

Decision No. 59893**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
 PACIFIC MOTOR TRUCKING COMPANY for a
 certificate of public convenience and
 necessity authorizing operations as
 a highway common carrier of property
 between Lone Pine Station and Keeler,
 California, and authorizing service at
 off-route points within five miles of
 existing route between Lone Pine and
 Laws, California.

Application No. 40881
 (Amended)

William Meinhold and Randolph Karr,
 by Randolph Karr, for applicant.

O P I N I O N

On January 20, 1959, the Southern Pacific Company applied to the Interstate Commerce Commission under Section 1(18) of the Interstate Commerce Act, for permission to abandon its Keeler branch narrow-gauge line of railroad extending from Laws to Keeler, and the connecting portion of its Owenyo branch standard gauge line of railroad extending from Lone Pine to Owenyo, all in Inyo County, California. The Interstate Commerce Commission authorized the abandonment by an order dated December 30, 1959.

Application No. 40881 was filed on February 26, 1959, while the original matter was pending before the Interstate Commerce Commission. It requests that the applicant, a wholly owned subsidiary of the Southern Pacific Company, be granted a certificate as a highway common carrier to serve the routes presently served by the rail lines, which will be abandoned under the order of the Interstate Commerce Commission.

An amended application was filed on April 21, 1959, asking that the Commission authorize the applicant to continue to charge the current rail carload commodity rates after the rail lines are abandoned and that the applicant be further authorized to deviate from the minimum rates prescribed in Minimum Rate Tariff No. 2, because the rail carload commodity rates in the territory involved herein are less than the rates specifically prescribed for highway carriers in Minimum Rate Tariff No. 2 and may only be used by highway carriers by alternative application.

All of applicant's operating authorities were combined in the appendices attached to Decision No. 56898, in Application No. 35802, dated June 24, 1958. The applicant now requests that Original Page 31 of Decision No. 56898 be replaced by Revised Page No. 31, and that an Original Page 31-A be added to the decision. The Original Page 31 has already granted authority to the applicant to operate over the main route between Lone Pine and the Inyo-Mono County line. Revised Page 31 merely changes the original page by providing for service at all intermediate points and off-route points within five miles thereof; Original Page 31-A describes the proposed route between Lone Pine Station and Keeler, which was formerly served exclusively by narrow-gauge railroad.

Public hearing was held at Lone Pine, California, on February 3, 1960, before Examiner Edward G. Fraser, and the matter was submitted.

The applicant has requested permission to charge the rail rates on commodities hauled over the routes formerly served by the railroad. Since the rail line will be abandoned, applicant cannot rely on the alternative application doctrine and has asked for an exemption from the provisions of Minimum Rate Tariff No. 2, so shippers in the area will have the benefit of the lower rail rates.

No justification appears for granting to Pacific Motor Trucking Company a complete or permanent exemption from the minimum rates established for the truckload transportation of property between the points in question. However, in order to avoid unjustified increases in the rates currently available to shippers utilizing the carload rail rates, directly or alternatively, applicant will be authorized without regard to the minimum rates which otherwise might be applicable, to publish, maintain, and participate in joint truck-rail carload commodity rates on the same level as the current rail carload commodity rates. Inherent in the request is the need for relief from the long- and short-haul provisions of Article XII, Section 21, of the Constitution, and Section 460 of the Public Utilities Code. Such relief also will be granted.

The Commission having considered the application and the amendment thereto, and the evidence adduced at the hearing, finds that public convenience and necessity require that the application be granted to the extent set forth in the ensuing order. It appears that applicant possesses the experience, equipment, personnel and financial resources to institute and maintain the operation authorized herein.

Applicant is hereby placed on 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, such rights extend to the holder a full or partial monopoly of a class of business over a particular route. This monopoly feature may be modified or canceled at any time by the State, which is not in any respect limited as to the number of rights which may be given.

O R D E R

Public hearing having been held and based upon the evidence adduced therein and the application and the amendment to the application, as well as the representations filed herein,

IT IS ORDERED:

1. That a certificate of public convenience and necessity is hereby granted to Pacific Motor Trucking Company authorizing the transportation of property as a highway common carrier between Lone Pine Station and Keeler, California, and authorizing service at all intermediate and off-route points within five miles of the existing route between Lone Pine and Laws, California.

