

ORIGINAL

Decision No. 29374

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

In the Matter of the Application of
 CALIFORNIA MILK TRANSPORT, INC., a
 corporation, for certificate of public
 convenience and necessity to operate
 a milk truck transportation line and
 hauling service between dairies located
 in San Fernando, Canoga Park, Girard,
 Van Nuys, Clearwater, Compton, Torrance,
 Redondo, Hawthorne, and intermediate
 points, and creameries or distribution
 plants located in Pico, Whittier, El
 Monte, Pasadena, Glendale, Alhambra,
 Long Beach, San Pedro, Hawthorne,
 Venice, Santa Monica, Beverly Hills,
 Downey, San Bernardino and Santa Ana.

Application No. 20273

Boone & Stratton, by Charles C. Stratton,
and Clock, McWhinney & Clock, by Henry
H. Clock, for Applicant.

Phil Jacobson, for Dairy Delivery Service,
Interested Party, and for Bahler Trans-
portation Service, Inc., Protestant.

A. M. Astor, for Serop Meketaroff, adminis-
trator of Estate of Bob Arutoff, Protestant.

Richard T. Eddy, for Sun Transport Company,
Protestant.

Clarence G. Weisbrod, for Gregory G. Panopulos,
Protestant.

BY THE COMMISSION:

O P I N I O N

By its application in this matter, as amended, Calif-
ornia Milk Transport, Inc., a corporation, seeks a certificate of
public convenience and necessity authorizing the operation of a
motor truck service as a highway common carrier, as defined in
Section 2-3/4 of the Public Utilities Act for the transportation

for compensation of milk and dairy products, serving producers located in the vicinity of San Fernando, Canoga Park, Girard, Van Nuys, and intermediate points, designated as the San Fernando area, and also serving producers located in the vicinity of Compton, Torrance, Lennox, Redondo, Hawthorne, and intermediate points, designated as the Compton-Gardena area, on the one hand, and creameries or distributing plants located at Alhambra, Downey, El Monte, Glendale, Long Beach, Los Angeles, Pasadena, Pico, San Pedro, Santa Ana, Santa Monica, Venice, Vernon and Whittier, on the other hand. (1)

Public hearings were held at Los Angeles before Examiner Austin when the matter was submitted.

At present applicant is engaged in the transportation of milk and dairy products, hauling these commodities from producers within the territory lying between the Pacific Ocean, on the south, and Whittier Boulevard, on the north, and extending from Los Angeles and Whittier easterly to Santa Ana, to approximately twenty-four creameries or distributing plants. To some eight of these plants applicant transports milk and dairy products from producers located within the Compton-Gardena area, but this is not their sole source of supply, these plants depending also upon the entire area now served by applicant as well as that included within the Compton-Gardena and the San Fernando districts. The carriers who collectively serve the Compton-Gardena area transport these products to eighteen plants and plants situated without the Los Angeles, Long Beach, San Pedro and Wilmington territory, such as those located at Pico, Whittier, El Monte and Pasadena, and also draw from the Compton-Gardena producing territory.

(1) Applicant originally sought the right to serve San Bernardino also, but this was withdrawn at the hearing, and, by stipulation, the application was to this extent amended.

In support of the application, the representatives of five distributing plants were called as witnesses, together with producers from the Compton-Gardena area and a representative of one of the large associations of producers.

From their testimony, as well as that of the officers and employees of the applicant, it appears that there originates within the Compton-Gardena area approximately 300 cans of milk daily, ⁽²⁾ of which applicant now handles about 239 cans in the course of two trips daily, an average of 119 cans per trip. Within the San Fernando area the production is about 200 cans daily. From the entire territory it now serves, together with the Compton-Gardena and the San Fernando districts, applicant now transports some 3300 cans of milk daily.

The milk originating within the Compton-Gardena area now handled by applicant is transported to the following plants:

Blossom Dairy Products, Lincoln and Washington,
Venice;

Western Dairy (Arden Farms),
Slauson and Western Avenues, Los Angeles;
Beverly Blvd. and Robinson, Beverly Hills;

Golden State Creamery, 12th and Towne, Los Angeles;

Modern Foods Creamery, Alameda and Vernon, Los Angeles;

Standard Creamery, Florence and Avalon, Los Angeles;

Pellissier's Dairy, San Gabriel and Beverly, Pico;

Edgemar Farms (Santa Monica Dairy), Venice;

Adohr Creamery, 3rd and Los Cienego, Culver City.

