

Decision No. 82748

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
EDGAR R. CUDE, an individual, doing
business as ACTIVE TRUCKING SERVICE,
for a Certificate of Public Convenience
and Necessity to operate as a highway
common carrier for the transportation
of property in intrastate and inter-
state and foreign commerce.

Application No. 52790

(Filed July 30, 1971)

Murchison & Davis, by Donald Murchison,
Attorney at Law, for applicant.
Richard S. Kopf, Attorney at Law, and
Still, Steiger & Ollestad, by
Ronald J. Kinsling, Attorney at Law,
for Pacific Motor Trucking Co.; and
Russell & Schureman, by Carl H.
Fritze, Attorney at Law, for Smith
Transportation Co., Western Gillette,
Inc., Desert Express, Victorville
Barstow Truck Line, Reliable Delivery
Service, Inc., Kern Valley Trucking,
City Transfer, Inc., Griley Freight
Lines, Imperial Truck Lines, Inc.,
G & H Transportation, Inc., and
Quikway Trucking Co., protestants.

O P I N I O N

Applicant, now operating as a radial highway common carrier and highway contract carrier, requests a certificate of public convenience and necessity authorizing him to transport, as a highway common carrier, in intrastate and in interstate and foreign commerce, plastic pipe, brass and copper articles, iron and steel articles, chemical products, plastic liquids, talc, clay products, paint and paint products, lighting fixtures, cleaning compounds, mufflers, and asbestos.^{1/}

^{1/} At the commencement of the hearing at the request of a potential protestant, W. S. Hatch Company, applicant removed from consideration "bulk chemicals".

The proposed service is to be between:

- a. All points and places in the Los Angeles Basin Territory, as described in Exhibit "A" attached to the application.^{2/}
- b. All points and places in the Los Angeles Basin Territory, on the one hand, and the San Diego Territory, as described in Exhibit "B" attached to the application. serving all intermediate points on or within ten miles laterally of the following highways, on the other hand:

U.S. Highway 101 (Interstate 5),
U.S. Highway 395, and State Highway No. 78.

- c. All points and places in the Los Angeles Basin Territory, on the one hand, to Bakersfield, serving all intermediate points on or within ten miles laterally of the following highway, on the other hand:

U.S. Highway 99 (Interstate 5).

- d. All points and places in the Los Angeles Basin Territory, on the one hand, and Mojave, serving all intermediate points on or within ten miles laterally of the following highways, on the other hand:

U.S. Highway 99 (Interstate 5)
and State Highway 14.

- e. All points and places in the Los Angeles Basin Territory, on the one hand, and Santa Barbara, serving all intermediate points on or within ten miles laterally of the following highways, on the other hand:

U.S. Highway 101 and State Highway 1.

^{2/} Exhibit 4 is a map of the proposed service areas, including the Los Angeles Basin Territory and the San Diego Territory.

Copies of the application were served on existing carriers with which the proposed service might compete and an appropriate notice was published in the Federal Register.

Public hearings on the application were held before Examiner Rogers in Los Angeles between November 30, 1971 and March 5, 1973, both days inclusive. The parties were given permission to file concurrent briefs which were filed on December 17, 1973, at which time the matter was submitted.

Applicant's Presentation

Applicant is an individual doing business under the fictitious firm name and style of Active Trucking Service. His office is in Maywood, California. His transportation experience includes 19 years driving trucks for such trucking companies as Savage Transportation Company, Navajo, P.F.L., Reliable Delivery Service, and Willig Freight Lines. He also drove between Los Angeles and New York for Cleveland Metal Abrasives.

