

ORIGINAL

Decision No. 45499

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 CARL P. KREIFELS, an individual doing)
 business as GENEVA TRANSFER AND DRAYAGE)
 CO. for a Certificate of public con-)
 venience and necessity to operate as a)
 highway common carrier for the trans-)
 portation of limited commodities under)
 refrigeration between various points)
 and places in California over defined)
 routes.)

Application No. 30449

- Clair W. MacLeod for Applicant.
- Glanz & Russell for Moser's Frozen Food Freight Line, Inc., protestant.
- Willard S. Johnson for J. Christensen Co. and Delta Lines, Inc., protestants.
- William F. Brooks for The Atchison, Topeka & Santa Fe Railway Company and Santa Fe Transportation Company, protestants.
- Douglas Brookman for Merchants Express Corporation, protestant.
- Reginald L. Vaughan, Varnum Paul and John G. Lyons for Clark Brothers, Motor Transport, Inc., Kellogg Express and Draying Company, and Pacific Motor Tariff Bureau and its members (excepting Merchants Express Corporation), protestants.

O P I N I O N

In this proceeding, Carl P. Kreifels, doing business as Geneva Transfer and Drayage Co., seeks authority to operate as a highway common carrier, limited to the transportation of perishable products moving under refrigeration. The service would be provided between San Francisco, South San Francisco and East Bay points, on the one hand, and, on the other hand, points extending north to Santa Rosa, Sebastapol, Sacramento and Woodland; and extending south

(1)
to Monterey, Carmel and Turlock. Only those commodities specified
(2)
in the application would be carried. Applicant stipulated that he
would transport shipments of smoked, cooked, cured or preserved meat
only in connection with shipments of frozen meat or poultry moving
(3)
concurrently between the same points and parties.

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- (1) In general, applicant proposes to operate between San Francisco, South San Francisco, Richmond, El Cerrito, Albany, Oakland, Alameda, Emeryville, Berkeley, Piedmont, San Leandro and Hayward; between San Francisco and South San Francisco, on the one hand, and, on the other hand, (a) Santa Rosa, Sebastapol, Sonoma and Vallejo; (b) Napa; (c) Sacramento (serving Woodland an off-route point, and Pittsburg, Manteca and Stockton as intermediate points); (d) Turlock (serving Oakdale as an off-route point, and Vernalis, Manteca and Modesto as intermediate points); and (e) Carmel and Santa Cruz (serving Hollister as an off-route point, and Salinas as an intermediate point). Designated routes would be traversed. All intermediate points would be served. Operations would be conducted between all points located on the various routes mentioned. A lateral zone would also be served, extending ten miles on each side of the routes traversed.
- (2) The commodities which applicant proposes to transport comprise: (a) frozen foods and frozen beverages; (b) eggs, in the shell; (c) meat, fresh, smoked, cooked or cured, other than canned; (d) poultry, fresh, dressed; (e) dry ice; (f) dairy products, viz: butter; milk; cream; buttermilk; yoghurt; curd; cheese, with or without fruit or vegetable ingredients; cottage cheese, with or without fruit or vegetable ingredients; pot cheese; ice cream; ice cream mix; milk mix; and ice water mix; (g) prepared dough; (h) yeast; (i) animal food, fresh, containing meat; (j) empty containers; (k) butter substitutes.
- (3) This stipulation, which was entered into between applicant and the other parties appearing at the hearing, provided that any certificate granted in this proceeding would be subject to the following conditions and limitations, viz: "(a) the line-haul (intercity) transportation of all commodities other than empty containers, shall be in insulated equipment under refrigeration; (b) applicant shall not transport any shipment of smoked, cooked, cured, or preserved meat, except when transported with a simultaneous shipment of fresh or frozen meat or poultry from the same consignor at the same point of origin to the same consignee at the same destination; (c) applicant shall not transport any shipment of evaporated or condensed milk, except when shipped and transported in milk shipping cans of five gallons or greater capacity."

Public hearing was had before Examiner Austin at San Francisco, when the matter was submitted. Several common carriers serving this territory appeared as protestants; however, some of them withdrew from active participation in the proceeding following the consummation of the stipulation mentioned above. ⁽⁴⁾ Applicant himself described his proposal and the nature of his operations; in addition, he called shipper-witnesses. Protestants produced their executive or operating officials who described the character of the operations in which they severally were engaged. Such a showing was offered on behalf of Christensen, Moser, Santa Fe and Delta. They also called shipper-witnesses.

Applicant described the nature of his operations. Since 1926 he has been engaged in the trucking business (of which he is the sole owner), currently operating under both radial and city carrier permits. He holds no contract carrier permit. Prior to 1940, he handled commodities of all descriptions. However, in that year he embarked upon the transportation of perishable products, using insulated and specially equipped trucks for that purpose. During the recent war, he supplied such a service to military establishments. Before entering the trucking business, he was employed for several years in a cold storage plant, thus becoming familiar with the methods

(4) Of the protestants originally appearing, Clark Brothers, Motor Transport, Inc., Kellog Express and Draying Company, and Pacific Motor Tariff Bureau withdrew their protests, following the adoption of the stipulation mentioned. Merchants Express Corporation neither took part in the hearing nor offered any evidence. The other carriers which appeared continued to participate as protestants. They comprise J. Christensen Co., Moser's Frozen Food Freight Line, Inc., Delta Lines, Inc., The Atchison, Topeka & Santa Fe Railway Company and Santa Fe Transportation Company. Hereafter, for brevity, the protesting carriers will be referred to as Christensen, Moser, Delta and Santa Fe (the latter including both the rail line and its truck-operating subsidiary).

followed in refrigerating perishable commodities. The filing of this application, he stated, was prompted by uncertainty regarding the lawfulness of his present operations; this step was taken under advice of counsel.

