

ORIGINAL

Decision No. 42405

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
FORTIER TRANSPORTATION COMPANY, a)
corporation, for a certificate of)
public convenience and necessity as)
a highway common carrier.)

Application No. 27278

- BEROL & HANDLER, by EDWARD M. BEROL, and ORVILLE A. SCHULENBERG, for applicant.
- DOUGLAS BROOKMAN, for California Motor Express, Ltd., protestant.
- GORDON & KNAPP, by SANFORD A. WAUGH, for Pacific Freight Lines and Pacific Freight Lines Express, protestants.
- ROBERT W. WALKER and WILLIAM F. BROOKS and ALLAN P. MATTHEW and ROLAND J. HENNING, for Santa Fe Transportation Company and The Atchison, Topeka & Santa Fe Railway Company, protestants.
- PHIL JACOBSON, for Western Truck Lines, HENRY J. BISCHOFF, for Southern California Freight Lines, and LAFAYETTE J. SMALLSPACE, for Millie Transportation Company, all protestants, by SCOTT ELDER.

O P I N I O N

In this amended application, Fortier Transportation Company requests authority to transport property as a highway common carrier (a) between San Francisco, South San Francisco, Oakland, Alameda, Albany, Berkeley, Emeryville and Piedmont, on the one hand, and points between Chowchilla and Famoso, both inclusive, on the other hand; (b) between Los Angeles territory, on the one hand, and points between Famoso and Chowchilla, both inclusive, on the other hand; (c) between San Francisco Bay points, on the one hand, and Los Banos and Maricopa, both points inclusive, on the other hand; and (d) between Los Angeles territory, on the

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- (1) These points will hereafter be referred to as the San Francisco Bay points.
 - (2) The area included in the term "Los Angeles territory" is defined in Highway Carriers' Tariff No. 2.

one hand, and between Maricopa and Los Banos, both points inclusive, on the other hand.

The applicant proposes to limit its service to the transportation of shipments of not less than 5,000 pounds, or shipments which shall carry a charge no lower than that applicable to shipments of not less than 5,000 pounds. Service in the area along U. S. Highway 99, and the "East" and "West loops", as described, will be daily, except Sundays and holidays. Points on State Highway 33 will be served three times per week. Time schedules are set forth in Exhibit No. 12 and indicate an overnight service between San Francisco and Fresno, and between Los Angeles and Fresno, with local schedules serving points on State Highway 33, and on the so-called east and west loops, including intermediate points. Service is proposed to all points and places laterally within five miles of the highways above named, within the proposed service area.

Public hearings were held before Examiner Gannon in San Francisco on February 24 and 25, in Fresno on April 14, 15 and 16, and July 15, and in Los Angeles on June 14, 15, 16 and 17, all in the year 1948.

Appearances were entered by a number of common carriers but only Pacific Freight Lines, and its affiliate, Pacific Freight Lines Express, participated in the proceedings until submission. Wherever, therefore, the term "protestants" is used in this opinion, the reference is to Pacific Freight Lines and Pacific Freight Lines Express. Written waivers of protest are on file from California Motor Express, Ltd., Southern Pacific Company, Pacific Motor Trucking Company, Valley Express Co. and Valley Motor Lines, Inc.

For some years last past applicant has been engaged in

the transportation of property under contract and radial highway common carrier permits from this Commission. As of the dates of the hearings it maintained terminals at Fresno, Bakersfield, Los Angeles, San Francisco, Richmond and Oakland. It operates 408 pieces of equipment, 392 units of which are company-owned. In addition to these units, it had on order \$120,000 worth of equipment. Its operations are generally throughout the San Joaquin Valley, chiefly from Fresno to the Bay Area and to the Los Angeles Area.

Applicant's General Manager testified that he had received numerous requests from shippers throughout the Valley who used his service but desired a certificated service as being more responsive to their needs. He stated that wherever in this application authority is requested to provide a common carrier service, there will be no utilization of any other type of service, i.e., under contract or radial permits. The reason for the 5,000 pound limitation, as explained by this witness, is because of the fact that applicant has no desire to extend the proposed service into the less-than-carload field, which is now adequately covered by other carriers. The witness stated that applicant would decline to accept shipments destined to San Francisco from Los Angeles, or in the reverse direction.

