

ORIGINAL

Decision No. 57079

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of:
SAN DIEGO FORWARDING COMPANY, a corporation, for a certificate of public convenience and necessity to operate as a highway common carrier of general commodities (with named exceptions) between certain points in Los Angeles and San Diego Counties, pursuant to Public Utilities Code, Section 1063, as an extension of existing service.

Application No. 39687

Glanz and Russell, attorneys, by Theodore W. Russell, for applicant.

James H. Williams for Southern California Freight Lines and Southern California Freight Forwarders, and Robert H. Molitor for Edward T. Molitor, doing business as Standard Truck Line, protestants.

O P I N I O N

San Diego Forwarding Company, a corporation, applicant herein, now has a certificate of public convenience and necessity authorizing it to transport general commodities between San Diego, Coronado, North Island, El Cajon, La Mesa, Lemon Grove, National City and Chula Vista, on the one hand, and a described Los Angeles area, on the other hand, but not to, from, or between intermediate points. Said certificate also restricts the transportation of certain named commodities, all as more specifically set forth in Decision No. 52762 on Application No. 35936.

By this application authority is sought to enlarge the scope of applicant's operating authority so as to include

(1) additional points of service in San Diego County lying within the San Diego Territory as that term is defined in Item No. 271-C, Minimum Rate Tariff No. 2 of this Commission, and (2) Oceanside and all points intermediate between Oceanside and San Diego which lie along either U. S. Highway 101 or State Highway 78 and U. S. Highway 392 (see map, Exhibit No. 3, attached to the application). The principal communities between Oceanside and San Diego via U. S. Highway 101 are Carlsbad, Encinitas, Solano Beach and Del Mar, and those via State Highway 78 and U. S. Highway 395 are Vista, San Marcos, Escondido and Miramar. The principal additional service points that would be included by extending service within the San Diego Territory lie immediately east of applicant's presently authorized service areas. They are Lakeside, Bostonia, Jamul, Bonitas and San Ysidro. Other smaller communities would also be served.

Public hearings were held in Los Angeles and San Diego before Examiner Mark V. Chiesa. Oral and documentary evidence having been adduced, the matter was submitted for decision.

Upon the evidence of record we find the facts as hereinafter set forth.

Applicant's president and general manager, Mr. Virgil B. Windle, testified that he has been associated with applicant for twenty years and has been in the transportation business approximately forty years; that applicant has been rendering a truck transportation service between Los Angeles and San Diego; that San Diego Forwarding Express is a subsidiary of applicant which has "grandfather" rights as an "express corporation" between Los Angeles and

San Diego, with service areas at said terminal points which are less extensive than applicant's highway common carrier authority; that applicant operates as the underlying carrier for said express corporation; and that applicant also operates as a contract carrier and radial highway common carrier.

Applicant is financially responsible, operates approximately 62 pieces of equipment, maintains up-to-date facilities both in Los Angeles and San Diego (Exhibits Nos. 2 and 3), employs 63 persons, and at present is operating at least 5 regular schedules daily, Monday through Friday, between the said areas. The service is overnight, with a following-morning delivery. Applicant serves approximately 500 shippers, more or less, regularly each week and as many as 1500 in a period of a month. Revenue and expenses for the first three months of 1958 were \$158,667.56 and \$150,586.24, respectively.

Applicant presently is a party to Southwestern Motor Tariff Bureau, Local, Joint and Proportional Freight Tariff, No. 18 B, J. L. Beeler, Agent Cal. P.U.C. No. 17 in the publication of its rates and charges for service between the points it now serves as a highway common carrier. Applicant proposes to establish rates and regulations in connection with the proposed service substantially in conformity with the presently published schedules of rates in said tariff between the Los Angeles Area points and the points in San Diego County applicant proposes to serve.

Shipper witnesses testified that applicant has been serving them under its present authority in a satisfactory manner and that they need the proposed service to the new points because it would be an added convenience in the matter of split deliveries

and would be economical and time-saving in the handling of various shipments by the same carrier. The evidence clearly shows that applicant's service is considered by its present customers to be better than average in the matter of time and promptness of pickup and delivery and ability and courtesy of its employees. There is substantial evidence of record that applicant's proposed service would be convenient and necessary and in the general public interest, and we so find.

Protestants Southern California Freight Lines and its affiliate, Southern California Freight Forwarders, did not call any witnesses, but it was stipulated with the applicant, in effect, that shipper witnesses, if called, would testify that they use protestants' service and that the service is satisfactory. It was also stipulated that protestants daily serve all the points proposed to be served by applicant and could handle additional traffic if offered to them. No evidence was offered to show to what extent, if any, applicant's proposed service would adversely affect protestants' present revenue.

Protestant Molitor (Standard Truck Line) is a highway common carrier, generally, of garments on hangers between Los Angeles, San Diego, La Mesa, El Cajon, Lemon Grove, National City, Chula Vista, Palm City and Coronado as more specifically set forth in Decision No. 49161 on Application No. 34430, and has been authorized to establish with A & B Garment Delivery of San Francisco joint rates between San Diego, Bakersfield, Fresno, San Francisco and Sacramento (Decision No. 51927 on Application No. 37144). This protestant also holds a certificate of public convenience and necessity issued to

him by the Interstate Commerce Commission, authorizing the transportation of general commodities, with certain exceptions, between San Diego, California, and the International Airport, Los Angeles, serving the intermediate and off-route points of Carlsbad, Encinitas, Oceanside, and San Clemente, Lockheed Air Terminal at Burbank, and Long Beach Airport at Long Beach. Said authority is restricted to service for shipments having an immediately prior or immediately subsequent movement by air to or from said Los Angeles International Airport, Lockheed Air Terminal, or Long Beach Airport.

