

ORIGINAL

Decision No. 43107

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
J. CHRISTENSON CO., a corporation, for)
a certificate of public convenience)
and necessity to operate as a highway)
common carrier for the transportation)
of various commodities, between various)
points and places in California over)
defined routes.)

Application No. 30176

Willard S. Johnson and William M. Larimore for applicant.
Frederick W. Mielke for Delta Lines, Inc.; Reginald L. Vaughan
and John G. Lyons for Canton Transbay Express, Inc.,
Inter-Urban Express Corporation, Peoples Express Company,
East Bay Drayage & Warehouse Company, West Berkeley
Express and Draying Co., United Transfer Company, Haslett
Warehouse Company, Kellogg Express & Draying Co., Clark
Bros. Motor Transport, Inc., and Santa Cruz Motor Express,
Inc.; Douglas Brookman for Merchants Express Corporation
and California Motor Express Company; E. L. Van Dellen
for The Western Pacific Railroad Company and Tidewater
Southern Railway Company; W. A. Gregory for Southern
Pacific Company, Pacific Motor Trucking Company and
Northwestern Pacific Railroad Company; Edward M. Berol
and Bertram S. Silver for Highway Transport, Inc.;
William F. Brooks for The Atchison, Topeka and Santa Fe
Railway Company; and Glenn & Russell by Theodore W.
Russell for Moser's Frozen Food Freight Line.

O P I N I O N

By this application, as amended, J. Christenson Co., a corporation, seeks a certificate of public convenience and necessity authorizing operations as a highway common carrier for the transportation of frozen foods and various other perishable products between numerous points in central and northern California. A public hearing was held before Examiner Bradshaw at San Francisco.

Applicant was organized as a California corporation in 1947. At that time it took over trucking operations which had been conducted for a number of years as a partnership by applicant's

principal stockholders. Operations have been devoted principally to the transportation of perishable commodities under radial highway common carrier, highway contract carrier and city carrier permits. Applicant's president testified that there has been a steady increase in the business handled and the number of patrons using the service.

The area which applicant proposes to serve as a highway common carrier embraces roughly the territory between Woodland, Sacramento and the Santa Rosa-Sebastopol districts on the north and the Tulare, Visalia and Hanford districts in the San Joaquin Valley and Santa Cruz, Watsonville and Salinas, on the south, including the San Francisco Bay area. A daily service is contemplated, using insulated, mechanically refrigerated equipment in line-haul operations. The proposed rates are those established by the Commission as minima increased by 5 per cent to compensate for the refrigeration service. Relief from the long-and-short-haul provisions of the Constitution and Public Utilities Act is desired in instances where shipments are transported over routes through intermediate points at which higher rates apply.

Applicant's equipment consists of 13 tractors, 4 trucks, 23 semi-trailers, 1 trailer, 7 dollies and a business car. Nineteen of the semi-trailers have insulated bodies. Of this number 16 are also mechanically refrigerated. An affiliated company owns terminal properties used by applicant at Oakland and Manteca. According to an exhibit of record, applicant's revenues during 1948 amounted to \$266,057, while the expense of conducting the present operation was \$239,553. The net income after provision for income taxes is reported as having been \$20,139. In the opinion of applicant's

president, the increase in traffic if the certificate is granted will be substantial.

In describing its equipment, applicant's vice president testified that the refrigeration appliances in use can provide temperatures ranging from 60 degrees Fahrenheit to zero and that the desired temperature for a given commodity can be controlled to within about 3 degrees. The witness, who since 1936 has been engaged in transporting commodities requiring refrigeration, asserted that he does not know of the existence of more efficient equipment than applicant possesses. He declared that requests have been received to provide service at points where applicant does not now operate.

