

66385

Decision No. _____

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 ENCINAL TERMINALS, a corporation,)
 for a certificate of public conven-)
 ience and necessity to extend)
 operations as a highway common)
 carrier for the transportation of)
 property.)

Application No. 42856
 (Filed November 15, 1960)

Edward D. Ransom and E. H. Griffiths, for applicant.
Alan Short, for Stockton Port District, Associated
 Freight Lines, California Motor Express, Ltd.,
 Constructors Transport Co., Delta Lines, Inc.,
 Di Salvo Trucking Co., Garden City Transportation
 Co., Ltd., Interlines Motor Express, Merchants
 Express of California, Oregon-Nevada-California
 Fast Freight, Inc., Southern California Freight
 Lines, Pacific Motor Trucking Company, Shippers
 Express Company, et al., Sterling Transit Company,
 Inc., Valley Motor Lines, Inc., Willig Freight
 Lines, Sacramento Auto Truck Co. and California
 Motor Transport Co. of the West; J. Richard Town-
send, for Stockton Port District, Delta Lines, Inc.,
 Valley Motor Lines, Inc., Valley Express Co.,
 Merchants Express of California, Lodi Truck Service
 and Willig Freight Lines; T. J. Champion, for Lodi
 Truck Service; C. W. Phelps, for Stockton Port
 District; Ken D. Anderson, for Swanson's Trucking
 Service and Scannavino Trucking Co., protestants.
W. G. Stone and James H. McJunkin, for Sacramento-Yolo
 Port District, interested party.

O P I N I O N

This application was heard before Examiner Fraser at
 San Francisco on October 16 and 17 and November 20 and 21, 1961;
 also on January 15, 16, 17, 18 and 19, 1962. The matter was sub-
 mitted on concurrent and answering briefs filed on April 17 and 28,
 1962, respectively. Copies of the application and the notice of
 hearing were served in accordance with the Commission's procedural
 rules.

The Supreme Court of the State of California, on May 14, 1963, annulled Commission Decision No. 64375, dated October 9, 1962 and directed the Commission to state separately findings and conclusions upon the material issues of fact and law that determine the ultimate issue of public convenience and necessity. (59 A.C. 604)

Oral argument was presented before the Commission in bank on September 19, 1963 and the record is complete on all of the issues in this case. No further hearing is necessary.

Applicant is now operating under permitted authority as a radial highway common carrier, a highway contract carrier, and a city carrier. Applicant is also a certificated highway common carrier presently operating within the San Francisco-East Bay Cartage Zone and to San Jose.

Applicant requests authorization to extend such highway common carrier operations so as to transport general commodities within three miles of the following routes and points: (1) between the San Francisco-East Bay Cartage Zone, along U. S. Highway 40, to Sacramento, inclusive, also serving the off route area of Travis Air Force Base; (2) State Highway 4 between its junction with U. S. Highway 40, near Pinole, and Stockton, inclusive; (3) U. S. Highway 50 to Stockton and U. S. Highway 99 between Sacramento and Manteca, inclusive; (4) State Highway 29 between its junction with U. S. Highway 40 at Vallejo, and Napa, inclusive; and (5) between all points and places within ten miles of Stockton and twenty miles of Sacramento, inclusive. Applicant proposes a daily "on call" service, hauling primarily truckload shipments, under the rates set forth in Pacific Motor Tariff Bureau 8-A, California Public Utilities Commission No. 1.

Applicant amended the application during the first day of hearing to eliminate therefrom the transportation of "fresh or green fruits, fresh or green vegetables". The president of applicant corporation testified that applicant is engaged in the wharfing, warehousing, stevedoring, and trucking business. A freight forwarding business is conducted by a wholly owned subsidiary. Encinal Terminals' stock is owned by Alaska Packers Association and most of the latter's stock is owned by California Packing Corporation. The last two corporations are engaged in canning fish and fruits and vegetables. The witness stated that Encinal Terminals started in the trucking business about five years prior to 1961 as a permitted carrier, operating in the Bay Area; that it obtained its first certificate in 1958 by purchase from another carrier (Decision No. 56935, dated July 8, 1958 in Application No. 40112) whereby it was authorized to serve the San Francisco - East Bay Cartage Zone; and that this authority was expanded in 1960 to include the San Jose area. The witness testified that applicant now serves about every point in the requested area under its radial permit and that many loads have been refused by applicant where it seemed likely the frequency of operation would approach the daily service provided by certificated carriers. The witness stated applicant will be able to accept all shipments and therefore provide better service if it is granted the certificate applied for herein. The witness testified further that many of applicant's customers have expanded into the area applicant is requesting to serve and frequently prefer the daily service a certificated carrier can furnish; also that its shippers require the special service and equipment which applicant provides and which they have not been able to obtain from other carriers.