In April 1967 he started Active Trucking Service, a permitted carrier. At the outset he had three bobtail trucks and three drivers. He and his wife ran the office. At that time he had three customers and was carrying carbon black, frozen commodities, and plastics. His maximum service area was 150 miles from his office (Exhibits 1 and 2). He is now transporting all the commodities he requests authority to carry within the limits of his existing authority. If he receives the requested authority he will become a party to Western Motor Tariff Bureau, Inc., M. J. Nicolaus, Agent. He carries \$25,000 cargo insurance and has on file with the Commission public liability insurance to \$300,000, and property damage insurance to \$50,000. Premiums for the insurance are based on the gross revenues. He also has a subhaul bond and a C.O.D. bond on file, but his subhaul bond on file was cancelled on May 10, 1972, and has not been reinstated.

Applicant will give service Mondays through Fridays, with Saturday service on request. He proposes to give same day service between points in the portion of the Los Angeles Basin Territory, roughly, west of Claremont, Pomona, Irvine, and San Clemente, provided calls for pickup are received by 2:00 p.m. (Exhibit 4). The balance of the proposed area is to be served overnight. Deliveries will be made as late as the consignee is open. Normal pickups will be made to 6:00 p.m. Applicant has 25 employees, including 19 drivers. The drivers work on a commission basis, 35 percent of the gross freight charges. As of May 1972, he had 36 pieces of equipment, including 12 bobtail (pickup) trucks, seven diesel tractors, and 10 semitrailers. When applicant commenced business in 1967, his gross revenue was \$37,341. In 1968, his first full year of operation, his gross revenue was \$128,296, and his total tonnage was one million pounds per month. In 1972, his gross revenue was \$596,593, and his total tonnage was approximately 5.5 million pounds per month.

Applicant testified that operations beyond his proposed highway common carrier operations, for example Oildale or Lomita, are conducted pursuant to his radial highway common carrier permit, and operations within the proposed certificated area are conducted pursuant to his highway contract carrier permit.

Applicant will have no regular pickup or delivery routes. He proposes what he designates as an on-call service, that is, he will only make pickups after he receives a request from a shipper.

No specific trucks or drivers are, or will be, assigned to any run including local, or to Santa Barbara, San Diego, Bakersfield, or Mojave. All drivers work on a commission basis. Applicant has one terminal in Maywood with an 11,500 square-foot warehouse in a fenced, blacktop area. He has no tail gate spaces as he does not have, nor does he propose, a dock operation.

Mr. Cude testified that the reason he filed the application was that he had been advised by an unnamed Commission employee that his operations were approaching highway common carriage and, hence, a certificate of public convenience and necessity should be secured.

At the outset of the hearings Mr. Cude stated that the specific items he sought authority to transport, as specified in the National Motor Freight Classification A-12 (now A-13), are plastic pipe, as specified in Items 156990 through 156997; brass and copper articles, as specified in Items 30100 through 31020; iron and steel articles, as specified in Items 104000 through 107660; chemical products, as specified in Items 42600 through 47450; plastic liquids, as specified in Item 156240; clay products, as specified in Items 47990 through 48540; paint and paint products, as specified in Items 149500 through 150320; lighting fixtures, as specified in Items 109000 through 109950; cleaning compounds, as specified in Items 48580 through 48584; mufflers, as specified in Item 120920; asbestos, as specified in Items 14600 through 15050; and talc, as specified in Items 90360 through 90420.

At the conclusion of applicant's presentation he placed in evidence Exhibit 62 which purports to list or summarize the items he proposes to carry as a highway common carrier. These items were those which applicant's supporting witnesses stated they had applicant transport. Repeatedly, throughout the hearings, protestants' counsel objected to testimony by shippers relative to applicant's transportation services and moved to strike the testimony for the reason that applicant had specifically listed the types of commodities he would carry, but the supporting witnesses testified relative to traffic he had not requested authority to carry. The examiner overruled the objections and denied numerous motions to strike. We affirm the examiner's rulings.

Applicant's Supporting Witnesses

Eighteen shipper witnesses and one representative of an interstate motor carrier testified in support of the application. The testimony of one shipper was added by stipulation. The testimony of the evidence most favorable to the applicant is:

(1) B. F. Goodrich Company, Los Angeles

Commodities: Plastic, liquid latex, and industrial adhesives (in drums).

