

ORIGINAL

Decision No. 40522

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of V. SUGLIO for certificate to operate as a highway common carrier of fresh berries, fruits and produce (returning empty containers), between San Francisco and Oakland and points in Santa Clara County located along U. S. Highway No. 101, between Sunnyvale and Gilroy, etc.) Application No. 27961

Application of ANTHONY FRANK AMADEO (Market Hauling Co.) for a certificate to operate as a highway common carrier of fresh fruits and vegetables, including mushrooms (returning empty containers) between points in Santa Clara County and San Francisco and Oakland.) Application No. 27963

Application of LEONARD A. SHIPKOWSKI for certificate to operate as a highway common carrier of fresh fruits and vegetables, including mushrooms (returning empty containers) between points in Santa Clara and San Mateo Counties and San Francisco.) Application No. 27964

Application of ALFRED V. NUNES for certificate to operate as highway common carrier of fresh fruits, berries and vegetables (returning empty containers) between points in Santa Clara County and San Francisco.) Application No. 28212

- FRANK LOUGHERAN for V. Suglio, applicant in App. No. 27961.
- E. C. CONNELLA for Anthony F. Amadeo, doing business as Market Hauling Co., applicant, in App. No. 27963; and for Leonard A. Shipkowski, applicant, in App. No. 27964.
- OLNEY & ELDER, by Scott Elder, for Alfred V. Nunes, applicant, in App. No. 28212.
- WILLIAM WEINHOLD for Southern Pacific Company and Pacific Motor Trucking Company, protestants.
- DOUGLAS BROOKMAN and CLYDE L. EDDY for Merchants Express Corporation, protestant.
- F. E. WARD for Highway Transport Inc., protestant.
- R. A. LUPICH for Harold P. Schivo, doing business as Produce Transfer Company, protestant.

O P I N I O N

In these proceedings, the applicants above-named severally seek certificates of public convenience and necessity, under Section 50-3/4 of the Public Utilities Act, authorizing operation as highway common carriers, respectively, between points in Santa Clara County (including also, in one instance, San Mateo County points) and both

San Francisco and Oakland, or San Francisco alone. These operations would be limited to the transportation of fresh fruits and vegetables from the Santa Clara Valley to San Francisco and Oakland, and of empty containers returning. The applications were opposed by certain carriers in the field, who appeared as protestants. They comprised Southern Pacific Company and its subsidiary, Pacific Motor Trucking Company; Merchants Express Corporation; Highway Transport, Inc. and Harold P. Schivo, doing business as Produce Transfer Company.

A public hearing in these matters was had before Examiner Austin at San Jose on May 5 and 6, 1947, and at San Francisco, on June 16, 1947, when they were submitted. They were consolidated for hearing and decision.

Applicants severally described their past operations in this territory and outlined their respective proposals. Various shipper witnesses were called in their behalf. All of the applicants have operated, for varying periods, between Santa Clara Valley and San Francisco or Oakland (or both), under permits issued by the Commission, authorizing operation as radial highway common carriers, as highway contract carriers and as city carriers. Applicant Nunes is authorized to provide a highway common carrier service in this territory. They have specialized in the transportation of fresh fruits and vegetables to the produce markets in San Francisco and Oakland. We shall refer briefly to their respective proposals.

Applicant V. Suglio (App. No. 27961) seeks authority to engage in the transportation of fresh berries, fruits and produce (with empty carriers returning) between San Francisco and Oakland on the one hand, and on the other hand, points situated along U. S. Highway 101 between Sunnyvale and Gilroy, including off-route points

(1) Though some of the applications originally sought broader authority, they subsequently were amended so as to limit the operations, as stated above.

located within 10 miles of that highway between Sunnyvale and Edendale, and within 5 miles of the highway between Edendale and Gilroy. Under permits issued by the Commission, applicant has served this territory since 1940. Headquarters are maintained at San Jose, where a terminal now under construction soon will be completed. Some 15 trucks and 20 trailers would be used. His financial ability to provide the service was established.