A total of 35 witnesses, engaged in shipping or receiving perishable commodities, testified on behalf of applicant. In general, their testimony was of a similar nature. A discussion of the evidence presented by each of these witnesses is, therefore, unnecessary. The principal transportation movements in which they, as a group, are concerned were indicated as consisting of (a) frozen foods, such as fruits, vegetables, meats or fish, from San Francisco Bay points, Sacramento, Santa Clara Valley or Watsonville to various destinations or between San Francisco and East Bay points; (b) ice cream mix and ice milk mix from San Joaquin Valley producing points to the Bay area and Valley destinations; (c) cottage cheese from San Francisco Bay and San Joaquin Valley points to various destinations; (d) prepared dough and packaged butter from Bay points to various destinations; (e) eggs and frozen egg meat from the Petaluma area, Sacramento and the San Joaquin Valley to San Francisco Bay territory; and (f) dressed poultry from the

San Joaquin Valley to the Bay area, Valley points and Santa Cruz. Illustrations of other descriptions of traffic which certain of the witnesses stated they are interested in follow: (a) frozen enchiladas from Tulare to the Bay area, Sacramento and Petaluma; (b) curd from Petaluma and Lemoore to Oakland; and (c) yoghurt from Oakland to Sacramento and San Joaquin Valley points.

Transportation under refrigeration was declared to be essential for commodities of this nature. One witness testified that the availability of such transportation is one of the most important features in increasing the distribution of frozen foods. Another stated that graded packaged butter requires refrigeration at all times after leaving the print room. Railroad baggage car service was claimed by a witness to be unsatisfactory for transporting ice cream mix. He asserted that at times this commodity has reached destination at excessive temperatures when so transported. Movement under ice instead of mechanical refrigeration was also said to result in a high temperature upon arrival at destination.

The public witnesses were virtually unanimous in declaring that applicant's proposed service is required in their respective businesses or would prove to be a beneficial supplement to present proprietary truck operations. Existing common carrier services were characterized as unsatisfactory. According to one witness, it is difficult to secure facilities for moving small lots under refrigeration. Another testified that the required service cannot be secured from contract carriers. In nearly every instance the witnesses said that they know of no existing refrigeration transportation service such as applicant proposes to establish as

a common carrier. Other carriers, a witness testified, do not solicit frozen food traffic.

A number of the public witnesses asserted that the proposed service would assist in developing a wider distribution of certain commodities or in improving shippers' sales position. A shipper of frozen foods contemplating the establishment of branches at Sacramento, Stockton and Salinas stated that before doing so he must be certain that refrigeration transportation will be available. Another witness testified that the absence of proper transportation constitutes a handicap in developing markets for cottage cheese. A consignee who uses applicant's present service declared that if the proposed service is established he could purchase supplies at points from which applicant has not rendered service in the past.

According to the record, the temperature of frozen foods should be kept at zero until sold, or as close thereto as possible. The maximum temperatures at which it is desirable to transport some of the other commodities embraced in the application were stated to be as follows:

	Degrees Fahrenheit
Fresh meats	30
Ice-packed dressed poultry	34
Cottage cheese	45
Prepared dough	45
Yoghurt	45 to 50
Ice cream mix	50 or lower
Eggs and frozen egg meat	55

An employee of the State Department of Agriculture, engaged in the administration of laws respecting temperatures of dairy products upon arrival at destinations, testified that provisions of the Agricultural Code and regulations of the Department

require that ice cream mix and ice milk mix be immediately cooled to not above 50 degrees Fahrenheit and maintained at that temperature until frozen. This witness asserted that he could not recall discovering illegal temperatures upon inspecting shipments transported by applicant. He also declared that the necessity of consignees receiving shipments at the required temperature has been a considerable problem when other carriers engage in the transportation of these commodities.

A number of highway common carriers and railroad corporations appeared in opposition to the granting of the application. During the course of the hearing, however, stipulations were entered into which more definitely indicated and in some instances restricted the commodities applicant proposes to transport or the conditions under which they would be accepted for transportation. As a result, all of the protests were withdrawn, except those of three rail carriers and Moser's Frozen Food Freight Line. The rail carriers in question did not actively participate in the proceedings or offer any evidence. A second amendment to the application, which conforms to the terms of the stipulations, was filed June 6, 1949.

By Decision No. 40775, dated September 30, 1947, as amended by Decision No. 41232, dated February 17, 1948, in Application No. 27611, Moser's Frozen Food Freight Line was granted a certificate of public convenience and necessity authorizing highway common carrier operations for the transportation of fresh frozen foods and refrigerated commodities, as described therein, between the Los Angeles and San Francisco areas and Sacramento, including certain intermediate and off-highway points.

