

ORIGINAL

Decision No. 59029

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of HENRY STOVALL, an individual, doing business as HENRY'S FREIGHT LINES, for a certificate of public convenience and necessity as a highway common carrier.

Application No. 40731

Orville A. Schulenberg, and A. R. Kerstetter, by Orville A. Schulenberg, for applicant. Robert S. Crossland of Crossland, Crossland & Richardson, for Valley Express Co., Valley Motor Lines, Inc., Calif. Motor Express, Ltd., Calif. Motor Transport Co., Ltd., Harold M. McBride dba H. McBride Delivery Service; and Charles F. Hamlin of Peckinpah, Peckinpah & Hamlin, for Intervalley Transportation, protestants.

O P I N I O N

By this application, as amended, Henry Stovall, doing business as Henry's Freight Lines, seeks a certificate of public convenience and necessity to operate as a highway common carrier between certain hereinafter named points in the San Joaquin Valley. At present the applicant operates in this region as a radial highway common carrier and as a highway contract carrier under permits issued by this Commission.

Public hearings on this application were held in Visalia on April 22, 23, 24, 1959 and in Fresno on May 21 and 22, 1959, before Examiner James F. Mastoris at which time evidence was presented and the matter duly submitted.

Specific authority is requested to transport general commodities with limited exceptions as a highway common carrier between Modesto on the north, on the one hand, and Bakersfield on

the south, on the other hand, including points 25 miles laterally on each side of U.S. Highway 99, and all intermediate points. In addition the applicant requests permission to serve an area west of Fresno bounded by State Highway 33 including cities such as Coalinga, Avenal, Huron and Taft. Three additional points south of Bakersfield -- Edison, Weedpatch and Greenfield -- are also included. Overnight service and same-day delivery are proposed in accordance with the following schedule:

- (a) Pickups of freight made before noon between Fresno and all points north of Porterville, Tulare and Hanford to be delivered the same day.
- (b) Morning pickups between Visalia and Reedley, Dinuba, Cutler, Oroquieta, Sanger, Selma, Kingsbury and Fresno to be delivered the same day.
- (c) Overnight service to all other points in the proposed area.

In justification for the authority sought applicant presented, among other things, the testimony of 30 shipper witnesses who generally testified to their need and desire for the proposed operations and that they intended to use this service if such were authorized. In effect, most of said witnesses declared they preferred Henry's Freight Lines over existing certificated carriers operating in this region. The preference was attributed to the applicant's fast, dependable and consistent pickup and delivery service operating out of Fresno and Visalia, and to the courteous, attentive and solicitous conduct of his drivers, with special emphasis on his efficient and expeditious handling of same-day, overnight, early morning, and Saturday deliveries. In addition evidence was received indicating that the incidence of lost or damaged freight was reduced when applicant's services were utilized and that claims were processed without delay or contention.

In opposition to this application evidence was produced by the protestants, the various truck lines which conduct operations in all or part of the concerned area, to the effect:

(1) That the granting of the certificate requested would have an adverse effect upon their business.

(2) That they are now rendering an adequate and satisfactory service in the aforementioned area and that the proposal would constitute an unnecessary duplication of existing truck services.

(3) That the contemplated service of the applicant, especially as to the specialized same-day, early morning and Saturday deliveries, would not be feasible or compensatory, or if practicable at all, would only be so in certain areas within the territory to be served. Most of the protestants' operating witnesses stated that their companies provided restricted one-day and Saturday operations at present, justifying such limitations upon the ground that they have found from past experience that such operations have not been economically successful.

(4) That the demand for such specialized service is limited. It is claimed that the applicant's public witnesses conceded that they had no complaint against the services of the existing carriers and that said shippers admitted they only require "reasonable overnight service". Such overnight service, it is contended, is currently provided by the protestants.

(5) That they all can handle the available business as well as any increased business that they may be offered.

Upon consideration of all the ~~allegations~~ allegations of the application and the evidence adduced at the hearings, the Commission finds that public convenience and necessity require that the application be granted to the extent set forth in the ensuing order.

