

ORIGINAL

Decision No. 89136 JUL 25 1978

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application  
 of CARA TRANSPORTATION CO., INC.  
 for a certificate of public con-  
 venience and necessity authorizing  
 the transportation of specified  
 commodities as a highway common  
 carrier between certain designated  
 points within the State of California.)

Application No. 57106  
 (Filed February 23, 1977)

Thomas M. Loughran and Edward J. Hegarty,  
 Attorneys at Law, for Cara Transportation  
 Co., Inc., applicant.  
Handler, Baker and Greene, by Ray Greene,  
 Attorney at Law, for Doudell Trucking,  
 Frank's Trucking, Steel Transporters,  
 Rackley Trucking, and Kooyman Trucking,  
 protestants.  
Stanley E. Garrett, for the Commission staff.

O P I N I O N

Applicant presently operates as a highway contract carrier under a permit issued by this Commission which authorizes the transportation of general commodities between all points within the State of California. Applicant has operated under this authority since December 30, 1975, primarily in the transportation of iron and steel articles between the points embraced by this application.

Applicant requests authority to transport "Iron and Steel Articles", "Railway Car or Locomotive Parts", and "Railway Track Material", within an area bounded by Sacramento on the north, Highway 99 south to Modesto on the east, San Jose to Salinas along Highway 101 to the south, and San Francisco on the west. A 10-mile lateral extension is requested off all routes traversed. It has applied to provide service on shipments moving in intrastate, interstate, and

foreign commerce. Copies of the application were served upon the carriers who might find the proposed service competitive and an appropriate notice was published in the Federal Register. Five protests were filed and the application was scheduled for hearing. Public hearings were held on May 23, 24, and July 19, 20, and 21, 1977. The matter was submitted on concurrent briefs, which were filed by counsel for applicant and protestants.

Applicant's president and sole stockholder testified as follows: It operates out of an office near the Oakland docks with a clerk, the witness, and his wife. Applicant owned no equipment on the date of filing, but has since purchased a tractor. The three trucks and trailers on its equipment list are owned by others and operated under lease. The witness started working at the 9th Avenue Pier in Oakland, which ships large quantities of iron and steel. After six years on this job, he was hired in 1972 by Container Freight Transportation Co. as manager of steel transportation and transferred to Keep On Trucking (a protestant herein) in 1973 as vice president for operations until December 1975, when he started operating as Cara Transportation Co., Inc. On his last two jobs he was in charge of delivering the iron and steel that came into the Oakland Port from overseas. He handled all documentation to insure that the right parties received the right material from the designated carrier.

He testified that he does all of the dispatching for applicant. He has an office clerk to handle it if he is not in the office. His wife does all of the bookkeeping. His operating equipment consists of three trucks and trailers which he leases from the owner-operators. All three of the latter have been with him at least two years and one has worked with him since he was employed by Keep On Trucking. The drivers operate under written leases which provide that applicant will have exclusive control of the equipment and will be responsible to the public for the transportation performed. Applicant has a subhaul bond on file and the drivers also have their own operating authority issued by the

California Public Utilities Commission. Applicant has an agreement to release its drivers to haul for others if applicant has nothing for them to do. During the last 18 months (prior to May 1977) the drivers worked for others a total of 10 days (3 days per driver). Applicant also hires additional carriers on the average of twice a month for periods as long as a week.

Applicant will provide the chains, binders, and tarpaulins to secure steel loads if necessary, but the drivers always have their own equipment. Applicant is planning the purchase of some 40-foot flatbed trailers as operating equipment. Many owner-operators have a tractor, but no trailer capable of hauling long, heavy steel; customers also may require a trailer to be loaded and remain in a spot for a period before unloading. More trailers are required at times than tractors.

Applicant presently handles interstate loads moving from the San Francisco, Alameda, and Oakland docks to points in and out of the commercial zones. This transportation is handled by Miles Motor Transport (Miles) under an agreement whereby the transportation moves under Miles freight bills and bills of lading prepared by applicant's personnel. Miles then collects the freight charges and returns a portion of the revenue to applicant. It was 10 percent through February of 1977, then was reduced to 7 percent by agreement. Payments are usually delayed one to two weeks, which is a great hardship on applicant and interferes with cash flow and credit.

