

ORIGINALDecision No. 64161

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
ALDO J. SCOFFONE, doing business as
SCOFFONE TRUCKING SERVICE, for a
certificate of public convenience
and necessity to operate as a highway
common carrier.

Application No. 43245
(Filed March 20, 1961)

Peter H. Dawson, for applicant.

Graham, James and Rolph, by Boris Lakusta, for
Associated Freight Lines; Blankenship Motors, Inc.;
California Motor Express, Ltd. and California
Motor Transport Co., Ltd.; Delta Lines, Inc.;
Di Salvo Trucking Co.; Garden City Transportation
Co.; Interlines Motor Express; Merchants Express
of California; Oregon-Nevada-California Fast
Freight and Southern California Freight Lines;
Pacific Motor Trucking Co.; Shippers Express;
Sterling Transit Co., Ltd.; Valley Express Co.
and Valley Motor Lines, Inc.; and Willig Freight
Lines, protestants.

O P I N I O N

This application was heard before Examiner Thomas E. Daly at San Francisco and was submitted on March 13, 1962, upon the receipt of concurrent briefs filed and considered. Copies of the application and notice of hearing were served in accordance with the Commission's procedural rules. The protestants are shown in the appearances above.

Applicant's Case

Aldo J. Scoffone, doing business as Scoffone Trucking Service, presently rendering service as a radial and contract carrier, requests authority to transport general commodities, with the usual exceptions, between all points on the following routes,

including points located within 10 miles of the city limits of Sacramento and 5 miles of the city limits of Stockton:

1. San Francisco Territory as described in Item No. 270-3-C of the Commission's Minimum Rate Tariff No. 2.
2. Between Sacramento and the San Francisco Territory via U. S. Highways Nos. 40, 50 and 99.
3. Between U. S. Highways Nos. 40 and 50 via State Highway No. 4.
4. Between Sacramento, Stockton and Modesto via U. S. Highway No. 99.
5. Between Antioch and Oakland via State Highway No. 24.
6. Between Benicia and Dublin via State Highway No. 21.
7. Between San Jose and Salinas via U. S. Highway No. 101.
8. Between Santa Cruz and Castroville via State Highway No. 1.
9. Between all points and places located within 5 miles laterally of the highways described in paragraph 2 - 8, inclusive, above.
10. Via any and all routes between said points for operating convenience only.

Applicant proposes an on-call service. The proposed rates are comparable to those prescribed by the Commission in Minimum Rate Tariff No. 2.

Applicant has his general office and terminal in San Jose. The terminal is owned by applicant and consists of approximately eight acres. He owns and operates 42 power units and 57 trailers and semitrailers. As of June 30, 1960, applicant indicated a net

worth in the amount of \$148,492.23 and for the first six months of 1961 realized a net profit in the amount of \$37,102.76.

Applicant commenced business in June 1945. He stated that he was motivated in filing his application because the nature of his operations has grown to the extent that he has certain doubts as to its legality. He further stated that he serves approximately 150 accounts, of which only 5 or 10 are served under oral agreements for exclusive service; the remainder are assertedly served under applicant's radial permit. According to applicant many of his shippers have requested him to seek certification because they require the type of service he performs and they are not able to obtain it from the existing certificated carriers.

Public Witness Testimony

Eight public witnesses testified on behalf of applicant. Four represented business firms located in San Jose. The others represented concerns located at Oakland, San Francisco, Santa Clara and Stockton. Four companies are engaged in the distribution of steel products, two in the distribution of building materials, one in the distribution of tin cans and one in the distribution of clay products. For their transportation needs they require open equipment, because many of their products are either over length or require power loading and unloading. With few exceptions they ship in truck-load quantities. A number of shipments move directly to job sites, requiring a closely coordinated schedule between the carrier and the construction crew.

These companies have used applicant for many years because of his specialized service and the proximity of his San Jose terminal.

