

ORIGINAL

Decision No. 35914

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)	
THOMAS W. GILBOY, doing business as)	
GILBOY COMPANY, for certificate auth-)	
orizing the extension of operative)	Application No. 24556
rights to permit transportation by)	
automobile truck of property between)	
San Francisco and Los Angeles.)	

GWYN H. BAKER, for Applicant.

REGINALD L. VAUGHAN and E. STERN, for Railway Express Agency, protestant.

PHIL JACOBSON, for Special Service Transportation Company, protestant.

DOUGLAS BROOKMAN, for California Motor Transport, Ltd., and California Motor Express, Ltd., protestants.

BY THE COMMISSION:

O P I N I O N

Thomas W. Gilboy, doing business as Gilboy Company, seeks a certificate of public convenience and necessity to authorize a highway common carrier service for the transportation of moving picture films and theatre supplies between Shafter and Los Angeles, as an extension of present operative rights. Applicant does not propose to serve any point intermediary between Shafter and Los Angeles.

Public hearing was held at San Francisco on January 14, and March 12, 1942, and at Los Angeles on April 16, 1942, before Examiner Cameron, evidence was received and the matter was submitted.

Applicant at present and for some time past has been

operating as a highway common carrier, transporting moving picture films and theatre supplies to and from theatres in San Francisco and other points north of Shafter. As stated, applicant, in the present proceeding, seeks to extend his service from Shafter to Los Angeles, thus permitting him to handle films and theatre supplies between San Francisco and Los Angeles.

In support of this proposal a number of witnesses were called. They testified, in substance, that applicant's service was of a highly specialized character, designed to accommodate the peculiar needs of those engaged in the motion picture business, and serving not only the theatres themselves but also the exchanges and distributors situated at San Francisco and Los Angeles. To facilitate the pickup and delivery of films and supplies at times when the theatres are closed, applicant's drivers are permitted to enter these establishments at all times of the day or night, keys being furnished them by the owners for that purpose. Because of the nature of the traffic, the utmost expedition is required. A given film, it was shown, may be exhibited successively by theatres situated at very widely separated points, in accordance with a definite and closely knit schedule. This necessitates the prompt movement of films from one theatre to another with a minimum of delay. In the territory he now serves, it was shown, applicant has provided a service fully responsive to these strict requirements. The shippers, so they stated, seek the extension of this service from Shafter to Los Angeles, thus placing the southern theatre owners and distributors on a parity with those situated in the northern section.

Through the medium of another carrier, applicant has been able to close the gap between Shafter and Los Angeles. Films and

theatre supplies picked up by applicant in Los Angeles and destined to points in Northern California are delivered by him to Snowden Transportation Company, a highway contract carrier, which transports them from Los Angeles to Fresno. There these commodities are delivered to applicant who, in turn, carries them to points which he serves. Traffic of this character picked up by applicant in the Northern California territory and destined to Los Angeles is delivered by him to Snowden Transportation Company at Fresno, which hauls it to Los Angeles where it is received by applicant and distributed to the consignees. The line-haul service thus performed by Snowden Transportation Company is provided under the terms of a written contract between the applicant and that carrier:⁽¹⁾

Under the existing arrangement between applicant and Snowden Transportation Company, the film exchanges and theatre supply distributors in both San Francisco and Los Angeles now enjoy a service between those points, providing an overnight delivery, which they seek to preserve. In the present proceeding applicant itself proposes to establish a through service which would meet their requirements.

The other carriers now serving this territory, it was shown, are unable to render a comparable service to the shippers' satisfaction. Protestant, Railway Express Agency, could not provide a service as expeditious as that offered by applicant.

(1) A copy of the contract was received in evidence (Exhibit 3). On its face it purports to govern the relationship between the parties in their respective capacities as shipper and carrier. It provides for the transportation of merchandise tendered by applicant between Los Angeles and San Francisco and way points.

The record indicates that frequently shipments of films and theatre supplies handled by that carrier have been subjected to substantial delay. Although through its Air Express, a service is offered between Los Angeles and San Francisco much faster than that afforded by applicant, the charges are considerably higher, consequently the service is used principally in emergencies.

