

ORIGINALDecision No. 52877

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application)
of FORTIER TRANSPORTATION COMPANY,)
a corporation, to remove restric-) Application No. 32510
tions contained in certificate of)
public convenience and necessity)
as a highway common carrier.)

Edward M. Berol and Bertram S. Silver, for applicant.
William Meinhold and Frederick E. Fuhrman by Frederick E. Fuhrman, for Southern Pacific Company and Pacific Motor Trucking Company.
Robert W. Walker and Richard K. Knowlton, for Santa Fe Transportation Company and The Atchison, Topeka and Santa Fe Railway Company.
Douglas Brookman, for California Motor Express, Ltd., California Motor Transport Co., Ltd., Valley Express Co., and Valley Motor Lines, Inc.
Gordon, Knapp and Gill by Hugh Gordon and Joseph C. Gill for Pacific Freight Lines and Pacific Freight Lines Express.
Spurgeon Avakian, for Sterling Transit Company, protestants.
Willard S. Johnson, for J. Christenson Company.
James H. Lucas and Orville A. Schulenberg, for Kings County Truck Lines, interested parties.

O P I N I O N

By its application, as amended, filed June 21, 1951, Fortier Transportation Company, presently rendering service as a highway common carrier for the transportation of general commodities between points in the San Joaquin Valley, on the one hand, and San Francisco Bay area points and the Los Angeles territory, on the other hand, seeks the removal of restrictions limiting shipments to 5000 pounds or more and prohibiting through service between San Francisco Bay area points and the Los Angeles territory.

Public hearings were held before Examiner Daly at Fresno, San Francisco and Los Angeles, the matter being submitted on December 7, 1954, upon briefs since filed and considered.

By Decision No. 42405 dated January 4, 1949, and as amended by Decision No. 42508 dated February 15, 1949, in Application No. 27278, applicant was authorized to operate generally as follows:

- (1) Between San Francisco, South San Francisco, Oakland, Alameda, Albany, Berkeley, Emeryville and Piedmont, on the one hand, and points between Chowchilla and Famoso, both inclusive, on the other hand;
- (2) Between Los Angeles territory, on the one hand, and points between Famoso and Chowchilla, both inclusive, on the other hand;
- (3) Between San Francisco Bay points, on the one hand, and Los Banos and Maricopa, both inclusive, on the other hand; and
- (4) Between Los Angeles territory, on the one hand, and between Maricopa and Los Banos, both points inclusive, on the other hand.

Service is authorized to all points laterally within five miles of the highways traversed on the routes prescribed.

The certificate is subject to restrictions reading as follows:

- "a. Applicant shall not transport any shipment weighing less than 5,000 pounds, nor any shipment which shall carry a charge lower than that applicable to shipments of not less than 5,000 pounds."
- "c. Applicant will not accept for shipment through traffic between terminal points in the San Francisco and Los Angeles Areas, nor shall any such traffic be transported under its permits."

It was stated that the above restrictions were self-imposed for the purpose of separating Application No. 27278 from the consolidated Savage group applications. After service was commenced

asserted difficulties were experienced in rendering a complete service to customers. As a result applicant used Commerical Transfer, Incorporated, an affiliate company and permitted carrier as a means of circumscribing the restrictions. This practice was discontinued in 1950 after an informal investigation by the Commission. Since then applicant claims that it has not been able to respond to all of its shippers' requests and is unable to operate in the most efficient manner.

Applicant maintains terminals at Fresno, Los Angeles, Bakersfield, San Pablo and San Francisco. It owns and operates 698 pieces of equipment, all but 195 of which could suitably be used to transport small as well as heavy shipments. The proposed service would be daily except Sundays and holidays.

For the year ending December 31, 1953, applicant showed assets totaling \$1,382,697, with liabilities amounting to \$708,634 and a net worth of \$674,063. Although applicant indicated \$3,720,719 in revenues for the year 1953 it suffered a net loss of \$46,650.

