

**ORIGINAL**Decision No. 50333

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
 W. J. Pope and V. W. Pope, doing )  
 business as AETNA FREIGHT LINES )  
 for a certificate of Public Con- )  
 venience and Necessity as a Highway )  
 Common Carrier between points in )  
 Northern and Southern California. )

Application No. 33901  
 (As Amended)

Scott Elder for Applicants.  
Glanz and Russell by R. W. Schureman for Desert Express and Victorville-Barstow Truck Line, interested parties, and for Public Freight System and George Smith Jr., dba Smith Transportation, protestants. Douglas Brookman for California Motor Express, Ltd., California Motor Transport Co., Ltd., and Merchants Express Corporation, protestants. E. M. Berol and Bertram S. Silver for Culy Transportation Co. Inc., Highway Transport, Inc., Miles Motor Transport System and Sacramento Freight Lines, Inc., protestants. Robert W. Walker and Henry M. Moffat for Santa Fe Transportation Company, protestant. J. Richard Townsend for Southern California Freight Lines and Southern California Freight Forwarders, protestants.  
Orville A. Schulenberg for Kings County Truck Lines, protestant.  
Frederick E. Fuhrman, E. L. H. Bissinger and John H. Gordon for Southern Pacific Company, Pacific Motor Trucking Company, Railway Express Agency, Inc., and Pacific Electric Railway Company, protestants.  
Lloyd R. Guerra for Western Truck Lines, Ltd., protestant.  
Frederick W. Mielke for Delta Lines, Inc., protestant.  
Gordon, Knapp and Gill by Joseph C. Gill for Pacific Freight Lines, Pacific Freight Lines Express, Valley Motor Lines and Valley Express, protestants.  
Willard S. Johnson for Ted Peters Trucking Company, Inc., and J. A. Nevis Trucking, Inc., protestants.  
Turcotte and Goldsmith by Jack O. Goldsmith and Frank Turcotte for Thompson Truck Lines and Pixley Transportation, protestants.  
Frank Loughran for Bonded Draying Service, protestant.  
J. T. Phelps for the Commission Staff.

O P I N I O N

This application filed November 26, 1952 requests the issuance of a certificate of public convenience and necessity as a highway common carrier over the territory where it is alleged the major part of applicants' permitted operations is conducted. In brief the operations proposed are between Los Angeles, Los Angeles Basin points and San Diego on the one hand and San Francisco and other Bay Area points and Sacramento on the other with service from and to most of those terminal areas and at intermediate points on the coast route, at all San Joaquin Valley points and at Monterey Bay and Peninsula points. Service is also proposed locally within Los Angeles territory, between Los Angeles and Los Angeles Basin points, between Los Angeles Basin points, including Los Angeles and San Diego territory and intermediate points and between Los Angeles and Imperial and Coachella Valley points, locally within the San Francisco territory, between the San Francisco territory and Sacramento, Stockton and intermediate points and locally between Fresno and San Joaquin Valley points. The commodities to be carried consist of general commodities except fresh fruits and vegetables, livestock, used uncrated household goods, refrigerated commodities, commodities in bulk and valuables.

Public hearings were held before Examiner Rowe in Los Angeles on September 15, 16, 24 and 25, 1953, on October 16, 1953, December 16 and 17, 1953 and on January 6 and 7, 1954 and in San Francisco on October 20, 1953 and on January 11 and 12, 1954. On said last mentioned date the matter was submitted on briefs which have now been duly filed.

The principal owner of applicants' business testified in support of the application and generally described the history and present operations they perform. Others employed by applicants supplemented this testimony. From the evidence it appears that they

conduct their business under permits as a radial highway common carrier, highway contract carrier, city carrier and household goods carrier. The city carrier permit authorized operations within Los Angeles, San Bernardino, San Diego, Fresno, San Leandro, San Francisco and in all incorporated cities within a radius of thirty miles from said named cities and in any other city in California where an intracity shipment is tendered as a result of an intercity movement. The rates, rules, and regulations proposed to be published and applied will be those provided in Highway Carriers' Tariff No. 2, to the extent that they are applicable or appropriate to a highway common carrier operation.

Applicants' automotive fleet numbers approximately seventy-three pieces of equipment, including nineteen pickup and delivery units with both van and stake type bodies, twenty tractors and thirty-four 22-foot semi-trailers with van, stake and low-bed bodies, nine dollies and four lift trucks. Four additional tractors, three diesel and one gas, are continuously under annual lease. All this equipment is expected to be used under the requested certificate. In addition, sub-haulers are now and will be used. They operate diesel tractors with double van trailers, averaging about forty trips a month between Los Angeles and San Francisco Bay areas.

Terminals are maintained at Los Angeles, which were established in 1936; at San Francisco and San Diego, established in 1943; and at Oakland, established in 1948. The firm's personnel numbers approximately 66 including the two owners. The owners' experience covers an eighteen-year period. From a small beginning the company's assets as of June 30, 1953 were \$267,338.40 of which \$133,317.48 represents proprietorship capital. Total tonnage transported increased from 35,418,584 pounds in 1948 to 78,175,495 pounds in 1952.

