

ORIGINAL

Decision No. 40934

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 HIGHWAY TRANSPORT, INC., a corporation,)
 for a certificate of public convenience)
 and necessity to operate a highway)
 common carrier service between Los Gatos) Application No. 28333
 and Los Altos, and all points on its)
 lines, and to add additional routes to)
 and from Permanente.)

Berol and Handler, by Edward M. Berol, and F. H. Ainsworth, Jr., for applicant; H. M. Hays and W. H. Kessler, for Intercity Transport Lines and Pioneer Express Company, protestants.

O P I N I O N

By this application, Highway Transport, Inc., seeks to extend its highway common carrier operations to serve Los Altos and Los Gatos. Public hearings were held at San Francisco on June 27, September 22 and October 17; at Los Altos on July 14, and at Los Gatos on July 15 and September 23, all in 1947. The application was protested by Intercity Transport Lines, an express corporation, and by Pioneer Express Company, a highway common carrier affiliate of Intercity.⁽¹⁾

Applicant conducts operations generally between San Francisco, San Jose, Gilroy, Hollister, Salinas, Soledad, Monterey, Santa Cruz, Watsonville, and intermediate points. East Bay cities are served under joint rates with a commonly controlled associate,

(1) For brevity, the following contractions will be used:

- Highway Transport, Inc. - Highway
- Intercity Transport Lines - Intercity
- Pioneer Express Company - Pioneer
- Merchants Express Corporation - Merchants
- Pacific Motor Trucking Company - P.M.T.
- Railway Express Agency, Inc. - Railway Express
- Southern Pacific Company - Southern Pacific

Canton Transbay Express, Inc., (Dec. 40016, Mar. 4, 1947, App. 27618.) Operative rights over the Coast Road between San Francisco and Santa Cruz have been acquired from Coastside Transport Company. (Dec. 35912, Nov. 5, 1942, App. 25180.) An extension between Salinas and Natividad was granted early in 1942. (Dec. 35161, Mar. 4, 1942, App. 24830.)⁽²⁾

The proposal, in substance, is for an overnight service with early morning store-door delivery between East Bay cities and San Francisco, on the one hand, and Los Altos and Los Gatos, on the other hand, to be integrated with existing operations. Applicant's delivery trucks operating out of its Palo Alto terminal now skirt Los Altos along El Camino Real, but do not serve the central business district of that community located about 1-1/2 miles west of the highway. Service within the city limits of Los Gatos is now forbidden (46CRC243, 244), although applicant's trucks pass through the town frequently and serve points in the immediate vicinity.

Applicant's general manager described the proposed method of operation. Traffic from East Bay points and San Francisco destined to Los Altos and Los Gatos would be brought to Highway's outbound terminal in San Francisco and loaded on linehaul trucks for movement the same night on present schedules. Los Altos loadings would be dropped at the Palo Alto terminal for delivery the following morning by a small delivery truck leaving the terminal at 8:00 o'clock. Los Gatos freight would be moved to the San Jose terminal in linehaul units and there transferred to a delivery truck which leaves at 7:30 a.m. five days a week for Campbell (an intermediate point about five miles north of Los Gatos), but which would go on in to Los Gatos if

(2) An in lieu certificate, covering all operative rights except those acquired by Decisions 35161 and 35912, was issued in 1945. (Dec. 38466, Dec. 10, 1945, App. 24476 - 46CRC243.)

the application were granted. That truck now makes deliveries once or twice a week to nearby points beyond Los Gatos along State Highway 17. If the application were granted, it was stated, heavy shipments for Los Gatos might occasionally be loaded at San Francisco in linehaul units carrying Santa Cruz freight. In such cases, the delivery would be made directly from the linehaul truck outbound to Santa Cruz via Los Gatos, or on the backhaul from Santa Cruz through Los Gatos⁽³⁾ where the outbound trip was made over the more level Valley route.

It was shown that applicant now has available adequate terminal facilities, trucks and other equipment and that no further investment would be required for the proposed operation. The only additional mileage to be incurred would be that between El Camino Real and the central part of Los Altos, and that occasioned by more frequent runs beyond Campbell to Los Gatos. No changes in linehaul schedules are contemplated, as deliveries will normally be made from terminals in small trucks. The bulk of the traffic is expected to originate at East Bay points and San Francisco, with perhaps an appreciable volume from San Jose and some from other points on applicant's lines.

