

ORIGINAL

Decision No. 82332

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
KING CONTRACT CARRIER, INC., doing
business as KING TRANSPORTATION CO.,
for a certificate of public convenience
and necessity to operate as a highway
common carrier for intrastate commerce
and for a corresponding certificate of
registration for interstate and foreign
commerce.

Application No. 53686
(Filed November 10, 1972)

Hillyer & Irwin, by Michael F. Welch,
Attorney at Law, for applicant.
Russell & Schureman, by Carl H. Fritze,
Attorney at Law, for Shippers-Imperial,
Inc., protestant.

O P I N I O N

Applicant operates in intrastate service in California under a highway contract carrier permit and a radial highway common carrier permit, both bearing file No. T-91760 dated February 11, 1969. Applicant is a California corporation, incorporated on October 31, 1968. Applicant's predecessor in interest was Jack B. King, dba King Transportation Co., a sole proprietorship (King). Applicant is authorized to transport general commodities, with the usual exceptions, within a radius of 500 miles of San Diego.

Applicant seeks a certificate of public convenience and necessity to operate as a highway common carrier for intrastate commerce and for a corresponding certificate of registration for interstate and foreign commerce for the transportation of carpets, floor coverings, and related materials. A description of the specific commodity authority sought by applicant is set forth in Exhibit A attached to the application.

The operating territory for which the certificate authority is sought is set forth in Exhibit B attached to the application and is depicted on a map, attached as Exhibit C to the application. In general, it encompasses all points in, and within 15 miles of, the Los Angeles Basin Territory and the San Diego Territory.

A public hearing was held on January 26, 1973 in Los Angeles before Examiner Levander. Applicant's case was submitted on that date. Protestant, Shippers-Imperial, Inc. (SI), was permitted to submit a late-filed sworn statement, Exhibit 2, by its vice president setting forth its objections to the granting of the certificate to applicant. Applicant subsequently filed a sworn rebuttal statement, Exhibit 3. In each instance the opposing party could request further hearing for cross-examination of the witness preparing the exhibit. Neither party requested further hearings. The matter was submitted upon the filing of concurrent closing briefs.

King began operations as a radial and contract carrier within a radius of 50 miles from San Diego. In 1956 King's radial permit limit was increased to 150 miles. In 1962 King's highway contract carrier permit was extended to 150 miles and at that time he commenced operations from San Diego to Los Angeles. The permits have since been amended to authorize operations within a 500-mile radius of San Diego. King's operations evolved from the transportation of general commodities to a specialized operation as a transporter of carpets and floor coverings and of auto tires and tread rubber.

Applicant's president testified that since 1963 his company has specialized in movements of carpets, floor coverings,

including tile, and related materials; that such service is requested on a daily basis; that shipments have increased in size; that special services, including the need for forklifts equipped with rams are necessary to carry out the services; and that they are continually receiving additional requests for service. He further testified that it was difficult to mix general commodities with carpets and floor coverings without excessive damage; hence, the desirability toward specialization in the movement of that type of commodity; that there were 50 mills and distributors in the Los Angeles area who were contacted daily regarding requests for service to San Diego County; and that a one-day service was provided. There were daily contacts with 75 to 100 outlets. Applicant's terminal is set up to handle carpet in shelves rather than on a dock. Applicant transports the carpet to where the consignee wants it unloaded and will deliver the carpet on the second and third stories of buildings. Applicant also has the capability of unloading railroad cars and piggyback trailers. He testified that this is of benefit to dealers without forklifts who do not wish to incur forklift expense, or to have rail cars on their sidings.

Applicant has received requests from interstate carriers to unload their goods at applicant's terminal because they do not have proper equipment. Applicant bills for certain accessorial services (e.g. there is a forklift charge of \$25 for lifting the carpet two to three stories, and hourly rates are assessed depending upon the wages of its employees and the applicable tariffs).

Sixty of the shippers listed on Exhibit G attached to the application are called by telephone on a daily basis. Daily calls are also made on request to various consignees. Approximately 30 to 40 daily calls are made to different pickup locations. Applicant owns its San Diego terminal and leases its Los Angeles terminal building and lot from its president.

All of applicant's present business is intrastate in nature except for the rail unloading operations which are in an exempt category.^{1/} Shipments designated for Mexico are held on applicant's San Diego dock for pickup by another carrier. Applicant's income has grown from approximately \$230,000 in 1968 to approximately \$333,000 in 1972, with a minimal amount of solicitation of new business.

