

ORIGINALDecision No. 71736

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application
of WALKUP'S MERCHANTS EXPRESS, a
corporation, for a certificate of
public convenience and necessity
to extend highway common carrier
service.

Application No. 47472
(Filed April 5, 1965)

Bruce A. Geernaert, for Walkup's
Merchants Express, applicant.
Boris H. Lakusta, Richard Eastman
and E. Myron Bull, Jr., for
Willig Freight Lines, protestant.

O P I N I O N

Walkup's Merchants Express (Merchants) seeks authority to serve Fort Bragg and nearby points. This application was heard before Examiner Rowe at Fort Bragg on July 8, 9, September 28 and 29; at San Francisco on August 11, 12, September 14, October 1, 25, and 26, 1965. Copies of the application and the notices of hearings were served in accordance with the Commission's procedural rules. The protestant is Willig Freight Lines (Willig), the carrier presently serving the area sought to be served by Merchants. Before the conclusion of the hearings each party filed a petition for a proposed report by the presiding officer.

Merchants is a highway common carrier engaged in the transportation of general commodities with the usual exceptions between the principal points and along most of the highways of the State of California. Merchants's present authority is limited as follows:

"EXCEPTION 2: Merchants Express of California is not authorized hereunder to serve points and places more than 20 miles west of U. S. Highway 101 between Santa Rosa and Longvale, both inclusive."

This exception prevents service to and from Fort Bragg and nearby points along State Highway 1. Merchants consequently seeks the removal of Exception 2 so that it may serve the excluded area. Merchants also requests authority to serve these points and places in interstate commerce, pursuant to the provisions of Section 206 of the Interstate Commerce Act.

Merchants's Evidence

Merchants proposes to offer daily scheduled service except Saturdays, Sundays, and holidays. The rates to be assessed and the rules covering the same will be generally those established as a minimum by this Commission and contained in Minimum Rate Tariff No. 2 and the other minimum rate tariffs providing rates and rules applicable to the transportation of commodities.

No issue was raised as to Merchants's experience and ability to equip and initiate the proposed transportation service. At the hearing, in addition to the operating witness, Merchants produced 14 public witnesses from the Fort Bragg area and 9 witnesses from the San Francisco Bay area. The testimony of these witnesses concerning the need for the proposed service indicated that it would:

1. Permit a single-line operation presently available only to the customers of Willig;
2. Reduce the incidence of lost or damaged shipments and expedite processing of damage claims;
3. Materially reduce transit time for those shippers whose places of business are served by Merchants's pickup trucks;
4. Reduce the congestion at the docks of several of Merchants's present shippers;
5. Provide refrigerated equipment better adapted to the transportation of fish and seafood shipments from Fort Bragg to Sacramento;

6. Increase the number of schedules operating in the Fort Bragg area;

7. Make available split pickup and split delivery service as to freight moving to or from the San Francisco Bay area, in conjunction with freight moving to or from points north of Fort Bragg along U. S. Highway 101, such as Eureka and Crescent City; and

8. Provide better emergency service and make available lower rates by eliminating the necessity for the use of the combination of local rates, since Willig indicated that it had not entered into any joint rate agreements.

Certain testimony should be set forth in more detail.

The experiences of one shipper, the Johnson & Johnson Company, summarize the needs of Merchants's shipper witnesses on shipments to the Fort Bragg area. This company ships, from its Menlo Park facility, 100,000 pounds of freight per day. It utilizes two primary carriers for its intrastate shipments, Merchants and Oregon Nevada California Fast Freight, Inc. Its loading dock has ten spots for trailers and loading is a continuous all day process. When an order comes in to be shipped by a carrier not utilizing a spot on the dock, the freight piles up on the dock while awaiting the carrier. When the carrier arrives a spot must be found and a man must be taken off his regular job to load the carrier. This upsets the shipper's loading pattern, is inconvenient, and is costly. Freight to Fort Bragg is shipped on Willig's equipment because the inconvenience and cost of calling Willig are outweighed by the higher combination rate that would have to be paid if the originating carrier were Merchants. The shipper would like to eliminate the need to call Willig for freight destined to Fort Bragg.

