

ORIGINAL

Decision No. 48926

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)	
H. F. REILLEY (REILLEY TRUCK LINE))	
for a certificate of public convenience))	Application No. 31722
and necessity to operate as a highway)	
common carrier.)	

Francis X. Vieira, for applicant; William Meinhold, for Southern Pacific Company and Pacific Motor Trucking Company; Frederick W. Mielke and Thomas R. Dwyer, for Delta Lines, Inc.; Marvin Handler, for Stockton Motor Express; Frank Loughran, for Riske Trucking Co.; Louis Welsh, Frederic Jacobus, Robert W. Walker and Matthew H. Witteman, for The Atchison, Topeka & Santa Fe Railway Co. and Santa Fe Transportation Co.; N. R. Moon, for Merchants Express Corporation, protestants; Willard S. Johnson, for Joe A. Nevis Trucking and J. Christenson Co., interested parties.

O P I N I O N

This is an application by H. F. Reilley, an individual doing business as Reilley Truck Line, for a certificate of public convenience and necessity, under Section 1063 of the Public Utilities Code, to operate as a highway common carrier for the transportation (1) of general commodities, with certain exceptions, between the following points:

Between San Francisco, Oakland and Richmond pick-up and delivery zone limits, on the one hand, and Stockton pick-up and

(1) Exceptions are: Livestock; high explosives; articles of extraordinary value; petroleum products in bulk; fresh fruits and vegetables; frozen fresh fruits and vegetables; household goods and related articles; any commodity requiring refrigeration in transit.

(2)
delivery zone limits, on the other hand, serving the intermediate points of Santa Rita, Livermore, Tracy, Lyoth (U. S. Army Base), Lathrop (including U. S. Army Base known as Sharpe's General Depot) and French Camp, via U. S. Highways 40 and 50 and connecting county roads.

The application was submitted on briefs following public hearings held at San Francisco, Oakland and Stockton before
(3)
Examiner Gregory. The record includes testimony from operating officials of applicant and the three principal protestants (Delta, Merchants and Santa Fe) and from 26 shippers and receivers of freight at San Francisco, Oakland and Stockton, called by applicant.

Applicant commenced a local drayage business in Stockton in 1922. After constructing a warehouse in 1924 he expanded his operations, conducted under the name of California Fireproof Storage and Transfer Company, to include transportation of groceries, hardware and flour from bay area cities to Stockton and other points in the Sacramento and San Joaquin Valleys. With the opening of the Port of Stockton in 1932 he experienced a rapid increase in the volume of flour shipments, mostly interstate, handled through his warehouse and the port facilities. At this time he was serving about 25 patrons under verbal arrangements some of which were

(2) Pick-up and delivery zones are those described in the following items of Highway Carriers' Tariff No. 2:

San Francisco, Richmond - Item 260-7-E
Oakland - Item 260-5.5-B
Stockton - Item 260-9

(3) Briefs were filed by applicant and by Delta Lines, Inc., Merchants Express Corporation, The Atchison, Topeka & Santa Fe Railway Co. and Santa Fe Transportation Co. Protestants Southern Pacific Co., Pacific Motor Trucking Co., Stockton Motor Express and Riske Trucking Co. took little or no active part in the proceeding. Counsel for Joe A. Nevis Trucking and J. Christenson Co. withdrew from the case during the hearings.

reduced to writing after passage of highway carrier regulatory legislation in 1935. The number of patrons served under these arrangements has remained substantially unchanged for the past 20 years. During the past ten years or so applicant, in addition to his local storage and delivery service at Stockton, his interstate traffic and his occasional shipments to points in the Sacramento and San Joaquin Valleys, has maintained a daily (except Sunday and later except Saturday and Sunday) service between Stockton, San Francisco, Oakland and Berkeley, touching the intermediate points of Santa Rita, Livermore, Tracy, Lathrop and French Camp, along U. S. Highway 50.

While a rather diverse assortment of commodities has been handled between the bay area and Stockton, the principal intrastate items, as indicated by exhibits covering two selected periods of one week each, have consisted of canned goods, paint, auto parts and supplies, flour, bakery supplies and fresh horsemeat. The bulk of these shipments originated at San Francisco and Oakland destined to Stockton, although a fairly substantial movement occurred in the reverse direction, comprising chiefly auto parts and miscellaneous general freight. Weights of the individual shipments listed in the exhibits range from one pound (advertising matter and hair clamps) to 18,600 pounds (canned goods). For the most part, however, the weight per shipment was well below 4,000 pounds.