(2) Other estimates are somewhat higher. For example, the association estimated the daily production of the Compton-Gardena area at 500 cans. And certain plants estimated their daily receipts from this area as follows: Adohr, 115 cans; Edgemar Farms, 60 cans; Arden Farms, 100 cans; and Modern Farms, 45 cans; a total of 320 cans. This excludes the Golden State plant, which was unable to estimate the number of cans received.

In addition, applicant served two more plants when the application was filed, viz., the Keel Dairy Farms at Downey and the Knudsen Creamery at 20th and Santee Streets, Los Angeles, but it no longer does so.

Scattered over a wide area and separated by considerable distances, but few of these plants can readily be served by any route which can conveniently be used to reach the others. The following table indicates the distance of some of them from Compton:

Modern Foods,	Vernon,	10 miles
Western Dairy,	Beverly Hills,	23 "
Pellissier's Dairy,	Pico,	18 "
Blossom Dairy Products,	Venice,	18 "
Paramount,	Hines, (3)	4 "
Watson,	Pasadena, (3)	30 "

To bring about the most efficient and economical operation of their plants and to permit the proper pastuerization of their milk, so it was testified by the distributors, the latter have established definite schedules for receiving milk from the producers. The hours differ somewhat at each plant, depending upon its peculiar requirements, some of them demanding two deliveries daily at appointed times. As not all of the milk is of the same class or grade, it has become necessary to fix the times when milk of each class will be accepted, thus facilitating proper and expeditious standardization and grading. Some of the milk, it appears, is designed for the retail trade, while other

(3) These plants, though not now served, were mentioned among those which would be served were the application granted.

milk is for wholesale distribution only. Each class is received and handled separately. To avoid congestion at the receiving platforms, the plants prefer that wherever possible milk be delivered in full truckloads, and they view with disfavor the delivery of small shipments consisting of a few cans only.⁽⁴⁾ Consequently, they insist upon consolidated loads moving in large trucks or trucks and trailers.

In order to meet these requirements, it is essential that the carrier be in a position to serve an extensive producing area, for only in this way can sufficient milk be accumulated to permit the handling of full truckloads to each plant. Since the milk from each producing area may move to many plants, it is obvious that any plant dependent upon a limited area will receive but a small share of the total supply. Representatives of the plants testified that because of applicant's ability to consolidate milk originating in the Compton-Gardena area with that originating elsewhere, it was able better to fulfill their requirements and to operate more efficiently than other carriers serving a narrower territory.

Because of the wide distances separating the plants, it is possible for a single truck hauling milk from a producing area, such as the Compton-Gardena or the San Fernando territories, to deliver milk to but three plants within the scheduled times established for that purpose. Although the volume of milk produced in the Compton-Gardena territory could readily be handled by two trucks, it being insufficient, so applicant asserted, to

(4) A full load is considered to be 200 cans, while 250 cans is deemed to comprise a maximum truck and trailer load. 130 cans is usually carried on a single 5-ton truck.

justify the profitable operation of more equipment, it clearly appears that were the facilities thus limited, deliveries of the small quantities destined to each plant could not be completed until late in the afternoon. Were sufficient equipment used (which the evidence shows should be at least seven trucks) to effectuate deliveries within the required time from this territory alone to all the plants now drawing upon it, the operation would be conducted at a substantial loss. Only by combining this milk with that originating in other territory can the service be carried on profitably and in a manner that would meet the demands of the plants.

The distributors stressed the importance of the carrier maintaining definite headquarters where he could be quickly reached in an emergency. Oftentimes, when it is necessary to contact the producer at once to advise him of changes in the quality of his milk, this can better be accomplished through the carrier than the fieldmen of the distributing company. Such changes in quality occur frequently and suddenly, necessitating in each instance a reclassification of the producer's milk. When this happens it may be necessary for the plant to provide for deliveries upon a different schedule or to reject the milk entirely, in which event arrangements must be made for delivery to another plant. So important was this considered that some of the plant representatives declared they would purchase no milk in any territory not provided with a satisfactory transportation service.

Within the past few years some of the plants, in an effort to solve the transportation problem, have utilized their own equipment to haul milk from the producing area, a few of them

maintaining substantial fleets of trucks for this purpose. The evidence shows, however, that many of them, including the larger operators, have lately abandoned or materially curtailed this practice, preferring rather to rely upon the facilities of the independent carriers. (5)

The producers called by the applicant stressed the need for an adequate service, operating at least twice daily, which would enable them to deliver their milk to different distributing plants within the scheduled times. Most of their shipments were quite small, ranging from 8 to 18 cans daily. One dairyman testified his highest production was 45 cans.

