

Decision No. 39515

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

In the Matter of the Application of Alfred V. Nunes for a certificate to operate as a highway common carrier of farm and orchard produce and returning empty containers between certain points and places in Santa Clara and Alameda Counties on the one hand and Oakland on the other.

Application No. 27638

SCOTT ELDER, for applicant.

O P I N I O N

In the above-entitled application Alfred V. Nunes requests the Commission to grant him a certificate of public convenience and necessity authorizing the establishment and operation of service as a highway common carrier, as defined in Section 2 3/4 of the Public Utilities Act, for the transportation of fresh farm and orchard produce, including berries, fruits and vegetables between Oakland, on the one hand, and points and places in the Santa Clara Valley in the general area of Mountain View, Santa Clara, Cupertino, Campbell, Edenvale, Evergreen, San Jose, Berryessa, Milpitas, Alviso and Warm Springs, on the other hand.

(1) The points and places proposed to be served as set forth in the application are: between Oakland on the one hand and the following points and places in Santa Clara and Alameda Counties on the other hand, to wit:

San Jose, Campbell, Evergreen and all points and places within five miles thereof; Mountain View, Sunnyvale, Agnew, Alviso, Milpitas, Santa Clara, Cupertino, Robertsville, Edenvale, and all points and places within three miles thereof; but excluding all points and places west of the Palo Alto-Los Gatos right-of-way of Southern Pacific Company, and all points and places south of Blossom Hill Road, Kooser Road, and Downer Lane between its intersection with Kooser Road and Cottle Road; all points and places along and within two miles laterally on either side of United States Highway No. 101 between its intersection with Downer Lane and Coyote but excluding Coyote; Hall's Valley; Warm Springs, Irvington, Mission San Jose, Centerville, San Lorenzo, and all points along and within one mile laterally on either side of State Highway No. 17 between Milpitas and San Leandro but excluding San Leandro.

A public hearing was held before Examiner Paul in San Jose on October 1, 1946, and the matter having been submitted is ready for decision. No one appeared in opposition to the application.

Applicant stated that the proposed rates and charges for the transportation of the commodities involved are the minimum rates established by the Commission for such transportation.

According to the record applicant has been engaged in the business of transporting property for compensation for a number of years. For approximately five years he was employed as a truck driver in similar operations and during the month of November, 1945, obtained a highway contract carrier permit from the Commission and thereupon engaged in the transportation of farm produce on his own account. He owns one truck, three tractors, one trailer and three semi-trailers. He has an outstanding obligation on the purchase price of two tractors and two semi-trailers of approximately \$8,900. The remainder of the equipment is fully paid for.

Under his proposed plan of operation the picking up of shipments would begin about 5:00 p.m. and be completed by mid-night so that deliveries to the commission markets in Oakland, which open at about 5:30 a.m., and other consignees, would be completed by 4:30 a.m.

Applicant now employs two and sometimes three drivers depending upon the demands by shippers for his service. While the application states that the service would be conducted on a so-called "on-call" basis, applicant testified that his trucks would begin operations in the pickup territory in the late afternoon regardless of any specific calls for service. No service would be provided on Saturdays or days preceding holidays.

Twelve farmers engaged in the production of fresh fruits, vegetables and berries testified in substance that they have been using applicant's service, in some cases under written agreements, and in

other under oral agreements, which service has been eminently satisfactory. With a few exceptions, all of these witnesses testified that there is no other common carrier truck service of the type proposed by the applicant to and from Oakland which is available to them; that they prefer and would use the service of applicant as a highway common carrier rather than as a highway contract carrier because of the advantage of a more certain service since applicant would then be obligated to transport their commodities at established rates and without the necessity of special agreements. Applicant testified to the effect that the demands for his service have increased to such an extent that he is unable lawfully to meet them under the limited authority inherent in his contract carrier permit.

After careful consideration of the evidence adduced in this proceeding, it is conclusively evident that there is a public need for the service proposed by applicant. An outstanding feature of the testimony in support of the application was that applicant has been providing a highly reliable, dependable, and satisfactory service within the limits of his permitted authority. The record is ample to show he is fully qualified to expand his operations to that of a highway common carrier. Accordingly a certificate therefor will be granted to him.

Alfred V. Nunes is hereby placed on notice that operative rights, as such, do not constitute a class of property which may be capitalized or used as an element of value in rate-fixing for any amount of money in excess of that originally paid to the State as the consideration for the grant of such rights. 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

Application having been made as above entitled; a public hearing having been had, the Commission now being fully informed and it being hereby found that public convenience and necessity so require

IT IS ORDERED:

(1) That a certificate of public convenience and necessity is hereby granted to Alfred V. Nunes authorizing the establishment and operation of service as a highway common carrier for the transportation of fresh vegetables, fresh fruits, including berries, with a return movement of empty containers, to Oakland, from the following points and places in Santa Clara and Alameda counties: San Jose, Campbell; Evergreen and all points and places within five miles thereof; Mountain View, Sunnyvale, Agnew, Alviso, Milpitas, Santa Clara, Cupertino, Robertsville, Edenvale, and all points and places within three miles thereof; but excluding all points and places west of the Palo Alto-Los Gatos right-of-way of Southern Pacific Company, and excluding all points and places south of Blossom Hill Road, Kooser Road, and Downer Lane between its intersection with Kooser Road and Cottle Road, other than points and places along and within two miles laterally on either side of United States Highway No. 101 between its intersection with Downer Lane and Coyote but excluding Coyote; Halls Valley, Warm Springs, Irvington, Mission San Jose, Centerville, San Lorenzo, and all points along and within one mile laterally on either side of State Highway No. 17 between Milpitas and San Leandro but excluding San Leandro;

(2) Applicant in providing service pursuant to the certificate herein granted shall comply with and observe the following service regulations:

- a. Applicant shall file a written acceptance of certificate herein granted within 30 days from the effective date hereof.

- b. Applicant shall within 60 days from the effective date hereof and upon not less than 5 days' notice to the Commission and the public establish the service herein authorized and comply with the provisions of General Order No. 80 and Part IV of General Order No. 93-A by filing in triplicate, and concurrently making effective tariffs and time tables satisfactory to the Commission.
- c. Subject to the authority of the Commission to change or modify them at any time applicant shall conduct operations herein authorized over and along California Highway No. 17 between Oakland and San Jose and over any and all public highways between points in the territory herein authorized to be served.

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

Dated at San Francisco, California, this 15th day of October, 1946.

Harold P. Kille
Justus F. Gaeber
John H. Russell
A. F. Dindman
 COMMISSIONERS