

ORIGINAL

Decision No. 45259

## BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
 O. J. BOEDEKER and A. T. RAWLINS )  
 (SACRAMENTO FREIGHT LINES) to remove ) Application No. 30533  
 a restriction in their certificated )  
 operative right between Sacramento )  
 and Los Angeles and for an extension )  
 of said operative right so as to )  
 serve Stockton. )

Edward M. Berol, for applicants.  
Douglas Brookman, for California Motor Express, Ltd.  
 and California Motor Transport Co., Ltd.;  
 Gordon & Knapp, by Hugh Gordon, for Pacific  
 Freight Lines, Pacific Freight Lines Express,  
 Valley Express Co. and Valley Motor Lines, Inc.;  
Roy Jerome and E. L. H. Bissinger, for  
 Southern Pacific Co. and Pacific Motor Trucking  
 Co.; Francis X. Vieira, for N. A. Gotelli  
 Trucking Co.; Lafayette J. Smallpage and  
Harold J. Willis, for Lillie Transportation  
 Co., Inc.; Robert M. Walker and Frederick G.  
Pfrommer, for The Atchison, Topeka & Santa Fe  
 Railway Co. and Santa Fe Transportation Co., all  
 protestants.

## O P I N I O N

Applicants seek removal of a restriction in their highway  
 common carrier certificate between Sacramento and Los Angeles which  
 limits transportation of general commodities and canned goods to  
 shipments of not less than 20,000 pounds<sup>(1)</sup>. They also request  
 authority to extend their certificated service for both general  
 commodities and perishables to Stockton, a point now served by  
 them under permits. In addition, they propose, with respect to

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(1) Decision No. 42352, December 21, 1948, Application No. 28326.  
 Applicants also have a certificated operative right, granted  
 in 1942, between Sacramento and Feather River Canyon points.  
 That right is not subject to a weight-per-shipment restriction.  
 (Dec. No. 35169, App. No. 24747.)

northbound split delivery shipments from Los Angeles having final destination at either Stockton or Sacramento, to deliver component parts at intermediate points between, and including, Fresno and the two northern cities.

The application was submitted on concurrent briefs after extensive public hearings held before Examiner Gregory at Sacramento and Los Angeles during the period from October, 1949, to April, 1950. Briefs were filed on July 14, 1950. Granting of the requested authority was opposed by the principal rail and highway common carriers operating between Los Angeles and Sacramento over the Valley Route.

Decision No. 42352, issued in the former proceeding, granted to applicants a certificate to transport (a) fresh fruits and vegetables between Los Angeles territory and an area extending generally from Santa Barbara to San Bernardino, on the one hand, and an area radiating approximately 50 miles from Sacramento plus the points of Fresno and Modesto, on the other hand, and within 10 miles laterally of highways traversed, subject to a restriction, proposed by applicants, limiting shipments originating at or destined to off-highway points and outside of incorporated communities to not less than 10,000 pounds; (b) general commodities, with certain exceptions, between Sacramento and a five-mile radius thereof, on the one hand, and Los Angeles territory (as described in Highway Carriers' Tariff No. 2), on the other hand, with intermediate service between Los Angeles and Lodi only, subject to a weight-per-shipment restriction, also proposed by applicants, of 20,000 pounds or more; (c) canned goods between Sacramento and Lodi, on the one hand, and the Los Angeles area authorized for fresh fruits and vegetables, as indicated in (a) above, on the

other hand, also subject to a self-imposed 20,000 pound weight-per-shipment restriction. Transportation of general commodities and canned goods was further limited, as requested by applicants, so as to preclude shipments of such traffic wholly within either the Los Angeles or Sacramento areas.

At the time of the hearing in the former application the so-called "Savage" cases (Appl. No. 23877, et al.) had not been decided by the Commission. Among the applicants in that group who were seeking certificates to transport general commodities between Los Angeles and Sacramento were Lillie Transportation Company, Inc. and Western Truck Lines, Ltd., both of which appeared in opposition to the Sacramento Freight Lines' proposal and urged that the Commission defer a decision thereon pending determination of the Savage proceeding. In addition, Lillie protested applicants' proposal to serve Stockton as a certificated carrier of fresh fruits and vegetables, it having theretofore acquired, by transfer, a right to transport those commodities between Stockton and vicinity and the Los Angeles produce markets. Pursuant to a stipulation between counsel for applicants and counsel for Lillie, entered into at the former hearing, applicants amended their pleading so as to delete Stockton from their offer of certificated service. Valley Express Company and Valley Motor Lines, Inc., originally protestants, withdrew their objection prior to the hearing, as did also California Motor Express, Ltd. and California Motor Transport Co., Ltd.