The Secretary of the California Milk Producers Association, a marketing agency for some 300 producers within the Los Angeles milk shed, voiced the needs of the members of this organization, pointing out in this connection the requirements of the producers to which we have adverted, and stating that frequently, on extremely short notice, milk was diverted from one plant to another, generally because of disagreements arising between the Association and the plant as to the prices. Approximately 30 per cent of the milk supply, he testified, is shifted from one plant to another on the 1st and 15th of each month. In such an emergency, only an efficient carrier can accommodate their needs. Ordinarily, milk is pre-cooled before delivery to the carrier and must reach the plant at a low temperature, thus requiring an expeditious service.

(5) The manager of Edgemar Farms testified that when their truck wore out they did not desire to replace it. Although Adohr Milk Farms still maintains its own equipment for this purpose, it uses fewer trucks than formerly, and recently has been depending to a greater extent upon the certificated carriers.

Applicant proposes to use three trucks serving the Compton-Gardena area exclusively. Milk originating here will be consolidated with that handled in other equipment from adjoining territory now served by the applicant, thus making it possible to perform the service efficiently and meet the requirements of the plants. Because of its adequate facilities, applicant can serve all of the plants the producers desire to reach, and can accommodate sudden changes in the destination of the milk from one plant to another.

Representatives of certain plants, viz., Golden State Creamery, Adohr Creamery, Edgemar Farms, and Arden Farms, stressed the need for more efficient service from the Compton-Gardena area, three of them expressing a preference for applicant because of the extensive territory it now serves, while one, the Golden State Creamery, was indifferent as to the identity of the operator so long as the service is adequate. If applicant is unable to operate here, the Adohr Creamery will use its own trucks, while the Arden Farms will no longer purchase milk in this territory.

Regarding the San Fernando area, representatives of two distributors, viz., Edgemar Farms and Arden Farms, testified they received milk from producers there but no adequate transportation service was available. Also, the Secretary of the California Milk Producers Association described the need for better service of two of its members situated in this territory.

The principal protestant, Sun Transport Company, a corporation, now operates, under a certificate from this Commission, between El Monte and Whittier and Los Angeles, and it has recently acquired the operative right of Bob Arutoff who, prior to his death in December, 1935, was engaged in transporting milk from the Compton-Gardena area to plants within Los Angeles, Long Beach, San

Pedro and Wilmington.⁽⁶⁾ Before the transfer of this certificate, this protestant conducted the service for the benefit of the estate, paying over to the administrator all the proceeds. Sun Transport Company now owns 24 pieces of equipment, of which but five are suitable for the transportation of milk. Protestant proposes to consolidate milk produced in the Compton-Gardena area with that originating in the other districts it serves, excepting El Monte, which is situated at so great a distance that milk from that territory must be handled in a separate truck. The evidence indicates that the service of this protestant, though efficient, will not so adequately meet the requirements of the producers in the Compton-Gardena area as that of applicant, since protestant's trucks are smaller than those of applicant and are not sufficient in number to permit such expeditious deliveries to the various plants.

Some of the producers testified that the service of Sun Transport Company satisfied their needs, and there was some testimony to the effect that the service previously afforded by Bob Arutoff, protestant's predecessor, was satisfactory. Arutoff served this territory with three trucks, one of which was purchased in 1935. The distributors experienced some difficulty because of their inability to reach him by telephone, Arutoff having failed to provide any in his own name until shortly before his death,⁽⁷⁾ choosing rather to rely upon the telephone of his driver and that in a nearby wrecking plant.

(6) This transfer was authorized by Decision No. 28636, in Application No. 20211, dated March 16, 1936.

(7) Mr. Perumean, applicant's president and general manager, testified this was installed at his suggestion.

Some complaint was voiced as to his failure to serve adequately certain producers, but this was rather uncertain. Also, there was some evidence that his equipment was inadequate.

