is alleged in the supplemental application that all the issued and outstanding capital stock of Pioneer Express Co. is owned and held by C. S. McLenegan and Edith M. Hays, wife of Harold M. Hays; that the Commission, by its Decision No. 34349, dated June 24, 1941, authorized Pioneer Express Co. to acquire from Valley Motor Lines, Inc., a highway common carrier certificate which authorized operations between San Francisco, Petaluma, Santa Rosa and Willits, on the one hand, and certain named points between Longvale and Garberville, including those points, on the other hand; that Pioneer Express Co., in the exercise of that right, will traverse the same route as that proposed in this proceeding; and that economies in operation could be effected by substitution of Pioneer Express Co. in the place of applicants McLenegan and Hays in this application for a certificate.

service confined to the transportation of the express loadings of Intercity Transport Lines, Inc., an express corporation, between San Francisco, Petaluma and Santa Rosa and intermediate points, on the one hand, and points between the northern boundary of Santa Rosa and the northern boundary of Willits, including Redwood Valley and Talmadge, by diversion from the main route, on the other hand, and between Santa Rosa and Willits and intermediate points. It is also proposed to provide service to and from all points within one-half mile of the Redwood Highway between Santa Rosa and Willits. The express corporation likewise requests certification between the same points without any restriction as to traffic that may be handled.

In the application as originally drawn, the express corporation not only sought certification between the points set forth in the foregoing paragraph, but sought that authority as an extension and enlargement of its present operations between San Francisco and points easterly and southerly thereof including Richmond, Oakland, Livermore, San Jose, Watsonville and other points, and between San Francisco, on the one hand, and points, northerly and northeasterly of Willits, including Eureka, Crescent City, Happy Camp and Burnt Ranch. It also sought authority to serve points on the line of Humbolt Motor Stages as far easterly from Eureka as Weaverville, Douglas City, Hay Fork, Bridgeville, Peanut and other points on that line. In addition, it requested authority to provide a local express service between points in the territory between Sausalito, Fairfax, San Rafael and San Quentin on the highway common carrier line of Sausalito, Mill Valley and San Francisco Express as an extension and enlargement of its present operative authority.

The application as now amended materially reduces the scope of the original application. In its petition for re-hearing, applicant takes the position, briefly stated, that the Commission failed properly to review and evaluate the evidence offered in support of its application; that basic facts were not analyzed and summarized and many were ignored; that the findings made upon such summary are insufficient; that the preponderant testimony of witnesses of large shippers that they could develop new business was ignored; that such summarization wholly ignores such preponderant testimony; that the existing services between the points involved are unsatisfactory and inadequate; that it wholly ignored exhibits of record; and that the Commission erred in ignoring vital testimony and erred in presupposing that the granting of the application would have the effect of impairing the services of competing carriers without having before it positive and competent evidence that the granting of the application would in fact impair such services.

Considering the record in the light of applicant's amended proposal, it does not appear that any good purpose would be served by entering into an extended discussion of all the points raised by the petition for re-hearing. In fact, nothing was presented on re-hearing which would justify the Commission in reaching a conclusion that the evidence would warrant the granting of the application in its original form. As stated in the original order in this proceeding, the bulk of the evidence of record relates to the proposal to serve the Santa Rosa-Willits territory. A number of applicant's witnesses expressed a desire and contended there is a need for pickup and delivery service at non-agency rail stations. It was also urged in the record that there was a hazard of loss of shipments left at

non-agency rail stations by the rail carrier. Some of applicant's witnesses stressed the point that they are unable to develop new business as long as they are compelled to rely upon the transportation facilities now available.

