

**ORIGINAL**Decision No. 67228

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application )  
of DIAMOND FREIGHTWAYS, a )  
corporation, for a certificate of )  
public convenience and necessity )  
to operate as a highway common )  
carrier for the transportation of )  
property. )

Application No. 44455  
(Filed May 17, 1962)  
(Amended December 17, 1962)

Donald Murchison, for applicant.  
Arthur H. Glanz, for Boulevard Transpor-  
tation Company, California Cartage  
Company, California Motor Express, Ltd.,  
Constructors Transport Co., Delta Lines,  
Inc., Merchants Express of California,  
Pacific Intermountain Express Co., Inc.,  
Pacific Motor Trucking Company, Shippers  
Express Company, Southern California  
Freight Lines, Inc., Valley Motor Lines,  
Inc., Halverson Transportation, and  
Los Angeles City Express, Inc.; Russell &  
Schureman, by R. Y. Schureman, for Jack A.  
Cronshaw, dba Mercury Freight Lines,  
Quikway Trucking Co., Ronga Truck Company,  
Square Deal Trucking Corporation, Swift  
Transportation Company, Brake Delivery  
Service, Burton Truck & Transfer Co.,  
G & H Transportation, Inc., Griley Security  
Freight Lines, and S and M Freight Lines;  
Henry W. Fulhorst, for Paxton Trucking Co.,  
and E. Wiczorek, for Railway Express  
Agency, Inc.; protestants.  
Babe Talsky, for Reliable Delivery Service,  
Inc; interested party.

O P I N I O N

Public hearings on the application were held before  
Commissioner Fox and Examiner Rogers in Los Angeles on July 18  
and 19, 1962, and before Examiner Rogers in Twentynine Palms on

August 9, 1962, and in San Bernardino on August 10, 1962. Thereafter, the application was amended to conform to the requirements of the Interstate Commerce Act to secure interstate rights coextensive with intrastate operations (Public Law 87-805, amending Section 206 of the Interstate Commerce Act), and notice of the application and of further hearings was published in the Federal Register. Thereafter, further hearings were held in Los Angeles on August 27 through 30, 1963. On March 17, 1964, the matter was orally argued and submitted. The protestants are listed above.

The applicant is a highway contract carrier of general commodities. It requests authority to conduct operations as a highway common carrier of both intrastate and interstate traffic for the transportation of general commodities with the usual exceptions: (a) to, from, and between all points and places in the Los Angeles Basin Territory; (b) between all points and places in the Los Angeles Basin Territory and Twentynine Palms via U. S. Highway 99 and an unnumbered highway intersecting same to Twentynine Palms, serving all intermediate points and serving the off-route points of the United States Marine Corps Base in Twentynine Palms and Desert Hot Springs; and (c) to establish through routes and rates between all points and places described in paragraphs (a) and (b). Applicant proposes to use all available public highways between points proposed to be served and within the cities proposed to be served.

Service is to be on call, but will be conducted daily, except Sundays and holidays, with Saturday delivery at destination points.

The rates to be charged for intrastate traffic are the rates established as minimum by the Commission as contained in Minimum Rate Tariff No. 2, and other tariffs of the Commission naming minimum rates, rules and regulations applicable to the transportation of the commodities proposed to be transported between the points involved herein.

The applicant corporation was formed on November 13, 1961, and commenced operations in February, 1962. Prior to the incorporation, various shareholders and officers of applicant were associated together as joint adventurers in the trucking business under contract carriers' permits. The corporation's articles authorized the issuance of 1,000 shares of no par value stock. At the time of the hearings, 100 shares of its stock had been issued for a stated price of \$30 per share. Twenty-five of these shares were held by Harold Hines, who has an arrangement whereby he is to receive 25 per cent of all issued stock, which is to be issued to him in exchange for his services. The officers of the corporation during the hearings were Hubert D. Howell, President; James J. O'Gara, Secretary-Treasurer; and Harold Hines, Vice President. Each was also a shareholder in the corporation, and the only additional shareholder was David H. Lewis. As of June 30, 1962, the president of the corporation had net assets he valued at \$574,227 (Exhibit No. 2). He stated he would commit \$100,000 to the use of the corporation, either as a loan or in exchange for stock therein, if such funds were needed.

The history of the applicant and its predecessor in the operation was outlined by its vice president who is also its

general manager. Prior to the incorporation of applicant in November, 1961, he was a traffic consultant and advisor to the various joint adventure groups which preceded the applicant. Between November, 1961, and the start of operations of the corporation in 1962, there was a seven-man joint adventure group which included some of the present shareholders. Prior to that time, and commencing early in 1960, there was a four-man joint adventure group, three of whom became members of the seven-man group. Each group operated pursuant to a contract carrier permit issued by this Commission. The four-man group permit was for operations within 50 miles of Los Angeles and it had one customer. The later seven-man group had a state-wide permit and had approximately ten customers. At the time of the hearings the applicant served between 45 and 50 customers.