Manifestly, the arrangement between applicant and Snowden Transportation Company, under which the latter performs the line-haul service between Fresno and Los Angeles, might well be challenged as unlawful. Snowden Transportation Company provides this service for the applicant, and not directly for the shippers themselves. In respect to Snowden Transportation Company, applicant occupies the status of a connecting carrier rather than that of a shipper. Applicant itself could not lawfully provide the service between Fresno and Los Angeles unless it held a certificate of public convenience and necessity as a highway common carrier. And that service could not be performed for it by another carrier unless the latter was also a highway common carrier. Since Snowden Transportation Company operates as a highway contract carrier authorizing service between the points described, it cannot act as an underlying carrier for applicant should the latter be regarded as an express corporation or as a freight forwarder. No contention is made here that applicant possesses such an operative right.

(2) Where a carrier "...cannot itself transport goods for the public between fixed points in this State by motor truck without first securing a certificate from this Commission, it cannot indirectly through an agent or sub-agent engage in such transportation." Re Walkup Dravage and Warehouse Co., 32 C.R.C. 246, 247. See also E. L. McConnell, v. Los Angeles and Santa Barbara Motor Express Co., 32 C.R.C. 64, 71; Railway Express Agency, Inc., v. Consolidated Package Service, 37 C.R.C. 791, 794; Shippers, Inc., 41 C.R.C. 543, 551; Southern Pacific Company v. Stanbrough, 37 C.R.C. 756.

It has long been our rule of decision that a certificate of public convenience and necessity authorizing operation as a highway common carrier will not be granted upon a showing resting upon unlawful operations conducted by the applicant. ⁽³⁾ Thus the applicant is not permitted to take advantage of his own wrong. But the rule should not be so applied as to deprive the public of the benefit of a service essential to its requirements. Such is the situation here. A clear public need has been shown to exist for the extension of applicant's operations from Shafter to Los Angeles, and accordingly the certificate sought will be granted. However, a formal investigation of applicant's operations will be instituted immediately and should the facts warrant such a step, suit will be instituted to recover maximum penalties.

O R D E R

Application having been made as above entitled; and the Commission now finding that public convenience and necessity so require:

IT IS ORDERED as follows:

(1) That a certificate of public convenience and necessity be and it hereby is granted to Thomas W. Gilboy, an

(3) Re J. W. Ritzman, 31 C.R.C. 772, 774; re G. W. Decker, 36 C.R.C. 317, 320; re S. C. Brooks, 37 C.R.C. 672, 675; re Joe Mangini Drayage Co., 41 C.R.C. 49, 53.

individual doing business as Gilboy Company, authorizing operation as a highway common carrier, as defined by Section 50-3/4, Public Utilities Act, for the transportation between Shafter and Los Angeles of the following commodities only: motion picture films, motion picture theatre accessories and supplies, viz., advertising matter, crayons, water or oil colors, brushes, poster paper, display cards, electric lighting effects (including globes, bulbs and reflectors), tickets (in rolls), ticket choppers, and motion picture projection machinery or parts.

Said certificate is granted subject to the following condition:

Thomas W. Gilboy, his successors or assigns, may never claim before this Commission, or any court or other public body, a value, for any purpose, for the certificate herein granted in excess of the actual cost incurred by him in securing said operative authority.

(2) That in the operation of said highway common carrier service, Thomas W. Gilboy shall comply with and observe the following service regulations:

1. Applicant shall file a written acceptance of the certificate herein granted within a period of not to exceed thirty (30) days from the date hereof.
2. Applicant shall comply with the provisions of General Order No. 80 and Part IV of General Order No. 93-A, by filing, in triplicate, and concurrently making effective, tariffs and time schedules satisfactory to the Commission within sixty (60) days from the effective date hereof and on not less than five (5) days' notice to the Commission and the public.

- 3. Subject to the authority of the Commission to change or modify them at any time by further order, applicant shall conduct said highway common carrier operations over and along the following routes:

Over any and all public highways between Shafter and Los Angeles available to and open for truck operation.

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

Dated at San Francisco, California, this 5th day of November, 1942.

Justus J. Galloway
H. J. Baker
Frank R. Havens
Richard H. Baker
 COMMISSIONERS