

Decision No. 32132

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application
of MABEL E. SMITH, doing business
as Allison Auto Express, for a
Certificate of Public Convenience
and Necessity to Enlarge Existing
Operating Rights as a Common Car-
rier of Property Between Los Angeles
and Long Beach.

Application No. 22681

ORIGINAL

SHAW, BAILEY AND POE, by ARLO D. POE, for
applicant

H. J. BISCHOFF for SOUTHERN CALIFORNIA FREIGHT
LINES, protestant

WALLACE K. DOWNEY for PACIFIC FREIGHT LINES
and KEYSTONE EXPRESS COMPANY, protestants

E. L. H. BISSINGER for SOUTHERN PACIFIC COM-
PANY, PACIFIC MOTOR TRUCKING COMPANY and
MOTOR TRANSIT COMPANY, protestants

G. E. DUFFEY and GEORGE HURST for THE ATCHISON,
TOPEKA & SANTA FE RAILWAY COMPANY and SANTA
FE TRANSPORTATION COMPANY, protestants

J. R. ZIMMERMAN for CITY TRANSFER & STORAGE
COMPANY, protestant

ED STERN for RAILWAY EXPRESS AGENCY. INC., pro-
testant

BAKER, COMMISSIONER:

O P I N I O N

Applicant is now operating as a highway common carrier between Los Angeles and Long Beach under and pursuant to a limited certificate of public convenience and necessity issued by this Commission for the transportation of automobile supplies and accessories and cigars and tobacco. In the present application she seeks authority to enlarge her operating right to include certain additional commodities⁽¹⁾ now handled by her customers, provided,

(1) ELECTRICAL APPLIANCES, household, including household fur-
naces and heaters, gas or electric
HARDWARE, viz: nails, screws, nuts, bolts, rivets, pad-
locks, fittings

(Continued on
next page)

however, that the shipments be consigned to or from business and commercial firms engaged principally in the sale of automotive parts, accessories or supplies or in the business of repairing automotive equipment.

Public hearings were had in this matter on June 15, July 6 and 7, and August 3 and 4, 1939. The matter having been duly submitted, is now ready for decision.

The following facts were shown on behalf of applicant in support of her application; that her business in so far as it pertains to automotive supplies and accessories from its inception was a specialized combination purchasing and delivery service rendered to garages and automotive supply houses; that from the granting of the certificate in 1920 until 1928, a good business was enjoyed in the transportation of cigars and tobacco, but for the last several years said commodities have not been solicited or transported; that several years ago business conditions changed whereby applicant's customers in Long Beach and the firms in Los Angeles from which the former purchase parts and supplies added and continue to add various other commodities to their lines such as radios, refrigerators, electrical supplies, items of hardware, paints, etc.; that the aforementioned firms, in consigning merchandise to applicant's customers in Long Beach, refuse to divide shipments consisting of both such types of articles resulting in

(1) Continued from preceding page

METALS, unfabricated, viz: sheet, angle, bar, pipe, tubing-
iron, steel, brass, bronze, copper, and aluminum
MOTORS, electric and stationary
PAINTS, including paint materials, putty, painters' materials,
painters' supplies and equipment
RADIOS and SUPPLIES
HOUSEHOLD APPLIANCES, viz: refrigerators, washing machines,
and ironers
ROPE, wire, manila, cotton and twine
RUBBER GOODS, viz: hose, insulated wire, shoes, bathing wear,
belting
WHEEL GOODS, viz: juvenile, bicycles and supplies
TOOLS, hand or machinery

the loss of transportation of the commodities which she is authorized to transport; further, owing to her lack of authority to handle other than automotive supplies, merchants have diverted to other carriers shipments consisting only of automotive supplies in order to avoid multiplicity of shipments with its accompanying duplication of bookkeeping, routing, etc.; and that applicant renders an expedited service consisting of two trips each day as follows, leaving Los Angeles at 7:30 A.M. and 12:30 P.M., arriving at Long Beach at 8:30 A.M. and 1:30 P.M., deliveries being made by the line haul trucks and being completed by 9:30 A.M. to 9:45 A.M. and 3:30 P.M. to 3:45 P.M. respectively.

The following is a brief resume of the testimony of applicant's witnesses:

J. C. Lionbarger representing Long Beach Hardware Company, which is engaged in a general hardware business, testified that his company also handles automotive paints and automotive accessories; that his company utilizes the service of applicant in the transportation of the latter commodities; that the service rendered by applicant is faster than other carriers, affording a pick up in Los Angeles as late as 11 A.M. and a delivery to his company at Long Beach around 1:30 P.M. the same day; that such service in comparison with service of other common carriers saves one day; and that there is often need of rush shipments of paints, bolts, screws, etc. His testimony further disclosed that his company has never tried the service of Motor Transit Company or Railway Express Agency and that he has never made any complaint to any existing common carrier relative to time of deliveries.

G. E. Hobson, proprietor of The E & H Hardware Store, dealer in general hardware in Long Beach, testified that he has used the services of applicant for several years and that such service was a "trifle better" or "quicker" than other common carriers.

