

ORIGINAL

Decision No. 42556

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 JAMES P. NIELSEN, an individual, doing)
 business as NIELSEN FREIGHT LINES, for)
 a certificate of public convenience and)
 necessity to operate an automotive serv-)
 ice as a highway common carrier for the)
 transportation of property (except un-)
 crated household goods and automotive)
 parts when originating from auto parts)
 houses or automobile dealers) between)
 San Francisco, on the one hand, and all)
 points on U. S. Highway 101 between)
 Novato and Santa Rosa, including Novato)
 and Santa Rosa, on the other hand; and)
 between Novato and Santa Rosa and inter-)
 mediate points.)

Application No. 29105

Marvin Handler, for applicant.
Douglas Brookman, for Merchants Express Corporation;
 and W. A. Gregory and William Meinhold, for
 Pacific Motor Trucking Company, Northwestern
 Pacific Railroad Company and Petaluma and
 Santa Rosa Railroad Company, protestants.

O P I N I O N

By this application, James P. Nielson, doing business as Nielson Freight Lines, seeks a certificate of public convenience and necessity authorizing operations as a highway common carrier for the transportation of property other than uncrated household goods and automotive parts (when originating at auto-parts houses or automobile dealers) (1) between San Francisco, on the one hand, and all points on U. S. Highway 101 between Novato and Santa Rosa, including Novato and Santa Rosa, on the other hand; and (2) between Novato and Santa Rosa and intermediate points.

Public hearings were held before Examiner Bradshaw at San Francisco, Santa Rosa and Petaluma. Briefs have been filed. At the initial hearing applicant's counsel stated that it was not

proposed to transport uncrated livestock or liquid commodities in bulk in tank trucks. The application will be considered as having been amended accordingly.

It is proposed to operate two northbound trips and one southbound trip daily Mondays through Fridays. Shipments picked up in San Francisco before 12 noon would be delivered at destination the afternoon of the same day. Shipments picked up in San Francisco during the afternoon would be dispatched in line-haul equipment leaving at 6:30 p.m., so as to effect deliveries the next morning commencing at the following hours: Petaluma, 8 a.m.; Santa Rosa, 8:30 a.m.; Cotati, 11:15 a.m.; and Penn Grove, 11:35 a.m. Shipments picked up in San Francisco on Friday afternoons, according to the proposal, are to be delivered in Petaluma and Santa Rosa on Saturday mornings. The proposed southbound schedule contemplates a pick-up at Santa Rosa and Petaluma as late as 5:30 p.m., with a 7 a.m. arrival at San Francisco.

Applicant has conducted a highway carrier operation in the territory here under consideration since 1931. The details are set forth in Decision No. 42558, dated February 24, 1949, in Case No. 4820, Pacific Southwest R.R. Association vs. Nielson, and need not be repeated in this opinion. According to the record, he possesses operating authority as a common carrier of interstate and foreign commerce between San Francisco, Petaluma and Santa Rosa. It is stated that applicant owns six tractors and five semi-trailers for line-haul service, five trucks utilized in pick-up and delivery service and a terminal at Petaluma. Terminal space is also maintained in San Francisco and arrangements for facilities at Santa Rosa have been made.

Freight revenues for the year 1948 were reported as

\$90,229.77. It is stated that of the revenues which accrued during the first 3 months of the year, amounting to \$60,461.73, about one-third was derived from the transportation of interstate traffic.

A balance sheet as of December 31, 1948, lists current assets of \$26,350, equipment and buildings after depreciation amounting to \$18,983, land valued at \$1,000, and "franchise" amounting to \$3,245. The liabilities were indicated as being current liabilities in the sum of \$4,946, leaving a net worth of \$44,631. Applicant testified that he also owns a ranch worth about \$18,000, which is free of encumbrances.

Representatives of 20 business establishments in San Francisco which ship to or from the territory here involved testified as witnesses on behalf of applicant. He also called as witnesses 38 persons engaged in business or employed in business houses at Santa Rosa, Petaluma, Cotati and Novato. The latter witnesses are consignees of shipments originating in San Francisco. Some of them also ship to San Francisco or points in the territory between Novato and Santa Rosa. With some exceptions, the public witnesses indicated having had experience in the use of both applicant's service and that of the existing common carriers.