Applicant, Anthony Frank Amadeo, doing business as Market Hauling Company, (App. No. 27963) seeks a certificate authorizing the transportation of fresh fruits and vegetables, including mushrooms, from Santa Clara County points to San Francisco and Oakland, and the return movement of empty containers. Generally speaking, the origin territory would extend from Milpitas, Alviso, Sunnyvale and Saratoga south to Gilroy. For many years he has transported fruits and produce from the Santa Clara Valley to Oakland and San Francisco, operating under permits issued by the Commission. His headquarters and terminal are located at San Jose. To provide the service, applicant has available three trucks, two tractors, two semi-trailers and two trailers. He appears to be financially qualified to provide the service.

Applicant Leonard A. Shipkowski (App. No. 27964) seeks operating authority for transportation of fresh fruits and vegetables, including mushrooms, from points in Santa Clara and San Mateo counties to San Francisco, and for the return movement of empty containers. In general the origin territory would extend from Redwood City to Los Altos and Sunnyvale. For many years applicant has served this territory, under permits issued by the Commission. Headquarters are situated at Mountain View. The equipment used to provide the service

(2) Originally Amadeo and a partner sought a certificate to engage in this operation. By the amended application, Amadeo was substituted as the sole applicant.

comprises two trucks and one trailer. Applicant's financial qualifications were established.

Applicant, Alfred V. Nunes (App. No. 28212) seeks a certificate authorizing the transportation of fresh fruits, berries and vegetables, including mushrooms, from Santa Clara County points to San Francisco, and for the return movement of empty containers. In general the origin territory would include San Jose, Campbell, Evergreen, Mountain View, Sunnyvale, Agnew, Alviso, Milpitas, Santa Clara, Cupertino, Roberts and Edenvale, together with surrounding areas. Applicant also requests permission to operate between the origin territory and Oakland (which he serves under his present certificate),⁽³⁾ via San Francisco and the San Francisco Bay Bridge, as an alternate route to State Highway 17. During the past two years applicant has transported fresh fruit and vegetables from Santa Clara Valley points to Oakland. Since November 1946, this service has been provided under the certificate which he now holds. Under applicant's proposal this service would be extended to San Francisco. Authorization of the alternate route, which applicant seeks, via the San Francisco Bay Bridge would permit the unification of the San Francisco and Oakland operations, thereby resulting in more efficient and economical operation. Headquarters are maintained at Agnew. The equipment used comprises one truck, three tractors and four trailers and semi-trailers. Applicant appears to be financially qualified to conduct the operation.

Throughout the areas, in the Santa Clara Valley, which applicants, respectively, undertake to serve, shipments ordinarily would be picked up at the ranches and brought to the terminals, where they would be concentrated and transferred to line-haul vehicles. Some would be offered to the carriers at their terminals.

(3) Pursuant to Decision No. 39515, rendered October 15, 1946, in Application No. 27638, applicant is authorized to engage in the transportation of fresh fruits and vegetables, including berries, from Santa Clara and Alameda County points, including the origin territory above described, to Oakland and to transport empty containers returning. This service is routed via California State Highway No. 17, between San Jose and Oakland.

Larger shipments would move through to destination, without transfer. This traffic would be transported overnight to San Francisco and Oakland arriving there during the early morning hours in ample time for the opening of the fruit and produce markets.

All of the applicants submitted proposed tariffs, specifying the rates which would be established. In their judgment, these rates would be compensatory. No objection to these rates was voiced by any of the shippers called.

The origin territory which applicants propose to serve is devoted largely to the production of deciduous fruits, berries and vegetables of various kinds. Much of it is marketed in San Francisco and Oakland. The growers, it appears, are required to depend on the facilities of for-hire carriers, rather than on their own equipment, for the transportation of their products. Adequate common carrier service would facilitate the marketing of these products, applicants stated.

Between the Santa Clara Valley, San Francisco and Oakland there is a substantial movement of fresh fruits and vegetables, which move throughout the year, increasing during the periods of heavy production, extending from May to September. Because of their perishable nature, these commodities must be handled expeditiously. There is a constant demand on the part of the producers throughout this region, applicants testified, for a common carrier service which would meet these requirements.

Various shipper witnesses were called in support of applicant's proposals. They included producers of fresh fruits and vegetables within the origin territory described, and representatives of commission merchants engaged in the distribution of these products

at San Francisco, Oakland and San Jose.. They described the need for an expeditious transportation service, which would facilitate the prompt arrival of these perishable commodities at the San Francisco and Oakland markets. The carriers who center their activities largely upon the transportation of general commodities (such as protestants) cannot provide a service which would be responsive to their requirements, so they testified. Several common carriers specializing in the transportation of fresh fruits and vegetables, they stated, not only would be advantageous but are essential to insure the expeditious movement of this traffic. A common carrier service, they said, with its attendant responsibility, would be superior to that afforded by the highway contract carriers, now in the field.

