

Decision No. 35192

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of ASSOCIATED FREIGHT LINES, a California corporation, for a temporary certificate of public convenience and necessity to operate a freight service as a highway common carrier between San Francisco and vicinity, on the one hand, and Los Angeles and vicinity, on the other hand.)
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) Application
) No. 24638
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)

In the Matter of the Supplemental Application of SAVAGE TRANSPORTATION COMPANY, a corporation, for an interim order for a certificate of public convenience and necessity authorizing the service proposed in the application herein (as amended) during the National Emergency, or until further order of the Commission.)
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) Supplemental
) Application
) No. 23877
)
)

In the Matter of the Supplemental Application of E. J. WILLIG TRUCK TRANSPORTATION CO., a corporation, for an interim order for a certificate of public convenience and necessity authorizing the service proposed in the application herein (as amended) during the National Emergency, or until further order of the Commission.)
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) Supplemental
) Application
) No. 24107
)
)

In the Matter of the Supplemental Application of CHARLES P. HART, an individual doing business as CHAS. P. HART TRANSPORTATION CO., for an interim order for a certificate of public convenience and necessity authorizing the service proposed in the application herein (as amended) during the National Emergency, or until further order of the Commission.)
)
) Supplemental
) Application
) No. 24124
)
)

EDWARD M. BEROL, ARLO D. POE, RAY UNTEREINER, argued for Applicants.

DOUGLAS BROOKMAN, HUGH GORDON, RICHARD E. WEDEKIND, argued for Protestants.

It was stipulated that appearances entered in Applications Nos. 23877, 24057, 24107, and 24124 would be deemed entered in this proceeding.

BY THE COMMISSION:

O P I N I O N

The question to be determined in this proceeding is whether public convenience and necessity require that certain temporary highway common carrier certificates be granted.

The four applicants herein have pending, and partially heard before the Commission, applications for permanent highway common carrier certificates by which Associated Freight Lines seeks authority to operate between Los Angeles and San Francisco; Charles P. Hart between what are designated as the San Francisco and Los Angeles Areas; and Savage Transportation Company and E.J. Willig Truck Transportation Co. between what are described as the Sacramento, San Francisco, Los Angeles and San Diego Areas. Soon after the United States declared war on Japan, Germany and Italy, Associated Freight Lines filed a new application requesting a temporary certificate to operate between Los Angeles and San Francisco during the national emergency resulting from the war, and asked that its Application No. 24057 for a permanent certificate, and the testimony introduced in connection therewith, be considered in passing upon its present application. Subsequently, Savage Transportation Company, E. J. Willig Truck Transportation Co. and Charles P. Hart filed supplements to their applications for permanent certificates asking for temporary authority to operate between the points named in their major applications during the war emergency. These last three operators also requested that the evidence introduced in connection with their principal applications, as well as the applications themselves, be considered when the need for temporary certificates was determined.

The four applications for temporary certificates were consolidated for the purpose of oral argument which was held March 4, 1942 before the Commission sitting en banc at Los Angeles. Attorneys for applicants advanced reasons which they contended compelled issuance of such temporary certificates. Counsel for protestants, who are the existing common carriers, enunciated grounds which they insist necessitate denial of the authority sought. By agreement between the attorneys for the interested parties the record adduced in the applications for permanent certificates was not adverted to because it was incomplete, the conditions had changed since such evidence was received, and protestants had had no opportunity to present evidence relating thereto.

The contentions of the applicants can be stated briefly. It is pointed out that the Commission has express authority to grant the certificates without hearing under the terms of Section 50-3/4(c) of the Public Utilities Act. Applicants say there are, in reality, only three common carriers operating between Los Angeles and San Francisco, California Motor Express, Valley Express Co. and Southern Pacific Company. They treat Valley & Coast Transit Company and California Motor Express as one carrier because the former is being acquired by the interests owning the latter. It was argued that the issuance of certificates has not kept pace with the increase in traffic moving between the points in question. Attention was called to the fact that the overnight merchandise trains of the Southern Pacific were discontinued after the war began. Applicants asserted more highway common carriers should be certificated to provide an adequate "backbone" of transportation in the event of impairment of existing facilities. The allegation was made

that the present highway common carriers did not have sufficient equipment to haul the traffic now offered. To support this claim applicants quoted figures purporting to show the number of leased vehicles used by California Motor Express in 1941. Applicants asserted that contract carriers haul eighty per cent of the traffic moved by for-hire operators in California. This, it was contended, shows it is in the public interest to preserve in full force and vigor the services rendered by applicants. To insure their continuance it is necessary that they be converted to highway common carriers. Contract carriers have lost considerable business as many of the shippers with whom they have transportation contracts are not engaged in what has been termed "essential industries" and hence either have ceased to ship or are not shipping as much merchandise. Applicants do not feel free to contract with other shippers to replace the tonnage thus lost because of uncertainty as to what constitutes unlawful operation as a common carrier, yet applicants have equipment available which is not being used to capacity. This results in uneconomical, inefficient operation which is undesirable at a time when equipment and fuel should be conserved. Applicants have been permitted to develop substantial businesses with large investments and it is contended that they should be protected by being given common carrier status which, among other things, probably would improve their chances of securing tires, parts and equipment from Government rationing boards. It was alleged that there will be a great increase in production for the Government in connection with the war effort which will necessitate at least twice as much common carrier transportation as that now available. Applicants said existing common carriers would not be harmed if the temporary certificates were granted as many small contract carriers are going out of business and applicants could obtain their traffic.

