

Decision No. 79192

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

APPLICATION OF THE ATCHISON, TOPEKA  
AND SANTA FE RAILWAY COMPANY,  
a corporation, for authority to  
reduce to non-agency status their  
station at Orange, County of Orange,  
State of California

Application No. 52394

(Filed January 11, 1971)

Donald W. Ricketts, Attorney at Law,  
for The Atchison, Topeka and  
Santa Fe Railway Company, applicant.  
Furman B. Roberts, Attorney at Law,  
and Don E. Smith, for the City of  
Orange, protestant.  
Ronald H. Filius and Roland Bender,  
for the Chamber of Commerce, City  
of Orange, protestant.  
James H. Hicks, for Transportation-  
Communication Employees Union,  
protestant.  
Ronald H. Filius, for Anaconda Wire  
& Cable Company, protestant.  
Leamel L. Tillery, Lucie Eckart, and  
Billie H. Ziener, in propriae  
personae, protestants.  
Michael Homsany and Lorna Galeotti, in  
propriae personae, interested  
parties.  
Robert C. Labbe, for the Commission's  
staff.

O P I N I O N

By this application The Atchison, Topeka and Santa Fe  
Railway Company seeks authority to reduce its station in the  
City of Orange to non-agency status. It alleges that public  
convenience and necessity no longer require the maintenance of  
an agency at that location.

On February 22, 1971, a prehearing conference on the application was held before Examiner C. S. Abernathy. A report on the conference was issued by the examiner on March 4, 1971. Thereafter, on June 10, 1971, a public hearing on the application was held before Commissioner Vernon L. Sturgeon and Examiner C. S. Abernathy at Orange. The matter was taken under submission on June 20, 1971.<sup>1/</sup>

At the public hearing evidence in support of the proposed agency discontinuance was presented by applicant through three witnesses. In general, these witnesses undertook to show that:

- a. The public's need for agency service at Orange can be met through applicant's agencies at Santa Ana and Anaheim and through applicant's offices at Los Angeles and Fullerton;
- b. The discontinuance of the Orange agency would enable applicant to accomplish a reduction in its operating costs.

The witnesses testified that the agency at Santa Ana is 2.9 miles distant from that at Orange; that the Anaheim agency is 4.9 miles from Orange; that the Orange station is open from 9 a.m. to 6 p.m.; that the Santa Ana station is open from 8 a.m. to midnight; that applicant's Fullerton office is open 24 hours a day; that communication by telephone between Orange and

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<sup>1/</sup> The date of June 20, 1971, was specified in order to permit the receipt of an exhibit to be late filed. The exhibit was not actually received until June 28, 1971. It was accepted, nevertheless, inasmuch as it was confined to explanation of certain provisions of applicant's tariffs which are pertinent to this matter. Official notice of said tariff provisions is hereby taken.

Santa Ana does not entail toll costs; that the principal agency functions which are involved center about actions necessary to the receipt of incoming carloads of freight and the dispatch of outgoing carloads of freight;<sup>2/</sup> that said functions can be, and are being, performed by applicant's personnel working out of the Santa Ana agency; that applicant has not provided passenger service to or from Orange since May 1, 1971, when applicant's passenger service came under the control of the National Railroad Passenger Corporation (AMTRAK); that as of May 1, 1971, applicant transferred the duties of the Orange agent to Santa Ana and so notified its patrons; that the work involved in the performance of said duties was absorbed by present Santa Ana personnel; that the agency at Orange has been kept open, notwithstanding the transfer of the agent's duties; that a time study of the functions which the agent has been called upon to perform since shows that the agent performed 11 minutes of productive work in one 8-hour period and 23 minutes of productive work in another 8-hour period; and that transfer of the agent to another agency and closure of the Orange agency

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<sup>2/</sup> Less-carload shipments of freight are not handled through the Orange agency. The agency functions in connection with rail carload shipments include the notification of Orange receivers of freight of the arrival of the shipments, the obtaining of delivery instructions for the shipments; the transmittal of the delivery instructions to applicant's switching crews; the receipt of shipments on applicant's behalf from shippers of freight in Orange; the transmittal of the shipping instructions to applicant's switching crews; the inspection of damaged freight; the inspection of damaged rail cars and the arranging of replacements thereof; and various miscellaneous contacts with Orange receivers or shippers of freight as required.

would enable applicant to save more than \$1,000 a month in wage and wage related costs plus unspecified amounts in such expenses as telephone, electricity and station maintenance.