Although some use of the existing certificated carriers is made on less-than-truckload shipments, such carriers are not used on truckload movements. The reasons most frequently given by the witnesses for not using the certificated carriers were the inability of said carriers to immediately make available open equipment and the lack of personalized service. Each witness testified that his company ships to various points throughout the proposed area; however, the accumulative effect of their testimony indicates that their greatest demand for applicant's service is between San Jose and such points as Pittsburg, San Leandro, Sacramento, San Francisco, Stockton, Santa Clara and Oakland.

In support of the public witness testimony applicant introduced Exhibit 49, which reflected his operations for the months of January, August and October 1961. The exhibit reflects movements of steel products, building supplies, and canned goods moving predominantly in truckload quantities to many points throughout the proposed area. The greatest frequency, with any degree of regularity, was, for the most part, to the same points most frequently mentioned by the public witnesses.

Protestants' Case

The following protestants introduced oral and documentary evidence in support of their protests: California Motor Express and California Motor Transport, Delta Lines, Inc.; Di Salvo Trucking Co.; Interlines Motor Express; Merchants Express of California, Oregon-Nevada-California Fast Freight and Southern California Freight Lines; Pacific Motor Trucking Co.; Valley Motor Lines, Inc.; and Willig Freight Lines.

The evidence sets forth their operating authority, equipment operated, terminal locations and methods of operations. Protestants own and operate large fleets of modern equipment consisting primarily of van-type trailers. Each also owns and operates flat-bed equipment varying anywhere from 2 units to 55 units. Protestants' operating witnesses were of the opinion that their respective companies had sufficient flat-bed equipment to meet the demands made upon them for that type of service. In the event of an unusual demand they stated that the necessary equipment could be made available under lease arrangements.

Protestants contend that granting of the authority sought would result in further dilution of traffic. As the result of imbalanced load factors, they argue that any further dilution could effect their unit costs of handling traffic, and ultimately result in increased rates to the public.

Findings

It is apparent that applicant is providing a highly specialized and necessary service. Applicant has become closely familiar with his customers' shipping needs and requirements. Equipment and schedules are designed and tailored to meet the unusual shipping requirements of certain customers. It is a type of service that the existing carriers cannot readily and consistently make available.

After consideration, the Commission finds that public convenience and necessity require applicant's service between San Jose, on the one hand, and San Francisco, Oakland, Sacramento, Pittsburg, Stockton and Santa Clara, on the other hand.

Aldo J. Scoffone 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 hearing having been held and based upon the evidence therein adduced,

IT IS ORDERED that:

1. A certificate of public convenience and necessity is hereby granted to Aldo J. Scoffone authorizing him to operate as a highway common carrier, as defined in Section 213 of the Public Utilities Code, between the points as set forth in Appendix A attached hereto and hereby 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 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, applicant shall establish the service herein authorized and file in the Commission's office in triplicate tariffs satisfactory to the Commission.
- (c) The tariff filings shall be made effective not earlier than thirty days after the effective date of this order on not less than thirty days' notice to the Commission and the public, and the effective date of the tariff filings shall be concurrent with the establishment of the service herein authorized.
- (d) The tariff filings made pursuant to this order shall comply with the regulations governing the construction and filing of tariffs set forth in the Commission's General Order No. 80-A. ✓

3. In all other respects Application No. 43245 is hereby denied.

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

Dated at San Francisco, California, this 28th day of AUGUST, 1962.

President

[Handwritten Signature]

Commissioners

Commissioner Peter E. Mitchell, being necessarily absent, did not participate in the disposition of this proceeding.

Aldo J. Scoffone, by the certificate of public convenience and necessity granted in the decision noted in the margin, is authorized to transport general commodities, subject to the exceptions hereinbelow set forth between: San Jose, on the one hand, and San Francisco, Oakland, Sacramento, Pittsburg, Stockton and Santa Clara, on the other hand, via any and all available routes.

The operating authority hereinabove set forth does not include the right to render service to, from or between intermediate points.

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.

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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 as described in Minimum Rate Tariff No. 7 when transported in bulk in dump trucks.
7. Commodities when transported in vehicles equipped for mechanical mixing in transit.
8. Logs.

End of Appendix A

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