

Decision No. 43563

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 APPLGATE DRAYAGE CO., for a certificate)
 to transport property, as a common) Application No. 29833
 carrier for compensation, over the public)
 highways between Sacramento and Nevada)
 City and certain intermediate points.)

Wesley W. Kergan for applicant.
William Meinhold for Pacific Motor Trucking Company; and
Edward Stern and William Meinhold for Railway Express
 Agency, Inc., protestants.
J. G. Fitzhenry for Sacramento Chamber of Commerce,
 interested party.

O P I N I O N

In this proceeding, Applegate Drayage Company, a corporation, seeks a certificate of public convenience and necessity authorizing the establishment and operation of service as a highway common carrier for the transportation of freight between Sacramento and Grass Valley and Nevada City (including the area within a radius of 5 miles of such points) and intermediate points located north of the northerly city limits of Auburn.

Public hearings were held earlier this year before Examiner Bradshaw at Sacramento, Grass Valley and Nevada City. Following submission, the application was reopened to receive further evidence and was resubmitted at a hearing held at Sacramento on November 1, 1949, before Examiner Gregory. Pacific Motor Trucking Company (hereinafter called P.M.T.) and Railway Express Agency, Inc., protested the granting of the application. The last-mentioned carrier did not offer any evidence. The Sacramento Chamber of Commerce entered an appearance as an interested party.

At the further hearing, a report of the Engineering Section, Research Division, Transportation Department of the Commission dealing

with the transportation of general freight traffic by highway carriers between the Sacramento and Grass Valley-Nevada City areas, as related to the application, was received in evidence along with testimony of the author of the report, Grant L. Malquist. Also received at the further hearing was an exhibit prepared by the Sacramento district manager of Pacific Motor Trucking Company, showing a comparison of tons and shipments handled by that carrier between Sacramento and the Grass Valley-Nevada City area during the first nine months of 1947, 1948 and 1949. Applicant's attorney did not appear at the further hearing and applicant presented no additional evidence.

Applicant proposes to operate two round trips daily, except Sundays and holidays. One of the trips is intended to afford overnight service from Sacramento with arrivals at Grass Valley and Nevada City at 7:00 a.m. and 8:00 a.m., respectively. The other schedule contemplates a departure from Sacramento at 11:00 a.m. and arrivals at Grass Valley and Nevada City at 1:00 and 2:00 p.m., respectively. The truck arriving at Nevada City at 8:00 a.m. would leave that point at 11:00 a.m. and arrive in Sacramento at 2:30 p.m. The second truck is scheduled to leave Nevada City at 3:00 p.m. and arrive in Sacramento at 6:30 p.m. Shipments from Sacramento destined to intermediate points between Auburn and Grass Valley would be delivered by the trucks while on their return to Sacramento.

At the initial hearing, applicant's counsel stated that it is not proposed to transport uncrated household goods, office or store furniture and fixtures; uncrated livestock; or liquid commodities in bulk in tank trucks. The application will be considered as having been amended accordingly.

Applicant's president testified concerning the experience of its officers in the trucking business. He stated that operations

are now conducted under contract carrier, radial common carrier and city carrier permits, almost all of the hauls being within a 150-mile radius of Sacramento. According to the witness, general commodities and fruits and vegetables are transported, about 95 per cent (on a revenue basis) being for seven customers. It was asserted that applicant now handles about 10 to 15 tons of freight a month from Sacramento to Grass Valley and Nevada City for three of the seven customers.

It appears that the application herein was filled as a result of a survey conducted among certain shippers. According to the Commission witness, his investigation disclosed that (1) between 100 and 125 tons of freight a week move between the points here involved by contract carriers and private trucks; (2) P.M.T., the present common carrier, accomplishes first-morning deliveries from Sacramento only from 40 to 60 per cent of the time; (3) shippers complain because shipments from the San Francisco Bay area are assessed combination rates over Sacramento unless traffic is routed via Southern Pacific Company; and (4) there has been an increase in population of 27 per cent in Nevada County since 1940.

Testimony was presented to show that applicant has adequate terminal facilities in Sacramento as well as sufficient automotive equipment; that prospective revenues will sustain the proposed operation; and that, pursuant to an understanding with a highway common carrier operating between the Bay area and Sacramento, arrangements will be made for the establishment of joint rates if the sought certificate is granted.

Two consignees located 4 or 5 miles north of Auburn gave testimony complaining that P.M.T. leaves shipments at Auburn instead of making deliveries at their stores. It appears that neither witness instructed the carrier as to the desired method of receiving

their freight, but had asked salesmen for wholesalers to make the necessary arrangements.

The operator of a grocery store located $1\frac{1}{2}$ miles from Grass Valley on the Grass Valley-Marysville highway testified that he had been unable to secure deliveries of freight at his store, although a few deliveries were made recently for an additional charge. An assistant superintendent of P.M.T. asserted that the carrier never refused to deliver freight to the store in question, but the owner informed him that he would rather pick up shipments in Grass Valley than pay an additional charge. Another witness having a garage and small store in the same neighborhood testified that he has not received a delivery service nor ever requested it.

