Decision No. 49038

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
FLEETLINES, INC., for a certificate)
to operate as a highway common carrier)
of commodities generally between)
points and places in portions of)
Los Angeles, San Bernardino, Riverside,)
and Orange Counties.

Application No. 31630, as amended.

Glanz and Russell, by Theodore W. Russell and Robert Y.
Schureman, for applicant. Gordon, Knapp and Gill, by
Hugh Gordon and Sanford D. Waugh, for Pacific Freight Lines
and Pacific Freight Lines Express, protestants. Arlo D. Poe
for Motor Truck Association of Southern California, interested
party. Robert W. Walker, Frederic A. Jacobus and F. G.
Pfrommer by Frederic A. Jacobus and Gordon, Knapp and Gill by
Hugh Gordon, for The Atchison, Topeka & Santa Fe Railway and
Santa Fe Transportation Company, protestants. John H. Gordon
for Southern Pacific Company, Pacific Motor Trucking Company
and Pacific Electric Company, protestants. Laird M. Hail
and H. P. Merry for Southern California Freight Lines and
Southern California Freight Forwarders, protestants.

<u>opinion</u>

The original application herein was filed by Fleetlines, Inc., a Nevada corporation, on July 25, 1950, requesting authority to engage in business as a highway common carrier pursuant to the provisions of Section 50-3/4 of the Public Utilities Act (now Section 1063 et seq. of the Public Utilities Code), for the transportation of general commodities, with specified exceptions, between all points and places in Los Angeles, San Bernardino, Riverside and Orange Counties lying within the area bounded as follows:

Beginning at the intersection of the westerly boundary of the City of Los Angeles and the Pacific Ocean, then along the westerly and northerly boundaries of said city to its point of first intersection with the southerly boundary of Angeles National Forest, thence along the southerly boundary of Angeles and San Bernardino National Forests to the point

of intersection of the southerly boundary of the San Bernardino National Forest and the San Bernardino-Riverside County Line, thence in a southerly and westerly direction along said county boundary to a point thereon distant five miles east of the intersection of said county line and State Highway 18, thence generally southerly, southwesterly, southeasterly, and southwesterly along a line generally paralleling and distant five miles from State Highway 18, State Highway 55, U. S. Highway 101, Central Avenue in Irvine, California, and the prolongation thereof southwesterly to the Pacific Ocean, thence along the coastline of the Pacific Ocean westerly and northerly to the point of beginning.

Applicant further requested that it be given authority to use all streets and highways lying within the described territory in serving between the said points.

A public hearing was held in Los Angeles on October 9, 1950. At this hearing Pacific Freight Lines and Pacific Freight Lines Express moved that the application be dismissed and objected to the taking of any testimony on the ground that the application is not framed in accordance with the Public Utilities Act appropriately to seek a certificate of public convenience and necessity as a highway common carrier. The other protestants joined in this motion.

Further hearings were held on February 13, 14, 15 and 16, 1951, and on June 20, 1951, at which latter hearing applicant filed an amendment to the application setting forth routes to be followed in serving the territory described in the original application and the motion to dismiss was renewed and denied by the examiner.

Thereafter, additional evidence was presented by the protestants and the applicant on June 21 and 22, August 20 and 31, and October 15, 1951, briefs were filed, and the matter was submitted. It is now ready for decision.

Applicant has only two types of authority issued by the carrier's permit and a city carrier's permit. Contract carriage is specifically disavowed.

As amended the application requests authority to serve a large area (Exhibit 5), traveling via thirty specified routes and, in addition, using "... any and all streets and highways within any incorporated city lying on or along each of the routes described, and to depart from said routes via the most direct street or highway to accomplish pickup or delivery of freight at off-route points lying within the territory ... A new map (Exhibit 7) was filed which is identical with the original map, except that the principal routes are more heavily shaded. The method of operations under the original application and the amended application are to be essentially the same, and the proposed service is to be a continuation of the type of service applicant has been rendering since November 1948, under its radial and city carrier permits.

