

ORIGINAL

Decision No. 44523

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 JAMES GARIBALDI, VICTOR GARIBALDI and)
 DAVID GARIBALDI, JR., Co-partners, doing)
 business as GARIBALDI BROS, TRUCKING CO.,)
 for the extension of a certificate of)
 public convenience and necessity authoriz-) Applications Nos. 30945
 ing the transportation of livestock between) 31002
 King City and Modesto and the Oregon State) 31139
 Line, Sacramento and Barstow and the) 31327
 Nevada State Line, and various other and)
 intermediate and off-route points,)
)
 and (1))
 related applications.)

Bailey & Poe, by Arlo D. Poe and Ivan McWhinney, for applicants in Application No. 30945.
Edward M. Berol and Bertram S. Silver, for applicants in Applications Nos. 31002 and 31139.
James J. Broz, for applicants in Application No. 31327.
Robert W. Walker, F. A. Jacobus and Frederick G. Pfrommer, by Frederick G. Pfrommer for The Atchison, Topeka & Santa Fe Railway Company, protestant in each application.
Willard S. Johnson, for M & M Transportation Co. Inc., interested party.

O P I N I O N

This proceeding involves the applications of four highway common carriers now engaged in the transportation of livestock, who seek extensions of their existing operative rights.

Public hearings were held before Examiner Gillard at Los Angeles on May 3, 1950, at San Francisco on May 15, 1950, and at San Luis Obispo on May 18, 1950, after consolidation for hearing and disposition.

Protestant herein appeared at the first hearing held in Los Angeles, and therein cross-examined applicants' witnesses. No

(1) Application No. 31002, Sandercock Transfer Co., a corporation; Application No. 31139, Batteate Livestock Transportation Co., a corporation; Application No. 31327, J. B. Bowers, Alfred Knutsen, George E. Jacobsen and Roy H. Fox, copartners doing business as Paul Alley Livestock Transportation Co. Applicants will hereinafter be referred to respectively as Garibaldi, Sandercock, Batteate and Paul Alley.

further appearances were made by protestant, and it presented no evidence herein.

By Decision No. 44195, dated May 23, 1950, J. B. Bowers, Alfred Knutsen, George E. Jacobsen and Roy H. Fox were authorized to sell all of their highway common carrier rights to S. Del George. The latter subsequently filed herein a request that he be substituted as the applicant in Application No. 31327. The request is granted.

In 1944 there were about fifteen highway common carriers certificated by this Commission to transport livestock. Most of these were authorized pursuant to Decision No. 32673, dated December 19, 1939, (42 CRC 408). Today there remain only six such certificated carriers, and four of these are joined in this proceeding, each seeking to extend its "on-call" service to every point in the state, along most of the principal highways not heretofore authorized and within fifty miles on either side of said highways.

At the present time applicants are certificated as follows:

Garibaldi: All points south of a line drawn through King City, Modesto and Coleville, except the area east of Barstow.

Sandercock: All points between San Francisco and Los Angeles, with fifty mile lateral rights, along U. S. 101 and 101-A, Bakersfield to Los Angeles along U. S. 99, and Santa Margarita to Bakersfield along State Route 178.

Batteate: All points north of Salinas and Bakersfield, except north of Willits on U. S. 101 and certain territory around Johnstonville.

Paul Alley: All points in the state except north of San Francisco along U. S. 101, the northeastern section, the area east of Barstow, and certain territory in the south where 10-mile lateral rights were originally granted.

All of the applicants except Paul Alley possess radial highway common carrier permits and are presently rendering state-wide service under the combined authority of their certificates and permits. Paul Alley serves most of the state under its certificates, but possesses no radial permit; it has received numerous and repeated requests for service to or from its uncertificated areas, and has rendered some service to those areas.

Since 1939, the year of said Decision No. 32673, the business of applicants has increased markedly, both inside and outside their certificated areas, due to (1) the decrease in the number of certificated carriers, and (2) the tremendous increase in California's population with a consequent increase in the volume of livestock slaughter for human consumption.

