

Decision No. 31725.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
AUTOMOTIVE PURCHASING CO., INC., a
corporation, for a certificate of
public convenience and necessity to
operate as a Freight Forwarder of
automotive parts, accessories, and
supplies necessary for and used in the
building, maintenance, operation, re-
pair and servicing of automotive equip-
ment to auto parts houses, garages, and
service stations between San Francisco
and Oakland, on the one hand, and Gilroy,
Merced, Oakland, Red Bluff, Ukiah, and
Visalia, on the other hand, and to
consolidate any such right as may be
granted hereunder with the rights
granted heretofore to applicant to oper-
ate service as a Freight Forwarder.

ORIGINAL

Application No. 21819

Harry A. Encell, for applicant.
Reginald L. Vaughan, Fred M. Mott and E.H. Hart for
Canton Express Company, East Bay Drayage and Ware-
house Company, The Haslett Warehouse Company,
Kellogg Express and Draying Company, Interurban
Express Corporation, Merchants Express Corporation,
Peoples Express Company, United Transfer Company,
and West Berkeley Drayage and Warehouse Company,
protestants.
William Hoffman for Transbay Motor Express Company,
protestant.
Edward Stern, for Railway Express Agency, Inc.
J.J. Broz, for Valley Express Co. and Valley Motor
Lines.
H.W. Hobbs and F.X. Vieira for Southern Pacific Company,
Northwestern Pacific Railroad Company, Pacific Motor
Trucking Company and Pacific Motor Transport Company,
protestants.
E.E. Carley, for Carley & Hamilton, Inc.

BY THE COMMISSION:

O P I N I O N

Automotive Purchasing Co., Inc., a corporation, seeks
a certificate declaring that public convenience and necessity re-
quire the operation by it of service as a freight forwarder of
automotive parts and supplies tendered to it in quantities of 100
pounds or less for shipment (a) between San Francisco and Oakland

and (b) between San Francisco and Oakland on the one hand and Gilroy, Merced, Red Bluff, Ukiah and Visalia on the other hand. If such a certificate be granted, applicant desires concurrent authority to consolidate the operations authorized thereby with certain other freight forwarding operations which it now conducts.

Public hearings were had at San Francisco before Examiner E.S. Williams and the matter was submitted on briefs.

According to the record applicant's principal business consists of purchasing automotive parts and supplies in San Francisco and Oakland, as agent for jobbers, automotive supply houses, garages and service stations throughout northern California. As an adjunct to this business it performs service as a freight forwarder between certain points and as a highway common carrier between others.¹ The freight forwarding service includes the picking up of automotive parts and supplies from wholesalers, warehouses or other sources of supply in San Francisco and Oakland, the carrying

¹ Applicant now holds certificates of public convenience and necessity from this Commission as follows:

(a) A certificate authorizing it to operate, as ancillary to its purchasing business, both a transportation and forwarding service (1) between San Francisco and Oakland on the one hand, and San Jose on the other, serving certain intermediate points; and (2) a loop service with San Francisco and Oakland as its starting and terminating points and touching in its course Stockton and Sacramento and certain intermediate points (Decision No. 28939, dated February 21, 1936, in Application No. 20540).

(b) A certificate authorizing it to operate as a freight forwarder, as ancillary to its principal business, between San Francisco and Oakland on the one hand, and Chico, Fresno, Marysville, Modesto, Monterey, Salinas, Santa Cruz and Watsonville, on the other hand (Decision No. 28934, dated June 29, 1936, as amended, in Application No. 20512).

(c) A certificate authorizing it to operate as a highway common carrier for the transportation of automotive parts, limited to service to automotive parts houses, garages and service stations (1) between San Francisco and Oakland on the one hand, and San Jose on the other hand, serving certain intermediate points; and (2) a loop route with San Francisco and Oakland as its starting and terminating points and touching in its course Stockton and Sacramento and certain intermediate points (Decision No. 30653, dated February 28, 1938, in Application No. 21155).

of the property to applicant's terminal in San Francisco, and the forwarding of the property to destination (either in individual or consolidated lots) via common carriers or via the United States Parcel Post. Applicant also receives freight at its San Francisco terminal for forwarding to destination in individual or consolidated lots. Charges in both instances are paid by the consignees. The freight forwarding service which is here sought to be rendered is substantially the same in character as that now being afforded but includes points not covered by applicant's present certificates.

