

Decision No. 40473

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)	
CALIFORNIA MOTOR TRANSPORT CO., LTD.)	
for authority to operate via Pacheco)	Application No. 27220
Pass for the transportation of express)	
traffic of CALIFORNIA MOTOR EXPRESS,)	
LTD. between San Francisco and Fresno.)	

- DOUGLAS BROOKMAN, for California Motor Transport Co., Ltd., and California Motor Express, Ltd.
- BEROL AND HANDLER, by MARVIN HANDLER, for Fortier Transportation Company, protestant.
- PHIL JACOBSON, for Western Truck Lines, protestant.
- J. RICHARD TOWNSEND, for General Transfer Company, protestant.
- HUGH GORDON, for Valley Motor Lines, Valley Express Company, Pacific Freight Lines and Pacific Freight Lines Express, protestants.
- R. E. WEDEKIND, for Southern Pacific Company and Pacific Motor Transport Company, protestants.

O P I N I O N

California Motor Transport Co., Ltd., a highway common carrier, seeks to obtain, by the above entitled application, a certificate of public convenience and necessity authorizing it to use a route via Pacheco Pass for the transportation of express traffic of California Motor Express, Ltd., to Fresno and San Joaquin Valley points from San Francisco.

Public hearings were held May 24, June 19, 20 and August 2, 1946, in San Francisco before Examiner Howard and evidence was introduced. The matter was submitted on the latter date subject to the filing of concurrent opening and closing briefs. Protestants, in their opening brief, requested that oral argument be granted before the Commission, en banc. However, as this matter was

thoroughly argued in the briefs, repetition of such presentations orally seems unnecessary. Therefore, the request will not be granted. The evidence of record has been carefully considered together with the briefs and the matter is ready for decision.

Applicant presently is authorized to transport express traffic for California Motor Express, Ltd., between San Francisco and Los Angeles, via both the coast route U. S. Highway No. 101, and the valley route U. S. Highway No. 99. When employing the latter route, applicant is authorized to use Pacheco Pass to or from U. S. Highway No. 99. The above operative rights authorized California Motor Transport Co., Ltd., to serve San Francisco and Los Angeles but not points intermediate thereto. In addition to the certificated rights mentioned, applicant was authorized to acquire the highway common carrier operative rights of Valley and Coast Transit Company by Decision No. 37472, in Application No. 24371, reported in 45 C.R.C. 502. By this acquisition applicant gained the right, among others, to operate a scheduled service between San Francisco, Paso Robles and certain intermediate points, as well as the right to render an on-call service for truck loads of not less than 5000 pounds between coast line points and points in the San Joaquin Valley, including the right to operate between Fresno and Paso Robles. As a result of possession of the last mentioned operative rights, California Motor Transport Co., Ltd. was able to transport express traffic of California Motor Express, Ltd., between San Francisco, Fresno and other San Joaquin Valley points via Paso Robles.

By the instant application, California Motor Transport Co., Ltd. seeks authority to use the shorter and more direct

route via Pacheco Pass and U. S. Highway No. 99, when rendering service between San Francisco, Fresno and other San Joaquin Valley points. Applicant referred specifically to Fresno in its application, because that is one of the most important San Joaquin Valley points included in the Valley and Coast Transit Company operations, which applicant acquired. If the right to serve Fresno via Pacheco Pass is granted as prayed for, the right to serve the other San Joaquin Valley points by such route will be comprehended too.

The evidence of record shows that the distance between San Francisco and Fresno via applicant's existing route through Paso Robles is 324 miles, while it is 197 miles between the same points via the proposed route through Pacheco Pass. The latter route, therefore, is 127 miles shorter than the former. The difference in time in transit is approximately four hours between the two routes. It was estimated that use of the Pacheco Pass route would result in savings to applicant in direct operating costs of an amount in excess of \$3,000 per month. The evidence shows that over-night service with early morning delivery can be given by either route, in spite of the difference in distance and time in transit. Some evidence was introduced by protestants respecting operations by applicant from East Bay points to San Joaquin Valley points, but such evidence is outside the scope of this application, which embraces use of the Pacheco Pass route between San Francisco and San Joaquin Valley points only.

