

ORIGINAL

Decision No. 3994A

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
J. L. BELYEA II and T. W. McCARTHY,)
co-partners, doing business as)
REFRIGERATED EXPRESS, for a certifi-)
cate of public convenience and)
necessity to operate a motor truck)
service as a common carrier, between)
Los Angeles, California, and San)
Ysidro, Calexico, Blythe, Needles,)
San Luis Obispo, Coalinga, Tulare,)
and Bishop, California, and all)
intermediate points.)

Application No: 26848

TRIPP, CALLAWAY, SAMPSON & DRYDEN by DEWITT MORGAN MANNING,
for applicant.

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

H. P. MERRY, for Southern California Freight Lines and
Southern California Freight Lines Express,
protestants.

E. L. H. BISSINGER and J. C. GILL, for Southern Pacific
Company and San Diego and Arizona Railway
Co., protestants.

LLOYD R. GUERRA, for Western Truck Lines, protestant.

R. C. CRANSTON and F. P. GRIM, for The Atchison, Topeka &
Santa Fe Railway Company, interested party.

E. H. J. EGGERT, EDWARD STERN and S. H. STRONG, for Railway
Express Agency, Incorporated, protestant.

HERBERT CAMERON, for Moser's Frozen Food Freight Line,
protestant.

O P I N I O N

In this application, as originally filed, J. L. Belyea II and T. W. McCarthy, co-partners, doing business as Refrigerated Express, requested a certificate of public convenience and necessity to operate a motor truck service as a common carrier for the transportation of commodities requiring refrigeration, between Los Angeles and each of the following points: San Ysidro, Calexico, Blythe, Needles, San Luis Obispo, Coalinga, Tulare and Bishop, and all intermediate points, and points and places within fifty miles on either side of the main highway connecting these termini. At the

initial hearing the original application was amended by the exclusion of all points and places east of Indio on U. S. Highways Nos. 60 and 70 and all points and places north of Mojave on U. S. Highways Nos. 6 and 395. In view of this amendment Western Truck Lines withdrew its protest. Upon motion of applicants George C. Belyea was substituted as a party applicant in place of T. W. McCarthy.

Public hearings were held by Examiner Gannon at Los Angeles and San Diego and the matter was submitted on concurrent briefs which are now filed.

Applicants presently operate under radial highway common carrier and highway contract carrier permits and are engaged in the transportation of such commodities as require refrigeration or protection from heat. ⁽¹⁾ Plants for the freezing of such commodities are already in operation in a number of cities in the territory and new plants are being constructed, according to the testimony. The record shows that they maintain a warehouse with cold storage facilities in Los Angeles and operate five trucks, which will be augmented by the purchase of additional equipment now on order, to be financed through a loan of some \$25,000.

One of the applicants testified in considerable detail regarding the type of service required for the successful handling of commodities under refrigeration, and such service may be thus briefly described: The proposed service is specialized and requires experienced and expert handling. Frozen foods are highly perishable

(1) Commodities transported generally include ice cream, dairy products, butter, eggs, cheese, milk products, fish, meats, frozen juices, frozen fruits, frozen vegetables and frozen cooked foods.

and must be held at a low even temperature. Once defrosted, they cannot be refrozen. The commodities should be transported in insulated trucks which provide for the free circulation of air which has been chilled by dry ice. Loading, re-icing and unloading are operations which require careful handling. This witness testified that his experience with this specialized transportation has been extensive and successful, and has involved movements between Los Angeles and a number of communities, mostly north of Los Angeles.

It is proposed by applicants to transport the commodities listed in footnote (1) directly from the cold storage plants to destination by refrigerated trucks. It was alleged that the movement of frozen commodities has grown rapidly and now justifies the establishment of a common carrier service rather than a permitted operation. Applicants propose to transport these commodities directly from cold storage warehouses or from the producing plants, to destination through the use of refrigerated trucks. This will not require the shipper to provide his own icing. Pickups are made by line-haul refrigerator trucks. When the new trucks on order are delivered, applicants propose to perform the pickup service with these new units and consolidate the small shipments into line-haul trucks at applicants' warehouses. They have cold storage facilities for temporary holding of such shipments.

