

Decision No. 33517

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of HIGGINS)
 TRUCKS, INC., for a certificate of public)
 convenience and necessity to operate an)
 automobile truck service as a common carrier) Application
 between Los Angeles, California, on one hand) No. 23293
 and those portions of the Los Angeles drayage)
 area as defined in Case No. 4121, Decision)
 No. 32504, without the incorporated limits of)
 the city of Los Angeles, on the other hand.)

ORIGINAL

F. W. TURCOTTE, for applicant.

HENRY J. BISCHOFF and H. P. MERRY for Southern California Freight Lines and Southern California Freight Forwarders, protestants.

WALLACE K. DOWNEY, for Pacific Freight Lines and Keystone Express System, protestants.

LOUIS T. FLETCHER, for Goodman Delivery Service, protestant.

E. L. H. BISSINGER, for Pacific Electric Railway Company, interested party.

LAWRENCE M. PRICE, for Chief Delivery Service, interested party.

RAYMOND TREMAINE, for 20th Century Delivery Service, interested party.

JOHN J. WILLIAMS, for Williams Transfer Company, interested party.

CRAEMER, Commissioner:

O P I N I O N

By this application, Higgins Trucks, Inc. ⁽¹⁾ seeks a certificate of public convenience and necessity authorizing it

(1) Higgins Trucks, Inc. is a California corporation organized in 1931. The corporation succeeded to the business of R. P. Higgins Trucking Co., a co-partnership, which established a city drayage business in Los Angeles in 1928.

to establish and conduct service by motor vehicle for the transportation of property as a highway common carrier between the city of Los Angeles, on the one hand, and the incorporated cities of Vernon, Huntington Park, Maywood, Bell, Walnut Park, South Gate and the "county strip"⁽²⁾ on the other hand, and also locally between the latter named points. The granting of this application was protested by the Southern California Freight Lines, the Pacific Freight Lines and the Goodman Delivery Service. The Pacific Electric Railway Company, Chief Delivery Service, 20th Century Delivery Service and Williams Transfer Company appeared as interested parties.

Public hearings were had at Los Angeles when evidence was offered, the matter was submitted, and it is now ready for decision.

Applicant is presently engaged in business in the city of Los Angeles as a city carrier. It also operates under permits from this Commission authorizing it to transport property as a highway contract carrier and radial highway common carrier. Its principal transportation service however, is rendered within the city of Los Angeles which forms the major part of the district known as the "Los Angeles Drayage Area", and for which minimum

(2) Walnut Park is an unincorporated city adjacent to Los Angeles on the south-east.

The so-called "county strip" area includes a portion of Los Angeles County in Drayage Zone 1-A east of Indiana Street and south of the Los Angeles city limits to and including a line bounded by City Terrace Drive and Ramona Boulevard on the south.

An additional "county strip" involved herein includes that portion of Drayage Zone 1-D north of Century Boulevard and south of Tweedy Boulevard and bounded on the west by Alameda Street.

rates and drayage zones were established by Decision No. 32504, as amended, in Case No. 4121. While most of the drayage zones established in that proceeding lie wholly within the corporate limits of the city of Los Angeles, two of the zones include such points in Los Angeles County as Vernon, Huntington Park, Maywood, Bell, Walnut Park and South Gate. Trucks moving between Los Angeles and the named cities must traverse streets and highways outside of the city of Los Angeles and property carried in such trucks may not be transported by the applicant under its city carrier permit.

Applicant's present service between these points is performed under oral or written contracts with certain shippers. Applicant operates 16 trucks and 1 trailer. Twelve of its trucks are used to handle traffic wholly within the city of Los Angeles. The remaining equipment is operated to points inside and outside the city. An exhibit offered in evidence, describes applicant's present traffic between the points here involved and shows that during the month of April, 1940, applicant transported 1,001 shipments weighing 1,106,794 pounds at an average weight of 1,105 pounds per shipment. It was further shown that of the total number, 501 shipments, or approximately 50%, were minimum shipments.

