

**ORIGINAL**Decision No. 50332

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
 WALTER G. MITCHELL, JR., doing business )  
 as AUTO FAST FREIGHT, for a certificate )  
 of public convenience and necessity to ) Application No. 34731  
 operate as a highway common carrier for )  
 the transportation of property. )

Donald Murchison and Cunningham, Parry and Holcomb  
 by James E. Cunningham, for applicant. Gordon,  
Knapp and Gill by Volney V. Brown, Jr., for Pacific  
 Freight Lines and Pacific Freight Lines Express;  
Robert Walker, Wm F. Brooks and Henry M. Moffat,  
 for The Atchison, Topeka and Santa Fe Railway  
 Company, Santa Fe Transportation Company and  
 Railway Express Agency; H. J. Bischoff, John B.  
Robinson and George Strouse, for Southern California  
 Freight Lines and Southern California Freight  
 Forwarders; Raymond Tremaine and William Campbell,  
 for C & L Freight Lines, Inc.; protostants.  
Turcotte and Goldsmith by Frank Turcotte and Jack  
O. Goldsmith, for Pixloy Transportation Company,  
 interested party.

O P I N I O N

Walter G. Mitchell, Jr., an individual, is now conducting a truck transportation business under two fictitious firm names, one, the Mountain Auto Line, is a certificated highway common carrier operation, unlimited as to commodities, between San Bernardino and the San Bernardino Mountains resort area (Decisions Nos. 43644 and 48382), and the other, Auto Fast Freight is a permitted carrier operation conducted pursuant to Radial Highway Common Carrier Permit No. 33-1675, Contract Carrier Permit No. 33-1676, and City Carrier Permit No. 33-1991. The certificated operation was acquired from Max H. Green in April 1953, and the permitted carrier operations have been conducted since March 1948.

Applicant now seeks authority to enlarge his common carrier operations to include a service between the Los Angeles

Area, <sup>(1)</sup> on the one hand, and said San Bernardino Mountains resort area and San Bernardino, Redlands, Riverside and Santa Ana, on the other hand, serving also intermediate points, along the principal highways connecting said points and all points and places within three miles laterally of said highways.

Applicant is not proposing to transport the following commodities: livestock; uncrated, unpacked and unwrapped new furniture, electrical or gas appliances, household goods, stoves and refrigerators; commodities requiring special equipment; commodities in bulk; articles of extraordinary value; dangerous explosives; and commodities injurious or contaminating to other lading.

The application is protested by one railroad, three express corporations, and five highway common carriers, all now serving in the area, or portions thereof, encompassed in applicant's request.

Public hearings were held in Los Angeles and San Bernardino before Examiner Chiesa. Oral and documentary evidence having been adduced, the matter was submitted for decision.

We shall first consider that portion of the record pertaining to applicant's proposal to establish a single-line operation between the Los Angeles Area and the said mountain resort area, <sup>(2)</sup> which applicant now serves, as a highway common carrier, from the City of San Bernardino. No other highway common carrier is authorized to serve the said resort area.

Six witnesses, three representing large Los Angeles shipping concerns and three consignees with businesses in said

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- (1) The Los Angeles Area is described as that territory bounded on the south by Firestone Boulevard and Manchester Avenue; on the west by Vermont Avenue; on the north by Los Feliz Boulevard, San Fernando Road, Avenue 26, Griffin Avenue, Mission Road, Valley Boulevard; and on the east by Atlantic Boulevard.
- (2) The principal places in the said area are Cedar Pines Park, Crestline, Switzerland, Twin Peaks, Blue Jay, Lake Arrowhead Village, Running Springs, Green Valley, Arrow Bear, Bear Creek, Big Bear Lake, Fawnskin, and Big Bear City.

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resort area, testified that their need is for a single-line overnight service between said termini. At present freight charges are based on the combination of two local rates, Los Angeles to San Bernardino and San Bernardino to destination, except that one common carrier publishes a joint rate with applicant that is approximately fifteen per cent lower than the combination of the two local rates. Only a small amount of the tonnage transported to the resort area by applicant originates with this carrier. The Los Angeles lading is now taken to applicant's Mountain Auto Line terminal in San Bernardino by highway common carriers, private carriers, and by applicant operating as a permitted carrier. Applicant testified that the daily tonnage destined to the mountains averages approximately 13,000 pounds in winter and 20,000 pounds in summer, most of which originates in the Los Angeles Area.

