

ORIGINAL

Decision No. 62795

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of SAN DIEGO-IMPERIAL EXPRESS, INC., a corporation, for a Certificate of Public Convenience and Necessity under Public Utilities Code Section 1063 to commence common carrier operations in San Diego and Imperial Counties.

Application No. 43170  
(Filed February 24, 1961)

Knapp, Gill, Hibbert & Stevens, by Karl K. Roos, for applicant.  
Graham James & Rolph, by Boris H. Lakusta, and Leo J. Vander Lans, for Southern California Freight Lines, Sterling Transit Co., Inc., Boulevard Transportation Company, Shippers' Express, and California Motor Express, Ltd.; Charles W. McKay, for Imperial Truck Lines, Inc.; Baron W. Strayer, for Film Transport Company of California, Inc., protestants.  
Donald Murchison, by Leo J. Vander Lans, for Borrego Freight Lines; Gerald R. Cordell, for Film Transport of California, Inc., interested parties.

O P I N I O N

This application was heard before Examiner Robert D. DeWolf at San Diego on May 4 and June 26, 1961, and was submitted on June 26, 1961, subject to the filing of concurrent briefs, which are now filed. Copies of the application and the notice of hearing were served in accordance with the Commission's procedural rules.

The protestants are Southern California Freight Lines, Sterling Transit Co., Inc., Boulevard Transportation Company, Shippers' Express, California Motor Express, Ltd., Imperial Truck Lines, Inc., and Film Transport Company of California, Inc.

Applicant is a highway permit carrier engaged in the transportation of property between points in California within a

radius of 250 miles from San Diego by authority of permits issued by this Commission under Chapters 1 and 2 of Division II of the Public Utilities Code. Applicant requests authorization to conduct operations as a highway common carrier for the transportation of general commodities, with certain exceptions, between points and places located in San Diego County and Imperial County, California.

Applicant proposes to publish its tariff of rates and charges predicated upon minimum rates and charges as prescribed and established in Minimum Rate Tariff No. 2.

Applicant proposes to render overnight service five days a week with deliveries on Saturday in addition, when requested.

Exhibit No. 1 is a balance sheet by the public accountant of applicant showing total assets of \$17,393.01 and a profit and loss statement from January 1 to March 31, 1961, showing total revenue of \$9,388.65 and net profit of \$745.64. Exhibit No. 2 is a list of applicant's equipment consisting of three 1960 Ford van trucks. Exhibits No. 3 through No. 9 were submitted by protestants and show their authority and the extent of their operations.

An officer and manager of the applicant testified that applicant has four employees consisting of a secretary and three drivers, two of whom are himself and another officer of the company, and that other part-time drivers are employed when needed; that there has been an increasing demand upon the applicant for the service herein proposed; that there has been a substantial increase in population and industry at the points and places it presently serves and proposes to serve; that applicant has enjoyed a steady growth of business in the territory for which authority is sought herein,

and is qualified and has the experience, equipment, personnel, and financial resources to institute and maintain the proposed service.

Eight shipper witnesses testified they have been using applicant's service and are very well satisfied and will use it in the future.

One shipper engaged in tobacco wholesale distributing to retailers in San Diego and Imperial Counties testified he requires shipments to be made at frequent intervals with emergency orders for next day delivery and was unable to get such service from other carriers. A wholesale liquor distributor testified to difficulty in getting a late afternoon pickup from one of the protestants and also a failure to make Saturday deliveries when requested. A shipper in the radio and Hi-Fi jobbing business also testified to the holding of minimum inventories in towns outside of San Diego and their attempts to get some of the protestants to make late afternoon pickups and to carry out scheduled deliveries on Friday and Tuesday and that they had subsequently received very satisfactory service of this applicant.

A shipper of janitorial supplies to Imperial County testified to frequent need for emergency delivery of orders received in the afternoon and has found applicant's service satisfactory and had previously tried two of the protestants.

A grocer at Alpine east of San Diego testified to considerable difficulty in getting daytime deliveries from carriers other than this applicant and one of these protesting carriers always made deliveries late at night while applicant never delivered after four p.m.

A distributor of tires who did not have large inventories in the Imperial Valley testified he would use daily overnight service and could not get it from other carriers.

These shippers are all generally wholesale jobbers or distributors, three of whom had trucks of their own and all testified to the highly competitive nature of their business and their need for a kind of overnight service furnished by applicant, which they all stated they were using and needed in their business and had not so far found with any other carriers. All but one of the shippers will ship to all points in the territory requested by applicant.

