

ORIGINAL

Decision No. 85065

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
S & C FREIGHT LINES, INC., for an
extension of its certificate of
public convenience and necessity
authorizing operations as a highway
common carrier.

Application No. 55030
(Filed July 12, 1974
amended April 3, 1975)

Handler, Baker & Greene, by Daniel W. Baker
and Randall M. Faccinto, Attorneys at Law, for
S & C Freight Lines, Inc., applicant.
Dunne, Phelps & Mills, by Marshall G. Berol and
James O. Abrams, Attorneys at Law, for Delta
Lines, Inc., protestant.

O P I N I O N

This application was heard before Examiner Fraser at Oakland on April 28 and 29, San Jose on May 1 and 2, and San Francisco on June 9, 1975. It was submitted on the last day of hearing. Protests were filed by Delta Lines, Inc. (Delta) and by Pacific Motor Trucking Co. The latter withdrew its protest prior to the hearing after the applicant amended its application to exclude the transportation of wine from Napa or points within 10 miles of Napa from its proposed certificate.

Applicant is a California corporation with its office and terminal at 300 East Gish Road, San Jose, California. It transports general commodities under radial highway common carrier and highway contract carrier permits in addition to a certificate of public convenience and necessity, which is registered with the Interstate Commerce Commission and authorizes the transportation of general commodities with the usual exceptions from San Francisco south to San Mateo, Redwood City, and San Jose; east through Richmond, Berkeley,

Oakland, Hayward, and Fremont down to San Jose and back to point of origin as previously described. The area served is defined as the San Francisco Territory.

Applicant has applied to extend its general commodity authority with the usual exceptions northerly to Novato and Napa, northeasterly to Sacramento, then southerly along Highway 99 through Stockton to Modesto, from Modesto westerly along Highway 132, Highway 580, and Highway 50 through Dublin to Hayward; also southerly from San Jose to Salinas and Monterey; also southerly from San Jose on Highway 17 through Santa Cruz and Watsonville to Monterey. Applicant also requests authority to use all convenient roads and routes and for 10-mile laterals between and from all points to be served. Applicant will provide service in intrastate, interstate, and foreign commerce in the expanded area. Notice of this application was published in the Federal Register of August 31, 1974.

Applicant will provide a scheduled service Monday through Friday. Service will not normally be performed on Saturdays, Sundays, or holidays. Applicant will provide overnight delivery between all points served. The rates charged will be identical to those published in Minimum Rate Tariff 2. Applicant's operating equipment as of April 1, 1975 includes seven van-type trucks, five tractors, four van semi-trailers, and two service vehicles. All of the tractors and five of the trucks are equipped with two-way radios. Applicant's balance sheet as of December 31, 1974 shows total assets of \$149,519 and current liabilities of \$53,851. Long-term liabilities total \$36,125. The income statement for the last six months of 1973 indicates a gross income of \$196,976, expenses of \$150,441, and a net income of \$21,301.

The president of applicant testified as follows. He has been in for-hire transportation since 1950 and has been a manager and truck owner since 1961. The present applicant was started as a partnership in 1967 and the present witness became sole owner in 1969.

Applicant was incorporated on July 6, 1971 with he and his wife as the principal stockholders. In May 1967 applicant had two trucks and did a gross business of \$60,000. Applicant owned 16 vehicles at the end of 1974 and did a gross business of \$420,000. The estimated gross for 1975 will exceed \$450,000. Applicant has never employed solicitors or salesmen and does not favor extensive advertising. It is applicant's position that its steady growth has been due to recommendations passed on by applicant's old customers. Applicant operates with 16 employees: the president, two office clerks, a part-time mechanic, two dock employees, and 10 regular drivers. Applicant operates out of a single terminal in San Jose. The facility includes a one-half acre paved and fenced parking lot, a maintenance shop, a platform with gas and diesel storage, and applicant's main office. It is a small carrier which specializes in providing extra service to shippers. It operates on a five day week, but will make pickups or deliveries on Saturday if required. It also features pickups at 9:00 p.m. or 10:00 p.m. and deliveries at 5:00 a.m. when requested by a shipper for good reason. Most large carriers transport goods to a terminal. The goods are then carried to a second terminal and transferred to one or more delivery trucks. Applicant's shipments are not directed through a terminal. This saves considerable time in transit. Twenty percent of applicant's shipments are delivered on the day picked up and 80 percent are delivered the following morning. This application was filed because business has increased to the point where a large number of shippers are being served on a virtually day-to-day basis between points within and without the existing certificated territory. Customers have requested daily service to points beyond applicant's certificated area. If applicant is denied this expansion, it may lose some of the shippers it has served for many years.

