

Decision No. 45580**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
A. D. Woolley and R. E. Woolley, dba

WESTERN TRANSPORT COMPANY,

a co-partnership, for a certificate
of public convenience and necessity
as a highway common carrier between
Santa Clara Valley Territory, includ-
ing San Jose, on the one hand, and an
extended territory in Southern
California on the other hand.

Application No. 31527

Scott Elder for applicants.Gordon & Knapp by Joseph C. Gill for Pacific
Freight Lines and Pacific Freight Lines
Express; Douglas Brookman by Joseph
C. Gill for California Motor Express, Ltd.,
William Meinhold, Frederick E. Fuhrman,
E.L.H. Bissinger and Walter A.
Steiger for Southern Pacific Company,
Pacific Electric Railway Company and Pacific
Motor Trucking Company; H. J. Bischoff
Warren V. Glass, Jr., J. B. Robinson and
H. P. Merry for Southern California Freight
Lines and Southern California Freight For-
warders; and Edward M. Berol by
Joseph C. Gill and Bertram S. Silver
for Culy Transportation Co., protestants.
R. F. Shackelford for Public Freight System,
interested party.**O P I N I O N**

By the application, as amended, in this proceeding, A. D. Woolley and R. E. Woolley, copartners doing business as Western Transport Company, seek a certificate of public convenience and necessity authorizing operations as a highway common carrier for the transportation of general commodities, with certain exceptions, between points in the Santa Clara Valley, on the one hand, and points in the Los Angeles Basin and San Diego territories, including all points located on, and two miles or less from, U. S. Highway 101 between the Los Angeles Basin and San Diego territories, on the other hand.

Various highway common carriers, express corporations and Southern Pacific Company, including certain of its affiliated companies, protested the granting of the application. Public hearings were held before Examiner Bradshaw at San Jose, Pomona, Santa Ana, San Diego, Los Angeles and San Francisco. Evidence was received and the parties were heard in oral argument.

Applicants are engaged in highway common carrier operations transporting general commodities between Santa Clara Valley and Los Angeles territories, pursuant to Decision No. 43003, dated June 14, 1949, in Application No. 27301 and various related proceedings. By Decision No. 41600, dated May 18, 1948, in Application No. 29212, applicants were granted highway common carrier authority to transport fresh berries from the Santa Clara Valley and Watsonville producing areas to the Los Angeles Territory. Previously, they engaged in for-hire transportation operations under a permit authorizing service as a highway contract carrier.

According to the proposal now presented for approval, applicants intend to transport less-truckload shipments in line-haul equipment between San Jose and Los Angeles. Deliveries in the territories proposed to be served would be accomplished by delivery trucks operating out of applicants' Los Angeles terminal. After completing deliveries the trucks would return to Los Angeles, picking up shipments for the Santa Clara Valley while en route. It is proposed to effect deliveries at the various destinations on the first day after shipment from point of origin. According to a proposed time schedule, trucks are to depart from Los Angeles at 6:00 a.m. in the general direction of San Bernardino, Riverside and San Diego, reaching those points at about 12:00 noon. It is planned to dispatch the same trucks from San Bernardino, Riverside and San Diego, respectively, at approximately 2:00 p.m., so as to arrive at Los Angeles in time to connect with northbound line-haul equipment

leaving there during the evening. Service is proposed on six days a week. Truckload shipments would be handled in direct movements from point of origin to destination.

Terminal facilities are maintained by applicants at San Jose, Gilroy and Los Angeles. An exhibit of record purports to indicate that applicants' equipment consists of 25 refrigerator-van semi-trailers, 24 diesel or gasoline powered truck tractors, 16 pick-up and delivery units and five sedans. Applicants' general manager testified that some of this equipment will be replaced with new vehicles. He also stated that, of the 16 pick-up and delivery units, seven are stationed in the Santa Clara Valley and nine at Los Angeles.

