

ORIGINAL

Decision No. 40584

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
THEO PETERS, doing business as TED )  
PETERS, for a certificate of public )  
convenience and necessity to operate )  
as a highway common carrier for the )  
transportation of property between )  
San Francisco Bay cities, on the one )  
hand, and Dos Palos and intermediate )  
points on California Highway 33, on )  
the other hand. )

Application No. 30080

Willard S. Johnson, for applicant.  
W. A. Gregory, Jr., for Southern Pacific Company and  
Pacific Motor Trucking Company; R. Edward Burton,  
for Valley Motor Lines, Inc., and Valley Express  
Co.; and Reginald L. Vaughan and George G. Murry,  
for Manual Souza and Bettencourt Brothers.

O P I N I O N

By this application, as amended, Theo Peters, doing  
business as Ted Peters and having his principal place of business  
at Gustine, seeks a certificate of public convenience and necessity  
authorizing operations as a highway common carrier for the trans-  
portation of certain commodities

- (1) between all points and places located on California Highway 33 between its junction with U. S. Highway 50 near Tracy and Dos Palos, both inclusive, and points situated laterally within five miles thereof, on the one hand, and San Francisco, South San Francisco and various East Bay cities, on the other hand; and
- (2) locally between points and places located on California Highway 33 between its junction with U. S. Highway 50 and Dos Palos, both inclusive, and points situated laterally within five miles thereof.

Public hearings were held before Examiner Bradshaw at  
Newman.

The commodities which applicant seeks authority to transport as a highway common carrier consist of dairy products and certain specified articles used in the dairy products processing industry. The specific commodities embraced in these categories are enumerated in the footnote. <sup>(1)</sup> In addition, applicant desires authority to transport general commodities, except live animals, uncrated household goods, liquid commodities in tank equipment, rock and similar commodities in dump trucks and set-up motor vehicles, when the transportation charges upon the shipments are predicated upon a minimum weight of 10,000 pounds or over. It is proposed to render an on-call service on seven days of each week. Refrigeration-in-transit will also be provided.

Theo Peters, Jr., one of applicant's sons and manager of his trucking business, described applicant's facilities, equipment and operations as presently conducted and proposed to be rendered in the future. He testified that originally shipments consisted principally of milk and cream in tank trucks, but that since about three years ago applicant has been called upon to transport additional commodities. It was stated that, although operations are conducted throughout the State, 75 per cent of the business is composed of traffic moving between the San Joaquin Valley and the San Francisco Bay area.

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(1) Dairy products of all kinds (including milk, cream and products and by-products thereof; cheese of all kinds with or without fruit or vegetable ingredients; butter; ice cream; ice milk; ice cream or ice milk mix; and ice water mix); sawdust; lime; acids; nuchar, boneblack and other neutralizing agents; machinery; salt; adhesives; labels; seals and caps; soap, caustic, disinfectants, cleaning and scouring compounds; chemical laboratory instruments, equipment and supplies; empty containers; paperboard, fibreboard, chipboard, boxboard and box shook; tin plate; sugar; pipe, pipe fittings and valves; and paint and varnishes.

The trucking equipment owned and operated by applicant is listed as including ten tractors; two dump trucks; and one flat-rack, six van and seven tank semi-trailers. Terminal and garage facilities are maintained at Gustine. Exhibits of record purport to show that freight revenues in 1948 amounted to \$183,623.51, and that the commodities transported were, generally speaking, those which applicant seeks authority to haul as a highway common carrier. The present operations are rendered pursuant to radial highway common carrier, highway contract carrier and city carrier permits.

According to the testimony, 18 dairy products processing plants are located in the area between Patterson and Dos Palos. Peters further testified that in the transportation of dairy products a guaranteed delivery time is required and that the industry demands the availability of transportation service on seven days of the week. It was stated that this traffic is tendered in both less-truckload and truckload quantities.

Representatives of nine shippers of dairy products testified on behalf of applicant. They asserted that the type of service which applicant has rendered in the past and proposes to establish as a highway common carrier is necessary to meet their transportation requirements. Most of them stated that outbound shipments require refrigeration in transit. Several declared that they have occasion to make and receive shipments on Saturdays, Sundays and holidays and that they do not know of any other service which is comparable to that furnished by applicant.

Southern Pacific Company, Pacific Motor Trucking Company, Valley Motor Lines, Inc. and Valley Express Co. protested the

granting of the application. The last two of these carriers, however, withdrew their opposition upon the filing of an amendment eliminating from the application a request for authority to transport so-called "general commodities", without restriction as to the weight upon which charges shall be computed.

The freight service rendered by Southern Pacific Company and Pacific Motor Trucking Company was described by officials of those carriers. Less-than-carload shipments between the Bay area and communities along Highway 33 as far as Los Banos are transported by train between San Francisco or Oakland and Tracy and by trucking equipment of Pacific Motor Trucking Company south of Tracy. Shipments to or from Dos Palos move by train between the Bay cities and Fresno and by truck between that point and Dos Palos. Pick-up and delivery service is in most instances rendered by local draymen. Carload traffic is handled in local freight trains between the Valley communities and Tracy where connections are made with trains operating to and from the Bay cities.

