

ORIGINAL

Decision No. 43739

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application)	
of ALFRED B. JOBS, WILLIAM J.)	
BALTHAZAR and OTTO B. GALL (Safe)	Application No. 30006
Transportation Co.) for a certifi-)	
cate of public convenience and)	
<u>necessity.</u>)	

Marquam C. George, for applicant.
F. W. Turcotte, for Furniture Fast Freight,
 protestant.
Omar E. Pullen, Traffic Manager, for Retail Furniture
 Association of California, protestant.
Fay F. Morgan, General Traffic Manager, for Furniture
 Manufacturers Association, Inc., protestant.

O P I N I O N

By this application, as amended at the hearing, Alfred B. Jobs, William J. Balthazar and Otto B. Gall, a copartnership⁽¹⁾ doing business as Safe Transportation Co. with headquarters in Oakland, request a certificate of public convenience and necessity authorizing transportation, as a highway common carrier, of new, uncrated furniture, furniture parts, lamps and parts thereof. The service will be restricted to such items moving between furniture manufacturers and dealers, and between dealers, located in the San Francisco Bay area and within the territory bounded generally by Napa and Sacramento, on the north, and Modesto and Monterey Peninsula points on the east and south, with intermediate service between, and within a five-mile radius of, all points and places and along some 22 routes described in the application. An on-call service only is proposed.

The application was submitted following public hearings held before Examiner Gregory at Oakland on May 23 and 24, 1949, and at

(1) The operation is now conducted under radial, contract and city carrier permits.

San Francisco on May 25 and September 13, 1949. Granting of the certificate was opposed by Furniture Fast Freight, a corporation, and by representatives of the Retail Furniture Association of California and the Furniture Manufacturers Association, Inc. Evidence in support of the application was received from the two operating partners, Jobs and Balthazar, from a traffic counsellor who presented an outline of a proposed tariff, and from 14 owners or representatives of furniture manufacturing establishments located in San Francisco and the East Bay area. Testimony of representatives of five other furniture manufacturing concerns was received pursuant to a stipulation entered into at the hearing between counsel for applicant and for the several protestants. ⁽²⁾ The showing made by protestants was presented by Melvin A. Pixley, president of Furniture Fast Freight, and by the two trade association representatives.

The record establishes that Jobs, who has a 60 per cent interest in the partnership, has been engaged in transportation activities in the movement of furniture since 1941. That year, in partnership with Gall, owner of Gall Manufacturing Company, of Oakland (by whom Jobs was employed as a shipping clerk), he performed local transportation, with occasional movements to other East Bay points and to San Francisco and the Peninsula, for Gall's company, using one truck and one driver. By 1943 three more trucks had been added and service was being performed for other manufacturers, beside Gall, to such points as Oakland, Berkeley, Richmond, Hayward and San Jose, with occasional trips to Sacramento and Monterey. By the middle of 1946 the operation had been extended to include more frequent trips to Sacramento and service was also afforded to Carmel, Stockton and

(2) F. W. Turcotte, counsel for Furniture Fast Freight, though not appearing formally on behalf of the two trade associations, nevertheless conducted the examination of their representatives at the hearing.

Modesto. The extended service proved unromunerative and it was discontinued after four months of operation. It was resumed on March 1, 1947, at the request of several manufacturers, and, together with the local operations in the Bay Area, is the service which applicants are now rendering and here seek to have certificated.

The operation is conducted with six 1½ ton vans and one 2 ton van from leased terminal and office facilities in Oakland. Some 30 manufacturers of furniture in San Francisco, the East Bay cities, Sacramento and San Jose, as well as dealers at those points and at Stockton, Modesto, Gilroy, Monterey and numerous other places, are accorded service by applicants. Pickups are made on call, and trips are made on a daily basis between the Bay Area communities, from two to four times per week to Sacramento and San Jose, and once or twice a week to such points as Monterey, Gilroy, Stockton and Modesto. About 100 shipments per day are delivered to approximately 80 consignees.

The witnesses who testified in support of the application either owned or had responsible positions with the manufacturing firms whose products they desired to have transported by applicants' facilities. There was no substantial variation in their testimony. Shipments of their products generally move to dealers on a collect basis, with the dealers, in most instances, specifying Safe Transportation Co. as the carrier to be employed. Where the dealer has not specified the transportation agency to be used the manufacturer has selected the carrier, which has generally been Safe Transportation Co. where the shipments are destined to points in the territory served by applicant. As a rule, the manufacturers have little or no storage space; hence, it is necessary that transportation facilities be available promptly to clear the articles off the floor as they are manufactured. The witnesses uniformly testified that they had used, and would continue to use, applicants' service in the territory sought

herein, not only because of its adaptability to their specific needs, but also because pickups were more prompt and deliveries were faster and attended with less damage to shipments than was the case with other highway carriers used, including Furniture Fast Freight, the chief (3) protestant.