Applicants do not contemplate establishing terminal facilities or agencies at any points in the extended areas they seek to serve. To the extent that it may be feasible they propose to arrange for a so-called "telephone answering service" at some of the points to enable shippers to place orders for service. Upon the arrival of trucks at the terminus of their respective routes the drivers will be expected to communicate with the Los Angeles terminal to ascertain at what points and places shipments are to be picked up on the return trip. When shipments originate at or are destined to points not located upon the usual routes it is planned to make such departures therefrom as may be necessary. Shipments from or to Santa Ana, for instance, will be serviced either by the Riverside or San Diego truck, depending on the traffic to be handled on a particular day. It was stated that on occasions it might be expedient to dispatch a truck now serving the Long Beach area to Santa Ana for the purpose of handling shipments to or from that point.

Applicants' general manager further indicated that it might be advantageous to utilize some of their Los Angeles delivery trucks

to effect deliveries at nearby points after completing the Los Angeles delivery work. He claimed that such a method would overcome the problem of attempting to deliver shipments at hours before consignees open their places of business. It was conceded that consignees might receive their freight at one hour on one day and at other hours on other days, depending on applicants' dispatching problems. Shippers at points such as San Bernardino and Riverside who do not have shipments ready by 2:00 p.m., applicants' witness testified, will have to be educated to make them available for shipment earlier if they desire to take advantage of the proposed overnight service.

According to a balance sheet as of June 30, 1950, applicants' cash, accounts receivable and prepayments accounts aggregated \$63,967. The depreciated value of property and equipment was listed as \$175,105. Liabilities were reported as consisting of notes payable, \$83,506; accounts payable, \$31,297; equipment obligations, \$27,247; and accrued taxes, \$7,685; leaving a net partners' capital account of \$89,336. A profit and loss statement for the year 1949 indicates that operating revenues were \$935,136, as contrasted with expenses of \$913,039. A similar compilation covering the first six months of 1950 sets forth operating revenues as having been \$366,626, with expenses amounting to \$355,542. The foregoing data were not represented as reflecting only the results of highway common carrier operations as distinguished from other for-hire transportation activities in which applicants are also engaged.

Applicants' general manager testified that numerous requests have been received from shippers that service be established between the Santa Clara Valley and the Los Angeles Basin and San Diego areas. It was also asserted that the proposed service is necessary in order to enable applicants to protect their present traffic. According to the testimony, certain shippers desire to tender their shipments to

such carriers as operate to all destinations instead of only a portion of the territories to which they ship. It appears that at the present time applicants accept traffic for destinations east and south of Los Angeles. Such shipments, the evidence indicates, are delivered at about 9:00 a.m. to common carriers at Los Angeles, generally Southern California Freight Lines or Pacific Freight Lines, for further transportation. The local rates of the separate carriers are apparently collected. It was estimated that the volume of this traffic to the southern California destinations embraced in the application averages 13,000 pounds per day and comprises from 30 to 35 separate shipments. Applicants' witness expects that, in the event the proposed service is established, the shipments to these destinations will be twice the number now being transported.

Numerous public witnesses testified on behalf of applicants. They were interested as shippers or consignees of shipments moving from the Santa Clara Valley to the Los Angeles Basin and San Diego territories or from the Los Angeles Basin to the Santa Clara Valley. One of the witnesses receives plastic boats shipped from Costa Mesa to San Jose. According to these witnesses, expeditious service is important. Some of them declared that shipments have been delayed or that the elapsed time consignments are in transit is too long. It was stated that deliveries on the day after shipments are received by the carriers at point of origin would meet their requirements.

One witness testified that it would not be convenient to be required to telephone from Pomona to Los Angeles or San Bernardino to obtain pick-up service. A witness engaged in shipping frozen foods from Santa Ana declared that he transports such shipments to Los Angeles to be placed in cold storage and subsequently picked up by applicants for movement to points in the Santa Clara Valley and.

that the proposed service would save warehousing expense.

The research manager for the San Jose Chamber of Commerce presented as exhibits six pamphlets containing literature and statistics depicting the growth in population and business activities in San Jose and Santa Clara County. Another exhibit was offered by applicants indicating comparative population and business trends in numerous cities and by counties throughout the State. The increase in population and industrial development which has occurred during recent years are matters of general knowledge. It is, therefore, not deemed necessary to incorporate in this opinion a detailed analysis of these exhibits.