At the request of the applicant the examiner asked that the Commission staff make a survey to determine the type of service being performed by the applicant. By stipulation, Exhibit 33 prepared for use in an investigation of status (Case No. 5268) was received in evidence in the instant matter.

Applicant proposes to transport commodities generally with the exception of livestock, personal effects, uncrated household goods, articles of unusual value and commodities requiring tank trucks, at rates equivalent to those prescribed by Highway Carriers' Tariff No. 2, with the qualification that it does not propose any rate at a lower level than 25 cents per 100 pounds, even though the minimum rate is less.

Vehicles will operate throughout the proposed service area, will depart from and return to the Los Angeles terminal and, depending on the quantity and destination of the individual shipments thereon, will follow a pattern of streets and highways which will return each vehicle to the Los Angeles terminal on the day of departure therefrom. The specific manner of operation will be subject to variation, depending on the distance from Los Angeles the merchandise is to be carried, the concentration of population, and the quantity of traffic tendered on a particular day. In most instances the procedure will be to accumulate the pickups and bring them into the Los Angeles terminal. There the freight will be segregated to areas and reloaded for distribution. If the size of the shipment is sufficient to warrant, shipments will be handled from point of origin direct to destination without going over the Los Angeles dock.

In delivering merchandise the trucks will be loaded in Los Angeles, with the shipments for the most distant point loaded first and the point nearest to Los Angeles loaded last. However, as indicated by the amended application regular operations over certain routes therein designated will be required. Other than this plan of loading to the most distant point first, no particular plan or route will be followed. On-call service is to be given, although applicant at present has many regular pickups without calls and, if certificated, will continue to render such service. Generally delivery will be made the day following pickup or the next business day. Service will be rendered Monday through Friday, inclusive, and on Saturdays pickups and deliveries will be made within ten miles of Los Angeles.

Applicant became an operating corporation in June 1948 and secured California radial highway common carrier and city carrier permits on November 1, 1948. It began actively soliciting intrastate trucking business in May or June of 1949. Applicant also holds an interstate certificate of public convenience and necessity between points in California, Nevada and Arizona.

Applicant's mobile equipment is adequate. Outside of the line-haul equipment, the greater portion is permanently located in Los Angeles. Equipment located outside the state will be brought to California as needed. The Los Angeles terminal of applicant is owned by the Transport Equipment Company, a Nevada Corporation wholly owned by applicant. In the main the assets of this wholly owned affiliate consist of the Los Angeles and Las Vegas terminals, used by applicant, which together are valued at \$36,200. The Los Angeles terminal is on a lot 100 feet by 150 feet and consists of a loading dock, warehouse and office space having combined dimensions of 40 feet by 150 feet.

Applicant's president estimated that its income for the whole year of 1951 would amount to \$1,000,000 as compared with \$694,000 for the year 1950. However, the item of carrier operating property, increased from \$84,310.11 in 1950 to \$136,978.68 on August 31, 1951, due, in part, to the fact that the vehicles used in the business were transferred to the applicant from the Transport Equipment Company late in 1950.

Upon the record herein, the Commission is of the opinion and finds that the applicant is qualified and has the ability to perform the services it proposes.

Item 1600, Exhibit No. 2.

Fifty shippers or representatives of shippers having, respectively, a business in one of the following places, Los Angeles, Alhambra, Vernon, Pasadena, Arcadia, Burbank, Culver City, Huntington Park, Lynwood, Etiwanda and Pomona, appeared at the hearings at the request of the applicant and testified concerning alleged needs of their firms for the proposed services.

According to the evidence transportation is required for general commodities in this area. Shipments range in weight from 15 pounds to several tons, with frequency varying from one shipment in several days to 250 shipments per day, five days per week. In respect to the number of points to be served, there was a variance from service between two points only to service between all, or most, of the places in the proposed service area, with the latter two needs being those of the majority.