This company ships daily to points and places in the Los Angeles Basin Territory (hereinafter LABT) and to San Diego and Santa Barbara about once a month. Destinations change daily depending upon construction sites. Shipments weigh from 10,000 to 20,000 pounds and the company makes use of applicant's same day delivery service. The company has interstate shipments to the 11 western states on a daily basis. Applicant's services would be used on interstate shipments (ranging from 500 to 3,000 pounds) when long-line carriers have already effected some of the company's interstate pickups. Service, not cost, is a paramount item relative to this company's transportation. Overnight service is needed and received from applicant in the balance of the LABT east of the same day area, and to Santa Barbara, Bakersfield, San Diego, and intermediate points.

(2) Triple Quality Tool & Die Company, Bell

Commodities: Steel stampings, raw steel, and coils.

This company ships to points within the LABT, including points within the 35-mile area. Shipments are made to Anaheim three or four times a week, and to other points five or six times per month, both on less-than-truckload and truckload shipments ranging from 2,000 pounds to 40,000 pounds. Shipments to the City of Industry are effected three times a week, and range from 500 pounds to 5,000 pounds. Transportation is required to the City of Commerce once a week on shipments averaging 3,000 pounds. Occasional shipments are made to Bakersfield, San Diego, and the Carlsbad area. Same day service is afforded this shipper by applicant and is important to the company. Saturday service has been requested and received. The company has infrequent out-of-state shipments to Phoenix and applicant would be used as the origin carrier.

(3) Pacific Western Extruded Products, Inc., Downey

Commodities: Plastic pipe, plastic hose, and fittings.

This organization ships to points and places in the LABT on a daily basis. Shipments are also made to Santa Barbara, Mojave, Palmdale, and Lancaster weighing 1,000 to 20,000 pounds. Shipments are made to San Diego, Fallbrook, Escondido, and La Mesa three or four times a week. The company receives same day service within the 35-mile area, and overnight service to the balance of the LABT. Applicant has been used for three years. The company honors customer routing and will continue to do so. Shipments to Santa Barbara, averaging 10,000 pounds each, are made three or four times a month, and must be moved on flatbed equipment. The company also ships occasionally to Bakersfield, having shipped within the past month about 30,000 pounds. Shipments are destined to job sites

within ten miles on either side of the highway. Shipments are also made to Lancaster and Palmdale. The company has interstate shipments to Phoenix and would employ applicant to avoid congestion and number of carriers entering its place of business. The witness for the company indicated that "the cost is worth the service" and he would continue to use applicant's service even "if he couldn't give me the same day service" despite the fact that same day service is very important to the shipper.

(4) Pacific Wire Rope Consolidated, Santa Fe Springs

Commodities: Steel wire rope and wire rope fittings.

The company ships substantially to all points and places in the LABT on a daily basis. The shipments range from 100 to 500 pounds. The company ships three times a month to Santa Barbara, and once a month to Mojave. Saturday service is given by applicant which has been used for approximately eleven months. The company is receiving the same day service proposed by applicant. The witness said applicant's service is excellent and he makes no charge, as other carriers do, for the same day service. The company has interstate freight destined to Phoenix, Tucson, El Paso, and occasionally, to Wisconsin and Michigan. The company would use applicant for pickup for delivery to the long-line carriers and needs applicant's service. The company has 1,200-pound shipments to Bakersfield two or three times a week. Applicant performs many pickups per day for this company and renders job site deliveries for it.

(5) Chemical Products Corporation, Western Division, Burbank

Commodities: Liquid plastic.

This organization has shipments to "all areas of the LABT". Service by applicant is on a daily basis to many of the company's customers on 100 to 20,000-pound shipments. The company's

shipments, ranging from 100 to 1,000 pounds, move to San Diego once or twice a month. The company receives applicant's same day delivery service. The company has used applicant for four years, found the service excellent, and has a need for it.

