

ORIGINAL

Decision No. 44932

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
PAUL KUNDE and R. M. CARROLL (Associated)
Transportation Co.) for a certificate) Application No. 30525
of public convenience and necessity to)
operate as a highway common carrier.)

Marvin Handler, for applicants
William Meinhold and W. A. Gregory, Jr.,
for Southern Pacific Company and Pacific
Motor Trucking Company, and, representing
E. L. Van Dellen, for Western Pacific
Railroad Company and Sacramento Northern
Railroad Company, protestants.
Frank Loughran, for Johnson Truck Lines,
Valley Express Company and Valley Motor
Lines, Inc., protestants.

O P I N I O N

Applicants, whose headquarters are at Yuba City, seek
a certificate to operate as a highway common carrier (P.U.A. Sec.
2-3/4) for the transportation of general commodities, except

- (a) petroleum products in bulk in tank trucks or trailers;
- (b) articles of unusual value;
- (c) uncrated household goods;
- (d) livestock;
- (e) explosives;
- (f) nuts in shells, dried vegetables and dried fruits, unmanufactured and unprocessed;
- (g) fresh fruits and vegetables destined to processing plants or ice houses;

between San Francisco Territory, as described in Item 270 Series,
Highway Carriers' Tariff No. 2, on the one hand, and on the other,
Marysville and Yuba City and points and places within 10 miles of
each thereof, "via any and all available routes." The service is
offered subject to the restriction that from or to points in San
Francisco Territory north of South San Francisco and north of San

Leandro applicants will transport no shipment less than 4,000 pounds or which is subject to a charge lower than applicable to a shipment of not less than 4,000 pounds; except that from and to Richmond shipments of insecticides of any weight will be carried. Also, from and to points in San Francisco Territory, South San Francisco and south, and San Leandro and south, shipments of any size will be carried.

Class and commodity rates will be published at the level of minima established by the Commission, subject to the above weight-per-shipment restriction and to the promulgation of certain rail-competitive rates, and will be generally at the level of rates maintained by common carriers operating in the territory. Relief is sought from the long-and-short-haul provisions of Section 24(a) of the Public Utilities Act and from the provisions of Section 21 of Article XII of the Constitution of California to meet rail-competitive rates. Distances are to be computed in accordance with established constructive mileage tables and with actual highway miles where constructive mileages have not been established. The operation will not be conducted pursuant to fixed time schedules.

Applicants allege that they have been transporting a substantial volume of traffic in intrastate, interstate, and foreign commerce between the points proposed to be served; that continuation of their service is required by public convenience and necessity; that they are uncertain of the scope of their present intrastate operative rights and have therefore filed the application to clarify their status and dedicate their service to the "entire public".

The evidence shows that the carrier has been operating since 1936 in the Yuba City-Marysville area. Prior to 1946, the

copartnership consisted of Morrison, Kundo and Hurlbert. Carroll replaced Morrison as a partner in January, 1946, and Hurlbert withdrew as of January, 1949. Substantial terminal facilities are maintained in Yuba City. The firm does considerable hauling of fresh fruit and vegetables from field to canneries during seasons, in addition to its general freight business. The average number of employees throughout the year is about 35, with more as required during harvests. Between January 1, 1947, and September 30, 1949, the carrier transported a wide variety of general commodities, in shipments chiefly exceeding 4,000 pounds, between the various points embraced in the application. The bulk of this traffic consisted of items commonly moving between agricultural areas and manufacturing or distributing centers and included farm, orchard, and packing house machinery and supplies; feedstuffs, seed, packed and canned fruits, grain, rice, box shoo, containers, electrical appliances and a substantial movement of cement, salt, and beer.

Applicants' fleet, on September 30, 1949, comprised six trucks, three trailers, 15 tractors, and 15 semi-trailers, the latter including five van-type units. Most of the freight carrying vehicles are of the flat bed type.

