

Decision No. 44490

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
 CHAS. F. MacGREGOR, an individual, )  
 for a certificate of public con- )  
 venience and necessity to operate as )  
 a highway common carrier for the )  
 transportation of pumps, pumping )  
 units, water well and mining )  
 equipment, materials and supplies, )  
 pipes, pipe fittings, motors, fire- )  
 proof doors, heavy machinery, and )  
 other specified commodities over )  
 described routes, intermediate and )  
 off-route points. )

Application No. 30627  
 As Amended

Raymond Tremaine for Applicant; Bart F. Wade for  
Asbury Transportation Company; E. L. H. Bissinger  
 for Pacific Motor Trucking Company, Southern  
Pacific Company and Pacific Electric Railway  
Company; Douglas Brookman for Highway Common  
Carrier Conference of Truck Owners' Association  
of California; Robert W. Walker and Frederick  
A. Jacobus for The Atchison, Topeka & Santa Fe  
Railway Company, and Santa Fe Transportation  
Company, and Gordon and Knapp by Hugh Gordon  
 for Pacific Freight Lines, Pacific Freight  
Lines Express and General Transfer Company,  
 protestants.

### O P I N I O N

The applicant, Charles F. MacGregor, doing business under his own name, and having his principal place of business in Walnut Park, County of Los Angeles, California, alleges that he has been engaged in trucking operations in this state since 1934, under permits authorizing operations as a highway contract carrier and as a radial highway common carrier, carrying pumps, pumping units, water well and mining equipment,

materials and supplies, pipes and pipe fittings used in, or incidental to, the construction, operation and dismantling of facilities for the production, storage and transmission of water and minerals, motors and accessories, and certain other related types of freight.

By this application permission is requested to establish and operate service as a highway common carrier for the transportation of pumps, pumping units, water-well and mining equipment, materials and supplies; pipes and pipe fittings, equipment, structural iron and steel, heavy machines and machinery and parts thereof and supplies therefor, empty containers, reels and pellets used in, or incidental to, the construction, operation, or dismantling of facilities for the production, storage, and transmission of water or minerals; and motors and accessories, parts and supplies therefor, over many designated routes over most of the State of California.

Applicant operates a terminal in the Los Angeles area. The equipment used in applicant's business consists of tractors, semitrailers, converter dollies, one full trailer, trucks, service cars, and other items such as a hyster for lifting heavy freight. This equipment is of the flat-bed type capable of handling heavy and unwieldy freight. It is all in good condition and is operated by skilled and well-trained personnel. Mr. MacGregor's financial ability appears adequate to assure a successful operation under the certificate to be herein issued.

Applicant has been performing a specialized service of carrying pumps, pipe, and related types of freight primarily

for pump, electric motor, and pipe manufacturers in the area including Los Angeles, Alhambra and Vernon, hereinafter called the Los Angeles area, in their delivery to branches and agencies of such manufacturers, and often complete pumping units are so delivered to the well site. These pumps are largely used for irrigation purposes, and consequently well-site deliveries are many miles off the principal highways.

The application, as amended, alleges that, owing to the volume of traffic transported by him, the number of shippers served, and the nature and extent of his present operations, some question exists concerning the status of applicant as a highway carrier. He further asserts therein that he is desirous of eliminating any such question by making his transportation service available to the public generally.

Public hearings were held in Fresno and Los Angeles before Examiner Rowe, on November 17, and 18, 1949, on February 24, and 27, and on March 16, 1950. Evidence, both oral and documentary, was adduced and the matter was submitted on briefs, and is now ready for decision.

Eleven public witnesses testified as to the need for the proposed service in and around Fresno and other valley points. They were unanimous in their praise of the manner in which applicant handled shipments of pumps and related freight to and from their places of business, and to and from off-highway well sites. By stipulation it was agreed that four other witnesses from that area would testify in substantially the same manner.

At the Los Angeles hearings representatives from ten manufacturers of water and other pumps, and of electric motors and distributors of pipe, located in that area, testified as to the need for applicant's services in delivering their products through a substantial portion of the state. The great bulk of this movement has been to the San Joaquin Valley, and to a lesser extent into the Sacramento Valley, where irrigation is largely effected through the use of water-well pumps.

There was evidence that the public using applicant's services from the Los Angeles area had some need for shipments to other points in California, but this evidence appears to be insufficient to justify the Commission in finding that public convenience and necessity require the granting of a certificate to authorize applicant to serve points not included in the following order as highway common carriers.