(6) Ureadek International, Downey

Commodities: Urethane elastometers (liquid plastics)

The company has shipments in the 35-mile radius, and to points and places beyond the LABT. The shipments total approximately 1,000,000 pounds per year. Substantially all deliveries are to job sites, and within the last three months the product, employed for waterproofing, has been delivered to Mojave on a large construction job. The company has shipments to San Diego ranging from 20,000 to 40,000 pounds. The company has need for applicant's service and receives the same day delivery service. The company's business operations have doubled within the last year. Service is most important to the company. The witness said applicant provides excellent service.

(7) Supergrate Open Steel Flooring Company, Maywood

Commodities: Open steel flooring.

This company has approximately ten to twenty 1,500 to 20,000-pound shipments daily into the same day area. Movements also are made to points beyond the same day area, but within the LABT. Shipments are made to Santa Barbara four times a month, and job site deliveries are necessary. The company ships to Bakersfield on an average of five times a month with approximately 5,000 pounds per shipment. Shipments move to San Diego about four times a week and to Mojave, Lancaster, and Bakersfield about four times a month. The shipments average 4,000 pounds each. The company has approximately ten less-than-truckload interstate shipments per week, weighing approximately 8,000 pounds each.

Applicant's service has been used for the past two years and the company's business has grown approximately 25 percent during that period.

(8) Wagner Electric Sales Corporation, El Segundo

Commodities: Hydraulic brake shoes for automobiles, asbestos, brake shoe lining with metal cores.

Shipments move from the company's plant in El Segundo to its warehouse in Torrance three times a week. These shipments range from 25,000 to 34,000 pounds. The company uses applicant's service and needs it, particularly the same day service.

(9) USCO Services, Inc., Vernon

Commodities: Plastic liquids, chemicals, clay products, and cleaning compounds (in containers).

The company ships into the 35-mile area and San Diego, San Bernardino, and Riverside. It receives same day delivery service from applicant on shipments ranging from 450 to 40,000 pounds. The company has occasional shipments to Mojave. It finds applicant's service excellent and needs it.

(10) John K. Bica Company, Inc., Los Angeles

Commodities: Shale, limestone, formica, soapstone, chemicals, whitening, clay, and talc.

Shipments are made daily within the LABT. They average approximately 10,000 pounds each. Shipments also go to San Bernardino, Riverside, Corona, Upland, and Ontario a total of five to six times a week. They average 5,000 pounds. Shipments are also made to Santa Barbara, Ventura, and Oxnard approximately once a week. These shipments average 2,000 pounds. Two to four 5,000-pound shipments per month are made to Bakersfield. About twice a month shipments are made to Mojave, Lancaster, and Palmdale averaging 3,000 pounds each. About three shipments a

month, averaging 10,000 pounds each, are made to San Diego, Escondido, and San Ysidro. Three times per year the company has shipments through the port of Wilmington to Hawaii. These shipments average approximately 2,000 pounds each. Same day service is required in the 35-mile area, and is being received from applicant on a daily basis. The service was characterized by the witness as excellent. Service to points beyond the 35-mile limit are effected on an overnight basis. In the last four years this company's business has increased approximately 30 percent.

(11) Angeles Metal Systems, Los Angeles

Commodities: Iron and steel products (studding, furring, and wall components).

The company ships to all points and places in the LABT, including those within the 35-mile area, which move approximately four times per week on less-than-truckload to truckload quantities, and into the LABT once to twice a week on truckload movements, and two or three times a week to points east of the 35-mile area, namely, Pomona, Ontario, Upland, and Chino. Job site deliveries are required. The company also ships to the Santa Barbara, Ventura, and Oxnard area. These shipments average 5,000 to 20,000 pounds, and move approximately twice per week. Movements to Bakersfield are twice a month, and average 2,000 to 5,000 pounds. Movements are made to San Clemente, Oceanside, Escondido, La Jolla, Pacific Beach, and the San Diego Territory four times a week. These shipments average 5,000 to 40,000 pounds. This shipper has used applicant for a period of four years and receives prompt and dependable pickup and delivery service, including proper provision of equipment. The proposed same day service is needed and received from applicant.

