

Decision No. 51879

**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
HIGGINS TRUCKS, INC. for a certificate )  
of public convenience and necessity )  
authorizing the transportation of )  
freight, with certain exceptions from, )  
to and between points in Southern )  
California, Santa Barbara on the north )  
and San Ysidro on the south, as an )  
extension to its present operating )  
authority. )

Application No. 35465

Turcotte and Goldsmith, by F. W. Turcotte, for applicant.  
Donald Murchison, for Arrow Pacific Drayage; Douglas  
Brookman, for California Motor Express, Ltd., and  
California Motor Transport Co. Ltd., Robert W. Walker,  
Matthew H. Witteman and R. K. Knowlton, by R. K.  
Knowlton, for The Atchison, Topeka and Santa Fe Railway  
Company, and the Santa Fe Transportation Company;  
E. D. Yeomans, E. L. H. Bissinger and Walt A. Steiger,  
by Walt A. Steiger, for Southern Pacific Company,  
Pacific Motor Trucking Company, Pacific Electric  
Railway Co., and Railway Express Agency, Inc.; Gordon,  
Knapp and Gill, by Joseph C. Gill and Volney Brown, Jr.,  
for Pacific Freight Lines and Pacific Freight Lines  
Express; H. J. Bischoff, John B. Robinson, James H.  
Williams and George E. Strouse, for Southern  
California Freight Lines and Southern California  
Freight Forwarders; C. N. Bailey, for California  
Cartage Company, Inc.; Harry T. Fields, for Fields  
Freight, Inc., protestants.  
Herman Lewis, for Auto Purchasing Agency, interested  
party.

O P I N I O N

Applicant Higgins Trucks, Inc., is a California corporation engaged in the transportation of property for compensation in California pursuant to authority from this Commission. In 1935 it received from this Commission a radial highway common carrier permit, a highway contract carrier permit and a city carrier permit. On January 21, 1941 (Decision No. 33817 in Application No. 23293), it received from this Commission authority as a highway common carrier to transport bottles and bottle caps, canned goods, drugs and chemicals, groceries, iron and steel articles, paints

and paint products, paper and paper products, tile, tires, tubes and rubber goods between (a) Los Angeles, on the one hand, and Vernon, Huntington Park, Walnut Park, Maywood, Bell, South Gate, and the following described "county strip" territory, on the other hand:

County Strip No. 1 - That portion of Los Angeles County in Zone 1-A as defined in Case No. 4121, lying east of Indiana Street and south of the Los Angeles City limits, to and including a line bounded by City Terrace Drive and Ramona Boulevard, on the south;

County Strip No. 2 - That portion of Los Angeles County in Zone 1-D as defined in Case No. 4121, lying north of Century Boulevard and south of Tweedy Boulevard, and bounded on the west by Alameda Street and on the east by the City of South Gate;

(b) locally between Vernon, Huntington Park, Walnut Park, Maywood, Bell, South Gate and points in "county strip" No. 2 defined above. Service was to be rendered via described routes.

On February 17, 1948 (Decision No. 41226 in Application No. 28919), applicant acquired from Reader Truck Lines authority to operate between Los Angeles and Bellflower, including the right to serve to, from, or between Maywood, Bell, Vinvale, Downey, Hollydale, Clearwater and Hynes;<sup>1/</sup> to carry freight between Los Angeles and Long Beach;<sup>2/</sup> and to carry freight between Wilmington, San Pedro and Long Beach;<sup>3/</sup> and to carry freight between Long Beach, Seal Beach, Sunset Beach, Huntington Beach, Talbert, Wintersberg,

- <sup>1/</sup> Decision No. 7443, dated April 19, 1920, in Application No. 5035; Decision No. 9309, dated August 4, 1921, in Application No. 7050; Decision No. 25832, dated April 17, 1933, in Application No. 18719; Decision No. 35387, dated May 19, 1942, in Application No. 24874.
- <sup>2/</sup> Decision No. 7571, dated May 13, 1920, in Application No. 5511 (18 C.R.C. 195); Decision No. 38183, dated August 28, 1945, in Application No. 26727 (46 C.R.C. 5).
- <sup>3/</sup> Decision No. 12692, dated October 13, 1923, in Application No. 9336; Decision No. 38183, dated August 28, 1945, in Application No. 26727 (46 C.R.C. 5).