The evidence presented by the applicant with respect to the delineated area described in the attached appendix was substantial and convincing that his services meet the actual and prospective needs of the shippers in these growing and developing communities. It is our opinion that the applicant's one-day and Saturday operations afford advantages to the public in these regions not presently obtainable by use of the services of the protestants. We are satisfied that the shippers need such special services because of the evolutionary shifting in the demand of the public. Transportation characteristics are changing in these agricultural areas; service counts with the shipper, probably more than rates or anything else. More and more shippers selling directly to the public are requiring and demanding same-day, early morning and Saturday service. The protestants admit their operations for this type of service are comparatively small. In order to survive competitively, especially the smaller firms, such shippers must give original and individualized service, whether they sell television appliances or agricultural equipment parts. With many commodities becoming more standardized in form and content, specialized service attuned to the needs of their customers can be said to be the principal attribute distinguishing similar businesses. In other words, such service, although small percentagewise at present, is no longer merely convenient but is gradually becoming indispensable. The phrase "public convenience and necessity", being relative in application and not being susceptible to an all-embracing definition that will satisfy all situations, can

be construed to include any transportation improvement that is advantageous and desirable to the public convenience. The evidence discloses that this carrier has acquired and will acquire more frequent and profitable hauls from current customers and new business from new shippers as a result of his willingness to afford shippers a same-day and Saturday delivery transportation service. The stimulation of such additional and gainful shipments presents a reasonable expectation that this phase of the applicant's operation will be economically practicable. Moreover, his over-all financial picture is sound (Exhibits Nos. 2 and 3). We are satisfied that he has the financial ability and responsibility commensurate with the character and extent of the operations proposed.

It appears that the applicant possesses the experience and equipment to institute and maintain the operations to be authorized and the resources to acquire such additional equipment as may be required to conduct such service. His terminal facilities and personnel are adequate and suitable for the purposes herein authorized.

We do not find that the evidence is sufficient to justify a grant of authority to serve the area surrounding Dinuba. As to the balance of the area requested, but not included in the attached Appendix A, the record discloses that the demand and need from the shipping public was inappreciable.

Applicant is hereby 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 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

Public hearings having been held and based upon the evidence therein adduced,

IT IS ORDERED that:

1. A certificate of public convenience and necessity is granted to Henry Stovall, doing business as Henry's Freight Lines, authorizing him 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 routes as more particularly set forth in Appendix A attached hereto and made a part hereof.

2. 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 he will be required, among other things, to file annual reports of his 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 on not less than ten days' notice to the Commission and to the public, applicant shall establish the service herein authorized and file in triplicate and concurrently make effective, tariffs satisfactory to the Commission.

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

Dated at San Francisco, California, this 22nd day of September, 1959.

Conrad R. W. [Signature]
President
[Signature]
Theodore [Signature]

Commissioners

1. Henry Stovall, doing business as Henry's Freight Lines, by the certificate of public convenience and necessity granted in the decision noted in the margin, is authorized to transport general commodities between the points and over the routes hereinafter set forth, provided, however, that applicant shall not transport any shipments of the following:

- a. 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.
- 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 and 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.
- h. Logs.

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2. Applicant shall have the authority to transport the commodities set forth in paragraph 1 of this appendix between the points and over the routes as follows:

- a. Between Fresno, on the one hand, and all points located on U.S. Highway 99 between and including Bakersfield, on the other hand, including also all points, (with exceptions noted below,) located 25 miles laterally on each side of U.S. Highway 99 between Fresno and Bakersfield, and all intermediate points.

Provided however

- (1) Service is not authorized to and from the following points: Dinuba, Cutler, Sultana, Oroquieta, Reedley, Parlier, Orange Cove, Monson, Yettlem.
- (2) Applicant's tariff shall provide for the rendering of same-day and Saturday service between Fresno, on the one hand, and Visalia, Woodlake, Porterville, Hanford, Lemoore and Tulare, on the other hand.
- b. Between Fresno or Bakersfield, on the one hand, and Coalinga, Avenal and Taft, on the other hand, over and along any route, serving all intermediate points.
- c. Between Fresno, on the one hand, and Modesto, on the other hand, over and along U.S. Highway 99, serving no intermediate points.

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