The witness testified that his (applicant's) operation is not complicated. When a steel shipment for a customer arrives at the dock he is notified by the customhouse broker or the customer of its arrival. He picks up the necessary documents, leaves them with U.S. Customs, and notifies his customer (consignee) that he is ready to pick up and deliver as requested. He acts for the customer by inspecting the shipment before picking it up. If there is a shortage or damage, he notifies the customer before pickup and requests further instructions.

The witness placed Exhibit 1 in evidence. It shows that applicant transported total shipments weighing 5,639,311 pounds at a revenue of \$12,565.07 during the first three months of 1976, and shipments weighing 10,239,917 pounds at a revenue of \$32,485.33 during the first three months of 1977. The exhibit states further that the 1977 revenue was 258 percent of the 1976 revenue and the 1977 tonnage was 182 percent of the 1976 tonnage.

Applicant will provide a daily on-call service Monday through Friday; and service on Saturdays, Sundays, and holidays will be provided on special request. Applicant will adopt the rates, rules, and regulations set forth in Minimum Rate Tariff 2 and other applicable minimum rate tariffs. Applicant's balance sheet as of April 30, 1977 shows total assets of \$21,990 and current liabilities of \$14,784. Applicant's statement of earnings for the six months ending on April 30, 1977 shows a net revenue of \$117,722, expenses of \$114,604, and a net income (before income tax) of \$3,118.

Applicant's witness testified that its monthly traffic has doubled since it started operations. It now serves 30 customers and moves on a regular basis three or four times a week between points in the area embraced by this application. More customers are requesting interstate service and some shipments are difficult to classify due to uncertainty as to whether they are destined to points in (or out) of the commercial zones. This application was filed to request additional operating authority necessary for applicant to provide the expanded service demanded by its shippers.

Five shipper witnesses testified for the applicant. L. H. Cooper testified as the owner of a business called Western Associates, which distributes steel as bars, plates, pipes, shapes, and in other forms. He imports steel from overseas to the ports of Oakland, Alameda, and San Francisco. Some of this steel is hauled directly to a consignee from the ship on which it arrives. Other quantities are imported and stored in a warehouse until a buyer is found. Intrastate shipments originate in Oakland or Hayward and intra- or interstate shipments may be destined to any point in the area this application seeks to serve.

His shipment volume averages 200 tons a month and he has used applicant's service since it started. It is dependable and there are no customer complaints. He pays about half of his shipping charges and informs his customers who pay freight charges that applicant provides good service. The witness admitted on cross-examination that shipments to most areas were infrequent. A study of all of applicant's freight bills (both inter- and intrastate) for the first four months of 1977 revealed four shipments for this witness.

A Miss Georgee Marcus testified for the Harper Robinson Company of San Francisco. They are customhouse brokers who are authorized to speak for and to represent Mitsui & Co., U.S.A., Inc. (Mitsui). Mitsui is an importer of steel from Japan. It handles steel wire and reels, plates, and other forms which enter the United States at Oakland, Alameda, or San Francisco. Applicant is used to transporting about one million pounds a month to Pittsburg and Sacramento for specific consignees. Applicant is favored because it will pick up the papers from the broker and deliver them with the shipment; applicant's personnel inspect the load at the dock and if anything is wrong they phone Mitsui before moving the load; applicant's drivers will arrange a time of delivery with the consignee and appear on schedule. On cross-examination the witness admitted that applicant hauled to only two consignees and that shipments moved about once a month. It was also admitted that numerous other carriers were used for hauls to other areas.

Carol Baker testified for the C.D. Erickson Company of Oakland. C.D. Erickson Company is an importer for Sumitomo Metals. She routes all traffic for Sumitomo Metals in the area included in this application. The loads consist of pipe from one-half inch through twenty-four inches in diameter and all material shipped has been imported from Japan.

Some of the steel is hauled to the consignee as soon as the ship docks. Other portions are retained in C.D. Erickson Company warehouse until a buyer is obtained and is then delivered. Applicant performs both types of hauling on from 200 to 1,000 tons of steel every month. She has used applicant since it started. Applicant is favored because a representative will pick up all papers on the load to be delivered, inspect, and certify the load before it leaves the dock, make arrangements for delivery, if necessary, and deliver on time. The steel is delivered to jobsites, which may be anywhere, but shipments are made to Stockton 3 or 4 times a week, to Sacramento once a week, and to Salinas once a month. She became acquainted with applicant's president when he worked for Keep On Trucking and continued with him when he started his own business. She has obtained good service from Bill Rackley and Keep On Trucking in the past and presently employs other carriers for less than truckload shipments.

