

Decision No. 45650

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
MOSER'S FROZEN FOOD FREIGHT LINE, a
California corporation, for a certi-
ficate of public convenience and
necessity to operate a highway common
carrier service for the transportation
of fresh frozen foods and other frozen
commodities between Los Angeles on the
one hand and San Francisco and Sacramento
on the other hand, and certain inter-
mediate points, and to issue securities.)

) Application No. 30571

- Marvin Handler, Orville A. Schulenberg and Frank W. Kerrigan for Applicant.
- William Meinhold for Southern Pacific Company and Pacific Motor Trucking Company, protestant.
- Donald Murchison for Pacific Freight Lines and Pacific Freight Lines Express, protestants.
- Douglas Brookman for California Motor Express, Ltd., and California Motor Transport Company, Ltd., protestant.
- Willard S. Johnson for Theo. Peters, dba Ted. Peters, protestant.
- J. A. Cummins for Atchison, Topeka and Santa Fe Railway Company and Santa Fe Transportation Company, protestant.
- Orla St. Clair for the Common Carrier Conference of the Truck Owners Association of California, protestant.

O P I N I O N

Applicant, Moser Frozen Food Freight Lines, presently rendering service as a highway common carrier for the transportation of fresh frozen foods and refrigerated commodities between Los Angeles, San Francisco, Sacramento, and certain intermediate points under a certificate of public convenience and necessity issued in Decision No. 40775, dated September 30, 1947, in Application No. 27611 and as amended by Decision No. 41232 dated February 17, 1948, requests authority to extend its service as follows:

(a) Food and food products requiring refrigeration or protected service against cold, all or part of the year; and certain specified commodities, as described in appendix "A" attached hereto and handled by packing houses, dairies, food manufacturers and distributors of food products, with the exception of canneries, between all points on the routes presently served by applicant, including all intermediate points on said routes; and as an extension of present routes, to, from, and between all intermediate and off-route points between Manteca and Delano, and points and places within twenty-five miles laterally of U. S. Highway 99 between Manteca and Delano, with daily service to all points on said routes and principal off-route points and on-call service to other off-route points.

(b) Commodities requiring refrigeration, all or part of the year, from Los Angeles Basin Territory on the one hand, to points between Bakersfield and Sacramento, both inclusive, on U. S. Highway 99, and to San Francisco Territory on the other hand, via presently authorized routes. Proposed service would be on-call with a return movement of refused or rejected shipments.

(c) Commodities requiring refrigeration, all or part of the year, canned meats, lard, and advertising matter, between Sacramento, Woodland, Yuba City, Marysville, Grass Valley, Nevada City, Auburn and Sacramento, and intermediate points, via U. S. Highway 40, State Highway 24, State Highway 20, State Highway 49, and U. S. Highways 99E and 99W. Service under this paragraph is proposed between all points presently served by applicant, including Sacramento, on the one hand, and the points above named, on the other hand. No local service is proposed between the intermediate points such as between Marysville and Grass Valley. Service proposed is twice weekly.

(d) Commodities requiring refrigeration, all or part of the year, canned meat, lard and advertising matter, between Pittsburg

and Sacramento, and intermediate points, via State Highway 24. The proposed service is twice weekly. The pick-up and delivery areas which applicant proposes to serve in the San Francisco and Los Angeles Territories and the Los Angeles Basin Territory are those described in Item 270 Series of Highway Carriers' Tariff No. 2.

Applicant proposes the above described service subject to the following restrictions:

(a) The line-haul portion of the service would be rendered by means of refrigerated or insulated equipment.

(b) No service would be performed locally between Chowchilla and points in Los Angeles Territory and Los Angeles Basin Territory and intermediate points on, and off route points within twenty-five miles laterally of U. S. Highway 99 ⁽¹⁾.

(c) No service would be performed on fresh dairy products between Los Banos and Patterson and intermediate points on State Highway 33 on the one hand, and San Francisco and the East Bay points, from Richmond on the north to Hayward on the south, inclusive on the other hand ⁽²⁾.

The application was protested by Southern Pacific Company and Pacific Motor Trucking Company; Pacific Freight Lines and Pacific Freight Lines Express; California Motors Express, Ltd., and California Motor Transport Company, Ltd., Theo. Peters, dba Ted Peters; The Atchison, Topeka and Santa Fe Railway Company and Santa Fe Transportation Company.