Applicant's latest unaudited balance sheet is summarized below:

<u>Balance Sheet</u> <u>as of 12/31/72</u>	
Current Assets	\$42,282.27
Net Property and Equipment	84,830.36
Other Assets	<u>13,304.79</u>
Total	\$140,417.42
Current Liabilities	\$38,372.09
Fixed Liabilities (contracts payable)	41,694.58
Capital	<u>60,350.75</u>
Total Liabilities and Capital	\$140,417.42

^{1/} This Commission is without authority to impose economic regulation on interstate or foreign commerce, even though it may be exempt from the jurisdiction of the Interstate Commerce Commission under the so-called commercial zone exemption in Section 203(b)(8) of the Interstate Commerce Act, Baltimore Shippers and Receivers Association, Inc. v Public Utilities Commission of the State of California (1968) 389 US 583, 196 L ed 2d 783, 88 S Ct 694.

Applicant's latest unaudited statement of profit and loss is summarized below:

Profit and Loss
(Year ending 12/31/72)

Operating Revenue	\$333,321.72
Net Operating Income	3,553.46
Rental Income Fees & Gain	29,773.25
Income Tax	14,229.65
Net After-Tax Profit	19,097.06

Applicant's equipment list is contained in Exhibit E attached to the application.

Applicant's present operations utilize six tractors, seven van-trucks, four forklifts, six van-trailers, and four convertors (auxiliary dollies).

Exhibit F attached to the application shows photographs of the storage and loading operations carried out by applicant. Applicant contends that its specialized service to San Diego shippers, together with community growth, increased demand for its services, and its favorable reputation and willingness to perform all contribute to its growth and its need for a certificate of public convenience and necessity.^{2/} Applicant proposes to render its service on a daily basis except for Saturdays, Sundays, and holidays. It proposes to charge the Commission's minimum rates or the prevailing common carrier tariffs for its services. Less than 10 percent of applicant's volume represents tires and rubber goods deliveries.

Applicant has duly filed, and publication has been made in the Federal Register, in regard to applicant's request for interstate and foreign commerce authority. Applicant desires to be able to interline and share rates on a joint through basis

^{2/} Twenty-six shippers and consignees prepared letters supporting the request of applicant for a certificate.

with other certificated carriers. Applicant anticipates potential growth if given the ICC authority to transport goods in interstate commerce. The predominant movement of goods is from Los Angeles to San Diego.

Applicant cites Stapel Truck Lines (1950) 49 CPUC 392, 405 as being apropos of their situation.

"This territory...has experienced substantial growth and development during recent years. There appears to be a need for a transportation service which would meet the requirements of the local retail merchants and dealers...which are not adequately supplied by the carriers in the field. These shippers need, and are entitled to, a service which will afford prompt delivery of goods purchased from their suppliers.... Applicant, it appears, is qualified to perform such a service. The potential traffic is sufficient to warrant the admission of a newcomer to the field; the competition thus generated would not, in our judgment, impair the ability of existing carriers to continue their operations. Accordingly, applicant will be authorized to serve...as a highway common carrier...."

Applicant states that because of its growth, its operations now deserve the sanction of a certificate of public convenience and necessity, citing the following:

- (a) Investigation of the Highway Carrier Industry
(1949) 48 CPUC 587, 599,

"Contract and Radial Permittees are placed on notice that if they have reason to believe their operations come within the provisions of the Public Utilities Act, they should file applications for certificates."

- (b) Moore Truck Lines (1967) 67 CPUC 449,

"It is unreasonable to expect a carrier to synchronize the precise date on which its permitted operations becomes too frequent with the date upon which it files its application for a certificate to operate as a highway common carrier."

