

Decision No. 39570

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

In the Matter of the Application of)
EDWARD J. FOURNIER for certificate)
of public convenience and necessity)
to operate property transportation)
service between Sacramento and)
Indian Flat and between Indian Flat)
and Loyalton and intermediate points.)

Application No. 26946

In the Matter of the Application of)
W. H. BAXTER for certificate of)
public convenience and necessity)
to operate as a common carrier)
between Sacramento, California,)
and Sierra City, California.)

Application No. 27200

- A. J. JUST, for applicant Fournier in Application No. 26946.
- ALFRED R. LOWEY, for applicant Baxter in Application No. 27200.
- JOHN E. HENNESSY and JOHN L. AMOS, JR., for Western Pacific Railroad Company, protestant in Application No. 26946 and interested party in Application No. 27200.
- WILLIAM BEINHOLD, for Southern Pacific Company and Pacific Motor Trucking Company, protestants in both applications.
- M. P. FISCHER, for M. P. Fischer, doing business as Downieville Stage Co., protestant in both applications.
- ROYAL A. STEWART, for Martin I. and Elsie Yribarren, doing business as Reno-Loyalton-Calpine Stages, protestant in both applications.

CRAEMER, Commissioner

O P I N I O N

In Application No. 26946, as amended, Edward J. Fournier requests a certificate of public convenience and necessity authorizing the transportation of property and passengers between Sacramento and Indian Flat and between Indian Flat and Loyalton and intermediate points.

In Application No. 27200, W. H. Baxter requests a certi-

ificate authorizing the transportation of property between Sacramento and Sierra City. No testimony was introduced in support of this application and for that reason it will be dismissed.

Public hearings were held at Downieville on May 23 and June 20, 1946, and the matters were then submitted on a consolidated record.

Applicant Fournier holds radial and contract permits under which he operates over the route he proposes to serve as a common carrier. His contracts number approximately twenty, serving shippers and consignees between Loyalton and San Juan. His traffic has increased to such an extent, according to his testimony, that he feels it can be better handled as a certificated service. He accepts all shipments offered to him, and to that extent is admittedly performing a common carrier service. He maintains a terminal station at Sacramento and when consignments arrive there he is notified. About one-tenth of his business originates at Nevada City and Grass Valley, the greater portion of the balance originating at Sacramento. For four or five years last past he has been serving the territory twice a week.

Some ten witnesses testified on behalf of applicant. Their testimony was generally to the effect that they had used the service of Fournier, that it was satisfactory, but that it was susceptible of improvement.

Pacific Motor Trucking Company, protestant herein, is authorized to engage in the transportation of property as a highway common carrier between Sacramento and Grass Valley and Nevada City and intermediate points. Two daily schedules are maintained, one leaving Sacramento at 3 a.m., arriving at Grass Valley at 5:30 a.m.

and the other leaving Sacramento at 6:30 p.m., arriving at Grass Valley at 9 p.m. Traffic destined to Nevada City is handled in a separate truck between Grass Valley and Nevada City. Shipments destined beyond Nevada City are transported by Downieville Stage Company, owned and operated by M. P. Fischer. The general practice has been for Pacific Motor Trucking Company to notify consignees by postal card of the arrival of shipments at the Grass Valley terminal. There was some complaint from Fournier witnesses that shipments from Sacramento by Pacific Motor Trucking Company and those by Fischer were delayed in transit, especially when such shipments included perishable commodities.

Western Pacific Railroad Company, protesting the application, operates between Sacramento and Loyalton, and maintains a tri-weekly service between those points. It offered testimony purporting to show that shipments in its custody from Sacramento, destined for Loyalton, would arrive at their destination earlier than if handled by Fournier. However, this contention does not take into account that shipments loaded on Fournier trucks on the day before departure from Sacramento would arrive at 6 p.m. at Loyalton on the following day. In the opinion of an operating witness any substantial decrease in the amount of Sacramento tonnage would reduce the ability of Western Pacific to continue the operation of its shuttle car into Loyalton. This carrier renders no service in this area except to Loyalton.