They stated also that competition would not be increased as contract carriers are receiving the "cream" of the hauls while the common carriers obtain the "skimmed milk." Applicants pointed out that if it was deemed necessary to protect the common carriers, the temporary certificates could be restricted in some manner, such as curtailing the amount of equipment to be employed, limiting the tonnage to be hauled, or narrowing the boundaries of the areas to be served. In conclusion, it was stated, the question of basic concern is the public interest which applicants contended would best be served in the present emergency by utilizing its equipment fully wherever needed which could only be accomplished by granting the temporary certificates because contract carrier's operations are restricted and inflexible.

Summarization of the arguments made on behalf of protestants discloses a totally different concept of the present transportation situation. Protestants first remarked on applicants' failure to allege that the service of the common carriers was inadequate and aver this is due to the fact that such service is entirely sufficient. It was stated that there is nothing the public wants or needs which it cannot get from the existing common carriers. Protestants asserted they could handle all of the traffic now carried by contract carriers between the points involved in this proceeding. The protestant highway common carriers stated that their equipment was not utilized to capacity, that they had more vehicles available and were in the process of acquiring additional units. It was alleged further that if transportation demands increased to such an extent that still more truck facilities were needed, equipment could and would be leased from contract or other carriers. Protestants averred that while transportation by rail had increased since the war began, the

business of the highway common carriers had decreased. It was admitted that the Southern Pacific overnight merchandise trains were not operated between the 12th and 27th of December of last year as they were needed elsewhere for special Government work, but it was stated such service was resumed December 28th and has operated continuously since. Southern Pacific was said to be acquiring 4,500 new freight cars. This company, it is stated, can now, and will be able in the future, to meet all demands made upon it for transportation service. There have been no complaints by the Government of the service rendered by the common carriers. In fact, the Government has commended the railroads for their efficient transportation work. Protestants pointed out that there are at least four common carriers operating between the San Francisco and Los Angeles Areas as, in addition to those named by applicants, Atchison, Topeka and Santa Fe Railway Company hauls considerable tonnage. While there are not many common carriers engaged in the transportation business between such points, it is asserted that the service is better than between any similar areas in the Nation. Protestants allege applicants are endeavoring to use the war emergency to obtain common carrier status, not so much from a desire to conserve fuel and equipment, as to replace the traffic they have lost. Protestants agree that equipment should be used to capacity so that no more vehicles are operated than needed, but argue that as their trucks are not fully loaded nor all utilized and as they are legally obligated to maintain service, no other certificates should be granted under present conditions. Protestants contend it is desirable at present for all equipment to be as closely held and centrally controlled as possible so that the minimum number of trucks are on the road and so the highways may be readily cleared if or when necessary. It is admitted by the

common carriers that the contract operators have received much of the "cream" of the traffic, but this they attribute to the specialized service rendered by contract carriers which, it is alleged, they could not perform as common carriers. Attorneys for the common carriers contend the Commission should not circumvent nor increase the work of the Government rationing boards by changing the legal status of applicants. Finally, protestants allege they can produce overwhelming evidence to prove the temporary certificates should not be granted and request the Commission not to grant such certificates without first receiving and considering such evidence.

As stated in the opening paragraph of this opinion the question to be determined herein is whether public convenience and necessity require the granting of the temporary certificates sought. Because of the nature of this proceeding no evidence was introduced. Thus, for purposes of this decision it must be assumed that counsel for the conflicting interests could submit sufficient evidence to sustain their respective assertions. Based upon this premise and a full consideration of the arguments presented, it is obvious the Commission cannot conclude that public convenience and necessity is established. It is not shown that the existing services are inadequate or insufficient and no present or future need for additional common carrier transportation is proven. Therefore, the applications for temporary certificates must be denied.

It is realized that as a result of the war emergency existing common carrier facilities may become impaired or inadequate and that a need for additional service may arise. If this should occur the Commission is prepared to act promptly upon appropriate requests for certificates by the present applicants.

O R D E R

Applications for temporary certificates of public convenience and necessity having been filed by Associated Freight Lines, Savage Transportation Company, E. J. Willig Truck Transportation Co. and Charles P. Hart, oral argument having been presented before the Commission en banc, such pleadings and argument having been considered, and the Commission being of the opinion public convenience and necessity is not established,

IT IS ORDERED that Applications Nos. 24638, 23877 supplemental, 24107 supplemental, and 24124 supplemental, are denied.

Dated at San Francisco, California, this 31st day of March, 1942.

Ray L. Roney
W. B. M. M.
Francis D. Havens
Richard Jackson
COMMISSIONERS