(12) Greer Hydraulics, Inc., Los Angeles

Commodities: Iron and steel products.

This company has movements within the 35-mile area of the LABT on a daily basis of at least 5,000 pounds per shipment. Shipments of about 5,000 pounds are made to Pomona, Claremont, and Ontario two or three times a week. The same day service is required. This company's business has increased from \$5,000,000 gross sales in 1970 to \$6,000,000 in 1971, and it anticipated an additional \$1,000,000 during 1972. The company has interstate traffic and would use the services of applicant for both intra-state and interstate traffic. The amount tendered on interstate approximates 50,000 to 60,000 pounds per month, and freight destined to Hawaii varies from 5,000 to 10,000 pounds a week, with a frequency of three shipments a week in both directions. The company has a need for applicant on both interstate and intra-state shipments. Multiple pickups per day are received from applicant.

(13) Silmar Chemical Corporation, Hawthorne

Commodities: Liquid plastics, resin, and polyethelene.

The company ships to substantially all points in the 35-mile radius on a daily basis with a weight per shipment of 2,000 to 5,000 pounds. Shipments are made into the balance of the LABT two or three times a week averaging 5,000 pounds. Shipments to Santa Barbara are made once a month and average 20,000 pounds. Shipments are made to Bakersfield once a week and average 8,000 pounds. Shipments are made to San Diego once every three months and range from 5,000 to 15,000 pounds. The company receives the offered same day service and overnight service to other points. The company's business has grown approximately 15 percent in the last two years. It has a need for

applicant's service, and would benefit by applicant's picking up interstate freight on interline arrangement with transcontinental carriers.

(14) Howard C. Fletcher Company, Santa Ana

Commodities: Copper and brass commodities.

The company has from three to 30 shipments into the 35-mile radius area daily ranging from 300 pounds to 5,000 pounds each. It receives the same day service. Shipments are made twice a week to Riverside, Pomona, and San Bernardino. They vary from 3,000 to 5,000 pounds each. Movements to San Diego are on a daily basis and weigh 2,000 pounds each. Shipments move to Santa Barbara and Oxnard once or twice a week and average 1,500 pounds. Shipments of 300 to 400 pounds are made once or twice a month to Palmdale. The company witness said applicant's service is excellent. The company has interstate shipments to the 11 western states weighing approximately 2,000 pounds each, and to Alaska once a month of 5,000 to 6,000 pounds. The company has been unable to obtain pickups and appeared in support of the applicant in order to be able to tender interstate, along with intrastate, shipments to applicant when long-line interstate carriers fail to make pickups.

(15) The Okonite Company, Los Angeles

Commodities: Brass and copper, insulated (on reels).

The company's shipments range from 100 to 2,000 pounds and move into the LABT, both within and outside of the 35-mile radius. Shipments are made to San Clemente, Elsinore, Murietta, and Temecula. Movements to San Diego vary from daily to two or three times a week. Shipments are made to Oceanside, Vista, Encinitas, and Escondido two or three times a week. Shipments are made to Santa Barbara and Bakersfield two

or three times a week, and average 1,500 pounds. The company needs the applicant's proposed daily and Saturday service, same day service within the 35-mile area, and overnight delivery to the balance of the points indicated. The business grew from 300 orders in 1971 to over 300 orders by April 1972. The company needs applicant's service both in intrastate and in interstate and foreign commerce. The interstate movements will require applicant's service two or three times a week on shipments ranging from 500 to 5,000 pounds. The company will continue to use services of other carriers when customers request such service. The company receives multiple pickups from applicant.

(16) Nu-Lite Fluorescent Manufacturing Company, City of Commerce

Commodities: Fluorescent lighting fixtures.