It appears from the testimony that less-than-carload shipments picked up in the Bay cities during the afternoon are delivered to consignees in the Valley communities proposed to be served by applicant during the following morning or shortly after 12 o'clock noon. Less-than-carload shipments in the opposite direction, one of the witnesses stated, are delivered in the Bay area on the second day after shipment. The service in each direction is rendered daily, except Saturdays, Sundays and holidays.

The witness for Southern Pacific Company testified that carload traffic is handled in a train scheduled to leave Tracy about 8 a.m. the day after shipment from the Bay area. He stated

that the arrival time at the different stations varies, depending on the amount of traffic to be handled. According to the witness, carload shipments from the Bay area are handled on a train scheduled to leave Los Banos about 8 a.m., which connects with a train arriving at Oakland about 5 a.m. and San Francisco by 7 a.m. the following day. It was stated that in addition to this service a train leaving Los Banos about midnight, affording second-day delivery in San Francisco, was also available for the movement of carload traffic.

Ten witnesses engaged in various types of business other than the dairy products processing industry at Patterson, Crows Landing, Newman and Gustine testified on behalf of protestants. They asserted that the services rendered by the existing common carriers are satisfactory and meet their requirements.

A careful examination of the record in this proceeding discloses that the existing common carriers are furnishing an adequate and satisfactory service for the classes of traffic they customarily carry. The evidence is also convincing that such service does not meet the peculiar requirements of the dairy products industry. In view of the importance of this industry in the territory herein under consideration, it appears that the establishment of a highway common carrier service designed to meet its transportation needs is, under the circumstances, both justified and desirable. The showing presented by applicant, however, does not warrant the inclusion in a certificate of public convenience and necessity of authority to transport any shipments other than those made by or consigned to persons, firms or corporations engaged in the shipment, manufacture or processing of dairy products. Nor

has any need been shown for the proposed operations from or to points situated laterally within five miles of California Highway 33.

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 the commodities described or specified in the application, as amended, (a) between all points and places located on California Highway 33 between its junction with U. S. Highway 50 and Dos Palos, both inclusive, on the one hand, and San Francisco, South San Francisco and various East Bay cities, on the other hand; and (b) locally between all points and places located on California Highway 33 between its junction with U. S. Highway 50 and Dos Palos, both inclusive, when shipped by or consigned to persons, firms or corporations engaged in the shipment, manufacture or processing of dairy products.

Theo Peters is hereby 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

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 Theo Peters 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 (a) dairy products of all kinds (including milk, cream and products and by-products thereof; cheese of all kinds, with or without fruit or vegetable ingredients; butter; ice cream; ice milk; ice cream or ice milk mix; and ice water mix); (b) the following commodities: Sawdust; lime; acids; nuchar, boneblack and other neutralizing agents; machinery; salt; adhesives; labels; seals and caps; soap, caustic, disinfectants, cleaning and scouring compounds; chemical laboratory instruments, equipment and supplies; empty containers; paperboard, fibreboard, chipboard, boxboard and box shook; tin plate; sugar; pipe, pipe fittings and valves; paints and varnishes; and (c) general commodities, except live animals; uncrated household goods; liquid commodities in bulk in tank trucks or trailers; rock, sand or gravel in dump trucks; and set-up automobiles or motor vehicles (when the transportation charges are predicated upon a minimum weight of not less than 10,000 pounds) (1) between all points and places on California Highway 33 between its junction with U. S. Highway 50 (near Tracy) and Dos Palos, including Dos Palos, on the one hand, and San Francisco, South San Francisco, Oakland, Piedmont, Alameda, Emeryville, Berkeley, Albany, El Cerrito, Richmond, San Leandro and Hayward, on the other hand; and (2) locally between all points and places on California Highway 33 between its junction with

U. S. Highway 50 (near Tracy) and Dos Palos, including Dos Palos.

(2) That the certificate herein granted is subject to the condition that no shipment may be accepted for transportation or transported unless shipped by or consigned to persons, firms or corporations engaged in the shipment, manufacture or processing of dairy products.

(3) That in providing service pursuant to the certificate herein granted, Theo Peters shall comply with and observe the following service regulations:

- a. Within thirty (30) days after the effective date of this order, applicant shall file a written acceptance of the certificate herein granted.
- b. Within sixty (60) days after the effective date hereof, 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 on not less than five (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 following routes:

Between San Francisco Bay cities:  
Any and all highways, roads and streets.

Between San Francisco Bay cities and points on California Highway 33:  
U. S. Highway 50; thence California Highway 33.

Alternate Routes:  
California Highways 24 and 21 to U. S. Highway 50.  
California Highway 17 and/or U. S. Highway 101;  
thence California Highway 152 to Los Banos. U. S.  
Highway 101, San Mateo Bridge and connecting roads  
through Mt. Eden and Hayward to U. S. Highway 50.  
Unnumbered highway from intersection with California  
Highway 33 twelve (12) miles south of Gustine to  
its intersection with California Highway 152.



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

Dated at San Francisco, California, this 7th day of December, 1949.

R. Z. [Signature]  
Justice J. Calver  
Chief Justice  
[Signature]  
[Signature]  
COMMISSIONERS