

Decision No. 68682**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of EDWARD T. MOLITOR, for a Certificate of Public Convenience and Necessity, to operate as a highway common carrier, generally, of garments on hangers to and between certain points in San Diego County as an extension of existing service.

Application No. 44585
(Filed June 25, 1962)

Petition to Reopen
(Filed April 7, 1964)

Robert H. Molitor, for applicant.
Graham James & Rolph, by E. Myron Bull, Jr., for Boulevard Transportation Co., California Cartage Company, California Motor Transport Co., Callison Truck Lines, T.I.M.E. Freight, Inc., Delta Lines, Inc., Di Salvo Trucking Company, Fortier Transportation Company, Garden City Transportation Company, Merchants Express of California, Nielsen Freight Lines, Oregon-Nevada-California Fast Freight and Southern California Freight Lines, Pacific Intermountain Express, Pacific Motor Trucking Company, Shippers Express, Sterling Transit Co., Inc., Valley Motor Lines, Inc., and Willig Freight Lines, protestants.

O P I N I O N

The Commission, by Decision No. 64482, dated October 30, 1962, in Application No. 44585, granted a certificate of public convenience and necessity to Edward T. Molitor to operate as a highway common carrier in intrastate commerce. On May 5, 1964, in the petition filed April 7, 1964, the Commission issued its order reopening the proceeding for the purpose of determining whether

Decision No. 64482 should be amended to include a finding that public convenience and necessity require that applicant be authorized to engage in interstate and foreign commerce within limits which do not exceed the scope of the intrastate operation authorized to be conducted by Decision No. 64482. Copies of the petition and notices of hearing were served in accordance with the Commission's procedural rules, and notice of the petition for a certificate of registration to conduct operations in interstate and foreign commerce was published in the Federal Register of May 27, 1964.

Applicant reaffirms his original application with exception of the financial statement which is brought down to date to include the year 1963, and alleges that it is his desire also to engage in transportation of commodities described herein in interstate and foreign commerce within the limits of the intrastate authority contemplated by this application.

The additional territory to be served in interstate commerce includes Del Mar, Solano Beach, Rancho Santa Fe, Escondido, San Marcos, Vista, Oceanside, Carlsbad, Leucadia, Encinitas, and Cardiff-by-the-Sea.

Public hearing was held before Examiner DeWolf on September 17 and November 17, 1964, at San Diego, California, and the matter was submitted on November 17, 1964, upon the filing of briefs.

Protestants filed a motion to rescind the order of the Commission reopening the proceedings, and the applicant filed an answer to the motion. This motion raises the legal questions of res judicata and jurisdiction of the Commission to reopen its decision after expiration of more than two years.

The motion to rescind the order reopening this proceeding should be denied for the reason that the Commission has continuing jurisdiction, upon notice and after opportunity to be heard, to alter, amend or rescind a prior order. (Pub. Ut. Code, sec. 1708.)

At the time of filing the application in this matter it was not necessary for applicant to establish interstate public convenience and necessity in order to register the certificate with the Interstate Commerce Commission. The Amendment to the Interstate Commerce Act became effective on October 15, 1962, and changed the procedure so that Decision No. 64482, dated October 30, 1962, could not be registered with the Interstate Commerce Commission. Therefore, applicant was allowed in this proceeding to show the facts required under the Interstate Commerce Act, as amended, effective October 15, 1962.

At the hearing applicant and four witnesses testified in support of the application. Applicant testified that he is now conducting daily service under his present certificate; that there is no other service operating in the area devoted to the transportation of garments on hangers as is his; that his motor equipment and employees are substantially the same as described in Decision No. 64482; his motor equipment, originally consisting of three semi-trailers, three tractors, and five power trucks has been increased by two units and is fully paid for; that he employs six full-time and two part-time drivers, three full-time and two part-time office help.

Applicant testified that the recent local operation in this area in intrastate freight has not been profitable, that applicant's total operations in his last financial statement show a reduction in profit of at least \$2,000, while the total revenue increased during the same period by \$7,000 and that it is necessary for applicant to have interstate authority in this new territory to make the operation profitable.

Applicant testified that he has space available for this additional freight without increasing his equipment or personnel, and that the extension of his present service to interstate and foreign commerce will greatly improve his financial position.