The time-schedules governing this operation were described. A daily service would not be afforded; that offered would range in frequency from twice weekly, between some points, to four times weekly, between others. ⁽⁵⁾ At all points, it would be provided only on-call. This corresponds with the service presently supplied. On the days when schedules are operated, overnight delivery would be afforded. At San Francisco freight would be picked up and distributed

(5) Under the proposed time-schedule, the service afforded would range in frequency, as follows:

Twice Weekly. Shipments leaving San Francisco on Monday and Wednesday would be delivered on Tuesday and Thursday, at the following points:

Points extending from Los Gatos to Santa Cruz; from Santa Cruz to Boulder Creek, via Felton; from Santa Cruz to Carmel, via Watsonville, Monterey and Pacific Grove; from (but not including) San Jose to Carmel, via Gilroy, Salinas and Monterey, and also via Hollister and San Juan Batista.

Three Times Weekly. Shipments leaving San Francisco on Monday, Wednesday and Thursday would be delivered on Tuesday, Thursday and Friday, at the following points:

Points extending from Antioch to Sacramento, via Rio Vista, Isleton and Walnut Grove; from Fairfield and Suisun to Sacramento via Vacaville, Dixon and Davis; from Sacramento to Stockton, via Lodi; from Livermore to Stockton, via Tracy, Manteca and French Camp; from Manteca to Turlock, via Modesto; from Manteca to Oakdale, via Escalon and Riverbank; also, at Yountville.

Four Times Weekly. Shipments leaving San Francisco on Monday, Tuesday, Wednesday and Thursday would be delivered on Tuesday, Wednesday, Thursday and Friday, at the following points:

Points extending from Daly City and Colma to San Jose, via San Mateo, Redwood City, Palo Alto and Santa Clara; from Sausalito to Santa Rosa and Sebastopol, via Ignacio, Novato and Petaluma (including also Marin County points, such as Tiburon, Belvedere, Marin City, Mill Valley, Corte Madera, Larkspur, Kentfield, Ross, San Anselmo, Fairfax and San Rafael); East Bay points, including Alameda, Oakland and Berkeley; points extending from Oakland to Napa, via Richmond, San Pablo, Pinole, Rodeo, Crockett and Vallejo; and Contra Costa County points, including Orinda, Lafayette, Walnut Creek, Concord, Martinez, Port Chicago and Pittsburg.

by pickup trucks; elsewhere, the line-haul equipment would be used for this purpose. Immediately following their receipt, full truck-load shipments would move directly from the consignor to the consignee; they would not be handled through the terminal.

The facilities available to provide the service were described. A terminal is maintained at 731 Bryant Street, in San Francisco; if the operation were certificated, this would be moved to a nearby location. Here, there is a platform and also a cold storage room about 20 feet square and 12 feet in height, designed to accommodate shipments held while in course of transit. In this space, shipments brought from other points and destined to communities beyond San Francisco are stored overnight. ⁽⁶⁾ To expedite handling, thus avoiding delays which might prove injurious to perishable commodities, freight is loaded on pallets which can be moved quickly between truck or platform and the storage room.

A warehouse also is situated at this terminal. It is owned and operated by Geneva Warehouse Corporation, a corporation controlled by Kreifels and members of his family. ⁽⁷⁾ This is operated as a private warehouse, accommodating a limited number of patrons. Here, perishable commodities, consisting almost entirely of berries, are stored.

(6) For example, shipments originating at Watsonville and consigned to Sacramento are brought to San Francisco where they are held overnight in the cooler room. Since direct through service is not provided between these cities, storage in this space would release the trucks for immediate use elsewhere.

(7) One-half of the outstanding capital stock of this corporation is owned by Kreifels and the remainder by his sisters. Kreifels considers the total book value of this stock to be approximately \$34,000.

The rolling equipment used by applicant in his present operations comprises some twelve units, of which three are devoted to pickup and delivery service in the Bay area, and the remainder to the line-haul service. (8) It is contemplated that some of the smaller units would be replaced by larger ones if the certificate sought were issued. Excepting the pickup trucks, all of these vehicles are so constructed as to provide for temperature control. Fiber glass insulation has been built into the walls, roof and floor. Slats are provided to facilitate free ventilation. Thermo-King cooling units have been attached to four vans, and an additional van will be so equipped. These provide mechanical refrigeration, permitting the temperature to be regulated from zero to 55° Farenheit.

