

Decision No. 31927

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of the CALIFORNIA MILK TRANSPORT, INC., a corporation, for certificate to operate an automobile truck service for the hauling of milk and dairy products between dairies located in the vicinity of Huntington Park, Bell, Maywood, Southgate, Watts, Lynwood, Compton, Long Beach, Bellflower, Hynes, Clearwater, Downey, Rivera, Montebello, Whittier, Los Nietos, Santa Fe Springs, Norwalk, Artesia, Buena Park, Cypress, Stanton, Westminster, Garden Grove and Wintersburg on the one hand, and creameries and distribution plants located in Alhambra, Burbank, Culver City, El Monte, Glendale, Hawthorne, Hollywood, Huntington Park, Inglewood, Lawndale, Lennox, Long Beach, Los Angeles, Montebello, Ocean Park, Pasadena, Redondo Beach, San Bernardino, San Pedro, Santa Monica, Torrance, Venice, Vernon, Watts, Whittier and Wilmington on the other hand, said certificate to be in lieu of all other operative rights to transport milk and dairy products heretofore granted this applicant.)

Application
No. 20833

BOONE & STRATTON, by D. A. BOONE and CHARLES C. STRATTON, for Applicant.

W. L. ENGLEHARDT, for Sun Transport Company, Protestant.

C. E. KIMBROUGH, in propria persona, Protestant.

CLARENCE G. WEISEROD, for Gregory A. Panopolus, Protestant.

BY THE COMMISSION:

O P I N I O N

California Milk Transport, Inc., a corporation, applicant herein, seeks a certificate of public convenience and necessity for the transportation of milk, cream and dairy products, as a highway common carrier, said certificate to be in lieu of seven separate certificates under which applicant now operates.

A public hearing was had at Los Angeles on December 8, 1936, and the matter was submitted.

The record shows that applicant is now operating as a highway common carrier for the transportation of milk, cream, dairy products and backhauling dairy supplies and empty containers from and between dairies and creameries in the vicinity of Alhambra, Burbank, Culver City, El Monte, Glendora, Hawthorne, Hollywood, Huntington Park, Inglewood, Lawndale, Lemmo, Long Beach, Los Angeles, Montebello, Ocean Park, Pasadena, Redondo Beach, San Bernardino, San Pedro, Santa Monica, Torrance, Venice, Vernon, Watts, Whittier and Wilmington and intermediate points, on the one hand, and dairies located in general and within five miles of the routes traversed between Huntington Park, Bell, Maywood, Southgate, Watts, Lynwood, Compton, Long Beach, Bellflower, Hynes, Clearwater, Downey, Rivera, Whittier, Los Nietos, Santa Fe Springs, Norwalk, Artesia, Buena Park, Cypress, Stanton, Westminster, Garden Grove, and Wintersburg and intermediate points on the other hand.

These operations are being conducted by virtue of certificates acquired by the following decisions of this Commission: Decision No. 24503 as amended by Decision No. 26668 (acquired from Robson); Decision No. 28106 (acquired from Stratton); Decision No. 28127 (acquired from Penhall Brothers); Decision No. 28829 (acquired from Joe Bozoff)⁽¹⁾. These operative rights as a whole are contiguous and to a great extent overlap each other. In this proceeding applicant seeks a certificate de novo in lieu of the foregoing described

(1) In addition applicant has operative rights created by Decision No. 29374, dated December 15, 1936, on Application No. 20273, Decision No. 29568, dated March 1, 1937, on Application No. 21014, and Decision No. 31454, dated November 10, 1938, on Application No. 22120. The right acquired by Decision No. 31454 is that formerly held by Sun Transport Company one of the protestants herein. The rights created by these three decisions are not involved in this proceeding.

operative rights so that it may conduct its operations in a more orderly manner and in addition thereto set up a unified rate structure and a new time schedule for the entire area served under the foregoing rights which are being considered in this proceeding.

By Decision No. 28106 applicant acquired not only an operative right for the transportation of milk, cream and dairy products, but in addition thereto an operative right for the transportation of general freight as a highway common carrier between Los Angeles and Artesia and the two intermediate points of Downey and Norwalk. Applicant proposes to continue the general freight operation as a separate and distinctive operative right from that for the transportation of milk, cream and dairy products.