Applicant contends that as it may transport express traffic of the California Motor Express Co., Ltd. between San Francisco, Fresno and other San Joaquin Valley points, via Paso

Robles, by virtue of its existing operating rights, it should be authorized to use Pacheco Pass and U. S. Highway No. 99 as an alternate route. In justification it points out that the proposed route is shorter, thereby conserving tires and equipment, and saving operating expenses for labor and fuel. Also the proposed route would permit a faster and more practical service to be rendered. Applicant stresses the fact that such an operation would not increase the competition it presently gives protestants Valley Motor Lines and Valley Express Company because California Motor Transport Co., Ltd. can give over-night service with early morning delivery via Paso Robles. The result of denial of the application, it is asserted, would be to compel applicant to perform a wasteful, more expensive service, which would result in depriving the shipping public of the benefit of improved service.

Protestants contend that applicant's request is not one for an alternate route but is in fact an application for a new highway common carrier service. They argue that applicant has no right to operate a through service between San Francisco and San Joaquin Valley points, but must interchange traffic where the scheduled and on-call rights connect. The differences in mileage and time between the proposed and existing operations, it is claimed, show a new service is contemplated. It is asserted the proposed service would violate the on-call restrictions and the weight limitation on applicant's present rights. Protestants aver, too, that applicant has failed to prove that public convenience and necessity require granting of the certificate. Finally, it is stated that applicant is not a fit and proper party to be granted the certificate because of its past and present violation of Commission orders.

The Commission, in its past decisions treating with the rights now held by applicant, which authorize service between San Francisco and San Joaquin Valley points, was not called upon to determine whether an interchange of traffic between the on-call and scheduled operations was necessary. At the time these rights were in question in the Valley and Coast Transit Company case, 45 C.R.C. 502, it was found that it had been the operating practice of Valley and Coast Transit Company to transfer traffic to other equipment at the junction point. Hence, when permitting applicant to acquire the rights of Valley and Coast Transit Company, the decision recognized the existence of the right to operate between San Francisco and San Joaquin Valley points, but was silent as to whether physical transfer of lading must be made. The original or historical reason for requiring an actual interchange of traffic at junction points between two routes has disappeared. To compel such "make work" today is not sound from either an economic or operating standpoint, and is not in the public interest.

It is argued by protestants that the differences in mileage and time between the existing and proposed operations of

applicant show that a new service is sought. This does not appear to be a valid contention as applicant is not seeking to serve any new territory, but rather to improve its existing service by employing a more direct route between the points it is authorized to serve.

Protestants contend that the proposed service would violate the on-call restriction and weight limitation on applicant's existing rights. This is an untenable claim. A provision that service may be rendered on-call or on-demand is not intended as a limitation on a carrier's right to increase its business. On the contrary, such a provision is for the benefit and protection of the carrier. It makes it unnecessary for a truck operator to run equipment unless notified by a shipper that there is traffic to transport. No persuasive reason is presented for prohibiting the joining of a scheduled and an on-call operation so as to afford a through service. The evidence of record shows that no truck of applicant traveling between San Francisco and San Joaquin Valley points had less than 7,300 pounds of traffic on board. The majority of shipments were well in excess of 10,000 pounds. Obviously, the weight restriction to 5,000 pounds has not been violated. However, it is protestants' position that individual shipments presented to California Motor Express Co., Ltd., did not all weigh 5,000 pounds. This, applicant admits, but as it is underlying carrier for the express company and every shipment presented to it by the express company weighed more than 5,000 pounds, no violation of the weight limitation on applicant's rights is shown.

It is protestants' claim that applicant has failed to prove that public convenience and necessity require granting of the certificate. This theorem assumes a new service, not an alternate route. In a situation, such as here presented, where applicant seeks to use another route between points it is authorized to serve, the nature and degree of proof is different than it would be if applicant sought permission to inaugurate service to new or additional points. The evidence shows that operating economies, expedition and efficiency will result from the use of the shorter alternate route. These are advantages which will accrue to the public. They will be realized through faster service, more flexible and effective operation and lower costs. Such factors considered with the other evidence of record are persuasive in determining public convenience and necessity. There have been a number of Commission decisions in the past which have followed this reasoning. Two of the most recent are in Re Valley Motor Lines, Inc., Decision No. 38760 in Application No. 27032, decided March 12, 1946, and in Re Highway Transport, Inc., Decision No. 40016 in Application No. 27618, decided March 4, 1947.

