

ORIGINALDecision No. 46550

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 SAN DIEGO FAST FREIGHT, INC., for a)
 certificate of public convenience)
 and necessity to operate as a highway)
 common carrier of property, between)
 points and places in Los Angeles)
 County, California and points and)
 places in San Diego County,)
 California.)

Application No. 31516

Vincent Matthew Smith for applicant. Arlo D. Poe
 for California Cartage Co., Inc., and California Cartage Express;
Wm. F. Brooks for The Atchison Topeka and Santa Fe Railway and
 Santa Fe Transportation Company; Donald Murchison for Pacific
 Freight Lines and Pacific Freight Lines Express; and H. J.
Bischoff for Southern California Freight Lines and Southern
 California Freight Forwarders, protestants. Glanz & Russell by
Theodore W. Russell for San Diego Forwarding Company, protestant,
 and Harold B. Boyle, doing business as Boyle & Son, interested
 party.

O P I N I O N

Applicant herein requests authority to transport general
 commodities, with stated exceptions ^{1/}, between points and places
 within the city limits of Los Angeles and Vernon, on the one hand,

1/ Household goods, explosives and other dangerous articles,
 livestock, live poultry, live birds, articles requiring
 special equipment to load, unload or transport, articles
 not subject to the terms and conditions of the uniform
 bill of lading, property of extraordinary value, property
 injurious or contaminating to other lading or to carrier
 equipment, property not properly packaged or marked, and
 property requiring heat or refrigeration other than dry
 icing.

and on the other, Oceanside and Chula Vista and intermediate points on U. S. Highway No. 101, and San Diego and El Cajon and intermediate points on U. S. Highway No. 80^{2/}.

Public hearings were held before Examiner Syphers in Los Angeles on August 14 and 15, and December 4, 5, 6, 21 and 29, 1950, and at San Diego on November 2 and 3, 1950 and February 26 and 27, 1951. On these dates evidence was adduced and on the last named date the hearing was adjourned, each party being given the privilege of filing concurrent briefs. The final briefs now have been filed and the matter now is submitted and ready for decision.

At the hearing the president of applicant corporation stated that since April of 1947, the company has been operating under authority of radial highway common, contract and city carrier permits. Since its inception the company has grown to the point where it now handles between 300,000 and 400,000 pounds of freight per month. He testified that this business had been secured without solicitation.

As a result of this growth applicant now seeks the certificate herein requested, proposing an on-call, overnight service on a daily basis, except Sundays and Holidays. The rates to be used are those now contained in Highway Carriers' Tariff No. 2, with the following exceptions:

"articles of a light and bulky nature, weighing

^{2/} The proposal as contained in the application was amended orally at the hearing on August 14, 1950, and later by a written amendment filed February 26, 1951.

eight pounds or less per cubic foot, will be charged for at the rate of 8 cents per cubic foot.

No allowance in weight will be made for dry ice, in packages with freight."

Applicant rents a terminal at San Diego, consisting of two warehouses or docks, one having 2500 square feet and the other having 2300 square feet. If the authority requested is granted it is proposed to have a loading dock at Los Angeles of 500 square feet.

Applicant, at the time of the hearing, operated six trucks, three tractors, five semi-trailers and one full trailer, employed six drivers in addition to two officials of the corporation who also act as drivers, and maintained an office staff of three employees.

A financial statement was attached to the application and was incorporated in the record.

The witness further testified that his company planned no active sales campaign if granted this certificate, stating that they had "all the business necessary to operate," although he expressed a willingness to handle any freight tendered by the shipping public.

Applicant produced seventeen shipper witnesses from the San Diego area and nineteen from Los Angeles. These shippers testified they used the services of applicant, were well satisfied and wanted to continue using these services. In summary, the desire for applicant's services stems from the facts of prompt pickups, overnight service, a minimum of claims, courteous drivers, early deliveries and in general, good service. Some of

these shipper witnesses likewise testified as to defects in the existing services, some of which testimony was contradicted by later witnesses for protestants.

The protestants consisted of the certificated carriers in the area, three trucking companies who also conduct or control some express or forwarding operations, one railroad and one trucking company which it owns, and one forwarding company.

The evidence shows that these protestants presently are conducting trucking operations in the area involved on a large scale. California Cartage Co., Inc., operates more than one hundred pieces of equipment and transports daily between the Los Angeles and San Diego areas, averaging about two and one-half runs each way per night. It controls an express company which operates southbound using the railroad as an underlying carrier.

Southern California Freight Lines maintains more than 100 pick-up trucks in the Los Angeles area and 31 in San Diego. It runs about 15 line trailers daily between Los Angeles and San Diego, some making two round trips per night. Exhibits 7 to 11, 13, 14, 18 and 19 contain data relative to this carrier. This carrier maintains terminals in both Los Angeles and San Diego, has a teletype service, and has both regular and non-scheduled pickups in both cities.

