

Decision No. 38123

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of JOHN S. GINOCCHIO, an individual, doing business as NEVADA CALIFORNIA TRANSPORTATION COMPANY, for a certificate of public convenience and necessity to operate a common carrier service for the transportation of property between Johnstonville and Alturas, California, and intermediate points; between Westwood and Chester, California; and between Hallelujah Junction, California and Westwood and Chester, California and intermediate points.

ORIGINAL

Application No. 24775

Hearing November 18, 1943:

HARLEY A. HARMON, for applicant; JAMES W. NISBET, for Pacific Southwest Railroad Association, The Western Pacific Railroad Company, and Oregon-Nevada-California Fast Freight, Inc., protestants; GEORGE I. MARTIN, for The Western Pacific Railroad Company; WILLIAM BUCHELT, for Pacific Motor Trucking Company and Southern Pacific Company, protestants; EDWARD STERN, Railway Express Agency, Incorporated, protestant; HARRY A. ENCELL, for Mt. Lassen Motor Transit, Inc., protestant; THOMAS O'HARA, for Sacramento Freight Lines.

Hearing June 27, 1945:

J. RICHARD TOWNSEND, for applicant; FRANK LOUGHERAN, for The Western Pacific Railroad Company, Southern Pacific Company, Pacific Motor Trucking Company, Oregon-Nevada-California Fast Freight, Inc., and Pacific Southwest Railroad Association, protestants; JOHN L. AMOS, JR, for The Western Pacific Railroad Company, protestant; P. W. BARNARD, for Southern Pacific Company and Pacific Motor Trucking Company, protestants; A. E. CRITSCH, for Oregon-Nevada-California Fast Freight, Inc., protestant.

BY THE COMMISSION:

O P I N I O N

In this application authority is sought to conduct an intrastate highway common carrier operation in Modoc, Lassen and Plumas Counties. Public Hearings were held in this matter at Susanville November 18, 1943, and June 27 and 28, 1945.

Applicant now conducts an interstate highway common carrier operation between certain points in Nevada and California as well as an intrastate operation in both states. The intrastate operation in California extends from a point on the state line between California and Nevada near Hallelujah Junction to Westwood, a distance of approximately 85 miles.

The original Application No. 24775 was filed with the Commission February 18, 1942, wherein a certificate was sought to expand applicant's intrastate operations over two routes, i.e.:

- (a) Between Bird Flat School House and the U.S. Army Ordnance Depot located at Honey Lake, Plumas County, a distance of approximately 5 miles.
- (b) Between Johnstonville, Lassen County, and Alturas, Modoc County, a distance of approximately 110 miles.

As an emergency matter, the Commission by its interim order in Decision No. 35200, dated March 31, 1942, granted applicant a certificate to conduct a highway common carrier operation between Bird Flat School House and the Ordnance Depot at Honey Lake.

The first amendment to this application was filed with this Commission September 7, 1943, wherein applicant seeks a certificate to conduct a highway common carrier operation, as an extension of its existing intrastate rights, over the following routes:

1. Between Johnstonville, Lassen County, and Alturas, Modoc County, and intermediate points, a distance of 109 miles;
2. Between Westwood, Lassen County, and Chester, Plumas County, and intermediate points, a distance of 13 miles; and
3. Between Hallelujah Junction, Plumas County, and both Chester and Westwood and intermediate points, a distance of 107 and 102 miles, respectively, including Portola, Quincy and Keddie, also the off-route points of Blairsden, Graeagle and Mohawk, located in Plumas County.

If the application is granted as applied for, this carrier's intrastate rights in California would be coextensive with its interstate rights.

At the hearing on November 18, 1943, the various interested parties stated their respective positions relating to the granting of this application, and after considerable discussion which included the question of the position of the Office of Defense Transportation relative to the exercising of the proposed certificate if granted by this Commission, the attorney for the applicant requested that the application be removed from the calendar.⁽¹⁾ All parties were agreeable to this proposal and the matter was adjourned with that understanding.