Applicant holds highway contract, radial highway common and city carrier permits from this Commission and authority from the Interstate Commerce Commission for the transportation, over irregular routes, of flour, sugar, lumber and machinery one way from Stockton and other origins and household goods within a radius of 250 miles of Stockton.

The service proposed in the present application is limited to that portion of applicant's overall operations which has been conducted for many years between Stockton and the bay area cities named, assertedly under authority of contract and radial carrier permits. Aside from publication of rates and time schedules, applicant does not offer a service essentially different from that now rendered, although it is contemplated that arrangements will be made with drayage or warehouse firms in San Francisco, Oakland, Livermore and Tracy for receipt of local freight offerings and telephone calls for service.

Two schedules daily, except Saturdays and Sundays, are proposed between Stockton, Oakland and San Francisco, leaving Stockton at 10 a.m. and departing from Oakland and San Francisco at 5 p.m. and 6 p.m., respectively, on the return movement. Freight picked up at San Francisco and Oakland destined for intermediate points between Stockton and Oakland will be brought to Stockton and delivered the following morning on the regular schedules leaving Stockton for the bay area at 10 a.m. Deliveries in Stockton of freight arriving in the evening from San Francisco and Oakland will commence at 8 a.m. the following morning, but, if special arrangements are made with consignees, it will be delivered on arrival the same evening. All pickups and deliveries will be made with line haul trucks, as is now the case. Applicant appears to have the requisite experience, equipment and financial resources with which to inaugurate such a service should it be authorized.

Applicant produced 26 representatives of business firms in Stockton, San Francisco and Oakland for whom he had performed transportation services, in some cases over a period of 20 years or more. All were satisfied with the manner in which their shipments

had been handled, all desired the service continued and stated they would use it if it were certificated. Some of the bay area witnesses testified they used the service at the request of their Stockton customers, others stated they found less damage to shipments handled by Reilley in contrast to their experience with other common carriers serving the area, or that Reilley's pickup service was more dependable than that of various other carriers. Representatives of automotive machine shops at Oakland and Stockton, who made shipments of such articles as shafts and other motor parts needing grinding or heat treatment, testified they found Reilley's service faster than that of the other carriers, thus permitting earlier completion of machinery repairs for their customers. For the most part, the Stockton witnesses (sixteen in number) also used the services of some of the protesting carriers, as well as those of other transportation agencies, either of their own volition or because their suppliers in the bay area routed shipments over their lines. Several of the witnesses who had used Reilley's service were unfamiliar with the services offered by protestants. Applicant called no witnesses from intermediate points.

Delta Lines, Inc., Merchants Express Corporation and Santa Fe Transportation Company, the three active protestants, through their operating officials described the service offered by them between the San Francisco Bay area and Stockton. They called no public witnesses.

Delta serves the bay area points and Stockton. Since the hearing it has acquired authority to serve all intermediate points along U. S. Highway 50 between Dublin and Stockton, including the off route points of Pleasanton, Lyoth and Lathrop. (Dec. 46075,

August 14, 1951, Apps. 31476, 31497.) Merchants serves between the bay cities and Stockton, including the intermediate points of Santa Rita and Livermore. Santa Fe also serves the bay area cities and Stockton. All three carriers normally render an overnight service between the points they serve in the area and all but a minor portion of the traffic is delivered in the forenoon. Delta has made deliveries the same day in Stockton of large shipments picked up in San Francisco or Oakland by linehaul equipment.

In addition to the three carriers, just mentioned, several other transportation agencies serve the territory, including Southern Pacific Company and its trucking subsidiary, Pacific Motor Trucking Company, Valley Express Company, Stockton Motor Express, Lodi Truck Service, Riske Trucking Company and some (4) others.

The issue to be determined here is the familiar one of whether public convenience and necessity require issuance of a certificate to applicant. The application states that "applicant is not exactly informed, nor has he been able to obtain exact information as to what he may do under his present operating permits, but applicant is filing this application responsive to the Commission's newly declared policy."

