

ORIGINAL

Decision No: 80497

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of SYSTEM 101, a corporation, for an extension of its Certificate of Public Convenience and Necessity to operate as a highway common carrier for the transportation of property in intrastate and interstate and foreign commerce. (amended title)

Application No. 52253  
(Filed October 16, 1970;  
Amended June 25, 1971)

Knapp, Gill, Hibbert & Stevens, by  
Karl K. Roos and David Christianson,  
Attorneys at Law, for applicant.  
Murchison & Davis, by Donald Murchison,  
Attorney at Law, for Auto Fast Freight,  
Inc., Joseph N. LeBow dba Desert Empire  
Express, La Salle Trucking Company,  
California Cartage Company, James H.  
Carr and Charles A. Carr dba Carr Bros.,  
Oxnard Trucking Service, Los Angeles  
City Express, Inc., Milton's Express,  
Inc., Swift Transportation Company,  
Reliable Delivery Service, Inc.,  
Pacific Motor Trucking Company, Delta  
Lines, Inc., and System 99 Express;  
Russell & Schureman, by Carl H. Fritze,  
Attorney at Law, for Brake Delivery  
Service, City Transfer, Inc., G & H  
Transportation, Inc., Griley Security  
Freight Lines, Imperial Truck Lines,  
Inc., Rozay's Transfer, Qwikway Trucking  
Co., and Smith Transportation Co.,  
protestants.  
Edward C. Crawford, for Commission staff.

O P I N I O N

This application was heard before Examiner DeWolf at Los Angeles, Santa Maria and San Diego, and after 24 days of hearing was submitted at Los Angeles on January 24, 1972 subject to filing of concurrent briefs, which have been received.

Copies of the application and the notice of hearing were served in accordance with the Commission's procedural rules. The application was amended to show the change of name from Solvang Freight Lines, Inc. to System 101.

Applicant is a highway common carrier presently transporting general commodities between Solvang and vicinity and the Santa Ynez Valley and Los Angeles and vicinity pursuant to a Certificate of Public Convenience and Necessity issued by this Commission in Decision No. 66855 dated February 25, 1964, and transferred to applicant by Decision No. 72375, both involving Application No. 45315. Applicant also operates as a radial highway common carrier and a highway contract carrier under permits issued by the Public Utilities Commission (File T-86,439).

Applicant additionally operates by authority of the Interstate Commerce Commission under Docket No. MC-129966 and by Order entered July 20, 1970 in Docket No. MC-129966 (Sub. No. 1).

Applicant requests authorization to extend such highway common carrier operations to the north as far as Salinas and south to San Diego to transport general commodities, in intrastate commerce and in interstate and foreign commerce, over regular routes, subject to certain exceptions.

Applicant alleges that it has operated between the points proposed to be served herein continuously for a period of many years as a permitted carrier. Applicant has received numerous service requests from various shippers having movements of the specified commodities to, from, and between the points and places located in applicant's proposed service area, which shippers have indicated they have not been able to obtain service from existing carriers. During the past few years, there has been a substantial increase in population and industry in the points and places presently served and proposed to be served by applicant and such increase requires additional transportation facilities. Applicant alleges that there is a need for adequate highway common carrier transportation service of the type proposed to be rendered by applicant from, to and between the points herein sought to be served and applicant has received many requests therefore.

Applicant's operating manager testified that it began service in the Santa Ynez Valley in 1943 by Don Veino at Solvang and its last certificate issued February 25, 1964 based on Application No. 45315, filed April 4, 1963, was opposed by three local carriers and 11 statewide carriers, many of whom now protest this application. Restrictions were then placed in applicant's certificate to satisfy those protestants, limiting applicant to the Santa Ynez Valley.

The exhibits show applicant's recent operations, equipment and financial condition.

Over 100 public witnesses were called and testified extensively in regard to their freight service and needs in the areas involved in this application.

The public witnesses called by applicant (46 in number) testified for over 9 days at Los Angeles and Santa Maria and gave evidence from all areas involved and described every conceivable type of freight they shipped. Their testimony uniformly praised the shipping service of applicant and emphasized their need for the new service proposed by applicant and nearly all testified that they are unable to get adequate or efficient service from other carriers or protestants from the local points in Santa Ynez Valley.

The public witnesses called by protestants (59 in number) were examined over 7 days and these uniformly testified that they are well satisfied with the service of protestants; do not need additional service of applicant; that they fear increasing rates if additional carriers are certificated, but none of these shippers testified that they intend or ever expect to use the services of this applicant.