The company has shipments on a daily basis, averaging 400 pounds, to points and places in the LABT. Shipments are made to San Diego ranging from 1,500 to 4,000 pounds, and to Escondido, Occanside, and Camp Pendleton practically daily. Shipments move to points intermediate between the LABT and the San Diego Territory about three times a week. Shipments to Santa Barbara are made approximately once a month. Shipments are made to Ventura and Oxnard about every two weeks. Shipments to each area average 400 pounds. Movements to points beyond the 35-mile area, but within LABT, are performed three times a week and average 10,000 pounds each. Applicant's service is excellent, with dependable pickups and helpful drivers. The company plans to eliminate use of its own trucks in the 35-mile radius area in the event applicant is certificated.

(17) T.I.M.E.-DC, Los Angeles

Commodities: General commodities, including those applicant proposes to carry.

The company is one of the largest transcontinental carriers in America. It has movements of interstate traffic originating at points and places in the LABT to applicant's Los Angeles warehouse destined to out-of-state points on a 24-hour basis. The company estimates 100,000 pounds a day are generated in the LABT destined to interstate points on its lines. If applicant is granted interstate authority, it would be used by the company on a daily basis, including Saturday service when necessary. The company experienced a 15 percent increase in Los Angeles generated revenue in 1971 over 1972. The company's present tonnage is up, and it needs applicant's service to complete its integrated pickup and delivery service operations.

(18) Textured Coatings of America, Los Angeles

Commodities: Paint products.

This company has daily shipments into the LABT averaging about 5,000 pounds. It needs daily service into the 35-mile area, with overnight service to points beyond. The company delivers to retail stores and needs job site deliveries. Shipments are daily to San Diego and to home sites located within ten miles of U. S. Highways 101 and 395. Shipments are also made to Santa Barbara, Ventura, and Oxnard four times a week, averaging 2,000 pounds per shipment, and to Bakersfield on a daily basis averaging 1,000 pounds. Movements are made once every two weeks to the Palmdale-Lancaster-Mojave area, averaging 500 pounds. Applicant's service is needed and the company would eliminate proprietary truck operations within a present 20-mile radius area if applicant is certificated. Applicant is needed to perform interstate movements to

the harbor for this carrier. Same day service is afforded by applicant and needed by the company.

(19) Inland-Ryerson Steel Company, City of Commerce

Commodities: Steel and fabricated steel.

Shipments move on a daily basis to points within the 35-mile area as well as the outer LABT. The shipper moves approximately 10,000 to 40,000 pounds per day via for-hire carriers, and has movements to San Diego and intermediate points three or four times a week of shipments ranging from 5,000 to 20,000 pounds. It also has shipments to the Santa Barbara-Ventura-Oxnard area averaging 5,000 to 10,000 pounds, two to three times a week; and to Bakersfield twice a month, ranging in weight from 500 to 800 pounds. The company receives daily service in the 35-mile area and overnight service to points beyond. The company has grown approximately 15 percent within the last year and similar further growth is anticipated. Applicant's service is necessary and meets the company's needs and requirements as to transportation. Proper equipment is invariably supplied by applicant. The grant of the application would benefit the company by faster delivery service for interstate traffic as it now takes a day or so longer to get it there.

(20) Kittell Muffler and Engineering Company, Los Angeles

Commodities: Steel exhaust mufflers
and steel fittings.

The evidence relative to this company was adduced by stipulation, evidencing shipments to the San Diego area, Bakersfield, Ventura, and the LABT on daily shipments of from 100 to 1,000 pounds, averaging 300 pounds per shipment. The company needs daily service and receives same day delivery service by applicant. Applicant's service was characterized as prompt and dependable.

Protestants' Evidence

Much of the applicant's shipper testimony was disputed by the protestants.

Many of the items carried and to be carried by applicant do not come within any of the tariff bureau commodity descriptions as stated by applicant.

