

Decision No. 47047**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 JAMES H. CARR and CHARLES A. CARR,)
 co-partners doing business as OXNARD)
 TRUCKING SERVICE for a certificate)
 of public convenience and necessity)
 to operate as a highway common carrier) Application No. 32313
 of commodities generally between points)
 and places in the Los Angeles area, on)
 the one hand, and points and places in)
 the Oxnard-Ventura area on the other)
 hand.)

Glanz & Russell, by Theodore W. Russell and Ernest F. Shelander, for the applicants. Gordon, Knapp and Gill, by Hugh Gordon, Joseph C. Gill and Sanford A. Waugh, for Pacific Freight Lines and Pacific Freight Lines Express, protestants. H. J. Bischoff and John B. Robinson, for Southern California Freight Lines, interested party.

O P I N I O N

Applicants, copartners doing business as Oxnard Trucking Service, request authority, as a highway common carrier, to transport commodities, except petroleum products and petroleum in tank trucks, livestock, and used household goods, between the Los Angeles Drayage Area as described in Items 30, 31, 32 and 33 series, City Carriers' Tariff No. 4, Highway Carriers' Tariff No. 5, as set forth in Appendix A of Decision No. 32504, as amended in Case No. 4121, and, in addition thereto, all points and places in the Cities of Glendale, Burbank and South Gate, hereinafter referred to as the southern territory, on the one hand, and points in a so-called Oxnard-Ventura area described as follows:

All points and places on and along U.S. Highway 101-A between Point Mugu and Ventura; all points and places on and along U.S. Highway 101 between Camarillo and Ventura; all points and places on and along State Highway 118 between Somis and Ventura; and all points and places on and along State Highway 126 between Fillmore and Ventura, including Point Mugu, Camarillo, Somis, Fillmore and Ventura; and, in addition thereto, all points and places within a radius of three miles on either side of said highways and within three miles of the corporate limits of the Cities of Oxnard and Ventura and the off-route point of Camarillo State Hospital; and including the points of Port Hueneme and the Naval Air Missile Test Center near Point Mugu,

on the other hand, hereinafter referred to as the northern territory.

Public hearings were held before Examiner Rogers.

Pacific Freight Lines and Pacific Freight Lines Express appeared as protestants, and Southern California Freight Lines appeared as an interested party. Briefs were filed by the applicants and the protestants, and the matter was submitted.

Applicants' proposal was described by Charles A. Carr, one of the partners. He detailed the experience of the parties in the trucking business, the history of the partnership, its present operations, the service proposed and the territory to be served. He also listed the applicants' equipment and explained how it would be used, and presented the applicants' financial picture. An official of the protestants described their operations between the places involved, and presented figures showing tonnage moved between the points in a selected period.

It is the claim of the protestants that their services are sufficient to meet the needs of the shipping public. Applicants contend that public need and convenience require that they

be given the authority requested because of the growth of the northern territory and the inadequacy of the existing highway common carrier services.

Charles A. Carr has been driving trucks for twenty years. He started the Oxnard Trucking Service in 1946 with Nelson Berry. Berry sold his partnership interest six months after the formation of the company to James H. Carr, a brother of Charles A. Carr. These two are the present partners and owners. For three years prior to and including the times of the hearings on the application, Charles Carr had been the manager of the Pleasant Valley Lima Bean Growers and Warehouse Association, at which job he works eight hours per day, working from 7:00 to 8:00 A.M., and from 4:30 to 6:00 or 7:00 P.M. for the applicants, keeping their books and records. James Carr spends his full time in the services of the applicants, and has charge of the dispatching and actual operations of the business. He has been driving trucks for fifteen years.

