

ORIGINALDecision No. 53847

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 PACIFIC TRAILER SHIPS, INC., for a)
 certificate of public convenience and)
 necessity to operate steamships between)
 the harbors of San Francisco and) Application No. 37404
 Los Angeles for the transportation of)
 automobiles and motor freight carriers)
 including tractors, trucks and trailers.)

(For appearances see Appendix A attached hereto.)

O P I N I O N

By its application, as amended, Pacific Trailer Ships, Inc., requests a certificate of public convenience and necessity to operate steamships between the harbors of San Francisco and Los Angeles for the transportation of automobiles and motor freight carriers including tractors, trucks and trailers.

Public hearing was held before Commissioner Untereiner and Examiner Daly at San Francisco and Los Angeles. The matter was submitted on June 11, 1956, subject to the filing of briefs since received and considered.

Proposed Service

Applicant, a California corporation formed in May 1955, proposes to construct and operate two vessels specially designed to carry trailers, trucks, and automobiles. Each ship will be 640 feet in length, have a beam of 84 feet and be capable of a speed of 22 knots. Each will be constructed with three decks, which will be laned off and will afford a total of 10,000 lineal feet for the stowage of vehicles. The proposed rate is two dollars a lineal foot. The vehicles will be loaded and discharged at the stern over specially designed ramps from ship to shore. It is

estimated that each ship will cost approximately \$10,000,000 and take approximately 16 to 18 months to build.

According to applicant's proposal of service, the vessels would depart their respective terminals daily about 7 p.m. and arrive at their respective destinations about 1 p.m. the following day. No sailings would be made on Saturdays and the departure time on Sundays would probably be about 1 p.m. The ships would be operated a total of 300 days each year, with provision for the annual overhauling of each vessel.

Truck companies would deliver their vehicles to 10-acre marshalling yards to be located at each terminal. The vehicles would be loaded on board and discharged by means of special tractors.

Proposed Financing

Applicant states that definite commitments for the financing of the vessels and their operations cannot be obtained until it has been granted a certificate of public convenience and necessity from this Commission as well as approval from the Maritime Commission, the Secretary of Commerce and the Secretary of Defense. However, applicant offered evidence relative to its plan of financing the enterprise when the aforementioned certificate and approvals have been obtained.

In addition to the estimated cost of \$20,000,000 for the two ships it is estimated that the total disbursements for the first year, including fixed charges and direct operating expenses, will approximate \$4,724,546.60; so that the initial cost of the venture will be almost \$25,000,000.

At the present time, \$46,000 of risk money has been invested by the organizers. Upon the granting of the certificate herein requested an additional \$30,000 of risk money has been

committed by the organizers. After obtaining the approval of the Maritime Commission it will be necessary to obtain a commitment for a long term loan from a major insurance company in the minimum amount of \$17,500,000 or 87½ per cent of the \$20,000,000 construction cost. It was indicated that if the ships qualify as "special purpose vessels, essential to the National Defense", applicant will be entitled to insurance of a construction bank loan and a twenty-year mortgage loan by the United States Government pursuant to Title XI of the Merchant Marine Act of 1936.

Applicant plans to issue three types of securities:

(a) 100,000 shares of Class A common stock to be the sole voting stock of the corporation; (b) 100,000 shares of Class B common stock, nonvoting, limited participation in dividends and redeemable at the option of the corporation; (c) 200,000 shares of 6 per cent cumulative preferred stock, \$25 per share par value.

(Total \$5,000,000)

All of the Class A common stock, it was stated, will be issued to the organizers as consideration for their risk capital and promotion effort.

With respect to the Class B common stock it was explained that, with the proper authority, obsolete or near-obsolete vessels can be sold and transferred to a foreign registry for a substantial profit. It was further explained that, as a means of encouraging shipbuilding in American shipyards, the Maritime Commission allows the builder of new ships the right to make such transfers. As the builder of two new ships, applicant would be entitled to assign the right of transfer to a concern which owned two obsolete ships and wished to sell and transfer them to a foreign registry at a profit. Applicant proposes to assign the right of transfer provided the assignee agrees to purchase all of the Class B common stock

with the profit realized from the transfer and sale of the ships. It is estimated that the profit will amount to approximately \$1,500,000.

After contacting certain private investors concerning the purchase of the preferred stock, applicant indicated that approximately 50 per cent of the shares, or a total of \$2,500,000, can be sold when and if the issue is authorized.

Economic Feasibility

Applicant employed the services of a local consulting engineer as well as the services of a New York engineering firm. Separate studies were prepared and introduced in evidence. In addition, a similar study was prepared and introduced in evidence by a consulting engineer on behalf of protestants Southern Pacific Company and The Atchison Topeka and Santa Fe Railway Company.

The studies were predicated on records and reports of this Commission, traffic checks conducted by the State Department of Highways, records of registration from the State Department of Motor Vehicles, and population figures. In the case of applicant's studies, conferences were held with the management of many carriers as well as with officials of civic organizations. Consideration was given to the growth of west coast traffic and, from historical figures, future trends and traffic potential were developed.

