

Decision No. 44837

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)	
Don E. Keith for a certificate to)	Applications Nos. 31441
operate as a highway common carrier)	31442
for the transportation of livestock)	31443
between various points and places in)	31444
California over defined routes,)	31519
and)	31548
related applications. (1))	

Willard S. Johnson for applicants in Applications Nos. 31441, 31442, 31443 and 31444.

Frank Loughran for applicant in Application No. 31519.

Edward M. Berol and Bertram S. Silver for applicants in Application No. 31548.

O P I N I O N

This proceeding involves the applications of six radial highway common carriers, who seek certificates of public convenience and necessity to operate as highway common carriers throughout the state for the transportation of livestock.

Public hearings were held before Examiner Gillard at San Francisco on July 11 and 12, 1950, and at Bakersfield on July 19, 1950, after consolidation for hearing and disposition. There were no protests to the granting of the requested certificates.

Each of the applicants alleges, in substance, that it is presently transporting livestock throughout the state as a radial highway common carrier, and that the volume of such operations has

(1) Application No. 31442, John Morosa, Joe Morosa and Mariana Morosa, co-partners, dba Morosa Bros. Transportation; Application No. 31443, Oscar Rudnick, Alvin Chanley and Glenn Chanley, co-partners, dba Chanley Bros. Trucking Co.; Application No. 31444, Thomas H. Griffel; Application No. 31519, Will C. Freitas, dba Freitas Livestock Transportation; Application No. 31548, Ralph L. Hughes, Howard Brown and S. D. Sinton, co-partners, dba Ralph Hughes & Co.

steadily increased pursuant to public demand, with the result that it believes that certification is now required in order that its services may be perpetuated in the public interest.

Each applicant asks for operative rights, on an "on-call" basis, over sixteen of the principal highways which traverse the length and breadth of the state, and lateral rights within fifty miles of each of such highways.

The record discloses that each of the applicants is a substantial carrier with sufficient operating personnel, experience, equipment and facilities to inaugurate the service it proposes. They possess combined assets in excess of one million dollars, and received in excess of one million one hundred thousand dollars in gross revenue from intrastate transportation of livestock in 1949.

Representatives of Western States Meat Packers Association, California Farm Bureau Federation, California Wool Growers Association and California Cattlemen's Association, testified on behalf of all applicants. They stressed the complete dependence of the livestock industry upon truck transportation, and the necessity of having enough highway common carriers with statewide rights to serve the industry. In their judgment, the six carriers presently certificated are unable to carry all intrastate livestock shipments, and the addition of applicants is necessary for adequate service to the industry.

Shipper witnesses testified that they were using the services of applicants and found them satisfactory and necessary in the conduct of their businesses. Many of them purchase livestock in every part of the state and have them transported to ranches, feed lots and slaughter houses. Some of them confine their activities

to particular sections of the state, e.g., the Sacramento and San Joaquin Valleys. On the whole, however, each applicant produced testimony showing a need for its services upon a statewide basis.

The men and concerns which deal in livestock do so on a statewide basis. In general, there are two main movements of livestock: from range or ranch to auction yard or feed lot, and from feed lot to slaughter or packing house. There are also prior movements, such as range to range, and intermediate movements, such as feed lot back to range or ranch.

The bulk of the feed lots and slaughter houses are located in the San Joaquin and lower Sacramento Valleys and along the coast between and including San Francisco and San Diego. Consequently, most of the services rendered by each applicant lies within these areas, wherein each has developed a regular pattern between the fixed points mentioned. Operations to other areas in the state involve producing ranches and ranges, and the smaller auction yards, feed lots and packing houses. These movements occur with much less frequency than the others but are just as important to the industry as a whole. The packing house in San Francisco, for example, may maintain five feed lots in the San Joaquin Valley, and a regular pattern of shipments will develop from the latter to the plant in San Francisco; but individual, irregular purchases of livestock, to be moved to those feed lots, will be made in such scattered places as Dorris, Alturas, Likely, Beckworth, Coleville, Bishop, Lone Pine, Goffs, Barstow, Indio, Blythe and Brawley. The packer is just as interested in having a certificated carrier for these movements, as for his regular movements from the feed lots to the plant.

Where the carrier has an operation between fixed points or over regular routes that should be certificated, then such irregular or infrequent operations should also be certificated, provided that the carrier can establish public convenience and necessity therefor, and there is no showing by existing highway common carriers that there already exists adequate service. These irregular or infrequent operations constitute an integral part of applicants' services to the public generally, and are conducted with the same equipment, personnel and facilities as are the regular, fixed-point operations.

The record is clear that very little traffic originates at points near the proposed routes, and that a 50 mile lateral right is essential to the conduct of a livestock truck transportation business. The same is true with respect to the "on-call" feature of applicants' proposals. The public witnesses were unanimous in declaring that a scheduled service would not fulfill their needs.

On the first day of hearings it was announced that Thomas H. Griffel, in Application No. 31444, was acting for and on behalf of M & M Livestock Transportation, Inc., a Nevada corporation; that a new California corporation was being formed, to which all assets of the Nevada corporation would be transferred and the latter dissolved, and thereafter a petition to substitute the new corporation for Thomas H. Griffel would be made. A request for such substitution has now been filed and the same will be granted.

After consideration of the entire record we find that public convenience and necessity require the establishment and operation of services by applicants herein as highway common carriers for the transportation of livestock to the extent set forth in the ensuing order.

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.

Chanley Bros. Trucking Co. also requested, in Application No. 31443, a certificate to transport livestock feed throughout the state. Only one shipper witness was produced, and he stated he purchased feed at numerous points in the San Joaquin Valley and Los Angeles and shipped it to ranches, ranges and feed lots stretching from Southgate to Mono Lake. From the various points of origin, frequency ranged from daily to Bakersfield to once weekly during fall and winter months only to Owens Valley. Alvin Chanley also testified as to the points of origin and destination served in hauling livestock feed, but no showing was made as to how many persons utilized or wanted this service. On the record we find that this applicant has failed to show that public convenience and necessity require the establishment of this portion of the proposed service, and the application, to this extent, will be denied.

O R D E R

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, upon an "on-Call" basis, be and it is hereby granted to each of the following named persons, co-partnerships, 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 Don E. Keith, individual; to John Morosa, Joe Morosa and Mariana Morosa, co-partners, doing business as Morosa Bros. Transportation; to Oscar Rudnick, Alvin Chanley and Glenn Chanley, co-partners, doing business as Chanley Bros. Trucking Co., to M & M Livestock Transportation, Inc., of California, a corporation; to Will C. Freitas, individual, doing business as Freitas Livestock Transportation; to Ralph L. Hughes, Howard Brown and S. D. Sinton, co-partners, doing business as Ralph Hughes & Co.

1. U.S. 101, 101 By-Pass and 101A between Oregon and Mexico;
2. U.S. 99, 99E and 99W 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 Needles;
11. U.S. 60 between Los Angeles and Arizona;
12. U.S. 80 between San Diego and Arizona;
13. U.S. 466 between Paso Robles and Nevada;
14. State Highway 127 between Baker and Nevada.

(2) IT IS HEREBY FURTHER ORDERED:

That the application of Oscar Rudnick, Alvin Chanley and Glenn Chanley, co-partners, doing business as Chanley Bros. Trucking Co., for a certificate to transport livestock feed, be and it is hereby denied.

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

- (a) Applicants shall file written acceptances 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.

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

Dated at San Francisco, California, this 26th day of September, 1950.

R. Z. [Signature]
James F. [Signature]
Charles H. [Signature]
Harold S. [Signature]
Herbert [Signature]
COMMISSIONERS