

ORIGINAL

Decision No. 51287

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 HIGHWAY TRANSPORT, INC., a corpora-)
 tion, for authority to extend an) Application No. 32456
 operation as a highway common) As Amended
 carrier between San Francisco and)
 Tulare and intermediate points.)

Edward M. Berol and Bertram S. Silver, for
 Highway Transport, Inc.
Gordon, Knapp & Gill, by Joseph E. Gill, for
 Pacific Freight Lines and Pacific Freight Lines
 Express; Douglas Brookman, for California
 Motor Express, Ltd., California Motor Transport
 Co., Ltd., Merchants Express Corporation, Valley
 Motor Lines, Inc. and Valley Express; Robert W.
 Walker and Richard K. Knowlton, for The Atchison,
 Topeka & Santa Fe Railway Co. and Santa Fe
 Transportation Co.; Frederick W. Mielke, for
 Delta Lines, Inc., protestants.
Willard S. Johnson, for J. Christenson Co.,
 interested party.

O P I N I O N

Introduction

Highway Transport, Inc., requests authority to transport general commodities as a highway common carrier:

(a) Between San Francisco and Tulare via U. S. Highways 40 (San Francisco-Oakland Bay Bridge), 50 and 99, and all intermediate points, including Stockton, and the off-route points of Visalia and Hanford, with no local service between San Francisco and Hayward and intermediate points;

(b) Between Gilroy and Tulare via State Highway 152 (Pacheco Pass) and U. S. Highway 99, serving all intermediate points.

Grant of the requested authority would permit integration of the proposed service with applicant's existing highway common carrier operations between San Francisco, Soledad and Monterey Bay territory.

Public Hearing

The application was submitted on briefs, filed July 19, 1954, following eight days of public hearing held between October 1953 and April 1954 at San Francisco, Fresno, Modesto and Los Angeles before Examiner John M. Gregory. The application, though filed in 1951, was not brought to hearing until two years later, due to conflicting engagements of counsel and to the possibility of enactment, by the California Legislature, of measures relating to truck transportation which might have affected applicant's status to the extent of making unnecessary further prosecution of the application. The legislation was not enacted and the application was accordingly set down for hearing.

Applicant's Position

Highway Transport, Inc., affiliated with Highway Transport Express, an express corporation, and Robertson Drayage Co., Inc., a city carrier and warehouseman, presently is authorized to conduct operations (a) as a highway common carrier between San Francisco Bay points, Monterey Bay points, Soledad and intermediate points; (b) as a common carrier by motor vehicle in interstate commerce, one-way, from San Francisco to Tulare, Visalia and Hanford and intermediate points and from San Francisco to Monterey and intermediate points via Salinas and Santa Cruz; (c) as a freight forwarder, in intrastate commerce, from San Francisco to Stockton; (d) as a radial highway common carrier in intrastate commerce. Applicant stipulated that its intrastate freight forwarder and radial authority might be revoked if the extended highway common carrier right herein requested is granted.

Applicant has terminal facilities at San Francisco, Palo Alto, San Jose, Santa Cruz, Watsonville, Monterey, Oakland,

Gilroy and Salinas. It also maintains station agencies at Hollister, Boulder Creek, Stockton, Modesto and Fresno, but will lease a terminal at Modesto if the application is granted.

Operating equipment owned by or available to applicant through its affiliates consists of 413 diversified units, including 70 truck stake bodies, 24 lowbeds and 32 semitrailer flatbeds, convenient for handling crane-loaded or extra-length loadings. An additional truck, costing about \$8,000, would be acquired, if needed, for service at Fresno.

Applicant has conducted operations as a highway common carrier under its present management since 1935. In 1952, pursuant to authority of this Commission and of the Interstate Commerce Commission, applicant and Robertson Drayage Co., Inc., by merger, acquired rights and properties held by Canton Transbay Express, Inc., and A-B-C Transfer and Storage Co., Inc. ⁽¹⁾ Applicant since has performed the interstate operations formerly conducted by A-B-C, consisting largely of distribution from San Francisco piers to San Joaquin Valley points of pool car and steamship freight originating in the eastern states. The present application was filed in 1951 in anticipation of the acquisition of A-B-C's rights.

