

ORIGINALDecision No. 42731

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 D. A. MITCHELL and G. V. CLARK,)
 doing business as RISKE TRUCKING CO.,)
 a copartnership, for a certificate) Application No. 30322
 of public convenience and necessity)
 to operate as a highway common carrier)
 for the transportation of property.)

Frank Loughran, for applicant; E. L. Van Dellen, for Western Pacific Railroad Company, protestant; Roy Jerome, for Southern Pacific Company, Pacific Motor Trucking Company and Central California Traction Company, protestants; F. W. Kerrigan, for Moser's Frozen Food Freight Line, protestant; Willard S. Johnson, for J. Christenson Co., interested party; William F. Brooks, for The Atchison, Topeka & Santa Fe Railway Company and Santa Fe Trucking Company, protestants; Reginald L. Vaughan, Varnum Paul and John G. Lyons, by John G. Lyons, for Kellogg Express and Draying Co., Inter-Urban Express Corporation, Pacific Motor Tariff Bureau and its member carriers, interested parties; Leland J. Humphrey, for Sacramento Chamber of Commerce, interested party; W. L. Warner, for Sacramento Auto Truck Co., protestant.

O P I N I O N

This is an application by D. A. Mitchell and G. V. Clark, copartners, doing business as Riske Trucking Co., for a certificate of public convenience and necessity authorizing operation as a highway common carrier for the transportation of truck-load traffic (shipments of not less than 20,000 pounds) as follows:

- (a) locally between Sacramento and Stockton and between points on various highways radiating out of Sacramento;
- (b) between Stockton, Sacramento and the points located along said highways radiating out of Sacramento, on the one hand, and on the other hand, the San Francisco Bay territory, including service at certain intermediate points hereinafter indicated.

Public hearings were held by Examiner Cannon at San Francisco and Sacramento and the matter was submitted on December 7, 1949, on briefs filed concurrently, and now received.

The applicants are experienced in the truck transportation business, having acquired and operated their present service in 1946, when they purchased the Riske Trucking Company. They operate a fleet of approximately 86 units, used primarily in the movement of truck-load traffic for volume shippers. Terminal facilities are maintained at Sacramento, Walnut Grove, Woodland and Oakland. Their present operations are alleged to be conducted under authority of contract and radial permits. The applicant Mitchell testified that the instant application was filed because shippers in the territory involved expressed a preference for service on a certificated basis which would afford the convenience of fixed tariff rates and freedom from the uncertainty of entering into contractual arrangements. This attitude was expressed by several of the public witnesses who appeared in support of the application. They stated that existing carriers generally furnished adequate service for less-truck-load traffic, but they had had difficulty in obtaining satisfactory truck-load service.

Summarizing the testimony of the ten shipper witnesses who were called by applicants, it appeared that they chiefly represented wholesale and retail shippers of commodities in large volume between Sacramento, Stockton and San Francisco. A representative of one of the largest hardware and building material concerns in Sacramento, with a heavy volume of shipments moving from San Francisco-Oakland Bay territory to Sacramento, testified that most of their traffic moved in truck-load lots, that present

facilities are slow, and that they require service of the character proposed by applicant.

The traffic manager of the Campbell Soup Company testified that the canned goods movement of his concern to San Francisco, Oakland and San Jose is approximately 400 tons per week and requires the service of a truck company which can handle shipments in large volume. He preferred a common carrier service rather than contract service as being more stable and dependable, although he presently uses the contract service of applicants.

The testimony of the remaining witnesses was typical of these two, and in each case indicated a need for the type of service which applicants propose to furnish.

Applicants, in their brief, allude to a recent study made by the Research Division, Transportation Department of this Commission dealing with the transportation of general freight traffic between the San Francisco-Oakland metropolitan area and the Sacramento-Stockton areas. They point out that, according to the study, permitted carriers are transporting by weight 58.5 per cent of the traffic moving in the Vallejo area, while the certificated carriers are transporting only 13.8 per cent, the remainder, or 27.7 per cent, being transported by proprietary carriers. They also point out that a breakdown shows that 82 per cent of this

(1)
traffic consists of shipments weighing 20,000 pounds or more. From these figures applicants deduce that the type of traffic which they are seeking to transport is truck-load traffic, which is presently being moved by permitted carriers rather than certificated carriers.