In support of the application it was represented (1) that there was a public need and demand for a service more economical, speedy and dependable than that afforded by carriers already in the field, (2) that the proposed service would be offered at rates lower than those now being charged by existing carriers, ² and (3) that applicant was in a position to accord unusually fast and dependable service.

The existence of a public need and demand for the proposed service was said to be evidenced by the fact that a service similar in many respects to that here proposed had previously been conducted by applicant between the points here involved, that such service had been discontinued and that subsequent to its discontinuance many requests for restoration of service had been received from old customers

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The rates proposed to be charged for the service here involved are set forth in a tariff submitted at the hearing. In general, such rates are substantially lower than those which common carriers, including freight forwarders, were required to observe for similar service by Decision No. 30370, as amended, in Case No. 4088, Part "U", and Case No. 4145, Part "F".

and from prospective new customers.

Four public witnesses testified that automobile parts are of low value and hence require a low transportation rate, that the emergency nature of shipments of automotive parts intended for repair or replacement purposes requires a fast and dependable service, and that the proposed consolidation of small lots into a single shipment for line-haul transportation would eliminate the inconvenience of receiving numerous individual consignments.⁴ The public witnesses were unable to explain in detail wherein the service presently afforded by carriers already serving the points involved was unsatisfactory, although they did indicate in a general way that minimum charges observed by such carriers were considered excessive for the small weight and low value of automotive parts shipments, and, moreover, that other carriers did not undertake to perform the purchasing service which applicant offers in conjunction with its freight forwarding service.⁵

³ Prior to January 11, 1937, applicant had authority under Decision No. 28934, supra, to operate as a freight forwarder between San Francisco and Oakland on the one hand and Auburn, Carmel, Chico, Corning, Fresno, Gilroy, Marysville, Merced, Modesto, Monterey, Pittsburg, Red Bluff, Roseville, Salinas, Santa Cruz, Ukiah, Visalia and Watsonville on the other hand. However, it was authorized by Decision No. 29445 of January 11, 1937, to discontinue service between San Francisco and Oakland on the one hand and Auburn, Carmel, Corning, Gilroy, Merced, Pittsburg, Red Bluff, Roseville, Ukiah and Visalia on the other hand, upon the representations that such service had proved unprofitable, that such points were not without ample transportation service by truck, rail and express and that the public, or any member thereof, would not be injured in any fashion or manner by the discontinuance of the freight forwarding service.

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The public witnesses were C.E. Brye, manager of the Oakland store of Patterson Parts, Inc.; George G. Voigt, a dealer in automotive supplies at Modesto, and representing also Lud's Automotive Parts at Merced and Automotive Sales at Visalia; V.V. Borneman of Montgomery Auto Parts at Gilroy; and Walter Stoll, a dealer in auto parts at Red Bluff.

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As a matter of fact, all but one of the public witnesses stated that applicant was already rendering a freight forwarding service between the points here involved, substantially the same as that for which it now seeks a certificate, that it had been doing so for some time past, that such service had been convenient and satisfactory and that, hence, no need had arisen to utilize the service of other carriers in the field.

Some cost evidence was introduced to show that the service involved would be more economical than that of other carriers and that the rates proposed to be charged would be compensatory. This evidence consisted principally of a showing of the costs experienced in the present operation for picking up shipments in San Francisco and carrying them to applicant's San Francisco terminal. There was no showing as to the cost of performing pick ups in Oakland or of the over-all cost to the consignees for the through service. It was stated, moreover, that although the service conducted between the points involved had proved unprofitable in the past, subsequent changes in time schedules of line-haul carriers had made it possible to realize savings in operating expenses by the distribution of pick-up, consolidation and forwarding operations more evenly throughout the day.

The asserted ability of applicant to render a service more speedy and dependable than that of carriers already in the field was said to be due (1) to the fact that through years of experience in the purchase and distribution of automotive equipment applicant's employees were able to fill purchase and pick-up orders more promptly and accurately than could employees of carriers engaged in general transportation and (2) to the fact that applicant as a freight forwarder could ship via whatever carrier had the most convenient time schedule, whereas present carriers are of necessity restricted to their own schedules.