The proposed operation contemplates pickup and delivery service from and to all points within the city of Los Angeles, in connection with traffic moving to or from the named points, as well as on traffic moving locally between the said points. Applicant proposes to operate four trucks initially in pickup and delivery work in Los Angeles on traffic from or to the adjacent cities. The shipments would move through applicant's

terminal at 1451 South Alameda Street, Los Angeles for sorting and routing to line haul trucks. Three line haul trucks would operate in scheduled service, three times a day, between Los Angeles and the nearby communities at the following hours:

<u>Schedule</u>	<u>Line Haul Truck Leave Los Angeles Terminal</u>	:	<u>Line Haul Truck Return to Los Angeles Terminal</u>
No. 1	8:00 A.M.	:	12:00 Noon
No. 2	11:00 A.M.	:	3:00 P.M.
No. 3	3:00 P.M.	:	6:00 P.M.

In addition to these regular schedules the four pickup and delivery trucks which operate in Los Angeles would be used for direct store door to store door movement of traffic between Los Angeles and the communities named, as circumstances and conditions might require.⁽³⁾

Applicant's president testified that approximately 75% of its present traffic moves through its Los Angeles terminal for sorting and routing and about 25% moves directly between the points of origin and destination. Under the proposed operations he said, no increase in his present operating expenses is anticipated since the proposal does not involve the operation of any additional equipment nor would the expense of operating additional trucks, as required, prevent the service from being profitable. In the event the certificate here sought is granted, applicant proposes to discontinue its present contract carrier operations between the points involved. The financial ability of applicant according to an exhibit offered in evidence shows

(3) In connection with the operations described, four specific routes are proposed by the applicant. These routes, described on Exhibit No. 7, follow designated streets and county highways between the city of Los Angeles, on the one hand, and the outside points involved herein, on the other hand.

its net assets to be about \$13,000 and its annual net income for the year 1939, (after payment of taxes) was approximately \$2,400.

Twenty-five shipper witnesses and one representative of the Huntington Park Chamber of Commerce witness testified on behalf of applicant, requesting that the proposed service be established. Of this number, twenty-one are Los Angeles shippers and the remainder are engaged in business in the nearby communities. All shippers who testified, now use applicant's
(4)
services under written or oral contracts.

Shipper witnesses for applicant testified generally that they need the three scheduled pickup and delivery services per day proposed by applicant; that they have been unable to secure such multiple services from existing highway common carriers operating between the same points and were forced to execute a contract with the applicant; that merchandising of commodities in the nearby communities require "emergency" transportation of small shipments because retailers and industrial or manufacturing concerns order goods only when they exhaust their small supply of stock on hand, and that they desire their telephone orders to be filled the same day if possible; that two scheduled services offered by protestants are not sufficient, and that applicant has offered to render

(4) Both oral and written contracts have substantially the same terminology and provide, in effect, that the shipper agrees to employ applicant to make all deliveries within the "Los Angeles Drayage Area" for an indefinite period of time. Applicant agrees to perform transportation service at the shippers request and to charge the rates established by the Commission in Case No. 4121. Applicant further agrees to carry adequate insurance upon his trucking equipment. The contracts are subject to cancellation by either party upon thirty days' notice.

the same kind of prompt and frequent service it now renders to them under contract.

Nineteen shipper witnesses for applicant, engaged in the wholesale or manufacturing business in Los Angeles testified that their shipments average less than 2,000 pounds each. Fifteen of the latter stated their average shipments run less than 1,000 pounds per shipment. ⁽⁵⁾ In addition six other shipper witnesses asserted their shipments range from 2,000 pounds to 30,000 pounds per shipment.

Applicant's witnesses testified that they would ship the following kinds and classes of property by for-hire carrier between Los Angeles and the affected territory; tires, tubes and rubber goods, canned goods, groceries, paper and paper articles, drugs and chemicals, iron and steel articles, bottles and bottle caps, paint and paint products, and tile.