Many of the San Francisco witnesses testified that the existing common carriers have on occasions failed to pick-up shipments the same day as requested or that the pick-up service could not be depended upon. Several stated that they deliver shipments to the carriers' depots rather than risk delays in obtaining pick-up service. Others complained that shipments are picked up, or that requests for service must be made, too early in the afternoon. Some of the witnesses testified that they have not received a morning pick-up service. A few declared that the existing service

is satisfactory or had improved during the last few weeks prior to the hearing. With respect to applicant's pick-up service on the shipments which he has transported, the witnesses claimed it to have been prompt, convenient and reliable. A number of them contended that a morning service is very convenient.

A number of the San Francisco shipper-witnesses testified that complaints have been received from customers concerning the failure to receive promptly shipments tendered to one or another of the existing common carriers. They claim that overnight deliveries have not been made in all cases. One witness complained that it is difficult to trace shipments transported by one of the carriers. Another stated that he was unable to obtain deliveries on the same day as freight is shipped. A few of the witnesses testified that no complaints had been received concerning the present common carrier service; ^{others} that it has been satisfactory most of the time.

The shipper-witnesses testified that time in transit is very important. A number of them stated that consignees are frequently in a hurry to receive shipments, because the merchandise is required for immediate use or sale. In a few cases, witnesses contended that expeditious service is essential from a shipper's standpoint in meeting local competition or the competition of others who use their own trucks for delivering merchandise. According to the shipper-testimony, an overnight service is not sufficient to meet all requirements. Nearly all of those who testified asserted that they want to be assured of a service which will afford deliveries on the same day as shipments are tendered to the carrier. A number of the shippers also expressed a desire that shipments picked up in San Francisco on Friday afternoons be delivered to consignees on Saturday morning instead of the following Monday, as at present.

It is claimed that these requirements would be met if the proposed service of applicant is established. The witnesses indicated a confidence based on past experience in applicant's ability to render dependable service.

The traffic manager of a large cooperative association engaged in marketing eggs testified that applicant transports for the association several truckloads of eggs daily from Petaluma to San Francisco and smaller quantities from Santa Rosa. Approximately 262,000 cases from Petaluma and 302 cases from Santa Rosa were transported during 1947. According to figures for the period from January 1 to the middle of October, 1948, the movement during 1948 was apparently somewhat greater. The witness stated that the service has been very satisfactory; that deliveries in San Francisco prior to 8 a.m. are necessary; that although some Government and export shipments are made by railroad in carload lots the faster service rendered by applicant is essential for local distribution; and that if the service should be discontinued the association would have to expand its proprietary truck operations.

The testimony of those engaged in business at Santa Rosa, Petaluma, Cotati and Novato, like that of the San Francisco witnesses, is substantially to the same effect. They characterized the service now rendered by applicant as very satisfactory, dependable and superior to that of the existing common carriers. Most of them stated that they have not received shipments the same day as shipped from San Francisco when transported by the present common carriers. It was also stated that on some occasions shipments have not been received the day after shipment from San Francisco.

Some of the witnesses said that the existing common carriers usually give a next-day service; others declared that the

service is too slow and not sufficiently dependable for emergency or rush shipments. A number of them testified that they use the express service of Pacific Greyhound Lines on such occasions - a service which does not provide a pick-up or delivery. Some improvement in the service during recent months was observed by a few of the consignee-witnesses. Numerous freight bills were produced to prove delays to shipments. In most cases week-ends or holidays intervened while shipments were in transit. The documents were admittedly selected in the majority of instances to indicate delayed shipments rather than the service normally performed by the presently authorized common carriers.

According to certain witnesses, shipments are delivered by the existing common carriers at various hours throughout the day, instead of at a more or less uniform time. The importance of expeditious service, including same-day in addition to overnight schedules, was stressed. It was stated in many cases that the delivery on Saturday morning instead of the following Monday of shipments made from San Francisco on Friday afternoons would be beneficial. A few complaints were made of an inability to contact a representative of one of the carriers at Petaluma. Several instances of damage to freight and delays in the settlement of claims by the present common carriers were referred to. Other witnesses said that the amount of damage was not unusual and that claims have been settled to their satisfaction.