The operative rights involved herein provide for the backhaul of dairy supplies, feed, and grain to the dairies. The record shows that since applicant began its operations in 1933, it has not transported any such commodities, and has not been requested to do so. Applicant seeks to abandon this portion of its operative rights, urging, as a further reason, that if it does carry dairy supplies, feed, and grain, the dust therefrom will settle on the milk cans and make the latter insanitary. The abandonment of such backhaul, under these circumstances, will be authorized. Thus, applicant's operative rights, as consolidated herein, will permit the transportation of milk, cream and dairy products from the dairies to the creameries and distribution points, and the backhaul of empty containers.

In addition to the in lieu certificate sought, applicant seeks authority to establish and operate extensions of its present milk operative rights into new territory over three different routes. One of these extensions includes considerable territory in the city

of Long Beach and southeasterly thereof. The justification for this proposed extension is alleged to be that it would make the shore line of the Pacific Ocean one of the boundaries of the territory proposed to be served, it being contended that such shore line is a natural boundary. Part of this territory in the city of Long Beach is now being served by Sun Transport Company. No showing was made of any necessity for additional service in such area. The balance of the proposed extension consists of a narrow strip of territory between the shore line of the Pacific Ocean and the southern boundaries of applicant's existing operative right. While no protest was made with respect to this extension, neither was any showing made as to the necessity for a service in such area other than that the shore line of the Pacific Ocean constitutes a more convenient boundary line. This extension, therefore, will not be granted.

The second proposed extension includes the town of Lynwood. No showing was made with respect to the necessity of any service to this area. It appearing from the record that the territory is now adequately served by other carriers, the request for this extension will not be granted.

A third proposed extension involves an operation into the territory roughly bounded by Rivera, Whittier and Montebello. Applicant now possesses an operative right acquired from O. J. Blakesley which authorized service to Rivera and points roughly one half mile westerly and one mile northerly thereof, as well as Los Nietos and Santa Fe Springs. Blakesley's operation was over a regular route in this territory with no lateral extension. No service was authorized on such route west or north of the junction of Bandini and Telegraph Roads. Applicant is, in seeking an extension of this

portion of its present operative rights, encroaching upon the existing operative rights of protestant Panopolus. The record does not show that the service of Panopolus in this area is inadequate nor does it show the need for any additional service in such territory. Therefore, this proposed extension will not be authorized. The record does show, however, that the limits of applicant's present operative rights in this territory should be more definitely defined.

Applicant proposes to divide the entire area now served under the operative rights involved herein into three districts for rate making purposes. The rates from all dairies in a given district will be equal, but the rates will vary as to the districts.

Six pickup routes are proposed to accomplish the consolidation of shipments of milk, cream and dairy products from the various dairies. Trucks will be operated on these pickup routes twice daily, leaving the applicant's depot at Clearwater at approximately 6:00 A.M. and 6:00 P.M., returning to the depot at approximately 7:00 or 7:30 A.M. and 7:00 or 7:30 P.M., respectively. Following the arrival of the pickup trucks at the depot the milk, cream and other dairy products will be consolidated according to quality and destination and will then be transported to the various destinations. Attached to the application herein is a detailed schedule of rates proposed to be charged and a time schedule of the service proposed to be given.

The record clearly shows a need for the consolidation of all the operative rights involved herein in order to enable the applicant to provide a unified and more adequate and economical service in the territory under consideration. Many of the rights now held by applicant were created years ago and in some cases a definition of the operative rights involved is indefinite and sometimes obscure and not susceptible to an accurate determination of the limits of the right. This difficulty will be cured by the granting of a

certificate de novo in lieu of all such rights now held by applicant involved in this area only, and the old certificates will be revoked and annulled.