Officials of Pacific Freight Lines, Southern California Freight Lines and Culy Transportation Co. presented evidence concerning their terminal facilities. In the territory embraced in the application Pacific Freight Lines maintains terminal or agency facilities at San Jose, Los Angeles, San Gabriel, Pomona, San Bernardino, Santa Ana, Oceanside and San Diego. Similar facilities are maintained by Southern California Freight Lines at Los Angeles, Colton, Santa Ana, Hemet, Oceanside and San Diego. It was stated that terminals are under construction at San Jose and Chula Vista. Culy Transportation Co., has a terminal at San Diego and conducts similar operations at San Jose through an agency arrangement with another carrier.

Evidence was presented indicating in detail the equipment operated by the same three carriers. An exhibit purports to disclose that Pacific Freight Lines owns or operates 1,312 units comprising various types of trucking equipment. It was testified that this carrier is also taking delivery of new equipment on an order for 169 additional units. Pick-up and delivery equipment is stationed at the several points at which terminals are located. The equipment of

Southern California Freight Lines was listed as comprising 640 units of various types. Included in this number are 26 semi-trailers on order and on which early delivery is expected. The equipment of these carriers is used in their entire operations, which embrace extensive areas beyond the territories covered by the application in this proceeding. It is claimed, however, that the equipment is available, as needed, for use between the points applicants propose to serve. According to the testimony, Culy Transportation Co. operates 16 line-haul tractors and 29 semi-trailers and four additional tractors have been ordered. The number of pick-up and delivery trucks in this carrier's service does not appear from the record.

Pacific Freight Lines' general manager testified concerning the service rendered by that carrier. In handling less-truckload traffic to the Basin and San Diego territories, shipments are loaded into line-haul equipment at San Jose and transferred to other equipment at Los Angeles for various outlying stations, from which they are transported by delivery trucks to destination. A similar method is used in handling shipments moving in the opposite direction. It was stated shipments are delivered on the second morning after leaving point of origin. When requested, shipments are picked up or delivered on Saturdays at points at which terminals are located. This carrier does not provide refrigeration service for less-truckload shipments on its routes extending from Los Angeles. This witness further testified that truckload traffic moves in through equipment from point of origin to destination, shipments to Santa Ana receiving overnight service, while those to other Basin points, such as Pomona and San Bernardino, and to San Diego are delivered during the first afternoon. It was stated that a similar service is provided in the opposite direction, but that deliveries are, as a rule, effected at an earlier hour.

Witnesses for Southern California Freight Lines testified that it provides an overnight service from San Francisco Territory, which includes a portion of the Santa Clara Valley, to the downtown business districts of the principal points in the Basin, Oceanside and San Diego. The practice, according to the testimony, is to dispatch shipments arriving at Los Angeles during the early morning on trucks departing for Oceanside and San Diego at 9:45 a.m. and for Colton and Santa Ana at 10:15 a.m. It was stated that this service is also accorded traffic reaching Los Angeles by other carriers provided that shipments are unloaded at Southern California Freight Lines' terminal at or before 9:30 a.m. This carrier's service is normally conducted on five days a week, although, the witnesses asserted, deliveries are, upon request, made at some of the stations on Saturdays.

Applicants presented both oral and documentary evidence to show that shipments tendered to Southern California Freight Lines at Los Angeles for transportation to a consignee at Santa Ana have been delayed. The showing was countered by other evidence introduced by Southern California Freight Lines for the purpose of indicating that the shipments were not tendered by applicants in time to move on the truck scheduled to depart at 10:15 a.m. The evidence in this regard is of such a conflicting nature that the responsibility for the alleged delays cannot be definitely determined.

A witness for Culy Transportation Co. testified that this carrier renders a direct overnight service in both directions between San Francisco and San Diego territories. He asserted that less-truckload shipments leave San Jose at about 6:30 p.m., arrive at San Diego between 9:00 and 9:30 a.m., and are then placed on delivery. Every trucks operated over three routes in San Diego Territory. It is claimed that shipments are accepted at San Jose until 4:30 p.m. This

witness further testified that truckload shipments move on the same schedule so far as transit time is concerned. It appears that the departure and arrival times vary, depending upon traffic requirements.

