

ORIGINAL

Decision No. 44263

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
RUSH SWOAPE, an individual, for a)
certificate of public convenience and) Application No. 30308
necessity to operate as a highway)
common carrier for the transportation)
of property;)

and)
In the Matter of the Application of)
ELMER DAIGH and W. H. STEWART, doing)
business as DAIGH & STEWART TRUCK CO.,) Application No. 30309
a copartnership, for a certificate of)
public convenience and necessity to)
operate as a highway common carrier)
for the transportation of property.)

Edward M. Berol for applicants. Bart F. Wade for Asbury Transportation Co., Louis M. Welsh for The Atchison, Topeka & Santa Fe Railway Co. and Santa Fe Transportation Company; Donald Murchison for Pacific Freight Lines and Pacific Freight Lines Express; A. R. Reader for Desert Express; E. L. H. Bissinger for Southern Pacific Company, Northwestern-Pacific Railroad Company, Pacific Electric Railway Co., Pacific Motor Trucking Co., Petaluma & Santa Rosa Railroad Company, San Diego & Arizona Eastern Railroad Company, and Santa Maria Valley Railroad Company; protestants. Douglas Brookman for Motor Transport Company, California Motor Express, and Delta Lines, Inc.; Phil Jacobson for Oilfields Trucking Co. and Western Truck Lines; F. E. Carey for Carey Truck Line; and A. E. Gilmore for Lacey Trucking Co.; interested parties.

O P I N I O N

The applications were consolidated for the taking of evidence, and, in view of the similarity of the authority sought and of the testimony of the public witnesses, both matters will be considered and decided in this opinion and order.

Public hearings were held in these proceedings in Bakersfield and Los Angeles. The matters having been submitted, they are now ready for decision.

The applicant in Application No. 30308 is Rush Swoape, an individual, whose principal place of business is in Bakersfield. He has been engaged in the trucking business since 1931, since 1938 in Bakersfield, and is now authorized by this Commission to operate as a city, contract, and radial highway common carrier. He specializes in the transportation of heavy equipment, machinery and materials, particularly that related to the drilling and refining of oil, and also transports construction equipment and materials, and farm equipment. His facilities consist of an office, yard and shops situated on six acres which he owns. He has twenty-three pieces of equipment and four additional units on order. The equipment consists of tractors, trailers, and trucks of the type and size used in transporting heavy and bulky property. Included also are pickups, sedans, and coupes, and three truck cranes. The equipment is in good condition and trained drivers and personnel are employed in its operation. Applicant is financially responsible (Exhibits D and E) and bears a good reputation with shippers. Indicative of the growth of his business are the gross income figures which show a gross income of \$44,000 for the year 1943 and \$277,000 for 1948. For the first six months of 1949 the gross income was \$156,000.

Applicant in Application No. 30309 is a copartnership consisting of Elmer Daigh and W. H. Stewart, doing business as Daigh and Stewart, with its principal place of business also in Bakersfield. This applicant is engaged in a similar trucking business and has operated since 1928, and since 1935 in the city of Bakersfield. It owns four acres where it maintains its yard,

complete shops and office. Forty-nine pieces of equipment, consisting of tractors, trailers, trucks, low bods, sedans, and coupes, are in use. This equipment is also of the type necessary in the transportation of heavy and bulky property and is operated by specially trained personnel. Applicant has a good business reputation, and its financial condition is satisfactory (Exhibits 10 and 13). The gross annual revenue of this applicant has increased from \$172,300.42 in 1943 to \$407,149.97 in 1948. Elmer Daigh and W. H. Stewart also own the controlling interest in an affiliated company, a copartnership, known as Valley Crane and Rigging Company, which operates six large truck cranes and six pickups. The latter company is not in the transportation business but conducts its crane operations principally in conjunction with the oil drilling rigs and related property transported to and from jobs by Daigh and Stewart.

Each applicant, Rush Swoape and Daigh and Stewart, requests authority to establish service as a highway common carrier for the transportation of property as follows:

property necessary or incidental to the establishment, maintenance, or dismantling of oil, gas, or water wells, pipe lines, refineries, and cracking or casing-head plants; equipment and material used in construction; and equipment used in farming;

over and along routes which include all the major highways running north and south and east and west throughout the state and including all points laterally within fifty (50) miles of said highways. In other words, the service would be on a statewide basis as very little area in the state would be excluded.

Applicants do not propose to transport shipments which shall carry a charge lower than that applicable to a shipment of

20,000 pounds. Other restrictions as between certain fixed areas are also acceptable ⁽¹⁾.