Applicants inaugurated their certificated service between Los Angeles and Sacramento on March 1, 1949. About March 15, 1949, the copartners, Boedeker and Rawlins, together with Fitzhenry, a former employee who for the preceding eight months had been

Manager of the Transportation and Industrial Department of the Sacramento Chamber of Commerce, originated a plan to organize a copartnership under the name of Black Hawk Motor Transport, to transport property as a contract carrier between the Los Angeles area and Northern California and also to conduct operations as a radial highway common carrier. Fitzhenry rejoined Sacramento Freight Lines on April 15, 1949, as its credit and transportation manager and general traffic adviser. Between that date and April 27, 1949, when Black Hawk commenced operations, Fitzhenry purchased a tractor and 35-foot semi-trailer from Boedeker and Rawlins for \$8,000 through a bank loan guaranteed by Boedeker, and also borrowed \$1,000 from Boedeker personally for use as working cash. With Boedeker's and Rawlin's acquiescence, Fitzhenry selected five of Sacramento Freight Lines' best contract customers between Sacramento, Los Angeles and other points, of whom three shipped in lots of less than 20,000 pounds, and commenced serving them under the name of Black Hawk Motor Transport. Three other contract customers, formerly patrons of other highway carriers (including Valley Lines) operating between Sacramento and Los Angeles, were added shortly to the group, making a total of eight contract patrons receiving service from Black Hawk between Sacramento and Los Angeles, as of the time of the April, 1950, hearings, plus some half-dozen radial accounts in Northern California served out of Sacramento.

In addition to the tractor and semi-trailer unit purchased from Sacramento Freight Lines, Black Hawk uses in its operations equipment leased from that carrier and also employs three owner-driver truck operators on a subhaul basis. In Sacramento, Black Hawk leases a portion of the Sacramento Freight Lines' terminal

at a rental of \$202 per month. At Los Angeles, Sacramento Freight Lines performs pickup and delivery service for Black Hawk, for which Black Hawk pays at the rate of 20 cents per 100 pounds.

The partnership of Boedeker, Rawlins and Fitzhenry conducted the Black Hawk operation until September 1, 1949, when, on advice of counsel, Boedeker and Rawlins withdrew leaving Fitzhenry in charge. Fitzhenry testified that the Black Hawk organization was set up primarily as an inducement for him to rejoin Sacramento Freight Lines, as he would otherwise not have been interested in the salary offered him. He also intimated that the arrangement was designed to accommodate some of the customers of Sacramento Freight Lines whom that carrier could not lawfully continue to serve under its newly-acquired certificate. (2)

We have considered it appropriate to examine the Black Hawk arrangement in some detail, since a major portion of protestants' attack has been levelled at that operation which they assert formed part of a long-range plan, conceived by applicants, to evade protests to their former application and eventually to secure an unrestricted operative right. We now turn to an examination of the present application which, as stated earlier, seeks removal of the weight restriction on general commodities and extension of certificated authority to Stockton.

The present application was filed July 30, 1949, five months after inauguration of service under the restricted certificate.

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(2) Section 4 of the Highway Carriers' Act makes it unlawful for one to transport property both as a common carrier and a contract carrier of the same commodities between the same points.

The proposal, in substance, is to operate four schedules, with as many sections per schedule as the traffic may require, six days per week in each direction, serving Los Angeles, Fresno, Modesto, Stockton, Lodi and Sacramento. The earliest schedule will meet produce market deadlines. Later schedules will handle produce for storage or distribution and dry freight. The last schedule, arriving at Los Angeles and Sacramento at 8:00 a.m. the following morning, will carry dry freight between those points with pickups and deliveries at authorized intermediate points. Rates will be the minima established in Highway Carriers' Tariff No. 2 and supplements thereof, subject to maintenance of Class B rates as minima for Classes C, D and E. The evidence indicates that applicants' experience, facilities and equipment are adequate for the service proposed.

Fitzhenry testified that the reason for filing the application so soon after commencement of operations under the restricted certificate was due to receipt of complaints from fresh fruit and vegetable shippers who also shipped from Los Angeles to northern markets such incidental dry freight as dried fruits and vegetables, edible nuts, containers and labels, but who could not always meet the 20,000 pound minimum weight restriction on those items. Similar complaints, he stated, had also been received from shippers of general merchandise who had formerly used Sacramento Freight Lines for both truckload and less-than-truckload traffic but had since been compelled to use other carriers for transportation of their smaller shipments. The record shows, however, that on numerous occasions after commencing operations under their restricted certificate, applicants transported shipments of general commodities weighing less than 20,000 pounds between Sacramento and Los Angeles for some of these customers.