SI is a motor common carrier engaged in the transportation of general commodities, with specific exceptions, over regular routes, pursuant to a certificate of public convenience and necessity issued by the Interstate Commerce Commission, Docket No. MC-99745. SI states that it is authorized to serve the territory sought by applicant in interstate and foreign commerce and holds authority from the Commission to provide service as a common carrier on an intrastate basis for the area sought by applicant, except for the Los Angeles Basin.^{3/}

SI maintains and operates terminals in several locations including Santa Fe Springs, Chula Vista (in the San Diego area), San Marcos, Indio, El Centro, and Calexico. Each of these terminals contains equipment, including motor vehicle units needed for pickup and delivery service in the area served by the terminal. SI operates a substantially larger fleet of motor vehicles than does applicant. SI dispatches trucks southerly from its Santa Fe Springs terminal to its other terminals on a daily basis. Return traffic from San Diego and the other areas to Los Angeles is very light, amounting to 5 to 10 percent of the traffic transported into these areas. SI arranges its schedules so as to assure next-morning delivery in the area sought by applicant. SI analyzed its operations in October of 1970 and during one week there were 120 truckload shipments (10,000 pounds or more), and 4,665 less-than-truckload shipments. The tonnage shipped in intrastate traffic amounted to approximately 2.1 million pounds and approximately 2.5 million pounds moved in interstate or foreign commerce. SI claims this is reasonably indicative of the relative mix of its business and that it mixes interstate and intrastate LTL shipments in the same trailers without regard

^{3/} Applicant's request includes territories 15 miles from the Los Angeles Basin and San Diego Territories not included in SI's certificate and also includes a 15-mile band from designated highways as compared to SI's 10-mile band from these highways.

to the character of the commerce. Generally goods are loaded into trailers depending upon the destination terminal. At that location the load is broken down for distribution except for direct deliveries of truckload shipments. SI states that it regularly interlines freight with other carriers operating to and from points outside the State of California and has joint through rates published in the various tariff bureaus governing such movements. SI questioned whether or not accessorial charges for services are listed in the summary of shipments contained in the application. SI seeks additional business because its existing equipment is operating below full capacity and therefore requests that the application be denied.

SI offered no evidence as to the extent that it transported the commodities proposed to be carried by applicant or how it would be adversely affected by certificating applicant. SI only expressed a willingness and ability to carry out this type of specialized work.

SI's testimony was that "The commodities involved in this application are desirable freight and SI now handles this type of freight in both intrastate and interstate commerce. We operate a number of forklift trucks to the extent this type of equipment becomes necessary and we will unload, and have unloaded, rail cars."

Applicant's rebuttal to this testimony was to call the manager of SI's Chula Vista terminal and ask "if SI provided services to handle rail shipments of carpet located on a team siding or unload piggyback trailers at locations as may be specified by a shipper or consignee." SI's manager replied "No, our forklift has a bent pole and the pole was not constructed of the right material to do the job." SI's manager also stated that "SI did not offer services to handle carpeting from piggyback trailers or rail cars as they did not have the necessary type of trailer to transport the

forklift to the location for unloading." SI's brief characterized applicant's rebuttal, in which Mr. King did not identify himself, as a "set-up" unsuccessfully designed to prove that SI couldn't perform the service and stated that this type of traffic is exempt from Commission regulation. (See Footnote 1.)

Findings

1. Applicant is presently, and for many years has been, providing a specialized service as a permitted carrier for the transportation of shipments of carpets, floor coverings, tile and related materials between points within the proposed area.
2. Applicant's service is designed, with respect to facilities, equipment as well as time and place of delivery, to meet the shipping needs and requirements of carpet mills and distributors located in the Los Angeles area.
3. As the result of an ever-increasing demand by its customers applicant is providing a daily service on shipments moving in intrastate commerce between points in the area covered by the application and operations in interstate and foreign commerce which are in an exempt category.
4. SI is primarily engaged in the transportation of general commodities as a highway common carrier. Although SI transports some shipments of carpets and floor coverings, it does not have the special facilities and equipment to meet all of the shipping needs and requirements of the carpet mills and their distributors.
5. Applicant is not a new carrier; it has been operating as a permitted carrier for many years and there is no reason to believe that it would be any more competitive as a certificated carrier than it has been as a permitted carrier. The certification of applicant will not materially alter the competitive picture nor adversely affect the existing certificated carriers.

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

7. 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.

8. With reasonable certainty the project involved in this proceeding will not have a significant effect on the environment.

Conclusion

The Commission concludes that the application should be granted. The territorial description or routes of the authority granted reflect the names of redesignated highways and roads and does not in any way exceed the geographical scope of the proposed operation as published in the Federal Register.

Applicant is 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. 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 King Contract Carrier, Inc., doing business as King Transportation Co., a corporation, authorizing it to operate as a highway common carrier, as defined in Section 213 of the Public Utilities Code, between the points set forth in Appendix A, attached hereto and made a part hereof.

