

ORIGINAL

Decision No. 72117

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of W. Ross Starkey,
doing business as PACIFIC
MESSENGER SERVICE, for an
extension of its certificate of
public convenience and necessity
to operate as a highway common
carrier within San Diego County.

Application No. 48396
(Filed April 12, 1966)

Knapp, Gill, Hibbert & Stevens,
by Wyman C. Knapp and Warren N.
Grossman, for applicant.
Arthur H. Glanz, for Southern
California Freight Lines, Inc.;
Russell and Schureman, by
R. Y. Schureman, for Astec
Transportation Co., Inc., and
Harding's Freight Service; and
Edward T. Molitor, for Standard
Truck Line; protestants.

O P I N I O N

W. Ross Starkey, doing business as Pacific Messenger Service (Pacific), seeks authority to serve, as a certificated highway common carrier, points in the northern part of San Diego County. Public hearings were held before Examiner Robert Barnett at San Diego on November 9, 10, 17, and 18, 1966. Copies of the application and the notices of hearing were served in accordance with the Commission's procedural rules. Protestants are certificated carriers presently serving in the area sought to be served by Pacific.

Pacific is a highway common carrier engaged in the transportation of general commodities with the usual exceptions

between all points in the San Diego Territory (Territory).^{1/}

Pacific seeks to extend its certificated authority to transport general commodities, weighing not more than 1,000 pounds, with the usual exceptions between all points in the following area:

Commencing where the Pacific Ocean and the northern boundary of the San Diego County line meet; thence, in a meandering easterly direction along said county line to a point twelve miles east of where U. S. Highway 395 and the San Diego County line intersect; thence, southerly along an imaginary line to Lakeside; thence, westerly along an imaginary line through Miramar and due west to the Pacific Ocean which is the northerly boundary of applicant's presently authorized territory; thence, northerly along the Pacific Ocean to point of beginning.

Also, between points in the foregoing area, on the one hand, and, points in the presently authorized territory, on the other hand.

For convenience, this area will be referred to as the North County. Pacific has been serving the North County for eight years under radial highway common carrier and city carrier permits. It filed this application because it is of the opinion that its service to the North County is increasing in frequency and may be approaching that of a certificated carrier.

At the hearing Pacific withdrew its request for authority to serve from points within the North County to points within the North County. Pacific also requested that any new authority be restricted to prohibit the transportation of any shipment between the Territory and the North County wherein any component part thereof weighs in excess of 100 pounds.

Pacific's Evidence

Pacific introduced evidence through its president and 28 shipper witnesses. Its operation is substantially as follows:

^{1/} For description see Item 25 of applicant's Local Freight Tariff No. 1, Cal. P.U.C. No. 1.

Pacific primarily performs a wholesale and retail delivery service of small packages. Wholesale service goes from jobber to retailer; retail service goes from retailer to private home. This service has been in effect since 1932 and is conducted from a terminal constructed especially for this kind of service. Rates for the service are 18 cents per package plus ^{2/}3 cents per pound within the San Diego Drayage Area (Drayage Area) ^{2/} and 18 cents per package plus 4 cents per pound within the Territory. There is a weight limit of 70 pounds per shipment ^{3/} in the Drayage Area and 50 pounds per package in the Territory. Also, there is a \$2 weekly charge for daily pickup service, in both areas. Shipments over the 50-and 70-pound limits are rated pursuant to appropriate general freight tariffs. ^{4/} In the sought territory, with respect to

2/

For description see Item 30 of applicant's Local Freight Tariff No. 1, Cal. P.U.C. No. 1.

3/

"Shipment" is defined as a quantity of property tendered by one shipper on one shipping document at one point of origin at one time for one consignee at one point of destination.