California Milk Transport, Inc. 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 held in the above entitled proceeding, the matter having been submitted and good cause appearing

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA HEREBY

DECLARES that public convenience and necessity require the establishment and operation by California Milk Transport, Inc., a corporation, of a highway common carrier service for the unified operation of a service for the transportation of milk, cream and dairy products and a return movement of empty containers therefor, not in addition to, but in lieu of applicant's present operative rights in the territory involved in this proceeding, service to be given to no others than the dairies and creameries located in or between Alhambra, Burbank, Culver City, El Monte, Glendale, Hawthorne, Hollywood, Huntington Park, Inglewood, Lawndale, Lemox, Long Beach, Los Angeles, Montebello, Ocean Park, Pasadena, Redondo Beach, San Bernardino, San Pedro, Santa Monica, Torrance, Venice, Vernon, Watts, Whittier and Wilmington, serving the dairies located in the territory and along the following

pickup route and five miles laterally therefrom, which pickup routes are in the general vicinity of Huntington Park, Bell, Maywood, Southgate, Watts, Lynwood, Compton, Long Beach, Bellflower, Hynes, Clearwater, Downey, Rivera, Los Nietos, Santa Fe Springs, Norwalk, Artesia, Buena Park, Cypress, Stanton, Westminster, Garden Grove and Wintersburg, to-wit:

ROUTE 1 Beginning at the depot of applicant located in West Compton Boulevard at Clearwater, California; thence west on Compton Boulevard to Paramount Avenue; thence north on Paramount Avenue and San Gabriel Boulevard terminating at a point where San Gabriel Boulevard is intersected by Center Street north of Rivera.

ROUTE 2 Beginning at the depot of applicant located in West Compton Boulevard at Clearwater, California; thence easterly on Compton Boulevard and Rosecrance Avenue to Pioneer Avenue; thence north on Pioneer Avenue and Norwalk Boulevard to Center Street north of Los Nietos.

ROUTE 3 Beginning at the depot of applicant in West Compton Boulevard, Clearwater, California; thence easterly on Compton Boulevard to Woodruff Avenue; thence north on Woodruff Avenue to Rosecrance Avenue; thence on Rosecrance Avenue to La Mirada Road; thence east on La Mirada Road to Grand Avenue at Buena Park; thence south on Grand Avenue to Lincoln Street; thence east on Lincoln Street to Stanton Boulevard; thence south on Stanton Boulevard and Huntington Beach Boulevard to Quincy Avenue.

ROUTE 4 Beginning at the depot of applicant in West Compton Boulevard, Clearwater, California; thence west on Compton Boulevard to Paramount Avenue; thence south on Paramount Avenue to South Street; thence east on South Street and Orangethorpe Avenue to Brookhurst Avenue; thence south on Brookhurst Avenue to Ocean Avenue near Garden Grove; thence east on Ocean Avenue to Wright Road; thence south on Wright Road to Quincy Avenue.

ROUTE 5 Beginning at the depot of applicant in West Compton Boulevard, Clearwater, California; thence east on Compton Boulevard to Cerritos Avenue; thence south on Cerritos Avenue to Chatman Road; thence east on Chatman Road to Moody Street; thence south on Moody Street to Garden Grove Avenue (Ocean Avenue); thence east to Bolsa Chica Road; thence south on Bolsa Chica Road to Wintersburg Avenue.

ROUTE 6 Beginning at the depot of applicant in West Compton Boulevard, Clearwater, California; thence west on Compton Boulevard to Paramount Avenue; thence south on Paramount Avenue to South Street; thence west on South Street to Long Beach Boulevard; thence northerly on Long

Beach Boulevard to Imperial Highway (no service may be given along Long Beach Boulevard between Orange Avenue (Rosecrance Avenue) and Imperial Highway); thence east on Imperial Highway to Paramount Avenue; thence south on Paramount Avenue to Compton Boulevard; thence east on Compton Boulevard to applicant's depot.

