

Original

Decision No. 42588

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)	
PACIFIC MOTOR TRUCKING COMPANY for a)	
certificate of public convenience and)	
necessity for the transportation of)	Application No. 20685
property by motor truck for other)	1st Supplemental
common carriers between Watsonville)	
Junction and Tres Pinos, and certain)	
intermediate points.)	

WILLIAM MEINHOLD, for applicant.
 GORDON, KNAPP and HENNESSY, by WELMAN C. KNAPP for Bekins Van Lines, Inc., Bekins Van & Storage Company, Lyon Van Lines, Inc., Lyon Van & Storage Company, James Van Lines, and James Van & Storage Company, protestants; and California Moving and Storage Association, interested party.

SUPPLEMENTAL OPINION

Pacific Motor Trucking Company, hereinafter referred to as applicant, was granted a certificate by Decision No. 33819 in the original application in this proceeding, authorizing highway common carrier service between San Jose and Tres Pinos and certain intermediate rail points on the line of Southern Pacific Company including Gilroy and Hollister. Among the restrictions attached to that authority was one limiting the traffic of applicant to that having a prior or subsequent movement by railroad in addition to movement by applicant.

Thereafter the restriction was modified by ex parte Decision No. 41461 to read as follows:

"C. All shipments having either origin or destination at San Francisco, Oakland, Berkeley, Alameda and Emeryville, must receive, in addition to the movement by applicant a prior or subsequent movement by railroad."

Said Decision No. 41461 stated in substance that the effect of the modification of the restriction would enable applicant to perform a local highway common carrier service between San Jose and Tres Pinos and certain intermediate rail points as theretofore certificated by said Decision No. 33819 and amendments thereof without regard to prior or subsequent movement by rail.

Bekins Van Lines, Inc., Lyons Van Lines, Inc., and James Van Lines are highway common carriers engaged in the transportation of used household goods and related articles between San Jose and Tres Pinos and intermediate points via Gilroy and Hollister, as well as between numerous other points in California. Calmay Van Lines, Inc., conducts similar operations between San Jose and Gilroy. These carriers, and California Moving and Storage Association, having among its members highway common carriers of used household goods, jointly petitioned for reopening and reconsideration of said Decision No. 41461⁽¹⁾. The petition asserts as grounds therefor that petitioners had neither waived protest nor been accorded an opportunity to present evidence in opposition to the modification contained in said Decision No. 41461. They contend that applicant should be prohibited from transporting uncrated used household goods and related commodities and request that applicant's operative

(1) Calmay Van Lines, Inc., made no appearance at the hearing. Bekins Van Lines, Inc., Lyons Van Lines, Inc., and James Van Lines will be referred to as Bekins, Lyons and James, respectively, or collectively as protestants.

(2)
authority be appropriately restricted. The petition was not seasonably filed to stay the effective date of the decision. The Commission ordered reopening and reconsideration of said Decision No. 41461 and a public hearing and oral argument was had thereon before Examiner Paul. Oral and documentary evidence was produced by parties of record through operating officials and witnesses only. No shipper-witnesses were called.

Applicant objected to the imposition of the proposed restriction. An operating witness testified that applicant holds itself out to handle all commodities transported by common carriers. Its tariffs provide for the acceptance of household goods for transportation provided such goods are protected in accordance with the packing and crating requirements of the Western Classification. The witness pointed out that under existing Office of Defense Transportation regulations, Southern Pacific Company may not use a box car for transportation of loads weighing less than 20,000 pounds except under certain specified conditions. That

(2) The restrictions proposed by protestants would prevent applicant from transporting:

1. Unrated used household goods, viz.: Household or personal effects commonly used in a household, such as clothing, furniture, furnishings, radios, musical instruments, stoves and refrigerators;
2. Unrated used fixtures and equipment, such as furniture, furnishings, and other appurtenances commonly used in a store, office, museum, institution, hospital, or other establishment;
3. Unrated new household goods, fixtures and equipment as described in Items 1 and 2 above, when not intended for purpose of resale.

As an alternative restriction, protestants suggested the description of used household goods, office and store fixtures and equipment set forth in Item 40-E, Second Revised Page 6 of City Carriers' Tariff No. 3, Highway Carriers' Tariff No. 4, Correction 12, effective March 1, 1948.

company has considerable traffic moving between San Jose and Hollister which often does not meet those minimum requirements. Applicant transports this rail traffic of Southern Pacific Company on the company's billing in substitution of rail service, as well as traffic moving under its own rates and billings between San Jose and Hollister and intermediate rail points via Gilroy. The witness stated that applicant finds itself in possession of items of household furniture or trunks picked up by its truckmen or received from its parent company, on occasion, which are not packed or protected in accordance with effective Western Classification (including exception sheets). These shipments are handled under tariff penalty charges. In such cases applicant would be operating in violation of the proposed restriction if it were applied. Therefore, according to the witness, applicant must have authority to transport all commodities which its parent company is authorized to transport regardless of whether the parent company participates in every haul. The witness stated that applicant does not compete for household goods traffic nor is its service comparable with that offered by those carriers engaged exclusively in transporting uncrated household goods and related commodities. Applicant employs no estimators, packers or personnel especially trained to handle those commodities. Neither does it provide more than a store-door pickup and delivery service.