Each of the protestants is a highway common carrier conducting operations within the State of California pursuant to certificates of public convenience and necessity issued by this Commission. Service in interstate or foreign commerce is provided pursuant to certificates of registration or certificates of public convenience and necessity issued by the Interstate Commerce Commission. Each protestant appeared at the hearings and presented substantial evidence as to its actual operations in the areas involved in the within application. The cross-examination of protestant's witnesses by applicant was extensive.

The application is for authority to serve the Los Angeles Basin, Bakersfield, Santa Barbara, San Diego, and the desert area. The following certificated carriers^{3/} serve, generally, the listed areas plus interstate:

Los Angeles Basin:	City, G & H, Griley, Qwikway, Reliable, SI (interstate), VBTL, PMT, Western Gillette
Bakersfield:	KVT, SI
Santa Barbara:	City, Griley, Smith, PMT
San Diego:	G & H, Griley, Qwikway, Reliable, SI, PMT
Desert Area:	City (interstate), KVT, Reliable, VBTL

^{3/} The full names of the carriers are:

City - City Transfer, Inc.; Griley - Griley Freight Lines; G & H - G & H Transportation, Inc.; Reliable - Reliable Delivery Service, Inc.; SI - Shippers-Imperial Truck Lines, Inc.; VBTL - Victorville Barstow Truck Line; Qwikway - Qwikway Trucking Co.; PMT - Pacific Motor Trucking Co.; Western Gillette - Western Gillette, Inc.; KVT - Kern Valley Trucking; Smith - Smith Transportation Company.

The Commission takes official notice of the numerous highway common carriers serving these areas.

Terminal facilities owned and/or operated by the protestants are scattered throughout the areas here involved as follows:

City:	Los Angeles (4), Carson, Fullerton, Santa Fe Springs, Los Angeles Airport
G & H:	Montebello (in San Diego and Los Angeles by Hodge Trucking Co.)
Griley:	Long Beach, Oxnard, Los Angeles, San Diego
KVT:	Los Angeles, Bakersfield, Palmdale, Fresno, Tulare, Stockton, Sacramento
Qwikway:	Los Angeles
Reliable:	San Diego, Paramount, San Bernardino
SI:	Santa Fe Springs, San Marcos, Chula Vista
Smith:	Los Angeles, Oxnard, Santa Barbara, Santa Maria, San Luis Obispo
VBTL:	Los Angeles, Bloomington, Victorville, Barstow, Palmdale

Each of the protestants operates a substantial fleet of equipment consistent with its particular operation. These fleets include all types of equipment from bobtails to vans and flatbeds of various sizes and descriptions, including liftgate equipment. Generally, the equipment is radio-dispatched in the Los Angeles Basin area. Most of the protestants' equipment is depicted on exhibits or described in the record.

Each of the protestants operates terminals and has regular pickup and delivery runs operating out of each terminal. The regular runs are backed up and supplemented with shag runs. Wherever possible, the large shipments are loaded to go and the balance handled over the docks. Each protestant handles both

intrastate and interstate traffic, including service at the harbors. Each handles interline traffic with connecting interstate carriers on through rates. Each also handles C.O.D., and order-notify shipments. Generally speaking, the service offered is overnight in character throughout the area here involved, but those carriers serving within the Los Angeles Basin claim to provide whatever same day service is necessary for the shipping public. Pickup and delivery operations vary from 10 to 12 hours to around the clock. Many of the protestants make late or early pickups to suit the convenience of the shipping and receiving public. While not advertised, Saturday service is provided upon prior request by several of the protestants. City provides services seven days per week. Each of the protestants is operating under union contracts which generally provide premium pay for Saturday service. The record reflects that not all of the freight handled by protestants moves over a dock, although dock and terminals are necessary in order to actually provide the common carrier service.

The protestants presented evidence which tends to show that there is adequate service in each of the areas; that each of the protestants is operating at less than capacity; that the protestants have unused equipment available; that the protestants can and will handle the material handled by applicant and are ready, able, and willing to handle this material both in intrastate and interstate commerce; and that the granting of the requested authority will have an adverse effect on each of the protestants. The protestants also state that applicant is a "pick and choose" carrier hauling only larger marks of prime freight. A common carrier is entitled to limit the types or sizes of shipments, or both, of the commodities he will carry as long as he offers the service to anyone having those commodities and the size shipments for transportation.