While several carriers entered their appearances at the hearings, only Southern Pacific Company and The Atchison, Topeka & Santa Fe Railway Company and their respective subsidiaries, took an active part in the proceeding. Sacramento Auto Truck Co., operating locally between Sacramento, Davis, Woodland and Winters offered no witness testimony. Rail protestants presented no public witnesses in support of their protests. In fact, aside from certain statistical data, offered by two operating witnesses, the protestants offered no testimony.

(1) The percentages stated by applicants are those set forth in Table 9 of the engineering report and reflect only the estimated tonnage of general freight transported between the San Francisco-Oakland metropolitan area and the Vallejo area, which was determined from vehicles weighed at the checking point of La Fayette. The report actually shows that permitted carriers are transporting 49.5 per cent of the traffic transported between the San Francisco-Oakland metropolitan area and the Sacramento area, while highway common carriers are transporting 26.3 per cent and proprietary carriers 24.2 per cent.

Between the San Francisco-Oakland metropolitan area and the Stockton area permitted carriers are shown to be transporting 56.2 per cent of the general freight traffic, while highway common carriers are transporting 15.1 per cent and proprietary carriers 28.7 per cent.

Although applicants' statement indicates that 82 per cent of the traffic transported by permitted carriers consists of shipments weighing 20,000 pounds or more, the report actually shows this percentage to amount to 78 per cent in the weight group 20,000 pounds or more.

Protestants contend that the showing of applicants was limited to the testimony of a few shippers, whose requirements dealt mainly with transportation of canned goods, cannery supplies, beans, grain and used machinery between the San Francisco and Sacramento areas. The need for the proposed service was sufficiently established by the testimony of applicants' witnesses who ship a variety of commodities. All stated they would use the service if the certificate is granted.

The only support for the protest of Southern Pacific Company and The Atchison, Topeka & Santa Fe Railway Company and their affiliated companies is found in the testimony of two operating witnesses and the stipulated tabulation of the scheduled services of their respective subsidiaries.

No public witness was called to refute the testimony of applicant witnesses, or to testify that the proposed service was not needed.

No reference is made by protestants to the Commission's Transportation Department report, alluded to above, other than the statement that the service provided by existing common carriers between the points involved is set forth in tabulated form, and that the Southern Pacific and Pacific Motor Trucking provide a complete and adequate service to the area covered in the application.

We find from the evidence of record in this proceeding that there is a definite demand for the service proposed, that applicants are fully capable of rendering such service, with respect to both their experience and financial ability, that the

testimony of shipper-witnesses strongly supports the application, that the protest against the granting of the application is weak in that it does nothing further than to indicate the availability of present rail service, and finally that no major truck service existing in the area protested the granting of the application. Accordingly, the application will be granted.

D. A. Mitchell and G. V. Clark are 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

Application as above entitled having been filed, public hearings having been held thereon, the matter having been submitted, the Commission being fully advised in the premises, and hereby finding that public convenience and necessity so require,

IT IS ORDERED:

(1) That a certificate of public convenience and necessity is hereby granted to D. A. Mitchell and G. V. Clark, 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 property between points and places and along the following routes:

ROUTE DESCRIPTIONS:

Route No. 1: Between Sacramento, on the one hand, and, on the other hand, all points and places located on and within three miles laterally of the following described highways, including service from, to and between all points located on any of said highways and in said lateral zone:

- (a) Highway U. S. 40 between Sacramento and Loomis and Dixon, including Loomis and Dixon;
- (b) Highway U. S. 99-E between Lincoln and Roseville, including Lincoln and Roseville;
- (c) Highway U. S. 50 between Sacramento and Clarksville, including Clarksville;
- (d) State Highway Route 16 between Sacramento and Michigan Bar, including Michigan Bar;
- (e) Highway U. S. 50-99 between Sacramento and Stockton, including Stockton;
- (f) State Highway Route 24 between Sacramento and Ryde, including Ryde;
- (g) State Highway Route 16 between Sacramento and Madison, including Madison;
- (h) Highway U. S. 99-W between Zamora and junction Highway U. S. 99-W and State Highway Route 16, including Zamora;
- (i) State Highway Route 24 between Woodland and Robbins, including Woodland and Robbins;
- (j) County Road between Sacramento and Rio Oso, including Rio Oso, via Verona and Nicolaus;
- (k) State Highway Route 28 between Winters and Davis, including Winters and Davis;
- (l) Highway U. S. 99-W between Woodland and Davis, including Woodland and Davis;
- (m) Including off route service at Lathrop and Lyoth.