Applicant renders daily, overnight service between San Francisco and presently certificated points in intrastate commerce; daily service from San Francisco to Stockton under its intrastate freight forwarder authority; service, on the average of three trips per week, from San Francisco to Fresno and San Joaquin Valley points south of Stockton in interstate commerce, with

(1) Dec. 47311, June 24, 1952, Appls. 33137, 33138, 33351.

I.C.C. No. MC 51244 SUB 7, November 20, 1952.

Applicant's president, Joseph Robertson, and his associates had acquired control of A-B-C's stock in 1942.

intrastate loadings to fill out void truck space on southbound trips into the valley. Little traffic is handled northbound under applicant's radial authority on return trips from the valley.

Applicant and its affiliates for several years have conducted operations under various types of authority and have been in competition with certificated and permitted highway carriers in the general area for which a certificate is here sought. The record establishes that applicant possesses substantial resources with which to inaugurate the proposed operations.

Shipper Support for Proposed Service

Shipper support for applicant's proposed service was developed on the record from representatives of some 40 manufacturing and wholesale firms located in the San Francisco-Oakland area, on the San Francisco Peninsula, and at points in the San Joaquin Valley and in the Monterey Bay area.

Many of these shippers have been using applicant's freight forwarder and radial highway common carrier service between San Francisco and Stockton and, to a lesser extent, to and from points in the San Joaquin Valley south of Stockton. They have also used the services of one or more of the protesting highway common carriers and express companies, but have had occasional difficulty in securing open equipment from them for transportation of long steel objects or items requiring flatbed trucks. Also, many of the shippers, both in the San Francisco and San Joaquin Valley areas, indicated dissatisfaction with either pickup or delivery service of one or more of the protesting carriers.

Shippers or receivers at Fresno, Modesto and Merced of freight moving between those points and points south of San Jose, including the Monterey Bay area, have not received single-line,

overnight service from the common carriers offering transportation between those points. Consequently, some have been compelled to use contract truckers or proprietary equipment in order to expedite such shipments. ⁽²⁾ The volume of traffic between San Joaquin Valley points and applicant's presently certificated territory from San Jose south, however, was shown to be substantially less than that moving south to the valley from the San Francisco-Oakland area.

Increase in Traffic Volume and Population Growth

The record makes plain that general commodity traffic between the San Francisco-Oakland area (including San Jose) and San Joaquin Valley points from Stockton to Fresno and vicinity, at least as experienced by the shippers who testified, has increased substantially over the past three years or so. Likewise, population, production and employment in both the San Francisco Bay area and the San Joaquin Valley have shown remarkable growth during the past few years and the trend is still upward. The record shows, for example, that using an index of 100 for 1940, the truck tonnage demand for the San Joaquin Valley trebled before 1950, that in 1950 the index was over 450 and that the forecast for 1960 is almost 600. Comparable growth of truck tonnage demand is also shown for the San Francisco Bay area. The projected increase in truck tonnage demand for both areas amounts to approximately four per cent annually from 1954 to 1960. ⁽³⁾

(2) Recent inauguration of single-line service by California Motors between San Joaquin Valley points and Monterey Bay territory was not known to many of these shippers. That service, however, except for direct movements of large shipments, appears to be on a second-day delivery basis.

(3) Exhibit 20 - "Population and Economic Trends in the San Joaquin Valley," by William A. Spurr, Professor of Business Statistics, Graduate School of Business, Stanford University.

Protestants' Operations

As the various operating rights of protestants are well known to this Commission and to the various parties concerned, no useful purpose would be served, in our opinion, by setting them forth in detail here.