The witness stated that applicant now operates out of a main terminal in San Leandro with substations at Alameda and Sunnyvale; that another station is being provided in San Jose, and if this certificate is granted, applicant will construct a terminal at Sacramento. Applicant's equipment list dated October 1, 1961 shows 17 tractors, 1 truck, twelve 24-foot flatbed semitrailers, 7 trailers with 35-foot flatbeds and 12 with 21-foot flatbeds; there are one tilt bed semitrailer, one 38-foot van semitrailer, 12 converter dollies and 3 fork-lift trucks. The balance sheet of applicant as of August 31, 1961 shows current assets of \$1,137,476 and total fixed assets of \$1,609,077; current liabilities are \$688,511, debts due in less than a year \$5,761 and debts due after one year \$120,991. The operating statement for the twelve months ending August 31, 1961 lists a net carrier operating income of \$53,995, and a total net income from all operations of \$217,974.

The operating manager of applicant's trucking division testified substantially as follows: He has approximately twenty years' experience in the trucking business; the trucking division employs 21 drivers, 1 driver-supervisor, 2 rate men and a salesman; applicant's trucks, tractors and trailers are all leased; preventive maintenance is performed at a nearby garage, but all major repairs are performed by International Harvester Company, since all of applicant's equipment was built by this company; applicant specializes in hauling palletized or unitized cargo in full truck-loads, with each pallet weighing about 2,500-3,000 pounds; this operation is attractive to its shippers because carrying pallets saves time and expense in loading; applicant's flatbed trailers are designed to carry loads (pallets) which can be loaded and unloaded by fork-lift trucks; it also leases vans and bobtail trucks when

required and uses subhaulers during peak periods; applicant will carry less-than-truckload shipments when requested by its customers.

Twenty-three shipper witnesses testified in support of applicant's request. They ship paper bags, fibre cartons, fruits and vegetables, seeds and fertilizer, welding equipment, sugar, corrugated shipping containers, paint and paint products, building materials, industrial chemicals, lumber and forest products, steel pipe, portable steel buildings, culverts, lift trucks, tractors, cranes, pulpboard, roofing, automotive parts and accessories, animal hides, food products, dextrose, cerelose and starch in bags, bags and drums. They include the largest paper manufacturer in the world, the second largest lumber company in the United States, the two largest food processors and canners in California, and the largest sugar, salt, and pulpboard manufacturers in California. These shippers use applicant to most points it seeks to serve, with frequency varying from one per week to numerous shipments in a single day. Six of those who testified stated they prefer certificated carriers, some because of the regular service and rates afforded, others because they prefer the split delivery privileges furnished by certificated carriers. Thirteen of the witnesses testified they require flatbed trailers, which applicant always has available; other carriers have some flatbeds, but they were said to be normally somewhere else when needed. Fifteen shippers stated they are located near applicant's terminals or warehouses and it is convenient to use applicant's trucks. Nine others have constructed new plants and require additional service to their expanded facilities. Others testified that they prefer the rapid "same day" service provided by applicant, or that they will use applicant in all areas it can serve to lessen the number of carriers coming to

their dock area. Several of the witnesses stated the existing service in the area applicant has requested is inadequate; one has found it difficult to find a carrier to haul animal hides, because they are smelly and can contaminate other goods; another testified he had called four of the protestants herein, that they were unable to haul a load of forty-foot pipe, so he then called applicant, who carried the load as requested. One witness shipping paper and cardboard claimed most carriers will not handle his light and bulky products unless they have nothing else to haul. Several of the witnesses mentioned missed pickups by carriers; the latter were said to have promised trucks at specified times but they did not appear. A majority of the witnesses had used carriers other than applicant and some still do, either to areas not served by applicant or due to the volume of their business. All of the shippers who testified stated they desire and would use applicant in the area applied for if a certificate is granted.