A witness for Southern Pacific Company and Pacific Motor Trucking Company described the services of those carriers. According to an exhibit of record, shipments from the Santa Clara Valley are scheduled to reach San Gabriel at 12:00 noon the first day after shipment and at other points in the Basin on the second day. Shipments for San Diego, the exhibit indicates, are inter-changed with The Atchison, Topeka and Santa Fe Railway Company at Los Angeles and accorded second morning delivery.

Representatives of a number of shippers and consignees interested in shipments moving between points embraced in the application, mostly from the Santa Clara Valley to southern California, were called as witnesses for protestants. Some of them declared that they receive shipments from the same firms whose representatives testified as witnesses on behalf of applicants. They asserted that the services of the existing common carriers are satisfactory or that no complaints have been received from customers with respect thereto.

Considerable testimony was presented by protestants to show that a dependable service cannot be conducted in the manner applicants propose. The general manager of Pacific Freight Lines testified that, assuming the volume of traffic to be the same as applicants now deliver to connecting lines at Los Angeles and shipments are picked up and delivered at various points in the areas to be served by three trucks, such an operation could not be conducted profitably by Pacific Freight Lines. According to this witness, it is not practical, except in a few cases, to effect deliveries before 9:00 a.m. For this reason, it is his opinion that in such an operation as proposed the trucks should not be dispatched from Los Angeles before approximately

7:30 a.m. The witness asserted that there are very few business establishments to which deliveries can be made between 12:00 noon and 1:00 p.m. He further stated that truck departures from San Bernardino, Riverside and San Diego by 2:00 p.m. would not accommodate the needs and convenience of the shipping public, it being customary for business houses to receive orders during the day and accumulate their shipments during the latter part of the afternoon. The witness asserted that, because of desires of shippers for late afternoon pick-up service, in excess of 85 per cent of the pick ups made by Pacific Freight Lines in the Los Angeles Basin are effected after 3:00 p.m.

The operating manager for Culy Transportation Co. testified that, in his opinion, an overnight service could not be maintained between the Santa Clara Valley and San Diego territories and adequate service rendered without terminal facilities and pick-up and delivery equipment stationed at San Diego. He asserted that in order to deliver 15 shipments and pick up five shipments with a single truck at five or more places throughout San Diego Territory an entire working day's time would be required.

An exhibit of record purports to show that during September, 1950, the trucks of Pacific Freight Lines in pick-up and delivery operations in the San Diego area made a daily average of 24 stops to deliver and eight stops to pick up shipments. The average elapsed time required was six and one-half hours. Other exhibits were received summarizing the performance on certain specified dates of the same carrier's pick-up and delivery operations out of its terminals at Oceanside, Santa Ana, Pomona and San Bernardino. The number of route miles operated by these trucks ranged from six miles a day within a single community to 130 miles where service was rendered to a number of communities. Excluding truck operations performed exclusively within a single community, the average number of route miles per truck

per day were 49, the number of stops to pick-up or deliver shipments ranged from ten to 52 and the average overall running and standby time per stop varied from six to 34 minutes.

The difference in the volume of traffic transported by Pacific Freight Lines and that which applicants expect to handle is such that these data do not afford a guide upon which to measure applicants' probable performance in attempting to provide the proposed service. Applicants will undoubtedly be required to operate more miles per shipment picked up or delivered than Pacific Freight Lines and the other protestants.

The average time required to deliver a shipment, according to Pacific Freight Lines' records, is about 12 minutes per stop. Its general manager called attention to the fact that, while a small package might be delivered in a minute, delays are frequently encountered. The necessity of trucks standing in line awaiting their turn to reach the consignee's door, drivers waiting to effect deliveries while merchants are attending to customers and the collection of C.O.D. and freight charges were mentioned as some of the causes of delays in effecting deliveries.

Applicants' counsel in oral argument directed attention to the numerous public witnesses who testified in support of the application, the different places throughout the areas involved in which they are in business and the wide variety of commodities -- in truckload and less-truckload quantities -- they ship or receive. The demand for first-day deliveries was stressed. Such a service, counsel pointed out, was not offered by any certificated carrier at the time the application herein was filed. Reference was made to the fact that applicants participated in the movement of traffic from and to the involved territories before they received their present certificates. Emphasis was also placed upon the circumstance that applicants

are a San Jose concern, as well as the importance of transportation to the Santa Clara Valley because of its growth and economic expansion. Their proposal was characterized as a flexible plan of operation designed to afford expeditious service.

