

Decision No. 43321

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
GARDEN CITY TRANSPORTATION CO., LTD.,)
a corporation, for a certificate of)
public convenience and necessity to) Application No. 30175
operate as a highway common carrier)
for the transportation of aluminum)
products between Permanente, California,)
and certain other points in California.)

Willard S. Johnson for applicant.
W. A. Gregory for Southern Pacific Company and Pacific Motor
Trucking Company; and Bertram S. Silver and Edward M.
Berol for Highway Transport, Inc., protestants.

O P I N I O N

By this application, Garden City Transportation Co., Ltd., seeks a certificate of public convenience and necessity authorizing operations as a highway common carrier for the transportation of aluminum products, including aluminum foil, between Permanente, on the one hand, and all points and places in San Francisco territory, as defined in Item 270 series of Highway Carriers' Tariff No. 2, on the other hand. In general, San Francisco territory, as defined therein, embraces San Francisco, the industrial and business sections of the East Bay cities and the territory south of San Francisco and Oakland to and including San Jose. Permanente is located about 10 miles west of San Jose.

Public hearings were held before Examiner Bradshaw at San Francisco. Briefs have been filed.

Applicant is a California corporation organized on November 8, 1948. According to the testimony, on January 1, 1949, it took over the business previously carried on since 1935 by another corporation. Intrastate highway carrier operations are

conducted under radial highway common carrier and highway contract carrier permits. Applicant asserts that it possesses limited interstate operative rights as a common carrier for the transportation of specified commodities over regular routes between the San Jose and San Francisco Bay areas and for the transportation of certain other commodities over irregular routes between the same and a number of additional points. It is stated that an application substantially coextensive in scope to that on file in this proceeding is pending before the Interstate Commerce Commission.

Applicant lists as its equipment 31 tractors, 51 flat rack semi-trailers, 4 trucks, 2 trailers, 9 dollies and another semi-trailer of a type not disclosed by the record. It appears that about one-fifth of this equipment is owned by applicant, the balance being available under lease arrangements.

Some shipments of aluminum foil, applicant's secretary-treasurer testified, have been transported by applicant from Permanente in both interstate and intrastate commerce. The intrastate shipments moved to San Francisco for local delivery or were interchanged with other carriers at San Jose for further transportation to Los Angeles. The witness stated that the present movement amounts to 2,000 pounds a week, being about equally divided as between that moving to the San Francisco Bay area and Los Angeles, and represents approximately one shipment a week. Applicant anticipates that in the future the outbound movement of aluminum foil will increase to about 500 tons a month to interstate and intrastate destinations. In this event, daily shipments -- both truckloads and less-truckloads -- are expected.

Applicant's secretary-treasurer testified that closed-van equipment is not adapted to the handling of palletized cargo, in which form some of the aluminum foil is shipped. An on-call service upon one hour's notice is proposed. Truckload shipments would move direct from Permanente to destination. It is proposed to move less-truckload shipments to San Jose for consolidation with other freight, principally canned goods and dried fruit transported under applicant's interstate rights. When requests for service are received during the afternoon applicant proposes to effect deliveries in the Bay area the following morning. In the event that requests are made by 11:00 a.m., deliveries of freight at destination the same day are contemplated. Applicant's witness also testified that, having been requested to do so by Permanente Metals Corporation, it proposes to undertake the establishment of joint intrastate services and rates with other carriers if the certificate herein applied for is granted.

The assistant general traffic manager of Permanente Metals Corporation testified on behalf of applicant. He stated that this concern is engaged in the production of aluminum products, having plants at various locations in the United States, including a sheet aluminum mill at Trentwood, near Spokane, Washington, and an aluminum foil plant at Permanente. The witness testified that the Permanente plant, representing an estimated investment of \$1,500,000, commenced production on March 31, 1949; and that while only 1,000 or 2,000 pounds of foil a day are now being shipped it is expected that the output will be approximately 500 tons a month when the plant is in full production. According to the witness, it is anticipated that about 70 per cent of the production will be marketed in the territory Denver and east thereof; that about 5 per cent will be shipped to other interstate destinations, and that the balance will move

principally to the Bay area and Los Angeles.

This witness contended that highway carrier service is essential in the development and conduct of the company's business. He asserted that, in commencing negotiations for service and rates with truck lines serving the East, he found that such carriers were confronted with the problem of making arrangements with a connecting carrier able to handle the traffic from Permanente. This situation, coupled with applicant's promise to undertake the establishment of through routes and joint rates, the witness testified, prompted Permanente Metals Corporation to support the instant application. He stated that the subject of through service and rates was not discussed with the common carriers now serving Permanente. It was not intimated that these carriers do not, or might not, provide adequate service to the Bay area. The reason for advocating the granting of the application, according to the witness, was that Permanente Metals Corporation desires that applicant be placed in a position whereby it can obtain sufficient traffic to be able to maintain the service it proposes to render in connection with other truck lines operating beyond the Bay area.

The Permanente Metals Corporation does not intend to use applicant's facilities for all of the foil shipments to the Bay area. Its representative asserted that a portion of this traffic will be tendered to the existing common carriers. He further testified that the transportation of foil by carriers equipped to handle it in palletized form was considered desirable. It was stated that foil would be the only aluminum product shipped from Permanente and that there is no prospective inbound intrastate aluminum traffic, the source of aluminum sheet from which foil is processed being Permanente's plant at Trentwood, Washington.

Highway Transport, Inc., Southern Pacific Company and its wholly-owned subsidiary Pacific Motor Trucking Company protested the granting of the application.