Several exhibits were introduced into evidence prepared in order to show the range of commodities transported and the volume and distribution of applicants' traffic. Three hundred forty-two different commodities were transported during the month of September 1952. In that month 8,718,996 pounds of freight were transported in 2,571 shipments between many different points and territories. In that period a total of one hundred twelve persons delivered shipments to Aetna Freight Lines for transportation. Three hundred sixty-two shipments weighing one and one-half million pounds moved from Los Angeles to the San Francisco territory and one million and about four hundred thousand pounds consisting of 148 shipments moved in the opposite direction. From Los Angeles ninety-nine shipments weighing in the aggregate approximately sixty-six thousand pounds moved to 28 various coast points intermediate between there and San Francisco. From the Los Angeles territory 21 shipments weighing a total of 65,598 pounds went to nine Contra Costa County points. Twenty-three shipments aggregating 14,357 pounds moved from San Francisco to five Los Angeles Basin points, 74 shipments weighing almost 160,000 pounds moved from San Francisco to 15 Peninsula, Santa Clara points including four to Gilroy and Lompoc.

During the same month 19 shipments moved over applicants' lines from San Francisco to Sacramento and intermediate points aggregating 256,578 pounds. Three shipments weighing 14,140 pounds in the aggregate moved from Sacramento to San Francisco. Sixty-three shipments aggregating 381,678 pounds were carried from Los Angeles to Sacramento and points intermediate between Sacramento and San Francisco. The bulk of this movement (26 shipments aggregating 253,564 pounds) went to Planehaven. Seven shipments aggregating 226,506 pounds moved from Sacramento to Los Angeles and 10 shipments aggregating 373,431 pounds went to the Los Angeles Basin territory,

and three shipments weighing a total of 106,176 pounds went from the same point, Sacramento to the San Joaquin territory.

At the same time a total of 218 shipments aggregating 267,785 pounds moved from the Los Angeles territory to 41 various points in the San Joaquin territory along U. S. Highways 99 and 50. Only three shipments aggregating 646 pounds moved from those points to Los Angeles. From San Francisco territory Aetna carried 145 shipments weighing a total of 569,925 pounds to San Joaquin territory. Only five shipments aggregating 12,575 pounds returned from that territory to San Francisco. At the same time 61 shipments weighing 16,592 pounds originated at Fresno and were carried to San Joaquin points.

During that month 277 shipments weighing a total of 379,368 pounds were carried from Los Angeles territory to 43 Los Angeles Basin points. Also from Los Angeles 332 shipments were carried to San Diego and intermediate points. Of these, 286 shipments weighing 640,437 pounds went to San Diego and 46 shipments weighing less than 9,000 pounds went to the intermediate points.

From San Diego 55 shipments in the aggregate weighing 542,500 pounds moved to Los Angeles, 19 shipments aggregating 30,008 pounds to San Francisco or intermediate points, one shipment of 2,596 pounds to Planehaven. From Los Angeles 57 shipments weighing a total of 96,615 pounds went to Imperial and Coachella Valley points. To those points at the same time nine shipments of 267,353 pounds came from San Diego. Within the Los Angeles territory 368 shipments weighing 1,088,278 pounds moved locally. Small numbers of shipments during that month were transported to several scattered points.

This witness testified that shippers are accustomed to call upon applicants for service to many widely scattered destinations. As an example he stated that on July 8, 1953 General Foods Corporation shipped 30 shipments from San Leandro consigned to 19 different points in the proposed certificated area. Similarly between July 8

and 14, 1953 Reynolds Metals Company located in Vernon shipped to a total of 17 different points in said area. He added that the geographical pattern of the shipments of such shippers varies greatly from day to day and week to week. The broad geographical coverage has, he said, developed over the period of the company history in response to such requirements of shippers. However, he testified, that applicants are now operating a daily schedule between:

Los Angeles and San Francisco and Oakland;  
Sacramento and San Francisco; Los Angeles and San Diego; Los Angeles and Los Angeles Basin points; San Francisco and Oakland, and Peninsula points; and, San Jose and Monterey Bay points.

Applicants produced shipper-witnesses from 14 companies, all customers of Aetna Freight Lines, 11 of which companies are located in Los Angeles or vicinity and three from the San Francisco Bay area. These witnesses uniformly stated that up to the time hearings commenced, they used applicants to many points, were satisfied with the service especially because it was a personalized and efficiently operated truck transportation business. None of these witnesses stated any need for any change in applicants' operations. In fact, most of these witnesses indicated that if the service of this carrier should become less personalized or less efficient they would not necessarily continue to patronize the service.

As stated in the opening brief, the "Application is not based on deficiencies in protestants' transit time or services, but is based on applicants' past operation, steady growth, and the volume and extent of their present business and patronage. The proceeding does not involve any 'proposed service' as protestants repeatedly call it, but contemplates the continuation under certificate of the same satisfactory service presently and heretofore rendered under permits."