Witnesses representing the fresh and frozen fish industries

located in the Fort Bragg area support this application. These industries need direct service between the Eureka-Crescent City area, where they have facilities, and Fort Bragg; and they need a split pickup and split delivery service, to or from those cities and the San Francisco Bay area, in conjunction with shipments originating at, or destined to, Fort Bragg. As these services cannot be obtained from Willig, proprietary carriage or illegal^{1/} carriage is utilized.

There was testimony that fishing boats unload their catch at Fort Bragg at various times of the day and night. The catch cannot always be processed in time to meet a common carrier's schedule so other transportation is used. Such other transportation would continue to be used when common carrier schedules could not provide service at the needed times even if the application were to be granted.

Merchants proposes to provide these needed services but asserts that it cannot maintain such services unless, at the same time, it is authorized to carry general freight as proposed in its application.

Willig is sometimes used to haul fish from Fort Bragg to San Francisco and its service is adequate in those instances when the fish are processed in time to meet its schedule.

^{1/}

"Illegal carriage" as used herein means intrastate hauling for compensation of commodities subject to the Commission's Minimum Rate Tariffs without authorization from the Commission.

Willig's Evidence

Willig introduced the testimony of its past president, its traffic manager, its general manager, and 16 public witnesses representing firms in the Bay Area and Fort Bragg area, which ship and receive freight over its lines.

Willig began serving the Fort Bragg area in 1938. It presently serves the area on a daily basis plus half-day Saturdays. Inbound shipments are brought to its Fort Bragg terminal on a "train" consisting of a tractor and two trailers. Every evening a tractor and one trailer leave its San Francisco terminal for the Fort Bragg area with freight that has come from Los Angeles, Fresno, and other points south of San Francisco. The tractor and trailer make one stop in Berkeley where they pick up a trailer destined for the Fort Bragg area that has been loaded with freight originating at Sacramento, San Jose, Stockton, and points generally north and east. The train then proceeds to Fort Bragg, arriving at approximately 8:00 a.m. At Fort Bragg the freight is transferred to smaller pickup trucks for delivery in the area. Perishables and special orders are delivered first; it usually takes all day to complete delivery of all freight, with an occasional carryover to the next day. Outbound freight may be deposited at the Fort Bragg terminal or may be tendered to a pickup truck driver for shipment out of the area. Willig accepts all freight tendered at Fort Bragg.

In 1964, the average weekly tonnage, inbound, was 165,073 pounds or 61.5 percent of legal capacity; outbound, 31,801 pounds or 12 percent of legal capacity. Inbound shipments averaged 85 percent of visual capacity of the equipment used.^{2/}

^{2/} Legal capacity (maximum payload weight allowed) may differ from visual capacity because of density and bulk of freight.

Revenue attributable to the Fort Bragg terminal was estimated by Willig to be, in 1963, \$188,871 inbound; \$43,339 outbound; total \$232,210. Revenue for 1964 was estimated to be \$222,115 inbound; \$40,414 outbound; total \$262,529.

Willig attempts to provide overnight service to Fort Bragg from the Bay Area. Schedules are constructed to provide service from outlying points to the terminals at Berkeley and San Francisco in sufficient time for freight to be transferred to the Fort Bragg train. Evidence was adduced to show that Willig's service from Bay Area points to those shippers and consignees called as witnesses by Merchants was overnight delivery 84 percent of the time. Failure to deliver overnight generally occurred with C.O.D. shipments, will-call shipments, and shipments where consignees had to be notified that the goods were available for delivery.

Inclement weather and adverse road conditions sometimes cause serious delivery problems. Floods wash out roads and cause trees to fall across the highway. This requires Willig to provide lead cars and tow trucks to help get the merchandise through. Also, alternate, little used roads must be traversed when the main road is blocked thus requiring more men, equipment, and time to be expended than would normally be needed.