The protestants called five shipper witnesses representing five jobbers and wholesale distributors who use their services and testified that their present shipping requirements were entirely satisfactory and that they were opposed to issuance of this certificate.

Five protestants testified that they serve major portions of the territory requested by applicant and that they have unused space in their trucks and that one of the companies had to discontinue service to the Imperial Valley area on account of insufficient freight.

#### Findings and Conclusions

Upon consideration of the evidence the Commission finds and concludes as follows:

1. That applicant possesses the experience, equipment, personnel, and financial resources to institute and maintain the proposed service.

2. That public convenience and necessity require that the application be granted as set forth in the ensuing order.

San Diego-Imperial Express, Inc., 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

An application having been filed, a public hearing having been held and based on the evidence therein adduced,

IT IS ORDERED:


1. That a certificate of public convenience and necessity be and it is granted to San Diego-Imperial Express, Inc., a corporation, authorizing it to operate as a highway common carrier, as defined in Section 213 of the Public Utilities Code, for the transportation of property between the points and over the routes more particularly set forth in Appendices A and B attached hereto and hereby made a part hereof.

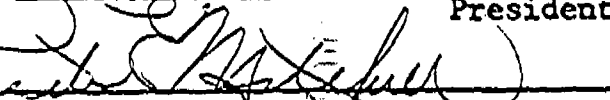
2. That in providing service pursuant to the certificate herein granted, applicant shall comply with and observe the following service regulations:

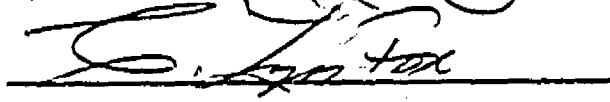
- (a) Within thirty days after the effective date hereof, applicant shall file a written acceptance of the certificate herein granted. By accepting the certificate of public convenience and necessity herein granted, applicant is placed on notice that it will be required, among other things, to file annual reports of its operations and to comply with and observe the safety rules and other regulations of the Commission's General Order No. 99 and insurance requirements of the Commission's General Order No. 100-B. 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 Orders Nos. 99 and 100-B, may result in a cancellation of the operating authority granted by this decision.
- (b) Within one hundred twenty days after the effective date hereof, and on 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.


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

Dated at San Francisco, California, this 14th day of NOVEMBER, 1961.

  
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President

  
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Commissioners

San Diego-Imperial Express, Inc., a corporation, by the certificate of public convenience and necessity granted in the decision noted in the margin, is authorized to transport general commodities between all points and places in the San Diego Territory as described in Appendix B attached hereto, on the one hand, and on the other hand, all points and places on and within five miles laterally of the following routes:

- (a) U.S. Highway 101 between Oceanside and the San Diego Territory, inclusive with service to Camp Pendleton as an off-route point.
- (b) San Diego County Road S13 between Fallbrook and Vista, inclusive.
- (c) State Highway 76 between Oceanside and Bonsall, inclusive.
- (d) State Highway 78 between its junction with U.S. Highway 101 and Escondido, inclusive.
- (e) U.S. Highway 395 between Escondido and the San Diego Territory, inclusive.
- (f) U.S. Highway 80 between Holtville and the San Diego Territory, inclusive.
- (g) U.S. Highway 99 between Westmoreland and Calexico, inclusive.
- (h) State Highway 111 between Niland and Brawley, inclusive.
- (i) State Highway 98 between Calexico and its junction with U.S. Highway 80 near Coyote Wells, inclusive.

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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, trucks and trailers combined, buses and 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 protection from heat by the use of ice (either water or solidified carbon dioxide) or by mechanical refrigeration.
5. 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.
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. Logs.

End of Appendix A

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APPENDIX B TO DECISION NO. 62795

SAN DIEGO TERRITORY includes that area embraced by the following imaginary line starting at the northerly junction of U. S. Highways 101-E and 101-W (4 miles north of La Jolla); thence easterly to Miramar on U. S. Highway 395; thence southeasterly to Lakeside on the El Cajon-Ramona Highway (State Highway 67); thence southerly to Bostonia on U. S. Highway 80; thence southeasterly to Jamul on State Highway 94; thence due south to the International Boundary Line, west to the Pacific Ocean and north along the coast to point of beginning.