Bolsa, Westminster, Garden Grove, Stanton, Cypress, Los Alamitos, Buena Park, Norwalk, Artesia, Downey, Clearwater, Bellflower, Hynes, Signal Hill, Harbor City, Lomita, Torrance, Gardena, Compton and Watts, and intermediate points, including those one mile on either side of main highways traversed, via designated routes;<sup>4/</sup> to carry freight between Los Angeles proper and the Los Angeles Harbor including East San Pedro or Terminal Island, San Pedro and Wilmington;<sup>5/</sup> to carry oils, acetylene and oxygen gas, vegetable oils, laundry supplies, and machinery between (a) Los Angeles Harbor (includes Wilmington, San Pedro, East San Pedro, Terminal and Mormon Islands) to (1) portions of the City of Los Angeles; (2) Long Beach; (3) Compton, Downey, Clearwater, Puente, Pomona, Ontario and the directly intermediate points thereto; (4) Seal Beach, Sunset Beach, Huntington Beach, Newport Beach, Balboa Beach, Santa Ana, Orange, Anaheim, Fullerton and the directly intermediate points; (5) Watts, Glendale, Pasadena, Alhambra, El Monte, Sierra Madre, Monrovia, Azusa, Glendora, Covina, and the directly intermediate points; and (6) Lomita, Torrance, Hawthorne, Hermosa, Redondo, El Segundo, Inglewood, Venice, Ocean Park and directly intermediate points; and (b) machinery construction steel, cement, sand, rock, lumber, and incidentals to be used on harbor construction work from points designated in (a) to points designated in (6); all shipments to or from points in routes (3), (4), (5) and (6) shall have a minimum load restriction of three tons, except that no restriction is

<sup>4/</sup> Decision No. 17594, dated November 10, 1926, in Application No. 13187; Decision No. 38183, dated August 28, 1945, in Application No. 26727 (46 C.R.C. 5).

<sup>5/</sup> Decision No. 14404, dated December 27, 1924, in Application No. 9770; Decision No. 23531, dated March 23, 1931, in Application No. 17221; Decision No. 23920, dated August 3, 1931, in Application No. 17425; Decision No. 31279, dated September 19, 1938, in Application No. 22227; Decision No. 32281, dated August 30, 1939, in Application No. 22928; Decision No. 38183, dated August 28, 1945, in Application No. 26727 (46 C.R.C. 5).

placed on the return of empty containers; that loads for points in routes (3), (4) and (5) shall originate at points designated in (a) and have no return shipments except empty containers; that shipments may move both ways on routes (1), (2) and (6) except that no movement may occur from point to point within a route, or from a point within a route to a point in another route.<sup>6/</sup>

By the application herein, filed on May 25, 1954, applicant requests authority to transport general commodities except (1) uncrated new furniture, (2) uncrated household goods for which the Commission has prescribed minimum rates in Appendix A, Decision No. 32325, City Carriers' Tariff No. 3 - Highway Carriers' Tariff No. 4 (now Minimum Rate Tariff No. 4-A), (3) livestock, (4) commodities in bulk, (5) articles of extraordinary value, and (6) commodities injurious or contaminating to other lading, from, to and between all points from Santa Barbara on the north and San Ysidro on the south, lying southerly and/or westerly of a line drawn ten miles northerly and/or easterly of State Highways numbered 150, 126 and 118 and U. S. Highways numbered 66 and 395, and extending westerly and southerly from said imaginary line to the Pacific Ocean, via any and all routes lying within the territory proposed to be served.

Applicant will establish rates, rules and regulations in substantial conformity with the rates, rules and regulations as set forth and prescribed in Minimum Rate Tariff No. 2 issued by this Commission.

Public hearings were held before Examiner Kent C. Rogers in Los Angeles on March 22, April 6 and 7, May 18, June 6 and 13,

<sup>6/</sup> Decision No. 18150, dated March 31, 1927, in Application No. 10858; Decision No. 23349, dated February 2, 1931, in Application No. 17112; Decision No. 31279, dated September 19, 1938, in Application No. 22227; Decision No. 32281, dated August 30, 1939, in Application No. 22928; Decision No. 38183, dated August 28, 1945, in Application No. 26727 (46 C.R.C. 5).

1955; in Oxnard on April 18, 1955; in Santa Barbara on April 19, 1955; in San Diego on May 10, 1955; and in San Bernardino on May 17, 1955. At the conclusion of the hearing in Los Angeles on June 13, 1955, the matter was submitted subject to the filing of an exhibit. This exhibit has been filed. The matter is ready for decision.