Both applicants offered evidence in the form of exhibits and by testimony to show the character and extent of their past and present operations. An examination of Rush Swoape's Exhibits G and H, and Daigh and Stewart's Exhibits 8 and 9, clearly shows that a very large percentage of their transportation business, both as to the number of shipments and as to the weight of shipments carried, consists of the transportation of property pertaining to the drilling for oil and the setting up of oil storage facilities or the establishment of oil refineries and gasoline plants, and that such transportation service is performed mainly to or from or between established oil fields. Exhibits G and 8 also clearly show the extent to which said services have been performed. The transportation of oil rigs and related property in and between established oil-producing areas of the state is the main portion of the business conducted by the applicants.

Thirty-three public witnesses were called by the applicants, of which number eighteen testified in behalf of both applicants, ten testified for Daigh and Stewart, and five supported the application of Rush Swoape. All of the witnesses testified that they have been hiring the trucking services of one or both applicants for many years. Twenty-two of the witnesses were engaged in, or connected with, the oil drilling, producing, refining, or supply

(1) Briefly, between the San Francisco area and the Los Angeles area; between San Francisco and Eureka; between San Francisco and Sacramento, Stockton, and San Jose; between Los Angeles and Sacramento, Stockton, and San Jose (see amendments to applications).

business; five witnesses were associated with or owned interests in construction machinery and supplies business; two were in the farm equipment business; three in the construction and oil equipment business; and one in the construction and farm equipment business.

Respecting applicants' proposal to operate as highway common carriers for the transportation of property necessary or incidental to the establishment, maintenance, or dismantling of oil and gas wells, pipe lines, refineries, and cracking or casing-head plants, the evidence shows that they are continually performing such a transportation service for the public generally, and that such service is regularly performed to and from and between jobs in the established and more productive oil fields of this state. The said fields, the evidence shows, are located in what is known as the Los Angeles Basin, the Coastal Area, and San Joaquin Valley. Other established, but less productive, fields or areas of exploration are in the Sacramento Valley and the areas near Paso Robles and King City. All of the witnesses in the oil business testified that they need the services of either or both of the applicants; that they have used and are now using their services; that applicants have the necessary equipment and their personnel have the required "know-how" to move the particular kind of property used in the oil production and refining business; and that the services are satisfactory. Many of said witnesses also testified that their needs require the service of other carriers that specialize in this type of transportation. The evidence shows that at least five or six other carriers are more or less regularly used by some of said witnesses. The evidence is clear that a need exists

for a highway common carrier service to and from and between established oil fields and nearby areas of exploration. The evidence does not, however, justify the granting of a certificate on a statewide basis as proposed. Outside of the areas described, only occasional wildcat activities take place which are so unpredictable as to location as to completely refute applicants' contention that a highway common carrier service is required.

Having carefully considered the entire record, we cannot find that there is substantial or sufficient evidence to justify granting to either of the applicants a certificate of public convenience and necessity for the transportation of construction equipment and materials, equipment used in farming, or property incidental to the drilling of water wells.

The protestants' position is that they have facilities, ability, authority, and willingness to perform the transportation services for which applicants seek authority. As to the railroads, the evidence is clear that the need of oil well drillers and producers is for job-site transportation which need cannot be fulfilled by railroads without a secondary movement by truck. The principal protesting highway common carriers, Asbury Transportation Company and Pacific Freight Lines, are now performing a transportation service, as highway common carriers, between the principal areas sought to be served by applicants. They contend that additional highway common carriers of this kind of property are not required. Aside from the fact that protestants' certificates are not as extensive as to territory, particularly the off-highway feature, the evidence indicates that it takes many more carriers than all the protestants and applicants to supply the transportation services required by those in the oil industry. The record does not show that a denial of the applications in toto would in any way benefit any of the protestants nor that the granting of said applications

would be materially harmful to them. Applicants are, it appears, merely seeking that authority which may be required by the character of their present operations and, having carefully considered the entire record in these proceedings, we find that public convenience and necessity require that certificates be granted as hereinafter set forth. Each of the applications will be granted in part and denied in part.

Rush Swoape, an individual, and Elmer Daigh and W. H. Stewart, doing business as Daigh & Stewart Truck Co., 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

Public hearings having been held in the above-entitled proceedings, the evidence having been fully considered, and basing this order upon the record, findings, and conclusions contained in the foregoing opinion,

IT IS ORDERED:

I

(1) That a certificate of public convenience and necessity be, and it hereby is, granted to Rush Swoape, authorizing him to operate as a highway common carrier, as defined in Section 2 3/4 of the Public Utilities Act, for the transportation of property

necessary or incidental to the establishment, maintenance, or dismantling of oil or gas wells, pipe lines, refineries, and cracking or casing-head plants, between Los Angeles, on the one hand, and Paso Robles and Sacramento, on the other hand, and intermediate points along and laterally within fifty miles of U. S. Highways 101 and 99, and including points within a radius of fifty miles of the city halls of said cities, subject to the following restrictions:

- (a) Applicant shall not transport any shipment which shall carry a charge lower than that applicable to a shipment of 10,000 pounds.
- (b) Applicant shall not transport any shipment
 - (1) between points on San Francisco Bay between Richmond, on the north, and Hayward on the south, inclusive, on the one hand, and points in Los Angeles Territory, as described in Highway Carriers' Tariff No. 2, on the other hand;
 - (2) between points on San Francisco Bay between Richmond, on the north, and Hayward, on the south, inclusive, and Los Angeles Territory, as described in Highway Carriers' Tariff No. 2, on the one hand, and points within the delivery areas of Sacramento, Stockton, and San Jose, as described in Highway Carriers' Tariff No. 2, on the other hand; and
 - (3) between points within the delivery areas of Sacramento, Stockton, and San Jose, as described in Highway Carriers' Tariff No. 2, on the one hand, and points in the Los Angeles Territory, as described in said tariff, on the other hand.

(2) That, in the operation of the highway common carrier service pursuant to the foregoing certificate, Rush Swoape shall conform with and observe the following service regulations:

- (a) Within thirty (30) days after the effective date hereof, applicant shall file a written acceptance of the certificate herein granted.

(b) Within sixty (60) days after the effective date hereof, and upon not less than five (5) days' notice to the Commission and the public, applicant 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, tariffs and time schedules satisfactory to the Commission.

(c) Subject to the authority of this Commission to change or modify such at any time, Rush Swoape shall conduct said highway common carrier operation over and along the following described routes:

between Los Angeles and Paso Robles via U. S. Highway No. 101;

between Los Angeles and Sacramento via U. S. Highway No. 99.

Service to off-route points shall be conducted over and along the most appropriate route or routes.

(3) Except as herein authorized, Application No. 30308 is hereby denied.

IT IS FURTHER ORDERED:

II

(1) That a certificate of public convenience and necessity be, and it hereby is, granted to Elmer Daigh and W. H. Stewart, copartners, authorizing them to operate as a highway common carrier, as defined in Section 2 3/4 of the Public Utilities Act, for the transportation of property necessary or incidental to the establishment, maintenance, or dismantling of oil or gas wells, pipelines, refineries, and cracking or casing-head plants, between Los Angeles, on the one hand, and Paso Robles and Sacramento, on the other hand, and intermediate points along and laterally within fifty miles of U.S. Highways 101 and 99, and including points within a radius of fifty miles of the city halls of said cities,

subject to the following restrictions:

- (a) Applicants shall not transport any shipment which shall carry a charge lower than that applicable to a shipment of 10,000 pounds.
- (b) Applicants shall not transport any shipment
 - (1) between points on San Francisco Bay between Richmond, on the north, and Hayward on the south, inclusive, on the one hand, and points in Los Angeles Territory, as described in Highway Carriers' Tariff No. 2, on the other hand;
 - (2) between points on San Francisco Bay between Richmond, on the north, and Hayward, on the south, inclusive, and Los Angeles Territory, as described in Highway Carriers' Tariff No. 2, on the one hand, and points within the delivery areas of Sacramento, Stockton, and San Jose, as described in Highway Carriers' Tariff No. 2, on the other hand; and
 - (3) between points within the delivery areas of Sacramento, Stockton, and San Jose, as described in Highway Carriers' Tariff No. 2, on the one hand, and points in the Los Angeles Territory, as described in said tariff, on the other hand.

(2) That, in the operation of the highway common carrier service pursuant to the foregoing certificate, Elmer Daigh and W. H. Stewart, copartners, shall conform with and observe the following service regulations:

- (a) Within thirty (30) days after the effective date hereof, applicant shall file a written acceptance of the certificate herein granted.
- (b) Within sixty (60) days after the effective date hereof, and upon not less than five (5) days' notice to the Commission and the public, applicant 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, tariffs and time schedules satisfactory to the Commission.

(c) Subject to the authority of this Commission to change or modify such at any time, Elmer Daigh and W. E. Stewart, copartners, shall conduct said highway common carrier operation over and along the following described routes:

between Los Angeles and Paso Robles via U.S. Highway No. 101;

between Los Angeles and Sacramento via U. S. Highway No. 99.

Service to off-route points shall be conducted over and along the most appropriate route or routes.

(3) Except as herein authorized, Application No. 30309 is hereby denied.

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

Dated at San Francisco California, this 26th day of May, 1950.

R. E. [Signature]
Justus F. [Signature]
[Signature]
Harold P. [Signature]
[Signature]
COMMISSIONERS