The Santa Fe Railway maintains daily rail service between Los Angeles and San Diego, and the Santa Fe Transportation Company conducts daily highway common carrier operations. This truck carrier has two schedules from Los Angeles to San Diego daily, one in the morning and one in the evening, and two in

the reverse direction, both in the afternoon. Terminals are maintained in both cities, and there are used in pickup and delivery service about 40 pieces of equipment in Los Angeles and 9 in San Diego.

Pacific Freight Lines, and its related company, Pacific Freight Lines Express, constitute the largest highway common carrier service between the points here involved. These companies operate about 30 semi-trailers between Los Angeles and San Diego and about 5 between Los Angeles and Oceanside. Terminals are maintained at both cities. Exhibits 1 to 6 and 20 to 25 relate to this carrier.

Generally these carriers testified that their northbound tonnage was less than the southbound, and further that they were in a position to handle more traffic. Some of them have ordered additional equipment. It was further testified that the present competition between existing carriers is rather keen, and it was opined that an additional common carrier in the field would detract some business from the existing carriers.

Protestants presented the testimony of forty-three shipper witnesses from the San Diego area and thirty-four from Los Angeles. The substance of this testimony was that these shippers were using the existing carriers, receiving satisfactory service and had no need for additional service. Some of these shippers also testified that due to limited space, or in the interest of expediting their shipments, they did not want too many carriers coming into their places of business.

We have carefully analyzed all of the evidence in this record and have given consideration to the briefs of the parties,

and in this light we find that a certificate of public convenience and necessity should be granted to applicant herein, subject to the restrictions hereinafter set out.

As to the public witnesses produced by applicant we are impressed with the strong desire they have expressed to have applicant's services. As to the public witnesses produced by protestants we observe that there appears to be no doubt but that protestants are providing satisfactory services to a number of shippers. However, in a public convenience and necessity matter all of the shippers must be considered. It does not follow from the fact that a good many shippers are now receiving satisfactory service and need nothing additional in that respect that all shippers are in the same position. When, as in this case, the testimony of a number of shippers is very favorable to applicant, that testimony should be given weight in arriving at a determination of public convenience and necessity.

From this record we further find that applicant is willing and able to provide service to a part of the territory; however, with the equipment and facilities applicant has, we do not believe it possible for it to provide a complete common carrier service to all of the area proposed to be served. There was testimony presented showing that to provide a general pickup and delivery service in the Los Angeles area would require many more trucks than applicant has. Furthermore, the strong shipper support stemmed somewhat from the personalized service of applicant, which might well be lost if applicant should attempt to provide a service beyond the scope of its facilities.

Exhibit 17 shows the places in the Los Angeles

territory where applicant has provided service. From this map and from the public witnesses' testimony it appears that the need for applicant's services is to be found in Vernon and in the central area of Los Angeles, and more particularly in those portions of the Cities of Los Angeles and Vernon which are described as Los Angeles Zone 1 in Distance Table No. 4 of Decision No. 46022, dated July 31, 1951, in Case No. 4808. We find that any certificate granted to applicant should be limited to that territory.

Applicant's proposal to include a cubic foot rule was not justified on this record and will be denied.

San Diego Fast Freight, Inc., 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

Application as above entitled having been filed, public hearings having been held thereon, the matter having been submitted, the Commission being fully advised in the premises and hereby finding that public convenience and necessity so require,

IT IS ORDERED:

(1) That a certificate of public convenience and necessity authorizing the establishment and operation of a service as a

highway common carrier as defined in Section 213 of the Public Utilities Code for the transportation of general commodities, except household goods, explosives and other dangerous articles, livestock, live poultry, live birds, articles requiring special equipment to load, unload or transport, articles not subject to the terms and conditions of the uniform bill of lading, property of extraordinary value, property injurious or contaminating to other lading or to carrier equipment, property not properly packaged or marked, and property requiring heat or refrigeration other than dry icing, be, and it hereby is, granted to San Diego Fast Freight, Inc., a corporation, between points and places in those portions of the Cities of Los Angeles and Vernon which are in Los Angeles Zone 1, as described in Distance Table No. 4 of Decision No. 46022, dated July 31, 1951, in Case No. 4808, on the one hand, and on the other, Oceanside and Chula Vista and intermediate points on U. S. Highway No. 101 and San Diego and El Cajon and intermediate points on U. S. Highway No. 80.

(2) That in providing 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 such at any time, San Diego Fast Freight, Inc., shall conduct said highway common carrier service between the following points and over the following routes:

Between Los Angeles and Chula Vista via U. S. Highway No. 101 and San Diego and El Cajon via U. S. Highway No. 80.

In all other respects Application No. 31516 will be denied.

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

Dated at San Francisco, California, this 18th day of December 1951.

A. T. Dunning
President

Justin F. Craver

Harold P. Hils

Lawrence P. Potter

John E. Marshall
Commissioners