Applicant has or has the use of three terminals. Its main terminal is at Orange where it can handle eight trucks or trailers. This facility is leased on a year-to-year basis, and applicant plans to replace this with a terminal in Garden Grove. Applicant's principal office is at this facility, and it performs light maintenance and does its billing thereat. Major equipment overhauls or repairs are to be done by outside contractors.

In San Bernardino, applicant has a contract with Auto Fast Freight for pickup and delivery in the area and has the use of 20 of its pickup units.

In Twentynine Palms, applicant has an undercover space, but no dock. This is located approximately halfway between

Twentynine Palms proper and the Marine Corps Base in an area called Smith's Ranch.

Applicant proposes not to exceed overnight time for delivery between any points in the proposed service area, and a same-day service between Los Angeles, on the one hand, and certain points, including Santa Ana, Orange, Fullerton and Anaheim, on the other hand.

On August 15, 1963, applicant owned equipment, including four trucks, ten tractors and 17 trailers varying from 22 feet to 40 feet in length. It had ten full-time and four part-time truck drivers.

As of March 20, 1962, applicant's total assets were \$16,606.87, and its current liabilities totaled \$7,974.41 (Exhibit "B" on application). As of July 31, 1962, applicant's total assets were valued at \$35,620.38, but its liabilities and the issued capital stock, having a stated value of \$3,000, exceeded the total assets by \$1,741.93 (Exhibit No. 5). On June 30, 1963, the total assets had increased to \$86,988, including revenue equipment having an original cost of \$64,422, and its liabilities and issued stock had increased to the point where they exceeded the assets by \$42,802 (Exhibit No. 10). These liabilities included \$92,368, listed as "Other Long Term Obligations", which represents money advanced by the corporation's president and heretofore referred to. This sum is allegedly not subject to any interest, is represented by notes, on demand, and may possibly be paid by a stock issue.

During the first eight months of 1963, applicant's gross revenues have shown a steady increase from \$10,320 in January to over \$16,681 in August (Exhibit No. 12). For the four months ending July 31, 1962, applicant had an operating loss of \$1,741.93 (Exhibit No. 6) and for the single month of June, 1963, applicant had net operating income of \$927 (Exhibit No. 11). Applicant's general manager testified that on a new operation he expected a loss for several months. No reason was given by applicant for choosing the month of June, 1963, to show the profit and loss experience and the receipt of this evidence was bitterly denounced by the protestants.

Applicant called 16 shippers as witnesses on and prior to August 10, 1962. Thereafter, the matter was continued from time to time, one of the reasons being to permit applicant to comply with the new requirements of the Interstate Commerce Act. Thereafter, on August 27, 1963, applicant recalled two of his prior public witnesses and one new witness. In addition, applicant called his general manager in different capacities representing two different companies. The first 16 witnesses were expressly cautioned that their evidence was not to include any reference to interstate transportation.

The applicant's witnesses represented shippers from various places in the Los Angeles Basin, San Bernardino, and Twentynine Palms. They had shipments varying in frequency from daily to once a week and in size from minimum to truckload. Collectively, they shipped all types of general commodities to, from, and between all points in the Los Angeles Basin Territory and

between said territory, on the one hand, and points to and including Twentynine Palms and the off-route points of the Twentynine Palms Marine Corps Training Center and Desert Hot Springs. These shippers have been shipping and receiving for periods ranging from several years to a few months. One had been doing business with the applicant's predecessor and had a contract with the applicant for transportation. The others had no contracts with the applicant and several of them had been solicited by applicant's general manager for their transportation business. The majority of them had been using the services of the applicant for all or a portion of their intrastate transportation for three or four months prior to the commencement of hearings in July, 1962. A few of these shippers were familiar with several of the numerous carriers serving the area involved, but the majority of them knew only four or five of the larger carriers. Some of them had complaints against existing carriers concerning the time of pickup or delivery and some of them had specific complaints against one or two carriers because of delays in transit. Some of the carriers desired Saturday service as proposed by the applicant.

After the recess for approximately one year, two of the prior shippers appeared and testified that they need and desire transportation as proposed by applicant for interstate service. They were familiar with the direct line transportation companies who carry in their own equipment from California to destination. They complained about time in transit of shipments coming into the State, but conceded that the delivering carrier is not responsible for time in transit of interstate shipments. One

witness was called who had not appeared at the prior hearing who has interstate and intrastate shipments and desires the services of the applicant on both types of transportation. Neither individually nor collectively did the shippers involved know all of the services available, nor have complaints against all of the existing carriers.

The general manager of the applicant figuratively changed hats and appeared as a representative of companies affiliated with the applicant and testified that their transportation would be given to the applicant if it were granted a certificate. This type of evidence, however, is worthy of little credence.