(5) The following list summarizes the pertinent evidence on this point.

Applicant's Witnesses	Name of Shipper	Average Size of Shipments
		each)
R.C. Paxton	:Lindsey Ripe Olive Co.	:5 cases(30 to 66 lbs
L.C. Wolfe	:B.F. Goodrich Company	:100 to 750 pounds
L.M. Sutherland	:Anchor-Hocking Corporation	:5 cases @35lbs.each
Roger Hinchman	:Dupont Company	:1 to 500 pounds
Gerald J. Tuska	:Tuska Coffee Company	:200 to 1000 pounds
Donald M. Dean	:Towel Saver, Inc.	:70 to 1000 pounds
R. Edwin Rogers	:Western States Supply Co.	:200 to 400 pounds
Jack Gorkman	:Nielson Chemical Co.	:100 to 1500 pounds
Wm. Perrin	:G.F. Wright Steel & Wire Co.	:1000 pounds
J.B. McCandless	:J.F. Schnier Co.	:5 to 2000 pounds
M. E. Bear	:M.E. Bear Co.	:9 to 300 pounds
Ira A. Davenport	:Sierra Products Co.	:20 to 560 pounds
Warren Stoeppel	:Calif. Vegetable Concentrates	:23 to 735 pounds
John Butts	:Butts Manufacturing Co.	:150 pounds
A.E. Brin	:Brin Bros.	:All minimum shipments
Max Fisher	:Acme Wiring Material	:75 pounds
John Alabaster	:G. B. Dean	:45 pounds
Norman D. Mead	:Acme Steel Co.	:100 pounds
Ralph Harris	:Anchor-Hocking Corporation	:50 pounds

The Huntington Park Southeast District Chamber of Commerce, acting through its secretary, offered in evidence a copy of a resolution adopted by its Board of directors on June 12, 1940, endorsing the proposed service of applicant, and directing its secretary to appear at the hearing and testify in support of the application. This witness testified that there are some 680 manufacturing concerns and industries in Vernon, Maywood, Bell, South Gate and Huntington Park; that retail sales in Huntington Park alone, approximated \$20,000,000 in 1939 and that these communities require a larger number of scheduled highway common carrier services than they have at present. ⁽⁶⁾

The need for additional pickup and delivery schedules, he said, was ascertained after a series of meetings held by various shippers following a survey of the district's transportation requirements conducted by the Huntington Park Chamber of Commerce in November 1938. At that time, according to the witness, the Firestone Tire & Rubber Co. urged that additional pickup and delivery truck service be established, and that that company and other shippers then executed contracts with the applicant to secure the kind of service they desired.

Protestants, in addition to their operating witnesses, offered the testimony of nineteen shipper witnesses who use protestant's service between Los Angeles and the points involved. These witnesses uniformly testified that they now use the service of one or more of the protestant carriers; that such service

(6) The witness identified the Pacific Freight Lines, Southern California Freight Lines and United Parcel Delivery as offering scheduled highway common carrier service between Los Angeles and the points named at present. The United Parcel Delivery did not appear as a protestant in this proceeding.

meets their transportation needs and requirements, and that they need no additional service. On cross-examination, it developed that several of protestants' shippers do not sell to the manufacturing or industrial concerns, but sell mainly to retailers in the affected territory. In several instances, it was testified that several of protestants' shippers use proprietary trucking equipment to make "rush" or "emergency" shipments. In one instance, a shipper said he maintains a regular, twice-a-day proprietary trucking service, between his warehouse in Los Angeles and the nearby points to take care of special shipments.

