

Decision No. 43970

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
HARRY STEWARD, doing business as)
AUTO PURCHASING AGENCY, for a cer-)
tificate to operate an automobile)
truck service as a highway common)
carrier for the transportation of)
automobile parts, etc., between Los)
Angeles and vicinity, on the one)
hand, and Wasco, etc., on the other)
hand.)

Application No. 28417

F. W. Turcotte and J. O. Goldsmith by F. W. Turcotte for
applicant.
Gordon, Knapp & Hennessy by Wyman C. Knapp for Pacific
Freight Lines and Pacific Freight Lines Express;
H. P. Merry for Southern California Freight Lines
and Southern California Freight Forwarders; Preston W.
Davis and W. J. Buckley for United Parcel Service, Inc.,
and Joseph C. Gill for Southern Pacific Company, Pacific
Motor Trucking Company and Pacific Electric Railway
Company, protestants.

OPINION ON REHEARING

By Decision No. 43023, dated June 21, 1949, in this proceeding, Harry Steward, hereinafter called applicant, was granted a certificate of public convenience and necessity, authorizing the establishment and operation of service as a highway common carrier for the transportation of automotive parts and accessories; automotive materials, supplies and tools; automotive gas and diesel engines and parts; and agricultural implements and parts between the Los Angeles metropolitan area known as Zone 1 and El Segundo, on the one hand, and numerous points in the territory extending to Santa Barbara and Wasco on the north; San Bernardino, Colton and Riverside on the east and San Diego and La Mesa on the south. The authority granted was subject to the condition that the aggregate weight of shipments which applicant may accept for transportation on any single day from any one consignor consigned to any one consignee at any one

destination shall not exceed 2,000 pounds.

A petition for rehearing was subsequently filed by certain highway common carriers, railroads and their affiliated express corporations or highway transport companies, which upon the original proceedings protested the granting of a certificate of public convenience and necessity to applicant. The petition alleged (1) that with respect to the weight limitation imposed the evidence did not show that public convenience and necessity required applicant's proposed service on shipments tendered on any one day from any one consignor to any one consignee at any one destination aggregating more than 500 pounds; (2) that the description of the commodities applicant was authorized to transport is more extensive than requested in the application, is ambiguous and uncertain; and (3) that, instead of filing tariffs and time schedules on not less than five days' notice to the Commission and the public, applicant should be required to make such filings on not less than ten days' notice and supply protestants with copies thereof. In an answer to the petition, applicant stated, among other things, that while he does not like the 2,000-pound restriction he is willing to attempt to operate thereunder. Applicant also alleged that the limitation suggested by protestants of 500 pounds would prevent him from conducting a profitable operation. He contended that he should not be granted a certificate which is so circumscribed.

By order, dated September 20, 1949, a rehearing was granted for the limited purpose of receiving evidence and giving further consideration to the (1) condition imposed with respect to the weight limitation of shipments which may be transported under the (2) *the proper description of the commodities embraced in the certificate* and (3) the conditions under which tariffs should be filed. The rehearing was held at Los Angeles before Examiner Bradshaw. *R. M.*

Representatives of four Los Angeles shippers of auto parts and related articles, called as witnesses by applicant, testified that their employers make daily shipments to points applicant has been authorized to serve as a highway common carrier; that frequently the total weight of shipments tendered for transportation on the same day to a single consignee at one destination exceeds 500 pounds and 2,000 pounds; that it is impossible to determine before the close of the business day the weight of the shipments requiring transportation; and that if a weight limitation is placed on the shipments applicant may accept they could not and would not use his service but would endeavor to secure the services of a contract carrier.

One of these witnesses asserted that 85 per cent of his firm's shipments weigh over 500 pounds and that 50 per cent weigh more than 2,000 pounds. An exhibit was submitted listing the shipments made by this shipper over applicant's facilities during October, 1949. According to this document, a total of 117 shipments⁽¹⁾ were made during the month to destinations embraced in this proceeding; 16 shipments, or 13.7 per cent, were over 500 pounds; and 2 shipments, or 1.7 per cent, weighed more than 2,000 pounds.

The other three shipper-witnesses gave similar testimony. One of them stated that shipments over 500 pounds were made about ten times a month and that a shipment of over 2,000 pounds was tendered to applicant approximately once a month. Another asserted that his firm has shipments of over 500 pounds about 30 per cent of the time and that it tenders shipments weighing over 2,000 pounds about twice a month. The third witness declared that approximately one-half of his employer's shipments weigh 500 pounds or over and that about once every week it has a shipment in excess

(1) Throughout this opinion the term "shipment" will be used to designate the aggregate weight of freight tendered for transportation to any one consignee at a single destination on any one day.

of 2,000 pounds. No detailed information was presented in support of these assertions. However, certain exhibits introduced by protestants containing statistics compiled from applicant's records covering shipments transported during March, April and May, 1948, disclose the following facts: One of these shippers had no shipments over 1,500 pounds during this three-month period. Another made two shipments over 1,500 pounds but which in each instance weighed less than 2,000 pounds. The third shipper tendered three shipments of over 1,500 pounds, the weights thereof ranging from 2,400 to 3,800 pounds.

