

Decision No. 29769

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
Paul Ludolph Company for a certifi- )  
cate of public convenience and neces- )  
sity authorizing the transportation )  
by motor truck of milk, and milk and )  
cream products between San Francisco )  
and East Bay cities and Manteca, )  
Lathrop, Stockton, Lodi, Galt, Los )  
Banos, Modesto, Pleasanton, Los Gatos, )  
San Jose and points between. )

**ORIGINAL**

Application No. 21167

BY THE COMMISSION:

O P I N I O N

Paul Ludolph Company, a corporation, herein seeks a certificate of public convenience and necessity authorizing it to establish and operate an automotive service as a highway common carrier of milk, cream, dairy products and empty containers therefor, between (a) San Francisco, Oakland, Emeryville, Piedmont, Berkeley, Albany, Alameda, San Leandro, Hayward and intermediate points; (b) San Francisco, San Mateo, Palo Alto, Santa Clara, Los Gatos, San Jose and intermediate points, on the one hand, and Dublin, Santa Rita, Pleasanton, Tracy, Stockton, Galt, Manteca, Modesto, Los Banos and intermediate points, on the other hand, with authority to serve dairies located laterally within ten (10) miles of pickup routes except that between Stockton and Modesto, it seeks authority to give pickup service two and one-half (2½) miles easterly from such pickup route.

The operation in general contemplates the transportation of milk, cream and dairy products between the producing territory over and along routes hereinbelow described as "pickup routes" and

creameries located at points in general between San Francisco and Hayward and intermediate points and between San Francisco and San Jose and intermediate points.

In the proposed operation between San Francisco and San Jose, applicant seeks authority to operate its vehicles over El Camino Real and Bayshore Highways. The operation over Bayshore Highway will not serve any points located thereon, such operation being only for the line haul movement of traffic. This situation also applies to the operation of its vehicles between Hayward and Dublin; between Pleasanton and San Jose via Sunol, Niles and Mission San Jose; and between the junction of Mt. View-Alviso County road and Bayshore Highway and Los Gatos via Saratoga.

In its operation between San Francisco and Oakland, applicant proposes to route its vehicles via the San Francisco-Oakland Bay Bridge or via any common carrier ferry boats.

Applicant alleges as justification for the granting of the authority requested that at this time the major portion of the transportation of milk, cream and dairy products, by common carriers, from the producing regions described to the consuming centers in the San Francisco Bay area is performed by Pacific Motor Trucking Company and Southern Pacific Company. That because of the more expeditious service that can be afforded the handling of these commodities by a carrier which would specialize therein and devote its entire attention thereto; and to give a complete and more satisfactory service between points of production and the consuming centers, the service as proposed by applicant will be more to the public interest than the service as now conducted. Applicant proposes to render a complete and continuous service between termini thereby avoiding rehandling and transferring of shipments.

Applicant further alleges that the granting of this application will add no new competition in the field, but instead will merely authorize a new carrier under rights analogous to those now held by Pacific Motor Trucking Company to handle certain commodities that are now being handled by Pacific Motor Trucking Company and Southern Pacific Company. In this connection applicant makes reference to Application No. 21171 in which Pacific Motor Trucking Company is seeking authority to be relieved from giving a service approximately identical to that proposed herein.

Waivers of protest having been received by the Commission from competing carriers in the territory herein affected, it appears that there is no need for a public hearing herein and the application will be granted.

Paul Ludolph Company 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

Paul Ludolph Company, a corporation, having made application as above entitled and the Commission being fully advised therein,

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA  
HEREBY DECLARES that public convenience and necessity require the establishment and operation by Paul Ludolph Company of an

automotive truck service as a highway common carrier for the transportation of milk, cream and dairy products, with a return movement of empty containers therefor, between (a) San Francisco, Oakland (via San Francisco-Oakland Bay Bridge and/or common carrier ferries) Emeryville, Piedmont, Berkeley, Albany, Alameda, San Leandro, Hayward and intermediate points, and (b) San Francisco, San Mateo, Palo Alto, Santa Clara, Los Gatos, San Jose and intermediate points, on the first hand, and the producing territory of Dublin, Santa Rita, Pleasanton, Lathrop, Stockton, Lodi, Galt, Manteca, Modesto, Gustine, Los Banos and intermediate points, on the second hand, serving the dairies located in the territory and along pickup routes and within ten (10) miles laterally therefrom, except that between Stockton and Modesto and intermediate points the pickup limit shall be two and one-half (2½) miles easterly and laterally from U. S. Highway No. 99 which pickup routes are described as follows:

- (a) Beginning at Dublin, thence easterly along U. S. Highway No. 50 to Lathrop via Santa Rita, Livermore Junction and Tracy;
- (b) Beginning at Santa Rita, thence southerly along the public highway to Pleasanton, thence easterly along the public highway to Livermore and U. S. Highway No. 50;
- (c) Beginning at Tracy thence southeasterly along the state highway to Los Banos via Gustine, Linora, Ingomar and Volta, and as alternate route between Gustine and Los Banos via the state highway leading southerly from Gustine to a point where such state highway intersects the state highway running easterly and westerly between Pacheco Pass and Los Banos thence easterly along last described state highway to Los Banos;
- (d) Beginning at Tracy, thence easterly along U. S. Highway No. 50 to Galt via Lathrop, Stockton and Lodi;
- (e) Beginning at Tracy, thence northeasterly and southeasterly along U. S. Highways Nos. 50 and 99 to Modesto via Manteca.

Providing that the lateral limits of the above described pickup routes may be calculated from any relocations of the public highways covered by such routes.

The trucks of the applicant may be operated and routed over the above described pickup routes in a manner to give the most economical and efficient service.

Line haul transportation between the pickup territory and creameries located at points named on the first hand hereinbefore set forth may be made over the routes via either Castro Valley road or Hayward over U. S. Highway No. 50; or through San Jose via the Niles Canyon road and Niles; or via Sunol and the Mission Road to Mission San Jose, thence to San Jose via U. S. Highway No. 101-E; between San Jose and San Francisco via either U. S. Highway No. 101-W or Bayshore Highway; between Los Gatos and Bayshore Highway via Congress Springs, Saratoga and Cupertino.

IT IS HEREBY ORDERED that a certificate of public convenience and necessity therefor is granted to Paul Ludolph Company subject to the following conditions:

1. No service may be given from or to points intermediate to Los Gatos and Sunnyvale via Cupertino.
2. No service may be given from or to points located on line haul routes hereinabove described except between San Francisco and San Jose over and along the U. S. Highway No. 101-W.
3. Applicant shall file a written acceptance of the certificate herein granted within a period of not to exceed fifteen (15) days from date hereof.
4. 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.
5. 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.

6. 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.

7. 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.

8. 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.

The effective date of this order shall be the date hereof.

Dated at San Francisco, California, this 17<sup>x</sup> day of  
May, 1937.

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Francis A. Newell  
Raymond W. Kephart  
Ray & Cully  
COMMISSIONERS.