Reno-Loyalton-Calpine Stages, owned and operated by Martin I. Yribarren and Elsie Yribarren, entered an appearance at the second hearing in protest against the Fournier application to render service to the Loyalton area.

(1) The Fournier proposed service calls for schedules only on Tuesdays and Fridays.

M. P. Fischer, operating Downieville Stage Company, renders a daily trucking service between Downieville and Nevada City and intermediate points. He picks up freight at Nevada City which is turned over to him by Pacific Motor Trucking Company. The testimony discloses that between the first and second hearings in these matters Fischer and Pacific Motor Trucking Company had taken steps to effect a joint rate and through service arrangement, pursuant to complaints against alleged high rates and inadequate service.

We come now to the protest of Pacific Motor Trucking Company. It should be stated at the outset that this carrier, some two months after the filing of the Fournier application, advised the Commission that it would interpose no objection to the granting of the application ex parte, on the ground that

"We have been advised by the attorney for the applicant that the latter does not seek authority to operate a local service between Sacramento, Nevada City and intermediate points which are now served by Pacific Motor Trucking Company."

A month later, Pacific Motor Trucking Company reversed its position and served notice of its intention to protest the application.

An operating witness for protestants Southern Pacific Company and Pacific Motor Trucking Company testified that those carriers "had only recently realized that joint rates were necessary to improve the service, and this discovery culminated in the filing of an application to establish such rates." He further testified that the delays and postal notices that had been necessary in the past will be obviated by the establishment of joint rates.

At the second hearing applicant Fournier amended his application to provide daily instead of twice-a-week service. The amendment also proposed passenger service from Sacramento to points beyond Nevada City and from points between Indian Flat and Loyalton

to Sacramento. No testimony was introduced supporting the proposal to transport passengers except the statement of the owner of Calida Lumber Company that service to his lumber mill, located five miles off the highway, would insure the prompt delivery of employees who otherwise might be delayed while transferring from one bus to another en route to the mill from Sacramento. There was no supporting testimony to the effect that a demand existed for daily truck service. In fact, applicant's counsel stated at the first hearing that applicant was not pressing for a daily service, but that he was in a position to extend the service to a daily movement if and when it became necessary.

It is apparent from this record that the proposed service will meet the need for additional and more adequate transportation facilities in the territory between Nevada City and Downieville. Protestant Pacific Motor Trucking Company recognized the inadequacy of the service in this area and took steps to expedite its service, but did not do so until the instant application had been filed and partly heard.

We find that on the record in Application No. 26946 there is a need for additional public transportation of property between Sacramento, on the one hand, and Nevada City and Downieville and intermediate points, on the other hand, and local service between Nevada City and Downieville. In all other respects, applicant has failed to justify his application.

With respect to Application No. 27200, since there was no testimony in support thereof, the application will be denied without prejudice.

Edward J. Fournier 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.

The following form of Order is recommended.

O R D E R

Public hearings having been held in the above entitled proceedings, the matter having been submitted, and the Commission being fully advised in the premises,

IT IS ORDERED:

(1) That a certificate of public convenience and necessity be granted to Edward J. Fournier authorizing him to operate as a highway common carrier, as defined in Section 2-3/4 of the Public Utilities Act, between Sacramento, on the one hand, and Nevada City and Downieville and intermediate points, on the other hand, and locally between Nevada City and Downieville.

(2) That in providing service pursuant to the certificate herein granted, applicant shall comply with and observe the following service regulations:

- a. Applicant shall file a written acceptance of the certificate herein granted within a period of not to exceed 30 days from the effective date hereof.

- b. Within 60 days from the effective date hereof and on not less than 5 days' notice to the Commission and the public, applicant shall establish the service herein authorized and comply with the provisions of General Order No. 79 and Part IV of General Order No. 93-A by filing, in triplicate, and concurrently making effective appropriate tariffs and time tables.
- c. 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 most appropriate route or routes between the points herein authorized to be served.

(3) That in all other respects Application No. 26946 is denied.

(4) That Application No. 27200 is hereby dismissed without prejudice.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

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

Dated at San Francisco, California, this 29th day of October, 1946.

Harold P. Kula
Justin F. Craven
Ernest C. ...
James H. Powell

COMMISSIONERS