

ORIGINAL

Decision No. 43732

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
STERLING TRANSIT CO., a co-partnership,)
consisting of Orin Thorkildsen and)
Doris N. Thorkildsen; and Doris N.)
Thorkildsen, dba SOUTHERN EXPRESS,)
for certificates of public convenience)
and necessity as highway common)
carriers between San Francisco Bay)
Area and Los Angeles Area and)
between Los Angeles Area and San Diego)
Area, respectively; and for approval)
of the establishment of through routes,)
rates and service.)

Application No. 27302

Spurgeon Avakian for applicant.
Donald Murchison for Pacific Freight Lines and
Pacific Freight Lines Express; and W. A. Steigor
for Southern California Freight Lines and Southern
California Freight Forwarders, protestants.

SUPPLEMENTAL OPINION

By Decision No. 43003, dated June 14, 1949, in this proceeding and various others which were consolidated therewith, Sterling Transit Company, Inc., hereinafter called applicant, was granted a certificate of public convenience and necessity authorizing operations as a highway common carrier between the San Francisco Bay area and Los Angeles territory, between the San Francisco Bay area and the San Diego area and between Los Angeles territory and the San Diego area. The certificate authorized the transportation of general commodities, with certain exceptions including plate glass. By petition, filed November 9, 1949, applicant seeks an order removing the restriction against the transportation of this commodity. A hearing was held before Examiner Bradshaw at Los Angeles.

During the proceedings upon applicant's application for a certificate and those of numerous others seeking similar authority the Commission asked that the parties indicate the commodities they did

not desire to transport. Pursuant to this request, a statement signed by the attorney who then represented applicant was filed, setting forth such information. Plate glass was included among the excepted commodities and accordingly it was excluded from the articles which applicant was authorized by its certificate to transport as a highway common carrier.

At the hearing upon the petition, applicant's vice president, in charge of its northern California operations, testified that he attended conferences with the attorneys who previously represented applicant; that he does not recall having had any discussion with the attorneys or applicant's president concerning plate glass; and that he was unable to state why applicant would have wanted to exclude this commodity from those it was seeking authority to haul. The witness stated that he was not aware that authority to transport plate glass had been excluded until a copy of Decision No. 43003 was received. According to the witness, plate glass is not subject to different transportation conditions than other glass and numerous commodities, such as radios, television sets and telephone switchboard parts, and although care is required in its transportation, plate glass is less subject to damage than other types of glass.

Applicant's president gave similar testimony. He also declared that applicant has been transporting plate glass for a considerable time. The exclusion of the right to haul this commodity, this witness asserted, frequently creates a hardship upon shippers desirous of using applicant's service, because plate glass is often included in mixed shipments with other glass and when forced to make separate shipments they cannot take advantage of lower rates applying on consignments of heavier weights.

Southern California Freight Lines, Pacific Freight Lines and their affiliated express corporations opposed the granting of the

petition. They contended that action upon the petition should be withheld until proceedings now pending in the Supreme Court, in which the validity of Decision No. 43003 is at issue, have been disposed of. It is also asserted that no showing of public convenience and necessity has been made which would justify according to applicant the relief it is seeking.

It seems evident from the record that authority to transport plate glass was excluded from the certificate as a result of a mistake or inadvertence on applicant's part. Under the circumstances, there does not appear to be any sound justification for withholding remedial action until the present court proceedings have been terminated. We also disagree with protestants' view that the removal of the restriction is not supported by a showing of public convenience and necessity. In our opinion, the record developed at the former hearings contains ample evidence upon this subject. There does not appear to be any question that if a willingness to exclude plate glass had not been indicated to the Commission authority to transport this commodity would have been included in the certificate.

In view of all of the facts and circumstances of record, the Commission is of the opinion and finds that public convenience and necessity require that the operating authority heretofore granted to applicant be modified to permit the transportation of plate glass.

SUPPLEMENTAL ORDER

Applicant having sought a modification of the decision previously rendered herein, a public hearing having been had, and the Commission having found that public convenience and necessity so require,

IT IS ORDERED that subparagraph (j), paragraph (1), of the order contained in Decision No. 43003, dated June 14, 1949, be and it

is hereby amended by striking therefrom the following exception:

(11) Plate glass.

The effective date of this supplemental order shall be twenty (20) days after the date hereof.

Dated at San Francisco, California, this 24th day of January, 1950.

R. E. Anderson
James J. Cooney
Harold Hill
Herbert Patten
 COMMISSIONERS