

Decision No. 59251

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
THOMPSON BROS. FREIGHT FORWARDING)
CO., INC., a corporation, for a)
certificate of public convenience)
and necessity to operate as a)
freight forwarder, and to issue)
stock.)

Application No. 41075

Berol and Silver by Edward M. Berol, for applicant.
Scott Elder, for Delta Lines, Inc., California
Motor Express, Ltd., California Motor Transport
Co., Ltd., Valley Express Co., Valley Motor
Lines, Inc., Oregon, Nevada, California Fast
Freight, Inc., Southern California Freight Lines,
Inc., and Fortier Transportation Company; Glanz &
Russell by Theodore W. Russell, for California
Cartage Company, Inc., Constructors Transport Co.,
Merrifield Trucking Company, Sterling Transit Co.,
Inc., Western Truck Lines, Ltd., Imperial Truck
Lines, Inc., and Desert Express; Wm. Meinhold and
Frederick E. Fuhrman by Frederick E. Fuhrman, for
Pacific Motor Trucking Company, protestants.
Don Haslett, for Haslett Warehouse Company, J. C.
Kaspar, R. D. Toll, Arlo D. Poe and J. X. Quintrall,
for California Trucking Associations, Inc.,
Jack L. Dawson, for California Warehousemen's
Association; L. B. Raymond, for Gibraltar Ware-
houses, Richard D. Stokes, for Howard Terminal;
Frank Loughran, for Grocery Shippers, Inc.;
Russell Bevans, for Draymen's Association of San
Francisco, Inc., interested parties.
Edward E. Tanner and Sidney J. Webb, for the
Commission staff.

O P I N I O N

On April 24, 1959, Thompson Bros. Freight Forwarding Co., Inc., a corporation, filed an application with the Commission requesting a certificate of public convenience and necessity to operate as a freight forwarder, together with certain other authority. Amendments were made to this application at various times prior to June 29, 1959. Public hearings were held on this application on June 8, 9, and 29, 1959 before Examiner William L. Cole in

San Francisco. On this last date the matter was taken under submission subject to the filing of briefs. The briefs have now been filed and the matter is ready for decision.

Applicant

The applicant is a newly formed California corporation. It proposes to issue all of its stock to Thompson Bros., Inc. This latter corporation, which will be referred to in this decision as the parent company, is at the present time a public utility authorized to operate as a highway common carrier and as a public utility warehouseman. The territory within which the parent company is authorized to operate as a highway common carrier includes some but not all of the territory requested by the applicant for its freight forwarder operation. The parent company operates six public utility warehouses, all of which are located in San Francisco.

Application

The application makes four requests. The first, as previously indicated, is for a certificate of public convenience and necessity to operate as a freight forwarder in the transportation of general commodities, except livestock, petroleum products in bulk in tank trucks, explosives, articles of extraordinary value, commodities requiring refrigeration, household goods and uncrated furniture. It is requested that the certificate authorize operations:

From San Francisco to Redding, and all points intermediate on U. S. Highways 40, 99-W, and 99-E.

From San Francisco to Sacramento, and all points intermediate on U. S. Highway 40.

From San Francisco to all points between Sacramento and Fresno, inclusive, on U. S. Highway 99.

From San Francisco to Salinas and all points intermediate on U. S. Highway 101.

From San Francisco to points on State Highway 1 between Santa Cruz and Carmel, inclusive.

From San Francisco to Eureka and all points intermediate on U. S. Highway 101.

The applicant is limiting its holding out to serve the public and requests that its authority be restricted to shipments having origin at a warehouse of the parent company. The applicant's interpretation of this restriction, as stated at the hearings, is that the applicant will only accept two types of shipments, to wit, a shipment having had prior storage for-hire at a warehouse of the parent company and a shipment originating at a warehouse of the parent company as a part of a pool shipment, as defined in City Carriers' Tariff No. 1-A, which pool shipment has been consigned to and received by the parent company. Other shipments tendered to the applicant at its proposed place of business would not be accepted.

As a common carrier the applicant would normally be required to assess no lower than the minimum rates and charges prescribed by the Commission. Because of this requirement, a shipper using the applicant's proposed freight forwarder service would not obtain any rate advantage over other shippers using other types of carriers. The applicant, however, is requesting authority to deviate from the minimum rates such that shippers using its proposed freight forwarder service could be charged less than the minimum rates. In general the rates proposed by the applicant would vary from 0 per cent to 17½ per cent less than the existing minimum rates.