4/

Pacific's present tariff containing parcel rates (of which we take official notice) states, "Rates in this section (Items 310, 312, and 313) apply on Parcels, as defined in Item 10, only when the consignor elects in writing in advance to utilize the rates herein for packages weighing 70 pounds or less. . . ." (1st revised page 20). However, Item 10 does not define "parcels" but it does define "Parcel Shipment" as "a single shipment, weighing not over 70 pounds" 1st revised page 20 is uncertain as there is no definition of "Parcels". If "Parcels" means "Parcel Shipment" then the phrase "packages weighing 70 pounds or less" is redundant. Also, Item 313 states that transportation of parcels beyond the Drayage Area but not beyond the Territory shall be limited to a maximum weight of 50 pounds per package. Testimony at the hearing implied that Item 313 limits shipments to 50 pounds, but the tariff doesn't so limit. These uncertainties must be rectified.

packages weighing 50 pounds or less, Pacific proposes to charge 18 cents per package plus 4 cents per pound; with respect to shipments weighing 50 pounds and over, applicant proposes to assess and collect charges based on the level of rates published in Minimum Rate Tariff No. 2.^{5/} (Emphasis added.)

Pacific renders parcel delivery service, freight delivery service, and special delivery service within its certificated area. Outside its certificated area it renders these services pursuant to its permits. Depending upon pickup time, Pacific can render same day service within its certificated area although most of its service is overnight delivery. To the North County, service is almost always overnight. Pacific renders daily pickup service in the Drayage Area and the Territory. After a truck completes its pickup rounds it returns to the terminal where its cargo is unloaded and transferred to delivery trucks. Shipments destined for the Drayage Area and the Territory are delivered in the afternoon of the day of pickup, if pickup was made in the morning. Shipments destined for the North County are delivered the next day. Delivery trucks leave Pacific's terminal daily destined for North County points.

Pacific estimates that over 60 percent of its gross revenue comes from the transportation of packages weighing 50 pounds or less and charged pursuant to its package rates. This percentage applies to transportation performed under its certificate and under its permits.

None of the testimony presented by Pacific's 28 shipper witnesses was controverted by protestants so this testimony will

^{5/} This proposal is ambiguous.

be set out in summary form rather than in detail. These witnesses have been using Pacific to transport shipments to the North County for periods ranging from one month to eight years, with the majority of the shippers using Pacific's service for eight years. The size of the shipments range from a few ounces to over 100 pounds but 90 percent or more of the shipments are under 50 pounds and are charged at the parcel rate. Only a few shippers testified to using Pacific occasionally for shipments of over 50 pounds to the North County. Shippers who frequently have shipments over 50 pounds utilize carriers other than Pacific such as Aztec Transportation Co., Inc., Harding's Freight Service, and Atlas Freight Lines. All of the shippers also use Pacific's parcel service within the Drayage Area and Territory and most of them get daily pickup service. None of them need same day service to the North County.

Protestant's Evidence

Five companies presented evidence in opposition to Pacific's application. They are Southern California Freight Lines, Aztec Transportation Co., Inc., San Diego Forwarding Company, Harding's Freight Service, and Mueller Truck Company. Their testimony was essentially similar to one another and can be summarized as follows: They are all certificated carriers serving the area presently certificated to Pacific and the area in which Pacific requests certification; they all provide overnight service from San Diego to the North County and, if shipments are tendered early enough, they will provide same day service from San Diego to the North County; they all provide regularly scheduled pickup service in the San Diego area; two, Harding's and Aztec, offer parcel service from San Diego to the North County; they all have

suffered a loss of business on traffic moving from the San Diego area to the North County within the past few years because competition has become more intense; however, all would withdraw their protests if Pacific would limit its requested authority to the transportation of shipments weighing 50 pounds or less.

Discussion

The evidence presented by Pacific shows that it is predominantly a parcel carrier. Over 60 percent of its revenue comes from parcel service and all its shipper witnesses testified to their extensive use of Pacific's parcel service, especially to the North County. The protestants recognize the need for this parcel service and do not object to Pacific's being certificated to perform it. But it is their opinion that no similar need for general freight service has been shown and therefore Pacific's authority should be limited to 50 pound shipments. The protestants' position is sound.