Five witnesses engaged in business at Grass Valley testified on behalf of applicant. Four of these witnesses stated that the proposed mid-day schedule from Sacramento would at times be helpful for rush shipments. They declared that except for the absence of such a schedule they had no complaint against the service of P.M.T. One of these witnesses, however, considered that damage to freight was excessive. The fifth witness of this group indicated that he does not use the present common carrier service.

The president of the Grass Valley Chamber of Commerce, who is also sales manager for an automobile dealer, testified that its board of directors had endorsed the application, being of the view that it would be preferable to have two carriers serving the town. He stated that shipments via P.M.T. consigned to his firm are received promptly and that the only complaint against the service is that P.M.T. did not make door deliveries during a period when his place of business was picketed by a labor union. Although the witness thought the additional delivery service proposed by applicant would

at times be convenient, he was unable to state whether the service would be used, if established.

The secretaries of the Nevada City Chamber of Commerce and Sierra Nevada Chamber of Commerce testified that those organizations adopted motions or resolutions endorsing the application. It appears that, at the time action was taken by the Nevada City chamber, applicant's president was present and no consideration was given to the existing service or the volume of available traffic. According to the testimony, the directors of the Sierra Nevada chamber -- a county-wide organization -- believed that applicant proposed to operate beyond the area served by P.M.T. and that service by more than one carrier would be beneficial, although no complaints of the existing service were brought to their attention.

The position of the Sacramento Chamber of Commerce was stated by the manager of its transportation and industrial departments. He asserted that if, upon a complete record, the Commission finds that the available tonnage is sufficient economically to support a competing carrier between Sacramento and the Grass Valley-Nevada City area his organization favors the granting of the instant application.

Applicant's president presented certain testimony as to the available tonnage. The evidence in this regard is too general and speculative to be of assistance in making a finding such as suggested by the Sacramento Chamber of Commerce.

The district manager of P.M.T. described the service, equipment and facilities of that carrier. He testified that trucks are scheduled to depart from Sacramento at 4:00 a.m. and arrive at Grass Valley at 7:00 a.m. daily, except Saturdays, Sundays and holidays, with an on-call service on Saturdays. It was stated that in actual practice the trucks usually leave Sacramento at 4:45 a.m.

and arrive at Grass Valley between 7:30 and 7:45 a.m. According to the witness, three smaller trucks perform the delivery work in the Grass Valley-Nevada City area commencing at about 9:30 a.m. The testimony also indicates that the line-haul trucks leave Grass Valley about 11:00 a.m. on the return trip to Sacramento, arriving there at approximately 2:00 p.m., and that shipments are usually delivered to consignees the following morning.

The witness stated that the average daily volume of tonnage handled by P.M.T. from all points of origin to Grass Valley-Nevada City territory was as follows: 1947, 27 tons; 1948, slightly over 23 tons; January, 1949, 16 tons; and February, 1949, about 12 tons.

The district manager further testified that P.M.T.'s predecessor (Nevada Pacific Trucking Agency) operated a mid-day service from Sacramento between August, 1939 and the early part of 1946. He declared that the reason for discontinuing this service was that the tonnage offered was very small and equipment could not be so operated as to comply with regulations of the Office of Defense Transportation then in effect.

A witness employed by Southern Pacific Company, the parent company of P.M.T., testified that shipments from the Bay area are transported in a train departing from San Francisco and Oakland at about 7:30 and 9:30 p.m., respectively, and that the rail cars are spotted at the Sacramento freight station between 2:00 and 2:30 a.m. where the shipments are transferred into P.M.T. equipment.

This witness presented two exhibits purporting to show the service rendered on all less-than-carload shipments transported from Sacramento, San Francisco and Oakland to Grass Valley and Nevada City from September 20 to November 18, 1948, inclusive. It was

(1) The application herein was filed November 19, 1948.

stated that the data were based upon analysis of shipping documents and that in computing the elapsed time in transit Saturdays, Sundays and holidays were excluded. Similarly, where consignees requested delivery of freight at other times than upon arrival the time in transit was calculated upon the time shipments were ready for delivery. A summarization of the results of the study follows:

Shipments from Sacramento

Number of Shipments-----1,507

Service Performance

Shipments which received first day
(overnight) service-----1,352 or 89.7%

Shipments which received second day
service-----100 or 6.6%

Shipments which received third day
service-----33 or 2.2%

Shipments which received more than
third day service or upon which
the elapsed time could not be
determined from shipping records-----22 or 1.5%

Shipments from San Francisco and Oakland

Number of shipments-----3,184

Service Performance

Shipments which received first day
(overnight) service-----2,581 or 81.1%

Shipments which received second day
service-----340 or 10.7%

Shipments which received third day
service-----167 or 5.2%

Shipments which received more than
third day service, or portions were
delivered on the first and second
day, or upon which the elapsed time
could not be determined from shipping
records-----96 or 3.0%

Twenty-four consignees in business at Grass Valley and eight at Nevada City appeared as witnesses for P.M.T. They stated

that the present service is satisfactory and that they do not require the service of another common carrier. Twenty of these witnesses testified that they did not need deliveries on Saturday mornings, as proposed by applicant. Five of the twenty said that Saturday deliveries would cause them inconvenience. Three witnesses declared that deliveries on Saturday morning would be advantageous on infrequent occasions. Of the witnesses who were interrogated on the subject, 17 stated that a mid-day service is not necessary, while one indicated that there were times when he could use such a service.

