

Decision No. 83350

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

In the Matter of the Application of
STATES WAREHOUSES, INC., a California
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 inter-
state and foreign commerce, and for an
in lieu Certificate of Public Conve-
nience and Necessity therefor.

Application No. 53537
(Filed August 17, 1972;
amended November 6, 1972
and November 15, 1972)

Russell & Schureman, by R. Y. Schureman,
Attorney at Law, for City Transfer,
Inc., Griley Freightlines, S & M
Freight Lines, West Coast Warehouse
Corporation, Qwikway Trucking Co., and
Los Angeles City Express, Inc., pro-
testants.

OPINION ON REHEARING

Prior to March 5, 1974, applicant had a certificate of public convenience and necessity as a highway common carrier pursuant to authority from this Commission for the transportation of general commodities with the usual exceptions: 1/

Between the warehouses of States Warehouses, Inc., at La Mirada and Vernon, California, and points and places within five miles thereof, on the one hand, and points and places in the Los Angeles Basin Territory described in Appendix B attached hereto, on the other hand, including local service wholly within the five-mile radius of said warehouses in La Mirada and Vernon, California, and including service between the said warehouses and points and places within five miles thereof.

1/ Decision No. 79422 dated November 30, 1971 in Application No. 52647.

By Application No. 53537, filed on August 17, 1972, and thereafter amended on November 6, 1972 and November 15, 1972, applicant sought to extend the origin or destination of intrastate traffic with a coextensive extension of interstate and foreign commerce traffic.

On February 13, 1974 the Commission issued its Decision No. 82474 in said application extending the origin and destination territories to be:

Between the cities of Los Angeles, La Mirada, and Vernon, California, and points and places within five miles thereof, on the one hand, and points and places in the Los Angeles Basin Territory, ... , on the other hand.

The authority remained to carry general commodities, with the usual exceptions.

The effective date of the authority was March 5, 1974.

The Commission made the following findings in support of the decision:

"Findings

"1. Applicant is a highway common carrier and public utility warehouseman.

"2. As a highway common carrier applicant has been providing service between its La Mirada and Vernon warehouses and points within five miles thereof, on the one hand, and on the other hand, any and all points and places in the Los Angeles Basin Territory. This authority is registered with the Interstate Commerce Commission.

"3. Applicant seeks authority to extend its service both in intrastate and interstate and foreign commerce to serve between the cities of Los Angeles, Vernon, and La Mirada and within five miles thereof, on the one hand, and all points and places in the Los Angeles Basin Territory, on the other hand.

"4. Applicant's customers, generally speaking, have little or no complaint concerning the protestants' service. They do, however, like the applicant's service and want this service available both in interstate and intrastate commerce.

"5. The proposed extension of service would provide a substantial number of customers with split pickup service and enable them to use applicant's service in a greater area.

"6. Applicant has been serving the entire area for many years as a permitted carrier, and applicant's continuation as a highway common carrier will not increase the highway common carrier competition to a substantial extent.

"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 this decision.

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

On February 25, 1974 a document entitled "Petition for Reconsideration and Rehearing of Decision No. 82474..." by the carriers listed hereinabove was filed.

On April 16, 1974, the Commission issued its "Order Granting Limited Rehearing". This rehearing was limited to oral argument on the issue of whether the evidence adduced at the

hearings held in Application No. 53537 require the granting of the relief sought in the application. Pursuant to said order, a hearing was held before Examiner Rogers in Los Angeles on June 14, 1974. The appearing parties were instructed to file proposed findings and conclusions supporting their position on or before June 24, 1974. The findings were filed as requested on said date and the matter was again submitted for decision.

Protestants' Argument

The principal thrust of the protestants' argument was that language in the Decision No. 82474 requires that the application be denied. The language is on page 19 of said decision and reads:

"The record is replete with evidence of ability and willingness of other carriers to provide full service."