It is essential that the commodities transported be kept at a temperature sufficiently low to insure their preservation. Before being picked up, shipments either are precooled by the shipper, or they are frozen, depending upon the nature of the product itself. Thereafter, they must remain in this condition while in the carrier's possession. The temperature in the vans stays constantly at about 30° Farenheit. In addition, dry ice is used for highly perishable commodities which must be held at still lower temperatures; these are insulated from other freight by means of blankets.

(8) This equipment consists of one 5-ton GMC truck; three 2-1/2-ton GMC trucks; three 1-1/2-ton trucks (one Dodge and two GMC); one 1-1/2-ton International rack truck; two 1/2-ton GMC panel trucks; one Fruehauf trailer and one Diamond-T tractor. The 1-1/2-ton rack truck and the two 1/2-ton panel trucks are used to supply the pickup and delivery service; the remainder are employed in the line-haul operations. Excepting the rack and panel trucks, this is van type equipment.

Information was submitted disclosing the nature of the traffic which applicant has handled. This covered shipments carried on specified dates between April and July, 1949. This exhibit, it was conceded, reveals the pattern of the movement during the past three years. It was confined to shipments originating at San Francisco and South San Francisco; with negligible exceptions, no traffic originated elsewhere. (9) Shipments originating at points other than those mentioned were rejected, it appears, because of applicant's doubts concerning his right to handle them. However, it was stated, shipments would be accepted at any point if the operation were certificated. An analysis of this exhibit discloses that approximately one third of the shipments described were of such a character that applicant could not transport them as a highway common carrier, in view of the limitations imposed by the stipulation (10) mentioned above.

(9) This exhibit covers 2362 shipments, of which all but seven originated at San Francisco or South San Francisco. These shipments originated, respectively, at San Mateo, Palo Alto, San Jose, Gilroy, Novato, Napa and Stockton. All were destined to San Francisco.

(10) Of the total 2362 shipments specified in the exhibit mentioned, weighing in the aggregate 460,184 pounds, it appears that not less than 1140 shipments weighing 164,309 pounds consisted of smoked, cooked, cured or preserved meat which were not handled in conjunction with simultaneous shipments of fresh or frozen meat or poultry, moving between the same points, and from the same consignor to the same consignee. Thus, under the certificate sought, applicant would be unable to accept 48 per cent of the number of shipments which he actually had transported in the past, or 36 per cent of the volume which had moved. This exhibit does not include the berry traffic, which was substantial in volume.

Applicant anticipates that if a certificate were granted, the volume of tonnage handled would increase considerably. This opinion rests upon numerous requests which have been received from those not presently served. These shipments, it was said, were rejected because of doubt concerning applicant's right to transport them.

Applicant is qualified financially to provide the service, if authorized to do so. He has reported assets totaling \$56,176.56 and a net worth of \$42,744.78; the record indicates that he owns additional property. His operations appear to have been conducted profitably.

A rate expert, who had undertaken a study of the subject, described the rate structure which applicant proposes to establish. In general, these rates would be kept upon substantially the same level as those published by Christensen. To compensate for the refrigeration service, they would be approximately five per cent above the minimum rates set by the Commission. On some commodities, such as dairy products, which are not currently subject to minimum rates, applicant proposes to establish rates similar to Christensen's rates. In the past, it was shown, applicant's rates have been maintained substantially upon this basis.

Applicant produced shipper-witnesses representing 19 firms, of which 17 are located at San Francisco and two at South San Francisco. These establishments either receive or distribute poultry, dairy products, meat and meat products, fruits, vegetables, vegetable juices and other food products. Their shipments move

(11) Of the 19 shippers represented by the witnesses produced, three were engaged in business at San Francisco in the wholesale distribution of poultry and dairy products (including turkeys, butter, eggs and cheese); two were engaged in business at San Francisco in the distribution of dairy products and frozen foods (including butter, eggs, cheese; and frozen foods, (Cont'd)

under refrigeration in substantial volume, preponderantly from San Francisco and South San Francisco, to points located within the affected territory. Some of this traffic also moves in the opposite direction. (12) It does not appear that any moved to or from East Bay communities, or locally between intermediate points.

These shippers deal in perishable products, which must be held at low temperatures in order to insure their preservation. The temperatures vary, according to the nature of the commodity, ranging from zero for such items as frozen fruits and berries, to 40 degrees (13) for some meat products, as well as for eggs.

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- (11) (Cont'd)
fruits and vegetables); eight (of whom six were located at San Francisco and two in South San Francisco) were engaged in the processing and distribution of smoked, cured, preserved and canned meat, sausage, ham, bacon and lard, and fresh and frozen meat and poultry. One witness represented the meat department of a large chain store, with headquarters at San Francisco, which purchased smoked, cured, canned, fresh and frozen meat. Three wholesale pie and pastry distributors at San Francisco received shipments of frozen fruits and vegetables. One witness represented a broker engaged in the distribution of frozen fruits and vegetables at San Francisco. One San Francisco shipper was engaged in the distribution of vegetables, fruit juices and yoghurt. These ranged in size from local concerns to firms operating on a national scale, such as the large meat packers.
- (12) The traffic offered by ten shippers located at San Francisco, and by two at South San Francisco, moved only outbound. This comprised meat products, poultry, dairy products, frozen foods, frozen fruits and vegetables, fruit juices and yoghurt. The traffic offered by four shippers moved both to and from San Francisco; this consisted of poultry, dairy products and frozen fruits and vegetables. The shipments offered by three firms consisted of frozen fruits and berries which moved only to San Francisco.
- (13) Poultry and dairy products, it was shown, should be kept at temperatures ranging from 32 to 38 degrees F.; eggs, at 40 degrees; smoked and cured meats, at from 30 to 32 degrees; fresh meat, at from 36 to 40 degrees; frozen meat, under 30 degrees; and frozen fruits and berries, below 30 degrees, preferably at zero.