The traffic manager of Southern California Freight Lines offered in evidence an exhibit showing the tonnage and revenue on shipments moved via his company from and to the affected area during the month of April, 1940. It appears from the exhibit that this protestant moved a total of 2,827 shipments weighing 1,426,698 pounds upon which it received a gross revenue of \$5,216.92.⁽⁷⁾

The vice-president and general manager of Pacific Freight Lines offered in evidence a cost study designed to show that the minimum rates established by Decision No. 32504, as amended, in Case 4121, for the transportation of property between Los Angeles and the points here involved, are unduly low and un-compensatory; particularly for hauls within 15 miles of Los

(7) The rates charged by protestant on this traffic were on a somewhat higher basis than the minimum rates established by the Commission in Case No. 4121. Effective July 5, 1940, however, this protestant and Pacific Freight Lines reduced their rates between Los Angeles and the points named, to the minimum basis established by Commission in Case No. 4121.

Angeles. This cost study purports to show that applicant's proposed operations cannot be performed at a profit under the existing minimum rates charged in this territory. The witness testified also that his company renders one service in the morning, and one service in the afternoon between Los Angeles and the affected points and that Pacific Freight Lines has not received any requests from shippers for three scheduled services per day in this area.

The last protestant, Goodman Delivery Service, testifying through its traffic manager stated that it recently purchased the operative rights of Real Transportation Company serving the affected territory, and that a recent survey made by the new management indicates that most shippers in the territory are satisfied with twice-a-day service. The Goodman Delivery Service, according to the witness, renders two scheduled pickup and delivery services per day, handling shipments of about 150 pounds average weight.

Before reviewing the evidence of record, it may be helpful to describe more particularly, the territory here involved. The applicant seeks to render a highway common carrier service wholly within an area, now designated by the Commission as the "Los Angeles Drayage Area"^(S). The cities of Vernon, Huntington Park, Maywood, Bell, South Gate, Walnut Park,

(S) The Commission in Decision No. 32504 in Case 4121 said:

"The Los Angeles drayage area is described in ...Appendix 'A' hereto; it embraces the more centrally located manufacturing, wholesale and retail districts of the City of Los Angeles and certain contiguous territory. Included therein are the cities of Vernon, Huntington Park, Maywood and Bell, as well as various other municipalities and unincorporated territory."

and the "county strips" lie immediately adjacent to the city of Los Angeles. The district is so densely populated and industrialized that there is no intervening undeveloped territory between the various communities; in fact, it is difficult to determine, from any physical development or lack of same, where the city of Los Angeles ends and the small communities begin. The record shows that the distance from applicant's Los Angeles terminal to its first point of delivery in Vernon is a matter of four blocks. The maximum radius of operations from applicant's terminal to the outermost point in the affected area is about 7 miles.

One of the primary questions involved in this application is whether public convenience and necessity require that applicant be certificated and authorized to render three scheduled pickup and delivery services per day between Los Angeles, on the one hand, and the adjacent cities, on the other hand. The evidence dealing with this question might be summed up as follows: a number of public witnesses testified that they now use applicant as a contract carrier and need three services per day. These witnesses testified that contracts were executed with applicant because they could not obtain more frequent service from the existing highway common carriers; that they have experienced much satisfaction from applicant's past service and desire such service to continue in the future.

On the other hand, protestants offered the testimony of approximately the same number of witnesses who asserted that they are satisfied with two schedules of service per day and that they do not require additional service. It developed

on cross-examination, however, that many of protestants' shippers do not ship to manufacturing concerns in the industrial territory here involved and moreover, that some of protestants' larger shippers regularly operate their own trucking equipment for rush or emergency shipments in addition to using the services of protestants.

Applicant and its predecessors have been engaged in the local drayage business in Los Angeles since 1928. According to evidence of record it appears that applicant possesses the necessary qualifications of fitness, ability and financial responsibility to perform the proposed highway common carrier operations which it seeks to render.