Dale MacDougall of United Motor Service of Long Beach, which handles automobile accessories, radios, tires and tubes, testified that applicant's service is better than other carriers because it affords a pick-up service as late as 11 A.M. and delivery at 2 P.M., whereas shipping instructions given to other carriers in the morning resulted in deliveries the following morning. He further testified, however, that there was no particular hurry for radios; that he could anticipate orders of popular tires 48 hours in advance; that he had no complaint to make of existing common carriers, and that he prefers to ship by few carriers as it reduces bookkeeping expenses.

Frank L. Varney, proprietor of Frank L. Varney Company, dealer in auto parts and accessories, testified that he sells small electrical supplies, radios, refrigerators, ice boxes and like articles; that on some commodities he maintains a small supply and on others no supply; that on sales to the school board pursuant to bids, and to others upon which he has promised prompt delivery his practice is to sell from catalogs; that this method of doing business greatly reduces inventories; that he is therefore in need of expedited transportation; that he has used the service of both applicant and other common carriers and stated applicant's service was faster; that the service of Motor Transit Company is more frequent and is available when applicant's service is not; and that shipments on orders have been divided by the suppliers in Los Angeles, non-automotive merchandise being routed by other carriers because of applicant's limited authority.

L. M. Spafford, shipping manager for Fey & Krause Company, Los Angeles, testified that said company was a dealer in wholesale automotive supplies, house radios and small electrical appliances; that it uses the service of applicant and divides shipments, routing non-automotive merchandise via carriers other than applicant because of her limited authority; that its customers in

Long Beach sell a large quantity of merchandise from catalogs furnished by it; that this method of business has resulted in customers' carrying reduced inventories. He further testified that his company utilizes the service of other common carriers; that he has no complaint of the services offered by these carriers; that Pacific Freight Lines affords pick-up service for it at about 10:30 to 11 A.M. and 4:30 or 4:45 P.M.; that applicant picks up about the same time, and that his company has no need for applicant's service although it does use it.

Approximately 18 Los Angeles public witnesses not engaged in the handling of automotive parts and supplies were called by protestants. Their testimony may be summarized generally as follows: The transportation service between Los Angeles and Long Beach by existing common carriers consists of two or more schedules per day by each of them, Pacific Freight Lines and Southern California Freight Lines making pick-ups regularly or on-call until 11 A.M. or 11:30 A.M. and 4:30 P.M. respectively, with deliveries in Long Beach the afternoon of the same day and the following morning; that the service of the existing common carriers is satisfactory and adequate; that fewer carriers in the field result in less congestion of trucks at their respective places of business and it is therefore more convenient for them to have fewer carriers, and that additional carriers transporting merchandise from their places of business results in duplication of bookkeeping, routing, etc.

The following evidence and testimony introduced on behalf of protestants shows the service being rendered by them.

T. L. Wagenbach, representing Pacific Electric Railway Company and Motor Transit Company, testified that Pacific Electric Railway Company operates a passenger express and freight service between Los Angeles and Long Beach; that Motor Transit Company operates a motor coach passenger service, including express, between said points; that the service of the latter is a depot-to-

depot service of shipments weighing 100 pounds or less and affords four schedules each way daily, leaving Los Angeles at 7:45 A.M., 10:50 A.M., 2:30 P.M. and 5:10 P.M. and arriving in Long Beach at 10:03 A.M., 1:03 P.M., 5:03 P.M. and 8:00 P.M.; that the service of Pacific Electric Railway Company is unrestricted as to commodities and affords pick-up and delivery service for LCL shipments; that two trips are made each way daily, except Sundays and national holidays; that freight is accepted for transportation in Los Angeles until 11:00 A.M. and arrives in Long Beach at about 1:00 P.M., and deliveries are commenced immediately; that freight which is picked up in Los Angeles in the afternoon is delivered the next morning in Long Beach, commencing at 8:00 A.M.; and that such service has been generally accepted by the public as a satisfactory and desirable service.

Ed Kuerbis, representing Southern California Freight Lines, testified that said company renders a general trucking service between Los Angeles and Long Beach in which there is afforded a store-door pick-up and delivery service; that in Los Angeles morning pick ups are made between 10:00 A.M. and noon, and afternoon pick-ups between 2:00 P.M. and 5:15 P.M.; that morning pick-ups arrive at Long Beach at 2:00 P.M. and deliveries are commenced immediately; and that deliveries of the afternoon pick-ups are commenced in Long Beach at 7:00 A.M. the following morning.

Ray Schneyer, representing Pacific Freight Lines, testified that his company renders a general trucking service between Los Angeles and Long Beach in which is afforded a pick-up and delivery service; that two schedules daily are observed in such transportation; and that said service is in all respects similar to that rendered by Southern California Freight Lines.

J. R. Zimmerman representing City Transfer & Storage Com-

pany and Puckett Freight Lines, Ltd., testified that these companies render a general trucking service between Los Angeles and Long Beach, in which there is afforded a store-door pick-up and delivery service twice daily; that pick-ups are made in Los Angeles in the morning until 12:00 noon, and in the afternoon until 5:45 P.M.; and that deliveries in Long Beach of the morning pick-ups are commenced at about 1:45 P.M. and are completed at 3:30 to 4:00 P.M.