Applicant's proposal to discontinue agency service at Orange was opposed by the City of Orange, the Chamber of Commerce of Orange, and by the Anaconda Wire & Cable Company (a principal user of applicant's carload freight services to and from Orange), and by several patrons of applicant's passenger services.

Appearing on behalf of the City, the Mayor of Orange asserted that the volume of Orange destined or originated freight which is processed through the Orange agency justifies the retention of the agency. He asserted, furthermore, that the agency is important to the future growth of the City and that applicant's proposal should be weighed against the adverse impact which closure of the agency would have upon the City's long-range economic development.<sup>3/</sup> Noting that applicant's passenger services are now performed under contract with AMTRAK, he stated that he had requested AMTRAK to make a study to determine what losses, if any, would be incurred in keeping the agency open for passenger purposes. He said that Orange County and the recently-formed Orange County Rapid Transit District are also both concerned about what impact the closure of the Orange agency might have upon the County's transportation needs. He urged that, in the circumstances, the Commission defer decision in this proceeding until AMTRAK and the various

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<sup>3/</sup> Regarding the potential of the City of Orange for future development, the Mayor testified that 1,200 prime acres, which are zoned for manufacturing, lie within the City's boundaries. He said, also, that a doubling of the City's population of 80,000 persons is expected to take place within a few years.

interested county agencies have opportunity to study the matters involved and to render reports thereon.<sup>4/</sup>

A resolution in opposition to the proposed agency closing was presented by the Orange Chamber of Commerce. In its resolution the Chamber of Commerce asserted that an operating railroad depot contributes to the economic growth and well-being of the City of Orange and provides a convenience for freight shipments and passenger service in the heavily populated and fast growing Orange area. It urged, therefore, that the Orange agency be retained.

The manager of the Orange plant of Anaconda Wire & Cable Company (Anaconda) testified to the effect that his company is a regular and substantial user of applicant's services; that during the past six months Anaconda has received at or has shipped from its Orange plant a total of 152 rail cars of raw materials and finished products; payments to applicant for the transportation services thus provided have approximated \$150,000; thus, on an annual basis, Anaconda's traffic involves a movement of more than 300 carloads and freight revenues to applicant of about \$300,000 per year.<sup>5/</sup> He asserted that an account of this magnitude justifies, in itself, the retention of the Orange agency. The manager also said that the movement of the traffic volume involved within the available time limits and according to Anaconda's needs and trackage facilities requires close

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<sup>4/</sup> Applicant's passenger and related services which are under the control of AMTRAK are outside of the Commission's jurisdiction. Whether the Orange agency should be kept open for such passenger purposes would depend upon decision of AMTRAK.

<sup>5/</sup> During the year which ended with September, 1970, the total volume of carload traffic which was handled through applicant's Orange agency for all of applicant's Orange patrons, including Anaconda, was almost 2,000 carloads. The monthly volume ranged from a low of 73 cars in November, 1969, to a high of 282 cars in June, 1970.

supervision over the traffic; that prior to May 1, 1971, when the Orange agent's duties were transferred to Santa Ana, Anaconda enjoyed good service from applicant in the movement of its rail shipments, but that since that date Anaconda has experienced difficulties arising out of applicant's failure to give timely notification concerning incoming shipments and to move out unloaded cars to make room for incoming loaded cars; moreover, Anaconda has experienced difficulties in establishing contact with applicant's station personnel to apprise them of its needs.