Applicant's president and its transportation engineer presented testimony and exhibits concerning the applicant's history, organization, facilities, present operations and proposed operations. This evidence is summarized below.

Applicant's predecessor company was formed in 1925 and incorporated under the present name in 1931. Shortly after the enactment of the Highway Carriers' Act in 1935 (Statutes of 1935, Chapter 223), applicant was granted and has since held permits from this Commission to operate as a radial highway common carrier, a highway contract carrier, and a city carrier. Thereafter it acquired the highway common carrier authority as set forth above. It has never entered into binding transportation contracts.

Applicant's freight revenue has increased from \$21,909 in 1932 to \$463,949 in 1954, and is expected to total \$500,000 in 1955. The revenue figures given include revenue from interstate traffic as well as from intrastate. The percentage of each was unknown to the applicant.

The applicant has a leased terminal in Los Angeles capable of handling twenty trucks at one time. It has no other terminal at present. In San Diego a local trucking firm performs pickup and delivery service and takes requests for service by applicant. If this application is granted, applicant proposes to establish and maintain terminals at San Diego, Santa Ana, San Bernardino, and either Santa Barbara or Ventura.

At the present time applicant owns and operates seventy pieces of trucking equipment and it will acquire additional equipment as needed.

On December 31, 1954, applicant had current assets it valued at \$36,617, and current liabilities totaling \$50,492. Its operations for the year 1954 resulted in a net loss of \$5,065. As of December 31, 1954, it had an earned surplus of \$58,385.

Applicant for years has been serving the more distant noncertificated portions of its proposed service area (e.g., Santa Barbara, San Diego and San Bernardino) one to three times per week as traffic warranted. For a considerable length of time, commencing prior to September 10, 1953 (the grandfather date specified in Decision No. 50448, dated August 17, 1954, in Case No. 5478), it has been rendering a regular five-day per week service for the transportation of general commodities between points in its proposed service area, bounded by Laguna Beach on the south, Ontario on the east, San Fernando on the north, and Santa Monica on the west. It has authority as a highway common carrier to transport general commodities between points in a large portion of this area. Early in 1953 applicant commenced soliciting traffic to the more distant noncertificated areas. In October, 1953 applicant commenced rendering service between Los Angeles and San Diego five days per week, and in January, 1954, applicant commenced rendering service between Los Angeles and San Bernardino and between Los Angeles and Santa Barbara five days per week. If this application is granted, applicant intends to serve the proposed area daily, Monday through Friday, rendering an overnight service between Los Angeles and other places in the proposed service area.

Applicant submitted in evidence an exhibit (No. 10) which is comprised of 11 exhibits. It purports to show, among other things, all intrastate traffic handled between points in the proposed service area exclusive of its presently certificated area during allegedly representative periods before and after

September 10, 1953. All of the shipments considered originated in or were destined to the Los Angeles area, and 95 per cent of all the shipments considered originated in the Los Angeles area. The representative periods chosen by applicant were the entire month of August, 1953; September 8, 9 and 10, 1953; October 28, 29 and 30, 1953; November 29 and 30 and December 1, 1954; and February 1, 2 and 3, 1955. Concerning the largest and most remote points in the proposed service area, the exhibit, among other data, shows the following:

<u>Number of Shipments</u>	<u>September 8, 9 and 10, 1953</u>	<u>October 28, 29 and 30, 1953</u>	<u>February 1, 2 and 3, 1955</u>
Between Los Angeles and Santa Barbara	3	4	43
Between Los Angeles and Ventura	3	2	28
Between Los Angeles and San Bernardino	3	2	35
Between Los Angeles and Riverside	2	6	21
Between Los Angeles and San Diego	3	42	80

Concerning the less remote points in the immediate vicinity of the City of Los Angeles, the exhibit, among other data, shows the following:

Between Los Angeles and Santa Monica	18	15	22
Between Los Angeles and Redondo Beach	9	10	14
Between Los Angeles and Whittier	34	22	23
Between Los Angeles and Alhambra	15	14	13
Between Los Angeles and Pasadena	36	32	46
Between Los Angeles and Glendale	22	22	19
Between Los Angeles and San Fernando	7	13	13

Public Witness Testimony

Forty-eight shippers and/or receivers of merchandise appeared and testified in support of the applicant's request. Collectively, they ship and receive all or a majority of the commodities applicant seeks authority to transport, their shipments vary in size from under 100 pounds to one or more truckloads, and the frequency of service they require varies from once in two weeks to several times daily. Each of the witnesses testified that applicant renders a satisfactory service which the witnesses need and use and would continue to use if the application is granted, and, generally, that applicant makes later pickups and earlier deliveries than the competing highway common carriers with which the individual witnesses were familiar.