The protestants, either directly or by joint-rate and through-route service, provide daily and normally overnight express or highway common carrier service between most of the points in the area covered by applicant's existing and requested certificated authority. Local restrictions, however, between San Francisco Territory and San Jose-Salinas, imposed for applicant's benefit in recent proceedings, apply to the operations of California Motors, Pacific Freight Lines and Merchants between those points.⁽⁴⁾ It may be noted, parenthetically, that Delta Lines, Inc., through purchase of an operative right between Los Angeles Territory, North Sacramento, Turlock and intermediate points via U. S. Highway 99,⁽⁵⁾ has recently extended its operations into the San Joaquin Valley south of Stockton. Delta, however, does not operate directly south of San Francisco in applicant's presently certificated territory. Also, Pacific Freight Lines and Pacific Freight Lines Express, two of the chief protestants, have recently been authorized to sell their intrastate common carrier rights and certain tangible property to Pacific Motor Trucking Company, the trucking subsidiary of Southern Pacific Company, neither of which carriers entered an appearance in this proceeding.⁽⁶⁾

(4) Dec. 47333, June 24, 1952, Appl. 32170 et al., which was a consolidated proceeding for extension of operating rights.

(5) Dec. 50080, May 25, 1954, Appl. 34892.

(6) Dec. 50908, Feb. 1, 1955, Appl. 35802.

The foregoing extensions and acquisitions were authorized subsequent to the filing of this application.

Protestants generally experienced substantial increases in gross operating revenues between 1949 and 1953. Also, during that period, by additions to equipment or replacements with larger units, they enlarged considerably their respective fleets. Some decrease, however, in the volume of traffic handled in the latter part of 1953 and early portion of 1954, as compared with preceding years, was noted by some of the protestants.

Traffic Characteristics - San Francisco-San Joaquin Valley

Tonnage moving between San Francisco Bay points and San Joaquin Valley points is predominantly southbound l.t.l. general commodity traffic. Northbound it consists primarily of dried fruits, cotton, wine and a few l.t.l. shipments of general commodities. Dried fruit and cotton shipments are exempt commodities in interstate commerce and the record indicates that they constitute about 90 per cent of all northbound tonnage of Pacific Freight Lines, Valley Motors and other carriers. Applicant, according to the record, does not appear to have participated in that northbound movement in order to fill void space on its trucks. (7)

(7) Motor vehicles used in carrying agricultural commodities (not including manufactured products thereof), if not used in carrying any other property for compensation, are exempt from rate regulation of the Interstate Commerce Commission (Sec. 203 (b) (6), Inters. Com. Act). Such transportation in interstate or foreign commerce between points in California is subject to the minimum rates established by this Commission (Dec. 50156, June 18, 1954, Case No. 5432 - Pet. 37).

Minimum rates on fresh fruits and other items included in Minimum Rate Tariff No. 8, when such shipments are moving in interstate or foreign commerce and are exempt from rate regulation by the Interstate Commerce Commission, were made inapplicable to such traffic for a six-month period commencing November 1, 1954, pending hearings. (Dec. 50647, Case No. 5438 - Pet. 6, 53 Cal. P.U.C. 541.)

Contentions of Applicant and Protestants

Applicant, in its brief, contends, in substance, that it should be granted the authority it requests because (a) it is already operating in the sought territory under a multiplicity of interstate and intrastate authority and certification of its intrastate operations would result in better service to the public as well as further the cause of sound regulation; (b) it has adequate facilities, including diversified truck equipment, for the proposed operation and such additional facilities as might be needed would require little capital investment; (c) its other certificated intrastate operations are substantial and have been conducted for many years, thus providing experience in the field of highway common carriage; (d) the needs of shippers would be met at various points for open equipment and at San Joaquin Valley points for overnight, direct, common carrier service between the valley and points south of San Jose, including the Monterey Bay area.