The applicant's president and general manager, Mr. Joseph Perumean, admitted that applicant had been serving the Compton-Gardena area preceding the filing of this application. He explained that over a period of two or three years applicant had been negotiating with Arutoff for the purchase of his operative right, the latter having frequently expressed a desire to retire from the business. On several occasions Arutoff had promised to sell, in fact had agreed upon the price, and even had gone so far as to have a written contract of sale drafted, but the sale was never consummated, Arutoff choosing instead to transfer the line to protestant Sun Transport Company. In the meantime, and pending these negotiations, applicant operated within the territory, on some occasions doing so at Arutoff's request, and sometimes at the instance of certain of Arutoff's patrons whom the latter had neglected. These, however, were returned to Arutoff as soon as he could be located. During this period, so Mr. Perumean stated, applicant had entered into an arrangement with Arutoff to join forces in an endeavor to prevent the continued operation in this territory by the distributors themselves, a practice detrimental to both operators. As an operator of long experience applicant must be presumed to be familiar with the rule prohibiting operations without proper authority. However, under the circumstances existing in this case, its conduct has not been of such a character as to prohibit the granting of a certificate where, as the facts abundantly show, there is a real need for the establishment of the service. The application will therefore be granted.

Upon full consideration of the evidence, the RAILROAD COMMISSION OF THE STATE OF CALIFORNIA DOES HEREBY FIND AS A FACT that public convenience and necessity require the operation by California Milk Transport, Inc., a corporation, of a motor truck service as a highway common carrier, as defined in Section 2-3/4, Public Utilities Act, for the transportation of milk and dairy products, and empty containers therefor, serving producers located in the vicinity of San Fernando, Canoga Park, Girard, Van Nuys, and intermediate points, designated as the San Fernando area, and also serving producers located in the vicinity of Compton, Torrance, Lennox, Redondo, Hawthorne, and intermediate points, designated as the Compton-Gardena area, as said areas, respectively, are described in Exhibit "B" accompanying the application and delineated upon the map or plat accompanying the application herein, on the one hand, and creameries or distributing plants located at Alhambra, Downey, El Monte, Glendale, Long Beach, Los Angeles, Pasadena, Pico, San Pedro, Santa Ana, Santa Monica, Venice, Vernon and Whittier, on the other hand, over and along the routes set forth in Exhibit "B" accompanying the application, and three miles laterally therefrom.

Applicant is hereby placed upon notice that "operative rights" do not constitute a class of property which should be capitalized or used as an element of value in determining reasonable rates. Aside from their purely permissive aspect, they extend to the holder a full or partial monopoly of a class of business over a particular route. This monopoly feature may be changed or destroyed at any time by the State which is not in any respect limited to the number of rights which may be given.

O R D E R

A public hearing having been had in the above entitled proceeding, evidence having been received, the matter having been duly submitted, and the Commission now being fully advised:

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA DOES HEREBY DECLARE that public convenience and necessity require the operation by California Milk Transport, Inc., a corporation, of a motor truck service as a highway common carrier, as defined in Section 2-3/4, Public Utilities Act, for the transportation of milk and dairy products, and empty containers therefor, serving producers located in the vicinity of San Fernando, Canoga Park, Girard, Van Nuys, and intermediate points, designated as the San Fernando area, and also serving producers located in the vicinity of Compton, Torrance, Lennox, Redondo, Hawthorne, and intermediate points, designated as the Compton-Gardena area, as said areas, respectively, are more particularly hereinafter described, on the one hand, and creameries or distributing plants located at Alhambra, Downey, El Monte, Glendale, Long Beach, Los Angeles, Pasadena, Pico, San Pedro, Santa Ana, Santa Monica, Venice, Vernon and Whittier, on the other hand, over and along the routes hereinafter described and three miles laterally therefrom.

The said Compton-Gardena and San Fernando areas are delineated, respectively, upon that certain map accompanying the application herein and marked Exhibit "D", and are more particularly described as follows:

COMPTON-GARDENA AREA.

Beginning at the intersection of Randolph Blvd. and Alameda Street, thence north on Alameda Street to Slauson Avenue, thence west on Slauson Avenue to Washington Blvd., thence on Washington Blvd. to the Pacific Ocean, thence southeasterly along the coast line to Wilmington-Redondo Blvd., thence easterly along said Wilmington-Redondo Blvd. and Western Avenue to Anaheim Street; thence east on Anaheim Street to Alameda Street; thence northeasterly along Alameda Street to the point of beginning, provided, however, that no service may be given to or from dairies located without such area.

SAN FERNANDO AREA.

Beginning at the intersection of Ventura Blvd. and Vineland Avenue (Cahuenga Avenue), thence north on Vineland Avenue (Cahuenga Avenue) to the Southern Pacific right-of-way, thence northwesterly along said right-of-way to Rinaldi Street, thence west on Rinaldi Street to the Ventura County Line, thence south and along said county line to Ventura Blvd., thence easterly and along Ventura Blvd. to the point of beginning, provided, however, that no service may be given to or from dairies located without such area.