The applicant's requested extension of its certificated operations from the Santa Ynez Valley on the north to Salinas and from the Los Angeles Basin on the south to San Diego and when combined with its present authority will cover the following network of regular routes:

Between points in San Diego County, California, and Salinas, California via:

- (a) Interstate Highway 5 between San Diego and Los Angeles;
- (b) U.S. Highway 101 between Los Angeles and Salinas;
- (c) State Highway 1 between Los Angeles and El Rio;
- (d) Interstate Highway 5 and State Highway 118 between Los Angeles and Ventura;
- (e) Interstate Highway 5 and State Highway 126 between Los Angeles and Ventura;
- (f) State Highway 150 between Santa Paula and Carpinteria;
- (g) State Highway 1 between Los Cruces and Arroyo Grande;
- (h) State Highway 1 and 68 between San Luis Obispo and Salinas;
- (i) State Highway 395 and State Highways 76 and 78 between San Diego and Oceanside; and
- (j) Interstate Highway 8 between San Diego and El Cajon, serving all intermediate points on and along the foregoing highways;

Within and between a portion of the Los Angeles Basin Territory.

The applicant began operations in the Santa Ynez Valley in 1943 operating under permits until 1963 when an application was filed for a certificate to operate between Los Angeles Basin Territory and Paso Robles and Morro Bay in San Luis Obispo County and intermediate points. The application was protested by 14 carriers, was cut back to the Santa Ynez Valley and restricted, and subsequently granted. During and since that time there has been extensive growth in the area. The protesting carriers and others have extensively expanded their certificates and operations in California, including this area, taking advantage of this growth and are the same carriers, with the others who are now so vigorously protesting the request of applicant at this time, to take advantage of this growth. At the same time, applicant during the period from 1963 to 1970 has been restricted to a small portion of the Santa Ynez Valley, as described in the certificate, to wit:

- "(a) State Highway 154 between its junction on the west with U.S. Highway 101 near Buellton and the San Marcos Pass summit on the east.
- "(b) State Sign Route 80 between its junction on the west with U.S. Highway 101 and State Highway 154 on the southeast, via Los Olivos."  
(From Decision No. 66255, Application No. 45315, Appendix A, Original Page 1.)

Such a boundary to this territory at this time, after the growth mentioned, is completely unrealistic and makes it impossible for applicant to compete with any of the protesting carriers on an equal basis. The applicant's present request is very little more to the north than was previously requested by it in its previous 1963 application, but does add routes from Los Angeles to San Diego.

Applicant gave reasons for filing the application as follows:

" . . . To extend applicant's certificated common carrier operations to cover the territory and routes over which System 101 has been serving regularly and frequently in both truckload and less than truckload lots. It covers the network of regular routes set forth ante."

The certificate presently held by applicant as above defined in Decision No. 66855 dated February 25, 1964, is wholly ineffectual to supplement applicant's permitted operations because of the limitations to the boundaries of the Santa Ynez Valley terminating in unpopulated areas as "the San Marcos Pass Summit on the east and the Junctions of State Sign Route 80, U. S. Highway 101 and State Highway 154" as described in page 1 of the appendix of said decision. The populated points, Solvang and Buellton, in fact, produce most of the shipments handled in the vicinity of either of these boundaries.

The applicant's shipper witnesses who testified are from communities to the north of Solvang, such as Santa Maria, Lompoc, Arroyo Grande, Buellton, Salinas and Paso Robles and to the south from Santa Barbara, Ventura, Oxnard, Torrance, City of Commerce, West Covina, Pico Rivera, Downey, Maywood, Glendale, Sun Valley, Los Angeles, South Gate, San Diego, El Cajon and Chula Vista.

These witnesses testified that they now receive a certain amount of freight service from the applicant and that they support the application and that they wish to continue the use of applicant's service and need and want it expanded as requested in the application.

The record discloses that the commodities shipped by these witnesses include a wide variety and assortment of items and may be described as general commodities.

The shippers described the service which they now receive from applicant as a personalized service by a local carrier which gives them personal control over their shipments and delivery times which are convenient to their business. Many witnesses testified that they have used the protesting



carriers and could not get the type of service from the protestants which they require and that they have difficulty with their small shipments as to pick ups and deliveries. Essentially, they complain that they are not treated as preferred customers by the protesting carriers. Several witnesses testified that applicant would make pick ups two or three times a day when called. Many witnesses testified that other carriers failed in giving overnight delivery. Other witnesses testified that they would use their own trucks for deliveries if they could not get the type of service provided by applicant, which they described as outstanding. Several of applicant's shippers testified that they need lift gates and other special equipment on occasion. Other witnesses described difficulties in getting overnight deliveries with carriers who interline their shipments.

