

ORIGINAL

Decision No. 49395

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 JOHN V. GIBSON for a certificate of)
 public convenience and necessity to)
 operate as a highway common carrier)
 for the transportation of property)
 between Santa Rosa territory and)
 Willits Territory.)

Application No. 33896

Frank W. Finn, for applicant.

Douglas Brookman, for Merchants Express Corporation,
 Pacific Greyhound Lines and Antoni Truck Line,
 protestants.

Fred E. Fuhrman, for Southern Pacific Company,
 Pacific Motor Trucking Company, Northwestern
 Pacific Railroad Company, Petaluma and Santa Rosa
 Railroad Company and Railway Express Agency, Inc.,
 protestants.

Harold M. Hayes, for Intercity Transport Lines and
 Intercity Motor Lines, protestants.

O P I N I O N

In the above-entitled application, as amended, John V. Gibson requests a certificate of public convenience and necessity authorizing him to establish and operate a highway common carrier service between Santa Rosa and Willits and intermediate points along U. S. Highway 101 including the off-route points of West Windsor, Talmadge and Redwood Valley. Applicant proposes to transport general commodities except livestock, petroleum products in bulk and tank trucks, uncrated used household goods and a few other items, all as more particularly set forth in the margin.^{1/} A public

^{1/} The excepted commodities are:

Bank bills, currency or coin, deeds, drafts or valuable papers with stamps affixed, precious metals or stones or articles manufactured therefrom, jewelery or other articles of extraordinary value. Also uncrated used household goods as described in current Western Classification, acids, livestock, animals or pets, petroleum products in tank trucks, explosives or other dangerous substances, any article which would be liable to damage other shipments or equipment, and commodities requiring special equipment, save and except refrigeration equipment.

hearing was held before Examiner Paul at Santa Rosa on March 5 and 6 and April 9, 13 and 14 and at San Francisco on May 25, 1953. The matter was argued orally on June 1, 1953 and submitted.

Applicant testified in some detail as to his present operations, equipment, facilities and demands for his services. His headquarters are maintained at Santa Rosa. He now operates one round trip daily except Saturdays, Sundays and holidays between the points involved except the off-route points. The service would be continued and adjusted to meet the public need if the authority sought should be granted. The rates which applicant proposes to charge would be at the same level and of the same volume as those established as minima by the Commission. Rates presently charged are above such minima according to the witness. He stated that he has been continuously transporting numerous commodities between Santa Rosa and Willits and points intermediate thereto since 1945.

Applicant maintains no terminal or dock facilities. He stated, however, that terminal facilities would be established if a need therefor should develop. Daily calls are made at the establishments of regular shippers. Pickups are also made in response to telephone calls received at his home from consignees located at the various points applicant serves. Such calls if received before applicant leaves Santa Rosa enable him to make the pickup and delivery the same day. As a rule he or his driver leaves Santa Rosa about 11 a.m. after having completed pickups which usually have been made shortly before that hour. The only stops which occur after leaving Santa Rosa are at those points where shipments are to be delivered. He arrives at Willits about 3 p.m. and immediately begins delivery of shipments consigned to that point and at the same time picks up shipments destined to Santa Rosa or to points between Santa Rosa and Willits, upon the completion of which he

begins the return trip. On returning, only a few pickups are made and these are usually at Willits or Ukiah.

The principal articles transported by applicant, so he stated, consist of automotive parts and supplies, electrical equipment, supplies and parts, plumbing materials and supplies, paints, pastes, building hardware and materials, paper and paper products, hardware and other items. One of the principal characteristics of applicant's present operation which he stated would be continued if certificated is delivery of shipments on the same day they are received from consignors.

Applicant further testified that requests for his service have been continuously increasing during the last five years and have more than doubled during the last two years. He said that he has had many requests from present customers to haul larger items, heavier shipments and different commodities than those hauled now or in the past but has not acceded thereto because of uncertainty as to the sufficiency of his operative authority.^{2/} He also stated, in effect, that even after consultation with members of the Commission's staff he remains unable to conclude with any assurance to what extent, if any, he lawfully may expand his permitted operations to meet the many requests for service which he has refused. He pointed out that some time ago, after admonishment by Commission representatives, he reduced the number of shippers served.

Applicant testified that he has operated the equipment used in the service since its inception in 1945. At times he employs a driver. Presently a 1947 Chevrolet 1-ton van-type truck is used for both line-haul and pickup and delivery service which is said to be sufficient to handle the traffic at this time. The witness stated, and the record shows, that he has sufficient

^{2/} Applicant holds highway contract and radial highway common carrier permits.

additional equipment to provide service effectively between the points as proposed if the authority sought should be granted.^{3/}

Applicant's balance sheet statement for the period January 1 to December 31, 1952 indicates a net worth of about \$19,000 (Exhibit No. 2): The statement of his income and expenses for the calendar year ending 1952 shows a total income of approximately \$99,900; total expenses of approximately \$97,600 and a net profit of about \$2,270. According to Exhibit No. 3 of applicant approximately 94 per cent of the revenues and expenses of his over-all operations applies to his transportation of U. S. mail between San Francisco and Marin County. Exhibit No. 3 shows the income for the calendar year 1952 to be approximately as follows:

Mail contracts	\$93,478.95
Freight	5,713.37
Passengers	765.00

The revenue from passengers is derived from an operation between Santa Rosa and the Sonoma County Airport in connection with the transportation of U. S. mail between those points.