The evidence does not support the contention made by protestants Pacific Freight Lines, Pacific Freight Lines Express, and General Transfer Company, that they would be substantially injured by the granting of a certificate to applicant. Asbury Transportation Company and Arrowhead Freight Lines have equipment and personnel capable of performing the service offered by applicant. However, these latter protestants will suffer no material injury by the granting of operating rights to applicant for the reason that they have for the most part been serving the oil fields, and the record cannot support a finding that they have been carrying substantial amounts of freight required for

irrigation purposes. Protestants Southern Pacific Company, Pacific Motor Trucking Company, and Pacific Electric Railway Company, made no showing to justify their protests. Likewise, no showing was made by Highway Common Carrier Conference of Truck Owners' Association of California, requiring discussion here. The evidence offered by protestants The Atchison, Topeka & Santa Fe Railway Company and Santa Fe Transportation Company tends to prove that they will not be adversely affected by the certificate granted in the following order.

From a careful study of all the evidence herein presented, and a consideration of the briefs submitted by the parties, we hereby find that public convenience and necessity require the institution by applicant of services as a highway common carrier for the transportation of pumps, pumping units, water-well equipment, materials and supplies; pipes and pipe fittings; materials, equipment and supplies used in, or incidental to, the construction, operation and dismantling of facilities for the production, storage and transmission of water; and motors and accessories, parts and supplies therefor, empty containers, reels and pellets, used in, or incidental to, the production, storage or transmission of water, between the Los Angeles area and Marysville, California, and intermediate points along U. S. Highway 99, with the right to serve off-route points within a radius of fifty miles on either side of said highway. Applicant has failed to prove that public convenience and necessity require the issuance of authority to him of highway common carrier rights to carry such freight as oil- or mineral-well pumps, supplies, materials and equipment; fireproof doors,

other heavy machines and machinery and parts thereof and supplies therefor. The record likewise fails to support the issuance of authority to applicant to serve along other routes or between other termini than as above provided.

Charles F. MacGregor 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 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, and briefs having been filed by the parties, the matter having been duly 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 be, and it hereby is, granted to Charles F. MacGregor, authorizing him to operate as a highway common carrier, as defined in Section 2-3/4 of the Public Utilities Act, for the transportation

of pumps, pumping units, pipes, pipe fittings, motors, accessories, parts and supplies for such motors, empty containers, reels and pellets, materials, supplies and equipment, between the Los Angeles area, including the Cities of Los Angeles, Vernon and Alhambra, on the one hand, and Marysville, California, on the other hand, over and along U. S. Highway 99, serving all intermediate points along said route, and all points within fifty (50) miles on either side of said route, and all points within a radius of fifty (50) miles of Los Angeles, and within a radius of five (5) miles of Marysville, traversing any and all public highways, as necessary and convenient, in serving such off-route points, subject to the following restrictions:

- (a) Only those articles or commodities listed above which are used in or are necessary to the production, storage or transmission of water, or for the construction, operation or dismantling of facilities for the production, storage and transmission of water, may be transported.
- (b) Except for deliveries to and from job sites, such as construction projects or water wells, no freight shall be transported in excess of ten (10) miles on either side of U. S. Highway 99.

(2) That, in the operation of the highway common carrier service pursuant to the foregoing certificate, Charles F. MacGregor shall conform with and observe the following service regulations:

- (a) Within thirty (30) days after the effective date hereof, applicant shall file a written acceptance of the certificate herein granted.
- (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, applicant 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 schedules satisfactory to the Commission.

(c) Subject to the authority of this Commission to change or modify such at any time, Charles F. MacGregor shall conduct said highway common carrier operations over and along U. S. Highway 99 between Los Angeles and Marysville, serving all intermediate points along said route, and all points within fifty (50) miles on either side of said route, and all points within a radius of fifty (50) miles of Los Angeles, and within a radius of five (5) miles of Marysville, except as above restricted, traversing any and all public highways as necessary and convenient in serving such off-route points.

(3) Except as herein authorized, Application No. 30627 as amended is hereby denied.

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

Dated at San Francisco California, this 27th day of June, 1950.

R. E. Johnson  
Justus D. Calver  
Robert F. Finley  
Harold H. Kula

COMMISSIONERS