Not many of applicant's shippers had truck loads to go and a great many were making small or medium shipments.

During seasonal rush periods shortages of equipment arise in January and the early Spring. There were also times when freight moves from Mexico via San Diego in heavy quantity. During several emergencies, such as strikes and the building of the missile base at Vandenburg, a severe shortage of trucks and shipping facilities arose in this area. Such conditions may very well occur again. An expert who is employed in the Chamber of Commerce of Santa Maria testified that there have been periods of rapid growth but that this has leveled off at the present time to a normal pace and that a normal average rate of growth is continuing. ✓

A shipper in El Cajon, California, described an emergency shipment of chemicals to remove the oil spill at Santa Barbara and testified that he had difficulty in getting the freight out in time and was unable to get pickups from some of protestants but received good service from applicant.

Applicant operates terminal facilities in Los Angeles, Solvang and Santa Maria. In Los Angeles it has two acres of property, with a truck-high dock and a 4,000 square foot warehouse facility. In addition, it maintains its general office facilities and a repair shop at the Los Angeles terminal. In Solvang, applicant has a leased warehouse and facilities. There, it has a truck-high loading dock, a warehouse with a 2,000 square foot capacity and a small office standing adjacent to the warehouse. At this particular facility it has fueling facilities and an 8,000 square foot parking area surrounding the warehouse. In Santa Maria, it has two acres of paved truck parking on which a 2,000 square foot warehouse stands and an office, repair and fueling facilities.

Equipment list, (Exhibit No. 6) described 40 pieces of motorized equipment.

Many of applicant's shippers have tried protestants' services and have found them inadequate in the following respects:

- (a) A reluctance to make pickups, especially on small lot shipments. If a shipper does not have traffic to warrant a daily pick up, protestants don't solicit it.
- (b) Protestants have sent their small lot shipments to other carriers, even though they are authorized to serve the point themselves. This makes delayed deliveries inevitable, causes customer dissatisfaction, and results in shifting of carrier responsibility on lost or damaged shipments.

- (c) Applicant's customers desire to use its services in a greater area, thereby helping to eliminate dock congestion in limited loading and unloading areas, eliminating "peddling" of their shipments by carriers who do not want to (or cannot) serve the point, and fix responsibility on lost or damaged shipments.
- (d) Applicant's shippers seek an expanded service to the areas they ship or from which they receive. They all favor applicant and most have used its services for years. Their testimony shows a need for applicant to expand its services.

Protestants set up their schedules and services to appeal to their most favored customers who prefer certain deliveries and other benefits and this leaves the other shippers who testified here without the benefits they require unless they are provided by this applicant. All protestants, including the largest carriers, testified that it is impossible for them to pick up every customer's freight at the same time and that some have to be first and some are last. Nearly all admitted that their preferred customers were the ones with the more profitable freight and many admitted that they did not solicit freight in small places or which was marginal or unprofitable.

Many of the protestants claim that they have unlimited assets for acquiring all equipment necessary to meet the demands placed on them by the shipping public throughout the State of California.

The diversion of existing traffic will not have an adverse impact on the shipping public.

The testimony herein falls into four categories: (1) the operating testimony of applicant and its officers; (2) the shipper witnesses called by applicant in support of the need for the extended service; (3) the shipper witnesses called by protestants; and (4) the operating testimony of protestants and their officers.

The issues hereinafter set forth are those the disposition of which are material to the ensuing decision.

1. Is the applicant qualified to institute and maintain the proposed service?
2. Does the applicant possess the equipment, personnel and financial ability to operate the requested extended service?
3. Will the operations of applicant in the proposed extended areas have a substantial adverse effect upon any protesting carriers who have been operating in these areas before this applicant?
4. Will the operations of applicant in the proposed extended area operate to increase the tariff rates?
5. Do public convenience and necessity require the proposed service?

The overwhelming weight of the evidence dictates that the shippers who testified here for applicant are entitled to consideration as a portion of the public when such service is offered by a competent carrier and, therefore, public convenience and necessity require that the application be granted.

There is no evidence that institution of the service by applicant will impair the ability of protestants to continue rendering service under their certificates. There is no evidence that applicant has been engaged in any conduct contrary to its present authority.

Upon consideration of the evidence, the Commission finds that:

1. Applicant possesses the experience, equipment, personnel, and financial resources to institute and maintain the transportation service hereinafter authorized.

2. The merchants and shippers who testified that they use or will utilize applicant's transportation service do not now have and have not had adequate transportation service available from protestants to satisfy their requirements in an efficient and speedy manner.