Thirteen of the carrier protestants presented evidence. Valley Motor Lines, Inc., and Valley Express Co.; Oregon-Nevada-California Fast Freight, Inc.; Southern California Freight Lines; Delta Lines, Inc.; Pacific Motor Trucking Company; Interlines Motor Express; Constructors Transport Co.; Merchants Express of California; California Motor Transport Co., Ltd.; California Motor Express; Di Salvo Trucking Co.; Lodi Truck Service; Sacramento Auto Truck Co.; and Willig Freight Lines. Each submitted oral and documentary evidence. Ten shipper witnesses testified that the area applicant is seeking to serve is adequately covered now and does not need another certificated carrier.

All thirteen of these protestants maintain they have adequate equipment to handle any foreseeable increase in the public

need for service throughout the area applied for by applicant. Protestants provided a map which shows the protesting carriers have over thirty terminals and freight receiving stations in this region. All of them stated they have equipment operating in this zone at much less than full capacity and several stated that they have trucks which are inoperative due to a lack of business. They assert they now haul for many of the witnesses who testified for applicant and can easily carry additional freight for these shippers on their present schedules. They claim they are losing business and their revenues are steadily declining due to increased competition in the area applicant is seeking to serve. An exhibit was introduced to the effect that on January 1, 1962 there were 73 certificated carriers serving all or a part of the region applicant has requested. Protestants contend all carriers operating from the San Francisco - Oakland area to Stockton and Sacramento will be forced to petition this Commission for a substantial raise in rates if many more carriers are certificated in the area where they operate. Protestants stated they are opposing this application because another certificated carrier is not needed in any part of the area for which authority is sought herein and because applicant can serve all of its customers adequately under the operating authorities it now holds. Protestants also expressed a fear that applicant's close relation with Alaska Packers Association and California Packing Corporation might prompt the latter two companies to encourage their customers to use the trucking service proposed by applicant herein.

The Port of Stockton appeared as a protestant, although it is neither a highway carrier nor a shipper. Witnesses for the Port testified it competes with applicant in the wharfing, loading,

and unloading of ships and vessels of various sizes and types and in the operation of a warehouse. They asserted the operation of trucks in hauling over a wide area can be a tremendous advantage to their competitor, since it would afford the latter an extra service to offer steamship lines and shippers using port facilities.

The Commission, in determining whether public convenience and necessity require the service proposed by applicant, considered the resolution of the following issues material to the making of such determination:

1. Does applicant possess the experience, financial ability, equipment and facilities necessary to conduct the proposed service?

2. Is the proposed service adequately responsive to the need of shippers sought to be served?

3. Does the public or a portion thereof, in addition to applicant's present shippers, require the proposed service?

4. Will the granting of the application adversely affect the protestants or the public interest?

Upon consideration of the evidence, the Commission finds that:

1. Applicant possesses the experience, equipment, personnel and financial resources necessary to institute and maintain the transportation service hereinafter authorized.

2. Applicant is engaged in the wharfinger, warehousing, stevedoring, and trucking business. A freight forwarding business is conducted by a wholly owned subsidiary.

3. There is a substantial unity of ownership of California Packing Corporation, Alaska Packers Association and the applicant herein.

4. Many of the applicant's shippers require large flatbed trailers and fork-lift trucks for palletized loading. The applicant has always provided this service and it has not been available from other carriers.

5. The applicant's service is preferred by a group of shippers who have expanded into the area the applicant now seeks to serve. The applicant also serves some shippers who use the applicant because of the proximity and convenience of the latter's terminals. Other shippers will use the applicant as a certificated carrier in the extended area the applicant seeks to serve because it will enable these shippers to serve their customers in the extended area with a single carrier. A few shippers favor the applicant's service because the latter has transported hides and other undesirable loads which other carriers have refused to handle.