Forty-seven of the shippers had been using the services of Fleetlines in the area involved for periods ranging from two months to two years, the greater part of these having used such services, at the times of the hearings, one and one-half to two years. Various reasons were given for the use of applicant's services, including customers' requests, direct solicitation by the applicant's agents, poor services of highway common and other carriers in the area, observation of applicant's trucks, and the need, on the part of several shippers, for all trucks, highway common and radial, in the field, together with additional carriers, in order that their merchandise be delivered.

These forty-seven shippers also used, or had used, one or more of the following highway common or rail carriers to make shipments in the proposed service area: Higgins Trucks, Inc., Pacific Electric Railway Company, Pacific Freight Lines, Pacific

Motor Trucking, S & M Transfer and Storage Company, Santa Fe Transportation Company, Southern California Freight Lines, Southern Pacific Company, 20th Century Delivery Service, Inc., United Parcel Service, Western Truck Lines, Ltd., and Western Transportation Company.

In addition to the shippers mentioned in the preceding paragraph, evidence was presented by three shippers which had never used the services of applicant.

A distributor of coffee, extracts, spices, dog food and similar products, ships from Los Angeles to points and places in applicant's proposed service area. The company ships an average of 25,000 pounds per day, five days per week, to the area, and uses all permitted carriers, except applicant, together with Pacific Freight Lines, Southern California Freight Lines, Santa Fe Transportation Company, and Pacific Motor Trucking Company. This company desires to have enough highway common carriers in the area that all of its shipments could go thereby, but, so its representative stated, the highway common carriers do not have enough equipment, as a result of which 70% of its shipments move by permitted carriers.

A winery and a vineyard in Etiwanda need another carrier in the area because the area is growing. The company ships between Vernon and Los Angeles on the one hand, and Etiwanda, on the other hand, only. It uses its own trucks for most shipping, but when it uses public transportation it uses Pacific Freight Lines and Southern California Freight Lines, primarily for the shipment of grapes to Los Angeles, which shipments amounted to twenty tons in 1950.

Service of Southern California Freight Lines is satisfactory, but in

the case of Pacific Freight Lines, in some instances where calls for pickup were made by 2:00 p.m., pickup was not made until the following morning.

Pryne & Company of Pomona distributes kitchen exhaust fans and recess lighting into the larger cities and towns in the proposed service area. At the time of the hearing this company was using Metro Parcel Service, a permitted carrier, to effect deliveries to Los Angeles and points west and south thereof, and Pacific Freight Lines to make deliveries from Los Angles east. The witness stated that Metro Parcel Service was very unsatisfactory, and Pacific Freight Lines service was sometimes good and sometimes bad, with two to five days being required on occasions to effect deliveries.

There were very few specific complaints against Pacific Electric Railway Company and Southern Pacific Company. There were some complaints against Pacific Motor Trucking Company that it handled merchandisc roughly and that it missed pickups. A few complaints were made against the Santa Fe Transportation Company of delayed shipments, slowness on claim adjustments, roughness and missed pickups.

Concerning the Southern California Freight Lines, the testimony showed complaints of delayed shipments, higher minimum rates than Fleetlines, lack of care in handling shipments, slower service than Fleetlines, breakage of merchandise, missed pickups, slowness in adjusting claims, incomplete coverage of the area, lost packages, slowness in remitting C.O.D. collections, too early pickups, and too many pickup trucks thereby causing congestion at the shipper's dock.

Pacific Freight Lines, purporting to cover the entire area, was the subject of the most complaints. Complaints were made that it had 100-pound minimum rates, that in one instance, when flour was to be hauled, the truck was dirty, that shipments were delayed, that the pickup was too early, that it gave poor pickup service, that its drivers threw freight, that there was breakage, that it had poor shipper adjustment service, that it was slow in paying claims, that its drivers were not courteous, that it was not dependable, and that it was slow in remitting on C.O.D.'s.