Route No. 2: Between all points and places described in Route No. 1, on the one hand, and, on the other hand, all points and places located in "San Francisco Territory", as described in Highway Carriers' Tariff No. 2, Item 270-A, via Highways U. S. 99, 99-E, 99-W, 40 and 50, and State Highway Routes 4, 12, 24, 16, 21 and 17.

Route No. 3: Between all points and places described in Route No. 1, on the one hand, and, on the other hand, all points and places on and laterally within three miles of the highways described in Route No. 2 as route highways between points located on Route No. 1 and said San Francisco Territory.

Route No. 4: Between all points and places located on and laterally within three miles of the highways described in Route No. 2 as route highways between points located on Route No. 1 and said San Francisco Territory, on the one hand, and, on the other hand, points and places located in said San Francisco Territory, except that no service will be performed between said San Francisco Territory, on the one hand, and, on the other hand, points on or laterally from State Highway Route 4 west of its intersection with State Highway Route 21, points on or laterally from State Highway Route 24 west of Walnut Creek, or points on or laterally from Highway U. S. 50 west of Mountain House.

DESCRIPTION OF COMMODITIES TO BE TRANSPORTED ALONG SAID ROUTES:

(a) Commodities to be transported along Routes Nos. 1 and 2:

General commodities (except articles of extraordinary value, uncrated used household goods, unprocessed fruits and vegetables, petroleum products in bulk in tank trucks, and products moving under refrigeration) in shipments of not less than 20,000

pounds, or shipments which shall carry charges applicable to 20,000 pounds, except as to machinery second hand (used), viz: cannery machinery, boxmaking machinery, rice bean and grain processing machinery, steam boilers, forklift trucks, platform trucks, warehouse carts and trailers, sorting and grading platforms moving from or to canneries, rice mills, grain and bean processing plants, warehouses and machine repair shops which shall be transported in shipments of not less than 5,000 pounds, or shipments which shall carry charges applicable to shipments of 5,000 pounds.

(b) Commodities to be transported along Route No. 3:

General commodities (except articles of extraordinary value, uncrated used household goods, unprocessed fruits and vegetables, petroleum products in bulk in tank trucks, iron and steel articles having origin in, or destination at Pittsburg, and products moving under refrigeration) in shipments of not less than 20,000 pounds, or shipments which shall carry charges applicable to 20,000 pounds, except as to machinery second hand (used), viz: cannery machinery, boxmaking machinery, rice bean and grain processing machinery, steam boilers, forklift trucks, platform trucks, warehouse carts and trailers, sorting and grading platforms moving from or to canneries, rice mills, grain and bean processing plants, warehouses and machine repair shops which shall be transported in shipments of not less than 5,000 pounds, or shipments which shall carry charges applicable to shipments of 5,000 pounds.

(c) Commodities to be transported along Route No. 4:

Grain and roofing materials in shipments of not less than 30,000 pounds, or shipments which shall carry charges applicable to shipments of 30,000 pounds, and machinery second hand (used), viz: cannery machinery, boxmaking machinery, rice bean and grain

processing machinery, steam boilers, forklift trucks, platform trucks, warehouse carts and trailers, sorting and grading platforms moving from or to canneries, rice mills, grain and bean processing plants, warehouses and machine repair shops in shipments of not less than 5,000 pounds, or shipments which shall carry charges applicable to 5,000 pounds.

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

- (a) Applicants shall file a written acceptance of the certificate herein granted, within thirty (30) days after the effective date hereof.
- (b) Within sixty (60) days after the effective date hereof, and upon not less than five (5) days' notice to the Commission and the public, applicants shall 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.

The effective date of this order shall be twenty (20) days after the date hereof.

Dated at San Francisco, California, this 24th day of January, 1950.

A. F. Anderson
Justice F. Calver
Samuel F. Hale
Penelope Patten
 COMMISSIONERS