

**ORIGINAL**

Decision No. 44159

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of	)	
SAMUEL A. SHOOTKEVICH and BENEDICT	)	
B. SHOOTKEVICH (STATE TRANSIT) for	)	
a certificate of public convenience	)	
and necessity to operate a truck	)	
service for the transportation of	)	
uncrated new furniture and appliances)	)	Application No. 30748
between Oakland, San Francisco, Rich-	)	
mond, El Cerrito, San Pablo, Albany,	)	
Emeryville, Berkeley, Piedmont,	)	
Alameda, San Leandro, San Lorenzo,	)	
Hayward and intermediate points.	)	

John Felton Turner, for applicant.  
E. H. Hart, for Canton Transbay Express, Inc., East Bay Drayage and Warehouse Co., Haslett Warehouse Company, Inter-Urban Express Corporation, Kellogg Express and Draying Company, Merchants Express Corporation, Peoples Express Company, United Transfer Company, West Berkeley Express & Draying Co., comprising Pacific Motor Tariff Bureau, protestant.  
Marquam C. George, for Safe Transportation Company, protestant.

O P I N I O N

Samuel A. Shootkevich and Benedict B. Shootkevich are copartners doing business as State Transit. In this application they are asking for a certificate of public convenience and necessity authorizing transportation as a highway common carrier of new uncrated furniture and appliances moving between furniture manufacturers and dealers, and between furniture dealers, and between manufacturers, dealers and customers.

The points at which applicants propose to establish service are to and between Oakland, San Francisco, Richmond, El Cerrito, San Pablo, Albany, Emeryville, Berkeley, Piedmont, Alameda, San Leandro, San Lorenzo and Hayward. Intermediate service is

proposed between all of these points, and to and between all points within a radius of five miles from points along the routes between such municipalities. On-call service only is proposed.

Public hearings were held in San Francisco before Examiner Gannon and the matter was submitted on concurrent briefs.

For somewhat over two years applicants have been conducting a specialized trucking service, supplying blanket-wrapped transportation of uncrated new furniture and appliances for furniture manufacturers and furniture stores in the San Francisco and East Bay Areas, within and between the cities set forth in their application, under radial and city carrier permits, and serving approximately sixteen furniture manufacturers. At present, applicants render such service on an on-call basis, making daily or more frequent transbay trips. They began business with one truck and served six or seven customers, all of whom were furniture manufacturers. They now have available three van trucks, all practically paid for. At the outset payment of freight charges was about equally divided between consignors and consignees. During the past two years, however, the majority of shipments have been forwarded freight collect.

Ten witnesses, representing furniture manufacturers, retail furniture, and appliance stores, testified in support of the application. All of the shippers represented by these witnesses were using the applicants' service and found it satisfactory in every way. They particularly stressed the importance to them of care and skill in handling new and uncrated furniture. Several witnesses expressed the opinion that the service rendered by available common carriers was not adequate for their

needs. In fact, one witness, a retail furniture and appliance dealer in San Francisco, testified that if it should develop that applicants' service was not available he would be compelled to buy his own truck in order to obtain the type of service he required.

The granting of the application is protested by Safe Transportation Company and Pacific Motor Tariff Bureau. E. H. Hart, representing the Bureau, <sup>(1)</sup> opposed the application on the assumption that the field is now adequately served by certificated carriers and that the applicants are not financially circumstanced to carry on the proposed service. The Bureau is an unincorporated association of truck operators who conduct common carrier truck operations between San Francisco, on the one hand, and the various points enumerated in the application, on the other hand. None of the members of the Bureau appearing here has any large volume of furniture transportation business, such as is proposed by the applicants.

A witness representing United Transfer Company, one of the Bureau protestants, testified that his company was engaged primarily in the hauling of general freight which constituted 99 per cent of their business, and that they do not solicit the business of carrying uncrated new furniture and appliances. Another protestant witness testifying for Merchants Express Corporation

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(1) The Bureau is comprised of the following nine members: Canton Transbay Express, Inc., East Bay Drayage and Warehouse Co., Haslett Warehouse Company, Inter-Urban Express Corporation, Kollogg Express and Draying Company, Merchants Express Corporation, Peoples Express Company, United Transfer Company, and West Berkeley Express & Draying Co.

stated that less than five per cent of their business was the transportation of uncrated household goods. Two other witnesses, representing members of the Bureau, testified to the same effect, to wit, that the transportation of uncrated new furniture constituted only a very small part of their general freight traffic.