We are of the opinion that there is substantial evidence of record justifying a highway common carrier service between the Los Angeles area and the San Bernardino Mountains resort area. The result would be lower rates and single-line operation, distinct advantages for both shipper and consignee. Upon the evidence of record we find that public convenience and necessity require that applicant be authorized to extend and enlarge his present highway common carrier operation to include service between said Los Angeles and mountain resort areas.

Applicant's business as a permitted carrier, conducted under the name of Auto Fast Freight, was commenced by him in Riverside and vicinity in 1948. He began operation in that locality with two trucks and two employees. As his service became known to the businessmen in the area, the operations soon began to expand to include pickups in the Los Angeles Area,

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which shipments were usually delivered the next morning to consignees in the so-called "Kito Area" (Riverside, Colton, San Bernardino, Redlands, and nearby smaller communities): At present applicant operates seven trucks and employs eleven persons in this phase of his business. Present operations are conducted generally as follows: preceding day pickups from Los Angeles are delivered in the morning from his terminal situated near Riverside. Five so-called "bobtail" trucks are used for this purpose. Deliveries are made first in Riverside, Colton, San Bernardino, Redlands and vicinity, and then the trucks continue westerly along four main routes serving a few intermediate points until they reach the Los Angeles Area about midday. The fifth truck serves Redlands first and then makes supplementary deliveries along one or more of the said four main routes which are generally along U. S. Highways 66, 60, 70 and 99, 91 and 101 (see Exhibit No. 1).

Applicant testified that approximately 99 per cent of his lading is less-truck-load, and that 95 per cent of it originates in the Los Angeles Area. The evidence supports his statement. The shipments are picked up in Los Angeles until about 5:30 p.m., taken to the terminal in Riverside, segregated and reloaded for delivery the following morning. Applicant presented an exhibit showing the character and extent of his business (Exhibit No. 9). This exhibit lists all of the shipments transported by Auto Fast Freight on August 4, 5, 20 and 21; September 1, 2, 17 and 18; and October 6, 1953. Mr. Mitchell testified that said shipments and daily business are representative of the business transacted by him throughout the year. Said Exhibit No. 9 lists the freight bill number, commodity, place of origin, place of destination, and weight of each shipment. The total weight of all shipments and

the weight of the principal commodities transported each day by all five of the trucks used are as follows:

August 4, 1953

Total Weight 39,162 lbs.

## Weight of Principal Commodities:

Paint and related products	24,710	lbs.
Printing paper and other paper products	11,903	"
All other commodities	2,549	"
	<u>39,162</u>	"

August 5, 1953

Total Weight 62,916 lbs.

## Weight of Principal Commodities:

Paint and related products	30,372	lbs.
Printing paper and other paper products	24,346	"
Auto parts, accessories, tires	6,612	"
All other commodities	1,586	"
	<u>62,916</u>	"

August 20, 1953

Total Weight 42,500 lbs.

## Weight of Principal Commodities:

Paint and related products	20,916	lbs.
Printing paper and other paper products	8,361	"
Coffee	9,600	"
Auto parts and accessories	1,621	"
Hardware	1,557	"
All other commodities	445	"
	<u>42,500</u>	"

August 21, 1953

Total Weight 38,063 lbs.

## Weight of Principal Commodities:

Paint and related products	26,704	lbs.
Printing paper and other paper products	9,628	"
All other commodities	1,731	"
	<u>38,063</u>	"

September 1, 1953

Total Weight 36,498 lbs.

## Weight of Principal Commodities:

Paint and related products	20,924	lbs.
Printing paper and other paper products	13,043	"
All other commodities	2,531	"
	<u>36,498</u>	"

September 2, 1953

Total Weight 55,288 lbs.

## Weight of Principal Commodities:

Paint and related products	33,080 lbs.
Printing paper and other paper products	17,110 "
Coffee	3,867 "
All other commodities	<u>1,231</u> "
	55,288 "

September 17, 1953

Total Weight 61,150 lbs.

## Weight of Principal Commodities:

Paint and related products	12,300 lbs.
Printing paper and other paper products	17,507 "
Coffee (truckload)	25,000 "
Type metal	3,025 "
All other commodities	<u>3,318</u> "
	61,150 "

September 18, 1953

Total Weight 32,623 lbs.