The listed complaints are in addition to the claims of the witnesses that, in general, the services of the applicant were preferable to those of the highway common carriers in that the drivers were more courteous, later pickups and prompter delivery services were given, more points were served, remittances were more prompt, and the drivers were more obliging.

Two witnesses desired that applicant be given a certificate because it also served interstate into Nevada and Arizona. Four shipper representatives knew nothing about the competing carriers as the companies, at least during the times the witnesses were connected with them had used applicant's services exclusively in the area involved. Several shippers wanted the use of all carriers including the applicant and had no complaints against the existing carriers.

Stipulations were introduced in evidence by the Pacific Freight Lines and Pacific Freight Lines Express (Exhibit No. 34), The Atchison, Topeka and Santa Fe Railway and Santa Fe Transportation Company (Exhibit No. 35), and Southern California Freight Lines and Southern California Freight Forwarders (Exhibit No. 36).

Exhibit No. 34

This exhibit recites that:

"It is hereby stipulated between the applicant, Flectlines, Inc., and protestants Pacific Freight Lines and Pacific Freight Lines Express, through their respective counsel, as follows:

"I. That the stipulation, together with the list of prospective public witnesses hereto attached, may be offered and received in evidence by the Commission in lieu of the calling of public witnesses to the stand to testify in behalf of the undersigned protestants;

"2. That if each of the witnesses named in the attached list were called and duly sworn, they and each of them would testify that they or the firms they represent regularly either ship or receive L.C.L. shipments of freight moving between points within the territory involved in this application; that for this purpose they have been and are now using the service of the protestants Pacific Freight Lines and Pacific Freight Lines Express, also the service of other common carriers now operating within said territory; that the service so rendered by said protestants includes dependable pickup and delivery service and transportation of shipments from point of origin to destination on an overnight basis; that such service has been satisfactory and adequate to meet their shipping requirements, and that so far as their respective businesses are concerned, there is no need for additional common carrier service within the territory involved, and that if another highway common carrier service should be authorized and established within such territory rendering service similar to that of Pacific Freight Lines and Pacific Freight Lines Express under substantially similar rates, they would not divert their shipments from the carrier service, except when requested by their customers so to do."

The names of 50 shippers were listed on this stipulation having places of business in Los Angeles, Vernon, Maywood, San Gabriel, Alhambra, El Monte, Monrovia, Pasadena, Arcadia, Ontario, Pomona, Upland, Santa Ana, Fullerton, Corona and San Bernardino.

Exhibit No. 35.

This stipulation has the same wording as Exhibit No. 34 except that the parties are the applicant and The Atchison, Topeka and Santa Fe Railway Company and the Santa Fe Transportation Company. The names of 25 shippers are listed on the stipulation having places of business in Los Angeles, Vernon, San Bernardino and Santa Ana.

Exhibit No. 36.

This stipulation has the same wording as Exhibit No. 34 except that the parties are the applicant and the Southern California Freight Lines and Southern California Freight Forwarders. The names of 23 shippers are listed in the stipulation having places of business in Los Angeles and Paramount.

From the evidence herein it appears that the majority of the public witnesses who testified at the request of the applicant had not used or had very limited knowledge of the services performed in the area by carriers other than the three; namely, applicant, Southern California Freight Lines and Pacific Freight Lines. Two highway common carriers other than Southern California Freight Lines and Pacific Freight Lines, to wit: Pacific Motor Trucking Company and Santa Fe Transportation Company, have very broad rights in the area and, in addition, four railroads, Pacific Electric Railway Company, Southern Pacific Company, The Atchison, Topeka and Santa Fe Railway Co., and the Union Pacific Railway Co., render service in the area. There were very few complaints against any of these latter carriers, the majority of the witnesses either never having used their services or having used them to a very limited extent.

