

Decision No. 45609**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 MUELLER TRUCK CO., a corporation,)
 for a certificate of public con-) Application No. 31601
 venience and necessity to operate)
 as a highway common carrier for)
 the transportation of property.)

Edward M. Berol for applicant. Gordon & Knapp, by Wyman C. Knapp, for Pacific Freight Lines and Pacific Freight Lines Express; H. J. Bischoff and James Williams for Southern California Freight Lines and Southern California Freight Forwarders; E. L. H. Bissinger for Southern Pacific Company, Pacific Motor Trucking Company, and Pacific Electric Railway Company; Robert M. Walker and Frederic A. Jacobus for The Atchison, Topeka and Santa Fe Railway Company and Santa Fe Transportation Company; Arlo Poe and Wyman C. Knapp for California Cartage Company; all protestants.

O P I N I O N

Mueller Truck Co. is a California corporation now operating as a radial highway common carrier, contract carrier, and city carrier in Southern California, principally in San Diego and vicinity, Los Angeles and vicinity, and between San Diego and the Los Angeles territory. The business was originally established many years ago, and in 1943 was acquired by a partnership which, in 1947, was incorporated as the Mueller Truck Co. The partners were the same as the present stockholders of applicant, James B. Witherow and Arno W. Mueller. Applicant's principal place of business is in San Diego.

By this application, as amended, authority is sought to establish service as a highway common carrier for the transportation of general commodities ⁽¹⁾ as follows:

- (a) Between the San Diego territory, on the one hand, and the Los Angeles territory, on the other hand, over and along U. S. Highways Nos. 101 and 101 Alternate, with service to all intermediate points on its proposed regular route via U. S. Highway No. 101 between San Diego and Capistrano Beach, and U. S. Highway No. 101 Alternate between Capistrano Beach and Long Beach, together with service to the off-route point of Santa Ana only, via its proposed alternate route U. S. Highway No. 101 between Capistrano Beach and Los Angeles.
- (b) Between the San Diego territory, on the one hand, and points along and laterally within ten (10) miles of U. S. Highway No. 70, between the Los Angeles territory and Redlands, on the other hand, via its proposed regular route of U. S. Highways Nos. 101 and 70, and the proposed alternate routes, for convenience only, of U. S. Highway No. 395, between San Diego and Colton, and U. S. Highway No. 101 between Capistrano Beach and Los Angeles. No service is proposed to points intermediate of San Diego and Riverside along U. S. Highway No. 395.

With reference to the proposed service as set forth in (a) hereinabove, applicant does not propose to transport any shipment which shall carry a charge lower than that applicable to a shipment of 2,000 pounds. The service, as proposed in (b) hereinabove, would be limited to shipments of 10,000 pounds or more each, or shipments each of which will carry a charge applicable to a shipment of 10,000 pounds.

(1) Applicant does not propose to transport bank bills, currency or coin, deeds, drafts or valuable papers with such stamps affixed, precious metals or stones or articles manufactured therefrom, jewelry or other articles of extraordinary value; household goods (used); acids; animals or pets; explosives or dangerous substances; any article which would be liable to damage other shipments or equipment; petroleum products in bulk.

The San Diego territory and Los Angeles territory proposed to be served are the territories described in Highway Carriers' Tariff No. 2, Items Nos. 271-C and 270-A, respectively.

Rates proposed to be assessed, and rules and regulations governing same, will be those established as minimum by this Commission, as contained in said Highway Carriers' Tariff No. 2 and such other tariffs applicable to the transportation of the commodities as proposed.

Applicant proposes a regular daily service, except Sundays and holidays, between San Diego and Los Angeles, and intermediate points; and, as to the off-route point of Santa Ana and service between San Diego and points along U. S. Highway No. 70, service is proposed to be "on call".

Public hearings were held in Los Angeles and San Diego before Examiner Chiesa. Oral and documentary evidence having been adduced, the matter was submitted on briefs which have been filed.

Applicant, by Arno W. Mueller, an officer and manager of the company, offered oral and documentary evidence of the company's financial condition (Exhibits Nos. 3 and 4), number and kind of vehicles owned and operated (Exhibits Nos. 6, 7, 8, and 9), personnel, proposed schedules (Exhibit No. 12), comparative annual volume of business (Exhibits Nos. 5 and 28), and the character of lading, weight of shipments, and points of service (Exhibit No. 27).