Willig introduced testimony to show that Merchants's complaint about lack of split delivery service was largely theoretical. That is, if the application herein were to be granted Merchants's shippers would not be able to avail themselves of low split delivery rates because of lack of tonnage shipped into the area. Of hundreds of shipments within a two-week period, analysed by Willig, only one was found wherein split delivery service would have saved shipping charges.

Willig answered Merchants' witnesses' complaints of two-day delivery service to the Fort Bragg area from points that normally would have overnight delivery service, with evidence that this was usually caused by the shipper or consignee specifying Merchants' service (or a third carrier's) for the first leg of the haul with the necessary consequence that the originating carrier has to turn over the freight to Willig for delivery into the Fort Bragg area. Such transfer often caused delay. In the great majority of these cases Willig served the same point of origin as the originating carrier and had Willig been selected as the originating carrier, transfer would have been eliminated and overnight service could have been provided. To the same effect, witnesses' complaints of paying a combination of local rates could have been largely obviated by selecting Willig as the originating carrier.

Willig produced testimony to show that it is an efficient carrier; loss and damage claims are settled promptly; customers are satisfied with the present service; any dilution of traffic will reduce its revenues with a possibly deleterious effect on service; and competition in this particular area is more likely to cause a rise in freight rates (or deterioration of service) than a reduction in freight rates.

Discussion

General Principles

One of the reasons for requiring certain motor carriers of freight to obtain certificates of public convenience and necessity is to promote good service by excluding unnecessary competing carriers, thereby promoting the public interest and preventing waste. In certain territories served by the trucking industry, experience has shown that the financial burdens incident

to unnecessary duplication of facilities and service are likely to bring high rates and poor service. Cost is dependent, among other things, upon volume and sufficient volume may not be obtained if available traffic is divided among competing carriers. Under such conditions, unit costs may so increase as to make it impossible to provide adequate service at reasonable rates. The certificate requirement recognizes that under certain circumstances excessive competition is harmful to the public, and that, in such a case, entry into a particular territory should be limited or denied entirely.

If the need exists it is the duty of the Commission to grant certificates of public convenience and necessity to qualified applicants. But when a territory is already sufficiently and satisfactorily serviced it is not enough to show merely that it may be more convenient if there is another service added to the territory. It is not only the needs of particular shippers and receivers of freight, or the needs of a particular carrier, with which the Commission must be concerned in a certificate proceeding; the Commission must be concerned with the needs of the public.

The needs of the public often are as varied as the areas to be served. The mountain and desert areas of the State present unique situations. In these areas roads are sometimes poor and alternate routes often nonexistent; frequently distances are great between sparsely populated towns; traffic is usually inbound, with few backhauls; the elements are an everyday hazard, and special equipment is needed to cope with extremes of heat and cold, wet and dry weather. A carrier entering this kind of area could capture some traffic, and yet be forced, because of financial or other reasons, to withdraw a short time later, leaving behind competitors who themselves might have been harmed by the diversion of traffic. Fort Bragg and its environs constitute such an area.

When the evidence adduced at the hearing in this matter is considered in the light of the above principles, it is clear that Merchants has failed to show a public need for its service.

Area

The area that Merchants proposes to serve is located in Mendocino County and encompasses the towns of Fort Bragg, Noyo, Mendocino, Caspar, Albion, Manchester, Point Arena, Gualala, and others. Merchants's witnesses estimated the population of this area from 8,000 to 35,000. The larger estimates are not persuasive as few of the witnesses defined, with sufficient accuracy, the area to which they were referring. Willig placed in evidence Exhibit No. 20 showing the 1964 estimated population of certain towns within the area in question. We take official notice of a 1961 population estimate and set forth a comparison:

<u>Town</u>	<u>1961</u> ^{3/}	<u>1964</u> ^{4/}
Fort Bragg	4,433	4,433
Noyo	600	25
Mendocino	900	900
Caspar	250	300
Albion	300	350
Manchester	112	150
Point Arena	596	596
Gualala	300	400
Total	7,491	7,154
Less Noyo	600	25
Total	6,891	7,129

^{3/} Rand McNally & Co. Commercial Atlas and Marketing Guide (1961, 92d Edition).

