

ORIGINAL

Decision No. 44518

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of	)	
R. E. Bisnett, doing business as	)	
BISNETT BROS., for a certificate of	)	Application No. 30611
public convenience and necessity to	)	
operate as a highway common carrier	)	
for the transportation of property.	)	

Marvin Handler for applicant.  
Wm. Meinhold for Southern Pacific Company and  
Pacific Motor Trucking Company, protestants.

O P I N I O N

By this application, as amended, R. E. Bisnett, doing business as Bisnett Bros., seeks a certificate of public convenience and necessity authorizing the establishment and operation of service as a highway common carrier for the transportation of (1) general commodities, other than uncrated household goods, articles of unusual value, livestock, explosives and petroleum products in bulk, between Monterey and points and places within five miles thereof, except Fort Ord, on the one hand, and points and places in San Francisco Territory, as defined in Item 270 series of Highway Carriers' Tariff No. 2, on the other hand; and (2) fish meal from Monterey to Petaluma and Santa Rosa.

Applicant does not propose, except as to certain commodities, to transport shipments weighing less than 10,000 pounds or on which the charges are less than applicable on a 10,000-pound shipment. It is proposed to transport shipments of canned goods, can covers, fiber cartons, mustard sauce, cannery machinery, tin plate, fish

meal bags, chlorine tanks (full or empty) and empty oil drums which weigh 4,000 pounds or over or when the transportation charge is not less than applicable to a shipment of 4,000 pounds. Applicant also proposes to limit the transportation of fish meal destined to Petaluma and Santa Rosa to shipments of 20,000 pounds and over. San Francisco Territory embraces the area commencing at San Jose and extending northerly along both sides of San Francisco Bay to and including San Francisco and Richmond.

Southern Pacific Company and Pacific Motor Trucking Company protested the granting of the application. Public hearings were held before Commissioner Potter and Examiner Bradshaw at Monterey. The parties were also heard in oral argument.

According to the testimony, applicant has been in the trucking business since 1933, maintains an office at Monterey and owns a lot in nearby Seaside for the storage of equipment. His present trucking fleet was described as consisting of four line-haul tractors, 14 trailers (including flat beds and closed vans) and a smaller tractor for moving trailers within the Monterey area.

The record indicates that applicant possesses certificates of public convenience and necessity authorizing interstate operations as a common carrier, which include the transportation of canned fish from Monterey to San Francisco, Oakland, Alameda and San Jose and of canning machinery and certain other commodities from Oakland and San Francisco to Monterey. He also holds permits granted by this Commission to operate as a radial highway common carrier, highway contract carrier and city carrier. Some operations, so applicant testified, are conducted outside the areas involved in

this proceeding. He asserted that the present application was filed in order to remove any question as to the legality of his operations and because the type of service being rendered was considered absolutely necessary to his customers and others.

It is proposed to render an on-call, as distinguished from a scheduled, service. In conformity with applicant's present practice, trailers will be spotted at designated places for loading and unloading as requested by shippers and consignees. Applicant testified that in many instances he will be able to deliver shipments on the same day that they are received. The proposed rates are those established as minima, with the exception that rail rates will be published on carload shipments when movements are between points having rail facilities.

The canning of fish and production of fish meal and fish oil constitutes the chief industry in the Monterey area. The greatest demands for transportation occur during the sardine fishing season, which lasts from August 1 to January 15. According to the testimony, there are 18 canneries and 23 reduction plants in Monterey. Applicant stated that not over six or seven canneries were located there at the time he commenced trucking operations.

The secretary-manager of the Monterey Peninsula Chamber of Commerce estimated that, based upon a recent survey, the present population in the Monterey Peninsula area, excluding military installations, is around 50,000, as contrasted with a population of 26,780 in 1940. This witness further stated that the incidental growth in business activities is increasing and that the chief source of the supplies shipped in is the San Francisco Bay area.

It appears that the protestants and Highway Transport, Inc. are the only common carriers of freight serving the Monterey area from the San Francisco Bay district. Applicant testified that two other trucking operators are located on the Monterey Peninsula. It was his understanding that one of them owns one truck and that the other has either one or two trucks.

Four shippers engaged in the fish canning and reduction industry testified in support of the application. They declared that the time outbound and inbound shipments are in transit is of considerable importance. It was stated that fluctuations in the sardine catch occur from day to day; that transportation requirements cannot be determined in advance; and that frequently canned goods must be delivered in the San Francisco area and inbound supplies received at the canneries upon very short notice.

These witnesses asserted that fast truck service is essential and that applicant's service has been very satisfactory in the past. One of them testified that it is impossible to rely on protestants for overnight deliveries; that rail shipments have been delayed in transit; that on occasions he has not been able to obtain rail cars, when needed; and that the switching service is unsatisfactory. The Highway Transport, Inc., according to two of the witnesses, does not operate the type of equipment required for the movement of full truck-and-trailer loads. The convenience of having available a trucking operator domiciled in the Monterey area in order to obtain quick service was stressed.