All of these shippers, it was shown, have used applicant's service, during varying periods, for the transportation of perishable products. This traffic moved regularly between the points described above. In volume it was substantial, differing among the several shippers. (14)

In the past applicant's service has proved satisfactory; all testified that it had fully met their requirements. The service had been prompt and expeditious, they stated. Shipments had not been damaged in transit. Applicant was conversant with the needs of the traffic. Some commodities, such as veal and yoghurt, require special handling -- a service which applicant had afforded. They would experience considerable difficulty in replacing him should the service be withdrawn, it was said.

The special facilities which applicant has provided were distinctly advantageous, they stated. Many had used the cooler room at the San Francisco terminal for the storage of shipments while in course of transit. They considered this an important factor in appraising the worth of applicant's service. Some shippers, particularly those who dealt in frozen berries, had stored their merchandise at the private warehouse mentioned above, drawing upon this supply as occasion might require. This, they said, was a convenient adjunct to the transportation service.

Without exception, the shippers testified they would continue to use applicant's service if it were certificated. Some of the larger shippers, which maintain fleets of equipment for the

(14) These shippers had used applicant's facilities for periods ranging from two to ten years or more. In the aggregate, their traffic amounted approximately to 8400 tons annually, it was shown. Their shipments moved to or from San Francisco or South San Francisco alone; the evidence does not disclose a movement to or from East Bay points nor between intermediate points.

distribution of their products, would utilize applicant's facilities to accommodate freight which could not conveniently be handled on their own trucks. Several asserted that, notwithstanding the limitations imposed by the stipulation referred to above, they would employ applicant to transport their perishable products. Smoked, cooked, cured or preserved meats would be offered in conjunction with shipments of frozen meat or poultry, they said.

The schedules under which applicant plans to continue the service would be convenient, it was said. As indicated above, a daily service is not offered, and some points would be served more frequently than others. Several shippers stated that inasmuch as this would correspond with the service currently afforded, which had proved satisfactory, it would fully meet their needs. Others asserted that, aside from any emergencies which may arise, the distribution of their refrigerated products would be keyed to these schedules. A few pointed out that their shipments are not urgent in character, and usually the need for them can be anticipated. Shipments which could not conveniently be accommodated under applicant's schedules, one stated, might be offered to other carriers. Some would take advantage of the through service afforded truck-load shipments.

Reference also was made to the service supplied by the protesting carriers. Some shippers had patronized either Christensen or Moser, or both of them; however, many were not familiar with their operations. For the most part, those who had employed these carriers had found their service satisfactory and dependable; the complaints voiced by a few were of a minor nature. Some were questioned concerning the refrigeration service offered by Delta, but they were not familiar with it. Likewise, many never had heard of the refrigerated

trucking service which Santa Fe proposed to establish. Two shippers testified they would not use that service, primarily because of its association with the rail operations, to which they objected.

On behalf of certain protestants, evidence was offered concerning the operations which they severally conduct. Such a showing was submitted by Christensen, Moser, Santa Fe and Delta.

Christensen's operations were described by its vice president and general manager. Since 1949, it has been engaged, as a highway common carrier, in the transportation of perishable commodities, moving under refrigeration, between substantially the same points as those which applicant proposes to serve. ⁽¹⁵⁾ Previously, it had operated under carrier permits issued by the Commission. Throughout this territory, a daily service is supplied, affording overnight delivery at all points. Unlike applicant's present operations, the traffic movement is widely diffused throughout the system. ⁽¹⁶⁾ Less truckload traffic predominates. This protestant is financially qualified to provide the service.

(15) By Decision No. 43107, rendered July 6, 1949, in Application No. 30176, Christensen was granted a certificate authorizing the transportation of commodities, identical to those which applicant Kreifels proposes to handle, when moving in insulated equipment under refrigeration between San Francisco Bay points and those situated along the Coast, extending from Santa Rosa and Sebastopol, on the north, to Salinas, on the south; and also those situated in the Valley, extending from Sacramento and Woodland, on the north, to Tulare, on the south.

(16) For example, poultry moves from Turlock to Valley points situated both north and south of that community, to San Francisco Bay points, and to Santa Rosa and Petaluma; cottage cheese moves from Manteca to Valley points, San Jose, Watsonville, Petaluma and Santa Rosa; ice cream mix moves from Galt to the San Francisco Bay area, to peninsula and coast points extending as far south as Salinas, and to Contra Costa points; and both eggs and frozen foods move from many points throughout the system.