The business was started in 1946 at the request of a lima bean growers' association. It was allegedly difficult at that time to secure transportation of property. The original investment was \$25.00, and one truck was used. Other shippers requested applicants to carry merchandise for them, and the business has gradually expanded to the point where applicants have twenty-three pieces of equipment ⁽¹⁾, including six 35-foot stake semitrailers, one insulated 35-foot van semitrailer, two insulated and mechanically refrigerated van semitrailers, and

(1) Exhibit No. 2.

one 24-foot stake semitrailer, together with power units and three pickup trucks. Three additional pickup trucks are available to applicants without cash outlay, if the application is granted. Operations are ostensibly conducted pursuant to written or oral contracts, but none of the witnesses appearing for applicant had any agreement with applicants resembling a binding contract. Applicants first secured a radial highway common carrier's permit on October 23, 1946, and a highway contract carrier's permit on May 11, 1950.

The applicants lease a terminal in Oxnard, their principal place of business, and rent a dock in Los Angeles. The Oxnard terminal has three acres of land, a garage and shop, an office, and a loading dock 30 or 40 feet wide by 60 feet long. The Los Angeles dock space is 40 feet by 80 feet. Applicants have sixteen employees, including drivers, in Oxnard, and three employees in Los Angeles.

As of July 31, 1951, applicants' current liabilities exceeded their current assets by \$1,121.22. The applicants, however, had \$58,316.95 worth of operating equipment on which they owed only \$14,510.33. Fourteen of applicants' twenty-three pieces of equipment are free of encumbrances. Applicants made a net profit of \$6,225.13 during the first seven months of the year 1951⁽²⁾.

Under applicants' proposed operations, which will be the same as their present operations, scheduled service will be rendered six days per week, with no departures from either terminal Saturday nights. Pickup service will be rendered by

(2) Exhibit No. 1.

applicants by means of the line equipment for the larger pickups, and by pickup trucks for the smaller shipments. Schedules will start from Oxnard. At 5:00 P.M. a tractor and semitrailer will depart from Oxnard, arriving in Los Angeles at 7:30 P.M. This tractor will hook on to a loaded semitrailer and leave Los Angeles at 8:00 P.M., arriving in Oxnard at 10:30 P.M. The same tractor will pick up a loaded semitrailer and depart from Oxnard at 11:00 P.M., arriving in Los Angeles at 1:30 A.M. This tractor will pick up a loaded semitrailer and depart from Los Angeles at 2:00 A.M., arriving in Oxnard at 4:30 A.M.

Delivery in the northern territory.

From Oxnard three delivery routes are planned, an Oxnard route, over which deliveries will be made to Oxnard, Camarillo, Port Hueneme, Camarillo State Hospital, and Naval Air Missile Test Center, intermediate highway points and off-highway points in the area, a Santa Paula-Fillmore route, over which deliveries will be made to Saticoy, Santa Paula, Fillmore, intermediate highway points and off-highway points in the area, and a Ventura route, over which deliveries will be made to El Rio, Montalvo, Ventura, intermediate highway points and off-highway points in the area.

Delivery in the southern territory.

Three delivery trucks are to be used at the start of the operations, and routed according to the traffic demands.

At both terminals deliveries will be made from 8:00 A.M. until noon. Pickups will be made regularly until 5:00 P.M., and later as required. Upon completing deliveries all drivers will call the local office relative to nonscheduled pickups.

Upon the evidence of record herein, we are of the opinion and find that the applicants have the experience, financial ability, and equipment with which to render the proposed services, and that their proposed method of operation is practicable.

Thirty-seven witnesses representing shippers or receivers of merchandise, or both, having places of business in Oxnard, Camarillo, Ventura, Los Angeles, Port Hueneme, or Santa Paula, appeared at the hearings, and a stipulation was made concerning the testimony of an additional nonappearing receiver having a place of business in Santa Paula. These witnesses either controlled or had the power to control the routing of shipments and the carrier used. The movement from the southern territory is predominantly less-than-truck-load, and the movement from the northern territory is predominantly truck load.

Northbound traffic.

Each of the thirty-seven shippers or receivers have shipments into the northern territory. The commodities involved in this movement include cellophane, burlap, cardboard shipping containers, steel, tires, oils, gasoline, batteries, accessories, paint, hardware, insecticides, farm equipment, welding rods, power transmission equipment, fire extinguishers, machinery parts, feed, fertilizers, tractors, seeds, garden tools, juice cans, acids, cleaning supplies, empty bags, ball and roller bearings, grease seals, chains, sprockets, V-belts, pulleys, housewares, plumbing supplies, sheet metals, iron, roofing, heating equipment, lumber, television sets, radios, wrapping paper, drugs,

sundries, toys, office supplies, filing cabinets, typewriters, and home appliances, in short, property of practically all descriptions.