3. The merchants and shippers of those certain commodities described in the testimony and others will be afforded shipping advantages, reduced dock congestion, early morning and Saturday deliveries with lift-gates provided, and more efficient service if applicant is granted authority to transport said commodities over the routes authorized.

4. Granting the application will not adversely affect protestants or result in any substantial impairment of their existing service.

5. Many of applicant's customers have employed applicant for many years and would like to see its service expanded.

6. The shippers who testified for the applicant prefer the service provided to that of other carriers.

7. A shipper is entitled to prefer the service of a particular carrier over that provided by all the others who are available and the favored carrier is entitled to rely on this preference as a basis for extending its service.

8. The possibility that an additional highway common carrier operating in an area may in time take some of the business from present operators is not sufficient reason to arbitrarily limit the number of operators in a particular area.

9. Protestants' shipper witnesses have never used applicant and the granting of the application would have no effect upon their operations as they would not use the applicant's services.

10. The evidence does not show that traffic will be diverted from protestants as the result of a granting of this application.

11. The protestants have experienced steady and substantial growth in their businesses and as a consequence the amount of traffic they shipped and received had steadily and substantially increased over the years.

12. The population, business and industrial growth in the Santa Ynez Valley, the missile capital of the world, recently has been increasing and also developing for recreation purposes, thus it is important for many shippers to have the personalized services proposed by applicant.

13. It is necessary to authorize applicant to provide the proposed transportation service in order to enable the shippers supporting the application to obtain the same quality of service which is offered to the other shippers in the Santa Ynez Valley, the Los Angeles Basin, and San Diego.

14. Public convenience and necessity require that applicant be authorized to engage in operations in intrastate commerce as proposed in the application and also require that applicant be authorized to engage in operations in interstate and foreign commerce within limits which do not exceed the scope of the intrastate operations authorized by the order herein.

15. The evidence does not establish that applicant is conducting operations in excess of its operating authority.

16. There is nothing in the record to indicate that the extension of applicant's certificate into the areas requested will cause an increase in the tariff rates.

The Commission concludes that the application, as amended, should be granted as specified in the ensuing order.

As applicant has heretofore been authorized to revise its routes on several occasions, it is deemed advisable to restate its certificate in order to clarify its operating authority. Accordingly, a new certificate will be issued which will include all of the applicant's present authority, and the new authority herein authorized.

The motions to strike applicant's brief and the request for a proposed report will be denied.

Protestants have petitioned for an order setting aside submission and authorizing the receipt of further evidence. This application was submitted on January 24, 1972 after 24 days of hearing. The petition of one group of protestants contains allegations concerning the financial conditions of applicant since this matter was submitted and utilizes facts occurring long after the application was filed and altogether immaterial to the matter presently before the Commission. Another petition sets out evidence presented before the Interstate Commerce Commission which it is

alleged is in conflict with evidence in this record. All of this evidence is, in the main, cumulative. Consideration of such matter would not affect the outcome of this application in any respect. Applicant filed a reply to the petitions of protestants partly as follows:

"On July 3, 1972, protestant Imperial Truck Lines, Inc., filed its petition to set aside submission of the case for the purpose of receiving additional evidence. To such petition, applicant filed its Reply. There has now been filed, under date of July 27, 1972, a second petition to set aside submission for receipt of further evidence filed by an additional eleven protestants. That petition, filed some three and one-half months after submission of the case, seeks to present to the Commission 'evidence' reflecting financial deterioration on the part of the applicant. Applicant does not intend to respond to the allegations contained within the contents of the petition, believing that its financial fitness has heretofore clearly been established of record. Instead, we content ourselves by suggesting to this Commission that if, indeed, there has been a deterioration in applicant's financial well being, such deterioration has been caused solely and simply by virtue of the tactics employed by protestants in their endeavor to hamper, hinder, and impede the timely progress of this proceeding.

"A review of the record herein will disclose the obfuscatory and delaying devices employed by protestants in order to extend the trial of this proceeding to the end that applicant's endeavor to obtain a determination on its application on the merits thereof has been completely frustrated; and along therewith, its expenses, due to the attenuated posture of this case, have been enormous."

The petitions to set aside submission are not persuasive and should be denied.



System 101, a corporation, 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.

