

ORIGINAL

Decision No. 45877

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
ALBERT F. ZILMERMAN and SUE G. ZILMERMAN,)
a co-partnership, doing business as)
ZILMERMAN TRANSPORTATION CO. for a)
certificate of public convenience and)
necessity to operate as a highway)
common carrier of property between)
Los Angeles, California, and various)
points in Southern California, for)
the transportation of shipments)
having origin or destination on lines)
of highway common carriers, north of)
Santa Barbara or Bakersfield, Cali-)
fornia.)

Application No. 31299

James J. Broz for applicant. Robert W. Walker, Louis M. Welch, and Mathew H. Witteman, for Santa Fe Transportation Company and The Atchison, Topeka & Santa Fe Railway Company; William Meinhold, E. L. E. Bissinger, and John E. Gordon, for Pacific Electric Railway Company, Southern Pacific Company, Railway Express Agency and Pacific Motor Trucking Company; Wyman C. Knapp for Pacific Freight Lines and Pacific Freight Lines Express; Henry J. Bischoff, Warren B. Glass, and H. P. Merry for Southern California Freight Lines and Southern California Freight Forwarders; Douglas Brookman for California Motor Express, Ltd.; protestants; and E. M. Peak for Charles P. Hart Transportation Company, interested party.

O P I N I O N

Albert F. Zimmerman and Sue G. Zimmerman, a copartner-ship doing business as Zimmerman Transportation Co., are engaged in the business of transporting property as a city, contract, and radial highway common carrier, in the Los Angeles commercial area and between Los Angeles, Orange, San Diego, San Bernardino, Riverside, Imperial, Ventura, Santa Barbara and Kern Counties.

Applicants or their predecessors, according to the allegations of the application, have regularly engaged in such truck transportation operations for more than twenty years.

The above-entitled application requests a certificate of public convenience and necessity authorizing them to establish service as a highway common carrier for the transportation of property generally (except commodities in bulk, explosives, automobiles, livestock and agricultural produce) between Los Angeles, California, on the one hand, and all points and places in the Counties of Los Angeles, Orange, San Diego, San Bernardino, Riverside, Imperial, Ventura, Santa Barbara and Kern, for the movement of shipments having origin or destination on the lines of other highway common carriers in the State of California, at points north of Santa Barbara or Bakersfield. In connection with this request, it is alleged that applicants are "willing to forego handling 'local' traffic on its proposed lines, and will thus refrain from diverting any local tonnage or revenue from the lines of existing highway common carriers in Southern California."

The applicants also request that the Commission grant its approval and authority for applicants "to establish joint rates and through routes with such highway common carriers as may be necessary to carry out and effectuate the purpose of this application."

Public hearings were held at Los Angeles and San Francisco, and the matter is now submitted.

As the hearings progressed, applicants abandoned much of the plan as described in the application. In spite of the allegation that applicants were willing to forego local traffic on the proposed lines, one of the applicants testified that the present so-called contract operation would be continued, and that a new corporation would be formed to carry on the operation for which a certificate of public convenience is herein requested. No financial statement or other required information of such corporation have been furnished. According to applicants' testimony, the management of both operations would be the same, but different equipment would be employed in each operation. Concerning the lack of proof that the proposed operation would be compensatory, and in describing the importance of using another corporation to carry on the proposed operation, applicants' attorney, stated: "Now we have not attempted to show whether or not the proposed service is compensatory or will be compensatory because we know that the operations in their aggregate will be compensatory as shown by the financial statement. The fact that there will be two corporations is just a pure immaterial matter of form." (Transcript, Vol. 7, page 738, lines 18 to 23, inclusive). The admission of applicants' counsel that he had not even attempted to show that the proposed operation will be compensatory cannot be disregarded in view of the burden of proof resting upon applicants.

According to the Profit and Loss Statement for the period January 1 to May 31, 1950, Exhibit No. 5, applicants

enjoyed a gross income of \$65,514.87, and a net profit of \$11,039.16. This included service to approximately thirty firms in and around Los Angeles with which applicants had oral contracts providing for a thirty-day cancellation privilege. This gross revenue included income from business interchanged with connecting carriers. When questioned as to the amount of such interchanged business, one of the applicant partners testified that, before such firms as Savage, Hart, Willig, and others were certificated in 1949, applicants' revenue from this source was approximately \$3,000 gross per month, but after those carriers received highway common carrier rights, applicants' gross revenue from this source was less than \$1,000 and perhaps over \$500 per month. This latter revenue, according to the same witness, resulted from business of firms with which oral contracts were held. This same witness, on March 2, 1951, failed to state, when questioned, what proportion of their freight revenue for 1950, which aggregated \$219,677.68, consisted of such interchanged freight.

