

ORIGINAL

Decision No. 58291

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of  
 STERLING TRANSIT COMPANY, INC., a  
 corporation, for the extension of  
 its certificates of public conven-  
 ience and necessity as a highway  
 common carrier of property.

Application No. 38874

Ivan McWhinney, for applicant.  
H. J. Bischoff and Donald Murchison, for Southern  
 California Freight Lines and Southern California  
 Freight Forwarders; E. L. H. Bissinger, for  
 Southern Pacific Company, Pacific Motor Trucking  
 Company, San Diego & Arizona Eastern Railroad  
 Company; Glanz & Russell by Theodore W. Russell  
 and R. Y. Schureman, for B. S. & W. E. Goldberg,  
 dba Film Transport Co. of California, and Imperial  
 Truck Lines, Inc.; Turcotte & Goldsmith, by Jack  
D. Goldsmith, for Lom Thompson, dba Thompson Truck  
 Lines, protestants.  
Milton Hallen, for San Diego Traffic Services; E. J.  
Langhofer, for San Diego Chamber of Commerce;  
William R. Daly for the Port of San Diego, interested  
 parties.

## O P I N I O N

Sterling Transit Company, Inc., presently operating as  
 a highway common carrier between the San Francisco territory, the  
 Los Angeles territory and the San Diego territory, and between the  
 San Francisco and Los Angeles territories, on the one hand, and  
 Fresno and Bakersfield, on the other hand, requests authority to  
 extend its service between the Los Angeles and San Diego territories,  
 and El Centro and points within 25 miles of El Centro.

Public hearing was held before Examiner Thomas E. Daly  
 at San Diego and Los Angeles. The matter was originally submitted  
 on October 22, 1957, upon the receipt of briefs. At the request of  
 applicant the Commission by its order dated July 15, 1958, set

submission aside and reopened the matter for the purpose of taking additional evidence. Further hearing was held on March 3 and 4, 1959, at Los Angeles, and March 5, 1959, at San Diego.

Applicant owns and operates approximately 175 pieces of equipment and maintains terminals at San Francisco, Fresno, Bakersfield, Los Angeles and San Diego. For the first four months of 1957, applicant indicated a net profit of \$68,367.42.

To provide the extended service, applicant proposes a daily overnight service between Los Angeles, San Diego and the Imperial Valley. A terminal will be established in El Centro and additional equipment will be acquired if needed.

Applicant alleges that the Imperial Valley, one of the major agricultural, ranching and farming areas of California, has experienced a marked increase in population and agricultural and industrial development. As a result, applicant asserts, the traffic moving between the Imperial Valley and its two major supply areas, San Diego and Los Angeles, has also increased. Applicant further asserts that it has received numerous requests from shippers to extend its service to the proposed area.

Many public witnesses testified on behalf of applicant. They represented large companies engaged in diversified businesses. The record indicates that these companies ship to numerous points within the state and prefer to use a carrier with a wide territorial coverage. The use of such a carrier, it was stated, results in certain operating economies and conveniences, i.e., a closer relationship between the shipper and the carrier, a scheduled daily pickup service, less congestion at limited dock facilities, less paper work, single monthly transportation payments, and a more satisfactory experience with respect to the processing of claims

and the tracing of shipments. It is for these reasons, the witnesses stated, that they presently use applicant and would use the proposed service if authorized.

For the most part there was little criticism of the existing services. The main complaint was from shippers located in the Los Angeles area and was directed toward the difficulty experienced in getting a pickup on calls placed after 2:00 p.m. or 3:00 p.m. In their use of applicant they receive a late, daily afternoon pickup service with "on-call" pickups made as late as 7:00 p.m. As a practical matter a carrier will not provide a scheduled daily pickup service unless a shipper has sufficient volume and frequency of traffic to warrant the service. In the case of those who complained, their respective companies do not have daily shipments to the proposed area and as a consequence their present pickups on such shipments are on an "on-call" basis. It would, therefore, be an advantage, they claim, if they could give all of their shipments to applicant, including those destined to the Imperial Valley.

Representatives from the San Diego Chamber of Commerce and the Port of San Diego appeared in the proceeding as interested parties neither supporting nor opposing the application. Through their testimony and exhibits it was asserted that San Diego has experienced a tremendous population and economic growth in the past few years; that being one of the fastest-growing areas in the United States, San Diego requires adequate transportation facilities to meet its increasing industrial development; that the Port of San Diego is vitally interested in the assurance that adequate overland facilities will be available to handle the increased tonnage which will be forthcoming due to its expanded marine facilities; that various commodities such as logs, bale ties, fertilizer, ureas, calcium nitrate, structural steel, building materials and cement move from San Diego to the Imperial Valley,

while such commodities as cotton, cotton linters, cotton seed meal, alfalfa pellets and scrap move from the Valley to San Diego.

Protestants introduced evidence both oral and documentary reflecting the nature of their operations. Each takes the position that the existing service is adequate and that any diversion of traffic would have an adverse effect upon them.

Southern California Freight Lines, through Exhibit No. 20, indicated that the weight, revenue and number of shipments which it handled to and from the Imperial Valley for the first seven months of 1957 was less than that handled for the corresponding period during 1956.