Approximately 90 witnesses were called and testified, 65 for the applicant and 26 for the protestant. It was stipulated that eleven additional applicant-witnesses, if called, would testify on direct and cross-examination substantially as other witnesses from their respective communities.

It would serve no useful purpose to dwell too minutely

on the individual testimony of all witnesses appearing for either applicant or protestant. It should suffice to set out a cross section of such testimony as it affects the various communities proposed to be served.

Nine witnesses dealing mostly in heavy and bulky commodities testified for applicant at San Francisco to the general effect that in many instances existing carriers refuse to pick up large shipments, or shipments of bulky commodities, and that applicant's service was the only one upon which they could rely.

Thirty-four witnesses testified at Fresno, some of whom were in business in communities other than Fresno. The commodities shipped included heavy hardware, farm and plumbing supplies, steel fabrications, mechanical equipment of one kind or another, and oil well supplies. The existing transportation facilities were entirely inadequate and the equipment of existing carriers was not adapted to the movement of heavy or cumbersome commodities. Service was slow by rail as well as trucks, in some instances requiring from five to seven days for delivery. Pacific Freight Lines' service was unsatisfactory and many of the witnesses testified that they were put to the necessity of using their own trucks. Shipments of 5,000 pounds or more were frequent, and these particularly were subject to long delays in pick-up and delivery. There was manifest a pronounced criticism of protestants' lack of reasonable promptness in settling damage claims. These witnesses preferred a common carrier service, but in the absence of such service were disposed to use a permitted service. In several instances applicant's witnesses testified that they had instructed their shipping departments to discontinue giving further shipments to Pacific Freight Lines because of complaints of slow service made by dealers.

Applicant produced 21 witnesses at Los Angeles, whose testimony is largely of a cumulative nature. Delivery is slow and shippers have been forced to use their own equipment in emergency cases. On large shipments they use the service of applicant. From 50 to 90 per cent of their shipments are over 5,000 pounds. A witness for the Cudahy Packing Company testified that his company makes shipments to Fresno of 100,000 pounds per week. He uses the Fortier service to Fresno.

J. J. Deuel testified on behalf of applicant at Los Angeles. The witness is engaged in farming and is also director of the Public Utilities Department of the California Farm Bureau Federation. The Federation is an institution of 50 counties and farm bureaus with over 50,000 members, some 10,000 of whom reside in the area with which this application deals. He is clothed with general authority to speak for the Federation in public utilities matters before the Commission, and has done so for over 20 years. He stated it was his opinion that there are not one-tenth enough certificated carriers operating in California to handle the agricultural products of the State. He stated further that over 90 per cent of the transportation of agricultural products in this State is being handled by permitted carriers. He favors perpetuation of common carrier service in the public interest.

Summing up the testimony of applicant-witnesses we find the situation to be as follows: There is a substantial movement of heavy commodities, north and southbound, into the area which applicant proposes to serve; these shipments run between 5,000 and 75,000 pounds daily; that the common carriers now certificated to serve this area do not have the necessary equipment

to handle the heavy type of commodities which constitute the bulk of such shipments; that in many instances a specialized loading and unloading process peculiar to the handling of heavy machinery is required, and is not now made available by existing common carriers; that, as a result of this situation, the common carriers in many instances have refused to accept such shipments, or have delayed pick-up until such time as they had certain pieces of equipment available which would be adaptable to the bulky nature of the commodities; that this has led to either an absolute refusal to handle such shipments or a delay in pick-up and ultimate delivery; that when the common carriers do attempt to pick up these shipments a problem of interchange is presented which leads to a further delay in delivery; that many of the shippers in this area, who now use the Fortier service, desire the permanent assured service that would be afforded the applicant should he acquire common carrier status.

For the purpose of estimating the growth of the San Joaquin Valley, and the San Francisco and Los Angeles areas, a consulting engineer offered testimony on behalf of applicant purporting to show the increase in population, in farm income and retail sales, and other factors indicating the economic development of the area involved. From exhibits filed he deduced that only 19.2 per cent of tonnage moving between Fresno and Los Angeles moves via certificated carriers, 62.6 per cent by permitted carriers, and 18.2 per cent by proprietary carriers. In his opinion the granting of the application would result in an increased use of common carrier service. The tabulations offered by this witness, and his direct testimony, were not challenged by protestant.