^{4/} Rand McNally Road Atlas (1964, 40th Edition).

Comparison shows that the area has actually lost population. Even if the drastic population drop in the case of Noyo were to be discounted, the resulting figure shows a net gain of only 238 persons, an insignificant number for consideration in this certification proceeding. And, even if we were to suppose that as many persons in the Fort Bragg area live outside the above enumerated towns as live in the towns and growth within and without the towns were proportional, it is apparent that any increase in population within the past few years, in absolute numbers, is still insignificant. In fact, population figures for Mendocino County show a slight decline between 1960 and 1965,^{5/} and a projection of population to 1970 of 53,000 persons^{6/} shows only a slight increase in absolute numbers.

The increase in revenue attributable to freight handled at the Fort Bragg terminal was from \$232,210 in 1963 to \$262,529 in 1964. But balanced against this is the fact that in 1964 Willig's average tonnage was only 61.5 percent of legal capacity, inbound, and 85 percent of visual capacity, inbound. There is room for additional freight on Willig's equipment that can meet the needs which foreseeable growth in the area will create.

We recognize that a carrier, by adding equipment, can always create an excess of capacity over payload. But in this case the evidence shows that Willig's use of two trailers, one at San Francisco and one at Berkeley, is a most efficient and economical way of providing overnight service to Fort Bragg from points in California.

^{5/} 1960 - 51,059 persons; 1965 - 51,000 persons; Rand McNally & Company, Commercial Atlas and Marketing Guide (96th Ed., 1965).

^{6/} California Information Almanac 459 (1966).

Adequacy of Service

1. Needs of Shippers

Most shippers of large volumes of freight have problems similar to those of Johnson & Johnson (set forth under Applicant's Evidence, above). No doubt it would be less costly^{7/} and more convenient for a shipper to have two or three carriers that could be used for shipments to every part of the State. However, to grant a certificate on this basis would not only place certification within the control of shippers rather than this Commission but would also shift the criteria for certification from public convenience and necessity to shipper convenience. The need of shippers is only one factor in determining public convenience and necessity. Willig's shipper witnesses testified to the adequacy of Willig's service. We find that as far as shippers are concerned, there is adequate service to the Fort Bragg area, except for some fish shipments. Most difficulties arising from delays in transit and the use of combination rates can be avoided by choosing Willig as the originating carrier; infrequent shipments make the inconvenience of such choice minimal.

Willig's service for shippers from the Fort Bragg area is adequate except for shipments of fresh and frozen fish. This inadequacy is caused to a great extent by Willig's lack of authority to serve the Eureka-Crescent City area. Merchants could satisfy this need but Merchants testified that it cannot economically serve the fishing industry in the Fort Bragg area unless it is also permitted to haul general freight into the area.

^{7/}

Except in those instances when even two carriers in a given area might so dilute traffic that service might deteriorate and rates could go up.

2. Needs of Consignees

Merchants presented several witnesses who receive freight in the Fort Bragg area. They complained about lack of overnight service from the Bay Area, late deliveries, need for overnight service from points not directly served by Willig, and high combination rates. These witnesses extolled the virtues of competition: supplying better service at lower rates. However, when asked if they wanted competition if it meant poorer service and higher rates they replied in the negative.

Willig's consignee witnesses testified to the adequacy of Willig's service, their promptness in pickup and delivery, satisfaction with overnight service from the Bay Area, courtesy of its drivers, and lack of need for a competing carrier. These witnesses were afraid that competition would cause deterioration of service and possibly higher rates.