Protestants contend that applicants' proposals are not practical. After referring to what they termed inconsistencies and uncertainties in the testimony of applicants' principal witness, their counsel described the proposals as fantastic. They asserted that the record does not disclose that applicants are fit, willing and able to conduct the proposed operation. The difficulties with which applicants will be confronted in an attempt to render a dependable service, as pointed out by protestants' operating witnesses, were referred to. The absence of any showing that the proposed operation would be compensatory was stressed. It was also contended that protestants are rendering an adequate and dependable service.

In reply, counsel for applicants defended the proposed method of servicing the extended areas on the ground that transportation requirements will change from day to day and asserted that, the proposed operation being comparable to the distribution of shipments within cities, the formulation of advanced plans would be meaningless. He argued that protestants' delivery experience is not comparable to the situation which will obtain in connection with applicants' proposed operation. The contention was made that applicants' refrigeration facilities would be superior to those of Culy Transportation Co. Southern California Freight Lines' service was referred to as a new service inaugurated after the filing of the application. It was also contended that the need for overnight service has not been questioned and that estimates of the cost of rendering the proposed service would not be of any probative value.

The principal ground upon which applicants urge that a certificate of public convenience and necessity be granted is that by such action a more expeditious service will be available than offered by existing certificated carriers. Under the circumstances, it is of paramount importance that consideration be given to the feasibility of rendering the contemplated service in the manner applicants propose. Obviously, if applicants are unable to show that they can fulfill the offer of service upon which they seek to justify the granting of operating authority, there can be no rational basis for a finding that public convenience and necessity require the establishment of the proposed operation.

Having carefully considered the entire record, we are convinced that the showing presented does not establish that, under the proposed method of operation, a dependable and satisfactory overnight service is practicable. Indeed, in view of the several imponderables which have been brought to light, it would appear that applicants' service would in a number of respects prove undependable and not entirely satisfactory to certain shippers.

Some of the factors which, in our opinion, justify these conclusions are:

The extensiveness of the areas to be served by the number of vehicles applicants propose to use;

The probable diversions which may be necessary from the direct routes of travel, especially in the Basin territory;

The uncertainty of the time deliveries will be made from one day to another to a given consignee or at the same destination;

The limited time allowed for delivering and picking up shipments at the eastern or southern terminus of the several routes, including the time of day such work is proposed to be attempted;

The absence of agencies or other definite arrangements to afford a convenient means whereby shippers may request service;

The early hours at which it will be necessary to have shipments ready for transportation from some points and the uncertainty of the time pick-ups will be possible at other points;

The uncertainty as to whether the territory can be served with the equipment proposed to be used within the time required in order to provide a consistent overnight service; and

While additional route trucks would permit of a more reliable service in some respects, it is apparent from the prospective traffic that the operation of such equipment would not be justified from an economic standpoint.

Although considerable testimony was presented indicating the desirability of following-day deliveries on traffic between the Santa Clara Valley and the Basin and San Diego territories, such a service is now available for most of the shipments between these areas. Culy Transportation Co. maintains an overnight service in each direction to and from San Diego Territory. A following-day service is also rendered by Southern California Freight Lines to the Basin and San Diego territories on southbound traffic and in which direction the demand for expeditious service was shown to be the greatest.

Upon the facts of record, the Commission is of the opinion and finds that a sufficient showing has not been presented to justify a finding that public convenience and necessity require the establishment of the operation proposed by applicants. An order will be entered denying the application.

O R D E R

Public hearings having been had in the above-entitled proceeding, and the Commission being fully advised in the premises,

IT IS ORDERED that the application, as amended, in this proceeding be and it is hereby denied.

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

Dated at San Francisco, California, this 17th day of April, 1951.

R. J. [unclear]
Justin J. Callahan
Harold P. Healy
Francis H. Patten
Edward E. [unclear]
Commissioners