

ORIGINALDecision No. 60685

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
 OVERNITE MOTOR EXPRESS, a corporation,
 for an expansion of its certificate of
 public convenience and necessity to
 operate as a highway common carrier.

Application No. 41545
 (Amended)

Handler & Baker, by Marvin Handler, for applicant.
 E. M. Berol and Bruce Geernaert, for Callison
 Truck Lines, Inc., and Merchants Express of
 California, protestants.
E. H. Griffiths, for T & S Motor Lines, protestant.

O P I N I O N

Overnite Motor Express is a highway common carrier authorized by a certificate of public convenience and necessity issued by this Commission to transport movie film and certain specified commodities between points ranging from Los Angeles in the southern part of the State to Eureka and Redding in the northern part of the State and points on U. S. Highway 40 from San Francisco to the Nevada border. Overnite also holds a highway contract carrier permit issued by this Commission. By this application, Overnite seeks authority to transport general commodities in an area substantially similar to that encompassed by its restricted rights; provided, however, that Overnite proposes to handle general commodities only if they originate from or are destined to a point in Eureka, Redding, Fresno, the San Francisco Territory or the Los Angeles Territory.

A duly noticed public hearing was held in this matter before Examiner Donald B. Jarvis on February 24, 25, 26 and March 25, 1960.

The record discloses that Overnite has approximately 26 pieces of operating equipment. It has terminal facilities in

San Francisco and Los Angeles. In Fresno, Eureka and Redding Overnite has resident drivers who use their homes as contact points where the shipping public can communicate with the company. There is testimony by Overnite's vice president that if the application is granted Overnite contemplates arranging for a driver and terminal facilities in Oroville. These arrangements have not been formalized and are nebulous.

Overnite handles, as a highway common carrier, primarily movie film and related items for delivery to movie theaters. Many of the deliveries are made at night.

Eleven witnesses representing firms which ship or receive freight testified in behalf of Overnite. In general this testimony may be summarized by stating that each of these witnesses was shipping or receiving freight by Overnite between some of the points here in question; that the service was excellent and they want to continue using it; and that they supported the granting of the application. It was stipulated that if two other witnesses were called they would give similar testimony. This evidence does not establish that public convenience and necessity require the granting of the rights herein sought.

The substance of the testimony of the thirteen witnesses referred to is that they like the service they are now receiving from Overnite and want to continue to use it. Insofar as this service is being rendered under Overnite's present highway common carrier certificate, no problem is herein presented. We assume for the purposes of this proceeding that the transportation rendered by Overnite for the aforesaid shippers as a highway contract carrier is being done in accordance with law. (Code Civ. Proc. Par. 1963 (1).) Therefore, since the present service is adequate to meet the needs

of the shippers the granting of additional highway common carrier operating rights does not appear to be warranted. Furthermore, this Commission has held that the fact that a highway permit carrier operates efficiently under his permit does not tend to establish that public convenience and necessity require the granting of rights of an entirely different character. (Florence v. Hill, 48 Cal. P.U.C. 514, 516.)

Each of the protestants introduced evidence in its behalf during the proceeding. In general this evidence consisted of showings of the equipment, personnel and terminal facilities as well as the operating authorities of the protestants. Each of the protestants holds a certificate of public convenience and necessity to operate as a highway common carrier for the transportation of general commodities, with limited exceptions, between various points involved in this application. The witnesses who testified in behalf of the protestants stated that the granting of the authority herein sought would dilute their business, thereby injuring them. In addition, protestant Callison Truck Lines introduced evidence to show that a portion of the additional operating authority herein sought is in the area encompassed by Item No. 512 of the Commission's Minimum Rate Tariff No. 2 which in part provides for an additional 10 percent surcharge to be applied on shipments from Humboldt and Del Norte Counties, on the one hand, and, on the other hand, the San Francisco Territory as well as providing for arbitraries from points in Humboldt and Del Norte Counties, on the one hand, and points south of San Francisco, on the other hand.

The Commission in Decision No. 56458, acting on Petition No. 103 in Case 5432, authorized all common carriers to publish in

their tariffs the 10 percent surcharge and arbitraries provided for in Item 512 of Minimum Rate Tariff No. 2.

Decision No. 56458 authorized the 10 percent surcharge and arbitraries because in the light of the unusual and peculiar circumstances pertaining to the area, the common carriers there operating were in need of additional revenues so that they would be able to continue to give adequate service to the public.

Based upon the evidence of record in this matter the Commission makes the following findings and conclusions:

1. The evidence fails to establish that there is a need by the public or portion thereof for the additional operating rights herein requested.

2. A substantial part of Overnite's operating equipment is used for the specialized evening transportation of movie film and related commodities and Overnite does not have sufficient equipment or terminal facilities to properly operate as a highway common carrier of general commodities throughout the entire area for which additional operating rights are herein sought.

3. The granting of additional highway common carrier operating rights in any portion of the area encompassed by Item No. 512 of the Commission's Minimum Rate Tariff No. 2 will tend to cause an increase in freight rates in the area and dilute the business of the highway common carriers already serving the area, thereby impairing their ability to give adequate and dependable transportation service.

4. Public convenience and necessity do not require the granting of the rights herein sought.

5. The application should be denied.

O R D E R

A public hearing having been held and based upon the evidence therein adduced,

IT IS ORDERED that Application No. 41545 is hereby denied.

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

Dated at San Francisco, California, this
6th day of SEPTEMBER, 1960.

President

Commissioners