The proposed rates and charges are those prescribed by the Commission in Highway Carriers' Tariffs Nos. 2 and 3 in Decisions Nos. 31606 and 32504, in Cases Nos. 4246 and 4121, as amended, plus 8 per cent for shipments within and between points in Los Angeles, Orange, San Diego, Riverside, San Bernardino and Imperial Counties, and 4 per cent for shipments to points within and between other counties wherein service is to be performed and between said

counties and Los Angeles, Orange, San Diego, Riverside, San Bernardino and Imperial Counties. Charges for refrigeration service are based on a graduated scale according to weight. In addition to the charges for refrigeration services the following charges are proposed:

- Shipments less than 10,000 pounds, ten cents per 100 pounds, minimum charge 50 cents;
- ✓ Shipments over 10,000 pounds but not over 20,000 pounds, 7½ cents per 100 pounds, minimum charge \$10.00;
- Shipments over 20,000 pounds, 5 cents per 1000 pounds, minimum charge \$15.00 (Exhibit No. 2).

A daily schedule, except Sundays and holidays, is proposed between Los Angeles and San Ysidro via Whittier and Fullerton and also via Los Angeles Harbor and Long Beach; four days weekly between Los Angeles and Tulare, serving intermediate points; twice weekly between Los Angeles and Needles and between Los Angeles and San Luis Obispo and between La Mesa and El Centro; twice weekly between Los Angeles and Barstow via Mojave; twice weekly between Los Angeles and Calexico via Indio, and twice weekly between Los Angeles and Coalinga.

Applicants submitted exhibits tending to show its financial condition. Exhibit No. 1 indicates that it has a present worth of \$15,714.99, with cash on hand of \$27,393.32 and notes payable of \$25,000. Exhibit No. 2 shows a net operating loss for 1945 of \$1775.52. Exhibit Nos. 5 and 6 purport to show a profit from operation of \$1029.74 for January 1946 and a profit of \$733.76 for February of the same year.

Applicants called some fifteen public witnesses in support of the granting of the application. Their testimony may be briefly summarized since it was more or less corroborative. The witnesses

had all used applicants' service which is conducted under permits issued by the Commission. This transportation involved the movement of commodities requiring refrigeration or protection from heat. There was no complaint against applicants' service, in fact, it was uniformly characterized as satisfactory in every respect. Shipments were principally from Los Angeles to such points as San Diego, Santa Barbara, Bakersfield, San Luis Obispo, Ontario, Riverside and Redlands. Several of the witnesses complained that other carriers required that products be packed in insulated containers with dry ice before accepting for shipment, while by the applicants' method they were relieved of that inconvenience and expense. Some criticism of applicants' service was based on allegations of irregularity and delay. In all cases the witnesses testified as to the approximate tonnage transported which in some instances amounted to 50,000 pounds per week. The witnesses, in general, regarded the applicants as "specialists" in the business of handling shipments of frozen fruits and vegetables. The Superintendent of the Los Angeles Cold Storage Company favored the granting of the application and testified that the company made shipments under refrigeration from Los Angeles to Ontario, Upland, San Bernardino, Santa Ana, San Diego and Santa Barbara, which amounted to 75 tons per week. This witness, however, admitted that the company uses Pacific Freight Lines only when instructed to do so by the shipper.

The granting of the application was protested by Pacific Freight Lines and Pacific Freight Lines Express, Southern California Freight Lines and Southern California Freight Lines Express, Southern Pacific Company, San Diego and Arizona Railway Co., Western Truck Lines, The Atchison, Topeka & Santa Fe Railway Company, Railway Express Agency, Incorporated, and Moser's Frozen Food Freight

Line. Of these, Pacific Freight Lines and Southern California Freight Lines were the most active in protesting the granting of this application.

Testimony on behalf of protestants was confined to statements by operating witnesses. The traffic manager of Southern California Freight Lines testified that their practice had been to offer refrigeration service but that such service had not been available during the war. The movement of commodities requiring refrigeration was on special schedules and the volume of traffic would control the type of service to be offered. The company used a method called "top-icing" and dry ice. They were handicapped by inability to receive delivery of equipment now on order.