Protestant Pacific Freight Lines operates as a certificated

common carrier from the Los Angeles Area north over U. S. Highway 99 to and including Fresno; over State Highway 65 from Famoso to and including Exeter; over State Highway 33 from Maricopa north to and including Coalinga, with the right to serve lateral points up to at least five miles on all of said routes. Protestant has further lateral rights on highways running east and west between U. S. Highway 99 and State Highway 65 from Famoso to Visalia. None of these rights is restricted as to weight or type of commodity hauled. It has interchange arrangement with Valley Motor Lines effecting all points in the San Joaquin Valley with which this application is concerned.

The protestants' case rests primarily on these contentions:

- (a) that applicant is in reality conducting a common carrier service under the guise of a highway contract carrier service;
- (b) that it offers no service not presently available by existing carriers;
- (c) that the 5,000 pound restriction would take only the most desirable part of the tonnage, and
- (d) that the existing service has been shown to be adequate.

In support of these contentions some 26 witnesses were called by protestant at Los Angeles, all of whom testified to the adequacy of Pacific Freight Lines service. They shipped a wide variety of commodities from the Los Angeles area to points proposed to be served by applicant, many of which required interchange between Pacific Freight Lines and other carriers before they could be delivered.

Generally speaking, these witnesses testified that they received overnight service, and there was little if any complaint regarding the settlement of claims by present carriers. They

preferred to give the bulk of their shipments to one carrier rather than have them split up. Most of the witnesses saw no necessity for additional service.

The general manager of Pacific Freight Lines presented a tabulation (Ex. 50) purporting to show that during the month of April, 1948, that carrier, and its affiliate, transported 104 shipments of 5,000 pounds or over per shipment and aggregating 1,094,260 pounds to San Joaquin Valley points such as Fresno, Taft and Tulare. He contended that should this application be granted, and the service authorized, protestant would lose approximately 40 per cent of that tonnage. An analysis of the exhibit does not bear out such a conclusion. Forty per cent of the traffic shown on Exhibit 50 would be 437,700 pounds for the month. During the month of April, 1948, protestant transported approximately 64,632,000 pounds over its entire system (Ex. 48). The anticipated loss of 437,700 pounds as against the total system tonnage is therefore infinitesimal (Tr. 922). It cannot be maintained, therefore, that protestant would be materially injured by the certificating of another carrier.

The witness Russell, Traffic Manager of Sears, Roebuck & Company at Los Angeles, testified that the only carrier his firm could use is one that is not restricted as to weight limitations. So far as the movement from warehouse to retail stores is concerned, that is always in truck-load quantities, according to this witness. He protested the granting of a certificate to applicant on the ground that it "skims the cream of the freight business off the market leaving only a limited portion for the common carrier to handle". However, on cross examination he testified that his Company uses permitted carriers for most of the larger shipments and pays

higher freight rates because they supply service that common carriers cannot give. Tonnage moved into the designated area from Los Angeles is in excess of 500,000 pounds per month, so he testified.

It does not appear from the record in this case that the testimony of protestants' witnesses is sufficient to warrant a denial of the application. On the contrary, there is a clear and affirmative showing that the proposed service is necessary if the transportation facilities of that portion of the San Joaquin Valley are to keep pace with the growth of the area. The testimony of an expert witness of record in this matter is that Kern, Tulare and Fresno Counties, all within the scope of this application, rank with the five highest production counties in the United States. Fresno is the most rapidly growing county in the State, percentage-wise, according to authentic figures, yet it cannot be said from this record that its common carrier transportation facilities are adequate and satisfactory. The granting of the application here prayed for will establish an efficient common carrier service between the Fresno Area and the Los Angeles and San Francisco Bay Areas, and will serve points on the connecting highways.

The sole protestant herein is fearful that the proposed service would impair its own service and deprive it of substantial revenue. We do not believe such a conclusion is warranted. There is no common carrier now in the field maintaining satisfactory service for shipments of over 5,000 pounds. Most of the shippers are concerned chiefly with the transportation of less than carload shipments.