Terminals are maintained at Oakland, Manteca, Sacramento and Fresno. (17) Here, telephone facilities are available to shippers desiring to utilize the service. At these terminals, provision is made for the storage of freight while in course of transit. These shipments are kept in semi-trailers equipped with mechanical refrigeration units. (18) At least one semi-trailer is stationed at each terminal for this purpose; usually there are more. (19) As a rule, commodities requiring varying degrees of temperature control are stored in different units. (20)

To provide the service, some 65 units are available. Twenty-four semi-trailers and three trucks are equipped with Thermo-King refrigerating units. The pickup trucks are provided with dry-ice bunkers. All of the trailers are insulated to insure proper temperature control. (21)

(17) At the Oakland terminal, where protestant's headquarters are located, shop facilities are maintained for major repairs to equipment. No docks are provided at any of these terminals.

(18) Such a course would be feasible, it was said. Each unit is supplied with sufficient fuel to insure overnight operation.

(19) Ordinarily, it appears, seven semi-trailers are stationed overnight at Oakland; seven, at Manteca; and three each, at Fresno and at Sacramento.

(20) Where it is impracticable to store these shipments in separate vehicles, commodities requiring a degree of temperature control different from that maintained within the unit, are insulated so as to protect them against damage. For example, a shipment requiring a higher temperature is wrapped in a blanket. The same treatment is accorded shipments requiring lower temperatures; however, dry ice is added. This, it was stated, is the customary practice.

(21) The walls, ceiling and roof of each unit are insulated with fiber glass. In some units, the floors are insulated with the same material, but in the newer units, rubber-tex is used. This is said to be a more effective insulator than fiber glass.

Moser's operations were described by its general manager. It is a corporation formerly controlled by members of the Moser family. Following the acquisition of its outstanding shares of stock, Kings County Truck Line assumed the direction of its business activities in July, 1949. It operates as a highway common carrier between Los Angeles, San Francisco and Sacramento over the Valley Route, and also via Los Banos and Gilroy, specializing in the transportation of perishable commodities moving under refrigeration. Intermediate points also are served.

This carrier offers daily overnight service between those points above described, which are located within the territory herein involved. Although most of the traffic moves during the period Monday through Friday, shipments are delivered on weekends, particularly should an emergency arise. At San Francisco and Oakland, special equipment is used to supply the pick up and delivery service. The schedules are designed to permit first-morning delivery at the larger communities, such as Sacramento, between 5:00 and 8:00 A.M. Same-day delivery is afforded for truckload shipments, which move directly from consignor to consignee.

The equipment available to provide the service comprises some 49 units. These include 19 insulated semi-trailers, of which 16 are equipped with Thermo-King units. Dry ice blowers have been installed in the smaller trucks, all of which are insulated. Eight additional semi-trailers, and five tractors, will be acquired from the parent company, which also leases equipment to Moser whenever the need may arise. Terminals are located at San Francisco, Sacramento, Tulare and at other points not material here.

The difficulties encountered in maintaining proper temperature control were explained. These arise largely from the

necessity for frequently opening and closing equipment doors when loading, transferring or delivering shipments. To overcome these obstacles, various means have been adopted. Ordinarily, pick up routes are short and the trucks return at brief intervals to the terminal. Often, the shipments have been precooled, when received by the carrier. At the terminal the lading is transferred expeditiously to line-haul units, which usually have been precooled. Even so, neither dry ice blowers nor mechanical devices have prevented undesirable variations in temperature, particularly during periods when warmer weather prevailed. It was conceded that, under some circumstances, the use of pallets in connection with the storage of shipments in a cooler-room might be advantageous.

To permit greater flexibility in the performance of the service, vans of smaller size than usual have been employed in the line-haul operations. The traffic, it was stated, could be handled more advantageously in a train of two 20-foot semi-trailers than in a single 35-foot unit. The damage occasioned by temperature changes occurring when handling freight across the platform would thus be minimized. Moreover, smaller truckload shipments could more readily be obtained from shippers and delivered directly to consignees. In either event, the carrying capacity of the equipment would be about the same. Such a service, it was said, would be more expensive than that provided by a single unit.

When the present management assumed control of Moser's operations, much of the traffic previously enjoyed by that carrier had disappeared because of the inadequate service afforded the shippers. Admittedly, this was very poor in quality. Sufficient schedules were not maintained; the trucks ran only when a payload was offered, smaller shipments being rejected. The equipment used was not suitable for the transportation of perishable freight.

The employees were not properly trained, and were too few in number to meet business demands. The adjustment of claims was protracted; correspondence was not promptly disposed of; and debts long overdue remained unpaid. Having lost most of the perishable traffic, this protestant had turned to dry freight, which was handled under its carrier permits.

The new management moved promptly to remedy these conditions. It concentrated upon the transportation of perishable freight, rejecting all other traffic. The existing equipment was rebuilt, and new units were purchased. As rapidly as practicable, definite schedules were established which were designed to accommodate the traffic. In actual practice, these schedules were observed. Employees were trained properly, and their number was increased. The outstanding indebtedness was liquidated, and current bills promptly paid. Claims were adjusted expeditiously. Between San Francisco, Tulare and Los Angeles, a leased-wire service was installed, which permitted customers to be kept informed concerning the status of their shipments. All shipments were accepted, no matter how small. Considerable expense was entailed, it was said, in carrying out this program.