Applicant testified that interstate freight is about half of the business; that there are 59 merchants on this new route to the points in question who are deprived of this service for commodities in interstate and foreign commerce; that he made a survey of the area and found many other businessmen in the area who stated they would use the service and would write letters or testify, if needed, to secure the service, and that their testimony would be similar to the testimony of the witnesses who did testify.

It was stipulated by applicant and protestants that witnesses were available who would testify for the applicant that no service is presently available in interstate commerce to the points covered by this application for handling garments on hangers.

Three shipper witnesses who are engaged in business in the territory testified for applicant that they were in great need of the services to be supplied by applicant; that no similar service is now available to the clothing dealers in the area; and that they all will use the service. These three shippers are presently using United States mail parcel post and United Parcel Service and other services, all of which require the merchandise to be flat packed in cartons which results in increased cost due to such packaging and additional pressing resulting therefrom. All of said shipper witnesses represented substantial businesses in operation in the area for more than four to ten years, and do a large volume of business.

The shipper witnesses testified that transportation service of garments on hangers was required to save the cost of processing the garments, to expedite the handling of the merchandise and reduce the damages to the garments, and that this type of transportation is needed to keep them in a competitive position with the larger centers of population. One witness testified that he is engaged in interstate commerce from the East and moves approximately 14 solid truckloads from the East each week of 11 to 12 tons per load, and needs the service of this applicant for the local territory he is requesting. This witness also testified that clothing accessories are included with the garment and tied to the hanger.

One shipper witness testified that she was being compelled to discontinue handling the clothes fashions from the East because she could not get delivery of garments on hangers. Another witness for a chain store testified that the annual volume of one outlet is about \$400,000 worth of garments on hangers, and that service of this type was essential to his business. The shipper witnesses generally testified that their business is increasing and that shipments from the East out of state would increase more with the applicant's service available in interstate commerce.

Three witnesses testified in support of the position of protestants and opposed the application, and each witness represented a different carrier. Exhibits 1, 2 and 3 constitute proof of the operating authority of three of the protesting carriers. The protestant witnesses testified that each of them has interstate authority, and offers service to all the points requested by the applicant for the transportation of general commodities including clothing. It appears from such testimony, however, that none of the protestants has any facilities for or offer any service in, the transportation of garments on hangers to any of the points requested by applicant.

These witnesses testified that granting of interstate authority to applicant would take away some of the freight the protestants presently handle in cartons and packages.

Findings

Upon consideration of the evidence, the Commission finds as follows:

1. Applicant possesses the experience, equipment, personnel, and financial resources to institute and maintain the service hereinafter authorized.
2. Public convenience and necessity require that the application be granted as set forth in the ensuing order.
3. The shippers who have made use of applicant's service do not now have, and have not had, adequate transportation service available from protestants, or otherwise, to satisfy said shippers' requirements in an efficient and speedy manner.
4. The shippers who make use of applicant's services will be afforded advantages such as direct service and delivery of the garments on hangers instead of cartons.
5. None of the protestants offer the services proposed by applicant although these protestants do have authority to transport general commodities.
6. Due notice to interested persons has been given through publication in the Federal Register of the filing of the petition and of the desire of applicant also to engage in transportation in interstate and foreign commerce within limits of the intrastate authority granted; reasonable opportunity has been afforded interested persons to be heard, and the Commission has duly considered the question of the proposed interstate and foreign operations.
7. Public convenience and necessity require that applicant also be authorized to engage in operations in interstate and foreign commerce within limits which do not exceed the scope of the intrastate operations authorized to be conducted by Decision No. 64482.

The Commission concludes that the application should be granted as set forth in the order.

O R D E R

IT IS ORDERED that:

1. The motion to rescind the order reopening this proceeding is denied.

2. Decision No. 64482 dated October 30, 1962, in Application No. 44485 is hereby amended by inserting on page 4 thereof Finding 3 to read:

"3. Public convenience and necessity require that applicant be authorized to engage in interstate or foreign commerce within limits which do not exceed the scope of the intrastate operations authorized to be conducted herein."

3. In all other respects, said Decision No. 64482 shall remain in full force and effect.

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

Dated at Los Angeles, California, this 2nd day of MARCH, 1965.

Fredrick B. Halaloff
President

William B. Belmont
Commissioners

I concur in the order.
George H. Grover