The granting of this application was protested by the Southern Pacific Company, Northwestern Pacific Railroad Company, Pacific Motor Transport Company and Railway Express Agency, Inc., by a number of highway common carriers and by The Haslett Warehouse Company, an express corporation, operating between San Francisco and Oakland.

⁶ The average cost of picking up shipments in San Francisco for the month of April 1938 was shown to have been 11.924 cents per pick-up.

Protestants' witnesses claimed that there was no public need for the proposed service. They asserted that inasmuch as a freight forwarder must necessarily rely upon the line-haul services furnished by common carriers, the speed and dependability of the service rendered by such common carriers was the maximum measure of the speed and dependability of the service that could be afforded by a freight forwarder. They contended further that the proposed consolidation service would be tantamount to a split pick-up service, which common carriers were precluded from performing as to shipments of less than 10,000 pounds under the provisions of Decision No. 30370, supra. Protestants urged that in any event the application should be denied because, as testified by the public witnesses, applicant restored service to the points here involved without first obtaining appropriate permission from the Commission.

The issue here is, of course, as to whether or not public convenience and necessity require the proposed freight forwarding service. In view of the fact that several truck, rail and express carriers are already operating between the points involved, it is incumbent upon applicant to demonstrate first wherein the existing service is inadequate. The testimony of the four public witnesses does not show the existence of a public demand and need sufficient to warrant the granting of the certificate sought. Most of this testimony was based upon the assumption that rates less than those of other carriers would be accorded. For reasons hereinafter discussed, however, justification for allowing applicant to disregard the provisions of outstanding minimum rate orders has not been shown and the testimony of the public witnesses must be discounted accordingly. Moreover, in seeking to withdraw service applicant itself represented heretofore that the territory involved would still be served adequately after

such withdrawal (Decision No. 29445, supra).

The claim that the proposed service would be more economical than that of other carriers appears to be inconsistent with the fact that a greater amount of physical handling would be required. The freight forwarder operation would involve a movement to applicant's terminal and a second movement from that point to the terminal of the line-haul carrier, whereas were the pick-up service to be performed by a line-haul carrier the property would be taken directly to that carrier's terminal. The Commission having prescribed by Decision No. 30370, supra, the rates to be charged existing carriers, it cannot be found, in the absence of strong evidence as to through transportation costs, that lower rates will be reasonable for an operation which, on its face at least, is inherently more costly.⁷ The fact that similar service proved unprofitable in the past is significant in this regard, even though changed time schedules may have altered the situation to some extent.

The contention that the proposed service offers advantages in speed and dependability was only made in general terms and no attempt was made to show actual time comparisons for representative movements in which the purchasing service was not involved. Although time comparisons were made as to movements in which the purchasing service was used, the time advantage appears to have resulted from the use of the purchasing service rather than from the ability of applicant to ship as a freight forwarder. The evidence is not persuasive, therefore, that were applicant to confine itself to the purchasing service and to employ existing carriers to perform the actual picking up and line-haul transportation service the public would receive service less

⁷ Applicant's study of the cost of performing pick-up in San Francisco only contains the ultimate expense items and does not show the basic figures, nor were the figures shown supported by performance records. Even though such costs were accepted as accurate, however, it would still not be possible to compute except in a general way the through cost which would result from the addition thereto of the charges of line-haul carriers for transporting consolidated shipments beyond applicant's terminal.

adequate. efficient or dependable than that which could be provided under the forwarding arrangement. In this connection, it is to be observed that, as pointed out by protestants, the proposed freight forwarding service contemplates only the carrying of shipments by applicants to its terminal and the consolidation of shipments at that point. The services of other common carriers or of the United States Parcel Post must be utilized for transportation beyond. It is not to be expected that such carriers will provide faster or more dependable service from applicant's terminal than they provide for the public generally.

It seems a fair conclusion from the record that the proposed service is sought principally in the hope of encouraging use of the purchasing service but that it is not essential to the successful operation of such purchasing service. The evidence falls far short of showing that the transportation service of existing carriers is not adequate, that the proposed service would be more economical or that public convenience and necessity require its inauguration. The application will be denied.

O R D E R

Public hearings having been had in the above entitled application, full consideration of the matters and things involved having been had, and the Commission being fully advised,

IT IS HEREBY ORDERED that this application be and it is hereby denied.

Dated at Los Angeles, California, this 16th day of

February, 1939.

[Signature]

[Signature]

Justus F. Cooney
Commissioners