Applicant regards the traffic transported during March, April and May, 1948, as typical of the business he has been rendering as a permitted carrier. An analysis of the number of shipments weighing 500 pounds and over which were transported during this period to or from points on the several routes covered by the certificate granted in this proceeding follows:

Shipments of 500 pounds and under 2,000 pounds:

	<u>March</u>	<u>April</u>	<u>May</u>	<u>Total</u>
San Bernardino Route	20	26	33	79
Santa Barbara Route	29	30	41	100
Bakersfield Route	40	40	29	109
San Diego Route	38	40	39	117
Prepaid Shipments				
All Routes	100	90	82	272
Total	<u>227</u>	<u>226</u>	<u>224</u>	<u>677</u>

Shipments of 2,000 pounds and over:

	<u>March</u>	<u>April</u>	<u>May</u>	<u>Total</u>
San Bernardino Route	1	0	2	3
Santa Barbara Route	5	7	4	16
Bakersfield Route	3	8	3	14
San Diego Route	1	8	4	13
Prepaid Shipments				
All Routes	4	7	5	16
Total	<u>14</u>	<u>30</u>	<u>18</u>	<u>62</u>

Other evidence submitted by applicant concerning the total traffic which moved during the same three months appears in the following tabulation:

<u>Shipments</u>	<u>Number</u>	<u>Total Weight (Pounds)</u>	<u>Revenue</u>
Under 500 pounds	11,960	965,147	#
500 pounds and under 2,000 pounds	677	599,076	\$5,032.00
2,000 pounds and over	62	197,739	1,481.98

Not Stated

According to a profit and loss statement for the same period, applicant's revenues amounted to \$28,527.06, as contrasted with disbursements of \$26,963.05, leaving a profit from freight revenue of \$1,564.01.

It is the practice of shippers, so applicant testified, to commence processing orders in the morning and accumulate shipments during the day as additional orders are received. He stated that for this reason the aggregate weight of shipments tendered by one consignor to any one consignee cannot be ascertained until pick-up trucks arrive at shippers' premises and in some cases not until the freight reaches applicant's dock and has been weighed. The difficulty in complying with a weight restriction, applicant asserted, would be even greater in instances where both morning and afternoon pick-ups are made and different men are engaged in performing the two services.

By arrangement between counsel, protestants were accorded an opportunity to examine the shipping records from which applicant's exhibits were prepared. They submitted several exhibits showing in greater detail the weights of shipments transported by applicant during the three months, already referred to. These data include

a segregation of the shipments weighing from 501 to and including 1,000 pounds, from 1,001 to and including 1,500 pounds, from 1,501 pounds to and including 2,000 pounds and over 2,000 pounds. The shipments which weighed over 1,500 pounds were also separately itemized as to points of destination and as between consignments of automobile parts and agricultural implements and parts thereof.

A summary of the total shipments over 500 pounds, the weight thereof and applicant's revenue therefrom is set forth in the following tabulation:

<u>Shipments</u>	<u>Number</u>	<u>Total Weight (Pounds)</u>	<u>Revenue</u>
501 pounds to and including 1,000 pounds	489	338,869	\$2,934.81
1,001 pounds to and includ- ing 1,500 pounds	135	165,279	1,441.17
1,501 pounds to and includ- ing 2,000 pounds	52	88,614	771.20
Over 2,000 pounds	<u>64</u>	<u>200,294</u>	<u>1,442.57</u>
	740	793,056	\$6,589.75

A break-down of the shipments, by routes, follows.

	<u>ROUTE</u>			
	<u>San Bernardino</u>	<u>Santa Barbara</u>	<u>Bakers- field</u>	<u>San Diego</u>
501 pounds to and including 1,000 pounds	108	121	114	146
1,001 pounds to and includ- ing 1,500 pounds	25	36	31	43
1,501 pounds to and includ- ing 2,000 pounds	14	9	15	14
Over 2,000 pounds	8	16	18	22

According to protestants' computations, five or more shipments weighing from 1,501 to and including 2,000 pounds were received at or shipped from only three of the points applicant has been

authorized to serve; viz: San Bernardino, 9 shipments; Bakersfield, 14 shipments; and San Diego, 13 shipments. Of the shipments over 2,000 pounds, five or more moved to or from five points, via: San Bernardino, 5 shipments; Oxnard, 10 shipments; Ventura, 6 shipments; Bakersfield, 17 shipments; and San Diego, 20 shipments. The shipments in these weight brackets are indicated as having been divided between automobile parts and agricultural implements and parts as follows:

<u>Shipments</u>	<u>Automobile Parts</u>	<u>Agricultural Implements and Parts</u>
1,501 pounds to and including 2,000 pounds	43	7
Over 2,000 pounds	43	22

Protestants urge that the Commission consider the question of weight limitation from the standpoint of the movement of traffic and the requirements at the several communities involved, rather than in the entire territory embraced in this proceeding. They suggest as appropriate, for instance, the fixation of different weight limitations depending upon the destination of shipments. It is argued that protestants' service is adequate for the movement of so-called stock-order shipments and that such traffic does not require the expedited service available by using applicant's facilities. Attention was called to the volume of shipments transported by applicant of less than 500 pounds and to the relatively few shipments of greater weight which moved over his facilities. While conceding that applicant's service meets a need for emergency shipments, the contention is advanced that, if the Commission finds that a showing has been made justifying the transportation by applicant of shipments weighing up to 1,000 pounds, all demands for service would be fulfilled and applicant would be accorded all the authority to which he is entitled upon the evidence of record.

Applicant asserts that our conclusions should be based on practical considerations and the authority granted should be of a nature that there would be a probability, under normal conditions, of making a success of the operation. Having agreed to limit the class of consignees to which he will haul and to eliminate certain commodities from his proposed tariff -- to which reference will be later made herein -- applicant argues that the necessity for a weight limitation has disappeared. It is claimed that the service in the future will be about the same as in the past, although dedicated to the public, and that the carriers transporting general freight will not be injured.

Applicant also directs particular attention to the results of the three-month traffic study. He contends that, based upon the figures presented, operations during the period in question would have yielded a profit of less than \$80 if shipments over 2,000 pounds could not have been handled. Similarly, it is asserted that if the traffic had been restricted to shipments of 500 pounds and less a loss of \$5,000 would have occurred. The expedited service found to be required can not, according to applicant, be continued if the available traffic is so restricted. Finally, it is urged that a weight limitation should not be placed upon applicant's operating authority, because it would deprive the public using his fast, efficient service of rate benefits through tendering shipments in larger quantities.

In making the findings set forth in Decision No. 43023, the Commission considered the importance of a high degree of expedition in the transportation of a substantial amount of the automobile and farm machinery parts traffic and of applicant's ability to provide a faster service upon this traffic than protestants

were actually rendering. We also concluded that there should be available a common carrier which affords the type of service demanded by shippers and consignees and which the existing common carriers did not provide. It was recognized that for the larger shipments of the articles under consideration, and on which time in transit is of less importance, the services of the existing common carriers appeared to be satisfactory. The record, however, was deficient in disclosing reliable information concerning the shipping weights of the traffic under consideration. It, therefore, became necessary to arrive at a weight limitation based upon our judgment in the light of all of the facts and circumstances revealed by the record.

The facts developed during the rehearing are very enlightening as to the traffic involved and have been carefully considered. We are satisfied that a weight limitation in connection with the authority granted is desirable as a safeguard against the extension of service to shipments of a nature which applicant has not heretofore carried. The establishment of different weight limitations depending on the destination of shipments, the routes on which the destinations may be located, or whether the shipments consist of automobile parts or agricultural implement parts, as suggested by protestants, does not appear to be justified. In our opinion, varying restrictions would result in confusion and, if predicated upon the individual shipments included in the three-month traffic check, would fail to afford sufficient flexibility to care for reasonable fluctuations in shipping requirements. Whatever limitation may be selected should, therefore, apply alike to all services included in the certificate already granted in this proceeding.

A weight limitation of 500 pounds, 1,000 pounds or 1,500 pounds would appear to be too restrictive to meet shippers' requirements or permit applicant to conduct the proposed operation. On the other hand, a study of the evidence indicates that the 2,000-pound limitation imposed in our prior decision was correct, considering the volume of traffic and applicant's revenue therefrom. Such a limitation should allow consignees sufficient latitude in availing themselves of applicant's service and permit him to maintain a service responsive to the requirements already found to exist.

The views expressed of record to the effect that a 2,000-pound limitation would not be practicable are not convincing. It is conceivable that consignors may on some occasions be uncertain of the weight of shipments they may desire to tender to applicant on a given day. However, it is noted that the shipments of over 2,000 pounds are relatively few. Moreover, it would appear that, by informing consignees of the restriction and the exercise of care in conducting his purchasing department and pick-up operations, applicant should be able to overcome most of the anticipated difficulties.