At the hearing June 27 and 28, 1945, Mr. Ginocchio, applicant herein, testified, among other things, that his desire to proceed with the application at that time was prompted largely by recent requests from shippers seeking his service to transport shipments in California along with his interstate operations over the routes for which he seeks a certificate herein. He alleged that he could conduct the intrastate operation proposed in connection with his interstate service with little if any added truck miles or equipment and practically no additional expense. It is his position that there is a need for this local service particularly under wartime conditions with the prevailing restrictions on the use of motor vehicle equipment by those who would use his service. In applicant's California and Nevada operations 23 pieces of equipment are operated, 22 of which vary in size from 3 to 14 tons capacity and one 3/4-ton pickup

(1) (Harmon) "At this time, if the Commission please, I would like to move the Commission that this matter of the application of the application of John S. Ginocchio, as an individual, doing business as the Nevada California Transportation Company for certificate of public convenience and necessity to operate a common carrier service for the transportation of property between Johnstonville and Alturas, California, and intermediate points, between Westwood and Chester, California, and intermediate points, and between Hallelujah Junction, California, and Westwood and Chester, California, and intermediate points, being First Amended Application No. 24775, be taken off calendar at this time." (Tr. p. 24, Line 3 to 14, inclusive).

truck (Exhibit No. 4). Applicant proposes to apply the minimum rates as prescribed by the Commission in Case No. 4246.

With respect to the proposed extension between Westwood and Chester, the record shows that there is a large saw mill operated by the Collins Pine Company located approximately one mile west of the town of Chester on California Highway No. 36. Applicant alleges that he has had many requests to serve this saw mill industry and allied businesses incident thereto, as an intrastate operator as well as an interstate carrier.

Four public witnesses from Susanville who were called in support of the granting of this application were engaged in the following types of business: Sale of general merchandise, stock feed, implements, furniture, motor vehicles together with parts and fuel, farm adviser and ranchers. These public witnesses testified that there was a need for intrastate truck transportation as proposed by applicant, particularly under prevailing wartime conditions. The record does show, however, that during normal times most of these establishments operate their own trucks in the delivery of at least a portion of their products to the consumer.

Except for the proposed extension between Westwood and Chester, the granting of this application was protested by rail, express and highway common carriers operating in this district, involving Pacific Motor Trucking Company, Railway Express Agency, Incorporated, Mt. Lassen Motor Transit, Inc., Sacramento Freight Lines, The Western Pacific Railroad Company, Southern Pacific Company, Oregon-Nevada-California East Freight, Inc., and Pacific Southwest Railroad Association. It is the protestants' position that the carriers of property serving this area, express, rail and truck, provide all the service that can be reasonably justified from the standpoint of meeting public convenience and necessity when due consideration is given to the small volume of traffic involved.

With respect to the proposed extension between Johnstonville and Alturas, the record shows that Southern Pacific Company provides a tri-weekly less-carload service over this line, via Reno, with pickup and delivery at both Susanville and Alturas under their contractual arrangement with the Pacific Motor Trucking Company. Agency stations are maintained at the intermediate points of Litchfield, Madeline and Likely. The record shows that during the month of October, 1944, Southern Pacific Company handled 118 tons of less-carload freight between Alturas and Susanville, of which 105 tons were shipments received and 13 tons were shipments forwarded to that area. In addition to the Southern Pacific service, the O. C. & N. Stages, Inc. operate a daily service over this route, which is primarily a passenger stage operation in combination with a right to transport express. The equipment is provided with a compartment to accommodate packages weighing up to 100 pounds.

