

ORIGINAL

Decision No. 4509S

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Commission investigation into the)	
operations and practices of)	
CHARLES P. HART, doing business)	Case No. 5146
as CHAS. P. HART TRANSPORTATION)	
COMPANY.)	

Ray E. Untermeier for respondent.
A. L. Russell for Sears Roebuck & Company;
Gordon & Knapp by Hugh Gordon for Pacific Freight
 Lines Express; Douglas Brookman for Valley
 Express Co., California Motor Express, Ltd.,
 Valley Motor Lines, Inc. and California Motor
 Transport Co., Ltd; H. P. Merry for Southern
 California Freight Lines and Southern California
 Freight Forwarders; and Willard S. Johnson
 in propria persona, 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 Charles P. Hart, doing business as Chas. P. Hart Transportation Company, 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 he shall obtain authority so to do; and
- (3) whether the permitted or certificated rights, or any of them, held by respondent should be cancelled, revoked or suspended.

A hearing was held before Examiner Bradshaw at Los Angeles.

Respondent, doing business as Chas. P. Hart Transportation Company, is engaged in operating auto trucks for the transportation of property, for compensation, over the public highways of this State. He possesses permits to operate as a highway contract carrier and radial highway common carrier, as defined in the Highway Carriers' Act, and as a city carrier, as defined in the City Carriers' Act. By Decision No. 43003, dated June 14, 1949, in Application No. 24124, he was granted a certificate of public convenience and necessity, authorizing operations as a highway common carrier, as defined in the Public Utilities Act, for the transportation of general commodities, with certain exceptions, between San Francisco and Los Angeles territories. No authority was conferred permitting transportation from, to or between intermediate points. Respondent commenced operations pursuant to this certificate on September 14, 1949.

An assistant transportation rate expert in the employ of the Commission's field division presented a report, based upon an examination of respondent's records and an interview with his traffic manager, designed to indicate respondent's non-certificated operations during the five-day period from November 14 to 18, 1949, inclusive. This period was selected because the rate expert considered it a representative one for the purpose of disclosing respondent's operations during the month of November, 1949. The report indicates that 41 shipments made by 19 consignors were transported in non-certificated operations, that 18 parties paid freight charges thereon and that 14 parties had engaged respondent's services in connection with such transportation.

Most of the shipments during the five-day period covered by the report of the field division's witness moved (1) from San Francisco territory to points beyond Los Angeles territory, (2) from points beyond Los Angeles territory to San Francisco territory and (3) from Los Angeles territory to points beyond San Francisco territory. In a number of instances, service was rendered from or to points beyond Los Angeles which are intermediate between San Francisco territory and San Diego. Four shipments moved between two points intermediate between San Francisco and Los Angeles territories, on the one hand, and San Francisco territory, on the other hand. One shipment moved from Long Beach to Fresno and another was transported from Eureka to Monrovia. In most cases, only one shipment was transported from and to the same points. The instances in which respondent transported more than one shipment follow:

From	To	Number of Shipments Transported	Number of Days on Which Shipments Moved
Los Angeles	Eureka	3	3
"	"	5	4
Fullerton	Santa Rosa	2	2
Orange	San Francisco	6	4
"	"	3	3
Saticoy	Oakland	3	3
San Francisco	San Jose	3	3
	San Diego	8	3

The field division's witness also testified that during his investigation he ascertained that operations had been conducted beyond respondent's certificated authority during the first two weeks of November, 1949, and during October of that year.

Respondent's traffic manager testified that the data presented by the field division's witness accurately described respondent's non-certificated operations during the period in

question; that a similar study for October, 1949, would disclose the movement of considerably more shipments to some points and the rendition of service for a greater number of shippers; and that the showing made did not reflect operations as conducted at the time of the hearing in that the shipments were not as great in number as in November and fewer shippers and points were being served.

