

Decision No. 67724

**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
JOHN SCANNELL, doing business as )  
SCANNELL BROTHERS DRAYAGE, for a )  
certificate of public convenience )  
and necessity to extend his operations )  
as a Highway Common Carrier between )  
presently certificated territory and )  
Marysville, Bakersfield, Salinas and )  
other points. )

Application No. 45224  
(Filed March 8, 1963)

Marquam C. George, for applicant.

Graham James & Rolph by Boris H. Lakusta,  
for California Motor Transport Co., and  
California Motor Express, Ltd.; Con-  
structors Transport Company; Delta Lines,  
Inc.; Di Salvo Trucking Company, Fortier  
Transportation Company; Garden City  
Transportation Company; Merchants Express  
of California; Oregon-Nevada-California  
Fast Freight and Southern California  
Freight Lines; Pacific Intermountain Ex-  
press; Pacific Motor Trucking Company;  
Shippers Express; Sterling Transit Co.,  
Inc.; Valley Express Co., and Valley  
Motor Lines, Inc.,; Willig Freight Lines,  
protestants.

O P I N I O N

This application was heard before Examiner Daly at San Francisco and was submitted on February 20, 1964, upon the receipt of concurrent briefs since filed and considered. Copies of the application and the notice of hearing were served in accordance with the Commission's procedural rules. The protestants are shown in the appearances above.

Applicant's Case

Applicant is presently authorized to operate as a highway common carrier for the transportation of general commodities between San Jose, San Francisco, Oakland, Sacramento, Stockton, and Modesto

including all points within three miles thereof as well as all points and places on, along and three miles laterally of the highways connecting said points. By this application authority is requested to extend service to an area bounded by San Francisco, Napa, Woodland, Yuba City and Marysville, on the north, and Salinas, Taft and Bakersfield on the south. Authority is also requested to transport interstate traffic pursuant to the provisions of Section 206(a) of the Interstate Commerce Act, Part II, effective October 15, 1962.

Applicant proposes a daily overnight service Monday through Friday with the exception of holidays. The proposed rates are comparable to those prescribed by the Commission in Minimum Rate Tariff No. 2.

Applicant owns and operates 28 units of equipment including tractors, trailers, vans and flatbeds. He operates terminals in San Francisco, Sacramento and Stockton. If the authority sought is granted applicant proposes to acquire additional equipment as needed. In addition to 10 drivers applicant also employs two office workers, a solicitor and a driver-dispatcher. As of September 30, 1962, applicant indicated a net worth in the amount of \$57,375.54. For the first 9 months of 1962 he indicated a net profit in the amount of \$37,354.09.

Applicant's main terminal is located at Carroll and Ibgalls Streets in San Francisco. It consists of dock and office facilities in addition to a service yard of approximately 20,000 square feet. The Stockton and Sacramento terminal facilities consist of leased space. Each has assigned a full-time driver, a tractor and trailer and each is provided with a telephone answering service.

As a result of the growth of the towns and communities within the proposed area applicant claims that he has received

numerous requests from his customers to extend his service. According to applicant the major portion of his operations has been performed pursuant to his certificated authority and only 2 percent of his gross revenue is derived from operations performed pursuant to his permitted authority.

Public Witness Testimony

Applicant introduced the testimony of 19 public witnesses, 3 of whom were manufacturers representatives, who between them shipped on behalf of 23 accounts. Sixteen public witnesses represented business concerns located in San Francisco. The others represented business concerns located in Sacramento, Emeryville and Burlingame. The commodities handled by their respective companies covered a wide variety of items such as electrical cable, heavy hardware, drains, pumps, wire, conduit, lamps, rope, twine, canned goods, paper, machinery, electrical switches, plumbing supplies, glass and appliances.