All of the studies indicated future as well as past growth and development in traffic between the points herein considered. The main point of difference concerned the amount of traffic the proposed operation would divert.

It was the conclusion of the applicant's experts that the proposed service would be economically feasible if it developed traffic amounting to 150 vehicles per trip in 1958 (assumed as the first year of operation). It was their opinion that such an

operation should produce sufficient revenue to meet the estimated operating expenses and fixed charges. Protestants' expert, on the other hand, was of the opinion that the proposed service would not divert enough traffic to meet such operating expenses and fixed charges.

Public Witness Testimony

Public witnesses testified at San Francisco and Los Angeles. For the most part they represented truck carriers presently engaged in the transportation of property between the proposed areas. They testified, in brief, that they frequently have occasion to transport truckload shipments that do not require an overnight service and that they would use the proposed service on such occasions. Their primary interest was in the attractive rate proposed, but it was also pointed out that use of the service would lead to a substantial saving to the carrier as the result of reduced operating costs. It was conceded, however, that any savings would ultimately have to be passed on, to some extent, to the shipping public in the form of reduced rates.

Protestants Showing

With the exception of the exhibit and expert testimony introduced jointly by Southern Pacific Company, The Atchison, Topeka and Santa Fe Railway Company and their subsidiaries, the only affirmative showing made by any of the protestants was the operational testimony introduced on behalf of Insured Transporters, Inc. The sum and substance of such testimony was that because of the nature of their equipment the proposed service could not be used by carriers engaged in the transportation of motor vehicles.

Issues Raised in Briefs

It is contended in the briefs filed on behalf of certain protestants that it is legally impossible for the truck carriers to

retain their status as "highway carriers" if the transportation for a substantial part of the distance is in fact performed by a water carrier. In such case, it is argued, neither of the statutory requirements that the transportation be performed by a motor vehicle nor that the property be transported over a highway is met. It is further argued that by the very nature of its operation a radial highway common carrier could not use the service. It is also argued that a contract carrier could not use the service, for to do so would constitute a breach of contract between the carrier and the shipper of the goods. Protestants take the position that the proposed service could only be performed on the basis of a freight forwarding operation or under a joint rate arrangement as in the case of rail "piggy-back" service in interstate commerce.

Inasmuch as the preponderance of the evidence supports a finding that the proposed operation is economically feasible if both certificated and permitted carriers can lawfully avail themselves of the service, and certain port authorities and Chamber of Commerce representatives, as well as other public witnesses, have pointed out advantages to the public that would accrue from diverting traffic from the major highways between the state's two principal metropolitan areas, a denial of the application would have to rest, in large measure, on a conclusion that these arguments advanced by the protestants are valid. We do not so conclude.

Although the term "highway" is frequently used in the Public Utilities Code when referring to the various types of truck carriers, it cannot be inferred that this in itself restricts such carriers to the use of highways exclusively. Highway carriers may and do operate within city limits, on private roads, and within private areas such as state and national

parks and federal territory such as the San Francisco Presidio, without losing their identity as highway carriers; provided some portion of the transportation service is performed over the public highways. Moreover, the Legislature, in the Highway Carriers' Act, not only determined that the use of the highways by for-hire carriers is a business affected with a public interest, but it also required this Commission so to regulate that business that it will "preserve for the public the full benefit and use of the public highways consistent with the needs of commerce without unnecessary congestion or wear and tear upon such highways." (Sec. 3502, P.U. Code.) Further, Section 727 of the Public Utilities Code provides in part: "It is the policy of the State that the use of all waterways, ports, and harbors of this State shall be encouraged ...".

In view of the increasing congestion on the public highways, resulting in a decrease for the public of the "full benefit and use" of such highways which this Commission is required to preserve "consistent with the needs of commerce", it appears that the purposes expressed by the Legislature in both Section 727 and Section 3502 of the Public Utilities Code will be subserved by a conclusion that highway carriers may lawfully use applicant's proposed service and still retain their identity and rights as for-hire motor carriers as to the through movement of freight. Finding nothing in the law that expressly prohibits truck carriers operating under our jurisdiction from using the type of service herein proposed, we are of the opinion that such use, being in the public interest and consistent with the general purposes of the Highway Carriers' Act, would be lawful.