Applicant has been doing precisely what his customers have desired insofar as intrastate freight transportation is concerned since 1967. These customers enthusiastically supported his request for interstate authority in order that they be enabled to use his service for such shipments. Applicant's offering is limited and no reason appears to deny his customers the complete service proposed.

Findings

1. Applicant, as a permitted carrier, is engaged in the transportation of a limited number of commodities between points in the Los Angeles Basin Territory, and between points in the basin, on the one hand, and points outside the basin, on the other hand.
2. Applicant's customers ship or receive freight between places in California, on the one hand, and other states or foreign places, on the other hand. They desire that this traffic be handled where possible, by applicant even though additional handling would be required. In order to handle such traffic, it is necessary that applicant have a highway common carrier certificate of public convenience and necessity issued by this Commission.
3. Since 1967 applicant has been serving the area in which he seeks certification. The granting of the requested authority will not increase the highway common carriage competition to any appreciable extent.
4. A shipper is entitled to prefer the service of a particular carrier over that provided by all others who are available, and to use that service to the exclusion of others.
5. The evidence does not show that any local traffic will be diverted from protestants by the granting of this application.

6. 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.

7. The Commission finds with reasonable certainty that the project involved in this proceeding will not have a substantial effect on the environment.

Conclusion

The Commission concludes that the application should be granted.

Edgar R. Cude, an individual, doing business as Active Trucking Service, 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 Edgar R. Cude, an individual, doing business as Active Trucking 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 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 he accepts the certificate he 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 his 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 his 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, he 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 16th day of APRIL, 1974.

William J. Sturgeon, Jr. President
[Signature]
[Signature]
Commissioners

I dissent:

[Signature], Commissioner

Commissioner Vernon L. Sturgeon, being necessarily absent, did not participate in the disposition of this proceeding.

Edgar Cude
(an individual)
doing business as
ACTIVE TRUCKING SERVICE

Edgar Cude, 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:

A. Commodities named, as described in the following items of the National Motor Freight Classification No. A-13, on the issue date thereof, Richard H. Hinchcliff, Issuing Officer:

1. Plastic pipe; items 156990 thru 156997.
2. Brass or copper articles; items 30100 thru 31020.
3. Iron or steel articles; items 104000 thru 107660.
4. Chemicals, excluding bulk chemicals; items 42600 thru 47450.
5. Plastic liquid; item 156240.
6. Talc; items 90360 thru 90420.
7. Clay; item 47990 thru 48540.
8. Paint; items 149500 thru 150320.
9. Lighting fixtures; items 109000 thru 109950.
10. Cleaning compounds; items 43580 thru 48584.
11. Mufflers; item 120920.
12. Asbestos; items 14600 thru 15050.

B. Between:

1. All points and places in the Los Angeles Basin Territory as described in Note A.

Issued by the California Public Utilities Commission.

Decision No. 82748, Application No. 52790.

2. All points and places in the territory described in paragraph B 1 above on the one hand and the following on the other hand serving all intermediate points on or within ten miles laterally of the named highways:
- (a) The San Diego Territory as described in Note B, via Interstate Highways 5 and 15 (U.S. Highway 395), and State Highway 78.
 - (b) To Bakersfield, via Interstate Highway 5 and State Highway 99.
 - (c) Mojave, via Interstate Highway 5 and State Highway 14.
 - (d) Santa Barbara, via U.S. Highway 101 and State Highway 1.

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

Issued by the California Public Utilities Commission.

Decision No. 82748, Application No. 52790.

Edgar Cude
(an individual)
doing business as
ACTIVE TRUCKING SERVICE

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.

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)

Issued by the California Public Utilities Commission.

Decision No. 82748, Application No. 52790.