With the exception of one shipment assertedly accepted through error, the shipments which moved between November 14 and 18, 1949, inclusive, according to respondent's witness, were transported pursuant to 12 contracts with various shippers. It was stated that one of these contracts was an oral arrangement, while the balance were written instruments. The witness declared that at the time of the hearing (February 15, 1950) six of these contracts had been cancelled. The date of cancellation in the majority of instances, it appears, was December 1, 1949.

Respondent's witness asserted that when the certificate of public convenience and necessity was granted by Decision No. 43003 an attempt was made to immediately cancel all contracts, wherever possible to do so. He testified that in undertaking such action respondent was confronted with a difficult task. Many of the shippers, so the witness stated, were long standing customers and wanted as much time as possible to make other transportation arrangements before terminating their contracts. It is claimed that respondent endeavored to reach an understanding with respect to cancellation dates as expeditiously as possible without causing too much inconvenience to shippers. It appears that the revenue effect of reduced so-called contract carrier operations, while endeavoring to develop traffic as a common carrier, was also taken into consideration.

The witness for respondent further stated that service is still being conducted on a contract basis for six of the shippers for whom transportation was performed between November 14 and 18, 1949, inclusive, and whose contracts have not been cancelled. The reason given was that these shippers were not agreeable to the cancellation of their contracts. In some cases, it was claimed that in meeting competition an overnight service is required and the shippers did not believe that they could obtain comparable service from other carriers. It was represented that one shipper has not been able to obtain sufficient trucks, as needed, from other carriers and its traffic enables respondent to obtain loads for equipment which would otherwise move empty. The assessment of charges based on rail rates--lower than the established minimum rates--was given in one instance as a reason for reluctance to agree to the cancellation of a contract.

According to the testimony of respondent's traffic manager, service is no longer being rendered for intrastate traffic at intermediate points between San Francisco and Los Angeles territories. The intrastate tonnage which respondent handled to Bakersfield, Fresno, Stockton and Sacramento during August, 1949, the record indicates, aggregated 393 tons. The following data were submitted to show (1) the tonnage transported to intermediate points as well as respondent's total gross revenues for the months of August, 1949, through January, 1950, and (2) the number of new customers served each month since the establishment of operations under its highway common carrier certificate:

Month	Tonnage Handled To Intermediate Points (Pounds)	Respondent's Total Gross Revenue	Number of New Customers Served
August, 1949	1,044,612	\$ 97,000	
September	923,968	81,000	39(a)
October	664,500	78,000	71
November	108,503(b)	66,000	57
December	113,040	58,000	49
January, 1950	209,910(c)	60,000	43

(a) Between September 14 and 30, inclusive
(b) Includes one shipment of 55,000 pounds
(c) Includes one shipment of 84,770 pounds

The decline in tonnage was attributed entirely to the cancellation of contracts previously in effect. It was further testified that no new contracts were entered into after respondent was granted a certificate of public convenience and necessity.

Upon careful consideration of the record in this proceeding, the Commission is of the opinion and finds that subsequent to June 20, 1949, respondent operated auto trucks used in the business of transporting property as a highway common carrier, as defined in Section 2-3/4 of the Public Utilities Act, for compensation, over the public highways of the State of California between fixed termini and over regular routes, to-wit: (1) Between San Francisco territory and points beyond Los Angeles territory and (2) between Los Angeles territory and points beyond San Francisco territory, without possessing a prior operative right therefor and without having obtained a certificate of public convenience and necessity authorizing such operations, in violation of Section 50-3/4 of said Act.

In view of the curtailment in service under contracts with shippers, as evidenced by the record herein, and the discontinuance of the handling of intrastate shipments to intermediate points

between San Francisco and Los Angeles territories, we are of the opinion that neither a cease and desist order nor the cancellation, revocation or suspension of respondent's permits is justified. An order will, therefore, be entered discontinuing the proceeding.

O R D E R

A public hearing having been had 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 Charles P. Hart, doing business as Chas. P. Hart Transportation Company.

This decision shall become effective upon the twentieth day after the date of such service.

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

R. F. Sutter
Justin J. Coleman
Joseph F. Lowell
Harold P. Hale
Frederick L. Lott
COMMISSIONERS