Other public witnesses called by applicant receive shipments of bottles, lumber and building materials, groceries, petroleum

products in drums or make and receive shipments of lumber. They described applicant's service as very satisfactory. A few considered applicant's service preferable to rail service for large shipments because of the labor and time required in unloading rail cars spotted on team tracks. Four of these witnesses testified that the difference in the transit time was important. It appears that the location of the mill from which one of the witnesses ships lumber is several miles from rail facilities. One witness testified that the services of Pacific Motor Trucking Company and Highway Transport, Inc. were satisfactory for small shipments.

A resolution adopted by the Monterey Peninsula Chamber of Commerce's board of directors in support of the application was received in evidence.

A representative of Southern Pacific Company testified that less-than-carload shipments transported by protestants from San Francisco, East Bay points and San Jose are delivered in Monterey during the first morning after shipment; and that in the opposite direction less-than-carload shipments are delivered in San Francisco and the East Bay cities on the second morning and in San Jose on the third morning after shipment. The same witness stated that the carload rail service of Southern Pacific Company in both directions affords second day performance. He also asserted that, according to protestants' records, certain less-than-carload shipments, which one of applicant's witnesses alleged were delayed in transit, were delivered on the day after receipt of the shipments by the carrier, but that the records did not disclose when the requests for service were made.

Protestants' contract drayman at Monterey testified that deliveries of less-than-carload shipments are commenced as close to 8:00 a.m. as possible and are accomplished during the morning, but that it is possible that some deliveries might be made in the afternoon. According to this witness, deliveries of shipments over 4,000 pounds are infrequent.

Testimony was also given by the owner of Wermuth Transfer and Storage Company, a highway common carrier operating between Monterey and Carmel. He said that less-than-carload shipments are picked up at the Southern Pacific depot in Monterey under joint rate arrangements at 8:00 a.m.; that deliveries in Carmel are commenced at 9:00 a.m.; that most of such deliveries are completed during the morning; and that outbound shipments are picked up in the afternoon and brought to Monterey the next morning. It appears that this carrier handles very few shipments weighing over 4,000 pounds.

Protestants introduced testimony through a number of public witnesses. They consisted of two shippers of sand, a manufacturer of fish by-products, a shipper of canned fish and fish meal, the storekeeper for a public utility and consignees of various commodities used in retail or similar businesses. Most of these witnesses testified that they were interested in the movement of less-than-carload shipments from the San Francisco area; that as a rule they obtained from protestants and Highway Transport, Inc. an overnight service; and that the services of these carriers were satisfactory and met their requirements. The shippers of sand asserted that the larger shipments moved by rail or contract carriers, while the smaller shipments -- usually samples -- were shipped via Pacific Motor Trucking Company or Highway Transport, Inc. The other shippers stated that they used rail service and also contract truck service when it

is more convenient to do so or when faster than rail service is required. Each of the shipper-witnesses indicated that existing transportation arrangements were satisfactory.

Characterizing Southern Pacific Company as the real protestant in this proceeding, counsel for protestants at the oral argument called attention to the fact that, as one of the major railroads of the United States, Southern Pacific Company serves many points and transports freight, regardless of quantity or character, including high rated and low rated traffic. He contended that the railroad's ability to provide a complete service under existing rate structures is dependent upon obtaining an adequate volume of traffic, properly balanced as to character and direction of movement. According to counsel, by seeking to restrict the traffic he will haul and giving a superior service, applicant will be in an advantageous competitive position in securing the more profitable traffic. The Commission is urged to consider these factors in granting or withholding highway common carrier certificates.

Protestants contend that the complete adequacy of existing rail and motor carrier services has been established by the evidence herein. In the opinion of their counsel, the Commission's certifying power should be so exercised as to not authorize the transportation of commodities by a superior-service carrier if the existing slower-service carrier is performing a reasonably adequate service. In this connection, it was argued that the evidence does not justify authorizing applicant to transport general commodities with or without the proposed weight restrictions. The further contention was made that applicant should be required to remain in the contract carrier field and confine his operations to the maximum number of

contracts considered by the Commission as permissible to avoid the appearance of a common carrier status.

In reply, applicant asserted that he is the only carrier available to shippers in the Monterey area requiring trucking equipment capable of transporting any substantial volume of traffic. The increase in business activities and population in the last ten years without any increase in common carrier facilities was also referred to. It was urged that this Commission should follow the rule observed by the Interstate Commerce Commission that even if rail service is adequate for shippers by rail the public is entitled to adequate truck service.

Applicant also contends that, in weighing the proof, his operations in the past should be considered as evidence of public need along with the public witness testimony. According to his counsel, a public need for the transportation of general commodities within the proposed weight limits has been shown and the imposition of restrictions, either as to commodities or weight limits, will prevent applicant from rendering a necessary service and would be economically unsound. Attention was called to the absence of any evidence tending to show a probable impairment of rail service as a result of the granting of the application herein.

The evidence presented by the parties and the contentions of counsel have been carefully considered. The applicant in this proceeding is proposing a common carrier service which will be considerably more flexible and expeditious than the common carriers now in the field provide. According to the testimony, the type of service proposed is necessary to meet existing transportation



requirements. A certificate of public convenience and necessity authorizing the performance of such a service as a highway common carrier should, therefore, be granted.