As an additional reason for removal of the restriction, applicants claim that the operation has been unsuccessful financially. They offered an exhibit at the closing hearings in April, 1950, purporting to show a comparison of revenues and expenses for the years before and after commencement of the service. Summarized, the exhibit indicates as follows:

(Applicants' Exhibit No. 14)

	Mar. 1, 1948 to <u>Feb. 28, 1949</u>	Mar. 1, 1949 to <u>Feb. 28, 1950</u>
Total operating revenue	\$ 1,047,244.33	\$ 1,159,729.17
Total operating and other expense	<u>1,027,538.47</u>	<u>1,165,489.36</u>
Net operating gain (Loss)	\$ 19,705.86	(\$ - 5,760.19)
Interest Expense	<u>4,845.09</u>	<u>4,464.94</u>
Net gain (Loss)	\$ 14,860.77	(\$ - 10,225.13)
Operating Ratio (%)	98.12	100.497

A previous exhibit, introduced at the October, 1949, hearings (Exhibit No. 6), indicates that applicants enjoyed net earnings of \$34,441.05 for the first eight months of 1949. Incidentally, and while on the subject of figures, the record shows that Black Hawk Motor Transport, during the period from April 27, 1949, to February 28, 1950, had a net operating income, before income taxes, of about \$4,000.

Applicants also offered an exhibit (Exhibit No. 15) purporting to indicate that, for the period from September, 1949, through February, 1950, their less-than-capacity loadings between the Sacramento and Los Angeles areas resulted in unused truck loading space, northbound, for 4,571,622 pounds of freight and southbound for 1,239,041 pounds.

Applicants contend that these financial and operating statistics show that their restricted highway common carrier service is neither feasible nor proper and that this adverse experience, together with the testimony of shippers (which we shall presently examine briefly), justifies removal of the limitation on their operative right.

Protestants, on the other hand, assert that applicants' predicament has been caused not only by their own misguided efforts to enter the general commodity transportation field under unworkable restrictions, the adverse results of which their past experience should have enabled them to anticipate, but also because of diversion of lucrative traffic to Black Hawk Motor Transport. In addition, protestants contend that the evidence shows no need for additional transportation service between Los Angeles, Stockton and Sacramento, especially since, both prior and subsequent to the filing of this application, several new carriers have entered the field as a result of the Commission's decisions in the Savage and (3) other cases.

With the exception of Santa Fe, which does not serve Sacramento directly, these carriers now offer direct overnight service for the transportation of general commodities between Los Angeles, Stockton, Sacramento and the various intermediate points

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(3)	<u>Dec. No.</u>	<u>Date</u>	<u>Appl. No.</u>	<u>Carrier</u>
	41237	Feb. 17, 1948	28864	Valley Motor Lines, Inc.
	43003	June 14, 1949	27270	Lillie Transportation Co., Inc.
	43003	June 14, 1949	27573	Pacific Freight Lines
	43262	Aug. 29, 1949	30295	California Motor Trans- port Co., Ltd.
	43355	Oct. 4, 1949	27203	Santa Fe Transportation Co.

(4)  
en route which they are respectively authorized to serve. Southern Pacific and Pacific Motor Trucking Company also operate in this territory, but do not offer an overnight service. Gotelli Trucking Company transports fresh fruits and vegetables between Stockton and a 20-mile radius thereof and Los Angeles. Some of the general commodity carriers, according to the evidence, will deliver freight on Saturdays if requested, but do not ordinarily keep their terminals open on that day, due to insufficient demand and to higher labor costs for Saturday work. Some ten or twelve permitted carriers also operate in the territory in active competition with the common carriers. The protesting carriers all appear to have substantial facilities with which to conduct their respective operations.

Applicants' proposal was supported by the testimony of some 30 shippers and receivers of truckload and less-than-truckload freight, including shippers of general commodities, fresh fruits and vegetables and related dry freight moving to produce markets. While a number of these witnesses expressed some dissatisfaction with the services of the protesting truck lines, it was shown that,

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(4) Prior to institution of direct service by Pacific Freight Lines and California Motors, traffic from Los Angeles destined to Sacramento and Stockton was handled by means of an interchange arrangement at Fresno between Valley and Pacific Freight Lines, and by a similar arrangement at San Francisco between California Motors and Delta Lines. Service under these conditions was normally on the basis of second-day delivery.

on the whole, they were not too familiar with the changes in the operations of such carriers as Pacific Freight Lines and California Motors, whose direct service between Los Angeles, Stockton and Sacramento was either in the process of being established or had been in operation for a short time when the witnesses gave their testimony. This was particularly true in the case of witnesses from the Sacramento area. On the other hand, witnesses called by protestants at the Los Angeles hearings, all of whom dealt in general commodities, expressed satisfaction with the services of the respective carriers on whose behalf they were called. Many of them had noted an improvement in delivery time on traffic from Los Angeles to Sacramento via the newly-established direct services.