The applicant is also requesting authority to issue 1,000 shares of its common capital stock, having a par value of \$10 per share, to the parent company for \$10,000 in cash.

Finally, the applicant is requesting relief from the provisions of Section 460 of the Public Utilities Code which prohibits

a common carrier from charging any greater compensation in the aggregate for the transportation of a like kind of property for a shorter than for a longer distance over the same line or route in the same direction, within the State, the shorter being included within the longer distance.

Reason for Application

The record shows that any analysis of the merits of this application involves mentioning another organization called Grocery Shippers, Inc. This organization was the subject of a Commission investigation in Case No. 6138. In its Decision No. 58676, the Commission found that it is a nonprofit shippers' association not subject to regulation by the Commission. This association operates from a public utility warehouse which competes with the applicant's parent company. By consolidating the individual shipments of its members storing goods at that warehouse, this association affords its members the opportunity to achieve lower transportation costs with respect to certain transportation. In order to avail themselves of such lower transportation costs, a number of customers which previously stored goods at the warehouses of applicant's parent company have taken their business to the competing warehouse. This, of course, has resulted in losses of revenue to the applicant's parent company. The parent company estimates that it has lost an annual revenue of \$14,025 in storage business, and \$23,550 in transportation business. It was in an attempt to meet this competition and forestall further reduction in the business of the parent company that applicant corporation was formed and this application filed.

Mode of Operation

Applicant proposes to operate as a freight forwarder from one of the parent company's six warehouses located in San Francisco.

It contemplates leasing 1,000 square feet of space at the warehouse. This area will be used to consolidate the individual shipments tendered to applicant. It is planned by applicant and the parent company to store all commodities adapted to freight forwarder consolidation at this one warehouse rather than at any of the other warehouses operated by the parent company. The operation then would consist merely of moving the property from the storage portion of the warehouse to that portion leased by the applicant for consolidating purposes, consolidating the property with other property and tendering it to a carrier for shipment to the point of destination. As noted previously, the applicant is limiting its offer of service to shipments having had prior storage for-hire at a parent company warehouse or shipments originating at a parent company warehouse as a part of a pool shipment, as defined in City Carriers' Tariff No. 1-A, which pool shipment has been consigned to and received by the parent company. The applicant will not accept any other shipments whether tendered to it at this warehouse or elsewhere.

As previously indicated, the principal reason for the application is to place the parent company in a position where those storing with it can obtain lower transportation costs in the same manner as those presently enjoyed by members of the Grocery Shippers, Inc. It is to accomplish this that the applicant requests authority to deviate from the minimum rates. Under its rate proposal, the applicant will consolidate smaller shipments into 4,000-, 10,000- or 20,000-pound shipments. Various sized consolidations will be made to the various points of destination on certain specified days. Inasmuch as the rates assessed to the shipper will vary with the size of the consolidation, the shipper will have to designate either the day on which he desires his property shipped or the size of the consolidation into which he wants his shipment placed.

Shipper Witness Testimony

A number of shipper witnesses testified on behalf of the applicant and indicated their support of the application. These witnesses were all either food brokers having customers presently storing goods in the parent company's warehouses or employees of food processing companies which are presently storing goods in such warehouses. The testimony of these witnesses showed that their primary reason for supporting the application was the lower transportation costs that would be available if the application were granted. This testimony also shows that if this application is not granted many such food brokers' customers will take their storage business to the competing warehouse in order to take advantage of the lower transportation costs afforded by the Grocery Shippers, Inc.

Merits of Application

An analysis of the applicant's proposed operation shows clearly that its primary purpose is to benefit the parent company and that any benefits accruing to the applicant or to the shippers using applicant's proposed service are secondary. Perhaps the most striking illustration of this fact is the applicant's limited holding out to accept only that property which was previously stored in a parent company's warehouse or part of a pool shipment consigned to the parent company. Because of this restriction, in order for a shipper to be able to use the applicant's service and avail himself of the preferred rate treatment applicant is requesting, the shipper must first use the parent company's services. An operation which would have such discriminatory results cannot be approved by the Commission. It was to eliminate such practices that the regulation of the transportation industry was first instituted.