Twenty shippers testified for the applicant. They ship and receive store fixtures, glass shelving, hardware, tools, sporting goods, housewares, school supplies, concrete forms and scaffolding, safety equipment, containers, liquors, beer and wine, heavy hardware, time cards, beds and bedding, pictures and frames, food processing equipment, drug items, mattresses, cushions, cotton goods, plumbing supplies, radios, trash compactors, and department store items. Almost all who testified have used applicant's service for six or more years in the transportation of shipments ranging from a few pounds to more than truckload. They use applicant's service throughout the greater Bay Area with frequencies ranging from twice a month to three or four times a week. Some of the shipments handled by applicant are being transported in interstate or foreign commerce. All classified applicant's service as being very dependable and claim free. Several emphasized that applicant will provide pickups after 5:00 p.m. if requested and emergency pickups in as little as 20 minutes to two hours notice. They further emphasized that applicant will deliver on or before a designated time. They have not been able to obtain this service from any other carrier. Several witnesses advised that the latter service is very important because work crews will have to frequently wait at a job site until necessary material is delivered by truck. All who testified advised they will use applicant's service throughout the expanded service area if the application is granted.

The general traffic manager for Delta testified it operates over the entire area applicant has applied to serve with nine terminals, 235 radio-equipped vehicles, and 725 employees. Other terminals, vehicles, and employees outside the scope of the application are also frequently involved. He testified that all Delta vehicles operate partially empty. Many more shipments could be carried without increasing or changing present schedules. He advised there are already

too many carriers competing for the one-way business out of the Bay Area. Delta recently lost two accounts to newly certificated carriers who campaigned vigorously for existing business. Protestant emphasized that as the number of scheduled carriers is increased the income of each is decreased which may result in petitions to raise the applicable freight rates which in turn prompt the larger shippers to buy trucks and haul their own merchandise.

Protestant's arguments have been heard in previous proceedings. Applicant's initial expansion will serve its shippers who are sending goods to distant customers. Applicant may acquire or lose accounts in the process of expansion but shippers have the right to select a preferred carrier even when their transportation needs exceed the carrier's authority. When a shipper expands its business, the carrier it employs must also expand or risk losing the business.

Findings

1. Applicant has provided a general commodity transportation service as a permitted and certificated carrier for more than 10 years.
2. Prior to this application applicant provided a certificated service in intrastate and interstate commerce throughout the San Francisco Territory.
3. This application was filed to request that applicant's certificated area be extended northerly to Novato, Vallejo, and Napa, northeasterly to Sacramento, thence southerly along Highway 99 to Stockton and Modesto; also southerly from San Jose to Santa Cruz, Watsonville, and Monterey along the coast, and Gilroy and Salinas on Highway 101.
4. Applicant will provide an overnight service on Monday through Friday and will adopt and publish the applicable rates as set forth in Minimum Rate Tariff 2.
5. Many shippers have used applicant's service for many years and would like to see its operations expanded.

6. The 20 shippers who testified for applicant prefer its service 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 (Tesi Drayage (1970) 71 CPUC 24, 28).

8. The possibility that a new carrier in the process of expansion may, in time, take some of the business from prior operators is not sufficient reason alone to deny a certificate.

9. Protestant is a large carrier who provides adequate service but is not able to cater to the personal requirements of each shipper as conveniently as applicant.

10. Applicant's expanded service will be used primarily by shippers who have used its service in other areas.

11. Protestant will not be immediately affected by applicant's expansion which is designed primarily to serve its old customers in a new area.

12. Granting this application will not harm the shipping public.

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

14. Applicant has the experience, equipment, personnel, and financial resources to institute and maintain the proposed service.

15. Public convenience and necessity require that applicant be authorized to engage in operations in intrastate commerce as proposed in the application, as amended, 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.

The order which follows will provide for the granting of an in-lieu certificate of public convenience and necessity and the revocation of all existing authority.

The Commission concludes that the application, as amended, should be granted as set forth in the ensuing order. The territorial description or routes of the authority granted reflects 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.

O R D E R

IT IS ORDERED that:

1. A certificate of public convenience and necessity is granted to S & C Freight Lines, Inc., 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 set forth in Appendix A of this decision.

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 administered by 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 amend or 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.

3. The certificate of public convenience and necessity granted in paragraph 1 of this order shall supersede the certificate of public convenience and necessity granted by Decision No. 80802, which certificate is revoked effective concurrently with the effective date of the tariff filings required by paragraph 2(b).

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

Dated at San Francisco, California, this 28th day of OCTOBER, 1975.