Witnesses called by Lillie Transportation Company, whose testimony was received chiefly pursuant to stipulation although they were present at the hearing, were mainly those who had traffic originating at Los Angeles destined to Modesto, Stockton and Sacramento and who utilized the split delivery service offered by that carrier between those points. Pacific Freight Lines, Valley Lines and California Motors also offer split delivery service on such traffic to the extent indicated by their tariffs, and applicants have proposed to do likewise on northbound shipments only.

As previously indicated, one of the principal reasons which prompted the filing of this application, according to applicants' transportation manager Fitzhenry, was the alleged inability of the carrier, after receiving its restricted certificate, to continue to transport shipments of dry freight weighing less than 20,000 pounds which normally move to produce markets in connection with shipments of fresh fruits and vegetables. The

testimony of six of these shippers of produce and related dry commodities indicates clearly that they have been put to considerable inconvenience as a result of having to seek out other carriers for their smaller dry freight shipments while at the same time utilizing applicants' service for early deliveries of fresh produce. None of the protestants, with the exception of Lillie and Gotelli (the latter serving between Stockton and Los Angeles only) appear to be in as favorable a position as applicants to render an expedited service for both perishables and related dry freight between the points sought in this proceeding. Indeed, the record leaves little doubt that applicants enjoy an enviable reputation for dependability in this field, and that their self-sought restriction is a handicap not only to themselves but also to the produce shippers whom they serve.

Applicants' restricted certificate was issued late in 1948 upon a finding by the Commission that, at that time, there was "no direct overnight common carrier service, by rail or truck, between all the points proposed to be served by applicant as to which the evidence shows a need for such service." (Dec. No. 42352, Appl. No. 28326.) The certificate granted by the Commission was not restricted as to fresh fruits and vegetables, except in connection with off-highway pickups and deliveries. Since that right was granted, however, there has been a substantial increase in the number of highway carriers certificated to transport general commodities in the territory between Los Angeles, Stockton and Sacramento. Although these carriers do not offer a pickup and delivery service with their own equipment in as extensive an area around Sacramento and North Sacramento as do applicants, that fact would not persuade us to remove completely the general commodity

restriction in applicants' certificate without additional substantial evidence, lacking on this record, that a real need on the part of shippers or receivers in the Sacramento area is not currently being met by applicants' present service and the services of the protesting carriers.

We believe that this record justifies the conclusion, and we so find, that public convenience and necessity would be subserved by modifying applicants' certificated operative rights so as to permit the transportation, in any quantity, of so-called "dry freight" between Los Angeles, Stockton and Sacramento, when such freight is destined from producers or suppliers to wholesale produce markets. We are not persuaded that applicants are entitled, either equitably or upon the basis of their showing, to further modification of their certificated authority at this time.

The authority granted herein will be carried out by means of an amendment to the restriction now appearing in Paragraph III (1) of the order in Decision No. 42352, issued in Application No. 28326.

O R D E R

Public hearing having been held upon the instant application, evidence and briefs having been received and considered, the matter having been submitted, the Commission now being fully advised and having found that public convenience and necessity so require,

IT IS ORDERED:

(1) That Paragraph III (1) of the order in Decision No. 42352, in Application No. 28326, be and it is hereby amended by

adding thereto the following proviso:

"Provided, however, that the foregoing weight limitation shall not apply to transportation of nuts in shells, dried fruit and dried vegetables unmanufactured and unprocessed, containers and labels, destined from producers or suppliers to wholesale produce markets, between all points applicants are authorized herein to serve and including the point of Stockton."

(2) Except as hereinabove modified, said Decision No. 42352 shall otherwise be and remain in full force and effect, and, except as granted herein, Application No. 30533 is hereby denied in all other respects.

(3) That in providing service pursuant to the authority herein granted, applicants shall comply with and observe the following service regulations:

- a. Applicants shall file a written acceptance of the modification of their certificate herein granted within a period of not to exceed thirty (30) days after the effective date hereof.
- b. Within sixty (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 schedules.
- c. Subject to the authority of this Commission to modify them by further order, applicants shall conduct the operations herein authorized over the following routes:

Over any and all routes specified in Paragraphs I (a), I (b), II and III of the order in Decision No. 42352, in Application No. 28326, and via U. S. Highway 99 between Sacramento and Stockton.

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

Dated at San Francisco, California, this 16<sup>th</sup>  
day of January, 1951.

R. F. [Signature]

Justice F. [Signature]

Harold P. [Signature]

[Signature]

COMMISSIONERS