As of August 31, 1950, applicant had total assets of \$154,431.23 and liabilities of \$57,925.36, or a net worth of

\$96,505.87, represented by capital investment (common stock) of \$70,000 and surplus of \$26,505.87. A net profit of \$19,008.04 for the first eight months of 1950 was shown. Annual gross revenues increased from \$78,021.74 in 1944 to \$184,156.74 for the first eight months of 1950. The gross revenue for the entire year of 1949 was \$177,603.21. Applicant has thirteen tractors, twenty-one semitrailers of various types, and one pickup and delivery truck. Applicant proposes to pick up and deliver from his line-haul equipment except when restricted by traffic ordinances or customer facilities, and in such instances will use lighter equipment which will be acquired when and as needed. Applicant maintains complete terminal facilities in San Diego, and at Los Angeles it has a working agreement with San Diego Forwarding Company for use of dock facilities and pickup and delivery service. At present, applicant does not propose to establish its own terminal at Los Angeles.

The evidence of record clearly shows the character of applicant's present trucking operations. Exhibits Nos. 27 and 28 show the date, origin, destination, commodity, weight of shipment, and total tonnage transported by applicant for the months of March, June, and September, 1950. Said months were chosen by applicant as representative of its transportation business. The total tonnage carried, within the scope of this application, was 18,513,000 pounds for the said three months. This figure is approximately 43% of all tonnage transported for said three months, which tonnage amounted to 42,743,618 pounds (Exhibit No. 28).

The total number of pounds transported between the points as proposed by this application was as follows:

March, 1950	5,105,755
June, 1950	6,829,809
September, 1950	6,577,706

In March, 1950, only 114,348 pounds were transported to or from points intermediate of the Los Angeles territory and the San Diego territory, including Santa Ana. Between San Diego territory and points along U. S. Highway No. 70 only 26,682 pounds were transported in March, 1950. The corresponding figures for the month of June, 1950, are 86,832 pounds (points intermediate of Los Angeles and San Diego), and 108,296 pounds (between San Diego and Highway 70 points). The September, 1950, figures are 541,350 pounds and 102,514 pounds, respectively. These figures show that 95 per cent of the business consisted of shipments between the Los Angeles and San Diego territories. Mr. Mueller testified that about ten truck loads daily are shipped in each direction.

Only five per cent of applicant's traffic performed within the scope of this application, and only 2.3 per cent of its entire traffic is to and from points intermediate of San Diego and Los Angeles (including Santa Ana) or points along U. S. Highway No. 70.

In its original application applicant had suggested a restriction to shipments of 4,000 pounds or over, between the San Diego and Los Angeles territories and intermediate points, including Santa Ana. An amendment was filed later lowering the

proposed restriction to 2,000 pounds. Neither the documentary evidence nor the testimony of shipper witnesses justifies this change.

Exhibit No. 27 shows that applicant transported the following number of shipments weighing between 2,000 pounds and 4,000 pounds in the months of March, June, and September, 1950:

	<u>March</u>	<u>June</u>	<u>September</u>
Southbound LA to SD and intermediate points	10	4	13
Northbound SD to LA and intermediate points	9	4	7

or an average of nine shipments per month southbound and six shipments per month northbound.

Exhibit No. 27 also shows, for the same months, that the number of all shipments weighing in excess of 2,000 pounds transported by applicant to and from points intermediate of the Los Angeles and San Diego territories, on the one hand, and the Los Angeles and San Diego territories, on the other hand, were as follows:

To Points Intermediate of LA-SD Territory

	<u>March</u>	<u>June</u>	<u>September</u>
From Los Angeles	0	4	3
From San Diego	0	1	1

From Points Intermediate of LA-SD Territory

To Los Angeles	0	0	1
To San Diego	2	1	0

During said three months the number of shipments, weighing in excess of 2,000 pounds, transported by applicant to and from Santa Ana, on the one hand, and the Los Angeles and San Diego territories, on the other hand, were as follows:

	<u>To Santa Ana</u>		
	<u>March</u>	<u>June</u>	<u>September</u>
From Los Angeles	1	1	5
From San Diego	2	0	0
	<u>From Santa Ana</u>		
To Los Angeles	0	0	0
To San Diego	0	0	12

The seven shipments from Los Angeles territory to Santa Ana were all truck-load shipments, five of which were consigned to a can company. Of the two shipments from San Diego territory to Santa Ana, one was a 3,210-pound shipment of pimientos and the other was a split shipment of tuna weighing a total of 5,298 pounds consigned to five different parties. The twelve shipments from Santa Ana to San Diego territory were all large shipments (the average weight being approximately 26,000 pounds) of pimientos transported for a packing company. A witness representing the latter company testified that the company is now being liquidated and that he did not know of protestants' transportation services between Santa Ana and San Diego.