The shipments originate at all places included in the southern territory (Exhibit No. 3), the major part originating in Los Angeles proper.

The point of destination in the northern territory for nineteen of the witnesses is Oxnard only. One desires service to Ventura, El Rio, Camarillo and Oxnard, one to Camarillo only, seven to Oxnard and off-the-highway points, one to ranches, packing associations, and service stations throughout the territory, five desire service to Ventura only, two to Port Hueneme only, and two to Santa Paula only.

Shipments range in size from under 100 pounds to truck loads. Thirty of the companies ship or receive less-than-truck-load shipments only, one, truck loads only, and the balance, some of each.

Frequency of service desired on the less-than-truck-load shipments varies from several per day to one per week, with daily shipments predominating. The company receiving truck-load shipments only receives one shipment per week.

All but four of the companies use the services of the applicants, the majority having used such services for several years. Eight use the applicants' services exclusively except on shipper routings, and the remainder of those using applicants' service, in the majority of the cases, also use the services of Pacific Freight Lines. Of the four companies not shipping via

the applicants, one uses the Auto Purchasing Agency, and the others use Pacific Freight Lines.

The companies represented by witnesses had grown, in each instance, some several hundred per cent since 1946, and consequently their volume of traffic had increased during that period.

While there were complaints against the Pacific Freight Lines, they were generally trivial, and the majority thereof will be disregarded. Three complaints deserve consideration, however. The first is that Pacific Freight Lines does not deliver to off-highway points, the second is that pickups in the southern territory stop so early that second-day delivery is required in many instances, and the third is that Pacific Freight Lines' equipment will not properly carry some merchandise.

Concerning delivery to off-highway points, eight shippers expressed needs for such services in the delivery of insecticides, feed, fertilizer, farm supplies, farming equipment, plumbing supplies, sheet metal, roofing, heating equipment, oils, greases, seeds, chemicals, steel, hardware and tires. Frequency of such shipments varies from three to four times per week for one receiver, to one shipment in two weeks for another, and the size of such shipments varies from truck loads to 1,000 pounds. Pacific Freight Lines admittedly has no authority to, and does not, serve off-highway points in the area. (See Decisions Nos. 23472, 24136 and 24396).

Concerning the pickup time in the southern territory, the evidence presented by the protestants is that pickup calls

are serviced until 2:00 P. M., and that emergency pickups are made thereafter until 5:30 P. M. "Emergency calls" were explained by protestants' witness as those resulting from disasters such as the San Francisquito Dam disaster, or resulting from bringing in an oil well under pressure and requiring the delivery of special tools.

Several of the witnesses testified that their companies need and desire, because of the demands of the businesses, a service which will make pickups in the southern territory at 3:00 P. M. or later and deliver in the northern territory the following day.

Applicants propose to pick up shipments in the southern territory as late as the places of business are open, and in practice makes them until 2:00 A. M. for delivery that morning in the northern territory.

Concerning the equipment situation, several receivers of long steel, pipe, heavy machinery and palletized merchandise such as sacks of fertilizer, testified that they need a service having long-bodied, open-top equipment. One witness testified that Pacific Freight Lines refused to handle steel over 24 feet in length. Pacific Freight Lines placed ten 35-foot long open-top semitrailers in service at or about the times of the hearings. Prior to that time it had no 35-foot long open-top rigs. Applicants have eight 35-foot long stake body semitrailers in service.

Upon the evidence of record we are of the opinion and find that public convenience and necessity require that applicants be given the authority they have requested to carry property, with

specified exceptions, from the southern territory, on the one hand, to the northern territory, on the other hand.

Southbound traffic.