Protestants' final contention is that applicant is not a fit and proper party to be granted a certificate because of past and present violations of Commission orders. This argument involves three grounds. The first is that applicant acted unlawfully by transporting traffic between San Francisco and San Joaquin Valley points via Paso Robles without transfer of lading to other equipment at the latter point. This matter has been considered hereinbefore and determined adversely to protestants' contention. The second is that service from East Bay points was performed by

applicant without authority. Applicant concedes it has no operative rights from East Bay points to San Joaquin Valley points. The evidence of record does not demonstrate that applicant operates between such points. It does show that Interurban Express Corporation contracted to act as underlying carrier for California Motor Express Co., Ltd. between Oakland and San Francisco and also leased equipment from applicant. The contract and equipment lease were made part of the record by introduction as exhibits. Nothing unlawful about such operations appears. Furthermore, as previously stated, operations between East Bay points and San Joaquin Valley points is not involved in this proceeding. The third is that California Motor Transport Co., Ltd. by operating between San Francisco and San Joaquin Valley points via Pacheco Pass, is violating the order of the Commission (Decision No. 38959, in Case No. 4811, reported in 46 C.R.C. 453) which found that applicant did not have the right to so operate, and ordered it to cease and desist therefrom unless and until it received a certificate of public convenience and necessity authorizing such service. This decision involved construction of the provisions of the 1941 amendment to Section 50-3/4 (c) of the Public Utilities Act quoted and referred to above. Applicant had relied on such statute in that proceeding to justify its claimed right to use the Pacheco Pass route to serve San Joaquin Valley points. Applicant seasonably petitioned the Commission for rehearing of that decision, and such petition was denied after oral argument before the Commission en banc. Applicant then petitioned the California Supreme Court for a writ of certiorari to review said decision. The Commission stayed the effective date of such order to give

applicant time to pursue the statutory remedies available to it to test the legality of said decision. The Supreme Court granted the writ as prayed for. As a result of this action the Commission withheld its determination upon the merits of the instant application pending a decision by the Court as to whether applicant required a certificate to conduct the operation in question. On May 29, 1947 the Supreme Court by its decision in California Motor Transport Co., Ltd. vs. Railroad Commission, S. F. No. 17382, sustained the order of this Commission. When this proceeding was instituted an honest difference of opinion existed as to the legal effect and meaning of the statute in question as then it had not been construed by the courts. Therefore it would be improper now to brand applicant as a violator or to penalize it for operating in accordance with the advice of its counsel as to what such act meant.

After reviewing the evidence and arguments presented the Commission finds that the present application is one for the use of an alternate route between points applicant now is authorized to serve, and not a request for the right to inaugurate a new service. It is found, also, that such proposed operation will conserve tires and equipment of applicant, save fuel and labor costs and provide a more expeditious and efficient service, all of which will redound to the public benefit. Further, it is found that applicant now competes with protestants and use of the requested route, while it will improve applicant's service and be in the public interest, will not materially alter the existing competitive situation.

After full consideration of the evidence of record and the arguments presented in the briefs, the Commission is of the opinion and finds that public convenience and necessity require that California Motor Transport Co., Ltd. be granted a certificate authorizing it to operate as a highway common carrier via Pacheco Pass for the transportation of express traffic of California Motor Express, Ltd., between San Francisco, Fresno and other San Joaquin Valley points which it is presently authorized to serve.

O R D E R

Public hearing having been held in the above entitled proceeding and the matter submitted, the evidence and briefs thoroughly considered, and good cause appearing therefor,

IT IS ORDERED that a certificate of public convenience and necessity is granted to California Motor Transport Co., Ltd., authorizing it to operate a highway common carrier service for the transportation of express traffic of California Motor Express, Ltd., via Pacheco Pass and U. S. Highway No. 99 between San Francisco, Fresno and other San Joaquin Valley points it acquired the right to serve by Decision No. 37472 in Application No. 24371, as an alternate and additional route to that now possessed by it via the coast route, U. S. Highway No. 101, to Paso Robles and thence via State Highway No. 41 to Fresno.

IT IS FURTHER ORDERED 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. 80 and Part IV of General Order No. 93-A by filing, in triplicate, and concurrently making effective appropriate tariffs and time tables.

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

Dated at San Francisco, California, this 28th day of June, 1947.

Harold A. Kuhl
Justin J. Coleman
Walter Powell
R. J. [unclear]
Kenneth Potter
 COMMISSIONERS