The Southern Pacific Company, Pacific Electric Railway and Pacific Motor Trucking Company protested the application but presented no evidence in support of their protests. The Union Pacific Railway Company made no appearance.

Summarized, the public witness testimony produced by applicant shows that a substantial portion of the shipping public uses the service herein proposed. Of some 50 witnesses testifying for applicant, many ship with regularity to substantially all points named in the application and said it was a convenience to have one carrier serve all those points. Most of these witnesses had traffic to be moved within the territory on a daily basis. A considerable number indicated that the area sought to be served corresponded rather closely to the shippers' own principal sales territory. Some frequently delivered to job sites often not located on a principal highway. From other evidence of record, including the evidence produced by the Commission Staff in the investigation proceeding, Case No. 5268, it appears that the witnesses who testified represented only a fraction of the public now served by applicant. Many of the witnesses appearing expressed the opinion that the service rendered by protestants and of other highway common carriers operating in this area was inadequate to their needs. The testimony of protestants' witnesses that they were individually satisfied with protestants' services cannot be considered as adequate refutation of the testimony as to the needs of shippers who stated that applicant's service was required by them. The assertion of protestants that if this additional highway common carrier service is authorized it would prejudicially affect their ability to render adequate service because of decrease in business and revenue may be discounted in view of the testimony of

those customers who stated that they would continue to use their service and would not use that proposed by applicant.

The Commission cannot concur in the contention of protestants that a highway common carrier service is not herein proposed. The application has been amended specifically to request authority to operate regularly over definitely described routes and it also requests authority to serve all points in the area. The fact that applicant is desirous of operating without a certificate, if it may lawfully do so, under the claim that its radial permits are adequate authority is not material under the circumstances.

The other principal contention of protestant that authority should be denied because service was instituted by applicant subsequent to the so-called "policy decision," (Decision No. 42646 dated March 22, 1949 in Case 4836) is without merit. The issue in an application proceeding of this nature is whether public convenience and necessity require the proposed service. The question of whether applicant is or is not presently exceeding the authority conferred by its radial permit is a collateral matter not to be considered conclusive in this application. That issue is being decided today in the investigation proceeding, Case No. 5268. Whether unauthorized service is to be treated as grounds for the denial of a certificate of public convenience and necessity to this applicant must be considered in the light of the showing made that a large portion of the shipping public requires that the service be continued.

The Commission finds as a fact that the service herein proposed is required by public convenience and necessity.

Fleetlines, 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 particular routes. 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.

ORDER

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

IT IS ORDERED:

- (1) That the motion to dismiss be, and it hereby is, denied.
- (2) That a certificate of public convenience and necessity be, and it hereby is, granted to Flectlines, Inc., a Nevada corporation, authorizing it to operate as a highway common carrier for the transportation of general commodities, exclusive of livestock, petroleum products in bulk in tank trucks, household goods and personal effects, explosives and uncrated furniture between Los Angeles, Laguna Beach, Corona del Mar, Balboa, Newport Beach, Huntington Beach, Sunset Beach, Seal Beach, Naples, Long Beach, San Pedro, Palos Verdes, Redondo Beach, Hermosa Beach, Manhatten Beach, El Segundo, Playa del Rey, Venice, Ocean Park, Santa Monica, Pacific Palisades, Topanga, Woodland Hills, Canoga Park, Chatsworth, San Fernando, Sylmar, Olive View, Pacoima, Tujunga,

La Cresenta, La Canada, Altadona, Sierra Madre, Arcadía, Monrovia, Azusa, Glendora, Claremont, Alta Loma, Etiwanda, Fontana, San Bernardino, Del Rosa, Patton, East Highlands, Mentone, Crafton, Yucaipa, Redlands, Eryn Mawr, Loma Linda, Highgrove, Riverside, Arlington, Corona, Prado, Peralta, Yorba, Atwood, Fullerton, Pacentía, Anaheim, Olíve, El Modena, Orange, Tustin and Irvino and intermediate points along or within fifteen miles on either side of the routes hereinafter described, traversing any and all public highways as necessary or convenient in serving such off-route points subject to the restriction that in describing and publishing pickup and delivery zones applicant shall not propose any service to any territory not included within the following described area:

