

**ORIGINAL**

Decision No. 123796

## BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
 JOE TESTO and MIKE TESTO, doing )  
 business as TESTO BROS., for a )  
 certificate of public convenience )  
 and necessity to operate an automobile )  
 truck service for the transportation )  
 of fresh fruits and vegetables, as a )  
 common carrier, between Stockton, )  
 California, and all points within a )  
 radius of twenty miles thereof, on the )  
 one hand, and Los Angeles, on the )  
 other hand. )

Application No. 23796

Louittit, Marceau & Louittit, by Daniel V.  
 Marceau, for applicant

Francis X. Vierra and Conroy I. Owens for  
 Southern Pacific Company and Pacific  
 Motor Transport, protestants

Willard S. Johnson, for Valley Express Company  
 and Valley Motor Lines, protestants

E. V. Luce, for Atchison, Topeka & Santa Fe  
 Railway Company, protestant

N. A. Gotelli, protestant

BY THE COMMISSION:

O P I N I O N

In this proceeding applicant, Joe Testo and Mike Testo, doing business as Testo Bros., seeks authority to establish and operate an automotive truck service as a highway common carrier, as that term is defined in Section 2-3/4 of the Public Utilities Act, for the transportation of fresh fruits and vegetables as follows: from Stockton, California, and a radius of twenty

(20) miles thereof, to Los Angeles, California; said service to be operated daily, except Saturdays, days preceding holidays, and such days when less than one hundred (100) packages in the aggregate are offered for transportation.<sup>1</sup>

On February 20, 1940, N. A. Gotelli filed an application with the Railroad Commission seeking a certificate of public convenience and necessity to establish a similar transportation service.<sup>2</sup> A public hearing was held on said Gotelli application and the matter was submitted and is now pending before the Commission for decision. The record of the hearing on the Gotelli application was incorporated in this proceeding by stipulation of all parties.

Public hearings were held at Stockton and Los Angeles on December 17, 18, and 19, <sup>1940,</sup> and January 7, 8, and 9, 1941, before Examiner Cameron, evidence was received, the matter was duly submitted, and the same is now ready for decision.

The testimony of many witnesses<sup>3</sup> who testified on behalf of applicant developed facts during the progress of the

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1. Application No. 23796, paragraph 1
  2. Application No. 22957, in Case No. 4435, filed September 1, 1939, submitted February 29, 1940
  3. 14 fruit and vegetable growers from Stockton and vicinity;  
14 fruit and vegetable brokers from Los Angeles and Stockton;  
The President of the San Joaquin Marketing Association of Stockton;  
The General Manager of applicant

hearing which may be summarized as follows:

For many years applicant has been conducting a produce business at the San Joaquin Marketing Association in Stockton. During 1935 many fruit and vegetable growers and dealers learned that applicant was operating trucks to Los Angeles, transporting fruit and vegetables in the conduct of its produce business. These growers and dealers from time to time requested applicant to transport produce of one type or another from the Stockton area to the Los Angeles markets. The requests became so frequent that during 1935 or 1936 applicant inaugurated a transportation service in conjunction with its produce business. Requests for transportation increased until applicant found it necessary to operate a line-haul and pick-up service. Shipments were picked up at farms in the Stockton vicinity during the day and consolidated with shipments originating at the San Joaquin Marketing Association on line-haul trucks for delivery. Line-haul trucks departed from Stockton about 4:00 p.m. each day and arrived at the Los Angeles markets about 3:00 a.m. the following day. The exact number of shippers patronizing applicant's service during the 1940 season is not shown. However, it does appear that a large number of shippers were served. In some instances shipments were handled pursuant to a special arrangement, but in most instances applicant handled shipments indiscriminately. Buyers for commission houses in Los Angeles requested the growers to transport shipments by applicant. It appears in practically all instances that the commission houses paid the transportation charges and deducted the amount from the sale price of the produce remitted to the growers. This constituted the manner in

which practically all of applicant's transportation business was handled.

The growers in the Stockton area require the establishment of a truck service that will transport the perishable crops to the Los Angeles markets in the most rapid and dependable manner. The perishable fruits and vegetables maturing during the spring and summer months are picked generally during the hot hours of the day and should arrive at the markets following the day of picking. To accomplish this requires careful and prompt transportation. Shipments should arrive at 5:00 a.m. so that commission merchants have an opportunity to dispose of said produce at the best available price. Late shipments, in many instances, cannot be disposed of on the day of arrival and must be held over and sold as seconds, thereby causing a considerable loss to the grower. The testimony of these witnesses, without exception, established that truck transportation is the only means whereby the growers can deliver their products to the Los Angeles markets with sufficient dispatch and in proper condition to avoid the loss of late delivery and damage to shipments resulting on many occasions from other means of transportation. Applicant's service was used regularly in delivering shipments from Stockton and vicinity to the Los Angeles markets.