Protestants' criticism that applicant would be unable to perform its proposed operations at the minimum rates established in Case No. 4121, without sustaining a financial loss, is not well founded. The Commission, after careful study and investigation, and after numerous public hearings in Los Angeles, established the minimum rates, rules and regulations for this drayage area. The minimum rates are designed to return to for-hire carriers some profit over and above operating expenses incurred under efficient management. Protestants themselves, published these rates in their tariffs, effective July 5, 1940, to meet the competition of other carriers.

Applicant desires to transport all commodities (except those which he specifically excluded) in shipments up to and including truck-load quantities. It appears from the evidence, that this proposal is fully supported by the testimony, so far as the weight of shipments is concerned. While a majority of applicant's witnesses testified that their

average shipments do not exceed 2,000 pounds several shippers asserted their shipments run as high as 30,000 pounds. However, the commodities transported by the applicant appear to fall within the following restricted category: tires, tubes and rubber goods, canned goods, groceries, paper and paper articles, drugs and chemicals, iron and steel articles, bottles and bottle caps, paint and paint products and tile. Applicant's request for authority to transport general commodities, does not appear to be supported by the evidence of record. I do conclude, however, that the record supports an affirmative finding of public convenience and necessity to transport shipments of the commodities named between the points here involved.

F I N D I N G S.

Upon consideration of all the evidence of record, I am of the opinion and find that public convenience and necessity justify and require that applicant Higgins Trucks, Inc. be authorized to operate as a highway common carrier for the transportation of bottles and bottle caps, canned goods, drugs and chemicals, groceries, iron and steel articles, paints and paint products, paper and paper products, tires, tubes and rubber goods, and tile between the city of Los Angeles, on the one hand, and Vernon, Huntington Park, Walnut Park, Maywood, Bell, South Gate and points in the so-called "county strip" territory (defined in the foregoing opinion) on the other hand, and between said latter points locally, except that no local service may be rendered from or to "county strip" points located in Zone 1-A.

Higgins Trucks, Inc. is hereby placed upon notice that "operative rights" do not constitute a class of property which should be capitalized or used as an element of value in determining reasonable rates. Aside from their purely permissive aspect, they extend to the holder a full or partial monopoly of a class of business over a particular route. This monopoly feature may be changed or destroyed at any time by the state which is not in any respect limited to the number of rights which may be given.

The following form of order is recommended:

O R D E R

Public hearings having been held in the above-entitled proceeding and based upon the evidence received at the hearings and upon the conclusions and findings contained in the preceding opinion,

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA HEREBY DECLARES that public convenience and necessity require the establishment and operation by Higgins Trucks, Inc. of an automotive truck service as a highway common carrier, as said term is defined by Section 2-3/4 of the Public Utilities Act, over public highways between

- (a) Los Angeles, on the one hand and Vernon, Huntington Park, Walnut Park, Maywood, Bell, South Gate and the following described "county-strip" territory, on the other hand:

"County strip No. 1 - That portion of Los Angeles County in Zone 1-A as defined in Case No. 4121, lying east of Indiana Street and south of the Los Angeles city limits, to and including a line bounded by City Terrace Drive and Ramona Boulevard, on the south."

"County strip No. 2 - That portion of Los Angeles County in Zone 1-D, as defined in Case No. 4121, lying north of Century Boulevard and south of Tweedy Boulevard, and bounded on the west by Alameda Street and on the east by the city of South Gate."

- (b) Locally between Vernon, Huntington Park, Walnut Park, Maywood, Bell, South Gate and points in "county strip" No. 2 defined above,

for the transportation of bottles and bottle caps, canned goods, drugs and chemicals, groceries, iron and steel articles, paints and paint products, paper and paper products, tile, tires, tubes and rubber goods, including the right to render store-door pickup and delivery service at any and all of said points hereinabove named.