The chambers of commerce at Santa Rosa and Petaluma presented resolutions passed by their respective boards of directors supporting the application. It appears that in adopting the resolutions very little, if any, consideration was given to the present service of the existing common carriers.

The manager of the Santa Rosa Chamber of Commerce testified that there has been a very definite growth in industrial activities in the Santa Rosa area during the last two years. He stated that the present population within the Santa Rosa city limits is 17,642 as compared with 12,600 in 1940, although about 1,800 of the increase is attributable to an expansion of the city limits. An exhibit was presented by the secretary-manager of the Petaluma Chamber of Commerce showing miscellaneous data reflecting that community's growth. The population is estimated as having been 11,500 in 1947 as compared with 8,245 in 1930.

Merchants Express Corporation, Pacific Motor Trucking Company, Northwestern Pacific Railroad Company and Petaluma and Santa Rosa Railroad Company protested the granting of the application.

The district freight agent of Merchants Express Corporation described the pick-up and delivery service of that carrier in San Francisco. He testified that trucks are dispatched along 21 pick up routes, leaving the terminal between 8:15 and 8:30 a.m. and after completing deliveries at about 9:45 a.m. commence regular pick up calls. Drivers, it was stated, telephone to the terminal at approximately 10 a.m. to receive additional orders to pick up shipments and return to the terminal with freight for various destinations between 11:30 and 11:45 a.m. It is claimed that when requests to collect shipments are received after 10 a.m. additional equipment is available to pick them up.

The witness asserted that shipments received during the morning are transported in line-haul equipment leaving the San Francisco terminal at 12:50 p.m. and between 1 and 1:15 p.m., arriving at Santa Rosa either between 2:45 and 3 p.m. or about

3:15 p.m. It was stated that the freight for Petaluma arrives there at approximately 2:45 or 2:50 p.m.

According to the testimony, similar pick up service is rendered during the afternoon, the drivers telephoning in for additional orders between 3 and 3:30 p.m. and returning to the terminal from 4:15 to 4:45 p.m. Line-haul equipment is dispatched from San Francisco at about 6:30 p.m. It is claimed that shipments will be received at the San Francisco terminal until 12 noon for the afternoon service and until 5 p.m. for the overnight service. The district freight agent said that between 300 and 375 shipments are transported daily to the points here involved; that approximately 250 San Francisco shippers utilize the service each day; and that of the shipments transported about 30 per cent move on the mid-day schedule.

Merchants Express Corporation's vice president described the equipment in use and available as well as the terminal facilities used by the carrier at San Francisco, Santa Rosa and Petaluma. The methods by which freight is transported after leaving San Francisco were also stated. The witness declared that shipments handled on the mid-day schedule are delivered the same afternoon unless consignees do not desire them until the following morning. He also asserted that the over-night freight is delivered the following morning. Union regulations, rates of pay, traffic congestion and the small volume of freight offered were said to make it impracticable from a financial standpoint to afford deliveries on Saturday mornings. It was stated that approximately 500 consignees regularly use this carrier's service in the Novato-Santa Rosa area; and that the traffic transported from San Francisco to such points during 1948 consisted of 88,997 shipments, aggregating slightly over 34,000,000 pounds.

A representative of Southern Pacific Company, parent company of the other protestants, described the service of those carriers. He indicated that less-than-carload shipments are picked up in San Francisco by a contract drayman and assembled at the freight station. Shipments for Novato, it appears, are transported on a truck of Pacific Motor Trucking Company to San Rafael and there transferred into another truck of the same carrier for movement to destination. Freight consigned to the other points embraced in the application, according to the witness, is trucked to Pier 3 in San Francisco, from which location it moves to Petaluma by river steamer. The vessel makes the trip each evening Mondays through Fridays. Upon arrival at Petaluma, the Santa Rosa freight is transported in a local freight train, while that for the other points is handled in trucks of Pacific Motor Trucking Company. It was testified that deliveries at destination are made the following morning after shipment from San Francisco, except that Penn Grove and Cotati are only served on 3 days a week and that no deliveries are made at any of the points on Saturday mornings. The witness said that a similar operation is conducted in the opposite direction.