Applicant submitted a balance sheet as of May 31, 1947, and a profit and loss statement for the five months ending on that date. The balance sheet indicates total assets of \$307,300.45 and total capital of \$54,777.02. During the period mentioned, the operating revenue aggregated \$412,466.60, and the net profit, after

(3) Applicant's general manager testified that the routing of Los Gatos area freight in large trucks running to Santa Cruz via Los Gatos, would be "a very, very rare operation," but that occasionally such freight might be backhauled from Santa Cruz. (Tr. P. 220.) The normal procedure, he said, would be to deliver by the small truck from San Jose.

taxes and other deductions, was shown as \$1,616.88. To this was added net additional income of \$8,966.71, derived by Canton Transbay Express, Inc., through its joint-rate concurrence with applicant, giving a total combined net profit of \$10,583.59 for the five-month period. Equipment owned and operated by applicant is stated to consist of 36 trucks, 24 truck tractors, 39 semi-trailers, 17 full trailers, and 10 dollies. Protestants questioned some of the items in the financial statements, but we believe their objections are unfounded. In our judgment, applicant appears to be financially qualified to conduct the proposed operation, if it were established. We next turn to a consideration of public testimony in support of the proposal.

Six consignors and fourteen consignees of less-than-truck-load general commodity freight testified in favor of the proposed service. (4) A representative of the Los Altos Business Men's Association, numbering about 42 members, introduced a resolution of that body endorsing the application. The six San Francisco shippers were primarily concerned with getting an overnight service to Los Altos and Los Gatos. All voiced dissatisfaction with the pickup service rendered by Intercity in San Francisco, stating it was either

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- (4) San Francisco witnesses represented the following concerns: A warehouse, shipping general commodities; a distributor of electrical and home appliances; a forwarding firm, shipping general commodities; a coffee and spice distributor; a shoe polish distributor; an electrical copper wire manufacturer and distributor. Los Altos witnesses included representatives of concerns dealing in the following commodities: plumbing supplies, radios and household appliances; druggist supplies; auto parts; furniture and household appliances; ice cream; paint cleaner supplies. Los Gatos witnesses included: two automobile dealers; a druggist; two home appliance dealers; an automobile supply firm; a hardware dealer.

(5)
unpredictable or subject to delays ranging from one to three days. The San Francisco witnesses also stated that they now used Highway's service for shipments to other points on the carrier's system, and that the service to those points, both as regards pickups and time in transit, was satisfactory.

Receivers of freight at Los Altos and Los Gatos, testifying on behalf of applicant, voiced general dissatisfaction with existing service of Intercity, Southern Pacific, and Railway Express on shipments originating at San Francisco, Oakland and San Jose. The chief cause of complaint revolved around late deliveries by Intercity from San Francisco, and the uncertainty of delivery times of the other carriers from all origin points mentioned. The delays and uncertainties experienced by a number of witnesses had resulted, they said, in their being compelled to use their own cars to transport emergency shipments. Also, in cases where store-door service was not furnished by certain carriers, private autos had to be used to pick up freight from the carriers' nearest terminals. Where shipments consisted of replacements of stock items, however, the witnesses did not appear to evidence much concern for an expedited service, and seemed to be generally satisfied with existing conditions. The testimony of these witnesses, however, considered as a whole, establishes the fact that the service proposed by applicant would be both necessary and convenient, and would be used. We next turn to a consideration of the showing on behalf of protestants.

Intercity Transport Lines, an express corporation, now

(5) No records appear to have been kept by these concerns relating to the actual time of pickups.

conducts a transportation service between the places served and proposed to be served by applicant which are pertinent to this proceeding. Between San Francisco and San Jose, Intercity employs Merchants Express Corporation as underlying carrier. Between San Jose and Los Gatos the underlying transportation is conducted by Pioneer Express Company, an associated highway common carrier under the same management as Intercity. In the performance of the underlying service between San Francisco and San Jose, Merchants utilizes trucks leased by it from Pioneer. Traffic from East Bay points destined to Los Gatos and Los Altos is brought by transbay carriers to Intercity's San Francisco dock. San Francisco traffic for the two communities is picked up by Intercity's pickup trucks and is also brought to the San Francisco terminal. Los Gatos loadings are transported to San Jose and there transferred to Pioneer at the dock used jointly by Merchants and Intercity. Los Altos shipments are dropped by Merchants on the backhaul from San Jose to San Francisco. The service from East Bay origins to Los Gatos Division destinations, including Los Gatos, Campbell, Saratoga and Cupertino, normally takes two days, it was stated.

Intercity produced an exhibit the purpose of which was to show a minimum and maximum possible allocation of daily revenue from traffic handled on twenty-two days in July, 1947, between San Francisco and San Jose, and between the latter point and Los Gatos. Protestant's traffic manager described the formula employed in arriving at the allocations used, and stated that a fair revenue to be allocated for the operations would be the mean of the maximum daily figure of \$31.68 and the minimum daily sum of \$12.68, or \$22.13. If Intercity were to lose a substantial portion of its traffic on its Los Gatos Division to a competing service, the witness stated, operations on that division could not be conducted at a profit.