The president of Highway Transport, Inc., introduced an exhibit setting forth the facilities and equipment of that carrier. He stated that it operates between Permanente and San Francisco and intermediate points and maintains joint rates to East Bay points in connection with Canton Transbay Express, Inc. According to this witness, Permanente is served by one or more trucks every day, except Saturdays and Sundays, deliveries of freight being effected at about 10:00 a.m. the day after shipment from points in the Bay area. He asserted that there is ample space on the trucks operating in the general territory, as well as those making deliveries at Permanente, to handle outbound shipments from Permanente; that the carrier has solicited the aluminum foil traffic, but has not been tendered any shipments as yet; and that open-type equipment is available for transporting foil in palletized form.

Highway Transport's president further testified that in 1947 the subject of establishing joint rates with the transcontinental carrier with which Permanente Metals Corporation negotiated service and rate arrangements was under consideration; that joint rates were not established at that time because an agreement could not be reached concerning the proportion of the revenue which would accrue to Highway Transport; and that a week before the hearings in this proceeding were concluded an understanding was reached concerning the division of joint rates among the interested carriers and such rates are being published.

Pacific Motor Trucking Company's superintendent having

jurisdiction over operations in the Bay area described the facilities and equipment operated by that carrier and by its contract drayman at San Francisco. Shipments from San Francisco and the East Bay cities, according to the testimony, after being picked up by trucking equipment usually move in rail cars from San Francisco and Oakland to San Jose, from which point they are distributed by truck to destinations in the surrounding territory, including Permanente. The witness declared that service is rendered daily, except Saturdays and Sundays, and that shipments ordinarily arrive at Permanente at 1:30 p.m. on the day after shipment. He testified that when truckloads are tendered at San Francisco they are transported direct to Permanente by truck.

Freight from Permanente, the Pacific Motor Trucking Company witness said, is picked up by trucks which deliver the inbound shipments, unless special service is requested, and moves in the same manner as freight transported in the opposite direction. It was asserted that ordinarily overnight service is rendered; that open equipment is available, if needed; and that this carrier is able to handle additional outbound traffic from Permanente and furnish more schedules, if requested to do so.

On brief, applicant contends that all of the elements of highway common carriage, as distinguished from contract carriage, are present in its proposed service even though a single consignor now constitutes the entire shipping public to be served. It asserts that some of the traffic will move with freight charges collect; that there may in the future be many shippers who will be interested in the service; and that the Commission in certain cases has taken the position that persons who pay the transportation charges are to be regarded as the "shippers" of the merchandise. In urging

that public convenience and necessity require the establishment of the proposed service, applicant argues that there is now available only one independent highway common carrier, the operations of the other existing highway common carrier constituting "an ancillary arm of Southern Pacific Company"; that the Permanente Metals Corporation desires additional competitive highway common carrier facilities for the distribution of its product; and that applicant now serves Permanente as an interstate common carrier and is fit, willing and able to perform the proposed service.

Protestants in their brief characterize the proposed service as a specialized one (to be used by a single shipper) which will not constitute a common carrier operation. They contend that for this reason a sufficient legal basis to grant common carrier rights does not exist. The evidence, protestants also assert, does not warrant the entry of an additional common carrier in the territory involved, because the available intrastate traffic is small and the testimony of record concerning the interstate traffic of Permanente Metals Corporation is irrelevant when determining public convenience and necessity for intrastate authority. Protestants further argue that the evidence discloses that the existing common carriers serving Permanente are providing adequate service, and that they are ready, willing and able to do so in the future with respect to all contemplated shipments of aluminum products from Permanente.

The question presented for determination in this proceeding is not whether additional common carrier service is necessary or desirable to move the traffic which applicant seeks authority to haul. The alleged justification for granting a certificate of public convenience and necessity is that, applicant having undertaken to cooperate in perfecting arrangements with other carriers for

through transportation beyond the territorial scope of the application, the originator of the traffic desires to avail itself of applicant's service as a common carrier in serving the San Francisco Bay area. As hereinabove indicated, the primary objective is that applicant be accorded access to enough business so that in the future it will be in a position to comply with commitments made respecting traffic not involved in this proceeding.

Protestants claim that the showing made with respect to transportation from and to points not embraced in the application is irrelevant. With this contention, we do not agree. In the instant case, the situation presented relates to problems entering into the successful operation of an important industry in this State. In our opinion, the Commission may consider such an industry's over-all transportation requirements in deciding whether public convenience and necessity require a proposed operation.

However, the record herein discloses that Highway Transport, Inc., has agreed to become a party to through routes and joint rates with the transeontinental carrier with which the Permanente Metals Corporation negotiated arrangements considered necessary in the marketing of its product. Whether the carrier was dilatory in taking such action appears to be immaterial and in any event is not a matter upon which this Commission is in a position to express an opinion. It, therefore, appears from the evidence that whatever justification may have existed for the granting of a certificate of public convenience and necessity at the time the application was filed has since disappeared.

In view of our conclusions herein, it will not be necessary to consider the contentions of the parties concerning whether applicant's proposed operations would constitute common or

contract carriage.

After careful consideration of all of the facts and circumstances of record, the Commission is of the opinion and finds that a sufficient showing of a demand or justification for authorizing an additional highway common carrier operation for the transportation of aluminum products between Permanente and the San Francisco Bay area has not been presented. An order will, therefore, be entered denying the application.

O R D E R

Public hearings having been had in the above-entitled proceeding, and the Commission having carefully considered the evidence presented and the briefs filed by applicant and protestants,

IT IS ORDERED that the application on file herein be and it is hereby denied.

This order shall become effective 20 days after the date hereof.

Dated at Los Angeles, California, this
20th day of September, 1949.

R. E. Anderson
Justus J. Casper
Ernest L. Dadd
Harold P. Huls
Herbert L. Potter
Commissioners