Of the thirty-seven shippers or receivers of freight represented at the hearings, several shipped southbound, but in such small quantities and so infrequently they could give no figures relative to such shipments, and several had no southbound movement whatsoever. Fifteen stated they need the services of a carrier from the northern territory to the southern territory. The commodities shipped, frequency and weight of shipments, if given, are, farm implements from Oxnard to Highland Park, Bell and South Gate, four or five shipments per year, returned shipments of fertilizer, seeds, insecticides, or garden tools from Oxnard to Los Angeles, two shipments per month of 1,000 to 2,000 pounds each, frozen concentrated fruit juices and fresh juices, from Ventura to Los Angeles and Burbank, daily shipments, mostly truck loads, returned shipments of machinery and parts thereof, from Ventura to Los Angeles, two to three times per year, empty acid carboys returned from Oxnard to Los Angeles, one shipment a month, farm machinery from Oxnard to Los Angeles, one shipment a week or one a month, defective television sets, radios or parts, from Oxnard to Los Angeles, two shipments per week, 50 to 75 pounds per shipment, frozen lima beans and peas and canned fruits and vegetables, from Oxnard to Los Angeles, shipments daily, mostly in truck-load lots, tires for recapping from Oxnard to Los Angeles, shipments nearly daily, 100 to 150 pounds per shipment, burned-out motors

for rewinding, from Oxnard to Los Angeles, shipments occasionally, 50 to 800 pounds per shipment, occasional shipments of sugar in truck-load lots, from Oxnard to Los Angeles, steel to be galvanized, from Ventura to Los Angeles, two to three shipments per month, machinery parts for repairs, from Oxnard to Los Angeles, 2,000- to 4,000-pound lots, one lot every two weeks, grain from Oxnard to Los Angeles in truck-load lots, daily, and seeds, vegetables and produce moving from the field to Los Angeles daily during produce seasons in truck-load lots mostly, but with some less-than-truck-load movements.

Nine of the fifteen shippers mentioned send returned merchandise, empty containers or merchandise requiring repairs or further work, to the southern territory. These shipments are in small lots generally, and come from the cities in the northern territory. No witness testified that Pacific Freight Lines refused any such shipments or could not carry such shipments, and no preference was given by the witnesses for a particular carrier on this movement. At the request of the applicant, Pacific Freight Lines prepared an exhibit (Exhibit No. 13) showing the movement of traffic from Ventura, Oxnard and Santa Paula to Los Angeles on October 15, 16, 17, 18 and 19, 1951. This exhibit shows that the preponderance of traffic is north-bound from the southern territory, and that Pacific Freight Lines always had ample room and facilities to handle the shipments of these nine shippers. In most instances Pacific Freight Lines now carries a portion of the traffic tendered by these witnesses.

One manufacturer ships farm implements to Highland Park, Bell and South Gate from Oxnard. On the northbound movement he uses Pacific Freight Lines and the applicant, and prefers Pacific Freight Lines for picking up small packages. No preference was voiced concerning the southbound movement as to which there are only four or five shipments per year.

The remaining five southbound shippers ship in large quantities. One ships 50 to 60 tons of fresh and frozen juices daily from Oxnard to the southern territory. The shipper has been using the applicant since 1947, as it requires mechanically refrigerated equipment, reinforced floors, and 24-hour service. Pacific Freight Lines has no mechanically refrigerated equipment and refused to reinforce the floors in its equipment, claiming the cost was too much.

A shipper of frozen lima beans and peas in Oxnard ships in truck-load lots mostly, averaging 5,000 tons per year to Los Angeles, using applicant and other permitted carriers. Pacific Freight Lines has no mechanically refrigerated equipment, and advised the shipper that it had no intention of handling refrigerated items. Also, those items must move as soon as ready, day or night, and Pacific Freight Lines picks up in daylight only.

A beet sugar producer in Oxnard ships sporadically, according to market fluctuations, to Los Angeles. Although the movement is very heavy, only a small portion goes via trucks, and Pacific Freight Lines handles most of this. The witness for this shipper, appearing at the request of the applicant, stated

that there is no need for applicants' services, but another carrier would be convenient.

An Oxnard grain shipper ships 40,000 100-pound sacks of grain per year to Los Angeles. This shipper uses both applicants and Pacific Freight Lines, and the grain is picked up in the field away from the highways.