The evidence herein supports and reaffirms the findings contained in said Decision No. 32673 that truck transportation for the hauling of livestock is superior to rail transportation; that a truck service is necessary for the transportation of livestock to, from and between all points in the State of California, and that fifty mile laterals on each side of the highways are essential to such a service.

Representatives of Cudahy Packing Co., Wilson & Co., Swift & Co., Armour & Co., James Allan & Sons, the California Cattlemen's Association, the California Wool Grower's Association

and the South San Francisco Union Stockyards, feedlot operators, cattlemen and cattle buyers, presented evidence, many of them on behalf of all the applicants, relative to the volume of cattle movements, the principal areas where cattle are produced, the types and causes of movements between areas, and the immediate sources of cattle shipped to feed lots, stockyards and packing houses. From all of this testimony there clearly appears a close relationship between all parts of the state and the sites of the major slaughter and packing houses. Every county in the state produces both sheep and cattle, and the packing houses purchase the same from all parts of the state and transport it via one or more of the applicants to their plants in San Francisco and Los Angeles. Consequently the packers are supporting each of these applications because they need truck transportation to their plants from all parts of the state.

Each of the applicants presented substantial testimony showing regular and continuous operations over the routes for which certificates are sought herein. The evidence thus presented when considered in connection with the testimony of the public witnesses fully supports the requests made by applicants.

The evidence also shows that the service rendered by applicants is primarily "on-call". Shipments from range to range, and range to feed lot, are dictated by weather and forage conditions. Shipments to stockyard and packing houses from range, feed lot or auction yard are controlled by the same factors and also by plant facilities and market conditions. None of these movements is susceptible to exact timetables and therefore a scheduled service would be of no value to the livestock industry and would place an

unnecessary and wasteful burden upon the carriers.

After full consideration of the entire record herein, the Commission finds that public convenience and necessity require the establishment and operation of services by applicants herein as highway common carriers for the transportation of livestock throughout the state.

Applicants are, and each of them 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.

In order to clarify applicants' operative rights, the Commission will grant new certificates of public convenience and necessity in lieu of the certificates heretofore granted.

ORDER

Public hearings having been held and based upon the findings and conclusions set forth in the foregoing opinion,

IT IS ORDERED:

(1) That a certificate of public convenience and necessity 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 livestock only, except polo ponies, race horses and show horses unless said animals are being transported to or from rodeos and state or county fairs, upon an "on-call" basis, be and it is hereby granted to each of the following named persons, copartnerships and corporations, respectively, upon and along the routes and between the points hereinafter described including all intermediate points, with the right to serve off-route points within fifty (50) miles of said routes:

(a) To James Garibaldi, Victor Garibaldi and David Garibaldi, Jr., copartners, doing business as Garibaldi Bros. Trucking Co.,:

1. U. S. 101 and 101 A between Oregon and Mexico;
2. U. S. 99, 99 E and 99 W between Oregon and Mexico;
3. U. S. 299 between Redding and Alturas;
4. State Highway 32 between Chico and Junction State Highway 36;
5. State Highway 36 between Junction State Highway 32 and Susanville;
6. U. S. 40 between San Francisco and Nevada;
7. U. S. 50 between San Francisco and Nevada;
8. U. S. 6 between Los Angeles and Bishop;
9. U. S. 395 between Bishop and Nevada;
10. U. S. 66 between Los Angeles and Arizona;
11. U. S. 91 between Barstow and Nevada;
12. U. S. 60 between Los Angeles and Arizona;
13. U. S. 80 between San Diego and Arizona.

