

ORIGINAL

Decision No. 44091

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)	
JOE SAIA for a certificate of public)	
convenience and necessity to transport)	
property as a highway common carrier)	Application No. 30473
between Sacramento, on the one hand,)	
and Truckee, Lake Tahoe and intermediate)	
points, on the other hand.)	

Spurgeon Avakian, for applicant.
Roy Jerome, for Southern Pacific Company and Pacific Motor
 Trucking Company, protestants.

O P I N I O N

This is an application of Joe Seia for a certificate of public convenience and necessity authorizing the transportation of general commodities between Sacramento, on the one hand, and points along U. S. Highway 40 and the western shore of Lake Tahoe, on the other hand.

Public hearings were held before Examiner Gannon at Sacramento and Truckee and the matter was submitted on concurrent briefs, filed November 18, 1950. Southern Pacific Company and Pacific Motor Trucking Company appeared as protestants, the latter being hereinafter referred to as PMT. The only freight transportation facilities in the area are those supplied by Southern Pacific and PMT, as common carriers, and by applicant as a highway contract carrier.

The service offered by common carrier is set forth in Exhibit 3 of the protestants. PMT offers a combined rail-truck service to Truckee and Lake Tahoe. Freight originating in Sacramento arrives in Truckee daily by rail. Deliveries are made

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by truck to Lake Tahoe points daily except Saturdays and Sundays during the summer; twice weekly during one month of the Spring; one month in the fall, and once weekly during the winter season. Points between Colfax and Truckee on U. S. Highway 40 are served by truck on Tuesdays and Fridays all the year around, with the freight being accumulated at Colfax prior to each delivery day. Colfax and points between Colfax and Sacramento are served by truck daily except Saturday and Sunday.

Applicant testified that he has had 10 years' experience in the trucking and fresh produce business as a contract carrier in the area involved in this application. He owns 7 trucks and 3 trailers most of which he has operated himself at one time or another. The territory which applicant seeks to serve as a common carrier extends from Weimar on U. S. Highway No. 40 to Truckee, which is the winter sports area, and from Truckee to Tahoe along the western shore of the Lake, which is the area of summer vacation camps and small stores carrying limited inventories. The testimony indicates that both of these areas are growing in population. He proposes to use two trucks, one to haul the Highway 40 freight and the other the Truckee-Tahoe shipments. The truck serving Highway 40 points will leave Sacramento at 6 a.m., starting delivering at Weimar at 7:30 a.m. and thence to Donner Summit, arriving there at 11 a.m. The truck serving the Truckee-Tahoe area will leave Sacramento at 12 midnight and arrive at Truckee at 7:30 a.m. and start delivering from there into Lake Tahoe points. It will follow the Truckee-Tahoe route, Brockway, and then back to Meeks Bay and Emerald Bay. The return movement is over substantially the same route. Although limited in his operations, applicant transported approximately 90,000 pounds from Sacramento to Lake Tahoe points during the month

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of August, 1949, the month succeeding the filing of this application. During the month of July, 1949, PMT hauled 61,400 pounds, despite the fact that the area is a steadily growing one. ⁽¹⁾

The applicant's witnesses testified generally that the service of Saia met all their requirements, except that they preferred a highway common carrier service. As a rule, they carried small inventories and required quick deliveries to meet their needs. Many of them felt that the applicant rendered a personalized service which did not end until their shipments had been delivered at their doorways.

The record does not disclose that protestants are rendering a service which satisfies the needs of the shipping public to an extent commensurate with that proposed by applicant. Thirteen witnesses were called at Sacramento, three of whom were operating witnesses. Their testimony related to the service now rendered by PMT, tonnage hauled, method of handling shipments and operating expenses and revenue.

It would be of no avail to cite from the record all the instances of failure on the part of protestants to supply satisfactory service, but a few instances may be pertinent.

The Branch Manager of Best Foods Company at Sacramento testified that his company served all the Lake Tahoe area in California, and Highway 40 points, during the summer months principally. He uses PMT exclusively because applicant will not transport his shipments under his present operating authority. The commodities in which they deal are highly perishable and they have been forced to take shipments back to Sacramento because of spoilage. A service

(1) Exhibit 2

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that would permit pickup in the morning and delivery the same day would meet their requirements. These commodities should not remain in the warehouse overnight and delivered the next day.

Another instance of failure was cited by the manager of a resort hotel at Soda Springs who testified that the driver of the truck refused to deliver a heavy shipment at the consignee's door, some distance from the highway, and took the shipment back with him. Still another instance involved the failure of the PMT driver to deliver a shipment, urgently needed by the consignee, until the following week.

Protestants in their brief emphasized the usual allegations: (a) that applicant has failed to prove public convenience and necessity; (b) that existing carriers are serving the field adequately; (c) that applicant is not qualified to render a highway common carrier service; (d) that any service, in addition to that rendered by PMT, would be superfluous and would result in an impairment of PMT service; (e) that PMT service is far superior to that proposed by applicant.

We do not believe the record bears out any of these extravagant contentions. Public convenience and necessity is proved by the testimony of the witnesses who require and will use the service and in this proceeding such instances are in a substantial majority.

Based upon the evidence of record herein, the Commission is of the opinion, and finds, that public convenience and necessity require the service proposed by applicant and the application will be granted.

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Joe Saia 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.

ORDER

Public hearing having been held in the above-entitled proceeding, evidence having been received, the matter having been submitted, and the Commission being fully advised,

IT IS ORDERED:

(1) That a certificate of public convenience and necessity is hereby granted to Joe Saia 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 Sacramento, on the one hand, and on the other hand, Weimar and Truckee and points intermediate thereto on U. S. Highway 40 (including Dutch Flat, Alta, and other points on Old Highway 40, between Monte Vista and Baxters) and points on State Highway 89 between Truckee and Tahoe City and points on the western shore of Lake Tahoe between ~~Broadway~~ ^{Brockway} on the north, and Emerald Bay and Inspiration Point on the south, all points being inclusive. (130)

(2) Said certificate herein granted is subject to the

following restriction:

Applicant may not transport uncrated household goods and certain other commodities mentioned in Paragraph II of his application.

(3) 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.
- c. Subject to the authority of this Commission to change or modify them by further order, applicant shall conduct operations pursuant to the certificate herein granted over and along the following routes:

Between Sacramento, Weimar and Truckee and points intermediate thereto on U. S. Highway 40 (including Dutch Flat, Alta, and other points on Old Highway 40, between Monte Vista and Baxters) and points on State Highway 89 between Truckee and Tahoe City and points on the eastern shore of Lake Tahoe between Brockway on the north and Emerald Bay and Inspiration Point on the south, all points being inclusive.

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

Dated at San Francisco, California, this 25th day of April, 1950.

R. B. [Signature]
Arthur F. [Signature]
[Signature]
[Signature]
[Signature]
 COMMISSIONERS