Protestants made no showing in support of their position, no witnesses being called in their behalf. They contended, however, that any certificates granted in these proceedings should be restricted to the transportation of fruit and vegetables from ranches within the origin territory to the produce markets in San Francisco and Oakland. Applicants, however, were unwilling to accept such a limitation, contending that it would not be warranted by the evidence.

In our judgment, applicants have shown a public need for the establishment of the operations in which they respectively propose to engage. The applications, accordingly, will be granted. In view of the facts shown of record, the limitations suggested by protestants would not seem to be appropriate.

Applicants are hereby severally placed upon 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

Applications as above entitled having been filed; a public hearing having been held thereon; the matters having been submitted; the Commission being fully advised in the premises and hereby finding that public convenience and necessity so require,

IT IS ORDERED that:

(1) A certificate of public convenience and necessity is hereby granted to V. Suglio, authorizing the establishment and operation of a service as a highway common carrier, as defined by Section 2-3/4 of the Public Utilities Act, limited to the transportation of fresh berries, fruits and produce to San Francisco and Oakland from all points and places located along U. S. Highway 101 between Sunnyvale and Gilroy, in Santa Clara County, including off-route points located within 10 miles of said highway between Sunnyvale and Edenvale, and off-route points located within 5 miles of said highway between Edenvale and Gilroy; and limited also to the transportation of empty containers returning from San Francisco and Oakland to the points in Santa Clara County, hereinabove described.

(2) A certificate of public convenience and necessity is hereby granted to Anthony Frank Amadeo, authorizing the establishment and operation of a service, as a highway common carrier, as defined

by Section 2-3/4 of the Public Utilities Act, limited to the transportation of fresh fruits and vegetables, including mushrooms, to San Francisco and Oakland from points in Santa Clara County, as follows: San Jose, Santa Clara, Evergreen, Berryessa, Morgan Hill and Gilroy and all points within five miles of said places exclusive of any points south of Gilroy; Agnew, Lawrence, Cupertino, Meridian, Edenvale, Robertsville, Coyote, Alum Rock Park and all points within three miles thereof, and Campbell and points within five miles thereof, but exclusive of Sunnyvale and exclusive of any point west or south of the Southern Pacific railway right of way between Monte Vista and its junction with said right of way between San Jose and Los Gatos, or south or west of Shannon Road or Downer Avenue; all points and places along U. S. Highway 101 between Gilroy and San Jose and between San Jose and the intersection of U. S. Highway 101 with Lawrence Station Road and within three miles of said highway along either side thereof; all points and places along State Highway 17 between San Jose and Milpitas, and along Alviso Road between Milpitas and Alviso and within two miles of said highway and road along either side thereof, all points and places along State Highway 9 from Sunnyvale to Cupertino, and along the Stevens Creek Road from its intersection with State Highway 9 to its intersection with the Santa Clara-Saratoga Road, and within one mile of said highway and road along either side thereof; along the Santa Clara-Saratoga Road between its intersection with the Stevens Creek Road and its intersection with the Southern Pacific railway right of way, and along State Highway 17 between its intersection with the Stevens Creek Road and its junction with the Santa Clara-Los Gatos Road and within three miles of said roads and highways along either side thereof. Said certificate shall be limited also to the transportation of empty containers returning from San Francisco and Oakland to the points in

Santa Clara County, hereinabove described.