(b) To Sandercock Transfer Co., a corporation:

1. U. S. 101 and 101 A between Oregon and Mexico;
2. U. S. 99, 99 E and 99 W between Oregon and Mexico;
3. U. S. 299 between Redding and Alturas;
4. U. S. 395 between Oregon and Nevada;
5. State Highway 36 between Red Bluff and Johnstonville;
6. State Highway 20 between Marysville and Junction U. S. 40;
7. U. S. 40 between San Francisco and Nevada;
8. U. S. 50 between Sacramento and Nevada;
9. U. S. 395 between Nevada and Junction U. S. 66;
10. U. S. 66 between Los Angeles and Arizona;
11. U. S. 91 between Barstow and Nevada;
12. State Highway 127 between Baker and Nevada;
13. U. S. 60 between Los Angeles and Arizona;

14. U. S. 80 between San Diego and Arizona;
15. State Highway 178 between Santa Margarita and Bakersfield.

(c) To Batteate Livestock Transportation Co., a corporation:

1. U. S. 101 and 101 A between Oregon and Mexico;
2. U. S. 99, 99 E and 99 W between Oregon and Mexico;
3. U. S. 299 between Redding and Alturas;
4. U. S. 395 between Oregon and Nevada;
5. State Highway 36 between Red Bluff and Johnstonville;
6. State Highway 20 between Marysville and Junction U. S. 40;
7. U. S. 40 between San Francisco and Nevada;
8. U. S. 50 between San Francisco and Nevada;
9. U. S. 395 between Nevada and Junction U. S. 66;
10. U. S. 66 between Los Angeles and Arizona;
11. U. S. 91 between Barstow and Nevada;
12. State Highway 127 between Baker and Nevada;
13. U. S. 60 between Los Angeles and Arizona;
14. U. S. 80 between San Diego and Arizona.

(d) To S. Del George, doing business as Paul Alley Livestock Transportation Co.:

1. U. S. 101 and 101 A between Oregon and Mexico;
2. U. S. 99, 99 E and 99 W between Oregon and Mexico;
3. U. S. 299 between Redding and Alturas;
4. U. S. 395 between Oregon and Nevada;
5. State Highway 36 between Red Bluff and Johnstonville;
6. State Highway 20 between Marysville and Junction U. S. 40;
7. U. S. 40 between San Francisco and Nevada;
8. U. S. 50 between San Francisco and Nevada;
9. State Highway 152 between Watsonville and Califa;
10. State Highway 198 between San Lucas and Hammond;
11. U. S. 466 between Atascadero and Nevada;
12. U. S. 395 between Nevada and Junction U. S. 66;
13. U. S. 6 between Los Angeles and Nevada;
14. U. S. 66 between Los Angeles and Arizona;
15. State Highway 127 between Baker and Nevada;
16. U. S. 60 between Los Angeles and Arizona;
17. U. S. 80 between San Diego and Arizona.

(2) That in providing service pursuant to the certificates

herein granted, applicants shall comply with and observe the following service regulations:

- a. Applicants shall file a written acceptance of the certificates herein granted within a period of not to exceed 30 days from the effective date hereof.

- b. Within 60 days from the effective date hereof and on not less than 5 days' notice to the Commission and the public, applicants shall establish the services herein authorized and comply with the provisions of General Order No. 79 and Part IV of General Order No. 93-A, by filing in triplicate and concurrently making effective, appropriate tariffs and time tables satisfactory to the Commission.

(3) That the foregoing certificates are granted in place and stead of, and shall supersede all operative rights heretofore granted applicants and their predecessors by the following decisions which are hereby cancelled, revoked and annulled, insofar as they apply to applicants herein and their predecessors: Decision No. 29195, dated October 14, 1936; Decision No. 32673, dated December 19, 1939, on Applications Nos. 22316 and 22211; Decision No. 35465, dated June 9, 1942; Decision No. 37481, dated November 21, 1944; Decision No. 38822, dated April 2, 1946; Decision No. 39247, dated July 30, 1946; Decision No. 40370, dated June 10, 1947; Decision No. 44224, dated May 23, 1950; Decision No. 44195, dated May 23, 1950.

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

Dated at San Francisco, California, this 11th day of July, 1950.

R. F. Dinderman
Justice F. Casner
W. H. Powell
Harold P. Kule
Frederick W. Potter
COMMISSIONERS