Protestants' contentions, summarized, are that (a) the sought territory, especially between San Francisco Bay points and Stockton, is already adequately served by common carrier facilities; (b) applicant's intrastate operations south of Stockton are so infrequent as to raise no doubt in anyone's mind as to their radial character; hence, the reasons favoring certification of radial operations of doubtful legality have no application here; (c) the available San Joaquin tonnage, including exempt, northbound interstate freight, is insufficient to render applicant's participation therein profitable; (d) daily intrastate operations by applicant into the valley, instead of the infrequent trips it now makes, would tax its resources beyond the breaking point; (e) applicant's shipper witnesses who were using protestants' services, while generally

satisfied with those services, would divert tonnage to applicant if a certificate were granted and thus further dilute tonnage handled by existing common carriers, especially between San Francisco Bay points and Stockton; (f) direct single-line service between San Francisco and San Joaquin Valley points and single-line or through-rate service from the valley to Salinas and Monterey Bay points are available by existing common carriers whose services are adequate between the territories involved herein.

Applicant and protestants cite various recent decisions of the Commission dealing with the granting or denial of certificates in portions of the territory here under consideration, or with the status of certain carrier operations. ⁽⁸⁾ The authorities cited have been carefully considered, as well as the arguments of applicant and protestants.

Summary and Conclusions

Applicant and its affiliates, like protestants, are established and responsible elements of the transportation industry in this State. They all render important services reaching most of the inhabited portions of the State. From time to time, as various areas in the State have grown in population and industry, with consequent increases in volume of traffic, not only applicant but also protestants have sought to expand their services to keep pace with the unfolding situation.

(8) Applicant cites: Investigation of Operations of All Carriers of Property, 48 Cal. P.U.C. 587, 597; Savage Transp. Co., et al., 48 Cal. P.U.C. 712, 719; Cal. Motor Transport Co., Dec. No. 49805, Appl. No. 33984.

Protestants cite: Nolan v. P.U.C., 41 Cal. 2d, 392; Merchants Exp. Corp. v. Robertson Drayage Co., Inc., Dec. No. 47928, Case No. 5366; Cal. Motor Transport Co., 51 Cal. P.U.C. 492, 503, 504; Pacific Freight Lines, Dec. No. 46874, Appl. No. 31338; Dec. No. 48468, Appl. No. 32907.

In some cases, like those involving the extension of service of California Motors, Pacific Freight and Merchants between San Francisco and the Monterey Bay area, where those carriers had not theretofore operated directly, restrictions were placed upon the operative rights granted to them in order to protect, to some extent, the highway carrier first in the field. In other cases, notably those involving extension of service between the San Francisco-Oakland and Stockton-Sacramento areas, similar restrictions were placed upon the rights granted and for much the same reasons.

For a number of reasons which we deem persuasive, we consider the cases cited by protestants to be distinguishable from the instant application. In the first place, applicant and its predecessor A-B-C Transfer & Storage Company were conducting substantial operations in various portions of the territory between San Francisco Bay points, Stockton and San Joaquin Valley points to Fresno and vicinity when applicant, anticipating the acquisition of A-B-C's operative rights, filed the present application. True, those operations, as well as the ones conducted since by applicant and its affiliates, have been performed under a variety of authorities, both interstate and intrastate; however, to the extent that applicant and its associates have been able to control traffic moving into that territory they have been competitive with protestants and with other common carriers in the field who did not oppose the application-- Southern Pacific Company and its subsidiary, Pacific Motor Trucking Company, to name two. Hence, the considerations that would persuade us to deny the application or to impose restrictions on segments of the authority granted, which might be present if applicant were a new operator or were seeking admission into occupied territory, are

not apparent in this case. Moreover, the competitive situation in the common carrier industry is constantly changing as a result of pressures exerted by both internal and external factors, such as acquisitions by one carrier of the operative rights or properties of another, development of new techniques in the transportation of property, growth or redistribution of population and industry, and the ups and downs of economic and political life at home and abroad. In short, protestants have no vested right either to immunity from competition or to preservation of the status quo.