Said service shall be conducted over and along the following described routes, and within a distance of three miles laterally therefrom, to-wit:

ROUTE #1 - COMPTON-GARDENA AREA.

Beginning at the depot of applicant in Clearwater, California, on Compton Blvd. near the intersection of Paramount Blvd., west on Compton Blvd. to Avalon Blvd., south on Avalon

Blvd. to 228th Street, west on 228th Street to Sepulveda Blvd., west on Sepulveda Blvd. to Hawthorne Avenue, north on Hawthorne Avenue to Rosecrans Avenue, west on Rosecrans Avenue to Lincoln Blvd., north on Lincoln Blvd. to Washington Street and thence by the most direct route to creameries or distribution plants in towns or cities named.

ROUTE #2 - COMPTON-GARDENA AREA.

Beginning at the depot of applicant in Clearwater, California, on Compton Blvd. near the intersection of Paramount Blvd. west on Compton Blvd. to Atlantic Blvd., south on Atlantic Blvd. to Olive Street, west on Olive Street to Wilmington Blvd., south on Wilmington Blvd. to Carson Street, west on Carson Street to Main Street, north on Main Street to Rosecrans Avenue, east on Rosecrans Avenue to Atlantic Blvd., south on Atlantic Blvd. to Compton Blvd., east on Compton Blvd. to depot at Clearwater.

ROUTE #3 - COMPTON-GARDENA AREA.

Beginning at the depot of applicant in Clearwater, California, on Compton Blvd. near the intersection of Paramount Blvd., west on Compton Blvd. to Figueroa Street, south on Figueroa Street to 190th Street, west on 190th Street to Western Avenue, north on Western Avenue to creameries or distribution plants in towns or cities named.

ROUTE #1 - SAN FERNANDO AREA.

Beginning at a point on Van Nuys Blvd. in the City of Van Nuys, thence north to Van Owen Street, thence west on Van Owen Street to Topango Canyon Avenue, thence south on Topango Canyon Avenue to the town of Girard, thence north on

Topango Canyon Avenue to Roscoe Blvd., thence east on Roscoe Blvd. to Reseda Blvd., thence north on Reseda Blvd. to Parthenia Street, thence east on Parthenia Street to Sepulveda Blvd., thence north on Sepulveda Blvd. to Plummer Street, thence east on Plummer Street to Van Nuys Blvd., thence north-easterly on Van Nuys Blvd. to Lauren Canyon Blvd., thence southeasterly on Laurel Canyon Blvd. to Van Owen Street, thence west on Van Owen Street to Fulton Street, thence south on Fulton Street to Ventura Blvd., thence by the most direct route to creameries in Los Angeles and metropolitan area.

IT IS HEREBY ORDERED that a certificate of public convenience and necessity therefor be, and the same is, hereby granted to California Milk Transport, Inc., subject to the following conditions:

1. Applicant shall file a written acceptance of the certificate herein granted within a period of not to exceed fifteen (15) days from date hereof.
2. Applicant shall commence the service herein authorized within a period of not to exceed thirty (30) days from the effective date hereof, and shall file in triplicate and concurrently make effective on not less than ten days' notice to the Railroad Commission and the public a tariff or tariffs constructed in accordance with the requirements of the Commission's General Orders and containing rates and rules which in volume and effect, shall be identical with the rates and rules shown in the exhibit attached to the application in so far as they conform to the certificate herein granted, or rates and rules satisfactory to the Railroad Commission.
3. Applicant shall file, in duplicate, and make effective within a period of not to exceed thirty (30) days after the effective date of this order, on not less than five days' notice to the Railroad Commission and the public, time schedules covering the service herein authorized in a form satisfactory to the Railroad Commission.
4. The rights and privileges herein authorized may not be discontinued, sold, leased, transferred nor assigned unless the written consent of the Railroad Commission to such discontinuance, sale, lease, transfer or assignment has first been obtained.

5. No vehicle may be operated by applicant herein unless such vehicle is owned by said applicant or is leased by applicant under a contract or agreement on a basis satisfactory to the Railroad Commission.

6. Applicant shall, prior to the commencement of service authorized herein and continuously thereafter comply with all of the provisions of this Commission's General Order No. 91.

For all other purposes the effective date of this order shall be twenty (20) days from the date hereof.

Dated at San Francisco, California, this 15th day of December, 1936.

M. B. Harris

Walter J. ...
Frank ...
Commissioners.