6. The applicant has provided its shippers with varied services they have been unable to obtain from other carriers and that the shipping public will benefit thereby if this certificate is extended to enable the applicant to serve a larger area.

7. Granting the application will not adversely affect the protestants nor will the granting thereof adversely affect the public interest.

8. The Commission finds that public convenience and necessity require the granting of the authority sought, subject to the conditions set forth in the following order.

The Commission concludes from the foregoing findings of fact that authority should be granted to applicant as specified in the ensuing order.

Applicant 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

IT IS ORDERED that:

1. A certificate of public convenience and necessity is granted to Encinal Terminals, a corporation, authorizing it to operate as a highway common carrier, as defined in Section 213 of the Public Utilities Code, between the points and over the routes more particularly set forth in Appendix A attached hereto and made a part hereof.
2. Whenever applicant engages other carriers for the transportation of property of Alaska Packers Association or California Packing Corporation, or of their customers or suppliers, the applicant shall not pay such carriers less than the minimum rates and charges established by the Commission for the transportation actually performed by such other carriers.

3. 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, applicant shall establish the service herein authorized and file tariffs, in triplicate, in the Commission's office.
- (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.

4. Appendix A of Decision No. 60547, as heretofore amended, is further amended by incorporating therein Third Revised Page 1,

attached hereto, in revision of Second Revised Page 1, and First Revised Page 2, attached hereto, in revision of Original Page 2.

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

Dated at San Francisco, California, this 26th day of NOVEMBER, 1963.

William La Berridge
President
George L. Hoover
Frederick B. Holshoff

Commissioners

I dissent.
George L. Hoover

Encinal Terminals, a corporation, is authorized to transport general commodities as follows:

1. Between all points and places described in Appendix B attached hereto.
2. Between all points and places on and within three miles laterally of the following routes:
 - a. U.S. Highway 40 between the northerly boundary of the San Francisco-East Bay Cartage Zone, as described in paragraph 1 of Appendix B attached hereto, and Sacramento, inclusive, including the off-route point of Travis Air Force Base.
 - b. State Highway 4 between its junction with U.S. Highway 40 near Pinole and Stockton, inclusive.
 - c. U.S. Highway 50 between the easterly boundary of the said San Francisco-East Bay Cartage Zone and Stockton, inclusive.
 - d. U.S. Highway 99 between Sacramento and Manteca, inclusive.
 - e. State Highway 29 between its junction with U.S. Highway 40 at Vallejo and Napa, inclusive.
3. Between all points and places within a ten-mile radius of Stockton.
4. Between all points and places within a twenty-mile radius of Sacramento.

Through routes and rates may be established between any and all points described in subparagraphs 1 through 4 above.

Applicant may use any and all available streets and highways between the points described for operating convenience only.

Lateral and radial miles referred to in this appendix are statute miles of 5,280 feet each, measured in a straight line without regard to terrain features.

Issued by California Public Utilities Commission.

Decision No. 66385, Application No. 42856.

Applicant shall not transport any shipments of:

- a. Uncrated used household goods and personal effects.
- b. Petroleum products in bulk and tank vessels.
- c. Livestock.
- d. Commodities of unusual value.
- e. Fresh or green fruits or fresh or green vegetables from fields or point of growth consigned to cold storage plants, precooling plants, canneries, accumulation stations, packing sheds, packing houses or other processing facilities.

For the purpose of subparagraph e above, the following definitions will apply:

- (1) Cold Storage Plant: Facilities maintained for the storage of commodities under refrigeration.
- (2) Precooling Plant: Facilities maintained for the purpose of precooling commodities for shipment under refrigeration.
- (3) Cannery: Facilities maintained for the processing of commodities at which the commodities are canned, preserved, dried, frozen, pickled, brined, or otherwise processed into manufactured products.
- (4) Accumulation Station: Yards or open areas maintained for the receiving of unprocessed commodities from the field, and accumulation and consolidation of such commodities for shipment to a cannery, winery, cold storage plant or precooling plant.
- (5) Packing Shed or Packing Plant: Facilities maintained for assembling, sorting, grading, or packing the commodity for shipment.

END OF APPENDIX A

Issued by California Public Utilities Commission.

Decision No. 66385, Application No. 42856.