The only points to which applicant herein is proposing service that are not now certificated to it, named in protestant Molitor's Interstate Commerce Commission certificate are Carlsbad, Encinitas and Oceanside. Protestant's position is that he has considerable out-of-state business from and to said three points, including cut flowers and caskets, and that the granting of a right to applicant to serve said cities would put a formidable competitor in the field which his small operation could not cope with, and would result in a loss of over-all revenue to the detriment of the entire operation. In view of applicant's limited showing in respect to this particular service the Commission will invoke an appropriate restriction.

The Commission having considered the evidence of record is of the opinion and finds that public convenience and necessity require that applicant establish and operate a highway common carrier service as hereinbelow authorized.

For the purposes of clarity and to set forth applicant's operating authority in one decision, a certificate in lieu of Decision No. 52762 will be granted.

San Diego Forwarding Company is 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

A public hearing having been held, the Commission being fully advised in the premises and having found that public convenience and necessity so require,

IT IS ORDERED:

(1) That a certificate of public convenience and necessity is granted to San Diego Forwarding Company, a corporation, 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 as more particularly set forth in Appendix A attached hereto and made a part hereof, and subject to the conditions and restrictions, if any, set forth therein.

(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 upon 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 the effective date hereof, and upon not less than ten days' notice to the Commission and the public, applicant shall establish the service herein authorized and file in triplicate, and concurrently make effective, tariffs satisfactory to the Commission.

(3) The operative rights granted applicant by Decision No. 52762, on Application No. 35936, are cancelled simultaneously with the filings made pursuant to and required by the provisions of paragraph (2) hereof.

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

Dated at San Francisco, California, this 29th day of July, 1953.

[Signature]
President

[Signature]

[Signature]

[Signature]
Commissioners

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

San Diego Forwarding Company, by certificate of public convenience and necessity granted in the decision noted in the margin, is authorized to transport property between the Los Angeles Area, on the one hand, and the San Diego Territory, on the other hand (as said Area and Territory are more particularly described in Appendix B attached hereto and made a part hereof), and between said Los Angeles Area, on the other hand, and points and places between Oceanside and San Diego, both inclusive, which are situated along U. S. Highway 101 and State Highway 78 and U. S. Highway 395, on the other hand, subject to the following conditions and restrictions:

Applicant shall not transport any shipments of:

1. Used household goods and personal effects not packed in accordance with the crated property requirements set forth in paragraph (d) of Item No. 10-C of Minimum Rate Tariff No. 4-A.
2. Automobiles, trucks and buses, viz.: new and used, finished or unfinished passenger automobiles, (including jeeps), ambulances, hearses and taxis; freight automobiles, automobile chassis, trucks, truck chassis, truck trailers, truck and trailers combined, buses, bus chassis.
3. Livestock, viz.: bucks, bulls, calves, cattle, cows, dairy cattle, ewes, goats, hogs, horses, kids, lambs, oxen, pigs, sheep, sheep camp outfits, sows, steers, stags or swine.
4. Commodities requiring the use of special refrigeration or temperature control in specially designed and constructed refrigerated equipment.

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5. Liquids, compressed gases, commodities in semi-plastic form and commodities in suspension in liquids in bulk, in tank trucks, tank trailers, tank and semi-trailers or a combination of such highway vehicles.
6. Commodities when transported in bulk in dump trucks or in hopper-type trucks.
7. Commodities when transported in motor vehicles equipped for mechanical mixing in transit.
8. Applicant shall not transport shipments originating at or destined to Carlsbad, Encinitas, or Oceanside having an immediately prior or an immediately subsequent movement by air to or from the Los Angeles International Airport, the Lockheed Air Terminal in Burbank or the Long Beach Airport.
9. Applicant shall not transport any shipments having both origin and destination within the said Los Angeles Area or within the said San Diego Territory, or any shipments between Oceanside and San Diego, both points inclusive, and intermediate points.

Routes:

Within the Los Angeles Area and the San Diego Territory applicant may operate along the most appropriate roads, streets or highways.

Between the Los Angeles Area and the San Diego Territory applicant shall operate over and along U. S. Highway 101, By-Pass 101 and Alternate 101, and also State Highway 78 between Oceanside and Escondido and U. S. Highway 395 between Escondido and San Diego.

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The Los Angeles Area is described as follows:

Beginning at the intersection of Colorado Street and Rosemead Boulevard, in Pasadena, California, then west along Colorado Street and the prolongation thereof to the east bank of the Los Angeles River, then northerly along the east bank of the Los Angeles River to the boundary of the City of Los Angeles, then westerly along the boundary of the City of Los Angeles to Barham Boulevard, then southerly on Barham Boulevard to Cahuenga Boulevard, then southeasterly along Cahuenga Boulevard to Mulholland Highway, then westerly along Mulholland Highway to Coldwater Canyon Road, then southerly along Coldwater Canyon Road to the northerly boundary of the City of Beverly Hills, southwesterly along the boundary of the City of Beverly Hills to Santa Monica Boulevard, then southwesterly along Santa Monica Boulevard to Sepulveda Boulevard, then southerly along Sepulveda Boulevard to Imperial Highway, then east along Imperial Highway to Lakewood Boulevard, then north along Lakewood Boulevard and Rosemead Boulevard to the point of beginning.

Also points on both sides of the streets and highways which are designated as boundary lines in the foregoing territorial description.

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The San Diego Territory is described as follows:

That area embraced by the following imaginary line starting at the northerly junction of U. S. Highway 101E and 101W (4 miles north of La Jolla) thence easterly to Miramar on State Highway No. 395; thence southeasterly to Lakeside on the El Cajon - Ramona Highway; thence southeasterly to Jamul on State Highway No. 94; thence due south to the International Boundary Lines, west to the Pacific Ocean and north along the coast to point of beginning.

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