There remains for consideration the question whether such authority should extend to the transportation of so-called "general commodities" or to a limited class of traffic. The principal shippers and consignees who presented testimony have occasion to ship or receive a considerable number of articles of various kinds. The record does not contain a complete list of such of these articles which now or in the future may require expeditious transportation. Moreover, a definite limitation upon the articles which applicant may transport would tend to circumscribe the usefulness of the type of service he seeks to provide for the general public. It also appears that in view of the peak demands for transportation during the sardine fishing season a reasonable latitude should be accorded applicant in order to afford means of utilizing his equipment during the balance of the year. We are, therefore, of the opinion that applicant should be authorized to transport general commodities, as sought in the application, as amended.

The record is convincing that protestants and Highway Transport, Inc. provide a satisfactory service on less-than-carload shipments which weigh less than 4,000 pounds. The testimony indicates that under applicant's proposal he will, in view of the existing rate structure, be in a position to transport some shipments which do not weigh over 2,600 pounds. In our opinion, the record does not justify the granting of authority to transport any shipments which weigh less than 4,000 pounds.

It appears that the movement of fish meal to Petaluma and Santa Rosa is largely by rail or by trucks supplied by consignees who determine the method of transportation to be used. Applicant has participated in the transportation of some of this traffic. However, the showing made in support of the application is insufficient to indicate a need for establishing a highway common carrier operation for the movement of this commodity to these two destinations.

Upon the facts presented, the Commission finds that public convenience and necessity require the establishment and operation of service by applicant as a highway common carrier for the transportation of general commodities between the Monterey and San Francisco Bay areas, subject to the exceptions, conditions and limitations set forth in the ensuing order.

R. E. Bisnett 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 R. E. Bisnett, 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 between Monterey and points and places within five (5) miles thereof, except Fort Ord, on the one hand, and San Francisco Territory, as described in the appendix to this order, on the other hand.

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

- (a) Applicant shall not transport any shipments of uncrated household goods, articles of unusual value, livestock, explosives or petroleum in bulk.
- (b) Applicant shall not transport any shipment of (1) canned goods, can covers, fiber cartons, mustard sauce, cannery machinery, tin plate, fish meal bags, chlorine tanks (full or empty) or empty oil drums which weighs less than 4,000 pounds, or (2) any other commodity which weighs less than 10,000 pounds or on which the transportation charges are less than applicable on a shipment weighing 10,000 pounds.

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

A P P E N D I X

SAN FRANCISCO TERRITORY includes that area embraced by the following boundary: Beginning at the point the San Francisco-San Mateo County Boundary Line meets the Pacific Ocean; thence easterly along said boundary line to a point 1 mile west of U. S. Highway No. 101; southerly along an imaginary line 1 mile west of and paralleling U. S. Highway No. 101 to its intersection with the corporate boundary of the City of San Jose; southerly, easterly and northerly along said corporate boundary to its intersection with State Highway No. 17; northerly along State Highway No. 17 to Warm Springs; northerly along the unnumbered highway via Mission San Jose and Niles to Hayward; northerly along Foothill Boulevard to Seminary Avenue; easterly along Seminary Avenue to Mountain Boulevard; northerly along Mountain Boulevard and Moraga Avenue to Estates Drive; westerly along Estates Drive, Harbord Drive and Broadway Terrace to College Avenue; northerly along College Avenue to Dwight Way; easterly along Dwight Way to the Berkeley-Oakland boundary line; northerly along said boundary line to the campus boundary of the University of California; northerly and westerly along the campus boundary of the University of California to Euclid Avenue; northerly along Euclid Avenue to Marin Avenue; westerly along Marin Avenue to Arlington Avenue; northerly along Arlington Avenue to U. S. Highway No. 40 (San Pablo Avenue); northerly along U. S. Highway No. 40 to and including the City of Richmond; southwesterly along the highway extending from the City of Richmond to Point Richmond; southerly along an imaginary line from Point Richmond to the San Francisco Waterfront at the foot of Market Street; westerly along said water front and shore line to the Pacific Ocean; southerly along the shore line of the Pacific Ocean to point of beginning.

## 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 Monterey and San Jose: California Highway 1 to Castroville, thence unnumbered highway to U.S. Highway 101; or via Salinas to U.S. Highway 101; thence U.S. Highway 101 or 101 By-pass.

Between San Jose and San Francisco: U. S. Highway 101 or 101 By-pass.

Between San Jose and Oakland: California Highway 17.

Alternate Routes: Between Redwood City and Centerville Dumbarton Bridge; between San Mateo and Mt. Eden, San Mateo Bridge; between Oakland and San Francisco, San Francisco Oakland Bay Bridge.

(4) That in all other respects the application, as amended, in this proceeding be and it is hereby denied.

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

Dated at San Francisco, California, this 11<sup>th</sup> day of July, 1950.

R. E. Zimmerman  
Justice J. Calves  
Robert J. Fawell  
Harold P. Kuto  
Herbert F. Little  
 COMMISSIONERS