One of the owners testified for Hicks-Guthrie Associates, of Campbell, California. His company imports steel which enters the United States at the Alameda or Oakland terminals. He has used applicant since it started in business to transport steel from the dock to the consignee, or from an Alameda warehouse to consignee. Shipments may go anywhere within the area applicant has applied to serve, but recent shipments have been directed to Sacramento, Stockton, and Salinas. He favors applicant for the same reason as prior witnesses; it provides extra service. A study of applicant's freight bills for the first four months of 1977 revealed three shipments for this witness.

A representative from the traffic department testified for Toyomenka, Inc. of San Francisco. His company imports steel on customers' specific orders. The consignee in the United States is known before the steel leaves as an export. When it arrives in the United States it is hauled by truck to its final destination in Milpitas, San Jose, or Salinas. About 25 loads a month are transported: 10 to Salinas, 10 to Milpitas, and 5 to Palo Alto, with all loads originating

at Alameda or Oakland. He has used applicant's service since it started in business. His reasons are the same as stated by the other witnesses, especially applicant's ability to deliver loads to jobsites on time. The witness noted that transportation is performed under Miles' freight bills and that Miles is paid for the transportation.

Protestant's Evidence

Four protestants appeared to testify in opposition to the application. The president of Steel Transporters (Steel) of California testified as follows: Steel holds certificated authority from both ICC and PUC authorizing operation as a common carrier of iron and steel in the area encompassed by this application. It operates 6 tractors and 17 flatbed trailers, all company owned, out of a 48,000 square-foot terminal next to the steel dock in Oakland which includes a warehouse for storage and a large parking area. Steel customers are handled in the same fashion as applicant's. All carriers hauling steel operate the same way.

Competition for business is so severe that Steel's gross revenue has been declining since 1975. Steel has transported for all of the shippers who provided witnesses to testify for the applicant and no complaints were received regarding the service. On most routes the trucks used are not operating fully loaded. Steel can serve many more customers efficiently with the equipment it now has. Applicant's president worked for Steel doing business as Keep On Trucking. When he left 18 customers went with him. This loss was hard to explain or to justify. Steel has more than \$300,000 invested in operating equipment and cannot compete with an operator who has no equipment or terminal and operates out of a small rented office.

The president of Frank's Trucking testified that his company's business is 80 percent steel. It has both ICC and PUC authority in the area applicant seeks to serve and is operating 20 tractors and 35 large flatbed trailers (all company owned) out of a seven-acre terminal which includes an office, garage, fuel supply and pumps, and a storage area. It has equipment idle all the time, although drivers of this equipment continue to be paid and all other operating expenses continue. His drivers cost the company between \$12 and \$21 an hour, with wages paid whether the trucks are empty or loaded to capacity. He has hauled for three of the shippers presented by applicant and received no complaints on the service. He is protesting because there are already too many carriers in the field and an individual operating out of a single office without equipment or overhead will provide ruinous competition.

A vice president of sales testified for Doudell Trucking Company (Doudell). It has ICC and PUC authority, hauling steel off the docks and handling the documents and shipments in the same fashion as the applicant and the other protestants. Doudell has hauled for two of applicant's shippers in the past and lost at least one other customer who is now served by applicant. Competition is severe in the business of hauling steel and the carriers who serve are required to maintain large fleets of expensive, specialized hauling equipment.

The owner of Kooyman Trucking testified that his company hauls iron and steel in intra- and interstate commerce through the area applicant is seeking to serve. His company has about 100 tractors and trailers designed to handle steel. He handles the paperwork, inspection, haul, and delivery in the same way as the other carriers. He estimated his investment in operating equipment as \$750,000 to one million dollars and is protesting because there are too many carriers hauling steel now.



All of the protestants stated that shippers are only attracted to a new carrier in a specialized field if the latter provides service at a lower rate. Testimony from one of applicant's shippers indicated no forklift charge was in applicant's rate. Protestants asserted they must impose this charge because it is an additional expense to them and is the only way to load steel at the dock.

Discussion

Applicant negotiates with a shipper who has steel to be transported and, on intrastate shipments, engages subhaulers who provide the actual transportation. Applicant has no trucks, terminal, drivers, or other equipment necessary to start or conduct a highway common carrier operation. No conventional trucker can compete with a competitor who has no operating expense and who provides intra- and interstate service with the equipment of other carriers.