Applicants' balance sheet, as of September 30, 1949, and their operating statement for January 1 to September 30, 1949, include the following data:

Total Assets	\$ 174,513.38
Total Liabilities	95,606.84
Net Worth	78,906.54
Operating Revenues	\$ 239,820.32 ⁽¹⁾
Operating and Other Expense (including taxes and depreciation)	227,215.58
Operating Rents - Credit	2,185.00
Other Income and Deductions - Net	8,795.28
Net Profit	5,994.46

(1) About one-fourth of applicants' freight revenue from intercity transportation during the first nine months of 1949 was derived from the intrastate movement of commodities covered by the application.

Applicants operate under permits from this Commission. They also have authority for transportation, in interstate and foreign commerce, of canned goods, dried fruits, beans, nuts and fresh fruits within the territory covered by the application.

Most of the 16 shippers and receivers of freight who supported the application used other highway carriers for smaller shipments or received shipments from consignors who had specified other carriers. These witnesses, for the most part, shipped or received the bulk of their freight in quantities ranging from 4000 pounds or more to truckloads of approximately 20 tons. With one exception, that of a beer distributor who desired applicants' service but received his shipments by a contract trucker employed by the brewery in San Francisco, all testified that time in transit was of importance to them. In some cases, involving shipments originating at or destined to points south of San Francisco and Oakland, the witnesses stressed the desirability and convenience of the direct service afforded by applicants in contrast to that of the protesting truck lines, who either did not serve the southern points directly or who did not offer direct service within the 10-mile radius of the northern termini, as applicants have proposed to do.

A few shippers who used rail carload service to or from the Bay Area testified that the rail service was slower than that afforded by the highway carriers. In one case, involving carload shipments of salt from Newark to Marysville and Yuba City for use in icing refrigerator cars, the witness stated that such service was less satisfactory than truckload service because shipments were too large to handle. No criticism was made of rail carload service to or from points beyond the San Francisco Bay area.

The 10 witnesses called by protestants in support of their position generally expressed satisfaction with the rail and truck service they were receiving. All of these used the facilities of Johnson Truck Lines and a majority also employed Valley Lines, both protestants. Some used one or more of the rail carriers for carload movements. Two of these witnesses had also used applicants' service and had found it satisfactory. Three stated that a direct highway service, such as that proposed by applicant, would be convenient or helpful between the Marysville-Yuba City area and points south of Oakland or South San Francisco as far as San Jose. Four of the 10 witnesses expressed a need for expedited delivery of shipments, five did not say whether fast service was required, and one said it was not. Some of these witnesses used their own trucks for local deliveries of less-than-truckload traffic or for movements between Sacramento and the Marysville-Yuba City area.

Although a few of protestants' witnesses indicated they received shipments from the Bay Area in excess of 4000 pounds, including truckloads and carloads (the latter both north and south bound), their testimony, on the whole, fails to establish a use of the facilities of the protesting truck lines for any considerable or regular northbound movement of heavy shipments. And there is little if any evidence that these shippers or receivers, all of whom were from the Marysville-Yuba City area, used the protesting truck services for southbound movements of general freight in excess of 4000 pounds. In that respect, their testimony corroborates that of the operating officials of both Valley and Johnson, who stated that their outbound tonnage from the area was practically nil. None of protestants' witnesses, moreover, indicated a need for direct service to or from the area embraced within a 10-mile radius of

Marysville or Yuba City.

Applicants have developed a transportation service which is designed to supply the economic needs of not only the rapidly growing communities in which they have become established as responsible and respected members, but also the developing agricultural area which surrounds these cities. They offer a type of service which clearly meets the requirements of a substantial number of shippers, particularly those having traffic moving in shipments of 4000 pounds or more from certain localities and in any-quantity lots, as well as in truckloads, from other areas not served directly by the protesting highway or rail carriers. Moreover, there is convincing evidence in the record that direct service to and from points within a radius of 10 miles of Marysville and Yuba City would be both convenient and necessary.