It appeared to be the position of the Bureau that if the application were amended to exclude shipments packed in accordance with the requirements of the current Western Classification, the Bureau would withdraw its protest.

Safe Transportation Company, a copartnership, had been operating as a permitted carrier but was recently granted a certificate for the transportation of new uncrated furniture moving between manufacturers and dealers, and between dealers, in the Bay Area. All points which applicants propose to serve will be served by Safe in addition to many other points, including San Jose, Salinas, Monterey, Gilroy, Modesto, Stockton, Sacramento and Vallejo. This witness stated that applicants had not demonstrated their ability in the past to carry on a successful operation; that public convenience and necessity do not require the service; and that the proposed operations of applicants are within the realm of a permitted carrier. The record does not justify these assumptions but rather indicates applicants' proposed operations to be those of a common carrier within the meaning of Section 50-3/4 of the Public Utilities Act. The testimony of public witnesses is commendatory of the service of applicants, and the area manifestly requires a service that is free from the inadequacies of the present service.

As we view the testimony in this record it appears clear that the applicants are offering a service which is highly

specialized, requiring the utmost in care and skill in handling; that the present operation of applicants is regarded by witnesses as an assurance of future adequacy; that the pick-ups and deliveries will be more prompt; that there will be a minimum of damage; that the proposed service is responsive to a local need and not a long-distance operation; that, so far as the testimony of witnesses is concerned, there is a substantial demand for the service; that the presently available service does not adequately meet the requirements of furniture dealers and shippers for reasonably satisfactory service, and that there is sufficient traffic in the area to support a competing common carrier service.

Protestants question the financial ability of applicants to carry on the proposed service. Exhibit No. 2 is a Profit and Loss statement of applicant for the 12 months ending December 31, 1949, and shows a net profit of \$6,922.49. The record shows that each of the partners drew \$70 per week for compensation during the year, and protestants argue that, deducting that amount from the profits of the business would result in a loss of some \$350. The record clearly indicates that applicants' financial resources are sufficient to enable them to successfully operate the service proposed.

We therefore find as a fact that public convenience and necessity require the establishment and operation of service by applicants as a highway common carrier, as proposed in the instant application. A certificate of public convenience and necessity will accordingly be granted.

Samuel A. Shootkevich and Benedict B. Shootkevich are

hereby placed upon 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

An application having been filed, public hearing having been held, the matter submitted, the Commission being fully advised, and it having been found that public convenience and necessity so require,

IT IS ORDERED:

(1) That a certificate of public convenience and necessity is hereby granted to Samuel A. Shootkevich and Benedict B. Shootkevich authorizing establishment and operation of service as a highway common carrier, as defined in Section 2-3/4 of the Public Utilities Act, for the transportation of uncrated new furniture and appliances moving between furniture manufacturers and dealers, and between furniture dealers and between manufacturers, dealers and customers, between the following points and places: Oakland, San Francisco, Richmond, El Cerrito, San Pablo, Albany, Emeryville, Berkeley, Piedmont, Alameda, San Leandro, San Lorenzo and Hayward, and all intermediate points. Service may be rendered from, to and between all points and places within a radius of five miles air line distance of all such points and places.

(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 thirty (30) days after the effective date hereof.
- b. Within 60 days after the effective date hereof and on not less than five (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.
- c. Subject to the authority of this Commission to change or modify them by further order, applicants shall conduct operations pursuant to the certificate herein granted over and along the most appropriate route or routes between the points herein authorized to be served.

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

Dated at San Francisco, California, this 9th day of May, 1950.

R. Z. [Signature]  
Justice F. Garner  
[Signature]  
Harold [Signature]  
[Signature]  
COMMISSIONERS