Beginning at the intersection of the westerly boundary of the City of Los Angeles and the Pacific Ocean, thence along the westerly and northerly boundaries of said City to its point of first intersection with the southerly boundary of Angeles National Forest, thence along the southerly boundary of Angeles and San Bernardino National Forests to the point of intersection of the southerly boundary of the San Bernardino National Forest and the San Bernardino-Riverside County Line, thence in a southerly and westerly direction along said county boundary to a point thereon distant five miles east of the intersection of said county line and State Highway 18, thence generally southerly, southwesterly, southeasterly, and southwesterly along a line generally paralleling and distant five miles from State Highway 18, State Highway 55, U. S. Highway 101, Central Avenue in Irvine, California, and the prolongation thereof southwesterly to the Pacific Ocean, thence along the coastline of the Pacific Ocean westerly and northerly to the point of beginning.

(3) That, in the operation of the highway common carrier service pursuant to the foregoing certificate, applicant shall

State Highway 35 from its junction with U.S. Highway 22 near Los Alamitos, California to its junction with U.S. Highway 99 near West Covina, California.

State Highway 19 from its junction with U. S. Highway 101-Alternate near Long Beach, California to its junction with U. S. Highway 66 near Arcadia, California.

State Highway 15 from its junction with U. S. Highway 101-Alternate in Long Beach, California to its junction with U. S. Highway 99 near Monterey Park, California thence along Atlantic Boulevard and Los Robles Avenue in Huntington Park and Pasadena, California to the junction of Los Robles Avenue and U. S. Highway 66.

State Highway 11 from its termination in San Pedro, California to its junction with U. S. Highway 118 in the vicinity of Pasadena, California.

State Highway 14 from its junction with U. S. Highway 15 near Paramount, California to its junction with State Highway 18 east of Olive, California.

Seaside Avenue, Henry Ford Boulevard and Alameda Boulevard from Terminal Island, California to the junction of Alameda Boulevard and U. S. Highway 99.

State Highway 26 from its junction with U. S. Highway 6 in Los Angeles, California to its junction with State Highway 39 near Buena Park, California.

State Highway 10 from its junction with U. S. Highway 101-Alternate near Playa Del Rey, California to its junction with U. S. Highway 101 near 'naheim, California.

U. S. Highway 7 from its junction with U. S. Highway 101-A near El Segundo, California to its junction with U. S. Highway 66 near San Fernando, California.

State Highway 107 from its junction with State Highway 7 to its junction with U.S. Highway 101-A near Walteria, California.

State Highway 2 from its junction with U. S. Highway 101 in Los Angeles, California to its junction with State Highway 118 near La Canada, California.

State Highway 118 from its junction with the northerly city limits of the city of Los Angeles north of Chatsworth, California to its junction with U. S. Highway 66-A in Pasadena, California.

Pico Boulevard from its junction with U. S. Highway 101-Alternate in Santa Monica, California to its junction with U. S. Highway 6 in Los Angeles, California.

Washington Boulevard from its junction with U. S. Highway 101-Alternate near Venice, California to its junction with U. S. Highway 6 in Los Angeles, California.

Pomona Boulevard from its junction with U. S. Highway 99 near El Monte, California thence via Pomona Boulevard through Puente, Walnut and Spadra, California to its junction with U. S. Highway 99 near Pomena, California.

Pomona Avenue from its junction with U. S. Highway
lol near Fullerton, California, thence via Romona Avenue and AnaheimSpadra Road via Brea, California to its junction with Pomona
Boulevard near Walnut, California.

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

Dated at In Francisco, Colifornia, this 9 day of

Denomber . 1952.

President