William J. Fyfe President
Leonard R. Ross
Robert S. Baker Commissioners

S & C Freight Lines, Inc., 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 general commodities:

- I. Between all points and places in the San Francisco Territory, as described in Note A, and all points within ten miles of any point therein.
- II. Between all points on or within ten miles of the points on the following routes:
 - (1) U.S. Highway 101 between San Francisco and Novato, inclusive;
 - (2) Interstate Highway 80 between Richmond and Sacramento, inclusive;
 - (3) State Highway 29 between Vallejo and Napa, inclusive;
 - (4) Interstate Highway 680 between Fremont and Vallejo, inclusive;
 - (5) State Highway 21 between Benicia and Cordelia, inclusive;
 - (6) State Highway 4 between Pinole and Stockton, inclusive;
 - (7) State Highway 24 between Oakland and Concord, inclusive;
 - (8) Interstate Highways 580 and 205 between Hayward and Stockton, inclusive;
 - (9) State Highway 99 between Sacramento and Modesto, inclusive;

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- (10) Interstate Highway 580 and State Highway 132 between junction with Interstate Highway 205 and Modesto, inclusive;
- (11) U.S. Highway 101 between San Jose and Salinas, inclusive;
- (12) State Highway 68 between Salinas and Carmel, inclusive;
- (13) State Highway 17 between San Jose and Santa Cruz, inclusive;
- (14) State Highway 1 between Santa Cruz and Monterey, inclusive.

III. In performing the service herein authorized, the carrier may make use of any and all streets, roads, highways and bridges necessary or convenient for the performance of said service.

Except that pursuant to the authority herein granted carrier shall not transport any shipments of:

1. Used household goods, personal effects and office, store and institution furniture, fixtures and equipment not packed in salesmen's hand sample cases, suitcases, overnight or boston bags, brief cases, hat boxes, valises, traveling bags, trunks, lift vans, barrels, boxes, cartons, crates, cases, baskets, pails, kits, tubs, drums, bags (jute, cotton, burlap or gunny) or bundles (completely wrapped in jute, cotton, burlap, gunny, fibreboard, or straw matting).
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 semi-plastic form and commodities in suspension in liquids in bulk, in tank trucks, tank trailers, tank semitrailers or a combination of such highway vehicles.
5. Commodities when transported in bulk in dump-type trucks or trailers or in hopper-type trucks or trailers.
6. Commodities when transported in motor vehicles equipped for mechanical mixing in transit.
7. Logs.
8. Articles of extraordinary value.
9. Fresh fruits and vegetables.
10. Commodities requiring the use of special refrigeration or temperature control in specially designed and constructed refrigerator equipment.
11. Wine from the City of Napa, and points within 10 miles of the City of Napa.

NOTE A

SAN FRANCISCO TERRITORY

San Francisco Territory includes all the City of San Jose and that area embraced by the following boundary: Beginning at the point the San Francisco-San Mateo County Line meets the Pacific Ocean; thence easterly along said County Line to a point one mile west of State Highway 82; southerly along an imaginary line one mile west of and paralleling State Highway 82 to its intersection with Southern Pacific Company right-of-way at Arastradero

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Road; southeasterly along the Southern Pacific Company right-of-way to Pollard Road, including industries served by the Southern Pacific Company spur line extending approximately two miles southwest from Simla to Permanente; easterly along Pollard Road to W. Parr Avenue; easterly along W. Parr Avenue to Capri Drive; southerly along Capri Drive to Division Street; easterly along Division Street to the Southern Pacific Company right-of-way; southerly along the Southern Pacific right-of-way to the Campbell-Los Gatos City Limits; easterly along said limits and the prolongation thereof to South Bascom Avenue (formerly San Jose-Los Gatos Road); northeasterly along South Bascom Avenue to Foxworthy Avenue; easterly along Foxworthy Avenue to Almaden Road; southerly along Almaden Road to Hillsdale Avenue; easterly along Hillsdale Avenue to State Highway 82; northwesterly along State Highway 82 to Tully Road; northeasterly along Tully Road and the prolongation thereof to White Road; northwesterly along White Road to McKee Road; southwesterly along McKee Road to Capitol Avenue; northwesterly along Capitol Avenue to State Highway 238 (Oakland Road); northerly along State Highway 238 to Warm Springs; northerly along State Highway 238 (Mission Blvd.) via Mission San Jose and Niles to Hayward; northerly along Foothill Blvd. and MacArthur Blvd. to Seminary Avenue; easterly along Seminary Avenue to Mountain Blvd.; northerly along Mountain Blvd. to Warren Blvd. (State Highway 13); northerly along Warren Blvd. to Broadway Terrace; westerly along Broadway Terrace to College Avenue; northerly along College Avenue to Dwight Way; easterly along Dwight Way to the Berkeley-Oakland Boundary Line; northerly along said boundary line to the Campus Boundary of the University of California; westerly, northerly and easterly along the campus boundary to Euclid Avenue; northerly along Euclid Avenue to Marin Avenue; westerly along Marin Avenue to Arlington Avenue; northerly along Arlington Avenue to San Pablo Avenue (State Highway 123); northerly along San Pablo Avenue to and including the City of Richmond to Point Richmond; southerly along an imaginary line from Point Richmond to the San Francisco waterfront at the foot of Market Street; westerly along said waterfront and shoreline to the Pacific Ocean; southerly along the shoreline of the Pacific Ocean to point of beginning.

(END OF APPENDIX A)

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