

Decision No. 45096

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Commission investigation into
the operations and practices of
STERLING TRANSIT COMPANY, INC.,
a corporation.)
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_____)

Case No. 5147

ORIGINAL

Phillips & Avakian by Spurgeon Avakian
for respondent.
Gordon & Knapp by Hugh Gordon for
Pacific Freight Lines and Pacific
Freight Lines Express, interested parties.
Boris H. Lakusta for Field Division,
Public Utilities Commission of the
State of California.

O P I N I O N

This proceeding is an investigation instituted on the Commission's own motion into the operations and practices of Sterling Transit Company, Inc., hereinafter called respondent. The purposes of the investigation are to determine:

- (1) whether respondent has operated since June 20, 1949, or is operating, as a highway common carrier, as defined in Section 2 3/4 of the Public Utilities Act, without authority;
- (2) whether respondent should be ordered to cease and desist from operating as a highway common carrier until it shall obtain authority so to do; and
- (3) whether the permitted or certificated rights, or any of them, held by respondent should be canceled, revoked or suspended.

A hearing was held before Examiner Bradshaw at Los Angeles.

Respondent is a California corporation engaged in the operation of auto trucks used in the transportation of property, for compensation, over public highways in this State. It possesses permits to operate as a radial highway common carrier and highway contract carrier, as defined in the Highway Carriers' Act, and as

a city carrier, as defined in the City Carriers' Act. Respondent was also granted a certificate of public convenience and necessity authorizing operations as a highway common carrier, as defined in the Public Utilities Act (Decision No. 43003, dated June 14, 1949, in Application No. 27302).

The certificate authorized operations for the transportation of general commodities, with certain exceptions including plate glass, (1) between the San Francisco Bay area and Los Angeles territory, (2) between the San Francisco Bay area and the San Diego area and (3) between Los Angeles territory and the San Diego area. The San Francisco Bay area embraces San Francisco, South San Francisco, Oakland, Emeryville, Berkeley, Albany, El Cerrito, Richmond, Piedmont, Alameda, San Leandro and San Pablo, together with the area within a radius of one mile of San Pablo and points within one-half mile laterally of U. S. Highway 101-Alternate between South San Francisco and San Francisco. Los Angeles territory is described in Item No. 270-A of Highway Carriers' Tariff No. 2. The San Diego area embraces the territory within the city limits of San Diego, National City, Chula Vista, La Mesa and El Cajon. No authority was conferred authorizing highway common carrier service from, to or between intermediate points. By Decision No. 43732, dated January 24, 1950, in the same proceeding, the restriction against the transportation of plate glass was removed.

Following an examination of respondent's records, an assistant transportation rate expert in the employ of the Commission's field division presented as an exhibit a tabulation describing all shipments handled by respondent in other than certificated and city carrier operations during the five-day period from February 6 to 10, 1950, inclusive. A total of 100 shipments from 17 consignors are

shown as having been transported. The exhibit also indicates that in such transportation respondent's services were engaged by 13 parties, that the freight charges were paid by 14 parties, and that service was performed on each of the five days. With the exception of one shipment from Oakland to Pomona, another from Fresno to Pasadena and two shipments from Los Angeles to Napa, all moved between Los Angeles or the San Francisco Bay area and intermediate points located upon respondent's certificated routes. According to the rate expert, the five-day period was chosen because it was the most recent one available at the time of his investigation and was considered representative.

Copies of truck manifests of record herein disclose that in most instances the shipments handled in the non-certificated operations moved in the same equipment as used in the certificated operations. The witness for the field division further testified that he was unable to discover any difference in the physical handling of shipments moving in non-certificated and certificated operations, that the same drivers and other personnel are used and that in its daily recapitulation of revenues respondent shows separately the revenues received from non-certificated and certificated operations.

Respondent's president testified that, except as to one of the consignees, all of the shipments listed in the rate expert's tabulation were transported pursuant to written contracts with the consignors or consignees shown therein as having paid the transportation charges or as having engaged respondent's services.

Copies of the written contracts were received in evidence. In general, they stipulate that the shipper agrees to tender to respondent not less than a stated amount or percentage (by weight)

of its shipments between certain points or areas each month, year or during the life of the contract. In most instances, the commodities involved are specified and the compensation to be received by respondent is described as the rates prescribed or established as minima by this Commission. Provisions are included under which respondent agrees to perform the transportation without loss or damage to shipments and to maintain adequate insurance protection. The instruments also contain clauses relieving the parties from liability when performance is prevented by reason of national calamity, labor disturbances and various other causes beyond the reasonable control of the party such as usually set forth in agreements. In most instances, it is stated that the contract shall continue in effect until canceled upon written notice of a specified period; in others, until a specific date and thereafter until terminated upon written notice. Some of the contracts contain clauses covering in greater detail the arrangements between the parties. According to respondent's officers, the traffic handled under these arrangements in most cases exceeds the minimum amounts which the shippers have agreed to tender.

Respondent's president testified that respondent and its predecessor provided service to the points shown in the rate expert's exhibit for approximately 20 years prior to commencing operations pursuant to the certificate granted by Decision No. 43003. It was stated that more than 50 or 60 shippers were receiving service but that the service was discontinued for all shippers other than those shown in the rate expert's exhibit and two others at about the time certificated operations were inaugurated. This witness explained that it was originally intended to retain only three or four customers in the Fresno-Bakersfield area after commencing certificated operations, but that shippers insisted that service be

continued. He further stated that at least 500 shippers are served in the certificated operations between Los Angeles and the San Francisco Bay area; that many of them have requested and been refused service to intermediate points; and that the service not covered by common carrier certificate is confined to that performed under written or oral arrangements with 13 shippers.

We accordingly find that the evidence presented does not disclose that respondent is operating as a highway common carrier without authority. An order will be entered discontinuing this proceeding.

ORDER

A public hearing having been held in the above-entitled proceeding, evidence having been received and duly considered, the Commission now being fully advised and basing its order upon the findings and conclusions set forth in the preceding opinion,

IT IS ORDERED that this proceeding be and it is hereby discontinued.

The Secretary is hereby directed to cause a certified copy of this decision to be served, personally or by registered mail, upon respondent, Sterling Transit Company, Inc., a corporation.

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

Dated at San Francisco, California, this 5th day of December, 1950.

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COMMISSIONERS