The nature of Pacific's operation requires that the evidence presented by Pacific be viewed from the point of view of a parcel carrier, as differentiated from a general carrier of freight. Pacific renders a highly specialized parcel service and has been rendering such service for decades. Its fleet of trucks was purchased with parcel service in mind; its terminal was constructed especially to expedite parcel delivery. Pacific's advertising brochure (Exhibit 5) mentions only two services, special delivery and parcel delivery, with the lion's share of coverage explaining the parcel service. Most of the witnesses supporting Pacific's application only utilize Pacific's parcel service; they have no need for general freight service. The few who tender shipments to Pacific that weigh over 50 pounds do so infrequently.

Pacific's service to the North County is composed of parcel service and general freight service. The parcel service is rendered on a daily basis on a scheduled run. It is a service that requires certification by this Commission. Pacific's general freight service, that is, shipments of over 50 pounds, does not have the frequency of the parcel service, nor is it utilized by a significant portion of Pacific's customers. This freight service has been performed under Pacific's permits and no evidence has been adduced that persuades us that it requires certification.

Findings of Fact

1. Pacific operates as a highway common carrier in the San Diego Territory pursuant to a certificate of public convenience and necessity issued by this Commission for the transportation of general commodities.
2. Pacific operates in that portion of San Diego County known as the North County pursuant to radial highway common carrier and city carrier permits issued by this Commission.
3. Pacific seeks certification as a carrier of general commodities, with the usual exceptions, in the North County subject to a weight limitation of 1,000 pounds per shipment and a prohibition on shipments wherein any component part thereof weighs in excess of 100 pounds.
4. Pacific is primarily a carrier of parcel shipments, that is, shipments weighing not more than 50 or 70 pounds. It purchases its equipment contemplating such shipments; constructed its terminal

to facilitate the handling of such shipments; and schedules pickups and deliveries to expedite the movement of such shipments. Its equipment and facilities are of a specialized type that are required to meet the demands of a particular group of customers whose shipments consist of small packages.

5. Pacific has been providing daily service of parcel shipments from the San Diego Territory to numerous locations in the sought territory. This service is approaching, if it is not already, a certificated carrier type of service.

6. Pacific has been providing intermittent service of shipments weighing more than 50 pounds from the San Diego Territory to the sought territory. This service is performed pursuant to permits issued by this Commission and is not approaching a certificated carrier type of service.

7. None of the protesting carriers will be materially affected by the expansion of Pacific's certificated parcel shipment service.

8. Pacific has the experience, equipment, personnel, and financial resources to institute and maintain the service authorized herein.

9. Public convenience and necessity require that parcel shipment service be authorized to the extent set forth in the order which follows.

The Commission concludes that the application should be granted to the extent set forth in the following order and that in all other respects it should be denied.

W. Ross Starkey, doing business as Pacific Messenger Service, 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. The order which follows will provide for the revocation of the certificate presently held by W. Ross Starkey and the issuance of a restated certificate.

O R D E R

IT IS ORDERED that:

1. A certificate of public convenience and necessity is granted to W. Ross Starkey, doing business as Pacific Messenger Service, authorizing him to operate as a highway common carrier, as defined in Section 213 of the Public Utilities Code, between the points and over the routes particularly set forth in Appendices A, B and C 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) Within thirty days after the effective date hereof, applicant shall file a written acceptance of the certificate herein granted. Applicant is placed on notice that, if it accepts the certificate of public convenience and necessity herein granted, it will be required, among other things, to comply with and observe the safety rules of the California Highway Patrol and the insurance requirements of the Commission's General Order No. 100-D. Failure to comply with and observe the safety rules, or the provisions of General Order No. 100-D, 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.
- (e) Applicant shall maintain its accounting records on a calendar year basis in conformance with the applicable Uniform System of Accounts or Chart of Accounts as prescribed or adopted by this Commission and shall file with the Commission, on or before March 31 of each year, an annual report of its operations in such form, content, and number of copies as the Commission, from time to time, shall prescribe.