The number of shipments weighing in excess of 10,000 pounds transported by applicant between the San Diego territory, on the one hand, and points along, and laterally within ten

miles of U. S. Highway No. 70, between the Los Angeles territory and Redlands, on the other hand, were as follows:

	<u>From San Diego</u>		
	<u>March</u>	<u>June</u>	<u>September</u>
To Highway 70 points	2	2	7
	<u>To San Diego</u>		
From Highway 70 points	0	1	3

It was not possible to ascertain from said Exhibit No. 27 whether one of the March shipments and three of the September shipments, from San Diego exceeded 10,000 pounds.

Applicant called, in all, thirty-three shipper witnesses. Their testimony was singularly corroborative of the documentary evidence adduced by applicant.

We find, upon the evidence in this record, as hereinabove set forth, that public convenience and necessity require applicant's proposed highway common carrier service between the Los Angeles territory, on the one hand, and the San Diego territory, on the other hand, restricted, however, to shipments of 4,000 pounds or more, or shipments which carry a charge applicable to a shipment of 4,000 pounds.

Respecting service to points intermediate to the Los Angeles and San Diego territories, including Santa Ana and points along and laterally of U. S. Highway No. 70, there was

evidence indicating both what applicant's operations had been and what the prospective needs of shippers were. It is concluded from such evidence that a certificate to applicant to serve such points is not justified.

Protestants, Pacific Freight Lines, Southern California Freight Lines, and Santa Fe Transportation Company, all substantial highway common carriers along the routes proposed to be served by applicant, offered operating evidence and also called many shipper witnesses to testify concerning all phases of service which is available to the general public. Without reviewing in detail the evidence adduced by them, it is apparent from the record that these carriers perform a substantial service between the San Diego territory and points along U. S. Highway No. 70, as well as to and from the points intermediate of the Los Angeles territory and the San Diego territory, including Santa Ana.

The application will be granted in part and denied in part.

Mueller Truck Co. is 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 proceeding, the Commission being fully advised in the premises, and having found that public convenience and necessity so require,

IT IS ORDERED:

(1) That a certificate of public convenience and necessity be, and it hereby is, granted to Mueller Truck Co., a California corporation, authorizing it to operate as a highway common carrier, as defined in Section 2-3/4 of the Public Utilities Act, for the transportation of property between the Los Angeles Territory, as now described in Item 270-A of Highway Carriers' Tariff No. 2, on the one hand, and the San Diego Territory, as now described in Item 271-C, of said tariff, subject to the following restrictions and conditions:

- (a) Applicant shall not serve any intermediate points.
- (b) Applicant shall not serve between points within the Los Angeles Territory nor between points within the San Diego Territory.

- (c) Applicant shall not transport any shipment which shall carry a charge lower than that applicable to a shipment of 4,000 pounds.
- (d) Applicant shall not transport bank bills, currency or coin, deeds, drafts or valuable papers with such stamps affixed, precious metals or stones or articles manufactured therefrom, jewelry or other articles of extraordinary value, household goods (used); acids; animals or pets; explosives or dangerous substances; any article which would be liable to damage other shipments or equipment; petroleum products in bulk.

(2) That, in the operation of the highway common carrier service pursuant to the certificate herein granted, there shall be compliance with 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 at any time the operation herein authorized, Mueller Truck Co. shall conduct said highway common carrier operation over and along the following described routes:

Within the Los Angeles and San Diego Territories over and along the most appropriate route or routes.

Regular Route

U. S. Highway No. 101-Alternate between Long Beach and Capistrano Beach. U. S. Highway No. 101 between Capistrano Beach and San Diego.

Alternate Route (for operating convenience only)

U. S. Highway No. 101 between Los Angeles
and Capistrano Beach.

(3) That, except as herein authorized, Application No.
31601 be, and it hereby is, denied.

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

Dated at San Francisco, California, this 24th
day of April, 1951.

R. J. [Signature]
Justus F. [Signature]
Harold [Signature]
[Signature]
[Signature]
COMMISSIONERS