In general the public witnesses testified that they have been using applicant's service to his presently certificated area and desire to have his service made available to the proposed area. Each was interrogated in detail as to the points to which his company shipped within the extended area, the frequency with which they shipped and as to the nature of the existing service. For the most part the witnesses testified that they have occasion to make shipments ranging in size from 100 pounds to 30,000 pounds to many of the proposed points, including off-route points such as construction sites, on a frequency varying from daily to occasionally. They were generally agreed that the existing services were satisfactory, however, several complained that the existing carriers did not always provide a satisfactory pickup service in that the time was not always convenient for the shipper's needs, or the proper equipment was not

always available. Several complaints were directed to delays in transit and excessive damage claims.

Most of the witnesses testified that they would divert all or part of their traffic moving to the proposed area from the existing certificated carriers to applicant for one or more of the following reasons: (1) applicant provides a dependable overnight service; (2) applicant picks up at the shipper's convenience and will provide an emergency pickup service when the occasion arises; (3) shipper has limited dock space and shipping facilities and therefore desires the use of a limited number of carriers having a wide territorial cover; (4) applicant's drivers are familiar with shipper's business practices and can make delivery from large lot shipments without the need of having each shipment specifically marked; and (5) applicant's service is such that there is little, if any, damage to shipments.

Speed in transit was important to certain witnesses who testified that their distributors prefer to work on a limited inventory and depend upon the shipper to make delivery of their orders as soon as possible. According to these witnesses they are presently receiving such service from applicant to the extent of his existing certificated authority. The record is almost devoid of any evidence in support of applicant's request to transport shipments moving in interstate commerce.

#### Protestants' Case

Affirmative showings in protest to the granting of the application were made by Delta Lines, Fortier Transportation Company, Di Salvo Trucking Company, California Motor Transport Co., Merchants Express of California, Southern California Freight Lines, Oregon-Nevada-California Fast Freight, Valley Motor Lines, Inc., and Pacific Intermountain Express Company. Said carriers introduced oral and documentary evidence relating to their present service within the

proposed area. Each possesses and operates extensive fleets of equipment. Each owns and operates terminal facilities strategically located throughout the extended area. The terminals are equipped with modern means of communication for the purpose of dispatching equipment and tracing shipments. Because of the competitive nature of the transportation business protestants actively solicit business through salesmen and by advertising in magazines and trade journals. It is their contention that the granting of the authority sought would lead to a diversion of traffic and a decrease in load factors, which they claim would have to be corrected by increasing rates.

According to the testimony of four of the protestant's representatives their companies have served without complaint, many of the public witnesses, who testified on behalf of applicant.

Protestants argue that although applicant is admittedly a conscientious operator performing an efficient service for his customers, he is merely proposing one more efficient five-day overnight service into an area where there is not sufficient traffic to support the existing certificated carriers. They contend that any efficient certificated carrier could produce a string of satisfied customers to support an extension of service regardless of whether there was a need for such service. They further contend that there was no showing that the existing service was inadequate and that in the absence of such a showing shipper preference is not a proper ground for granting a certificate.

Although each of the protestant representatives testified that they are not now operating their terminals and motor equipment at 100 percent capacity they readily admitted on cross-examination that to do so would be an ideal situation, which, from a practical point of view, is seldom, if ever, realized. They admitted also that as a matter of good business practice they have in the recent past

expanded their terminal facilities and have made additions to their terminal facilities and to their motor vehicle equipment as the result of increased demands upon their service. With few exceptions they admitted that their respective companies have been operating at a profit.

After consideration the Commission finds that:

1. Applicant is presently operating as a highway common carrier pursuant to certificated authority duly issued by this Commission.

2. Applicant is presently providing daily overnight service five days a week to points within the scope of his certificated area. He proposes to extend the same service to the area covered by the instant application.

3. Applicant possesses the necessary facilities, equipment and financial ability to provide the proposed service.

4. Applicant introduced the testimony of public witnesses who are presently using his existing service, primarily from San Francisco, and desire to use his service to the proposed area for one or more of the following reasons: (1) applicant provides a fast, dependable service, which is essential to certain distributors who operate on a limited inventory; (2) applicant provides a pickup service to meet individual business needs and requirements; (3) applicant provides an emergency service when requested; (4) applicant's drivers are familiar with his customer's commodities and can make delivery from large lot shipments without the need of marking each shipment; (5) some of applicant's customers have limited dock facilities and wish to reduce dock congestion by making greater use of his service.