Service between any two or more points within the area bounded by the Pacific Ocean and a line through Santa Monica, San Fernando, Ontario and Laguna Beach.

Several of the witnesses desire service between two or more points in the above described area. They have been using applicant's services therein for periods varying from one year or less to as much as eleven years. Applicant's president testified that the service for the transportation of general commodities has been rendered daily between points in the area from Ontario and Laguna Beach west to the ocean since before January 1, 1953, and continuously thereafter. The application herein was filed on May 25, 1954.

Upon consideration of the evidence herein, it appears and we find that the applicant has the facilities, finances, and experience to render service as a highway common carrier, and that public convenience and necessity require that applicant be granted authority as a highway common carrier to transport general commodities, with exceptions, between such points and via such routes as are set out in the order herein.



Service to, from, or between points  
in Ventura and Santa Barbara Counties.

Over one-half of the witnesses desired service to or from points in Ventura and/or Santa Barbara Counties, on the one hand, to or from points in the Los Angeles area, on the other hand. Two or three of them desired service between two or more points, all of which are in the two named counties. One or two desired service between a point or points in the named counties and Chula Vista. Some of these witnesses used applicant's services prior to September 10, 1953, but the majority of them commenced using applicant's services after that date. About January 1, 1953, applicant started actively to solicit traffic to, from, or between points in Santa Barbara and Ventura Counties. Until January, 1954, service was rendered approximately twice a week as the traffic warranted. In January, 1954, applicant commenced serving Santa Barbara and Ventura Counties regularly five days per week.

Service to, from, or between points  
in San Bernardino and Riverside

A total of about twenty-five of the witnesses from Whittier, Los Angeles, Oxnard, Santa Barbara, San Bernardino, Fontana, Riverside, Loma Linda and Colton testified concerning their desire for applicant's services to, from, or between points in the proposed service area east of Ontario. The majority of them desired service between the Los Angeles area and points east of Ontario, but those in Ventura and Santa Barbara Counties expressed desires for services between those counties and points east of Ontario. About one-third of the witnesses had been using applicant's services prior to September 10, 1953, and the balance commenced using its services subsequent to that date. Prior to January, 1954, applicant was serving this area two or three times per week. Starting in January, 1954, it commenced serving the area five days per week and is rendering such service at the present time.

Service to, from, or between  
points south of Laguna Beach

Approximately twenty-five witnesses desired service between points in the Los Angeles area and points south of Laguna Beach, and about three of the witnesses desired service between points in Ventura County or Santa Barbara County and points south of Laguna Beach. About one-half of the witnesses had been using applicant's services since prior to September 10, 1953, and the balance commenced using applicant's services thereafter. Prior to October, 1953, applicant was serving the area twice a week as the traffic warranted, but in October, 1953, it commenced serving the area five days per week.

Existing Highway Common Carriers

Three highway common carriers appeared and presented evidence in opposition to the application, namely: Pacific Freight Lines, which serves the area except generally that portion in the vicinity of U. S. Highway 395 between San Bernardino and San Diego; Southern California Freight Lines, which serves all of the area except that portion in Ventura and Santa Barbara Counties; and Fields Freight, Inc., which serves between a portion of the Los Angeles Territory, on the one hand, and points on U. S. Highways 101 and 101 Alternate in Santa Barbara and Ventura Counties between Thousand Oaks, Point Mugu and Goleta, on the other hand. Protests were filed, with no evidence in support thereof, by Arrow Pacific Drayage, California Motor Transport, Ltd., California Motor Express, Ltd., Santa Fe Transportation Company, The Atchison, Topeka and Santa Fe Railway Company, Southern Pacific Company, Pacific Motor Trucking Company, and California Cartage Company, Inc.

The carriers introducing evidence gave proof covering their operations, schedules, and facilities. They said that they have the ability to carry additional freight and desire and need

all of the traffic they can secure. Pacific Freight Lines and Pacific Freight Lines Express are in straitened financial circumstances. All of the carriers have adequate facilities.