The request for approval of joint rates and through routes cannot be granted for the obvious reason that no joint rates or through routes are proposed. The only testimony on this point consisted of statements by several carriers with rights between Los Angeles and points north of Santa Barbara and Bakersfield that, if applicants received the certificates of public convenience and necessity herein requested, they would favorably consider entering into joint rate agreements with them.

By filing a revised map showing the territory proposed to be served, the application was materially reduced in its territorial scope. The proposed service area as shown by this map, Exhibit No. 15, extends north to San Fernando, east to Redlands, south to San Ysidro, and west to Santa Monica and Long Beach. There is no evidence of record to indicate how much the elimination of the northern points, such as Santa Barbara, Ventura and Bakersfield, will further reduce the gross revenue now enjoyed from interlined or interchanged traffic.

Seven days of hearings were consumed in order for applicants to put in their evidence. Mr. Zimmerman stated that the only interlined carriage he is presently performing has been done pursuant to four contracts he has with shippers in San Francisco or other bay points. These shipments are consigned to applicants, who, upon their receipt, carry them under such contract to the ultimate consignee. These shippers with whom applicants have contracts testified in the San Francisco hearings that applicants' services were satisfactory and desirable. Other shippers, principally those who had used applicants' services in connection with such line haul carriers as Savage and Willig, prior to the time they became highway common carriers, testified that such service had been excellent, and that if applicants were certificated they would again avail themselves of such service. In Los Angeles several firms, who receive freight from the above-described northern area shippers, testified as to the excellence of applicants' service.

In addition, representatives of highway common carriers, who have recently been certificated as to operation between San Francisco and Los Angeles, testified that, if a certificate were granted applicants by this proceeding, they would consider the matter of entering into joint rate contracts with applicants. A few representatives of these certificated carriers stated that there is an advantage to them in such joint rate agreements with carriers who are not their competitors between Los Angeles and northern points. Also, there was some testimony that some of protestants' services were, in some respects, subject to criticism. Such criticism for the most part was vague and general.

At the final hearing in Los Angeles on April 30, 1951, applicants offered the following stipulation:

"James J. Broz
Attorney At Law
Suite 711 Citizens National Bank Building
Los Angeles 13, California

"Attorney for Applicant.

"BEFORE THE PUBLIC UTILITIES COMMISSION OF
THE STATE OF CALIFORNIA

"In the Matter of the Application)
of ALBERT ZIMMERMAN and SUE G.)
ZIMMERMAN, a co-partnership, doing)
business as ZIMMERMAN TRANSPORTATION)
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venience and necessity to operate as)
a highway common carrier of property)
between Los Angeles Calif., and var-)
ious points in southern California.)

APPLICATION NO.

31,299

APPLICANT'S STIPULATION

"Comes now the Applicant, and offers the following Stipulation to the Public Utilities Commission of the State of California, for the purpose of shortening the time of trial and expediting the Commission's consideration and disposition of the above entitled proceeding:

I

"Applicant stipulates as follows:

"That the Protestants collectively operate from, to and between all of the points and territory proposed to be served by applicant, and certain of said Protestants individually operate from, to and between said territory and points, viz:

"Pacific Freight Lines, Pacific Freight Lines Express, Southern California Freight Lines and Southern California Freight Forwarders serve points north of Santa Barbara and Bakersfield as a result of which a single line transportation service is now available daily by one or the other of said carriers on all traffic proposed to be transported by applicant.

II

"That the foregoing Protestants, and in addition, the Atchison, Topeka & Santa Fe Railway, Santa Fe Transportation Company, Southern Pacific Company, Pacific Motor Transport, Pacific Electric Railway, Railway Express Agency, and California Motor Express, Ltd. maintain joint or through rates and through routes for the transportation of property between points north of Santa Barbara and Bakersfield, California, on the one hand, and points south and east of Los Angeles, California, on the other hand.

III

"That Protestants would present to the Commission through operating and public witnesses, testimony and evidence of a documentary nature, demonstrating the validity of the following facts:

"(a) That the said carriers maintain agency stations at the principal points involved in this application, for pick-up and delivery service on outbound and inbound shipments for the public and that such service is regularly performed by them in the ordinary course of business.

"(b) That said carriers themselves, or through an affiliated carrier, perform a regular "line-haul service" between the points and in the territory involved in this application.

"(c) That the said carriers, collectively, serve a substantial part of the shipping public which regularly uses the services of these carriers in the normal course of business.

"(d) That a substantial number of shipper witnesses could be produced by the Protestant carriers to testify at further hearings in this Application, and that if called, they would testify that the existing services of the Protestant carriers are adequate; and that said Protestants are in a position to substantiate such testimony by A PREPONDERANCE OF WITNESSES WHO WOULD SO TESTIFY, AS COMPARED with the number of witnesses offered by the Applicant.