C. G. Anthony, representing Pacific Freight Lines, testified that although his company was well patronized between Los Angeles and the harbor district, the equipment was not operating to full capacity due to the intense competition for the available traffic between these points. He stated that whenever a new carrier commences operation, there is an instantaneous diversion of some traffic from existing carriers even though the latter may be adequately serving the area. The result is that the load factor of the existing operators is reduced and the operating expense for each 100 pounds of freight transported is correspondingly increased. He further stated that as a result of keen competition for the freight moving between these points, a twice-daily service is afforded by his company. Because of this, the operating cost to the harbor district is greater than operations over the same number of miles to other areas.

Ed Stern appearing on behalf of Railway Express Agency, Inc., submitted an exhibit⁽²⁾ showing the schedules of his company

(2) Train schedule between Los Angeles and Long Beach

	<u>Leave Los Angeles</u>	<u>Arrive Long Beach</u>
Pacific Electric	12:15 AM	7:00 AM
" "	4:00 AM	5:00 AM
U.P. Truck	8:00 AM	10:30 AM
Pacific Electric	10:30 AM	11:40 AM
	<u>Leave Long Beach</u>	<u>Arrive Los Angeles</u>
Pacific Electric	7:30 AM	10:00 AM
U.P. Truck	4:00 PM	5:50 PM
Pacific Electric	4:15 PM	5:15 PM
" "	6:15 PM	7:25 PM

between these points and that there is offered a continuous pick-up service between 10:00 A.M. and 8:00 P.M. in the business district of Los Angeles and from 10:00 A.M. to 6:00 P.M. in the residential district of Los Angeles, 142 vehicles being maintained for this purpose.

In addition to the service to which the above witnesses testified, it is apparent from the list of common carriers of general merchandise between Los Angeles and Long Beach which applicant has set forth in her application and from tariffs on file with this Commission that the following services are available for the transportation of general merchandise by the following carriers: (a) By rail carriers, viz. Southern Pacific Company, Union Pacific Company and The Atchison, Topeka & Santa Fe Railway Company; (b) by highway common carriers, viz. Keystone Express System, Pacific Greyhound Lines (express matter), United Parcel Service (restricted to transportation of shipments weighing 100 pounds or less); (c) by express corporations and freight forwarders, viz. Goodman Delivery Service, Highway Express and Forwarding Company, Keystone Express Company, Pacific Freight Lines Express, Southern California Freight Forwarders, 20th Century Delivery Service, Inc., (restricted to shipments weighing 100 pounds or less). From this number of carriers alone it would indicate a lack of need for additional carriers or for the enlargement of the operative rights of applicant.

It should be remembered that the authority under which applicant is operating was predicated upon the theory that public convenience and necessity required an expedited transportation service of automotive parts, accessories and supplies. Applicant, in the instant proceeding, seeks to justify the enlargement of her rights fundamentally on a different theory, namely, on the grounds that she is suffering loss of business because of her restricted authority, and incidentally upon the theory that general merchan-

dise requires a more expedited transportation service. Whether or not the authority prayed for herein by applicant should be granted depends not on whether applicant is suffering financial losses under her present operation, but solely upon the question of whether the public convenience and necessity require additional service.

The only pertinent evidence on behalf of applicant relative to the public convenience and necessity of her proposed service is the testimony of three shippers, stating the inconvenience to them of dividing shipments as described herein; the need for expedited transportation on commodities other than automotive supplies on the part of J. C. Lionbarger, Frank L. Varney and L. M. Spafford; and the expedited service rendered by applicant. Assuming but disagreeing with the proposition that this meager evidence on behalf of applicant relative to the need of an expedited transportation service is sufficient to justify the enlargement of applicant's rights, the record is not convincing that applicant would be in a position to render such an expedited service. Further, in reference to the above mentioned divided shipments, instead of indicating a need of an expedited service on general merchandise, it seems far more plausible that even on automotive supplies these shippers in many instances prefer to ship by carriers other than applicant.

It is apparent from the testimony and evidence introduced on behalf of protestants that the presently existing services for the transportation of general merchandise between Los Angeles and Long Beach are expedited and entirely adequate and satisfactory. Although it is unfortunate that conditions have so changed as to redound to the pecuniary loss of applicant, it is clear and convincing after carefully reviewing and considering all the evidence adduced at the hearing, that there has been no

showing made that public convenience and necessity require the enlargement of the authority sought herein by applicant.

O R D E R

The above entitled application having been filed, public hearing having been held, and the Commission being fully apprised of the facts,

IT IS HEREBY ORDERED that the above entitled application be and the same is hereby denied.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

The effective date of this order shall be ²⁰ 20 days from the date hereof.

Dated at San Francisco, California, this 21st day of
May, 1940.

Ray L. Cline

Frank DeWitt

Robert D. Babington

M. L. Ladd

Justus F. Cullen
Commissioners.