The applicant is financially able to establish and maintain the service proposed. It has ample equipment and modern, well-equipped terminals. It is experienced in the transportation business.

and is prepared to render the proposed service.

Having given full consideration to 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 will therefore be granted.

O R D E R

Application as above entitled having been filed, public hearings having been held thereon, the matter having been submitted, the Commission being fully advised in the premises, and hereby finding that public convenience and necessity so require,

IT IS ORDERED:

(1) That a certificate of public convenience and necessity is hereby granted to Fortier Transportation Company authorizing the establishment and operation of service as a highway common carrier, as defined in Section 2-3/4 of the Public Utilities Act, for the transportation of property (1) between San Francisco, South San Francisco, Oakland, Alameda, Albany, Berkeley, Emeryville and Piedmont, on the one hand, and points between Chowchilla and Famoso, both inclusive, on the other hand; (2) between Los Angeles territory, on the one hand, and points between Famoso and Chowchilla, both inclusive, on the other hand; (3) between San Francisco Bay points, on the one hand, and Los Banos and Maricopa, both points inclusive, on the other hand; and (4) between Los Angeles territory, on the one hand, and between Maricopa and Los Banos, both points inclusive, on the other hand. Service shall be provided to all points laterally within five miles of the highways

traversed on the routes prescribed. The authority hereby granted is subject to the following conditions:

- a. Applicant shall not transport shipments weighing less than 5,000 pounds, or shipments which shall carry a charge lower than that applicable to shipments of not less than 5,000 pounds.
- b. Uncrated furniture, office or store fixtures or equipment, used household goods or personal effects (commodities usually requiring special handling and equipment) shall not be accepted for shipment.
- c. Applicant will not accept for shipment through traffic between terminal points in the San Francisco and Los Angeles Areas, nor shall any such traffic be transported under its permits.

(2) That in providing service pursuant to the certificate herein granted, applicant shall comply with and observe the following service regulations:

- a. Applicant shall file a written acceptance of the certificate herein granted within a period of not to exceed 30 days from the effective date hereof.
- b. Within 60 days from the effective date hereof and on not less than 5 days' 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.
- c. Subject to the authority of this Commission to change or modify them by further order, applicant shall conduct operations pursuant to the certificate herein granted over and along the following routes:

Via U. S. Highways 50 and 99, and via U. S. Highway 101 By-Pass (State Highway 17 as an alternate route), U. S. Highway 101, State Highway 152 and U. S. Highway 99, between San Francisco Bay points and Famoso.

Via the same highways between San Francisco Bay points and Fresno; between Fresno and Famoso, via Sanger, Reedley, Dinuba, Orosi, Visalia, Exeter, Lindsay, Porterville and Famoso.

Via the same highways between San Francisco Bay points and Fresno; between Fresno and Tipton via Riverdale, Lemoore, Corcoran and Tipton; between Tipton and Famoso, via U. S. Highway 99.

Between Los Angeles territory and Chowchilla over U. S. Highway 99.

Between Los Angeles territory and Famoso over U. S. Highway 99; between Famoso and Fresno, via Porterville, Lindsay, Exeter, Visalia, Orosi, Dinuba, Reedley, Sanger and Fresno; between Fresno and Chowchilla over U. S. Highway 99.

Between Los Angeles territory and Tipton over U. S. Highway 99; between Tipton and Fresno via Corcoran, Hanford, Lemoore, Riverdale, and Fresno; between Fresno and Chowchilla over U. S. Highway 99.

Between San Francisco Bay points and Los Banos and Maricopa via San Francisco-Oakland Bay Bridge, State Highway 17, U. S. Highway 50, and State Highway 33.

Over U. S. Highway 99 between Los Angeles territory and the junction of U. S. Highway 99 and State Highway 166; over State Highway 166 between said junction and Maricopa; over State Highway 33 between Maricopa and Los Banos.

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

Dated at San Francisco, California, this 4th day of January, 1949.

R. E. Truitt
Justin F. Calver
James H. Lawrence
Harold Hills
Francis H. Patton
COMMISSIONERS