The record indicates that the regularity and frequency of the applicant's existing operation do not even closely approximate that of a certificated highway common carrier. Applicant's business is 5 percent intrastate hauling of general commodities, 20 percent hauling steel intrastate, and 75 percent hauling steel interstate; 60 percent of the latter total is transported by Miles and the remaining 40 percent is hauled to or within the commercial zones and is exempt from regulation. There were no complaints from applicant's shipper witnesses and no indication that others have complained. Applicant ostensibly filed for interstate authority because Miles is 7 to 14 days late in its payments. This is a matter of carrier convenience, not public convenience. The witnesses did not testify that intrastate service was inadequate, but merely that they prefer applicant to other carriers. If a need for

intrastate service is not shown, the need for interstate service can only be determined by the Interstate Commerce Commission (Molitor Extension (1967) 105 MCC., 790).

Protestants claimed that applicant is not fit to conduct the proposed service. The record shows that applicant assessed rates on interstate hauls which did not include a charge for loading steel. Protestants all claimed that this charge is required since the steel is loaded by forklift at considerable expense to the carrier. Applicant's total assets of \$21,990 seem incredibly low for a certificated carrier who should have sufficient investment to encourage it to provide good service and stay in business. Applicant has so little invested that it can discontinue by closing the door and removing the telephone.

Applicant's proposed operation as a public utility common carrier would be conducted with none of its own equipment. We are aware that existing common carriers use subhaulers on occasion. However, when certificating a common carrier we must find that the applicant possesses the fitness to provide the proposed service, which means adequate capital, equipment, and resources to reasonably conduct the public service proposed.<sup>1/</sup> Here, applicant owns none of the equipment to be used. It does not propose to contract with subhaulers only for overflow, or to handle peak period traffic, or to accommodate shippers when its own equipment is nonoperational. As such, we conclude that applicant has not demonstrated that it, with its facilities, can reasonably provide the public service for which it seeks a public utility franchise.

#### Findings

1. Applicant engages subhaulers on intrastate shipments to perform the actual transportation. *See Resolution No. 18017, issued April 4, 1978.*

---

<sup>1/</sup> The exception is when the Legislature provides for "grandfathering" of nonpublic utility operating rights to common carrier certificates, such as the enactment of SB 860. See Resolution No. 18017, issued April 4, 1978.

2. Applicant does not possess, and he does not propose to possess, the equipment and facilities to conduct the public utility common carriage operation proposed.

3. Applicant has not demonstrated that public convenience and necessity require its proposed service.

The Commission concludes that the application should be denied.

O R D E R

IT IS ORDERED that Application No. 57106 is denied.

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

Dated at San Francisco, California, this 25<sup>th</sup> day of JULY, 1978.

*I abstain*  
*Clare J. Delish*

*Robert Batistich*  
President  
*William L. Gerson*  
*Vernon L. Sottergen*  
*Charles W. Howell*

*I concur:*  
*see attached.*  
*Charles W. Howell*

Commissioners


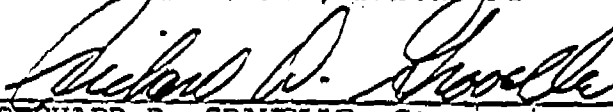
TH-1

A. 57106  
D.

ROBERT BATINOVICH, President  
RICHARD D. GRAVELLE, Commissioner

We concur.

It is our hope that the various highway carrier associations will publicize this decision, which should put carriers on notice that this Commission is serious about coming to grips with the longstanding dilemma of defining a carrier, subhauler activities and the activities of transportation brokers. Case No. 10278 will, in the near future, be the forum to explore such issues. The evolution of the carrier-broker, or broker in carrier clothing, has resulted in serious problems. We know a restructuring of carrier-subhauler broker functions emanating out of Case No. 10278 will not satisfy many affected interests. Longstanding industry practices may have to be substantially modified. But it is our intent that trucking regulation become less complex and chaotic, not only with respect to ratesetting, but through establishing a more systematic and organized classification of activities paralleling true functions (within the existing statutory confines).

  
ROBERT BATINOVICH, PRESIDENT  
  
RICHARD D. GRAVELLE, Commissioner

San Francisco, California  
July 25, 1978