A written stipulation was filed in the instant proceeding

setting forth the testimony which Moser's vice president and general manager would have given if called as a witness. The following facts concerning this carrier's facilities and service are included therein: Terminal facilities are maintained at San Francisco, Los Angeles and Fresno, the facilities at San Francisco and Los Angeles being equipped with cold storage boxes. The line-haul equipment includes 13 insulated vans, 5 of which are equipped with mechanical refrigeration units. Six partially insulated vans are available for pickup and delivery service. Four daily schedules are being operated between Los Angeles and San Francisco. Since May 1, 1949, one of these daily schedules has been normally operated each way between San Francisco and Fresno, unless the flow of traffic has required that equipment be operated via Gilroy. At least one round trip per day will be established on or before June 1, 1949, between San Francisco, Sacramento and Stockton and the intermediate points Moser is authorized to serve. Present operations have been conducted at a loss. The carrier is able and willing to accept additional traffic of the kind it is authorized to transport. It clearly appears from the evidence in this proceeding, however, that Moser's operations are not sufficiently complete as to its schedules and the territory served to meet the demands for transportation shown to exist.

After careful consideration of the facts of record, the Commission finds that public convenience and necessity require the establishment and operation by applicant of a highway common carrier service, as proposed in the application and the amendments thereto on file in this proceeding.

J. Christenson Co., a corporation, 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

A public hearing having been had in the above-entitled proceeding, and the Commission having found that public convenience and necessity so require,

IT IS ORDERED:

1. That a certificate of public convenience and necessity be and it is hereby granted to J. Christenson Co., a corporation, 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 (a) frozen foods and frozen beverages; (b) eggs in the shell; (c) meat, fresh, smoked, cooked or cured, other than canned; (d) poultry, fresh, dressed; (e) dry ice; (f) dairy products, viz: butter, milk, cream, buttermilk, yoghurt, curd, cheese, with or without fruit or vegetable ingredients; cottage cheese, with or without fruit or vegetable ingredients, pot cheese, ice cream, ice cream mix, ice milk mix and ice water mix; (g) prepared dough; (h) yeast; (i) animal food, fresh, containing meat; (j) empty containers and (k) butter substitutes between the following points and places:

- (1) Between San Francisco, South San Francisco, Richmond, El Cerrito, Albany, Oakland, Alameda, Emeryville, Berkeley, Piedmont, San Leandro and Hayward, hereinafter called San Francisco Bay Cities, via all highways and city streets;
- (2) Between San Francisco Bay Cities, on the one hand, and Stockton and all points on U. S. Highway 50, State Highway 120 and U. S. Highway 99 between Tracy and Stockton, both inclusive, on the other hand via U. S. Highway 50 to Stockton or U. S. Highway 50 and California Highway 120 to Manteca; thence U. S. Highway 99 from Manteca to Stockton;
- (3) Between San Francisco Bay Cities, on the one hand, and Vallejo, Sonoma, Sebastopol and all intermediate points between Vallejo and Sebastopol, on the other hand, via U. S. Highway 40 from Richmond to Vallejo; thence via California Highways 29, 48, 37 and 12 to Sonoma; an unnumbered highway to Petaluma; U. S. Highway 101 to Santa Rosa; and California Highway 12 to Sebastopol;
- (4) Between San Francisco Bay Cities, on the one hand, and San Rafael and all points on U. S. Highway 101 between San Rafael and Petaluma, on the other hand, via (a) Richmond - San Rafael Ferry from Richmond to San Rafael thence U. S. Highway 101 to Petaluma; or (b) U. S. Highway 101 from San Francisco to Petaluma;
- (5) Between San Francisco Bay Cities, on the one hand, and Salinas, Santa Cruz and all intermediate points along the following routes:
 - (a) From San Leandro to Santa Cruz via California Highway 17; thence California Highway 1 to Watsonville; an unnumbered highway commonly known as Chittenden Pass to junction with U. S. Highway 101 approximately 8 miles south of Gilroy; and U. S. Highway 101 to Salinas; and
 - (b) From San Francisco to Salinas via U. S. Highway 101, on the other hand;
- (6) Between San Francisco Bay Cities and Stockton, on the one hand, and Sacramento and all intermediate points between Stockton and Sacramento, on the other hand, via U. S. Highways 50 and 99, serving Suisun-Fairfield, Vacaville, and Woodland as off-route points,
- (7) Between San Francisco Bay Cities, Sacramento and Stockton, on the one hand, and Tulare and all intermediate points between Sacramento and Tulare, on the other hand, via U. S. Highway 99 with service from and to the off-route points of Visalia, Hanford, Armona, Lemoore and Sanger;