The traffic study (Exhibit 5) introduced at the further hearing, after reviewing briefly the facts of record respecting the operations of applicant and the other carriers in the area, sets forth figures designed to show the annual volume of general commodity traffic available to the for-hire carriers operating between Sacramento and the Grass Valley-Nevada City area. A tabulation of these figures follows:

<u>Class of Carrier</u>	<u>Estimated Tons Per Annum (1949)</u>	<u>Per Cent</u>
Highway Common (P.M.T.)	5,444	28.9
Permitted	6,361	33.7
Proprietary	<u>7,052</u>	<u>37.4</u>
	18,857	100.0

Exhibit 6, introduced by P.M.T. at the further hearing, tabulates the tons and shipments handled by that carrier between Sacramento and Grass Valley-Nevada City during the first nine months of 1947, 1948 and 1949, in both carload and less-than-carload traffic. Summarized, the figures are as follows:

	<u>1947</u>		<u>1948</u>		<u>1949</u>	
	<u>Tons</u>	<u>Shipments</u>	<u>Tons</u>	<u>Shipments</u>	<u>Tons</u>	<u>Shipments</u>
Total CL and LCL						
Received and Forwarded	5,537	30,796	4,781	26,969	3,487	22,371
Average Per Day	29.14	162.08	25.16	141.94	18.35	117.75
1949 % Decrease	37.03	27.36	27.07	17.05	---	---

P.M.T. enjoys its greatest volume of tonnage in October, according to its Sacramento district manager. On a systemwide basis, however, volume has decreased in 1949 as compared with the two previous years. One clerk has been laid off at Grass Valley since earlier this year and the service in that area is now handled by two clerks and three drivers.

A cursory inspection of the record in this case might lead to the conclusion that there would be available to applicant, should it be granted a certificate, a considerable volume of freight now shown to be moving by permitted and proprietary carriers. Closer analysis, however, points to the contrary. About 95 per cent of applicant's volume of transportation business is derived from seven shippers, two or three of whom provide the bulk of applicant's tonnage into the territory. Applicant's president testified that his firm would have to haul 80 tons per week, or roughly 60 per cent of equipment capacity, in order to meet estimated expenses of operation as a common carrier. There are about seven proprietary trucking operations and a number of permitted carriers serving the area, in addition to applicant and P.M.T. The proprietary trucks, according to a survey conducted by applicant's president, collectively transport about 70 tons per week into the area. One other contract carrier, which originates tonnage in the San Francisco-Oakland area as well as at Sacramento, does a good volume of business. Other permitted carriers also occasionally serve the territory. Applicant's president testified that, while his firm expected to divert some tonnage from P.M.T., the greater volume of additional tonnage would be obtained from shippers now using permitted and proprietary carriers.

Applicant's assumptions as to the volume of traffic available to it, considered in connection with the figures developed by the Commission's staff engineer and by P.M.T., would be persuasive

if standing alone. Other considerations, however, in our opinion, have the effect of nullifying, to a large degree, the optimistic view taken by applicant of the possibility of diverting traffic from the permitted and proprietary facilities, if not from P.M.T. In the first place, there is nothing in the record from which can be determined the availability of such traffic to applicant, other than the testimony of its president that he expects to get some of it. In the second place, the nature of proprietary transportation is such that, being designed for the convenience of the shipper, or used because of company policy, it is less subject to diversion to for-hire facilities than would be that which is normally performed by the latter. As to the traffic transported by permitted carriers other than applicant, the record indicates that a substantial volume consists of truckloads or of composite shipments for split delivery. Moreover, the permitted and proprietary facilities also serve other points in addition to those located on applicant's proposed route, as does applicant itself under its existing permits.

The entire record in this proceeding has been carefully scrutinized. As stated before, applicant offered no additional evidence at the further hearing and its showing made at the original hearing does not establish a need or demand on the part of the shipping public for additional highway common carrier facilities between Sacramento and the Grass Valley-Nevada City area. Moreover, participation by another common carrier in the decreasing volume of traffic shown to be moving by that type of facility would only tend to impair the existing service. Upon such a record the application should be denied.

C O R D E R

Public hearings having been had in the above-entitled proceeding, and the Commission having carefully considered the evidence presented,

IT IS ORDERED that the application on file herein be and it is hereby denied.

This order shall become effective twenty (20) days after the date hereof.

Dated at San Francisco, California, this 29th day of November, 1949.

R. E. Anderson
Justice J. Calver
Frank Powell
Herbert Patten
 COMMISSIONERS