Fourteen of the protesting carriers and the one carrier which appeared as an interested party gave testimony in opposition to the application. These carriers transport intrastate shipments to, from, and between the Los Angeles Basin Territory or, in some instances, to, from, and between a somewhat smaller area, which does not include March Air Force Base, Laguna Beach, and points east of the line between said places. Some of the protesting carriers serve the extended area from Redlands and Yucaipa to Twentynine Palms, including the Marine Corps Base. Some of the carriers either are, or are affiliated with, interstate carriers and provide a direct service in interstate traffic. All but one or two of the carriers have registered their intrastate certificates with the Interstate Commerce Commission so as to have pickup and delivery of interstate traffic coextensive with their intrastate certificates. Some of the carriers concentrate or specialize more in interstate traffic, and one or two have special equipment



and facilities in the Los Angeles and Long Beach Harbors to enable them to handle incoming foreign shipments. These carriers have terminals in each case in or around Los Angeles, and several have two or more terminals in the basin territory. These carriers have equipment available to serve the area proposed to be served by applicant varying from 15 or 20 pieces of equipment to as much as 1,200 or 1,300 pieces of equipment. They all desire additional traffic, all have room and facilities for additional traffic, and all stated that additional carriers tend to dilute the traffic each carrier receives. The protesting carriers stated that they are operating in some instances at 70 per cent to 80 percent of capacity, and those asked stated that particular traffic of various shippers appearing as witnesses for the applicant would be acceptable and transported by them.

Upon consideration of the evidence, the Commission finds that:

1. Applicant is a California corporation and has a highway contract carrier permit issued by this Commission.
2. On May 17, 1962, applicant filed the above-entitled application for a certificate of public convenience and necessity as a highway common carrier for the transportation of general commodities, with specified exceptions, to, from, and between points in the Los Angeles Basin Territory as described in Item 270 of Minimum Rate Tariff No. 2, and between said territory, on the one hand, and points and places on U. S. Highway 99 and an unnumbered highway to Twentynine Palms, including the off-route point of Desert Hot Springs, on the other hand.

3. Four days of hearings on said application were held at stated places in California after notice thereof was served by mail on all California highway common carriers with which applicant was likely to compete. The last day of said series of hearings was August 10, 1962.

4. On October 15, 1962, the Congress of the United States of America amended the Interstate Commerce Act by enacting Public Law 87-805. Thereafter, and on December 17, 1962, as permitted by said law, applicant filed its First Amendment to the application requesting authority to transport said commodities in interstate and foreign commerce to, from, and between all places specified supra. On May 1, 1963, a notice was published in the Federal Register that Application No. 44455 of Diamond Freightways was filed on May 17, 1962; that said application was for a certificate of public convenience and necessity to operate a freight service for the transportation referred to above; and that there would be a hearing on the application on July 2, 1963, in Los Angeles, California.

5. A copy of the First Amendment to the application was mailed to all of the parties to which the original application had been mailed. A copy of said amended application and a copy of the original application were mailed to the Interstate Commerce Commission, Bureau of Operating Rights, Washington 25, D. C., and thereafter hearings were held after notice thereof to the various parties. All parties appearing and the parties notified of hearings were given a reasonable opportunity to be heard. The California Public Utilities Commission thereafter considered the question of the proposed interstate and foreign operations.

6. Applicant has sufficient equipment and facilities with which to reasonably perform the proposed intrastate and interstate commerce transportation.

7. Applicant was at the times of the hearings herein operating at a loss. It does not have the necessary finances to enable it to continue the operations for a reasonable time until the operations themselves generate funds with which to continue the service. The only way it is presently able to secure the necessary additional funds is by borrowing from its president, who, at the time of the hearings, had loaned applicant almost the entire amount he was willing to commit himself to loan to the applicant.

8. Applicant has a substantial number of customers who wish and desire that the applicant's services, as a California highway common carrier and as a carrier in interstate commerce, be available to them, but said customers are not aware of and have not tried all of the existing highway common carriers or interstate carriers serving in the territory applicant seeks to serve as a highway common carrier.

9. There are many California highway common carriers with interstate operating rights and interstate carriers also having California intrastate rights. All of the carriers who appeared and presented evidence as protestants were ready, willing and able to perform all or a portion of the service proposed by applicant, had sufficient equipment, personnel and finances to continue operations and to continue to serve the parties who appeared in support of the applicant.

10. The needs and requirements of applicant's customers for California highway common carrier service and trucking service in interstate and foreign commerce can be met by the presently certified and authorized interstate and intrastate carriers.

11. Applicant has failed to establish that public convenience and necessity require that applicant render the proposed service or any part thereof either in intrastate or interstate and foreign commerce.

Upon the foregoing findings, the Commission concludes that the application should be denied.

O R D E R

IT IS ORDERED that Application No. 44455 is denied.

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

Dated at San Francisco, California, this 19<sup>th</sup> day of May, 1964.

William W. Burrows  
President  
Robert E. Mitchell  
Robert W. Regan

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Commissioners

I concur in the order.  
George H. Grover  
I dissent. Frederick B. Halbach