Applicant contended in argument that insufficient consideration was given to protestant's Exhibit No. 17 submitted at the request of applicant. This exhibit purports to show the performance record of local merchandise trains of Northwestern Pacific Railroad Company between points involved during the months of July and November, 1935. Two trains performed that service designated as "34's extra" and "32's extra." Extra train 34 did local work from Santa Rosa to and including Cloverdale. The record shows that it left Santa Rosa generally about noon time daily excepting Sundays and holidays. The extremes of the arrival of this train during July at Cloverdale, varied from 3:05 P.M. to 7:40 P.M. During the same month, nineteen arrivals at Geyserville and thirteen arrivals at Cloverdale were at or before 4:00 P.M. and seven and thirteen arrivals, respectively, were later than that hour. During November, ten arrivals at Geyserville and three at Cloverdale were at or before 4:00 P.M. and the remainder of the twenty-six arrivals were later than that hour. Sixteen and nine arrivals, respectively, were before 5:00 P.M. Because of engine failure on November 13, train 34 did not arrive at Cloverdale until after midnight. Extra train 32 handled traffic from San Francisco to points north of Cloverdale to and including Willits. The exhibit shows that during July its arrivals at Ukiah varied from 7:00 A.M. to 11:45 A.M. and at Willits from 9:30 A.M. to 3:50 P.M. During

this month twenty of the arrivals at Ukiah and six at Willits were before 10:00 A.M., while six and twenty arrivals, respectively, were later than that hour. All of the arrivals at Ukiah were before 12:00 M. and seven at Willits were later. During November twenty-five arrivals at Ukiah and four at Willits were before 10:00 A.M. and the remainder later than that hour. All arrived at Ukiah and twenty at Willits by 12:00 M.

A number of applicant's witnesses stated in general that rail service is inadequate to meet their needs at the agency rail stations. While some of them were of the opinion that some additional business might be developed at off-rail points along the highway where no pickup and delivery service is presently available, the amount of such speculative traffic was not shown.

Exhibit No. 21 is a group of shipping documents relating to sixteen shipments which moved via Pacific Motor Transport Co. from Richmond, Oakland, San Francisco and Santa Rosa to Healdsburg and Geyserville, consigned to six different consignees, during the months of June, July, August, October and November of 1935. As we are not now concerned with service to or from Richmond or Oakland consideration will be given only to those shipments originating at San Francisco and Santa Rosa. Six originated at San Francisco and one at Santa Rosa. They were all consigned to Geyserville, an agency rail station. Those documents show that the elapsed time between the date of the receipt of the shipment by the carrier and the date of delivery to the consignee for four of the shipments was two days, and for three of the shipments it was three days. Only one of the consignees indicated by that exhibit testified. He stated, in effect, that the rail service was not as dependable as he would like it to be

and he thought he should have a better service. He further stated that, on many occasions, shipments consigned to him from San Francisco were not delivered until the second morning after shipment.

A careful examination of the remaining evidence of record shows that the analysis presented above is typical of applicant's showing in general. Applicant produced testimony from about thirty-four public witnesses and it was stipulated that the testimony of about sixteen others would have been similar if they had been called and had testified. A number of these witnesses stated that the presently available services to non-agency rail points is inadequate to meet their needs and some of them testified similarly with respect to service at agency points. No complaint of any consequence, except as to rates, was directed at the service of Railway Express Agency which operates over the facilities of Northwestern Pacific Railroad Company and those of Pacific Greyhound Lines along the main highway. This is true also as to the express service of Pacific Greyhound Lines.

Protestants introduced testimony from forty-two public witnesses and it was stipulated that the testimony of eighteen others, if called, would have been similar. This evidence, in general, was to the effect that the present services are adequate both as to agency and non-agency rail points. On cross examination, some of them signified that they would use the proposed service if established and found to be a better service than is now available, while others indicated a partiality to the rail carrier. Some witnesses indicated they would not favor applicant's proposal if its effect would tend to impair the present rail service.

A general review of this record shows that many of applicant's witnesses had no general complaint in regard to existing services while others voiced definite complaints with respect to the lack of an adequate and dependable service throughout the area involved. Such complaints were more specifically directed to the inadequacy of service at non-agency rail points, at off-rail highway points and to the irregularity of rail service at the rail agency points in the Santa Rosa-Willits district which are the chief centers of population involved. It appears from this record that applicant's proposed service as modified meets an existing public need. In reaching this conclusion, we are not unmindful of the probability that some traffic may be lost to protestants. However, it was not shown in this record that such diversion would be sufficient to jeopardize the rail services. It is our conclusion that the public interest will be best served by granting the amended application. It is therefore found that public convenience and necessity require the establishment of the services now proposed by applicants.