The policy referred to is that enunciated by the Commission in Decision No. 42646, dated March 22, 1949, in Case No. 4823 (48 CPUC 587). That case was an investigation, instituted by the Commission after the end of World War II as a result of the many changes in transportation conditions which occurred during the war and in the early post war period, for the purpose of attempting to solve problems connected with providing a transportation

(4) Stockton Motor Express and A. R. Altnow (Lodi Truck Service), as well as Delta Lines, Inc., were granted certificates in 1951 during the period between the end of the hearings and the filing of briefs in the instant proceeding.

system responsive to present and future needs of commerce in California. (See Dec. 41470, April 13, 1948, Case 4823 - 48 CPUC 62 - the original decision in that investigation.). In its supplemental opinion, issued in March, 1949, the Commission recommended the adoption of certain legislation and also issued a "Declaration of Policy", the three items of which mentioned by applicant read as follows (48 CPUC 587, at 598, 599):

- "1. The Commission should be liberal in granting certificates of public convenience and necessity.
- "2. Contract and radial permittees are placed on notice that if they have reason to believe their operations come within the provisions of the Public Utilities Act, they should file applications for certificates.
- "3. The Commission in granting certificates of public convenience and necessity will follow a policy of strictly limiting such certificates to the scope of operation justified by the showing made, giving consideration to such matters as types and quantities of commodities, and the areas to be served."

We are of the opinion that the policy announced by the Commission was designed to include the type of operation conducted by applicant for which he now seeks a certificate. He has rendered service between Stockton, Oakland and San Francisco for many years, a service which, the record shows, is both convenient and necessary to those who have used it and who have stated they would continue to use it. There is little in the record, moreover, to suggest that the traffic now enjoyed by the protesting carriers would be diverted, in any significant sense, by the grant of a certificate to applicant. As a matter of fact, many of applicant's patrons make use of the facilities of these other carriers, to a greater or lesser degree, and they appear to have done so without serious complaint respecting the quality of service rendered.

While we believe that the record justifies the issuance of a certificate to applicant, we are not able to find substantial evidence of public need for the proposed service at the points of Santa Rita and Livermore, either from Stockton or from the San Francisco Bay cities. The authority hereinafter granted, therefore, will exclude the two intermediate points named.

The rather wide assortment of general freight shown to have been transported by applicant leads us to conclude that imposition of limitations on commodities to be carried in the certificated operation, other than those proposed by applicant himself, would restrict the enterprise to a degree unwarranted by any considerations of fact or policy to be found in this record. No additional limitations, therefore, will be placed upon the commodities to be carried or the weight thereof.

The following order will authorize the issuance of a certificate in accordance with the views herein expressed.

H. F. Reilley, applicant herein, 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 hearing having been held on the above entitled

and numbered application, evidence and briefs having been received and considered, the Commission now being fully advised and hereby finding 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 H. F. Reilley, an individual doing business under the fictitious firm name and style of Reilley Truck Line, authorizing the establishment and operation of service as a highway common carrier, as defined by Section 213 of the Public Utilities Code, for the transportation of property as follows:

General commodities, except livestock, high explosives, articles of extraordinary value, petroleum products in bulk, fresh fruits and vegetables, frozen fresh fruits and vegetables, household goods and related articles, as defined in Highway Carriers' Tariffs Nos. 3 and 4, as amended, and any commodity requiring refrigeration in transit,

between San Francisco, Oakland and Richmond pick-up and delivery zone limits, on the one hand, and Stockton pick-up and delivery zone limits, on the other hand, as said limits are variously described in Highway Carriers' Tariff No. 2, or in supplements thereof, and between said points, on the one hand, and the intermediate points of Tracy, Lyoth (U. S. Army Base), Lathrop (including Sharpe's General Depot) and French Camp, on the other hand, via U. S. Highways Nos. 40 and 50 and connecting county roads.

(2) That in providing service pursuant to the certificate herein granted, applicant shall comply with and observe the following service regulations:

- a. Applicant shall file a written acceptance of the certificate herein granted within a period of not to exceed 30 days after the effective date hereof.

- b. Within 60 days after the effective date hereof and on not less than 5 days' notice to the Commission and the public, applicant shall establish the service herein authorized and file in triplicate and concurrently make effective appropriate tariffs and time tables.

(3) That, except as herein specifically granted, the application otherwise 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 1st day of April, 1952.

A. J. [Signature]
President
Justus J. [Signature]
Harold [Signature]
[Signature]

Commissioners