Pacific Motor Trucking Company's district manager testified concerning the equipment owned by the contract drayman at San Francisco and by Pacific Motor Trucking Company at other points. He gave some testimony with respect to the service supplementary to that presented by the previous witness. It was stated that San Francisco pick up calls are accepted until 3 p.m. to permit shipments to reach the freight station by 4:45 p.m.; that deliveries of freight are made at Novato about 1:55 p.m.; and that the truck serving Penn Grove and Cotati leaves Petaluma at about 1 p.m.

The traffic manager of Petaluma and Santa Rosa Railroad

Company explained the method employed in processing certain damage claims, the circumstances under which shipments consigned to several witnesses called by applicant were delivered by a drayman in Petaluma instead of by Pacific Motor Trucking Company, and the physical handling accorded shipments while in the custody of Petaluma and Santa Rosa Railroad Company.

On brief, applicant contends that by reason of his experience there can be no question as to his ability to perform the service he proposes. He argues that the public witnesses conclusively established the inadequacy of protestants' services and the need for that proposed. It is asserted that protestants have failed to rebut applicant's case. The failure to present any public witnesses or statistical evidence showing protestants' performance in rendering the service claimed to be in effect is stressed. Applicant also claims that inasmuch as the same person is the principal stockholder of Merchants Express Corporation and Southern Pacific Company's contract drayman at San Francisco the present common carrier services in the territory between San Francisco and Santa Rosa are not competitive. He points out that other communities along the Redwood Highway as far north as Eureka now enjoy competitive highway common carrier services.

Protestants in their briefs urge that the application be denied. They place considerable reliance upon the fact that in Case No. 4820 applicant's present operations were found to be unlawful. This circumstance, according to Merchants Express Corporation, compels a denial of the application even though it were not rendering adequate service between the points here involved. It is also argued that the record fails to show that the present common carrier services are inadequate or that a need has been shown for

an additional highway common carrier service.

In the instant proceeding, considerable testimony was given by the public witnesses indicating a frequent use of the services rendered by the presently authorized common carriers. The details in which the service was claimed to be not responsive to their requirements were affirmatively shown. The Commission would not, under the circumstances, be justified in disregarding testimony disclosing instances that the existing services failed to meet fully the needs of the shipping public, especially in the absence of specific rebuttal evidence.

Protestants' argument that applicant having operated as a common carrier without first obtaining a certificate of public convenience and necessity constitutes sufficient cause for denying the application has been carefully considered. While we have found that applicant's operations have been unlawful (Decision No. 42558, Case No. 4820) and by Decision No. 42557, entered this day, denied his petition for rehearing, we believe applicant is the type of carrier referred to in Case No. 4823, who was uncertain of his status and filed this application to have his status clarified. In that proceeding we also held that where the needs of the public so required we would be liberal in granting to such a carrier a certificate of public convenience and necessity.

Upon the evidence presented, we find that public convenience and necessity require the establishment and operation by applicant

of a highway common carrier service for the transportation of freight, as proposed in the application.

James P. Nielson 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

Public hearings having been had and the Commission, upon the evidence received, 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 James P. Nielson, authorizing the establishment and operation of a service as a highway common carrier, as defined in Section 2 3/4 of the Public Utilities Act, for the transportation of freight other than (a) uncrated household goods, (b) automotive parts when originating at auto-parts houses and automobile dealers, (c) uncrated livestock and (d) liquid commodities in bulk in tank trucks (1) between San Francisco, on the one hand, and all points located on U. S. Highway 101 between Novato and Santa Rosa, including Novato and Santa Rosa,

on the other hand; and (2) between Novato and Santa Rosa and intermediate points.

(2) That in providing service pursuant to the certificate herein granted, James P. Nielson 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 it by further order, applicant shall conduct operations pursuant to the certificate herein granted over and along the following route:

U. S. Highway 101, including the Waldo Approach or Sausalito Lateral and the Golden Gate Bridge.

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

Dated at San Francisco, California, this 22nd day of November, 1949.

R. F. [Signature]
Justin F. [Signature]
[Signature]
[Signature]
[Signature]
 Commissioners