- (8) Between San Francisco Bay Cities, on the one hand, and Walnut Creek, Concord, and all intermediate points via California Highway 24, on the other hand;
- (9) All points and places on and within five miles laterally of the routes and points specified in subparagraph (1) through (8), above, and
- (10) Locally between all points embraced in subparagraphs (1) through (9).

2. That the certificate herein granted is subject to the following conditions and limitations:

- (a) The line-haul (intercity) transportation of all commodities other than empty containers shall be in insulated equipment under refrigeration.
- (b) Applicant shall not transport any shipment of smoked, cooked, cured or preserved meat, except when transported with a simultaneous shipment of fresh or frozen meat or poultry from the same consignor at the same point of origin to the same consignee at the same destination.
- (c) Applicant shall not transport any shipment of evaporated or condensed milk, except when shipped and transported in milk shipping cans of 5 gallons or greater capacity.

3. That in providing service pursuant to the certificate herein granted, J. Christenson Co. shall comply with and observe the following service regulations:

- (a) Applicant shall file a written acceptance of the certificate herein granted within a period of not to exceed 30 days after the effective date hereof.
- (b) Applicant shall 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 schedules within 60 days after the effective date hereof, and on not less than 5 days' notice to the Commission and the public.
- (c) Subject to the authority of the Commission to change or modify them by further order, applicant shall conduct operations pursuant to the certificate herein granted over and along the routes enumerated in Paragraph 1 of this order and, in addition, may operate over and along the following alternate routes:

Between Vallejo and Santa Rosa - California Highways 29 and 12.

Between Vallejo and Sacramento - U. S. Highway 40.

Between Rodeo and Stockton - California Highway 4.

Between Concord and Sacramento - California Highway 24.

Between Martinez and Mission San Jose - California Highway 21.

Between Hayward and Warm Springs - unnumbered highway via Niles and Mission San Jose.

Between Niles and California Highway 21 approximately 3 miles east of Niles - unnumbered highway.

Between Livermore and Mission San Jose - unnumbered highway.

Between Manteca and Vernalis - unnumbered county road.

Between Vernalis and Modesto - California Highway 132.

Between Crows Landing and Modesto - unnumbered road.

Between Newman and Livingston - unnumbered road.

From Merced southerly through El Nido to California Highway 152 - unnumbered road.

Between Watsonville and Califa-California Highway 152.

From Watsonville to Salinas - California Highway 1 to Castroville, thence unnumbered road.

Between Lemoore and Fresno - California Highway 41.

Between Armona and Fowler - unnumbered road.

Between Hanford and Kingsburg - unnumbered road.

Between Fresno and Sanger - California Highway 180.

Between Sanger and Kingsburg - unnumbered road.

Between Los Gatos and Sunnyvale - unnumbered road.

Between Lemoore and Visalia - California Highway 198.

Between State Highway 152 and U. S. Highway 50 - California Highway 33.

4. That applicant be and it is hereby authorized to depart from the provisions of Section 21 of Article XII of the California Constitution and Section 24(a) of the Public Utilities

Act to the extent necessary to permit the transportation of shipments over routes through points from or to which higher rates may be in effect than between point of origin and destination.

This order shall become effective 20 days after the date hereof.

Dated at San Francisco, California, this 6th day of July, 1949.

R. E. Anderson

Frank L. Russell

Harold P. Hild

Wesley H. Fetter

COMMISSIONERS