Pioneer Express Co., a corporation, and Intercity Transport Lines, Inc., a corporation, 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.

ORDER ON RE-HEARING

A further public hearing having been held in the above entitled matter, evidence having been received, the matter duly submitted following oral argument thereon and the Commission now being fully advised:

IT IS ORDERED as follows:

(1) That the Pioneer Express Co., a corporation, is hereby substituted as the applicant herein in the place and stead of C. S. McLenegan and Harold M. Hays.

(2) That a certificate of public convenience and necessity is hereby granted to Pioneer Express Co., a corporation, authorizing the establishment and operation of service as a highway common carrier, as defined in Section 2-3/4 of the Public Utilities Act, between San Francisco and Santa Rosa and intermediate points, on the one hand, and points between the northern boundary of Santa Rosa and the northern boundary of Willits including Redwood Valley and Talmadge, on the other hand; and, between Santa Rosa and Willits and intermediate points including Redwood Valley and Talmadge, restricted exclusively to the loadings of Intercity Transport Lines, Inc., an express corporation, as defined in Section 2(k) of the Public Utilities Act.

(3) That under the foregoing certificate, service shall be provided pursuant to the following service regulations subject to the authority of the Commission to change or modify them at any time by its further order:

1. Pioneer Express Co. shall file a written acceptance of the foregoing certificate within a period of not to exceed thirty (30) days from the effective date hereof.

2. Pioneer Express Co. shall comply with the rules of the Commission's 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 five (5) days' notice to the Commission and the public.
3. It shall also file, in duplicate, within a period not to exceed sixty (60) days from the effective date hereof copies of any contract or contracts entered into between it and Intercity Transport Lines, Inc. pursuant to the authority herein granted.
4. Subject to the authority of this Commission to change or modify them by further order, applicant shall conduct operations pursuant to the certificate herein granted over and along the following routes:

U. S. Highway No. 101 between San Francisco and Willits with diversions therefrom to serve Redwood Valley and Talmadge and all places within one-half mile of U. S. Highway No. 101 between San Francisco and Willits.

(4) That a certificate of public convenience and necessity is hereby granted Intercity Transport Lines, Inc., a corporation, authorizing the establishment and operation of service as an express corporation, as defined in Section 2(k) of the Public Utilities Act, for the transportation of property between San Francisco and Santa Rosa and intermediate points on U. S. Highway No. 101, on the one hand, and points along U. S. Highway No. 101 between the northern boundary of Santa Rosa and the northern boundary of Willits serving Redwood Valley and Talmadge by diversion from U. S. Highway No. 101, on the other hand; and, between Santa Rosa and Willits and intermediate points, including Redwood Valley and Talmadge and all points within one-half mile of U. S. Highway No. 101.

(5) That under the next foregoing certificate service shall be provided pursuant to the following service regulations subject to the authority of the Commission to change or modify them by its further order:

1. Intercity Transport Lines, Inc. shall file a written acceptance of the foregoing certificate within a period not to exceed thirty (30) days from the effective date hereof.
2. Intercity Transport Lines, Inc. shall comply with the rules of the Commission's Tariff Circular No. 2 in a form satisfactory to the Commission within sixty (60) days from the effective date hereof and on not less than five (5) days' notice to the Commission and the public.
3. It shall also file, in duplicate, within a period not to exceed sixty (60) days from the effective date hereof copies of any contract or contracts entered into between it and Pioneer Express Co. pursuant to the authority herein granted.

(6) That Decision No. 32555, dated November 14th, 1939, in the above-entitled proceeding is hereby vacated and set aside.

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

Dated at San Francisco, California, this 27th day of March, 1945.

David Anderson
Frederic F. Gilman
Richard Kachko

Carroll Russell
 COMMISSIONERS