We, likewise, do not believe that the 2,000-pound limitation will deprive applicant of revenue necessary to conduct the proposed operation. The revenue and expense figures submitted at the rehearing do not take into consideration increased traffic which will be available to applicant through attaining the status of a highway common carrier. Such increased traffic, applicant estimated during the original hearings, would amount to about 20 per cent on auto parts and 10 per cent on agricultural implements and parts. Furthermore, it does not appear that the statistics include revenues from services performed by applicant's purchasing department which is an integral part of his transportation business.

Upon the facts presented on rehearing, we conclude and find that the 2,000-pound weight limitation to which the certificate heretofore granted was subject is justified. Our previous order with respect to said weight limitation is hereby affirmed.

A stipulation was entered into between applicant and protestants during the rehearing concerning the classes of traffic which should be embraced in applicant's operating authority. It was agreed that the description of the articles as set forth in the certificate need not be changed, provided (a) that such transportation be restricted to shipments consigned to parties engaged in certain types of businesses and (b) that some of the items appearing in applicant's proposed tariff be cancelled or modified. ⁽²⁾ The parties further agreed that in the event the stipulation is approved there would be no occasion for filing tariffs on other than the customary five days' notice to the Commission and the public. In our opinion, the stipulation merits approval. After careful consideration of the entire record, we find that public convenience and necessity require that the prior order in this proceeding should be modified accordingly.

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- (2) According to the stipulation, shipments would be confined to those consigned to automobile machine shops; automobile tool dealers; automobile parts, accessories or supply dealers; automobile garages or repair shops; service stations; automobile body building or repair shops; automobile dealers; automobile upholstering shops; automobile painting shops; automobile tire sales or repair shops; automobile engine or replacement parts rebuilders; automobile wreckers; automobile battery sales or service shops and automotive equipment shops. The revision of the proposed tariff as agreed upon is set forth in the Appendix.

ORDER ON REHEARING

A rehearing having been had in the above-entitled proceeding, the Commission being fully advised in the premises and having found that public convenience and necessity so require,

IT IS ORDERED:

(1) That paragraph (2) of the order contained in Decision No. 43023 in this proceeding be and it is hereby modified and amended to read as follows:

"(2) That the certificate herein granted is subject to the following conditions:

- (a) The aggregate weight of shipments which Harry Steward may accept for transportation on any single day from any one consignor consigned to any one consignee at any one destination shall not exceed 2,000 pounds.
- (b) No shipments may be transported unless consigned to automobile machine shops; automobile tool dealers; automobile parts, accessories or supply dealers; automobile garages or repair shops; service stations; automobile body building or repair shops; automobile dealers; automobile upholstering shops; automobile painting shops; automobile tire sales or repair shops; automobile engine or replacement parts rebuilders; automobile wreckers; automobile battery sales or service shops; or automobile equipment shops."

(2) That paragraph (3) of the order contained in Decision No. 43023 be and it is hereby amended by adding a new subparagraph reading as follows:

"(d) Any tariffs which may be filed pursuant to subparagraph (b) of this paragraph shall be in conformity with the proposed tariff changes set forth in the appendix to the order on rehearing in this proceeding."

(3) That in all other respects the order in Decision No. 43023 shall be in full force and effect.

This order on rehearing shall become effective twenty (20) days after the date hereof.

Dated at San Francisco, California, this 21st day of March, 1950.

R. E. Johnson

Justice J. C. ...

Justice J. C. ...

Harold P. ...

James P. ...

COMMISSIONERS

A P P E N D I XCONTEMPLATED AMENDMENTS TOAPPLICANT'S PROPOSED TARIFF

Page 23: Eliminate "Automobile Parking Indicators or Motors".

Page 24: Eliminate "Carriers, Shipping, Second-hand, empty returning, or when shipped for return paying load by this carrier viz:" and substitute "Carriers, Shipping, second-hand, empty".

Page 25: Eliminate "Containers, Sheet Iron or Steel, (With or without their equipment of Bails, Handles, Covers, Bungs or Nozzles): Barrels, drums or kegs, noibn.; Cans, including jacketed cans, drums, kegs on pails, white lead; Barrels, half barrels, drums, shipping, old (used)".

Page 26: Eliminate "Radio Receiving Sets and Talking Machines combined, television sets or television receiving sets, including necessary equipment of tubes and loud speakers for each set in same or separate packages" and substitute "Automobile Radio Receiving Sets, including necessary equipment of tubes and loud speaker for each set in same or separate packages".

Page 28: Eliminate "Litharge, wet with water".

Page 30: Eliminate "Petroleum or Petroleum Products, Including Compounded Oils or Greases having a Petroleum Base, viz: Compression Oil, Gasoline. Grease. Grease, Lubricating, other than Axle Grease. Lubricating Oil." and substitute "Petroleum or Petroleum Products, other than in bulk, viz: Compounded Oils or Greases having a petroleum base. Grease, Lubricating, other than Axle Grease. Lubricating Oil."