The record reveals a rather widespread dissatisfaction with the service of Furniture Fast Freight in the territory sought to be served by applicants. During the war, and also during the period prior to March 1, 1947, when applicants were confining their operation to the Bay Area, most of the manufacturing concerns represented at the hearing used Furniture Fast Freight and other highway carriers, as well as rail facilities, for the longer movements. These manufacturers still use such facilities for shipments outside applicants' proposed area of service, but by far the larger proportion of their shipments within that area have gravitated to applicant since the carrier resumed its long-distance operations in 1947.

In May, 1948, Furniture Fast Freight increased its rates 38%. Following the increase, a number of the dealers requested their manufacturers to find less expensive transportation facilities, with the result that, in some instances, these manufacturers turned to Safe. One witness testified that the rate factor was influential in causing him to turn to cheaper transportation, while another stated that service considerations, rather than rates, prompted the decision to use applicants' facilities.

Whatever reasons may have contributed in the past to the change of carriers it may be inferred that the rate factor, though

(3) One Oakland manufacturer, who had used applicants' service since October, 1948, and who testified in support of the application at the early series of hearings, changed to Furniture Fast Freight in August, 1949. This manufacturer, though shipping collect in the proposed territory, designates the carrier to be used on at least 95% of his shipments.

perhaps of some significance in the period following May, 1948, was not considered by the great majority of witnesses as determinative at the present time, since applicants' proposed rates are generally in the neighborhood of those of Furniture Fast Freight in the territory in which the operations would compete.

The service provided by Furniture Fast Freight in the territory involved herein, and elsewhere in California, was described by the carrier's president, Melvin A. Pixley.

Furniture Fast Freight possesses operative rights as a highway common carrier of uncrated new furniture in territory extending from San Diego to North Sacramento and Napa, via the Coast and Valley routes; to San Bernardino and Redlands; to Porterville, Visalia and Dinuba; and to points on the San Francisco and Monterey peninsulas. In addition to its service to dealers and manufacturers at points along its authorized routes, it also possesses the right to make deliveries of uncrated new furniture to homes, hotels, motels and institutions in the Los Angeles Metropolitan area and in the territory north and east of San Francisco from North Sacramento and Napa to Manteca, including the right to serve within 10 miles laterally of the highways in the northern area. The carrier is also authorized to render service southbound at all points it serves northbound.

Furniture Fast Freight maintains terminals at Berkeley and Los Angeles and has available, though seldom used, rented space at the Southern Pacific Company's warehouse in San Francisco. Shipments originating at or destined to San Francisco Bay area points are handled chiefly at the Berkeley terminal, or, if consisting of full truckloads, are delivered directly from line haul units. Four tractors, seven semi-trailers, six small vans and one pickup truck are used to service traffic originating in the Bay area destined to

points in the Northern California territory. Certain intermediate points along both the Coast and Valley routes are also served by line haul units moving between San Francisco and Los Angeles. According to Pixley, points in the San Francisco Bay area and nearby territory are served from the northern terminal on a minimum schedule of three times per week. During the first six months of 1949, Pixley stated, the automotive equipment stationed in the San Francisco area had a use factor of approximately 50 per cent, while load factors in the territory proposed to be served by applicant ranged from 90 per cent between San Francisco, Napa, Sacramento and Stockton, to "very light" between San Francisco and points in Monterey County.

During the war, and for sometime after, Furniture Fast Freight experienced difficulties in handling civilian traffic due to government demands and shortage of equipment. By the latter part of 1947, however, it had reassembled a fleet of trucks and in 1948 was in a position to provide normal civilian service.

Pixley testified that about 50% of the deliveries made by Furniture Fast Freight in the area proposed to be served by applicant are to private homes, hotels, motels and jobbers, and the balance to retail stores. His position, which was also that taken by the representatives of the two trade associations, was that there was not enough traffic in the area involved herein to support a competing highway common carrier, and that any loss of retail store traffic by Furniture Fast Freight would not only adversely affect its ability to make deliveries to other consignees but would precipitate a "prohibitive" increase in rates. The showing made by protestants, however, was argumentative in nature, and does not afford a basis for making specific findings on the points raised by them.