## Weight of Principal Commodities:

Paint and related products	19,230 lbs.
Printing paper and other paper products	11,355 "
All other commodities	<u>2,038</u> "
	32,623 "

October 6, 1953

Total Weight 30,661 lbs.

## Weight of Principal Commodities:

Paint and related products	17,660 lbs.
Printing paper and other paper products	10,291 "
All other commodities	<u>2,710</u> "
	30,661 "

It will be seen that the daily average weight of all the commodities transported, excepting paint and related products, printing paper and other paper products, some auto parts and accessories, and occasional shipments of coffee, is approximately 2,527 pounds, or about 505 pounds per each truck that makes the daily trip into the Los Angeles Area for pickups. This evidence clearly indicates the limited scope of applicant's present business.

Applicant called four shipper witnesses and thirteen consignees to testify in support of this portion of his application. Two of the shippers were in the paint business, one in the printing paper business, and the other dealt in wholesale liquors. Five of the consignees dealt in paint or paint store products, six used or sold printing paper or other paper products, two dealt in auto parts, accessories, or tires, and one in beverages. Although applicant now renders a satisfactory service to said witnesses, it was not shown that existing highway common carriers cannot furnish to them reasonably adequate and satisfactory transportation. Many of them have not tried existing services, or did not know that several other carriers operated in the same territory. A pickup in the Los Angeles Area with a following morning delivery was the principal demand of most witnesses. The protestants showed that they are ready, able and willing to provide such service.

Having considered the entire record, we are unable to find that a public necessity exists for an additional highway common carrier service for the transportation of general commodities to the territorial extent requested by applicant. The application, therefore, will be granted only in part and in accordance with the findings of fact and conclusions as hereinabove set forth.

Walter G. Mitchell, Jr. 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

A public hearing having been held, the Commission being fully advised in the premises and having found as hereinabove set forth,

IT IS ORDERED:

(1) That a certificate of public convenience and necessity be, and it hereby is, granted to Walter G. Mitchell, Jr., an individual, authorizing him to establish and operate a service as a highway common carrier, as defined in Section 213 of the Public Utilities Code, for the transportation of property between the Los Angeles Area, as hereinafter described, on the one hand, and the points and places situated in the mountain resort area of the San Bernardino Mountains, which he is now authorized to serve as a highway common carrier, on the other hand, as an extension and enlargement of and to be consolidated with his present highway common carrier operating rights, subject to the following restrictions and conditions:

- (a) That the Los Angeles Area which applicant is authorized to serve is that which is bounded as follows:

On the south by Firestone Boulevard and Manchester Avenue; on the west by Vermont Avenue; on the north by Los Feliz Boulevard, San Fernando Road, Avenue 26, Griffin Avenue, Mission Road, Valley Boulevard, and on the east by Atlantic Boulevard.

- (b) Applicant shall not transport livestock; uncrated, unpacked and unwrapped new furniture, electrical or gas appliances, household goods, stoves and refrigerators; commodities requiring special equipment; commodities in bulk; articles of extraordinary value; dangerous explosives; and commodities injurious or contaminating to other lading.

(2) That in providing service pursuant to the certificate herein granted there shall be compliance with the following service regulations:

- (a) Within thirty days after the effective date hereof, applicant shall file a written acceptance of the certificate herein granted.
- (b) Within sixty days after the effective date hereof, and upon not less than five days' notice to the Commission and the public, applicant shall establish the service herein authorized and file in triplicate and concurrently make effective tariffs satisfactory to the Commission.
- (c) Subject to the authority of this Commission to change or modify such at any time, Walter G. Mitchell, Jr., doing business as Auto Fast Freight, shall conduct said highway common carrier operation over and along the following route or routes:

Within the said Los Angeles Area -

Over and along the most appropriate highways, streets or roads.

Between the Los Angeles Area and the San Bernardino Mountain Area -

Over and along the most appropriate route or routes to connect with applicant's presently authorized routes between San Bernardino and said mountain resort area.

(3) That, except as herein authorized, Application No. 34731, be and it hereby is denied.

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

Dated at Los Angeles, California, this 27<sup>th</sup> day of July, 1954.

Walter G. Mitchell  
 PRESIDENT  
Justin J. Wheeler  
Francis J. Miller  
Gene Higgins

COMMISSIONERS