The record of prompt service and condition of equipment places applicant in a position to perform the service for which authority is here sought. Very few shipments in the past five years have moved from the Stockton area to the Los Angeles markets by rail, or by highway common carrier truck.

The buildings of the San Joaquin Marketing Association occupy approximately three acres, in which there are 182 stalls for growers and dealers. During the 1940 season approximately 150,000 packages of produce were handled through the Association for Los Angeles markets. In addition to this large quantities moved directly from the farms to Los Angeles markets. The services of several carriers were utilized to transport the shipments during this season, the record showing that N. A. Gotelli, Teste Bros., and Campodonico & Barosso transported the largest quantities. Many grower witnesses were of the opinion that the quantity of produce to be shipped to the Los Angeles markets during the 1941 season will exceed that of the 1940 season by approximately twenty-five per cent. It is apparent that a highway common carrier service is necessary.

The record clearly establishes that applicant was performing a highway common carrier service during the 1940 produce season and that said service was performed in violation of the provisions of the Public Utilities Act. The Commission will not condone this illegal practice.<sup>4</sup>

A careful consideration of the entire record leads to the conclusion, and we hereby find as a fact, that public convenience and necessity require the establishment of an auto-

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4. An action seeking to recover penalties for violation of Section 50-3/4 of the Public Utilities Act has been instituted at the direction of the Commission and is now pending in the Superior Court in San Joaquin County.

motive truck service for the transportation of fresh fruits and vegetables as a highway common carrier, as defined in Section 2-3/4 of the Public Utilities Act by applicant, as follows: from Stockton, California, and a radius of twenty (20) miles thereof, to Los Angeles, California.

Applicant herein is hereby placed on notice that operative rights do not constitute a class of property which shall 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

Public hearing having been held in the above-entitled proceeding, upon which evidence was adduced, the matter having been duly submitted, the Commission now being fully advised, and it having been found that public convenience and necessity so require,

IT IS ORDERED that a certificate of public convenience and necessity is hereby granted to Joe Testo and Mike Testo, doing business as Testo Bros., for the establishment and operation of an automotive service for the transportation of fresh fruits and vegetables as a highway common carrier, as such is defined in Section 2-3/4 of the Public Utilities Act,

from Stockton, California, and a radius of twenty (20) miles thereof, to Los Angeles, California.

IT IS FURTHER ORDERED that in the operation of said highway common carrier service pursuant to the foregoing certificate, Joe Testo and Mike Testo, doing business as Testo Bros., shall comply with and observe the following service regulations:

(1) File a written acceptance of the certificate herein granted within a period of not to exceed thirty (30) days from the effective date hereof.

(2) Subject to the authority of this Commission to change or modify such at any time by further order, said Joe Testo and Mike Testo, doing business as Testo Bros., shall conduct said highway common carrier service over and along the following route: U.S. Highway No. 99, through Modesto, Merced, Madera, Fresno, Bakersfield, Burbank, and Los Angeles, California.

(3) Commence the service herein authorized within a period of not to exceed sixty (60) days from the effective date hereof and file in triplicate and concurrently make effective within a period of not to exceed sixty (60) days from the effective date of this order on not less than five (5) days' notice to the Commission and the public a tariff or tariffs constructed in accordance with the requirements of the Commission's general orders and containing rates, rules, and regulations which in volume and effect shall be identical with the proposed rates, rules, and regulations shown in the exhibit attached to Application No. 23796, in so far as they conform to the certificate herein granted, or rates, rules, and regulations satisfactory to the Railroad Commission.

(4) File in triplicate and make effective within a period of not to exceed sixty (60) days from the effective date of this order on not less than five (5) days' notice to the Commission and the public time schedules covering the service herein authorized in accordance with paragraph I of Application No. 23796, and in a form satisfactory to this Commission.

(5) Rights and privileges herein authorized may not be discontinued, sold, leased, transferred,

nor assigned unless the written consent of the Commission to such discontinuance, sale, lease, transfer or assignment has first been obtained.

(6) 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.

(7) 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 twenty (20) days from the date hereof.

Dated at San Francisco, California, this 13<sup>th</sup> day of May, 1941.

W. B. Kelly  
Ray L. Reed  
Justin J. Calver  
Francis J. Havens  
Richard L. Baker

Commissioners