The applicant in this case is not seeking to transform itself from a private into a public carrier. For many years it has

served a substantial portion of the general public as a common carrier, under a radial permit, and it proposes to continue that service without substantial alteration other than by the publication of a tariff and by the acquisition of specific routes. The case, therefore, does not present the question of entry by a new carrier, with possible disruptive effect, into a delicately balanced transportation network.

In considering whether to issue a certificate in the circumstances shown by this record, we have been impressed by the uncontradicted evidence tending to show a need for close cooperation between shipper and carrier in this highly specialized type of transportation, and by the extent to which applicant, both by its existing service and by that which is offered for the future, is in a position to fill that need. We believe that there is room in the field of certificated highway common carriage for this specialized form of transportation which responds to a more or less local need, as distinguished from the long-distance transportation requirements of particular industries. The fact there is already in the field of such operations an existing highway common carrier rendering both long distance and local service should not deter us from issuing a certificate to another carrier who, though not contemplating such an extensive operation as that of the existing agency, yet is able to show, as applicant has done here, that the proposed service will fill a local need more satisfactorily than the service presently rendered.

We therefore find as a fact that public convenience and necessity require the establishment and operation of service by

applicant as a highway common carrier, as proposed in the instant application. A certificate of public convenience and necessity will be granted.

Alfred B. Jobes, William J. Balthazar and Otto B. Gall, applicants herein, are hereby placed on notice that operative rights, as such, do not constitute a class of property which may be capitalized or used as an element of value in rate-fixing for any amount of money in excess of that originally paid to the State as the consideration for the grant of such rights. Aside from their purely permissive aspect, they extend to the holder a full or partial monopoly of a class of business over a particular route. This monopoly feature may be changed or destroyed at any time by the State, which is not in any respect limited to the number of rights which may be given.

O R D E R

A public hearing having been held in the above entitled and numbered proceeding, evidence having been received and considered, the application having been submitted for decision, the Commission now being fully advised and basing its order upon the findings and conclusions contained in the foregoing opinion,

IT IS ORDERED:

(1) That Alfred B. Jobes, William J. Balthazar and Otto B. Gall, copartners doing business under the fictitious firm name and style of Safe Transportation Co., be and they are hereby granted a certificate of public convenience and necessity authorizing the establishment and operation of service as a highway common carrier, as that term is defined in Section 2 3/4 of the Public Utilities Act, as amended, for the transportation of new uncrated furniture, furniture parts, lamps and parts thereof, moving between furniture manufacturers.

and dealers, and between dealers, between the following points and places and over the following routes:

- (a) Between San Francisco and San Jose via U. S. Highway 101 and U. S. Highway 101 Alternate.
- (b) Between San Jose and Santa Cruz via State Highway 17.
- (c) Between Santa Cruz, Monterey and Carmel via State Highway 1.
- (d) Between Monterey and Salinas via unnumbered County road.
- (e) Between Salinas and Hollister via U. S. Highway 101 and State Highway 156.
- (f) Between Hollister and Gilroy via State Highway 25 and U. S. Highway 101.
- (g) Between Gilroy and San Jose via U. S. Highway 101.
- (h) Between San Jose and Oakland via State Highway 17.
- (i) Between San Francisco and Oakland via San Francisco Bay Bridge.
- (j) Between Oakland and Burlingame via State Highway 17 and San Mateo Bridge.
- (k) Between Oakland and Centerville via State Highway 17.
- (l) Between Centerville and junction of unnumbered County road with U. S. Highway 101, via Dumbarton Toll Bridge and said unnumbered County road.
- (m) Between Oakland and Tracy via U. S. Highway 50.
- (n) Between Tracy and Modesto via U. S. Highway 50 and State Highways 33 and 132.
- (o) Between Tracy and Manteca via U. S. Highway 50 and State Highway 120.
- (p) Between Stockton and Modesto via U. S. Highway 99.
- (q) Between Stockton and Sacramento via U. S. Highways 50 and 99.
- (r) Between Sacramento and Oakland via U. S. Highway 40.
- (s) Between Vallejo and Napa via State Highway 29.
- (t) Between Crockett and Pittsburg via State Highway 24.
- (u) Between Pittsburg and Stockton via State Highway 4.
- (v) Between Oakland and Pittsburg via State Highway 24.

Service may be rendered from, to and between all points and places within a radius of five (5) miles airline distance of all points and places described above and from, to and between said points and points intermediate thereto.

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

- a. Applicants 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, applicants 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 twenty (20) days after the date hereof.

Dated at San Francisco, California, this 24th day of

January, 1950.

A. F. [Signature]
Justus J. Coe
Harold S. Kula
Herbert H. [Signature]
 COMMISSIONERS