The patrons of applicant's passenger service who testified stated that they had used said service from Orange prior to May 1, 1971, when the service was discontinued, and they urged its reinstatement in order that needs of the residents of Orange for convenient passenger transportation service might be better met. ✓

Replying to the recommendations of the Mayor of Orange concerning deferral of decision in this proceeding until after completion of studies by AMTRAK and Orange County agencies, applicant's attorney stated that applicant would not object to retention of the station properties for a reasonable period to permit completion and consideration of said studies. Regarding the service difficulties about which the manager for Anaconda testified, the attorney attributed the difficulties to temporary circumstances associated with the shift on May 1, 1971, of the Orange agency freight functions to Santa Ana. He said that appropriate steps would be taken to remedy the difficulties. He asserted, moreover, that applicant's objective is to serve its patrons adequately, and that in undertaking to transfer the Orange agency freight functions to Santa Ana, applicant had proceeded in the belief that its service from Santa Ana would equal or surpass that from Orange.

Discussion

In determining whether applicant should be authorized to discontinue its agency services at Orange, we are concerned primarily with whether the agency services which applicant proposes to provide in the alternative to those at Orange will meet the requirements of public convenience and necessity of applicant's patrons within Orange.<sup>6/</sup> On this issue the thrust of the opposition of the City of Orange and of the Orange Chamber of Commerce to this application is unequivocal, namely, that if the agency services which are involved herein are to meet the city's present and future needs, the agency should be located within the city. We are of the view, however, that a carrier's ability to provide adequate agency service, particularly as it applies to the transportation of freight, is not so restrictively tied to a geographical location. A considerable portion of an agency's work is performed through the carrier's contacts with its shippers and receivers in the field. Such work is largely independent of the location of the agency itself. In other respects differences in distance may be largely offset by telephone communication and by expeditious transit by automobile. Consequently, we conclude that if no impairment of applicant's services to the public will result, applicant should be permitted to discontinue its Orange agency, to merge the services thereof with those of its agency at Santa Ana, and thereby to realize the operating economies which it seeks to achieve as a consequence.

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<sup>6/</sup> Compare Re Discontinuance Agency, Santa Clara, Decision No. 61821, dated April 11, 1961, in Application No. 42486; Re Discontinuance Agency, West Palm Springs, Decision No. 61965, dated May 9, 1961, Application No. 41385.

It is clear from the record herein that applicant, by the device of transferring the functions of the Orange agency to Santa Ana, has undertaken to establish by demonstration that the needs of its patrons in Orange can be, and are being, adequately met by the Santa Ana agency. In general, it appears that applicant's purposes in this respect have been accomplished, inasmuch as no expressions of dissatisfaction with applicant's present services were received from any of those of applicant's patrons who account for about 85 percent of the total volume of carload traffic which was handled through the Orange agency prior to May 1, 1971. Nevertheless, in view of the service complaints which were registered on behalf of Anaconda, we are constrained to conclude that some diminution of service has resulted from the transfer of the Orange agency functions to Santa Ana. We do not completely accept applicant's explanation that Anaconda's complaints are attributable to temporary difficulties incidental to the transfer. Another explanation which may be equally applicable is that with the addition of the Orange agency functions, the service demands upon the Santa Ana agency now exceed that agency's capability to provide adequate service to the public. Whatever may be the cause, the level of service to applicant's patrons in Orange should be fully restored before discontinuance of the Orange agency is completed. In the circumstances applicant should demonstrate by deed that the discontinuance of its Orange agency will not impair its service to the public in Orange.

Applicant should be authorized to continue the merger of its Orange agency functions with those of Santa Ana which it has heretofore accomplished. It should also be authorized to transfer its agent at Orange to another location in order that



the agent's services may be more effectively used than at present. Meanwhile, it should bring the quality and quantity of its agency services which it is now providing at Santa Ana for Orange traffic up to the level which prevailed through the Orange agency immediately prior to May 1, 1971. Its actions toward the improvement of its services should be completed not later than December 31, 1971. Thereafter, in the absence of complaint to the Commission for good cause (said complaint or complaints to be filed not later than January 31, 1972), the authority herein granted should be permitted to become final. Otherwise, submission of this matter may be set aside for consideration of what action should be prescribed as appropriate in the circumstances. In this event the burden of proof concerning the sufficiency and quality of applicant's service should rest with applicant.