The necessary conclusion to be drawn from applicants' showing is that its operations under its radial permit between certain points and over certain routes have become that of a highway common carrier. (1) The extensive service to a large portion of the public served between the points and over the routes hereinafter described in the following order clearly demonstrates that there is a public convenience and necessity requiring the continuance of such service. The testimony of the shipper witnesses above referred to fully substantiates this showing. Since there has been no showing justifying the extremely broad coverage requested the argument of protestants that the personnel and equipment is inadequate for expanded operations requires no discussion other than to observe that the lack of such personnel and equipment is added reason for denying the application as to points of light and irregular service. Likewise no determination need be made as to whether traffic carried for customers with whom applicants have contracts may be considered as showing public need and convenience. The freight carried for customers with whom no contracts have been entered into is so substantial and regular that even by disregarding the freight of such contract customers the grant of operative rights hereinafter made is supported by ample evidence.

The request to serve the Imperial and Coachella Valleys will be denied because there is a failure to show a need therefor. This is especially true since with respect to most of the small movements to and from said area applicant has acted as an agent to procure transportation from another carrier. The same can be said

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(1) "Nolan's contention that a radial highway common carrier does not become a highway common carrier when business expansion results in regular trips to certain communities is without merit. By statutory definition, the distinction between the two types of carriers is that the highway common carrier operates between fixed termini or over regular route whereas the radial carrier has no fixed termini or regular route."

Nolan v. Public Utilities Commission 41 Cal. 2d 392 at 397.

for most of the points on U. S. Highway 101 between Los Angeles and San Jose. Authorization of highway common carrier rights between Los Angeles and the Los Angeles Basin points and to and from Peninsula points will be denied because the showing of traffic carried is not sufficiently substantial and in view of the probable injury to existing highway common carriers. The same can be said as to service between Los Angeles and San Francisco, on the one hand, and, on the other hand, Sacramento, and between San Diego, on the one hand, and, San Francisco and Sacramento, on the other hand.

A detailed description of the various services performed by protestants is not necessary. Between the points where highway common carrier rights will herein be granted the traffic carried by applicants is regular and substantial and there is no convincing evidence that important amounts of business will be lost by the protestants. The opinion evidence of protestants' witnesses that substantial business would be diverted was based primarily upon the assumption that full operative rights as requested throughout the wide area sought would be granted to applicants. The operative rights to be granted will be only in the areas of heavy freight movement and where the movement has clearly been regular. Applicants stated that they do not desire authority to provide through service between points on the various certificated areas involved in their application. Consequently applicants will be prohibited from establishing through routes or rates between the separate areas in which operative rights are hereinafter granted. Nothing stated in this opinion should be construed as indicating that the Commission finds that applicants' operations under contract are or are not in violation of Section 3542 of the Public Utilities Code nor that any



operations over routes or between points not hereinafter certificated are or are not in excess of applicants' rights under their permits. The rights hereinafter granted are hereby found to be required by public convenience and necessity.

W. J. Pope and V.W. Pope doing business as Aetna Freight Lines 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 as to the number of rights which may be given.

O R D E R

Application therefor having been filed, public hearings having been held, and the Commission having found 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 W. J. Pope and V. W. Pope, doing business as Aetna Freight Lines, authorizing the establishment and operation of service as a highway common carrier as that term is defined in Section 213 of the Public Utilities Code for the transportation of general commodities except fresh fruits and vegetables, livestock, used uncrated household goods, refrigerated commodities, commodities in bulk, and valuables (a) between the Los Angeles territory as presently described in Highway Carriers' Tariff No. 2, Item No. 270-A and places within four miles of Whittier on the one hand and on the other hand San Francisco territory as so described in said Tariff, Item No. 270-A serving Fresno as an intermediate point, and (b) between

said Los Angeles territory and points within four miles of Whittier on the one hand, and, on the other hand, San Diego territory also as described in Item 271-C of said Highway Carriers' Tariff No. 2

(2) That the operative rights referred to in ordering paragraph (1) above are granted subject to the prohibition that no through routes or rates, charges or classifications shall be established as to any movement of freight between any point served as authorized by subparagraph (a) to or from points as authorized by subparagraph (b).

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

- (a) Within thirty days after the effective date hereof, applicants 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 applicants 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 the Commission to change or modify them by further order applicants shall conduct operations pursuant to the certificate herein granted over and along the following public highways:
  - (1) Between Los Angeles and Whittier to San Francisco and Oakland over and along U. S. Highway 50, State Highway 120, U. S. Highway 99, Whittier Boulevard, U. S. Highway Bypass 101 between Los Angeles and Whittier and any convenient public highway between said highways above named and points within four miles of Whittier.
  - (2) Between Los Angeles and points within four miles of Whittier and San Diego over and along U. S. Highway 101 or U. S. Highway Bypass 101 and over any convenient public highway to reach said numbered highways from points within four miles of Whittier.

(4) In all other respects not granted in ordering paragraph  
(1) above, Application No. 33901 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.

[Signature]  
President  
[Signature]  
[Signature]  
[Signature]  
Commissioners