3. The certificate of public convenience and necessity granted in paragraph 1 of this order shall supersede the certificates of public convenience and necessity granted by Decisions Nos. 52595, 61543 and 63079, which certificates shall be revoked effective concurrently with the effective date of the tariff filings required by paragraph 2(b) hereof.

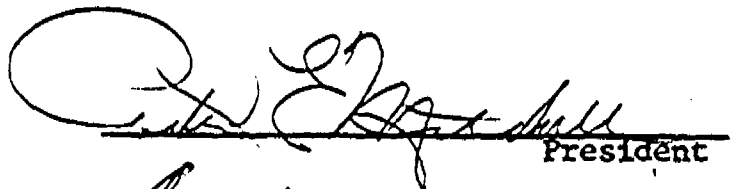
4. Applicant shall establish the rates for parcel shipments set forth in his application and is hereby authorized to depart from the provisions of Section 460 of the Public Utilities Code.

5. Applicant shall amend First Revised Page 20 of his tariff by substituting the words "Parcel Shipment" in place of the word "Parcels" and the words "Parcel Shipments" in place of the redundant phrase "packages weighing 70 pounds or less."

6. In all other respects Application No. 48396 is denied.

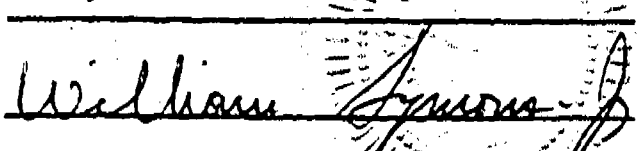
The effective date of this order shall be twenty days after the date hereof.

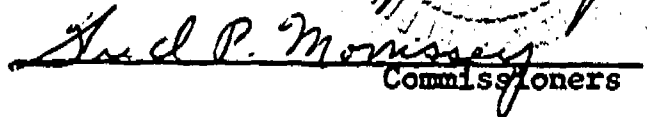
Dated at San Francisco, California, this 7th day of MARCH, 1967.



President







Commissioners

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

W. Ross Starkey, by the certificate of public convenience and necessity granted in the decision noted in the margin, is authorized to transport general commodities:

1. Between all points and places in San Diego Territory as described in Appendix B, attached hereto.
2. Between all points and places in San Diego Territory as described in said Appendix B, on the one hand, and all points and places in North County Territory, as described in Appendix C, attached hereto, on the other hand, subject to the restriction that no single shipment shall weigh more than 50 pounds.

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 Item No. 5 of Minimum Rate Tariff No. 4-B.
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, 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 protection from heat by the use of ice (either water or solidified carbon dioxide) or by mechanical refrigeration.
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.

Issued by California Public Utilities Commission.

Decision No. 72117, Application No. 48396.

/lm

Appendix A

W. Ross Starkey
doing business as
Pacific Messenger Service

Original Page 2

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.

End of Appendix A

Issued by California Public Utilities Commission -
Decision No. 72117, Application No. 48396.

APPENDIX B TO DECISION NO. 72117

SAN DIEGO TERRITORY includes that area embraced by the following imaginary line starting at the northerly junction of U. S. Highway 101E and 101W (4 miles north of La Jolla); thence easterly to Miramar on U.S. Highway 395; thence southeasterly to Lakeside on the El Cajon-Ramona Highway (State Highway 67); thence southerly to Bostonia on U. S. Highway 80; thence southeasterly to Jamul on State Highway 94; thence due south to the International Boundary Line, west to the Pacific Ocean and north along the coast to point of beginning.

APPENDIX C TO DECISION NO. 72117

NORTH COUNTY TERRITORY includes that area embraced by the Pacific Ocean and the northern boundary of the San Diego County line meet; thence, in a meandering easterly direction along said county line to a point twelve miles east of where U.S. Highway 395 and the San Diego County line intersect; thence, southerly along an imaginary line to Lakeside; thence, westerly along an imaginary line through Miramar and due west to the Pacific Ocean which is the northerly boundary of applicant's presently authorized territory; thence, northerly along the Pacific Ocean to point of beginning.