IT IS HEREBY ORDERED that the operations of Higgins Trucks, Inc. between Los Angeles and the points named shall be conducted along the following specified routes:

ROUTE 1 - South on Alameda Street to 25th Street, east on 25th Street to Santa Fe Avenue, south on Santa Fe Avenue to Pacific Avenue, southeasterly on Pacific Avenue to Leonis Boulevard, east on Leonis Boulevard and District Boulevard to Atlantic Boulevard, south on Atlantic Boulevard to Gage Avenue, west on Gage Avenue to State Street, south on State Street to Firestone Boulevard, west on Firestone Boulevard to Alameda Street, and north on Alameda Street to Los Angeles.

ROUTE 2 - North on Alameda Street to Olympic Boulevard, east on Olympic Boulevard to Indiana Street, north on Indiana Street to Whittier Boulevard, east on Whittier Boulevard to Goodrich Boulevard, south on Goodrich Boulevard to Olympic Boulevard, east on Olympic Boulevard to Gerhart Street, south on Gerhart Street to Ferguson Drive, west on Ferguson Drive to Anaheim-Telegraph Road, southeasterly on Anaheim-Telegraph Road to Eastern Avenue, south on Eastern Avenue to Slauson Avenue, west on Slauson Avenue to Riverside Drive, northwesterly on Riverside Drive to Atlantic Boulevard, northeasterly on Atlantic Boulevard to Anaheim-Telegraph Road, northwesterly on Anaheim-Telegraph Road to Union Pacific Avenue, west on Union Pacific Avenue to Los Angeles.

ROUTE 3 - Northeasterly on Ramona Boulevard to Bonnie Beach Street, north on Bonnie Beach Street to Medford Street, east on Medford Street to Marianna Avenue, southeasterly on Marianna Avenue to Ramona Boulevard, thence southwesterly on Ramona Boulevard to Los Angeles.

ROUTE 4 - South on Compton Boulevard to Firestone Boulevard, east on Firestone Boulevard to Alameda Street, south on Alameda Street to Imperial Highway, west on Imperial Highway to Central Avenue, north on Central Avenue to Los Angeles.

IT IS HEREBY FURTHER ORDERED that a certificate of public convenience and necessity therefor is hereby granted to Higgins Trucks, Inc. subject to the following conditions:

1. The authority herein granted shall lapse and be void if applicant shall not have complied with all of the conditions within the periods of time fixed herein unless, for good cause shown, the time shall be extended by further order of the Commission.

2. Applicant shall file a written acceptance of the certificate herein granted within a period of not to exceed thirty (30) days from the effective date hereof.

3. Applicant shall commence the service herein authorized within a period of not to exceed thirty (30) days from the effective date hereof, and shall file, in triplicate, and concurrently make effective on not less than ten (10) days' notice to the Railroad Commission and the public, a tariff or tariffs constructed in accordance with the requirements of the Commission's General Orders and containing rates and rules which in volume and effect shall be identical with the rates and rules shown in the exhibit attached to the application in so far as they conform to the certificate herein granted, or rates and rules satisfactory to the Railroad Commission.

4. Applicant shall file, in triplicate, and make effective within a period of not to exceed thirty (30) days after the effective date of this order, on not less than five (5) days' notice to the Railroad Commission and the public, a time schedule or time schedules covering the service herein authorized in a form satisfactory to the Railroad Commission.

5. The rights and privileges herein authorized may not be discontinued, sold, leased, transferred nor assigned unless the written consent of the Railroad Commission to such discontinuance, sale, lease, transfer or assignment has first been obtained.

6. No vehicle may be operated by applicant herein unless such vehicle is owned by said applicant or is leased by applicant under a contract or agreement on a basis satisfactory to the Railroad Commission.

7. Applicant shall, prior to the commencement of service authorized herein and continuously thereafter, comply with all of the provisions of this Commission's General Order No. 91.

For all other purposes, the effective date of this order shall be twenty (20) days from and after the date hereof.

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.

Dated at San Francisco, California, this 21st day of January, ~~December~~, 1940: 1941.

[Signature]
[Signature]
[Signature]
Justice J. Callahan
Francis R. Havenner
 COMMISSIONERS