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. By accepting the certificate of public convenience and necessity herein granted, applicant is placed on notice that it will be required, among other things, to file annual reports of its operations and to comply with and observe the safety rules and other regulations of the Commission's General Order No. 99 and insurance requirements of the Commission's General Order No. 100-A. Failure to file such reports, in such form and at such time as the Commission may direct, or to comply with and observe the provisions of General Orders Nos. 99 and 100-A, may result in a cancellation of the operating authority granted by this decision.
- (b) Within sixty days after the effective date hereof, and on not less than three days' notice to the Commission and the public, applicant shall establish the service herein authorized and file in triplicate, and concurrently make effective, tariffs satisfactory to the Commission.

3. That First Revised Page 31 attached hereto is hereby substituted in the place and stead of Original Page 31 attached to Appendix A of Decision No. 56898.

4. That Original Page 31-A attached hereto is hereby added to and made a part of Appendix A of Decision No. 56898.

5. That applicant is authorized, without regard to the minimum rates which otherwise may be applicable, to publish, maintain and participate in joint truck-rail carload commodity rates on the same level as the current rail carload commodity rates from and to points on the lines of the Southern Pacific Company authorized to be abandoned by the Interstate Commerce Commission in its order dated December 30, 1959, in Finance Docket No. 20510, on the one hand, and to and from other points in California, on the other hand.

6. That applicant, in establishing and maintaining the rates and charges authorized hereinabove, be and it is authorized to depart from the provisions of Article XII, Section 21, of the Constitution of the State of California, and Section 460 of the Public Utilities Code; and that applicant in publishing rates under the authority conferred in this ordering paragraph shall make reference in its schedules to this order.

7. That the authority granted herein shall expire unless exercised within ninety days of the effective date of this order.

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

Dated at San Francisco, California, this 5th
day of April, 1960.

Laurel R. Reed
President
W. L. R. R. R.
W. L. R. R. R.
E. L. R. R. R.
Theodore J. R. R.
Commissioners

SECTION III - AREA OF AUTHORIZED SERVICE AND ROUTES - CONTD.

14. Inyo County

14.1 Between Lone Pine and Inyo-Mono County Line:

From Lone Pine over U. S. Highway 6 to Inyo-Mono County Line.

*Service is authorized at all intermediate points and off-route points within five miles thereof.

From Bishop over U. S. Highway 395 to junction unnumbered County Highway, thence over unnumbered County Highways to Upper Scheelite.

From Round Valley over unnumbered County Highways to junction U. S. Highway 395.

From Round Valley over unnumbered County Highway to junction unnumbered County Highway.

From Bishop over unnumbered County Highway to Sunland.

From junction U. S. Highway 6 and unnumbered County Highway near Big Pine, over unnumbered County Highway to Otis Ranch.

From Owenyo over unnumbered County Highways via Lone Pine railroad station to junction U. S. Highway 6 near Lone Pine.

Service is authorized at all intermediate points.

Alternate route:

From Owenyo over unnumbered County Highways via Mt. Whitney railroad station to Lone Pine railroad station.

14.2 Between Lone Pine and Inyo-Kern County Line:

From Lone Pine over U. S. Highways 6 - 395 to Inyo-Kern County Line.

Service is authorized at all intermediate points.

Issued by California Public Utilities Commission.

*Added by Decision No. 50803, Application No. 40881.

SECTION III - AREA OF AUTHORIZED SERVICE AND ROUTES - CONTD.14. Inyo County (Contd.)

14.3 Between Lone Pine Station and Keeler:

From Lone Pine railroad station over unnumbered County Highways to junction California Highway 190, thence over California Highway 190 to Keeler.

Service is authorized at all intermediate points.

Alternate route:

From junction U. S. Highways 6 - 395 and California Highway 190 near Lone Pine, over California Highway 190 to junction unnumbered County Highway northwest of Keeler.

Issued by California Public Utilities Commission.

Decision No. 59893, Application No. 40881.