

Decision No. ~~40979~~

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
J. R. HENRY and R. F. MAHER, co- )  
partners doing business as EAST BAY ) Application No. 28397  
DELIVERY CO., for a certificate of )  
public convenience and necessity to )  
operate as a highway common carrier.)

Frank Loughran, for applicant; John E. Hennessy and John L. Amos, Jr.,  
for Sacramento Northern Railroad, protestant; E. L. Van Dellen,  
for Southern Pacific Company, Pacific Motor Trucking Company, and  
Railway Express Agency, Inc., protestants.

O P I N I O N

Applicant, a copartnership, seeks authority to operate as a highway common carrier between San Francisco, South San Francisco, Oakland, Alameda, San Leandro, Emeryville, Albany, Berkeley, El Cerrito and Richmond, on the one hand, and Concord and Danville, and all points intermediate between Concord and Danville on State Highways 21 and 24, on the other hand. The application was submitted for decision on November 5, 1947, following a brief oral argument at the conclusion of the testimony.

Applicant now operates under permits issued by the Commission pursuant to the Highway Carriers' and City Carriers' Acts. Ten patrons who have traffic moving into the Concord-Danville area are now served under written contracts. If granted a certificate, applicant proposes to pick up shipments five days per week at various points in the Bay Area extending from Richmond to South San Francisco, and deliver the freight the following morning in linehaul equipment starting from its Oakland terminal at 8:00 a.m. Traffic from San Ramon Valley points would be picked up in the afternoon and delivered

the next day at Bay Area destinations. The movement, however, would be almost entirely in the direction of the San Ramon Valley. R. F. Maher, one of the partners, testified that he expected to haul about five tons per day at first, but that an increase in volume could be expected as a result of certification of the operation. Shipments would move under class rates prescribed as minimum for less-than-car-load traffic by Commission orders.

Terminal facilities at Oakland, the only point at which such facilities are to be maintained, consist of a lot and two garages located at 2412 Webster Street in that city. The larger building, about 50 by 25 feet, contains space for loading five trucks under cover, while the smaller structure, about 15 by 25 feet, would be used as a repair shop. Applicant expects to hire two terminal workers and a part time rate expert, in addition to the four truck drivers now employed in the business. Both partners now confine their activities chiefly to the terminal.

The partnership owns seven trucks, any of which, it was stated, might be used for pickup and delivery service. If necessary, a two-ton van would be purchased for linehaul runs, although one of the presently-owned stake trucks might also be used for that purpose.

Applicant has not made an estimate of the cost of providing the proposed service. Mr. Maher testified, however, that he believed a truck could be operated for about 6 cents per mile, although he stated no basic data were available for such an estimate. Applicant's counsel, during the oral argument, admitted that the 6-cent figure was "pulled out of the air."

Applicant produced an income statement covering its permitted operations during 1946, and a balance sheet as of April 1, 1947.

Gross revenue for 1946 is shown as \$28,267.46, with operating expenses, including taxes and salaries, of \$22,699.37, thus leaving a net profit of \$5,568.09. The balance sheet lists total assets, depreciated, of \$7,559.68, and total liabilities of \$763.23.

Sixteen receivers of less-than-carload general merchandise in the San Ramon Valley testified in support of the application. All expressed a desire for overnight service from suppliers in the Bay Area, with next morning storedoor delivery. Ten consignees were located at Concord (one of these also had a branch store at Walnut Creek), five were from Walnut Creek, and one was engaged in the electrical contracting and appliance business in Danville. Commodities handled include auto parts, tires, home appliances and furnishings, hardware, oils and greases, and toys. Most of the shipments, it was shown, originate in Oakland and San Francisco, with some traffic from South San Francisco, Richmond, Berkeley, Emeryville, San Leandro and Hayward. In most cases, the consignees pay freight charges, although some shipments come prepaid. A rather wide variety of transportation services appears to have been used by those who testified. With one exception, all received shipments by Pacific Motor Trucking Company, and some, in addition, utilized Sacramento Northern Railroad, parcel post, Railway Express Agency, Inc., and a number of contract carriers. Three of the witnesses had used their own cars, they said, to pick up rush orders in Oakland. Shipments received by the various consignees range from 1 to 1100 pounds in weight, and have been moving daily in some cases, and from two to four times per week in others.

A majority of the witnesses who had been using the facilities of Pacific Motor Trucking Company expressed dissatisfaction with that service. The complaints were, for the most part, general in

nature, and dealt principally with slow deliveries and, in some instances, with excessive breakage and slow payment of claims. Two freight bills produced by one witness in support of his testimony on the subject of slow deliveries, however, revealed that in each case the shipment had been picked up in the Bay Area on Friday and delivered the first business day the following week. One of those shipments, it was shown, moved during the latter part of August, 1947, when Pacific Motor's direct highway service between Oakland and Concord<sup>(1)</sup> was strikebound, a condition still existing on November 5, 1947, the date of submission of this application. Other witnesses testified to delays ranging from two or three days to more than a week from the time orders were placed with Bay Area suppliers. It is not clear from their testimony, however, whether such delays were due to the carrier's failure to pick up the shipments or the suppliers' neglect in not having freight ready for transportation.