However, the record also shows that the applicant's supporting witnesses were not satisfied with the protestants' services and would not use their services if any alternative were available. This, in our opinion, amply demonstrates that public convenience and necessity require the granting to applicant of the requested authority.

Protestants' counsel finds a lack of clarity in the wording of the authority granted by the decision:

"Between the cities of Los Angeles, La Mirada, and Vernon, California, and points and places within five miles thereof, on the one hand, and points and places in the Los Angeles Basin Territory, as described herein, on the other hand."

We cannot comprehend how such language could be unclear. Counsel for protestants argues:

"Setting aside the issue of the second amendment, applicant is said to seek authority between Los Angeles, La Mirada, and Vernon, California, and points and places within five miles thereof, on the one hand, and points and places in the Los Angeles Basin Territory. Thus, contrary to the prior certificate, no local service is sought (1) Los Angeles and points and places within five miles thereof; (2) La Mirada and points and places within five miles thereof; and (3) Vernon and points and places within five miles thereof. Any other interpretation would render the prior grant authorizing local service within the five-mile radius meaningless, as well as the words 'on the one hand'. These words denote the restrictive radial grant and prohibit the local service. The presentation made by applicant wholly ignored and, in fact, conflicted with the scope of the application, even as amended. Eliminating the local service within the radius areas further eliminates any interest of the shippers, particularly the very broad five-mile radius of Los Angeles. In effect, five miles of Los Angeles includes basically the Los Angeles and Los Angeles Harbor Commercial Zones, and more. However, among other things, definite findings should be made that no local service may be performed within the named three cities and a radius of five miles thereof. This interpretation is consistent with the law, the application and the prior grant of authority to applicant."

We see no need to revert to the prior certificate. The language is clear. Applicant sought authority between, e.g., the city of Los Angeles and all points within five miles of the city limits, on the one hand, and all points and places in the Los Angeles Basin Territory, on the other hand. Such language does not exclude shipments between two points in the city of Los Angeles. We hold that the authority, if granted as stated in the application, would include local service.

The grant of the requested authority must be supported by evidence of public convenience and necessity. In our opinion, the record contains sufficient evidence to support a finding that the shippers need the service of applicant as proposed. In our decision granting the requested authority we summarized the portion of the applicant's evidence favorable to a grant. Such evidence will not again be summarized herein.

Findings

We have reviewed the record and we rescind our findings in Decision No. 82474 and make the following findings:

1. Applicant is a highway common carrier and public utility warehouseman.
2. As a highway common carrier applicant has been providing service between its La Mirada and Vernon warehouses and points within five miles thereof, on the one hand, and on the other hand, any and all points and places in the Los Angeles Basin Territory. This authority is registered with the Interstate Commerce Commission.

3. Applicant seeks authority to extend its service both in intrastate and interstate and foreign commerce to serve between the cities of Los Angeles, Vernon, and La Mirada and points within five miles thereof, on the one hand, and all points and places in the Los Angeles Basin Territory, on the other hand.

4. Applicant's customers like the applicant's service and want this service available both in interstate and foreign commerce and intrastate commerce.

5. The proposed extension of service would provide a substantial number of customers with split pickup service and enable the use by them of applicant's service in a greater area.

6. Applicant has been serving the entire Los Angeles Basin Territory for many years as a permitted carrier, and applicant's continuation as a highway common carrier will not increase the highway common carrier competition to a substantial extent.

7. The authority sought is for a limited modification of applicant's "hub" area within the same peripheral limits as presently authorized.

8. Applicant possesses the experience, equipment, personnel, terminal facilities, and financial resources necessary to service the increased hub area of its existing certificate.

9. Applicant, as a highway common carrier, has been conducting operations within its authority and has been conducting extensive operations throughout the modified hub area as a permitted carrier.

10. The evidence established the need of supporting shippers and present customers for a direct delivery when more economically feasible without moving through applicant's warehouse.