(3) A certificate of public convenience and necessity is hereby granted to Leonard A. Shipkowski, authorizing the establishment and operation of a service, as a highway common carrier, as defined by Section 2-3/4 of the Public Utilities Act, limited to the transportation of fresh fruits and vegetables, including mushrooms, to San Francisco from points in Santa Clara and San Mateo Counties, as follows: Sunnyvale and all points within three miles of Sunnyvale, but exclusive of any points east of Campbell Creek north of the Bay Shore Highway and south of Fremont Avenue between Stevens Creek and Campbell Creek; Mountain View and all points within three miles of Mountain View; Los Altos and all points within two miles of Los Altos, but exclusive of any points south of Fremont Avenue; Palo Alto and all points within three miles of Palo Alto, but exclusive of any point south or west of the Southern Pacific railway line from the point of its crossing of El Camino Real in Palo Alto or south of El Camino Real at any point west of said crossing; Redwood City and all points within one-half mile of Redwood City; all points and places along the Bay Shore Highway between Campbell Creek and Redwood City and within two miles of Bay Shore Highway along either side thereof; El Camino Real between its intersection with the Saratoga-Sunnyvale Road and its crossing of the Southern Pacific railway line at Palo Alto and all points within one mile of El Camino Real along either side thereof, but excluding all points and places west of the Southern Pacific railway line between Palo Alto and Los Altos. Said certificate shall be limited also to the transportation of empty containers returning from San Francisco to the points in Santa Clara and San Mateo Counties, hereinabove described.

(4) A certificate of public convenience and necessity is hereby granted to Alfred V. Nunes, authorizing the establishment and operation of a service, as a highway common carrier, as defined by Section 2-3/4 of the Public Utilities Act, limited to the transportation of fresh fruits, berries and vegetables, including mushrooms, to San Francisco from points in Santa Clara County, as follows:

(1) 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; excluding, however, 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 described in subparagraph (2) below. (2) All points and places along and within two miles laterally on either side of U. S. Highway 101 between its intersection with Downer Lane and a point three miles south of Edenvale. (3) Halls Valley. Said certificate shall be limited also to the transportation of empty containers returning from San Francisco to the points in Santa Clara County, hereinabove described.

(5) Decision No. 39515, rendered October 15, 1946, in Application 27638, is hereby modified and amended by striking out paragraph (2) c. of the order contained in said decision, specifying the routes over which Alfred V. Nunes was authorized to conduct service between Oakland and the points and places, in Santa Clara County, specified in paragraph (1) of said order, and by substituting therefor the following, viz.:

"(c) Subject to the authority of the Commission to change or modify them at any time, applicant shall conduct the operations

herein authorized over and along the following routes:

From points and places in Santa Clara County above described, on the one hand, and Oakland on the other hand:

- (a) Via State Highway 17 to Oakland;
- (b) Via U. S. Highway 101 alternate to San Francisco;
- (c) Between San Francisco and Oakland, via San Francisco-Oakland Bay Bridge."

In all other respects, said Decision No. 39515 shall remain in full force and effect.

(6) In providing service pursuant to the certificate herein granted, applicants shall comply with and observe the following service regulations:

- (a) Applicants shall severally file a written acceptance of the certificate herein granted within a period of not to exceed 30 days from the effective date hereof.
- (b) Within 60 days from the effective date hereof and on not less than 5 days' notice to the Commission and the public, applicants shall severally 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, appropriate tariffs and time tables.
- (c) Subject to the authority of this Commission to change or modify them by further order, applicants shall severally conduct operations, pursuant to the certificates herein granted to them, respectively, over and along the following routes:

- (i) Applicant V. Suglio

From the points and places in Santa Clara County, described in paragraph (1) above:

- (a) To San Francisco via U. S. Highway 101 alternate;

- (b) To Oakland via State Highway 17;
- (c) Between San Francisco and Oakland via San Francisco-Oakland Bay Bridge.

(ii) Applicant, Anthony Frank Amadeo

From the points and places in Santa Clara County, described in paragraph (2) above:

- (a) To San Francisco via U. S. Highway 101 alternate;
- (b) To Oakland via State Highway 17;
- (c) Between San Francisco and Oakland via San Francisco-Oakland Bay Bridge.

(iii) Applicant, Leonard A. Shipkowsi

From the points and places in Santa Clara and San Mateo County, described in paragraph (3) above:

- (a) To San Francisco via U. S. Highway 101 alternate;

(iv) Applicant, Alfred V. Nunes

From the points and places in Santa Clara County, described in paragraph (4) above:

- (a) To San Francisco via U. S. Highway 101 alternate;
- (b) To Oakland via State Highway 17;
- (c) Between San Francisco and Oakland via San Francisco-Oakland Bay Bridge.

(v) Applicants are severally authorized to conduct such operations, between points in the origin territories above described over any and all available public highways.

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

Dated at San Francisco, California, this 22nd day of July, 1947.

Harold H. Huls
Justice J. C. ...
...
A. J. ...

COMMISSIONERS