"(e) That the Protestant carriers, individually and collectively are in a position to render adequate and satisfactory service to a greater number of shippers than they are serving at the present time between the points and in the affected territory.

"(f) That the instant Application, if granted, would cause the Protestant carriers to suffer a loss, individually and collectively, in their gross revenues, from the transportation of such shipments as would be involved in the territory defined in this application.

"(g) That If the instant Application is granted, the competitive service provided by the Applicant hereunder, will divert from the Protestant carriers, a certain amount of traffic which they are presently transporting over their own lines.

"(h) That the Protestant carriers, individually and collectively are presently working under operating ratios which preclude their ability to withstand further loss of revenue to a new competitive service.

"(i) That the existing rates for truck transportation of through traffic between points north of Santa Barbara and Bakersfield, Calif. on the one hand, and points south and east of Los Angeles, Calif. on the other hand, whether published as through rates or made on combination of local rates over Los Angeles, Calif. are just and reasonable, and that Applicant is not proposing to establish any different rate structure by this Application.

"(j) That the existing schedules of service of Protestant carriers are individually and collectively equal to or greater than those proposed by the Applicant and that no superior service is proposed by the Applicant.

IV

"That this Stipulation is offered for the purpose of shortening the time of trial and expediting the disposition of the above proceeding, and that if said Stipulation is acceptable to the Commission, the Applicant and Protestants herewith submit the matter upon the record as made in this Proceeding, together with the foregoing Stipulation,

"IN WITNESS WHEREOF, the within Stipulation is signed and accepted by the undersigned Applicant and Protestant carriers, this 30th day of April, 1951, at Los Angeles, California.

"For the Applicant JAMES J. BROZ
James J. Broz
For Zimmerman Transportation Co.

"For the Protestants WYMAN C. KNAPP
For Pacific Freight Lines and
Pacific Freight Lines Express
Wyman C. Knapp, Attorney.

E. P. MERRY
For Southern Calif. Freight Lines
Southern California Frt. Fwdrs.
E.P. Merry.

E. L. H. BISSINGER
For Southern Pacific Co.
Pacific Electric Railway
Pacific Motor Trucking Co.
Railway Express Agency.
E.L.H. Bissinger, Attorney.

LOUIS M. WELSH
For A. T. & S. F. Ry. Co.
Santa Fe Transportation Co.
Louis M. Welsh, Attorney.

DOUGLAS BROOKMAN
For California Motor Express Ltd.
Douglas Brookman, Attorney."

By subsequent stipulation, that stipulation of April 30, 1951, was modified by eliminating the statement in paragraph III that protestants' available evidence was of such a nature that it demonstrated the validity of the facts stated in said paragraph of such April 30, 1951, stipulation. As revised, however, the stipulation admits the existence of a conflict of evidence on all issues. This stipulation, when considered with the weak showing made by applicants, precludes the granting of the requested certificate of public convenience and necessity. Applicants introduced no evidence to offset the stipulated evidence that, if the certificate were granted, business would be diverted from protestants, and that their operating ratios were such that they do not have the "ability to withstand further loss of revenue to a new competitive service."

In addition to the service of protestants, the area as far east as Fontana is served by Public Freight System, a highway common carrier not competing with any carrier operating between Los Angeles and any northern point. California Cartage Company, Inc., which also does not compete with carriers operating north of Los Angeles, has highway common carrier rights between Los Angeles and San Diego. Boyle and Son, in addition, possesses rights to serve points between Los Angeles and points intermediate to San Diego.

On page 6 of the application, applicants concede that the revenue from the interlined freight alone could not support the operation, and, also, that the existing services could not be shown to be inadequate or unsatisfactory.

The basic question to be determined in this proceeding is whether the evidence shows that public convenience and necessity require the proposed operation. After a careful study of the record, the Commission is of the opinion, and finds, that public convenience and necessity do not require the proposed service. Applicants do not propose to convert their entire operation in this area into a highway common carrier service. The interlined business as presently operated, or in reasonable prospect, is too small to alone justify the granting of a certificate of public convenience and necessity. There is of record no substantial evidence that the public convenience and necessity requires the institution of the highway common carrier service proposed by applicants, or that such service, if authorized, could be made profitable. In view of our conclusion, heretofore stated, it is not necessary to discuss the possible violation of Section 4 of the Highway Carriers' Act by the proposed operation and the continued contract operation between the same points. Consequently, the application will be denied.

O R D E R

Public hearings having been held in the above-entitled proceeding, the matter being under submission, and the matter having been fully considered by the Commission, and basing this order upon the record and the conclusions and findings contained

in the foregoing opinion,

IT IS ORDERED that Application No. 31299 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 26th day of June, 1951.

R. T. Dunderberg
Justus F. Casper
Harold H. Huls
Samuel H. Pittel
John E. McMill
Commissioners