A produce shipper ships truck loads and less-than-truck loads of seeds, produce, vegetables and tomatoes during the various seasons. Los Angeles-destined produce is picked up in the fields and delivered in the Los Angeles market around midnight. Applicants have been performing this service for five years.

Concerning the movement from the northern territory to the southern territory, the evidence shows, and we find, that public convenience and necessity require that the applicants be given authority to carry any quantity shipments of grain, fresh fruits and vegetables, frozen fruit juices and vegetables, and canned fruits and vegetables. As to these commodities, the record shows that Pacific Freight Lines either did not have the proper equipment, does not have the authority to render the requested service (see Decisions Nos. 23472, 24136 and 24396 for limitations on Pacific Freight Lines authority), or will not render the needed service. No need is shown for an additional certificated carrier of sugar. Pacific Freight Lines has ample facilities and adequately serves the public in the transportation of commodities southbound, other than those listed above in this paragraph, and the shippers expressed no preference for the services of the applicants in that direction.

James H. Carr and Charles A. Carr are 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, briefs having been filed, the matter having been submitted, the Commission being fully advised and having found that public need and convenience so require,

IT IS ORDERED:

(1) That a certificate of public convenience and necessity be, and it hereby is, granted to James H. Carr and Charles A. Carr, doing business as Oxnard Trucking Service, authorizing the establishment and operation of a service as a highway common carrier (as defined in Section 213 of the Public Utilities Code),

(a) for the transportation of commodities generally except petroleum and petroleum products in tank trucks, livestock, and used household goods, from all points and places

within Los Angeles Drayage Zones 1-A, 1-B, 1-C, 1-D, 10, 11, 12 and 17, as more particularly described in items 30, 31, 32 and 33 series, City Carriers' Tariff No. 4, Highway Carriers' Tariff No. 5 as set forth in Appendix A of Decision No. 32504, as amended in Case No. 4121, to and including March 4, 1952, the date of submission of this proceeding, and, in addition thereto, all points and places within the Cities of Burbank, Glendale and South Gate, referred to hereinafter as the southern territory, on the one hand, to the Oxnard-Ventura area described as: all points and places on and along U. S. Highway 101-A between Point Mugu and Ventura; all points and places on and along U. S. Highway 101 between Camarillo and Ventura; all points and places on and along State Highway 118 between Somis and Ventura; and all points and places on and along State Highway 126 between Fillmore and Ventura, including Point Mugu, Camarillo, Somis, Fillmore and Ventura; and, in addition thereto, all points and places within a radius of three miles on either side of said highways and within three miles of the corporate limits of the Cities of Oxnard and Ventura and the off-route point of Camarillo State Hospital; including also the points of Port Hueneme and the Naval Air Missile Test Center near Point Mugu, referred to hereinafter as the northern territory, on the other hand;

(b) for the transportation of grain, fresh fruits and vegetables, frozen fruit juices and vegetables, and canned fruits and vegetables from all points and places within the northern territory as described in ordering paragraph (1) (a) of the order herein, on the one hand, to all points and places within the southern territory, as described in ordering paragraph (1)(a) of the order herein, on the other hand.

(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, applicants shall file a written acceptance of the certificate herein granted.
- (b) Within sixty (60) days after the effective date hereof, and on not less than five (5) days' notice to the Commission and the public, applicants shall establish the service herein authorized and file, in triplicate, and concurrently make effective, appropriate tariffs and time tables.
- (c) Subject to the authority of this Commission to change or modify them at any time, applicants shall conduct operations over and along the following routes:

U. S. Highway 101 or U. S. Highway 101-A, or both, between the northern territory as described in ordering paragraph (1)(a) of the order herein and the southern territory as described in ordering paragraph (1)(a) of the order herein.

(3) That in all other respects, Application No. 32313 is denied.

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

Dated at San Francisco, California, this 22nd day of April, 1952.

A. J. [Signature]
President

Justin P. [Signature]
Harold P. [Signature]

[Signature]
[Signature]
Commissioners