This protestant endeavored to regain the traffic which had been lost. It actively solicited business from potential shippers of perishable products. A circular letter was mailed to some 1500 prospective customers, located in the territory which Moser served, including the Bay area. This was supplemented by personal solicitation carried on throughout the field. During the course of the hearing, Moser solicited business from several shippers who earlier had testified on behalf of applicant Kreifels. In this, he met with some success. Due to these efforts, both the tonnage and the revenues

enjoyed by this protestant, as well as the number of shippers served, have increased substantially. However, it was stated, the business was conducted at a loss, due in part to the expense incurred in rehabilitating the service, and also to the efforts made to overcome the poor reputation which this carrier formerly had borne.

It was shown that the equipment, regularly operated between the San Francisco Bay area and important points, has not always been filled to capacity. This appears from traffic studies submitted, covering the movement during selected periods between San Francisco and Oakland, and San Jose, Stockton, and Sacramento, respectively. These surveys, however, relate to traffic moving shortly after the new management had assumed control, and admittedly they reflect the shippers' reaction to the poor service which previously had been furnished.

Evidence was offered designed to establish that, upon its own showing, applicant could not conduct the service profitably. As indicated above, the latter submitted a statement covering shipments he had transported during selected periods. An exhibit which Moser later offered specifies shipments, shown in the earlier exhibit, that moved to certain points served both by that protestant and by the applicant. Their volume was so small, it is claimed, that the traffic would be unremunerative. This exhibit, however, omits many points served by applicant where the movement appears to be substantial. Also, it is predicated in part upon a service that applicant does not propose to supply, i.e., a five-day weekly service. Moreover, in our consideration of the statement which applicant submitted, we have commented upon traffic he could not hope to enjoy, owing to the limitations imposed by the stipulation into which he had entered.

Santa Fe Transportation Company called its Superintendent of Freight Operations, who described the service which it offers to establish. It conducts a highway common carrier service between the San Francisco Bay area and points situated on the Santa Fe rails, including Port Chicago, Pittsburg, Antioch, Stockton, Empire, Riverbank and Oakdale. It proposes to supply a service for less-carload traffic requiring refrigeration, which would be overnight in character. This service would be available daily, excluding Sundays, and would afford pickup and delivery at all Santa Fe points.

The operations of protestant Delta were described by its president and general manager. It operates as a highway common carrier between San Francisco Bay points, Sacramento, Stockton and intermediate points. Terminals are located at San Francisco, where its headquarters are established, and at Oakland, Sacramento, Stockton, Pittsburg and Rio Vista. An extensive fleet of equipment is maintained. At present it operates two insulated units which are equipped to handle perishable products moving under refrigeration. For many years, it has accepted such shipments, using dry ice to provide the necessary temperature control. It actively solicits this traffic, it was stated, and could handle an increased volume. The service is available five days a week, overnight delivery being afforded. In this field, it was said, Delta meets with effective competition from both Christensen and Moser.

Representatives of four shippers located in the Bay Area were called on behalf of the protestants. All of them produced or dealt in commodities requiring refrigeration in varying degrees. (22) Their

(22) One shipper produced ice cream mix and manufactured cream, at its plant in Galt. A farm cooperative distributed eggs between its processing plants, which were scattered throughout the territory involved. Another, whose headquarters are in Oakland, dealt in frozen foods of many varieties. Another shipper marketed dairy products, consisting mostly of cheese.

shipments moved frequently and in substantial volume. All had employed Christensen for the transportation of such shipments between points in the affected territory. The service, they said, had been expeditious, satisfactory, and adequate; they had experienced no need for any other carrier. Some objected to the schedules under which applicant proposed to operate, stating they would preclude the use of his facilities. Three of these shippers had utilized Christensen's service to supplement their own trucks, which were engaged extensively in the distribution of their products throughout this territory.

It is important, at this juncture, to consider the scope of the application in this proceeding. Protestants contend that it was filed in response to Decision No. 42646⁽²³⁾, where both contract and radial carriers were invited to apply for certificates, if they believed their operations actually had assumed highway common carrier status. Certificates would be issued commensurate with the operations actually performed, the decision stated. This claim is challenged by the applicant.

In this decision, which involved a comprehensive investigation into the operations of for-hire property carriers, certain policies were announced. Among them was a declaration that the Commission should be liberal in granting certificates of public convenience and necessity authorizing highway common carrier operation. Contract and radial permittees were advised that, if they have reason to believe their operations came within the purview of the Public Utilities Act, they should file applications for certificates.

(23) Investigation of All Carriers of Property (Decision No. 42646, Case No. 4823, dated March 22, 1949) 48 Cal PUC 587, 598, 599.

When acting upon these applications, it was said, the Commission would "...follow a policy of strictly limiting such certificates to the scope of operation justified by the showing made, giving consideration to such matters as types and quantities of commodities, and the areas to be served."