The area proposed to be served by applicant between Hallelujah Junction and both Chester and Westwood is now, for the most part, provided with intrastate service by existing carriers, namely Sacramento Freight Lines now conducts a daily common carrier operation between Greenville and Portola; Mt. Lassen Motor Transit, Inc., conducts daily passenger service, in combination with its right to transport property between Keddie and Susanville; Valley Motor Lines, Inc., operates a restricted highway common carrier service daily between Chester and Susanville; The Western Pacific Railroad Company provides the following less-carload service, daily between Chilcoot and Portola via Reno, tri-weekly between Keddie and Portola via San Francisco, and a daily between Keddie and Westwood with pickup and delivery service at Westwood; Oregon-Nevada-California Fast Freight, Inc., operates a daily highway common carrier service between Redding and Alturas; and Railway Express Agency, Incorporated, conducts an express business in this area where and to the extent underlying

carriers are available.

Protestants called two public witnesses interested in public transportation on the line between Susanville and Alturas. One maintains a general merchandise store at Standish, dealing in groceries, meats and machinery. He stated that in so far as he was concerned the Southern Pacific Company's service together with that of the O. C. & N. Stages, Inc., meet his requirements for public transportation. The other public witness who maintains a general merchandise store at Ravensville, likewise testified that the service of the Southern Pacific and the O. C. & N. Stages was all the public transportation that was necessary at this time to meet his requirements.

The record shows that the various carriers protesting the granting of this application are in a position to carry a larger volume of traffic with the facilities now engaged in that service. This is particularly true in the case of the railroad operation, where the less-carload traffic is very light in this district. It should be pointed out, however, that from this record it appears that applicants' proposed service would be somewhat superior to that which is now available with respect to time in transit.

The Commission in its Decision No. 38012, dated June 19, 1945, declared certain policies relative to the granting of new certificates under wartime conditions. Among other things, the Commission stated:

"Although the Commission has continued during the war period to grant certificates for new or enlarged highway carrier services, these for the most part have been uncontested applications and the need for the service appeared to be immediate and in furtherance of the war effort. In many instances the Commission has declared that the certificate granted must be deemed of temporary duration, the necessity for continued operation to be re-examined after the war."

The parties' attention was called to this order at the opening of the hearing in this proceeding on June 26 and 27, and a portion of this order was read into the record.

In a general way, this record shows that the service now provided in the transportation of property to and from the district involved is rather infrequent, with considerable time consumed in transit in the case of rail traffic, but when considered in connection with the volume and character of the traffic, it does not appear to be a serious matter under prevailing conditions from the standpoint of public convenience and necessity. This is particularly true when we consider that all public transportation throughout the country has been operating under serious handicaps during the wartime period.

Following the policy laid down in the Commission's order in said Decision No. 38012, we find upon a review of this record that applicant's request for a certificate to extend its operations between Westwood and Chester should be granted. This grant should also include serving the properties of the Collins Pine Company, located near Chester. On the other hand, the remainder of the application should be denied, and the following order will so provide:

John S. Ginocchio is 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

Public hearing on the above-entitled application having been had and based upon the record and findings contained in the foregoing opinion,

IT IS ORDERED: as follows:

I. That a certificate of public convenience and necessity is hereby granted to John S. Ginocchio 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 between Westwood and Chester and intermediate points together with the right to serve the Collins Pine Company development located approximately one mile west of Chester on California Highway No. 36.

II. That applicant, in providing highway common carrier service pursuant to the certificate herein granted, 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 date hereof.
2. Applicant 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. Subject to the authority of the Commission to change or modify them by further order, applicant shall conduct operations, pursuant to the certificate herein granted, over and along the following route:

Over and along State Highway No. 36 between Westwood and the community of the Collins Pine Company sawmill.

III. That authority for a certificate to conduct a highway common carrier service, as defined in Section 2-3/4 of the Public Utilities Act, between:

- a. Johnstonville and Alturas and intermediate points;
- b. Hallelujah Junction and both Chester and Westwood and intermediate points;

is hereby denied.

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

Dated at San Francisco, California, this 14th day of August, 1945.

David Ruden
Justin F. Cooper
Richard Kachee
Edward C. ...
James F. ...
COMMISSIONERS