

ORIGINAL

Decision No. 63120

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of ASBURY FORWARDERS, INC., a corporation, for a certificate of public convenience and necessity to operate as a freight forwarder and for authority to issue securities.

Application No. 43626  
(Filed July 24, 1961)

James W. Wade, for applicant.  
R. Y. Schureman and Lloyd R. Guerra, for Cantlay & Tanzola, Inc., Consolidated Freightways Corporation of Delaware, Evans Tank Line, Inc., Pacific Intermountain Express Co., Pacific Truck Service, Inc., protestants.  
R. W. Rowe, for Standard Oil Company of California, interested party.  
Richard R. Entwistle and Carl B. Blaubach, for the Commission staff.

O P I N I O N

This application was heard before Examiner Rowe at Los Angeles on October 26, 1961, and was submitted on concurrent briefs which have now been received. Copies of the application and the notice of hearing were served in accordance with the Commission's procedural rules.

Applicant is a newly formed California corporation. It requests authorization to issue stock and to conduct operations as a freight forwarder. Applicant proposes an on-call service to accommodate several of the large oil companies by combining their individual less-than-truckload shipments into amounts which would take advantage of a lower rate not applicable to individual smaller shipments. Asbury Forwarders, Inc., does not intend to acquire any automotive equipment of its own. The collection of these smaller

shipments is to be performed constructively, using the underlying carrier's equipment by assembling the memorandum bills covering the separate shipments and combining them under a master bill as a single consolidated shipping document representing a consolidated split delivery shipment. These combined shipments will be picked up, transported and delivered via the line of a common carrier at the tariff rate of such carrier.

The authorized representatives of four major oil companies testified as to the need their firms had for the proposed service in the several areas sought to be certificated.

There were two principal contentions made in opposition to the application.

1. It was contended that Asbury Transportation Company, which would own all the stock of applicant, would be diverting the anticipated traffic to itself and thereby be acquiring much business while, through a subterfuge, avoiding minimum rate regulations.

2. Next, they contended that applicant, having no automotive equipment of its own and expecting the underlying carrier to perform all pickups and deliveries, would not fully perform its duty under Section 220 of the Public Utilities Code. It is claimed that the execution of a volume tender agreement without any physical movement of the freight by applicant could not be the kind of collection contemplated by the Code section.

In addition, the staff suggested that the issuance of \$10,000 par value of stock seemed excessive and that anything over \$5,000 should be raised by the incurring of indebtedness to Asbury Transportation Company. Applicant indicated at the hearing that it was agreeable to this suggestion.

The evidence reveals two reasons why this application should be denied. First, Asbury Transportation Company through an obvious device, to wit: an affiliate corporate entity, proposes itself to serve individual shippers of single truckload shipments of bulk petroleum at "volume tender" rates. This is especially manifested by the fact that applicant Asbury Forwarders, Inc., will have no automotive equipment and will have only a bookkeeping contact with the physical shipments. The second reason is the failure to show that the proposal is required by public convenience and necessity. The testimony of the authorized representatives of four major oil companies amounts to no more than the expression of the view that they would like to have the Commission authorize this device and thereby procure lower rates for their customers. There was no evidence from these ultimate consumers that such a reduction is in any way justified. Because this application is to be denied, there need be no discussion of the corporate structure or the desirability of financing the corporation partly by the incurring of indebtedness rather than solely by the issuance of stock.

Protestants, on December 13, 1961, filed a petition requesting that this proceeding be stayed pending a decision in Case No. 5436. No good cause has been made to appear to justify such request. The petition will be denied.

O R D E R

Public hearing having been held and based upon the evidence of record,

IT IS ORDERED that:

1. The petition filed herein December 18, 1961 is denied.
2. Application No. 43626, as amended, is denied.

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

Dated at San Francisco, California, this 16th day of JANUARY, 1962.

*Clement W. Page*  
President

*John E. Marshall*

*Ed. Lynn Fox*

*George H. Brewer*

*Fredrick B. Haseloff*  
Commissioners