The present application was filed shortly after the rendition of Decision No. 42646. Although it did not expressly refer to that decision, it nevertheless alleged that applicant was doubtful concerning the scope of operations which might be performed under his permits, and that due to the increasing public demand for his service, he had concluded that certification of the operation was required. At the hearing, Kreifels testified that the application had been filed, upon advice of counsel, because of doubt concerning the legality of the operations conducted under the permits which he held. During the course of oral argument, protestants contended that the application had been filed pursuant to this decision and that, therefore, any certificate issued should not extend beyond the sphere of applicant's actual operations. Applicant conceded that, to some extent, the application was predicated upon this decision, but he contended, nevertheless, that it should not serve as a restriction upon any operating authority which might be granted. It seems clear that the application was filed pursuant to the invitation thus extended. This step was motivated by applicant's doubts concerning the lawfulness of the operations in which he was then engaged. The application, therefore, should be viewed in the light of the limitations imposed by that decision, and dealt with accordingly.

In some respects, applicant's operations as a permitted carrier do not match his proposal. The points served are not

coextensive with those as to which a certificate is sought. With minor exceptions, all of the traffic which he handled moved either to or from San Francisco or South San Francisco; there was no movement to or from East Bay Cities, nor locally between intermediate points. This appears from applicant's testimony, as well as from that of the shipper-witnesses. Independent of this testimony, there was no showing indicating a need for service between any points other than those which fell within the range of applicant's existing operations. However, the evidence discloses that applicant transported a wide variety of perishable products, which must be deemed fairly representative of those he proposes to carry. This traffic moved in equipment designed expressly to provide refrigeration for the products transported. Any certificate issued should reflect these factors.

The service which applicant provided has met the shippers' requirements. This is fully established by the record. The schedules under which the service would be performed, appear to be satisfactory. In the past, shippers have adjusted the distribution of their products to these schedules; they would continue to do so in the future. Some shippers would use applicant's facilities notwithstanding the more extensive service afforded by protestants, which they also have patronized.

In one important respect, applicant's proposal would be distinctly advantageous to the shippers. We refer to the mechanically refrigerated cooler room situated at the San Francisco terminal. There, perishable products may be stored with assurance that proper temperature control could be maintained. The loading of freight on pallets--a service not supplied by other carriers--would expedite the handling of shipments in and out of the cooler room, thus

minimizing the time required for loading and unloading equipment. This would tend to reduce temperature losses incidental to the frequent opening and closing of doors affording access to semi-trailers or storage space. This facility was widely used by the shippers.

The record, we believe, clearly establishes applicant's ability to provide the service. The operation contemplated is not so extensive as that supplied by the other specialized carriers in the field. As demonstrated by his past experiences, applicant could handle the traffic with his present equipment, under the schedules proposed. His financial qualifications appear adequate.

The contention that the inauguration of this service would result in impairment of protestants' operations cannot be accepted. Such a claim was advanced by Delta, Christensen and Moser, particularly by the latter. The testimony of the shipper-witnesses discloses that the distribution of frozen or refrigerated perishable products is a thriving and growing industry. In the light of their testimony, we cannot conclude that this field is so limited as protestants have indicated. The showing submitted by Moser concerning the unprofitableness of certain operations is not convincing. The exhibits offered do not cover all of the points which applicant proposes to serve, within the territory they purport to cover. Moreover, in our judgment, the lack of patronage which they disclose indicates the shippers' reaction to that carrier's service, which did not then fully meet their needs.

Protestants contend that there are now sufficient carriers to provide the necessary service; the field, they claim, is fully saturated. Within this territory, a refrigerated service is afforded by two carriers, viz, by both Christensen and Moser, which specialize

in that type of transportation. Santa Fe proposes to supply such a service in conjunction with its trucking operations; however, the record does not disclose specifically the facilities which it would afford, nor the extent to which it would engage in this operation. At present, Delta has available only two semi-trailers equipped with mechanical refrigeration units, designed to accommodate perishable commodities; however, it uses dry ice as a refrigerant, in connection with conventional equipment. Undoubtedly, both carriers provide an efficient service for the transportation of general commodities; however, their specialized refrigeration service apparently is still in the experimental stage.

Specifically, protestants contend that certain limiting factors should be considered, such as the highly specialized service provided, the relatively small number of shippers accommodated, the restricted scope of the commodities transported, the seasonal movement enjoyed, the unbalanced operation and the expensive facilities required. It is true that a service of this nature must be supplied by means of special equipment, which probably is more expensive than that ordinarily used. Moreover, it is limited as to the shippers served, the nature of the commodities handled and the seasons during which various products may be marketed. However, this traffic moves extensively throughout the affected territory in substantial volume. The frozen food industry appears to be firmly established. Upon the present record, we cannot find that, within this area, the saturation point has now been reached.

Accordingly a certificate will be issued to applicant authorizing the establishment of a refrigerated transportation service between San Francisco and South San Francisco, on the one hand, and the points specified in the application. As indicated

above, applicant will not be authorized to extend this service to East Bay cities, nor to provide a local service between intermediate points. Service may be provided within a zone extending laterally five miles on each side of the routes traversed, rather than within a ten-mile zone, as requested. In this respect, the service would conform to that supplied by Christensen, within the same area. Applicant will be authorized, in accordance with his request, to depart from the provisions of Article XII, Section 21 of the California Constitution, and Section 24(a) of the Public Utilities Act, in order to permit the establishment of an appropriate intermediate application rule governing the application of rates to be published.