In authorizing the transfer of applicant's agency services from Orange to Santa Ana, we are not unmindful of the request of the City of Orange that the Commission temporarily retain jurisdiction over the agency properties at Orange in order to enable AMTRAK to consider the City's request that the Orange agency be retained for passenger purposes. Moreover, it may develop that conditions which are hereinafter stated may not be met and that reinstatement of agency functions at Orange in connection with the movement of freight to and from Orange may become necessary. Accordingly, applicant will be required to retain and maintain its agency properties at Orange until the authority hereinafter granted becomes final or until otherwise specified by further order of the Commission.

Findings:

Upon consideration of the record in this matter the Commission finds that:

1. As of May 1, 1971, applicant in effect transferred the functions of its agency in the City of Orange to its agency in the City of Santa Ana, which agency is located 2.9 miles from the Orange agency.
2. The former functions of the Orange agency are now being performed at Santa Ana without apparent complaint from applicant's patrons in Orange with respect to about 85 percent of the volume of the traffic that previously was handled through the Orange agency.
3. Some diminution in the quality and/or quantity of applicant's agency services for its patrons in Orange has resulted from transfer of the Orange agency functions to Santa Ana. Said diminution is reflected in complaints registered in this matter on behalf of Anaconda Wire & Cable Company.
4. Applicant is willing to take remedial steps to correct service deficiencies reflected by Anaconda's complaints.
5. Upon correction of said service deficiencies, present requirements of public convenience and necessity for agency service in connection with the transportation of freight in rail cars to or from locations in the City of Orange will be met by the agency service which applicant is providing through its agency in Santa Ana. Thereafter, the operation of the agency in the City of Orange is not required by public convenience and necessity.

Conclusions:

Subject to the terms and conditions specified in the following Order, applicant should be authorized to discontinue its agency in the City of Orange.

O R D E R

IT IS ORDERED that:

1. Subject to the conditions herein specified, applicant is authorized to reduce its agency station at Orange to non-agency status and to transfer its agent at Orange to another location.

Conditions:

- (a) Applicant shall provide agency service at and/or from its station at Santa Ana to facilitate the transportation of freight in rail cars over its lines to and/or from locations within the City of Orange. Said agency service shall be not less in quality and/or quantity than that which applicant provided through its Orange agency immediately prior to May 1, 1971.
- (b) Within one hundred twenty days after the effective date hereof and not less than ten days prior to the discontinuance of the agency at Orange, applicant shall post a notice of such discontinuance at the station and, within one hundred twenty days after the effective date, hereof and on not less than ten days' notice to the Commission and to the public, applicant shall file in duplicate amendments to its tariffs showing the change authorized herein and shall make reference in such notice and tariffs to this decision as authority for the changes. In no event shall the agent be removed, pursuant to the authority hereinabove granted, earlier than the effective date of the tariff filings required hereunder.

2. Upon the receipt of complaint for good cause not sooner than January 1, 1972, nor later than January 31, 1972, that the conditions herein specified have not been met, the Commission may set aside submission of this matter for consideration as to whether agency service in the City of Orange should be restored or whether further orders as appropriate in the circumstances should be issued. In this event the burden of proof shall rest upon applicant herein.

3. Applicant shall retain and maintain its agency properties at Orange until the authority herein granted becomes final or until otherwise specified by further order of the Commission. In the event that no complaint is filed within the time specified in Paragraph 2, above, the authority herein granted shall become final as of February 1, 1972.

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

Dated at San Francisco, California, this 28th  
day of SEPTEMBER, 1971.

William J. Sproull Chairman  
Vernon L. Stinson  
Ed Deed Commissioners

Commissioner J. P. Vukosin, Jr., being necessarily absent, did not participate in the disposition of this proceeding.

Commissioner Thomas Moran, being necessarily absent, did not participate in the disposition of this proceeding.