We find that public convenience and necessity require the highway common carrier service proposed in the application, as amended, with two exceptions, neither of which will prevent the issuance of a certificate. The first exception relates to the request for authority to depart from the long and short haul provisions of Section 24(a) of the Public Utilities Act and of Article XII, Section 21, of the California Constitution. The record does not contain a sufficient showing, as contemplated by the Public Utilities Act and the Constitution, to justify granting such authority at this time. The authority sought will be denied without prejudice.

The second exception relates to the request to establish the proposed service "via any and all available routes". We do not believe that such a broad description of routes to be traversed by

a certificated highway common carrier is in the public interest. The order to follow, therefore, will prescribe specific highway routes between the principal points authorized to be served, except that no specific routes will be designated within either the San Francisco Territory, as described in Item 270 Series, Highway Carriers' Tariff No. 2, or a radius of 10 miles from Marysville and Yuba City, respectively.

Paul Kunde and R. M. Carroll, copartners doing business as Associated Transportation Company, are hereby placed upon notice that operative rights, as such, do not constitute a class of property which may be 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 granting of such rights. Aside from their purely permissive aspect, they extend to the holder a full or partial monopoly of a class of business. 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 hearing having been held in the above entitled and numbered proceeding, evidence having been received and considered, the matter having been submitted, the Commission now being fully advised and having found that public convenience and necessity so require,

IT IS ORDERED:

1. That Paul Kunde and R. M. Carroll, copartners doing business as Associated Transportation Company, be and they hereby are

granted a certificate of public convenience and necessity authorizing the establishment and operation of service as a highway common carrier (P.U.A., Sec. 2-3/4, as amended) for the transportation of general commodities, except -

- (a) petroleum products in bulk in tank trucks or trailers;
- (b) articles of unusual value;
- (c) uncrated household goods;
- (d) livestock;
- (e) explosives;
- (f) nuts in shells, dried vegetables and dried fruits, unmanufactured and unprocessed;
- (g) fresh fruits and vegetables destined to processing plants or ice houses;

between San Francisco Territory, as described in Item 270 Series, Highway Carriers' Tariff No. 2, on the one hand, and on the other, Marysville and Yuba City and points and places within 10 miles of each thereof, subject to the following restriction:

- (a) From or to points in San Francisco Territory north of South San Francisco and north of San Leandro applicants shall transport no shipment less than 4000 pounds or which is subject to a charge lower than applicable to a shipment of not less than 4000 pounds; except that from and to Richmond shipments of insecticides of any weight may be carried. Also, from and to points in San Francisco Territory, South San Francisco and south, and San Leandro and south, shipments of any size may be carried.

2. That in providing service pursuant to the authority 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 a period of not to exceed 30 days after the effective date hereof.
- b. Within 60 days after the effective date hereof and on not less than 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, appropriate tariffs and time schedules.

- c. Subject to the authority of this Commission to change or modify them by further order, applicants shall conduct operations over the following routes:

Between Marysville and Yuba City and a 10-mile radius surrounding each thereof, and San Francisco Territory, as follows:

- (1) Between Marysville and San Francisco, via State Highway 24 and U. S. Highways 99W and 40.
- (2) Between Marysville and Sacramento, via River Route (through Nicolaus) or U. S. Highway 99E.
- (3) Between Woodland and Sacramento, via State Highway 16-24.
- (4) Between Sacramento and San Jose, via U. S. Highway 50 and State Highways 21, 9 and 17.
- (5) Alternate routes:
 - (a) Between San Francisco and San Jose, via U. S. Highways 101 and 101 By-pass.
 - (b) Between Oakland and San Jose, via State Highway 17.
- (6) Within a 10-mile radius of Marysville and Yuba City, via all available routes.
- (7) Within San Francisco Territory, in addition to routes described above, via all available routes.

3. Applicants' request for authority to depart from the long and short haul provisions of Section 24(a) of the Public Utilities Act and of Article XII, Section 21, of the Constitution of California, is hereby denied without prejudice.

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

Dated at Los Angeles, California, this 24th
day of October, 1950.

R. Z. [unclear]
Justus F. [unclear]
Irving [unclear]
Harold [unclear]
Permitt [unclear]
COMMISSIONERS