Through operating witnesses protestants produced evidence describing their facilities, service and operations. These witnesses testified that protestants' operative rights authorize them to provide service between all the points involved in this proceeding. All asserted that they are ready, willing and able to provide service on demand for the transportation of uncrated household goods and

related articles between those points. There was testimony that shipments of 2,000 pounds or more, as a rule, are moved by protestants direct from point of origin to point of destination without interchange or transfer, thus to a great extent reducing damage or loss of goods as well as lessening costs of handling and time in transit. At times shipments of less than 2,000 pounds are moved in the same manner. Bekins' system-wide average weight of shipments was said to be about 1,400 pounds. The witness for Bekins had made no investigation to determine the amount of traffic it had moved between the points involved. He asserted, however, that Bekins had received considerable business from its agent at Gilroy and had delivered traffic in that area, but could not fix the amount or the points served. There was testimony that protestants, as a rule, do not discourage the offer of small shipments but those shipments of less weight than 500 pounds are assessed a higher charge for pick up and for delivery than those of greater weight. One witness stated that shippers often are advised to crate or protect small consignments and ship them by other carriers. Each protestant stated that it had no knowledge that applicant had engaged in transporting uncrated household goods, but was fearful of that possibility and objected to any competition by applicant. They took the position that it is not practicable to mix dry freight with uncrated furniture as the likelihood of damage to the latter would be increased.

On oral argument applicant stated that it and its parent rail carrier endeavored to exclude household goods and related articles if not packed or protected in accordance with their tariffs and the Western Classification. Realizing that at times some of these articles come into their possession unprotected and

require disposition, they have established and do assess penalty tariff charges for transportation which, it was contended, have the effect of discouraging the tender of such shipments. Applicant urged that it acts as a substitute carrier for Southern Pacific Company serving all the points involved except Tres Pinos and argued that if the restriction requested by protestants is imposed, it will in fact be a restriction on the railroad itself which undeniably is authorized to transport any commodity it desires subject to the provisions of the railroad's tariffs and classifications.

Applicant pointed out that on other occasions protestants have made the same request as here, that the Commission has said that while the rail line and its subsidiary truck line do not ordinarily transport uncrated or unpacked household goods, they do on occasions perform such transportation under penalty tariff charges, and that until their tariffs are amended to permit the movement of such traffic the truck carriers of household goods cannot suffer any injury. Applicant contended that protestants have not here shown that they will be subjected to any injury or threat of injury and until that fact is established no restriction should be imposed upon applicant.

Applicant claimed that protestants' request is not for a restriction to prevent it from handling certain commodities, but a restriction to prevent it from handling certain commodities when shipped in a certain condition. Applicant asserts this is analogous to the question presented in the Bradbury Case, (43 C.R.C. 631) wherein the Commission declined to require Bradbury to waive protective packing of fragile articles as that is essentially a matter affecting the rate to be charged and should not be made a part of the operative authority.

Protestants argued that applicant has not shown a public need for the transportation of uncrated and unpacked household goods and related articles and should be denied authority for such transportation until proof of that need is established. They contended that by publishing tariffs and classifications requiring crating or protective packing of these commodities, with tariff penalty charges for transportation when not so protected, applicant is in a position to expand its operative authority at will by publication of tariffs eliminating packing requirements. Applicant would thus be enabled to engage in direct competition with protestants. That possibility imposes a difficult burden upon protestants, so they contended, and requires them to be constantly alert in anticipation of such actions in order to take timely and appropriate steps to protect their operative rights and business.

Where carriers hold unlimited operative rights and establish restrictive tariff rules and regulations applicable to protective packing of shipments, it cannot be said that modification of such rules and regulations will place an undue burden on other carriers in the field. On the contrary it is their obligation to keep themselves informed of actions of potential competitors which they feel might jeopardize their operative rights and business. We see no merit to protestants' contention in that regard.

As pointed out by applicant very few of its certificates contain restrictions of the type protestants here request the Commission to impose even though in numerous other proceedings similar requests were made. In each of the cases cited by applicant the action taken by the Commission was based upon the facts there of record.

Here applicant has produced evidence which shows that occasionally uncrated items of household goods or related articles inadvertently come into its possession either from its rail affiliate or from the public for transportation. The record does not show the size or frequency of such shipments, but the evidence indicates that they are neither large nor of more than occasional frequency. Upon such facts it appears that applicant has shown a public need for the transportation of shipments of household goods and related articles which do not comply with its packing requirements, but are accepted for transportation through inadvertence of applicant's agents or of agents of its connecting carriers instead of being refused. Therefore, after giving due consideration to all the facts and evidence here of record we find that public convenience and necessity require that applicant continue the transportation of these shipments only. Decision No. 41461 will be amended accordingly.

O R D E R

A hearing having been had upon the above entitled first supplemental application and based upon the evidence of record and the conclusions and findings set forth in the preceding opinion,

IT IS ORDERED that the order of Decision No. 41461 is hereby modified by including therein the following limitations:

"Applicant shall not transport shipments of the following commodities:

- "1. Uncrated used household goods, viz.: Household or personal effects commonly used in a household, such as clothing, furniture, furnishings, radios, musical instruments, stoves and refrigerators;
- "2. Uncrated used fixtures and equipment, such as furniture, furnishings, and other appurtenances commonly used in a store, office, museum, institution, hospital or other establishment;

"3. Uncrated new household goods, fixtures and equipment as described in Items 1 and 2 above, when not intended for purpose of resale;

"except occasional shipments accepted for transportation through inadvertence of applicant's agents or of agents of its connecting carriers."

IT IS FURTHER ORDERED that said Decision No. 41461 shall in all other respects remain in full force and effect.

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

Dated at Los Angeles, California, this 8th day of March, 1949.

A. J. [Signature]
Justice J. [Signature]
[Signature]
[Signature]

COMMISSIONERS