Applicant called 35 public witnesses who testified as to their present or prospective use or need for his service. Nineteen of these witnesses are receivers of commodities shipped from Santa Rosa via applicant's line. One other witness had received shipments hauled by applicant but the service had been discontinued about one year previously. He desired its restoration. Another witness who

^{3/} The additional equipment owned by applicant which could be drawn upon for use if needed is listed below. This equipment is used by applicant principally to transport mail for the United States Post Office over two routes between San Francisco and points in Marin County.

No.	Year	Make	Type Model	H.P.
1	1947	Ford	1½-ton van	100
1	1950	GMC	16-ft van	120
1	1950	GMC	Tractor and 20-ft van	120
1	1950	GMC	Tractor and 30-ft van	120
2	1950	GMC	14-ft van truck	120
1	1950	GMC	Tractor and 26-ft van	120
1	1951	Pontiac	Sedan	

receives shipments from Santa Rosa said he was refused service by applicant. All of these witnesses emphasized a need for a service which would deliver shipments from Santa Rosa on the same day the commodities are ordered. Applicant, so the witnesses asserted, is the only carrier available to them who provides such door-to-door same-day service. Practically all of them were aware of the fact that Pacific Greyhound Lines operates a number of daily schedules between the same points but pointed out that its express service is limited to shipments of 100 pounds or less, limited as to size and confined to depot-to-depot service, while they expressed a need for store-door to store-door service. The foregoing 21 witnesses are engaged in the following types of business: nine electrical contractors, three plumbing contractors, three plumbing and electrical contractors, one plumbing and electrical contractor who also deals in hardware, one each in furniture and plumbing supplies, building supplies, hardware, general farm supplies and liquid petroleum gas.

The remaining public witnesses for the most part are the owners, officers or representatives of jobbing or wholesale establishments at Santa Rosa. They handle various types of commodities, mainly electrical equipment, appliances and supplies, plumbing equipment and supplies, consisting of bath tubs, septic tanks, pipe, fittings and other items; radios, television sets, autos, auto parts and supplies, trucks and parts, tractors, tractor equipment and supplies, welding materials, builders' hardware and materials, insecticides, chemicals, paint, twine, paper and numerous paper products and supplies and some other items. Of these witnesses three had requested applicant's service and were refused, one had used it but applicant terminated the service and two had never used the service but expressed a need for it and would use it if it should be authorized.

Characteristic of all the testimony of the public witnesses was a need for service providing delivery of shipments on the same day they are received from the consignors. Receivers need such service, so they testified, to enable them to supply certain emergency requirements which arise at times. Other receivers stated that a same-day delivery service enables them to conduct their businesses on an inventory basis which varies from 40 to 60 per cent less than required without such service. Some lack sufficient capital, so they said, to maintain a complete stock of goods and would have difficulty conducting business without applicant's or a comparable service. While there were a few complaints with respect to the services provided by some protestant carriers, they were not serious for the most part. Generally it had to do with the inability of witnesses to order and obtain delivery of shipments the same day. Some receivers requested that certain carriers not be used. Several witnesses desired certification of applicant and establishment of his proposed rates at the minimum level of the Commission's Highway Carriers' Tariff No. 2 so they could use his service for heavier shipments.

Operative witnesses of protestants, Pacific Greyhound Lines, Pacific Motor Trucking Company and Intercity Transport Lines, testified as to the type of service which each renders between the points involved.

The regional traffic and sales manager of Pacific Greyhound Lines stated that five northbound and four southbound schedules of Greyhound Lines provide local service between Santa Rosa and Willits and intermediate points along Highway 101. The first and last northbound schedules leave Santa Rosa at 10:25 a.m. and 10:25 p.m. and the first and last southbound schedules leave Willits at 8:30 a.m. and 10:10 p.m. Each of these schedules handles

shipments of express weighing 100 pounds or less but no package which in its greatest dimension exceeds twenty-four inches in height or twenty-four inches in width or breadth or forty-five inches in length will be accepted for transportation. Depot-to-depot service only is provided.