2. In providing service pursuant to the authority granted by this order, applicant shall comply with the following service regulations. Failure so to do may result in cancellation of the authority.

- (a) Within thirty days after the effective date of this order, applicant shall file a written acceptance of the certificate granted. Applicant is placed on notice that if it accepts the certificate it will be required, among other things, to comply with 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 of this order, applicant shall establish the authorized service 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 authorized service.

- (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 applicant elects not to transport collect on delivery shipments, it shall make the appropriate tariff filings as required by the General Order.

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

Dated at San Francisco, California, this 15th day of JANUARY, 1974.

I dissent:

[Signature], Commissioner

[Signature]
President
[Signature]
[Signature]
[Signature]
Commissioners

King Contract Carrier, Inc. doing business as King Transportation Co., by the certificate of public convenience and necessity granted in 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:

Carpets, floor coverings including tile, and related materials.

1. From, to and between all points and places located in and within 15 miles of the boundaries of the following territories:
 - (a) The Los Angeles Basin Territory as described in Note A.
 - (b) The San Diego Territory as described in Note B.
2. Between the following points and territories, serving all intermediate points on said routes and all off-route points within 15 miles laterally thereof:
 - (a) Points in the territories described in 1(a) and 1(b), via Interstate Highway 5; and
 - (b) Oceanside and Escondido via State Highway 78.
3. In performing the service herein authorized, carrier may make use of any and all streets, roads, highways and bridges necessary or convenient for the performance of said service.

Issued by California Public Utilities Commission.

Decision No. 82332, Application No. 53686.

Note A

LOS ANGELES BASIN TERRITORY

Los Angeles Basin Territory includes that area embraced by the following boundary: Beginning at the point the Ventura County-Los Angeles County Boundary Line intersects the Pacific Ocean; thence northeasterly along said county line to the point it intersects State Highway 118, approximately two miles west of Chatsworth; easterly along State Highway 118 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 of the City of San Fernando to Maclay Avenue; northeasterly along Maclay and its prolongation to the Los Angeles National Forest Boundary; southeasterly and easterly along the Angeles National Forest and San Bernardino National Forest Boundary to Mill Creek Road (State Highway 38); westerly along Mill Creek Road to Bryant Street; southerly along Bryant Street to and including the unincorporated community of Yucaipa; westerly along Yucaipa Boulevard to Interstate Highway 10; northwesterly along Interstate Highway 10 to Redlands Boulevard; northwesterly along Redlands Boulevard to Barton Road; westerly along Barton Road to La Cadena Drive; southerly along La Cadena Drive to Iowa Avenue; southerly along Iowa Avenue to State Highway 60; southeasterly along State Highway 60 and U.S. Highway 395 to Nuevo Road; easterly along Nuevo Road via Nuevo and Lakeview to State Highway 79; southerly along State Highway 79 to State Highway 74; thence westerly to the corporate boundary of the City of Hemet; southerly, westerly and northerly along said corporate boundary to The Atchison, Topeka & Santa Fe right-of-way; southerly along said right-of-way to Washington Road; southerly along Washington Road through and including the unincorporated community of Winchester to Benton Road; westerly along Benton Road to Winchester Road (State Highway 79) to Jefferson Avenue; southerly along Jefferson Avenue to U.S. Highway 395; southerly along U.S. Highway 395 to the Riverside County-San Diego County Boundary Line; westerly along said boundary line to the Orange County-San Diego County Boundary Line; southerly along said boundary line to the Pacific Ocean; northwesterly along the shoreline of the Pacific Ocean to point of beginning, including the point of March Air Force Base.

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Note B

SAN DIEGO TERRITORY

The San Diego Territory includes that area embraced by following an imaginary line starting at a point approximately four miles north of La Jolla on the Pacific Coast shoreline running east to Miramar on U.S. Highway 395; thence following an imaginary line running southeasterly to Lakeside on State Highway 67; thence southerly on County Road S 17 (San Diego County) and its prolongation to State Highway 94; easterly on State Highway 94 to Jamul; thence due south following an imaginary line to the California-Mexico Boundary Line; thence westerly along the boundary line to the Pacific Ocean and north along the shoreline to point of beginning.

(END OF APPENDIX A)

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