Only three of the witnesses had used the service of Sacramento Northern Railroad; one for a small percentage of his traffic, another on items not requiring expedited delivery, and the third on hardware shipments originating at points beyond San Francisco and Oakland where, it appears, the witness did not control or request the routing. One of the three witnesses stated that the rail line's service was satisfactory on items not needed in a hurry, while another stated that any delivery taking more than two days was slow for him.

At the closing hearing in San Francisco, protestants Pacific Motor Trucking Company and Sacramento Northern Railroad produced testimony from operating officials and, in the case of Pacific Motor, from shippers and receivers of freight, designed to show the nature of the service rendered by those carriers between the Bay Area and the San Ramon Valley.

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(1) See Decision No. 26619, as amended, Application No. 18871; Decision No. 39414, as amended, Application No. 26433. (46 CRC 69L)

Pacific Motor Trucking Company's direct highway service between Oakland and points in the San Ramon Valley was inaugurated August 22, 1947, approximately two months before the first hearings in this proceeding. Prior to the inception of that service, shipments destined to San Ramon Valley points moved by rail from Oakland to Martinez, and beyond that point by truck under the carrier's then existing operative rights. The rail-truck operation resulted in second-morning delivery, but this was shortened one day by the new direct highway service from Oakland via the Broadway Tunnel. On August 26, 1947, however, the carrier's drivers did not appear for work, and thereafter it was found necessary to resort to the former rail-truck operation through Martinez, a procedure still in effect when this application was submitted for decision on November 5.

The witnesses who testified at San Francisco on behalf of Pacific Motor Trucking Company did not indicate a need for expedited transportation, and stated they had found that carrier's service satisfactory.

It appears to us, upon careful consideration of the testimony, that the complaints registered by applicant's witnesses against the service of Pacific Motor Trucking Company, at least with respect to time in transit, were directed at the rail-truck operation rather than at the direct highway service whose efficacy had not yet been put to a real test. We are not prepared to say that the adequacy of an existing carrier's service, when attacked by one seeking competitive rights, is to be judged by performance under emergency conditions.

The showing on behalf of Sacramento Northern Railroad was limited to the production of three exhibits indicating the train schedules, linehaul performance, and less-than-carload tonnage of that

carrier between Oakland, Walnut Creek and Concord during June, July and August of the current year. The train schedule shows a departure from Oakland at 7:30 a.m. daily except Sunday (since July 11, 1947), with arrival at Walnut Creek and Concord, respectively, at 9:00 a.m. and 9:30 a.m. The westbound train leaves Concord at 2:30 p.m. and arrives at Oakland at 6:00 p.m. The pickup and delivery service of this carrier, however, was not described, nor was there any affirmative showing on its behalf with respect to overall time in transit of shipments. About 35 tons of less-than-carload freight were shown to have been handled by the rail line from Oakland to Walnut Creek and Concord during the indicated three-month period. The evidence is not persuasive that the service of Sacramento Northern Railroad, when considered in the light of the circumstances under which it was shown to have been used, is deficient to the point of inadequacy.

We have carefully reviewed the evidence in this proceeding and have fully considered the arguments of counsel. The principle that we believe should guide us here is one that has frequently been applied in similar situations, namely, that new certificated highway carrier rights should not be granted in a territory served by existing facilities of like character in the absence of clear proof of real public need for the new service and convincing evidence of inadequacy in the operations of the other carriers.

We do not believe that applicant has shown that the service proposed will fill a need that cannot be met by presently certificated facilities if operated under normal conditions. We have already stated that applicant anticipates an initial volume of traffic amounting to some five tons daily. Those who testified that they would use the proposed service were, for the most part, regular patrons of Pacific Motor Trucking Company who were suffering delays as a result

of the admitted slowness of that carrier's emergency rail-truck operation via Martinez. It is not unreasonable to expect, we think, that if the direct highway service contemplated by our previous authorization were given a fair chance to show what it could do, much of the dissatisfaction evidenced by the witnesses would be allayed. We believe that Pacific Motor Trucking Company should have that chance.

As we have concluded that applicant has not made the showing required by the rule above stated, it follows that the application must be denied.

O R D E R

Public hearing having been held on the above entitled and numbered application, evidence having been received and considered, the matter having been orally argued and submitted for decision, and the Commission being now fully advised,

IT IS ORDERED that said application of J. R. Henry and R. F. Maher for a certificate of public convenience and necessity authorizing service as a highway common carrier, as defined in Section 2-3/4 of the Public Utilities Act, be and it is hereby denied.

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

Dated at San Francisco, California, this First day of December, 1947.

Harold A. Hule  
Justice J. G. Grier  
James A. Russell  
P. L. D. D. D.

COMMISSIONERS