We do not, in expressing this opinion, imply that the use of applicant's services would necessarily be lawful for all carriers under all circumstances. Whether a contract carrier could use them

would certainly depend in part upon the terms of his contracts with his shipper customers. Whether a radial highway common carrier could use them would depend in part upon whether they were used with such frequency as to transform him into a carrier between fixed termini in violation of the limitations on his rights. Determination as to the legality of the use of the proposed service by specific truck carriers under specific circumstances may have to be made from time to time by this Commission. For the purposes of this decision, it is not necessary that we define in advance the exact limitations that might ultimately be found to exist upon the use of the proposed service by particular types of highway carriers. It is sufficient that we find, as we do, that the establishment of the service, for the use of such truck carriers as may lawfully avail themselves of it, is in the public interest. ✓

This Commission would not, of course, issue a certificate on the basis of which substantial sums of money may be invested, if it appeared that the service, when offered, could not lawfully be used by those for whom it is designed. We would not certificate this applicant if we were convinced by protestants' arguments that the proposed service can lawfully be rendered only on a freight forwarding or a joint through rate basis, and that highway carriers are rigidly limited to operations by self-propelled vehicles over the public highways. By statute and definition, it is true, a highway carrier is one who does so operate; but the statutes do not confine him to such operations exclusively. In view of the legislative purposes and intent as set forth in the Highway Carriers' Act, and in the absence of any statutory prohibition against the

use of such means of providing through service as are provided by trailerships, this Commission must base its decision in this matter on its finding as to the public interest. We find that the service here proposed would stimulate port activity at two of the major ports of the West Coast; would help eliminate traffic congestion on the over-crowded highways between San Francisco and Los Angeles; and would result in financial savings to the truck carriers and eventually to the shipping public.

The Commission is therefore of the opinion, and so finds, that public convenience and necessity require the granting of the authority sought. Inasmuch, however, as applicant has neither completed its financial arrangements nor procured the needed ships, this grant of authority must be made subject to certain conditions subsequent, as will appear in the order.

O R D E R

Application having been filed, public hearings having been held, and the Commission having found that public convenience and necessity so require,

IT IS ORDERED:

1. That Pacific Trailer Ships, Inc., be, and it hereby is, granted a certificate of public convenience and necessity authorizing the establishment and operation of service as a common carrier by vessel for the transportation of automobiles and of motor freight including tractors, trucks and trailers, either loaded or empty, between the harbors of San Francisco and Los Angeles.
2. That the certificate hereinabove granted shall be subject to revocation by the Commission on its own motion and without public hearing unless the applicant shall, within six months after the effective date of this order, have filed with the Commission a verified statement setting forth its complete financial structure and indicating, to the satisfaction of the Commission, that the necessary monies are on hand or committed; and unless the applicant, within two years after the

effective date of this order, shall have filed with the Commission a verified statement that the required vessels have been acquired, or have been ordered and either are constructed or are in process of being constructed. ✓

- 3. That this authority shall expire if not exercised by actual commencement and continuous operation of the proposed service within three years from the effective date of this order.
- 4. Prior to the inauguration of service and on not less than five days' notice to the Commission and the public, applicant shall file in triplicate and concurrently make effective appropriate tariffs and timetables.

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

Dated at San Francisco, California, this 1st day of OCTOBER, 1956.

E. P. Mitchell
President

Justin J. Casner

Paul J. L. ...

W. J. ...

R. V. Hardy
Commissioners

APPENDIX A

LIST OF APPEARANCES

For Applicant: Wallace, Garrison, Norton & Ray, by W. R. Wallace, Jr., and R. P. Norton.

Protestants: William Meinhold and R. E. Wedekind, for Southern Pacific Company and Pacific Motor Trucking Company; Edward M. Berol and Bertram S. Silver, for Pacific Intermountain Express Co. and West Coast Fast Freight; Robert W. Walker and Matthew H. Witteman, by Matthew H. Witteman, for The Atchison, Topeka and Santa Fe Railway Co. and Santa Fe Transportation Company; McCutchen, Thomas, Matthew, Griffiths & Greene, by Gerald H. Trautman and J. Stacey Sullivan, Jr., for Pacific Steamship Company; Glanz & Russell, by Theodore W. Russell, for Insured Transporters, Inc., Convoy Company, California Auto Transporters, Auto Transport Company of California, Auto Shippers, Inc.; and E. A. McMillan, for the California State Legislative Committee, Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees.

Interested Parties: Barrett & Harkleroad, by Dudley Harkleroad, for Mrs. H. F. Alexander; Jack Clodfelter, for McCormick & Company; D. J. Morris, for American President Lines, Ltd.; Russell Bevans, for Draymen's Association of San Francisco; William R. Daly, for Los Angeles Chamber of Commerce; Harold F. Culy, for Culy Transportation Company, Inc.; Arlo D. Poe, for California Trucking Associations, Inc.; Calhoun E. Jacobson, for the City of San Diego Harbor Department; J. H. Morrison, for Northern California Ports and Terminals; Charles C. Miller, for the San Francisco Chamber of Commerce; A. F. Shumacher, for Owens-Illinois Glass Co; Jefferson H. Myers, for the Board of State Harbor Commissioners for the Port of San Francisco; W. F. McCann, for Johnson & Johnson; E. J. Amar, William A. Harrington & E. F. Manning, for the Long Beach Harbor Department; and John F. Parkinson, for the Los Angeles Harbor Department.