Close to fifty public witnesses testified on behalf of applicant. For the most part their testimony was directed towards the removal of the 5000-pound restriction. Several witnesses testified to a need for through service.

In brief, the witnesses stated that they had used applicant's service on shipments over 5000 pounds and wished to use it on all of their shipments. Of primary interest to many was applicant's proposed Saturday service. This appealed in particular to those engaged in supplying automotive parts and farm equipment in cases of emergency. Many expressed interest in applicant's proposal to transport over-length shipments of pipe and steel. The

existing carriers, it was asserted, failed to provide open equipment capable of transporting pipe and steel in lengths of 40 feet. In order to use the existing carriers it was necessary for several witnesses to bear the inconvenience and expense of having over-length steel cut in two pieces.

Freight bills, as well as compiled data taken from freight bills, were introduced for the purpose of showing the existing services to be slow. An examination of these documents discloses that most of the delayed shipments moved over weekends and/or holidays.

Exhibit 37 was prepared by and introduced through a professor of business statistics at the graduate School of Business, Stanford University. It was designed to determine the future demand for freight transportation between the proposed areas based upon a consideration of certain general economic and population trends. The study indicates that the demand for trucking service between the areas herein considered should increase about 50 per cent during the period 1950 to 1960. The study was not prepared for the purpose of determining whether there exists a present need for additional service.

Protestants introduced evidence relating to their respective operations. In addition they prepared and offered exhibits covering shipments transported by them for various witnesses who testified on behalf of applicant. The exhibits covered the last two weeks of March and August, 1954. They show an overnight service with an occasional weekend shipment.

The appearance of J. Christenson Company was changed from a protestant to that of an interested party upon a stipulation that applicant would not transport shipments of less than 5000 pounds requiring temperature control in transit.

It is clear that removal of the 5000-pound restriction would enable applicant more completely to meet the shipping needs and requirements of that portion of the public which it presently serves. It is also clear that an established carrier such as applicant should have the opportunity to generate whatever through traffic it is able to develop between the metropolitan areas.

During the course of hearing Exhibit No. 29 was received in evidence over the objection of protestants. On June 10, 1954, a petition was filed to set aside and remove said exhibit from evidence. The exhibit consists of data taken from freight bills kept in the files of the Buying Department of Market Wholesale Grocery Company, doing business as Better Buy Grocers. It was introduced through the person in charge of the Department. He testified, however, that Exhibit No. 29 was prepared by representatives of applicant who were granted access to the files. Protestants contend that they were thereby denied the right to cross-examine the parties who actually prepared the exhibit and it should therefore be removed from evidence.

At the time the exhibit was offered in evidence it was made known to all parties that the freight bills were present in the courtroom and available for inspection. In the circumstances the petition is denied.

After due consideration the Commission is of the opinion and so finds that public convenience and necessity require that the authority sought be granted to the extent hereinabove indicated.

revised

O R D E R

Application having been filed, a public hearing held thereon and the Commission being informed in the premises,

IT IS HEREBY ORDERED:

(1) That Decision No. 42405 dated January 4, 1949, and as amended by Decision No. 42508 dated February 15, 1949, in Application No. 27278, is hereby amended by deleting therefrom subparagraphs A. and C. of ordering paragraph (1).

(2) That Decision No. 42405 dated January 4, 1949, in Application No. 27278 is hereby further amended by adding thereto the following condition:

d. Applicant shall not transport shipments of commodities weighing 5,000 pounds or less which require the use of special refrigeration or temperature control in specially designed and constructed refrigerated equipment.

(3) That within sixty days after the effective date hereof, and upon not less than five days' notice to the Commission and the public, applicant shall amend its tariff presently on file with the Commission to conform with the authority herein granted.

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

Dated at San Francisco, California, this 10th day of April, 1956.

John E. Mitchell
President
Justin J. Caswell
Roger W. Venter
P. Hardy

Commissioners

Commissioner ~~Matthew J. Dooley~~, being necessarily absent, did not participate in the disposition of this proceeding.