The Commission will take judicial notice of the highway common carriers transporting general commodities and now authorized to serve to, from, or between each of the areas involved. The record herein and the records of this Commission show that in the three areas there is a minimum of three, and as many as six or more, highway common carriers serving to or from the Los Angeles area. The record also shows that some of the public witnesses have never used any carrier other than the applicant, and that very few of them had ever used or tried all of the carriers serving the area or areas with which they were concerned.

Upon the evidence of record herein, it appears that at all times prior to, and including September 10, 1953, applicant's operations north of Santa Monica, east of Ontario, and south of Laguna Beach were within the scope of its permitted operations. Its operations to Santa Barbara and Ventura Counties and to Riverside and San Bernardino Counties continued to be within the scope of its permitted operations until January, 1954, and its operations to San Diego County continued to be within the scope of its permitted operations until October, 1953. At the stated times applicant commenced rendering a regular service five times per week to each of the said areas without first securing a certificate authorizing it to operate as a highway common carrier therein.

Inasmuch as the applicant knew, or should have known, that a certificate of public convenience and necessity is a prerequisite to the establishment of such service and as there is

nothing in the record to show that the existing highway common carriers serving each of such areas could not and would not render the service which the applicant seeks to provide, it appears and we find that applicant has failed to establish that public convenience and necessity require that a certificate be granted it to render service as a highway common carrier north of Santa Monica, east of Ontario, or south of Laguna Beach, and those portions of the application will be denied.

O R D E R

An application having been filed, public hearings having been held thereon, the matter having been submitted, the Commission having made the findings set forth above, and based upon said findings,

IT IS ORDERED that a certificate of public convenience and necessity be and it hereby is granted to Higgins Trucks, Inc., a corporation, authorizing it to operate as a highway common carrier, as defined in Section 213 of the Public Utilities Code, for the transportation of general commodities except (1) uncrated new furniture, (2) uncrated household goods for which the Commission has prescribed minimum rates in Minimum Rate Tariff No. 4-A (Appendix A to Decision No. 44919, as amended), (3) livestock, (4) commodities in bulk, (5) articles of extraordinary value, and (6) commodities injurious or contaminating to other lading, from, to and between all points lying within the area bounded as follows:

Commencing at a point on the northwesterly boundary of the City of Los Angeles at the Pacific Ocean southeast of the intersection of State Highway 27 and U. S. Highway 101 Alternate, thence via the northerly Los Angeles City Limits to Foothill Boulevard, the Pasadena City Limits, Foothill Boulevard, U. S. Highway 66 (Foothill Boulevard), Euclid Avenue (in Upland), Pine Avenue,

State Highway 71, U. S. Highway 91 and State Highway 18 to Corona, a straight line between Corona and Laguna Beach, the Pacific Ocean between Laguna Beach and the point of commencement,

(including all cities, towns or communities lying on any of said boundaries and serving via any and all available routes within the described territory).

IT IS FURTHER ORDERED that the authority granted herein is in lieu of the authority granted by the following decisions:

<u>Decision No.</u>	<u>Dated</u>	<u>In Application No.</u>
7443	April 19, 1920	5035
7571	May 13, 1920	5511
9309	August 4, 1921	7050
12962	October 13, 1923	9336
14404	December 27, 1924	9770
17594	November 10, 1926	13187
18150	March 31, 1927	10858
23349	February 2, 1931	17112
23531	March 23, 1931	17221
23920	August 3, 1931	17425
25832	April 17, 1933	18719
31279	September 19, 1938	22227
32281	August 30, 1939	22928
33817	January 21, 1941	23293
35387	May 19, 1942	24874
38183	August 28, 1945	26727
41226	February 17, 1948	28919

IT IS FURTHER ORDERED that in providing service pursuant to the certificate herein granted, applicant shall comply with and observe 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 and time schedules satisfactory to the Commission.

IT IS FURTHER ORDERED that, except as expressly granted herein, the application be and the same hereby is denied.

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

Dated at San Francisco, California, this 23<sup>rd</sup> day of August, 1955.

John E. Mitchell  
 President

Walter J. Cullen

Walter J. Cullen

B. Hardy

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Commissioners

Commissioner Ray E. Untereiner - being necessarily absent, did not participate in the disposition of this proceeding.