Obviously all customers of a trucking company cannot always have pickup and delivery service at their optimum feasible pickup or delivery time. Some must take earlier service and some must take later service. And, unless we were to certificate every carrier for every point in the State, some users will have to pay combination rates and some freight will take longer in transit because of transfer requirements between carriers. Even in a situation where one carrier serves all points in question freight may be delayed because of routing requirements or intra-carrier transfers.

The evidence introduced by Merchants regarding consignee complaints represents the minor frustrations inevitable in the trucking business and could be introduced against all carriers in the State, including Merchants. Willig's evidence shows that its service to and from the Fort Bragg area is adequate, with the exception of transportation of some fish.

3. Needs of the Public

The public need is to have adequate service at reasonable rates, without discrimination. Merchants's evidence shows that if this application is granted specific shippers and consignees may be immediately benefited; Willig's evidence shows that such benefits will divert traffic from Willig, cause its revenues to go down, lead to a deterioration in its service, and possibly create justification for rate increases to and from the area. Certification of Merchants will cause both it and Willig to have marginal operations in this area and such operations cannot provide the adequate service that the public is entitled to receive and is presently receiving from Willig. Notwithstanding the fact that certification of Merchants might provide, at the outset, better service for some shippers and consignees, we find that such certification, by diluting traffic in a more or less static economy, would merely substitute two marginal operations for a viable one. The public does not need Merchants's proposed service and the public would be damaged by it.

Financial Harm to Willig

There was no direct testimony concerning the subject of financial harm to Willig, if this application were to be granted, other than the predictions by Willig's management witnesses that its revenue would go down and service would deteriorate. Reasonable inferences drawn from other evidence presented at the hearing lead inevitably to the conclusion that this prediction is correct.

All of Merchants's shipper witnesses and most of its consignee witnesses use Willig's service for transportation of freight in and out of the Fort Bragg area. (Some freight is carried by illegal carriers and some by proprietary carriers.) We may infer that if this application is granted these witnesses will utilize

Merchants's service extensively, to the detriment of Willig.

Willig's evidence showed the need to use one tractor and two trailers in its Fort Bragg operation. One trailer, spotted at San Francisco, and one trailer, spotted at Berkeley, are required to handle freight, coming from all points, in an expeditious manner so as to insure overnight service from these terminals to Fort Bragg. In 1964 these trailers, on average, were loaded to 61.5 percent legal capacity and 85 percent visual capacity. If visual capacity were reduced below 50 percent, the evidence persuades us that the present two-trailer operation would still be required to prevent deterioration of overnight service to Fort Bragg. To the extent that freight is diverted from Willig to Merchants it is manifest that Willig's revenue would go down, but present expenses would remain substantially the same.

Findings of Fact

1. The area in which Merchants seeks to extend its service is sparsely populated; has rugged terrain; and is subject to inclement weather conditions that adversely affect truck transportation.
2. The population in the sought area does not exceed 15,000 persons. Recent growth has been minimal and future growth is expected to be small.
3. Needs of shippers to and from the area, except for the hauling of some fish, are adequately met by Willig.
4. Needs of consignees in the area are adequately met by Willig.
5. Willig is the only certificated carrier authorized to serve the area and it provides adequate service to the area.

6. Certification of Merchants would divert traffic from Willig and have a deleterious effect on Willig's revenues, rates, and services to the area.

7. The needs of the public are adequately met by Willig; certification of Merchants is not needed by the public.

8. Merchants has failed to establish that public convenience and necessity require the proposed service.

The Commission concludes from the foregoing findings of fact that the requested authority should be denied.

The request for a proposed report is denied.

ORDER

IT IS ORDERED that Application No. 47472 is denied.

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

Dated at San Francisco, California, this 20th day of DECEMBER, 1966.

President

George H. Hoover

Frederick B. Halbach

Augata

Commissioners

Commissioner William M. Bennett, being necessarily absent, did not participate in the disposition of this proceeding.

I dissent. I would grant this application.

Robert L. Mitchell