Protestant also introduced an exhibit showing shipments, amounting to about 6 tons, handled by Intercity during July, 1947, for applicant's Los Gatos patrons who had previously testified. Aside from traffic handled over weekends or holidays, the exhibit indicates that, with one exception, the shipments were accorded delivery the day following the date shown on the freight bills. The exhibit, however, does not show, nor did protestant otherwise establish, the actual time of delivery of the shipments listed. Another exhibit, listing representative shipments handled by Intercity during the first two weeks in July, 1947, from San Francisco and San Jose to various consignees in Los Gatos, shows consistent next-day deliveries and even a few made the same day. The exhibit was prepared by Intercity's San Jose agent, it was stated, under instructions to secure a fair picture of the operations conducted in the territory involved. Actual time of delivery, however, is not indicated by the exhibit, nor was that fact otherwise established for the shipments listed.

Protestant called four consignees at Los Gatos, who testified that the service they were getting from Intercity and other carriers was sufficient for their needs. On analysis, however, their testimony indicates that in no case was overnight service from Oakland a matter of importance to them, nor was such service from San Francisco considered vital on shipments of stock replacements. Three of the four testified that they used parcel post for rush shipments of small items. One stated that while he formerly paid freight charges, he no longer did so, and that his merchandise arrived via Southern Pacific, Railway Express and Pacific Greyhound

(6)

Lines, in addition to the facilities of Intercity:

The record indicates a public need for the establishment of the proposed service. Whether protestant's fears concerning possible diversion of traffic to Highway are likely to be realized is, of course, a matter of speculation. At any rate, there is nothing in the evidence to suggest that Intercity's patrons who are now satisfied with its service would switch to Highway. Moreover, the evidence is uncontradicted that an overnight service from East Bay points, with early morning delivery, as here proposed, would satisfy a need felt by both Los Altos and Los Gatos business men. Intercity does not now normally render such a service.

Upon full consideration of the evidence in this proceeding, it is found as a fact that public convenience and necessity require the establishment and operation of the highway common carrier service proposed herein. The application, therefore, will be granted.

Highway now possesses operative authority between San Francisco and San Jose, and intermediate points, and between San Jose and Santa Cruz, and various intermediate points. The grant of additional authority herein may be accomplished by amending the Commission's previous order in Decision No. 38466, so as to remove the restriction therein against service to Los Gatos, and by adding Los Altos as an intermediate point to be served between San Francisco and San Jose.

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- (6) Of the four public witnesses who testified on behalf of protestants, two were druggists, one was a sport shop proprietor, and one was in the paint and wallpaper business. In addition, counsel for applicant and protestants stipulated that eight other Los Gatos witnesses, if called by protestants, would testify substantially the same as those called. Businesses represented by the eight included: a plumbing and heating firm, a shoe store, a repair shop, an upholsterer, an electrical appliance store, a bakery, the Los Gatos Novitiate, and a pharmacy.

O R D E R

Public hearings having been held on the above-entitled and numbered application, evidence having been received, the matter having been submitted, the Commission being fully advised, and it having been found that public convenience and necessity require the establishment and operation by applicant of service as a highway common carrier, as defined by Section 2-3/4 of the Public Utilities Act, from all points on its lines to the communities of Los Altos and Los Gatos, in Santa Clara County; therefore,

IT IS ORDERED:

(1) That Decision No. 38466, issued December 10, 1945, in Application No. 24476, be and it is hereby amended as follows:

- a. By adding the point "Los Altos" to the list of points to be served appearing in the first sentence of ordering paragraph (1) of said decision.
- b. By deleting subparagraph (a) of ordering paragraph (2) of said decision, reading as follows: "No service may be performed to or from Los Gatos."
- c. By adding the following route description to those now contained in subparagraph 3 of ordering paragraph (4) of said decision immediately following the present description of the route between San Francisco and San Jose:

"To or from Los Altos and Los Gatos over the main public roads diverting from El Camino Real at or near Palo Alto, Mountain View, Sunnyvale, Santa Clara, or San Jose."

In all other respects, said Decision No. 38466 shall be and remain in full force and effect.

(2) That in providing service pursuant to the authority herein granted, the following service regulations shall be complied with:

- a. Applicant shall file a written acceptance of the authority herein granted within a period of not to exceed thirty (30) days from the effective date hereof.
- b. Within 60 days from the effective date hereof and on not less than 1 days's notice to the Commission and the public, applicant shall establish the service herein authorized and 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, appropriate tariffs and time tables.

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

Dated at San Francisco, California, this 19th day of November, 1947.

Harold P. Kula

Isaac P. Russell

B. F. Dintelman

COMMISSIONERS