The issue raised in the briefs related to the policy to be followed with respect to the future granting of certificates. Applicant argues that the recent program of certificating permitted carriers upon past doubtful operations has materially changed the relationship which formerly existed between such permitted carriers and the existing certificated carriers. Before certification, such carriers were not fully competitive, but, since certification, all restrictions, self-imposed or otherwise, have been removed and they are now fully competitive. The existing carriers, applicant contends, will be at a disadvantage in meeting this new competition unless the Commission through a moderate policy allows them to make reasonable improvements and extensions in their services and operations for the benefit of shippers.

Protestant, Southern California Freight Lines, argues that, instead of the moderate policy advocated by applicant, the Commission should deny all applications unless it is shown that the existing service is inadequate. If the Commission fails to so apply the law consistently, it argues, the public cannot expect good service at reasonable rates.

There is no simple or precise rule of law by which public convenience and necessity is determined. Generally, in a proceeding such as that before us, the term may be characterized as encompassing the actual or prospective need of shippers for the proposed service. It is established that the word necessity in such phrase must be taken in a relative sense to mean any improvement in service important to public convenience and desirable for the shipping public but not in a literal sense to mean indispensably requisite. The paramount concern to us must be the reasonable demands of the shipping public affected. The evidence in the instant matter shows that applicant's proposed extension is desired and would be used by numerous shippers. Based upon such evidence, the Commission finds and concludes that public convenience and necessity require that this application be granted.

Sterling Transit Company, Inc., 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 modified or canceled 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

Application having been filed and the Commission being informed in the premises,

IT IS ORDERED:

(1) That, as an extension and enlargement of its operating authority, a certificate of public convenience and necessity is hereby granted to Sterling Transit Company, Inc., authorizing the transportation of property as a highway common carrier between the points and over the routes set forth in Appendix A attached hereto and by reference 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 the date hereof, and on not less than ten days' notice to the Commission and to the public, applicant shall establish the service herein authorized and shall file in triplicate, and concurrently make effective, amendments

to its tariffs satisfactory to the Commission  
to reflect the authority herein granted.

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

Dated at San Francisco, California, this 21<sup>st</sup>  
day of April, 1959.

[Signature]  
President

[Signature]

[Signature]

Commissioners

Commissioner Everett C. McKeage, being  
necessarily absent, did not participate  
in the disposition of this proceeding.

Sterling Transit Company, Inc., by the certificate of public convenience and necessity granted in the decision noted below, is authorized to transport general commodities, except the following:

- (a) Used household goods and personal effects not packed in accordance with the property requirements set forth in paragraph (d) of Item 10-C of Minimum Rate Tariff No. 4-A.
- (b) 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, trucks and trailers combined, buses, bus chassis.
- (c) 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.
- (d) Commodities requiring the use of special refrigeration or temperature control in specially designed and constructed refrigerator equipment.
- (e) Liquids, compressed gases, commodities in semi-plastic form, and commodities in suspension in liquids in bulk, in tank trucks, tank trailers, tank semitrailers or a combination of such highway vehicles.
- (f) Commodities when transported in bulk in dump trucks or in hopper-type trucks.
- (g) Commodities when transported in motor vehicles equipped for mechanical mixing in transit.

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Between:

San Diego, National City, Chula Vista, La Mesa, El Cajon and the Los Angeles territory, (as defined in Appendix B), on the one hand, and El Centro and points within 25 miles of El Centro, on the other hand, via U. S. Highways Nos. 80, 60 and 99.

End of Appendix A

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LOS ANGELES TERRITORY

Beginning at the intersection of Sunset Boulevard and U. S. Highway No. 101, Alternate; thence northeasterly on Sunset Boulevard to State Highway No. 7; northerly along State Highway No. 7 to State Highway No. 118; northeasterly along State Highway No. 118 through and including the City of San Fernando; continuing northeasterly and southeasterly along State Highway No. 118 to and including the City of Pasadena; easterly along Foothill Boulevard from the intersection of Foothill Boulevard and Michillinda Avenue to Valencia Way; northerly on Valencia Way to Hillcrest Boulevard; easterly and northeasterly along Hillcrest Boulevard to Grand Avenue; easterly and southerly along Grand Avenue to Greystone Avenue; easterly on Greystone Avenue to Oak Park Lane; easterly on Oak Park Lane and the prolongation thereof to the west side of the Sawpit Wash; southerly along the Sawpit Wash to the north side of the Pacific Electric Railway right-of-way; easterly along the north side of the Pacific Electric Railway right-of-way to Buena Vista Street; south and southerly on Buena Vista Street to its intersection with Meridian Street, due south along an imaginary line to the west bank of the San Gabriel River; southerly along the west bank of the San Gabriel River to Beverly Boulevard; southeasterly on Beverly Boulevard to Painter Avenue in the City of Whittier; southerly on Painter Avenue to Telegraph Road; westerly on Telegraph Road to the west bank of the San Gabriel River; southerly along the west bank of the San Gabriel River to Imperial Highway; westerly on Imperial Highway to State Highway No. 19; southerly along State Highway No. 19 to its intersection with U. S. Highway No. 101, Alternate, at Ximeno Street; southerly along Ximeno Street and its prolongation to the Pacific Ocean; westerly and northerly along the shore line of the Pacific Ocean to a point directly south of the intersection of Sunset Boulevard and U. S. Highway No. 101, Alternate; thence northerly along an imaginary line to the point of beginning.

End of Appendix B

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