Another facet of the applicant's operation results from its rate proposal. An examination of this proposal shows that the

same shipper who furnishes for transportation two identical shipments on different days could be assessed entirely different charges. Such a result, likewise, cannot be approved by the Commission.

It is not difficult to forecast the probable effects on the State's transportation system of granting this application. Shippers storing at the parent company's warehouses would be receiving a competitive advantage. This would result in shippers leaving other warehouses and storing with the parent company. This in turn would force other public utility warehouses to apply to this Commission for the same authority that applicant is requesting. If the present application is granted, the Commission would have no alternative but to grant such other applications. Shippers who store in public utility warehouses would then have an advantage over shippers who do not. These other shippers would soon force highway common carriers and other carriers to request authority from this Commission to institute a similar type of operation. Again, the Commission would have no alternative but to grant such authority. The over-all result would be the complete breakdown of the less-than-truckload rate structure in California.

It has been argued that it would be better to grant the application and authorize this type of operation as a regulated utility than to require it to be conducted by unregulated associations. As a practical matter, however, it is questionable how effective such regulation would be. From a rate regulation standpoint, if unregulated associations lower their rates then freight forwarders operating as the applicant proposes to operate, must likewise be authorized to lower their rates in order to be competitive. For if the applicant were not allowed to remain competitive with the unregulated associations, the very reason for its existence would be

defeated. It is apparent from this that there would be little, if any, effective rate regulation. It is also apparent that a regulated operation such as is proposed could not effectively compete with an unregulated operation of the type engaged in by the shipper associations.

The Commission understand the motivation of the applicant and its parent company in filing the application and proposing this method of operation. It is the Commission's conclusion, however that from the over-all standpoint of public interest, the probable adverse effects resulting from the granting of this application far outweigh the beneficial effects that would accrue to the parent company.

Quite apart from the advantages or disadvantages of applicant's proposed operation, it is the Commission's conclusion that the evidence introduced into the record does not justify authorizing the applicant to assess rates and charges below the minimum prescribed by the Commission. For this reason, if for no other, the applicant's request for authority to deviate from the minimum rates and charges prescribed by the Commission must be denied.

Inasmuch as the testimony of the shipper witnesses indicated that their only interest in applicant's proposed service was because of the lower transportation costs it would afford due to the preferred rate treatment, it is the Commission's conclusion that public convenience and necessity has not been shown for a freight forwarder service which assesses the minimum rates and charges prescribed by the Commission.

Findings and Conclusions

Based upon the evidence of record, the Commission cannot find and conclude that public convenience and necessity warrants the granting of the authority sought in this application.

In view of the foregoing finding and conclusion, there is no reason to discuss the applicant's request for authority to issue

stock or for relief from the provisions of Section 460 of the Public Utilities Code.

Examiner's Proposed Report

At the hearings, a petition for an examiner's proposed report was filed. This petition has been denied by the Commission.

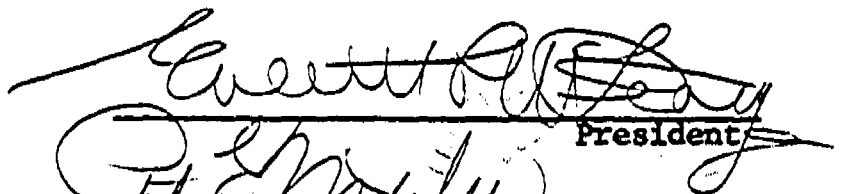
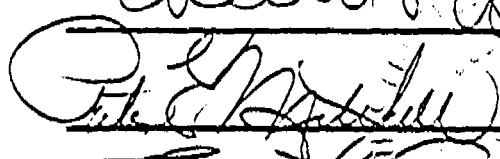

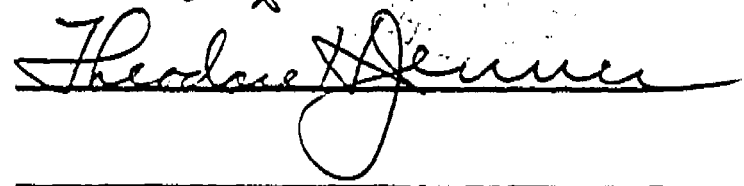
O R D E R

The above matter having been filed, public hearing having been held thereon, and the Commission being fully informed,

IT IS ORDERED that Application No. 41075 is denied.

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

Dated at San Francisco, California, this 10th day of November, 1959.


President



Commissioners