5. Although there were some complaints that certain of the existing carriers failed on occasion to provide a satisfactory pickup service, did not consistently provide an overnight service, and were unable at times to supply special equipment, the over-all service of the existing certificated carriers is satisfactory.

6. Certification of the proposed service would result in some diversion of traffic from the existing carriers because it will better meet the business needs and requirements of certain shippers. With each certificate that is granted there is bound to be some diversion. Most of the protestants herein have extended their individual certificated operations within the recent past and as a result thereof have diverted traffic from other carriers without compunction and apparently without disturbing the economic balance.

7. Almost without exception the protesting carriers have expanded their terminal facilities within the proposed area, have made additions to their equipment and are operating at a profit.

8. With the exception of intrastate shipments originating at San Francisco and destined to points within the proposed area the record contains little, if any, evidence supporting the requested authority to transport intrastate shipments moving between other points and it contains no evidence to support applicant's requested authority to transport shipments moving in interstate commerce.

9. Public convenience and necessity require applicant's service on intrastate shipments originating in San Francisco and destined to points within the proposed extended area.

The Commission concludes that the application should be granted to the extent provided in the following order, and that in all other respects said application should be denied.

O R D E R

IT IS ORDERED that:

1. A certificate of public convenience and necessity is hereby granted to John Scannell, doing business as Scannell Brothers Drayage, authorizing him to operate as a highway common carrier, as defined in Section 213 of the Public Utilities Code between the points set forth in First Revised Page 2 and Original Pages 3 and 4 attached hereto and 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) With 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 of the California Highway Patrol, the 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.



3. Appendix A of Decision No. 60299 is hereby amended by substituting First Revised Page 2 in place of Original Page 2, and by adding Original Pages 3 and 4.

4. In all other respects Application No. 45224 is hereby denied.

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

Dated at San Francisco, California, this 18th day of August, 1964.

Frederick B. Holdhoff  
President  
John E. Mitchell  
Carol A. Page  
William L. Bennett  
Commissioners

I dissent. I do not agree that public convenience and necessity require the proposed service.  
George E. Grover

John Scannell is also authorized to transport shipments of general commodities from San Francisco to all points and places on, along and within three miles laterally of the following routes:

- (a) U.S. Highway 99 between Modesto and Bakersfield including the off-route points of Sanger, Reedley, Dinuba, Visalia, Exeter, Lindsay, Porterville and Hanford.
- (b) State Highway 33 between Taft and its intersection with U.S. Highway 50.
- (c) U.S. Highways 399 and 99 between Taft and Bakersfield.
- (d) State Highway 88 between Stockton and Lockeford.
- (e) State Highway 8 between Stockton and Bellota.
- (f) Unnumbered county road between Bellota and Modesto.
- (g) State Highway 120 between Manteca and Oakdale.
- (h) Unnumbered county road between Oakdale and Modesto including Riverbank.
- (i) State Highway 132 between Modesto and Waterford.
- (j) Unnumbered county road between Modesto and Hughson.
- (k) State Highway 24 between Antioch and Sacramento, including the off-route points of Rio Vista and Thornton.

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- (l) U.S. Highway 101 between San Jose and Salinas.
- (m) State Highway 152 between Gilroy and Califa.
- (n) U.S. Highway 99-E between Sacramento and Yuba City.
- (o) U.S. Highways 40 and 99-W and State Highway 24 between Sacramento and Yuba City.
- (p) All points and places within the County of Contra Costa.
- (q) All points and places within a radius of the City Limits of Sacramento.
- (r) All points and places within a radius of the City Limits of Fresno.
- (s) State Highway 29 between Vallejo and Napa.

For operating convenience applicant may use any and all streets, roads, highways and toll bridges necessary or convenient for the performance of the service herein authorized.

Conditions

With the exception of San Francisco applicant may not link operations between previously certified points and those specified in subparagraphs (a) through (s) 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 the use of special refrigeration or temperature control in specially designed and constructed refrigerated equipment.
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.

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