Secondly, the Commission has declared that the requirement of stricter regulatory controls in the field of highway common carriage and the fact that such carriers must serve the public without discrimination tend toward greater stability. In a recent investigation into carrier operations, the Commission in its decision pointed out that, under our statutory scheme for regulation of certificated and permitted carriers, it is the operations of the permitted carriers which create problems and difficulties. Permitted carriers who might have cause to believe that their operations were open to question under judicial interpretations of the Public Utilities Code dealing with highway common carriage were advised to apply for certificates of public convenience and necessity. (9)

Although applicant's intrastate operations from San Francisco to points south of Stockton have not been so frequent as to raise serious doubts concerning their radial nature, at least under current decisions of the Supreme Court of California, the practical consequences flowing from the possession of a multiplicity of operative authority under which only partial use of equipment and other resources can legitimately be made, tend toward instability

(9) Investigation into Operations of All Carriers of Property,
53 Cal. P.U.C. 366.

and economic waste throughout applicant's entire organization. If for no other reason than this, applicant's operative rights should be simplified. By so doing, however, we doubt that either applicant's hopes or protestants' fears, as anticipated on the record, will be fully realized.

Finally, while the testimony of shippers and receivers is by no means conclusive, there is enough in what they had to say respecting available service and that which they desired or hoped for from applicant's proposals, to persuade us that if the requested authority were granted a definite public need would be met which is not now being satisfactorily filled by existing common carriers in the territory. This is particularly evident in connection with the rapid economic development of the territory. It is also evident in connection with the requirements, expressed by many shippers, for open equipment or for expedited service between San Joaquin Valley and Monterey Bay points.

We therefore conclude, for the foregoing reasons, that applicant has justified the granting of the authority here sought.

O R D E R

Public hearing having been held upon the above-entitled and numbered application, evidence and argument having been received and considered, the matter having been submitted for decision, the Commission now being fully advised and hereby finding that the public convenience and necessity so require,

IT IS HEREBY ORDERED that:

(1) A certificate of public convenience and necessity be and it is hereby granted to Highway Transport, Inc., authorizing it to operate as a highway common carrier for the transportation of

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general commodities, exclusive of used household goods (uncrated), petroleum or liquid products in bulk, livestock (uncrated), and commodities in insulated and mechanically refrigerated equipment;

- (a) Between San Francisco and Tulare, via U.S. Highways 40 (San Francisco-Oakland Bay Bridge), 50 and 99, serving all intermediate points and the off-route points of Visalia and Hanford, subject to the restriction, however, that no local service shall be performed between San Francisco and Hayward, both points inclusive, and intermediate points, or between points intermediate to San Francisco and Hayward;
- (b) Between Gilroy and Tulare, via State Highway 152 and U. S. Highway 99, serving all intermediate points;

as an extension and enlargement of and to be consolidated with applicant's existing highway common carrier operative rights conferred by this Commission in Decisions Nos. 35161, 35912, 38466, 40016, 40934, 41595, 42798 and 44626.

(2) Concurrently with establishment of service under the authority herein granted the operative right as a radial highway common carrier held by Highway Transport, Inc., evidenced by Permit No. 38-3526, and the operative right between San Francisco and Stockton as a freight forwarder, acquired by applicant pursuant to Decision No. 47311 in Application No. 33137, shall be revoked and applicant shall file on not less than five days' notice to the Commission and to the public cancellation supplements to all tariffs and schedules on file with this Commission in connection with said freight forwarder operation.

(3) Applicant, within thirty days after the effective date of this decision, shall notify this Commission, in writing, of its election to accept the certificate herein granted and shall also, in writing, advise the Commission of the date of commencement of service under said certificate.

(4) Applicant, within sixty days after the effective date of this order and on not less than five days' notice to the Commission

and to the public, shall file appropriate tariffs of rates, rules and regulations for the service herein authorized.

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

Dated at San Francisco, California, this 5th day of April, 1955.

Peter E. Mitchell
President

Justus J. Casper

Robert L. Luter

William J. Spaley

Commissioners