O R D E R

IT IS ORDERED that:

1. A certificate of public convenience and necessity is granted to System 101, a corporation, authorizing it 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 Appendix A attached hereto and hereby made a part hereof.
2. The certificate of public convenience and necessity granted in paragraph 1 of this order shall supersede all the certificates of public convenience and necessity granted by Decisions Nos. 66855 and 72375, which certificates are revoked effective concurrently with the effective date of the tariff filings required by paragraph 3(b) hereof.
3. In providing service pursuant to the certificate herein granted, applicant shall comply with and observe the following service regulations. Failure to do so may result in a cancellation of the operating authority granted by this decision.

- (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-Series.
- (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-Series.
- (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.

- (f) Applicant shall comply with the requirements of the Commission's General Order No. 84-Series for the transportation of collect on delivery shipments. If the applicant elects not to transport collect on delivery shipments, it shall make the appropriate tariff filings as required by the General Order.

4. The motions to strike the briefs, the request for a proposed report and the petitions to set aside submission to receive further evidence are hereby denied.

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

Dated at San Francisco, California, this 19th  
day of SEPTEMBER, 1972.

Vermon L. Sturgeon President  
William J. ...  
...  
...  
...  
Commissioners

Commissioner Thomas Meran, being necessarily absent, did not participate in the disposition of this proceeding.

System 101 by the certificate of public convenience and necessity granted by the decision noted in the margin, is authorized to conduct operations as a highway common carrier as defined in Section 213 of the Public Utilities Code for the transportation of general commodities as follows:

- I. A. Between that portion of the Los Angeles Basin Territory west of State Highway 39, as more particularly described in Note A, on the one hand, and on the other, the Santa Ynez Valley, as described below, and Las Cruces.
- B. For purposes of this authority the Santa Ynez Valley shall be all intermediate points on, and all off-route points within five miles laterally of, the following routes:
  1. State Highway 246 between its junctions on the west with U.S. Highway 101 near Buellton and on the east with State Highway 154;
  2. State Highway 154 between its junction on the west with U.S. Highway 101 and the San Marcos Pass summit on the east;
  3. Unnumbered county road, referred to as Alamo-Pintado Road, between its junctions on the south with State Highway 246 near Solvang and on the north with State Highway 154 at Los Olivos.
  4. In providing the services authorized in this part, carrier may use any and all public ways, streets, roads and highways necessary or convenient therefor.
- II. Within and between points in that portion of the Los Angeles Basin Territory described in Note A.

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III. Between points in the County of San Diego, on the one hand, and Salinas, on the other hand, serving all intermediate points, including that portion of the Los Angeles Basin Territory described in Note A, on and along the following routes:

1. Interstate Highway 5 between San Diego and Los Angeles;
2. Interstate Highway 5, State Highways 118 and 126 between Los Angeles and Ventura;
3. U.S. Highway 101 between Los Angeles and Salinas;
4. State Highway 1 between Los Angeles and El Rio and between Las Cruces and Arroyo Grande;
5. State Highways 1 and 68 between San Luis Obispo and Salinas;
6. State Highway 150 between Santa Paula and Carpinteria;
7. U.S. Highway 395, State Highways 76 and 78 between San Diego and Oceanside;
8. Interstate Highway 8 between San Diego and El Cajon.

Carrier 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 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 and bus chassis.

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3. Livestock, viz.: barrows, boars, bulls, butcher hogs, calves, cattle, cows, dairy cattle, ewes, feeder pigs, gilts, goats, heifers, hogs, kids, lambs, oxen, pigs, rams (bucks), sheep, sheep camp outfits, sows, steers, stags, swine, or wethers.
4. Liquids, compressed gases, commodities in semiplastic form and commodities in suspension in liquids, in bulk, in tank trucks, tank trailers, tank semitrailers or a combination of such highway vehicles.
5. Commodities when transported in bulk in dump trucks or in hopper-type trucks.
6. Commodities when transported in motor vehicles equipped for mechanical mixing in transit.

NOTE A. The description of the portion of the Los Angeles Basin Territory is as follows:

Beginning at the intersection of Sunset Boulevard and State Highway 1; thence northeasterly on Sunset Boulevard to Sepulveda Boulevard; northerly along Sepulveda Boulevard to Chatsworth Drive; northeasterly along Chatsworth Drive to the corporate boundary of the City of San Fernando; westerly and northerly along said corporate boundary to Maclay Avenue and its prolongation to the Angeles National Forest boundary; southeasterly and easterly along the Angeles National Forest boundary to State Highway 39; southerly along State Highway 39; southerly along State Highway 39 and its prolongation to the Pacific Ocean; westerly and northerly along the shoreline of the Pacific Ocean to a point directly south of the intersection of Sunset Boulevard and State Highway 1; thence northerly along an imaginary line to the point of beginning.

(END OF APPENDIX A)

Issued by California Public Utilities Commission.

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