Carl P. Kreifels 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

Application as above entitled having been filed, a public hearing having been held thereon, the matter having been duly submitted, the Commission being fully advised and now 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 Carl P. Kreifels, doing business as Geneva Transfer & Drayage Co., authorizing the establishment and operation of a service as a highway common carrier (as defined by Section 2-3/4 of the Public Utilities Act), for the transportation of the following commodities, viz: (a) frozen foods and frozen beverages; (b) eggs, in the shell; (c) meat, fresh, smoked, cooked or cured, other than canned; (d) poultry, fresh, dressed; (e) dry ice; (f) dairy products, viz: butter; milk; cream; buttermilk; yoghurt; curd; cheese, with or without fruit or vegetable ingredients; cottage cheese, with or without fruit or vegetable ingredients; pot cheese; ice cream; ice cream mix; milk mix; and ice water mix; (g) prepared dough; (h) yeast; (i) animal food, fresh, containing meat; (j) empty containers; and (k) butter substitutes, between the following points and places:

Between San Francisco and South San Francisco; and between San Francisco and South San Francisco, on the one hand, and, on the other hand, the following points and places, viz:

- (a) Santa Rosa, Sebastopol, Sonoma and Vallejo; (b) Napa;
- (c) Sacramento, serving Woodland as an off-route point;
- (d) Turlock, serving Oakdale as an off-route point; and
- (e) Carmel and Santa Cruz, serving Hollister as an off-route point; together with all intermediate points located upon the routes over and along which applicant is authorized to operate; and all points and places situated within a zone extending five miles laterally on each side of said routes.

2. That the certificate herein granted is subject to the following limitations:

- (a) The line-haul (intercity) transportation of all commodities, other than empty containers, shall be in insulated equipment under refrigeration.
- (b) Applicant shall not transport any shipment of smoked, cooked, cured or preserved meat, except when transported with a simultaneous shipment of fresh or frozen meat or poultry from the same consignor at the same point of origin to the same consignee at the same destination.
- (c) Applicant shall not transport any shipment of evaporated or condensed milk, except when shipped and transported in milk shipping cans of five gallons or greater capacity.

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

- (a) Within a period of not to exceed 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 on not less than five (5) days' notice to the Commission and 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 appropriate tariffs and time tables.
- (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:
 - (1) Between San Francisco and South San Francisco, over any and all available highways and city streets;

Between San Francisco and South San Francisco, on the one hand, and on the other hand, the following points and places:

- (2) Santa Rosa, Sebastopol, Sonoma and Vallejo, via:

U. S. Highway 101 to Santa Rosa; thence via California Highway 12 to Sebastopol, thence via unnumbered highway to Cotati;

U. S. Highway 40 from Richmond to Vallejo; thence via California Highways 29, 12, 37, and 48 to Sonoma; thence via California Highway 12 to Santa Rosa, or via unnumbered highway to Petaluma, thence by U. S. Highway 101 to Santa Rosa;

- (3) Napa, via:

U. S. Highway 101 to the junction of U. S. Highway 101 and Black Point Cut-Off north of Ignacio; thence via California Highway 37 to Napa;

- (4) Sacramento, via:

San Francisco-Oakland Bay Bridge to Oakland, thence via U. S. Highway 40 to Sacramento, serving Woodland as an off-route point;

U. S. Highway 40 from Oakland to Pinole; thence via California Highway 4 or unnumbered highway to Pittsburg; thence via California Highway 24 to Sacramento;

California Highway 24 from Oakland to Sacramento;

U. S. Highway 50 from Oakland to Stockton. Also, via U. S. Highway 50 and California Highway 120 to Manteca; thence via U. S. Highway 99 to Stockton. Thence via U. S. Highway 99 to Sacramento;

- (5) Turlock, via:

U. S. Highway 50 to Manteca; thence via U. S. Highway 99 to Turlock, serving Oakdale as an off-route point;

U. S. Highway 50 from Oakland to junction of California Highway 33 south of Tracy; thence via California Highway 33 to Ver-nalis; thence via California Highway 132 to Modesto;

(6) Carmel and Santa Cruz, via:

U. S. Highway 101 and U. S. Highway 101 By Pass to San Jose; thence via U. S. Highway 101 to Salinas; thence via unnumbered highway and California Highway 1 to Carmel, serving Hollister as an off-route point;

California Highway 17 from San Jose to Santa Cruz; thence via California Highway 1 to Carmel;

Junction of U. S. Highway 101 and California Highway 9 via California Highway 9 to Santa Cruz;

4. That applicant be and he hereby is authorized to depart from the provisions of Section 21 of Article XII of the Constitution of the State of California, and Section 24(a) of the Public Utilities Act, to the extent necessary to permit the transportation of shipments over routes through points from or to which higher rates may be in effect than between point of origin and destination.

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

Dated at San Francisco, California, this 27th day of March, 1951.

R. T. Johnson
Justus F. Galles
Harold T. Huls
Samuel Patten
John E. McNeill
COMMISSIONERS