The president and general manager of Intercity Motor Lines, a highway common carrier, and Intercity Transport Lines, an express corporation, described the automotive service performed by them. They serve between San Francisco and Santa Rosa and intermediate points, on the one hand, and points beyond Santa Rosa to Eureka and Crescent City, on the other hand, subject to certain limitations. In substance he stated that they have provided service between Santa Rosa and Willits since 1945 on a daily basis except Saturdays, Sundays and holidays; that in 1951 he had numerous requests for a same-day delivery service between those points; that in response thereto such service was established and operated during the months of June, July and August of 1951 between Santa Rosa and Ukiah and all intermediate points; that during those respective months the following tonnages were transported: 32,506 pounds, 32,441 pounds, and 31,643 pounds; and that the schedule providing this same-day delivery service left Santa Rosa at about 2 p.m. each operating day. At the end of the 3-month period the service was discontinued because it showed an operating loss of about \$700 each month. This witness also said that the over-all operations of his companies are being conducted at an unstated loss. He expressed the opinion that any additional certificated highway common carrier service would divert traffic from his lines thereby increasing their asserted operating deficit.

The assistant superintendent of Pacific Motor Trucking Company for the San Francisco-Eureka area described the highway

common carrier service performed by it as well as the service provided in conjunction with the Northwestern Pacific Railroad Company. Service by these carriers between the points involved is generally on an overnight basis.

This witness made an estimate of the cost of performing a service similar to that proposed by applicant. The estimate included a unit of equipment comparable to that used by applicant (Exhibit No. 6). It was his opinion that the total annual costs of such an operation with necessary drivers would amount to approximately \$8,000 a year and without including the cost of drivers the annual cost would be about \$3,000 a year. The witness concluded that upon his cost estimates and applicant's indicated net annual gross revenues of approximately \$6,000 the proposed operation would produce a financial loss. No evidence was adduced on behalf of any other protestant.

In general this record shows that applicant has been conducting a for-hire trucking service between Santa Rosa and Willits and intermediate points since 1945. He likewise conducts a mail transportation service between San Francisco and Marin County for the United States Post Office with which we are not here concerned. Protestants contend that applicant is required but has failed to show that his proposed operation under certification would be compensatory. They adduced evidence, both oral and documentary (Exhibit No. 6), which they assert proves that contention. Nevertheless the fact remains, as shown by the record, that applicant is, and since 1945 has been, conducting the service which he desires the Commission to certificate. The record shows that applicant's margin of profit from his Santa Rosa-Willits operation is relatively small at this time. However, he was of the opinion that this condition would improve rapidly if the application were granted since he would be able to increase his revenues substantially. The evidence

deletion
of applicant's past operations considered with testimony of public witnesses demonstrates a clear public need for the service proposed by applicant as provided for in the order following.

After careful consideration of the entire record in this proceeding, the Commission finds that public convenience and necessity require the establishment and operation of a service by applicant as a highway common carrier for the transportation of general commodities between the points set forth in the ensuing order.

Applicant 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.

O R D E R

A public hearing having been held and based upon the evidence therein adduced,

IT IS ORDERED:

(1) That a certificate of public convenience and necessity is granted to John V. Gibson authorizing the establishment and

operation of service as a highway common carrier, as defined by Section 213 of the Public Utilities Code, for the transportation of general commodities, except as noted hereinafter, between Santa Rosa and Willits and intermediate points along U. S. Highway 101 including the off-route points of West Windsor and Talmadge. The excepted commodities are: bank bills, currency or coin, deeds, drafts or valuable papers with stamps affixed, precious metals or stones or articles manufactured therefrom, jewelry or other articles of extraordinary value; also uncrated used household goods as described in current Western Classification, acids, livestock, animals or pets, petroleum products in tank trucks, explosives or other dangerous substances, any article that would be liable to damage other shipments or equipment, and commodities requiring special equipment, save and except refrigeration equipment.

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

- (a) Within thirty days after the effective date hereof, applicant shall file a written acceptance of the certificate herein granted.
- (b) Within sixty days after the effective date hereof, and upon not less than five days' notice to the Commission and the public, applicant shall establish the service herein authorized and shall file in triplicate, and concurrently make effective, appropriate tariffs satisfactory to the Commission.

(c) Subject to the authority of this Commission to change or modify them by written order, applicant shall operate over and along the following routes:

Over and along U. S. Highway 101 between Santa Rosa and Willits and the most appropriate public highways to serve the off-route points of West Windsor and Talmadge.

(3) That the application is denied in all other respects.

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

Dated at Los Angeles, California, this 1st day of December, 1953.

R. B. Murray
 President
Justus J. C. ...
... Fattis
Gene Higgins

Commissioners

I dissent.

It would serve no useful purpose to set out the facts of record reflecting the failure of the applicant to bring himself, and the service which he proposes to furnish, within the provisions of Section 213 of the Public Utilities Code. In my opinion, the proposal of the applicant, viewed in light of what he is now and has been doing and what he proposes to do in the future, is not comprehended by the provisions of said Section 213 of said Code. To grant a certificate to applicant, in my judgment, is not consistent with the public interest.



Peter E. Mitchell
Commissioner