The trucks of applicant may be operated and routed over the aforesaid pickup routes in a manner to give the most economical and efficient service over any of said pickup routes or combinations thereof, provided, however, that no service of any kind may be given to or from dairies located outside the territory included within the area bounded as follows:

Beginning at a point near the town of Huntington Park where Alameda Street intersects the right of way of the Los Angeles-Whittier line of the Pacific Electric Railway; thence easterly along said right of way to Garfield Road; thence northeasterly along Garfield Road to a point where said road intersects the right of way of the main line of The Atchison, Topeka and Santa Fe Railway between Los Angeles and San Diego; thence southeasterly along the line of said right of way to Rio Honda; thence northeast along Rio Honda to Center Street northeasterly from Bandini; thence southeasterly along Center Street to Norwalk Boulevard; thence southerly along Norwalk Boulevard through Los Nietos to Los Nietos Road; thence along the Los Nietos Road and Telegraph Road near Santa Fe Springs to Leffingwell Road; thence along Leffingwell Road to Central Avenue; thence along Central Avenue to the Los Angeles-Orange County Line; thence southerly and southeasterly along such county line to a point where such county line intersects the right of way of The Atchison, Topeka and Santa Fe Railway Company near the station of Northam; thence southeasterly along said right of way to Brookhurst; thence south along Brookhurst Avenue to Ocean Avenue; thence along Ocean Avenue through the town of Garden Grove to the Santa Ana River; thence southwesterly along the Santa Ana River to Quincy Avenue; thence westerly along Quincy Avenue to Huntington Beach Boulevard; thence north along Huntington Beach Boulevard to Talbert Avenue; thence along Talbert Avenue to Goldenwest Street; thence north along Goldenwest Street to Wintersburg Avenue; thence west along Wintersburg Avenue to Bolsa Chica Street; thence north along Bolsa Chica Street to Ocean Avenue; thence west along Ocean Avenue to Moody Street; thence north along Moody Street to Katella Avenue; thence west along Katella Avenue and Alvarado Street and a westerly projection thereof to connect with Willow Street east of the town of Signal Hill; thence along Willow Street and Long Beach-Redondo Road (Sepulveda Boulevard) to Alameda Street; thence northerly along Alameda Street to the

intersection of Orange Street (Rosecrance Avenue) in the town of Compton; thence east along Orange Street to Gibson Road; thence north on Gibson Road to Poppy Lane; thence east on Poppy Lane to Wright Road; thence northerly on Wright Road to Tweedy Abbott Road; thence westerly along Tweedy Abbott Road to Alameda Street; thence northerly along Alameda Street to the point of beginning.

IT IS ORDERED that a certificate of public convenience and necessity therefor is hereby granted to California Milk Transport, Inc. not in addition to, but in lieu of applicant's present operative rights involved herein.

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA HEREBY FURTHER DECLARES that public convenience and necessity requires the continued operation of California Milk Transport, Inc. as a highway common carrier of freight, without restriction as to commodities, between Los Angeles and Artesia and the two intermediate points of Downey and Norwalk over a route to be hereafter fixed by supplemental order, and,

IT IS FURTHER ORDERED that a separate certificate de novo therefor is hereby granted to California Milk Transport, Inc. in lieu of applicant's present operative right between such points.

The certificates as herein granted are granted subject to the following conditions:

1. The authorities herein granted shall lapse and be void if applicant shall not have complied with all of the conditions within the periods of time fixed herein unless, for good cause shown, the time shall be extended by further order of the Commission.
2. Applicant shall within thirty (30) days from the effective date hereof submit a map and a description of the route of operations for the transportation of general freight between Los Angeles and Artesia via Norwalk and Downey.
3. Within twenty (20) days from the date hereof, applicant shall file a written acceptance of the certificates herein granted, stipulating that applicant accepts such certificates in lieu of all operative rights heretofore acquired in the territory involved in this proceeding.

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 (5) days' notice to the Railroad Commission and the public, a time schedule or 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.

IT IS FURTHER ORDERED that the following decisions in so far as they have conferred any highway common carrier operative rights, and in no other respects, are hereby revoked and annulled: Decision No. 24503, dated February 23, 1932; Decision No. 26668, dated December 18, 1933; Decision No. 28106, dated July 8, 1935; Decision No. 28127, dated July 18, 1935; and Decision No. 28829, dated May 18, 1936.

The effective date of this order shall be twenty (20) days from the date hereof.

Dated at San Francisco, California, this 19th day of
April, 1939.

Robert W. Schindler
Frank R. Quinn
Carl H. King
H. H. Miller
Justus J. Casner
COMMISSIONERS