11. Applicant owns and operates a warehouse in the Los Angeles Basin Territory and its transportation service is closely, but not exclusively, related to its warehouse operations.

12. In addition to applicant's non-warehouse customers, applicant is providing a combined warehouse and transportation service for many of its warehouse customers. Applicant, in effect, acts as the traffic and shipping department for such customers. This is a service which most protestants do not perform.

13. Applicant is not a new carrier entering the field for the first time. It represents an established operation and there is no reason to assume that upon modification of the "hub" area of applicant's present authority it will be any more competitive than it has been as a permitted carrier.

14. The grant of additional authority will enhance its ability to provide reasonable service to its existing customers.

15. The equipment operated to serve its present customers is being utilized efficiently.

16. The equipment dedicated to the service will be loaded ~~.....~~
substantially to capacity.

17. Applicant will not require any additional fuel supply to carry out its modified additional common carrier obligation.

18. The proposed extension of service will provide many of applicant's customers with the advantages of a split delivery service. It will also be a convenience for them to use applicant to a wider area which will thereby help to reduce paper work, facilitate tracing, and, for some customers, decrease dock congestion.

19. A number of customers presently using applicant's permitted service have demonstrated a need to have applicant pick up their interstate shipments at the same time as it picks up their intrastate shipments.

20. Granting of the authority sought herein will have no significant impact upon any highway common carrier having authority to operate in competition with applicant's proposed service.

21. The institution of the extended service requested has not been shown to have caused any significant injury to any certificated carrier as to intrastate traffic, nor has there been any showing that it will as to interstate traffic.

22. Protestants have enjoyed a healthy economic growth and development in the past few years.

23. Shippers have not had available to them the combined alternate services proposed by applicant both as to interstate and foreign traffic, and intrastate traffic.

24. The portion of the public whose freight supports the present scheduled operations is composed in large part of those who find the services of existing certificated carriers not fully responsive to their needs; their dissatisfaction is based upon:

- (a) unable to obtain early A.M. deliveries from existing carriers;
- (b) city and west-coast-only protestants with warehouses which are inconveniently located;
- (c) applicant meets service specifications better than existing carriers;
- (d) undependability of service;
- (e) deliveries not made when wanted;
- (f) "messed up" pickups; and
- (g) nonsolicitation by existing carriers.

25. There is a need by members of the shipping public for expeditious service for shipments in interstate and foreign commerce between the same points and over the same routes that applicant has sought to serve in intrastate commerce.

26. Notice of this application appeared in the Federal Register on Thursday, September 7, 1972. Hearings on this matter were public and opportunity was afforded all interested parties to appear and be heard.

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

Conclusions of Law

1. Public convenience and necessity require that applicant be authorized to operate in intrastate commerce as proposed in the application.

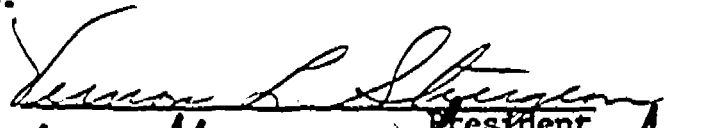
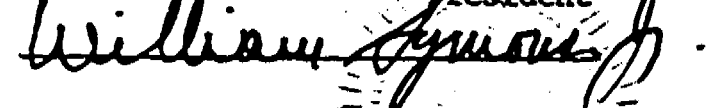


2. Public convenience and necessity also require that applicant be authorized to engage in operations in interstate and foreign commerce within limits which do not exceed the scope of the intrastate operations authorized.

ORDER ON REHEARING

IT IS ORDERED that the Order in Decision No. 82474 herein, modified by the new Findings of Fact, is affirmed.

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

Dated at San Francisco, California, this 27th day of AUGUST, 1974.


President




Commissioners

Commissioner J. P. Vukasin, Jr., being necessarily absent, did not participate in the disposition of this proceeding.