

ORIGINALDecision No. 53086

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of:)
 LEONARDO FABIANO and ROSARIO FABIANO.)
 copartners, doing business as FABIANO)
 BROS. for a certificate of public)
 convenience and necessity to operate) Application No. 35966
 as a highway common carrier of uncrated)
 new furniture, fixtures and appliances)
 between various points and places in)
 Southern California.)

Glanz & Russell by Ernest F. Shelander, for applicant.
Herbert Cameron and Melvin A. Pixley, for Pixley
 Transportation, A.T.L., Inc., and Melvin A. Pixley
 as an individual; R. C. Fels, for A.T.L., Inc.,
 Robert W. Walker and Matthew H. Witteman, for The
 Atchison Topeka and Santa Fe Railway Company - Santa
 Fe Transportation Company; Wm. Meinhold and Frederick
 E. Fuhrman for Southern Pacific - Pacific Motor
 Trucking, protestants.

Anthony V. Danna, for Furniture Manufacturers'
 Association of Southern California and Turcotte and
 Goldsmith by F. W. Turcotte, for Blue Truck Lines,
 interested parties.

O P I N I O N

This application was filed by Leonardo and Rosario Fabiano, doing business as Fabiano Bros., on November 5, 1954. Sometime in January, 1955, Jennie V. Fabiano was substituted as a partner in place of Leonardo Fabiano. The firm name was not changed. In March, 1955, a corporation was organized and in June the permits of the partnership were transferred to it. The corporate name is Fabiano Intra-Cal Lines, Inc. On February 3, 1956, an amendment was filed seeking to substitute the corporation as applicant.

A public hearing was held before Commissioner Untereiner and Examiner Power at Los Angeles on January 26, 1956, under a rule requiring all direct evidence to be reduced to writing,

verified, then served and filed at least five days before the hearing. The following facts appear from the application, the amendment and the evidence.

Applicants seek authority to render a highway common carrier service for blanket wrapped new furniture and related products. They first propose a local service between all points in an area east of the west boundary of Los Angeles City, south of Angeles National Forest and west of the east boundary line of Los Angeles County. Second, they seek to render service between Los Angeles Territory (as defined in Minimum Rate Tariff No. 2) and San Luis Obispo serving various intermediate and off-route points.

At the public hearing on January 26, 1956, applicants presented new evidence to supplement the exhibits which had been attached to the original application. The principal protestants also offered several exhibits.

It appears from the evidence, and we now find, that applicants have operated with substantial regularity and frequency between the points proposed to be served.

The applicants have demonstrated that they possess the requisite experience, personnel, facilities and equipment to provide and maintain the highway common carrier service proposed herein. The financial resources of applicants were not clearly demonstrated to be adequate by the balance sheet and income statement filed. Oral testimony at the hearing developed the reason. Applicants had done a substantial amount of subhauling for another concern. This account had not been paid and may be uncollectible. This will not be a recurring loss. With this explanation, the financial evidence is satisfactory for purposes of this application.

Applicants wish to have their certificate issued to Fabiano Intra-Cal Lines, Inc., the corporation previously mentioned. The following order will grant this request on condition that applicants take steps to unite their assets and their operating rights under the corporation's ownership. The corporation has never secured permission from the State to issue its stock. Such permission would be a necessary first step toward the acquisition of the partnership assets. The following order will require that this permission be obtained and the assets acquired before the operating right is exercised.

Upon consideration of the evidence presented by applicants and the representations and evidence of protestants, the Commission finds that public convenience and necessity require that the application be granted.

Fabiano Intra-Cal Lines, Inc., is placed on 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, such rights 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

A public hearing having been held, the Commission being fully advised in the premises and basing its decision on the findings and conclusions set forth in the foregoing opinion,

IT IS ORDERED:

(1) That a certificate of public convenience and necessity is granted to Fabiano Intra-Cal Lines, Inc., authorizing it to operate

as a highway common carrier as defined by Section 213 of the Public Utilities Code for the transportation of property between the points and over the route as more particularly set forth in Appendix A attached hereto and made a part hereof.

(2) 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. By accepting the certificate of public convenience and necessity herein granted, applicant is placed on notice that it will be required, among other things, to file annual reports of its operations and to comply with and observe the safety rules and other regulations of the Commission's General Order No. 99. Failure to file such reports, in such form and at such time as the Commission may direct, or to comply with and observe the provisions of General Order No. 99, may result in a cancellation of the operating authority granted by this decision.
- (b) Within sixty days after compliance with the provisions of paragraph (3) of this order, and on not less than ten days' notice to the Commission and the public, applicant shall establish the service herein authorized and comply with the provisions of General Order No. 80 by filing in triplicate, and concurrently making effective, tariffs satisfactory to the Commission.

(3) Fabiano Intra-Cal Lines, Inc., shall not institute the service herein authorized nor shall it file any tariffs unless and until it shall have acquired the assets now owned and employed in the transportation business by Jennie V. Fabiano and Rosario Fabiano, who now or formerly transacted business under the firm name and style of Fabiano Bros. Said assets may be acquired in return for capital stock of Fabiano Intra-Cal Lines, Inc., after authority has been obtained from this Commission for the issuance of such stock.

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

Dated at Los Angeles, California, this 15th day of May, 1956.

[Signature]
President

[Signature]

[Signature]

[Signature]

[Signature]

Commissioners

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Dated MAY 15 1956

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APPENDIX A

The certificate of public convenience and necessity granted to Fabiano Intra-Cal Lines, Inc., by the above-numbered decision, authorizes it to transport new household, office and store furniture and fixtures, loose, not in boxes, crates or cartons, and uncrated new household, office and store appliances between the following points and places:

- (a) Between all points and places within the following described area using any and all streets, roads and highways:

Beginning at the intersection of the westerly boundary of the City of Los Angeles and the Pacific Ocean, thence along the westerly and northerly boundaries of said City to its point of first intersection with the southern boundary of the Angeles National Forest, thence along the southerly boundary of the Angeles National Forest to its point of intersection with the Los Angeles-San Bernardino County Lines, thence southerly and westerly along the Los Angeles County Line to the Pacific Ocean, thence northerly and westerly along the coast line of the Pacific Ocean to the point of beginning. Also,

- (b) Between Los Angeles Territory, as defined in Item No. 270-3 series, Minimum Rate Tariff No. 2, on the one hand, and San Luis Obispo on the other hand, over and along U. S. Highways Nos. 101 and 101-Alternate with service to, from and between all intermediate and off-route points within a lateral of 10 airline miles from said routes and the additional off-route points of Fillmore, Santa Paula and Lompoc.