The traffic manager of Pacific Freight Lines testified that this company had 17 refrigerated trucks but that they would not accept small shipments unless the shipper furnishes the ice and attends to the packing of the shipments, at his own expense; also, that the company had lost substantial tonnage to contract carriers for various reasons.

A witness for The Atchison, Topeka and Santa Fe Railway Company testified that his rail line operated one refrigerated car a week out of Los Angeles for Needles and vicinity, via San Bernardino, to handle small shipments requiring refrigeration and that that was the only service available.

The San Diego Manager of Southern California Freight Lines testified that his company had handled two or three small shipments a week to the Imperial Valley but they moved packed in dry ice and zero pade.

In transporting shipments which require refrigeration, the Railway Express Agency, Incorporated, utilizes for the handling of less-carload shipments what is known as the "Church Container", which is a portable refrigerator box. The shipper calls for a container in which the shipment is loaded packed in dry ice. The Agency does not make pickups with refrigerator trucks.

On cross examination, applicant Belyea admitted that his financial condition was precarious, that neither he nor his father, who is a present partner, nor his mother, had derived any compensation from the operation in 1945, that he was paying interest at 8 per cent on money borrowed for additional equipment, that various items of contingent expense had not been shown in his statements.

It cannot be said that applicants' statements disclose a healthy financial condition, at least not to the extent that they are able to finance the purchase of new equipment and carry on the proposed service on an enduring financial basis. The statements, it was admitted, do not include expenditures for essentials such as insurance of the various types required, cost of tires, compensation for services, expense of accidents or cost of ice. Applicants' testimony was vague and incomplete on this phase of his cross-examination and also as to the details of management. The balance sheet of March 2, 1946, shows a net worth of \$15,714.99 (Exhibit No. 1) but applicant admitted that an item of \$8000, carried as "land and improvements", actually cost only \$3000 in 1939 with no present day appraisal. Funds in the amount of \$25,000, borrowed for the purchase of additional equipment, carry interest at the rate of 8 per cent. Other funds borrowed to pay for equipment now in use carried interest at the rate of one per cent a month. According to its own exhibit, applicants now

owe \$40,732.77 with a capital of \$15,714.99.

In addition to applicants' poor financial showing the record does not contain convincing proof of the public need for the proposed service in view of that now being offered by other carriers, which admittedly had been impaired during the war period, although there was testimony that it would be improved in the future. The application embraces a territory extending over all of Southern California and north as far as San Luis Obispo, Tulare and Coalinga.

The record shows that all of the points which applicants propose to serve are now served by at least one of the protestants with facilities which provide protection for refrigeration, and most of the points are served by a number of carriers. With the exception of Needles, daily over night services are rendered by a number of the protesting carriers to all points proposed to be served. For example, the territory between Los Angeles and San Diego and the Imperial Valley is served by two motor carriers, three express companies and by one rail line. Territory to the north of Los Angeles enjoys a scheduled daily overnight service by rail as well as by truck, except as to the territory between Coalinga and Taft which has the overnight service of two of the protestants.

The testimony of applicants' witnesses is not convincing as to public need for the service offered. The most that can be said for it is that the witnesses had used the present highway contract carrier service of applicant, found it satisfactory, and would use the proposed service if established. None of applicants' shipper witnesses criticized the service of existing carriers. It appears that the protestants are willing and able to offer a

refrigerator service in keeping with the reasonable requirements of the shippers. The only material lapse in such service was during the war period when protestants' equipment was commandeered by the government.

Upon a review of the record herein we find that applicants have not offered sufficient proof to sustain a finding of public convenience and necessity for the proposed service and the application will, therefore, be denied.

O R D E R

Public hearing having been held in the above entitled proceeding, evidence having been received, the matter having been submitted and the Commission being fully advised,

IT IS ORDERED that Application No: 26848 be and it hereby is denied.

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

Dated at San Francisco, California, this 4th day of February, 1947.

Harold P. Kula
Justice F. Casper
Earl H. Powell
A. J. ...

COMMISSIONERS