(1) Applicant's parent company, King's County Truck Line has presently on file with this Commission an application for authority to serve within this area. As a result applicant amended its original application by restricting local service.

(2) The protest of Theo. Peters dba Ted Peters was withdrawn upon this stipulated restriction in applicant's proposed service.

Public hearings were held before Examiner Daly in San Francisco and Los Angeles and the matter was submitted following oral argument on March 22, 1951.

According to applicant, considerable confusion has resulted with respect to interpreting what can and cannot be transported under its present certificate. For example, some commodities do not require refrigeration during certain periods of the year, but do during other periods. Applicant is unable to determine whether it may lawfully transport such commodities. Applicant further claims to be in doubt as to the intermediate points it may serve. Although applicant originally requested authority to serve all intermediate points, a tariff naming certain designated points as key points for the construction of tariff rates was submitted in evidence as part of the original proceedings. These designated key points were included in the original order as intermediate points between applicant's northern and southern terminus. Applicant states that it is in doubt as to whether it may transport shipments to intermediate points other than those so designated.

In addition to commodities requiring refrigeration all or part of the year applicant seeks authority to transport non-perishable food products handled by such businesses as packing houses, dairies, food manufacturers, and distributors of food products. It is contended by applicant that many of these businesses have shipments of non-perishable items as well as perishable. Due to the inconvenience that these businesses experience in splitting shipments so that perishable commodities will move via applicant and non-perishable commodities or dry freight via other carriers, a great deal of the transportation, which applicant is authorized to render, is lost to it and is diverted to permitted carriers, which can render a complete service.

Applicant's present and proposed operation as well as its operating equipment and facilities were explained by its general manager. To provide service over its entire operations applicant owns and operates approximately six line tractors and leases four others. It owns and operates approximately nine local tractors and approximately 17 pick-up, delivery and short line trucks which are either equipped with blower type refrigeration or mechanical refrigeration. It also owns and operates approximately 20 trailers, which are insulated and equipped with mechanical refrigerating units. At San Francisco applicant maintains a yard, dock and a small cool room. The equipment stationed at San Francisco includes three local trailers and six pick-up and delivery trucks. A large terminal is maintained at Los Angeles, which includes office space and dock. The equipment at this point includes four local trailers and five pick-up and delivery trucks. A terminal, office space and small dock are maintained at Fresno as well as one local tractor and three pick-up and delivery trucks. Terminals are also maintained at Manteca and Bakersfield, with one pick-up and delivery truck being stationed at each terminal. At Tulare applicant has use of the facilities belonging to its parent company, King's County Truck Line.

Applicant proposed no change in its present schedules. At present service between San Francisco and Los Angeles is afforded six days a week. From San Francisco to Los Angeles the service is on Monday through Saturday and in the reverse direction on Tuesday through Sunday. Sunday service to San Francisco is occasionally provided upon request. To all points situated on U. S. Highway 99 and within 25 miles laterally thereof between Manteca and Bakersfield applicant affords a five-day a week service. The service proposed for the Los Angeles Basin Territory, which is designed for the frozen citrus fruit industries, would be on-call. Service to the Sacramento area would be twice a week, and would be increased as business warranted.

The proposed rates on dry or non-perishable commodities would be those set forth in Highway Common Carrier Tariff No. 2. The rates proposed and presently charged by applicant on perishable commodities requiring refrigeration is 5% over those rates set forth in Highway Common Carrier Tariff No. 2. In the event this Commission determines applicable minimum rates on commodities moving in refrigerated service, applicant proposes to adopt said rates.

According to applicant's general manager, applicant has been transporting dry freight as a permitted carrier; however, its entire service both under its permits and certificate is non-competitive with the permitted carriers. This, he stated, was attributable to the fact that permitted carriers can render a service on both dry and perishable commodities and can further provide such service at volume rates, which is economically attractive to shippers. To transport a mixed shipment applicant must charge one rate for the perishable commodities and another rate for the dry commodities. It cannot combine the weights together for rate purposes and afford a cheaper rate based upon tonnage as do the permitted carriers. GR 2.2

The witness stated that 75 per cent of applicant's total revenue is derived from commodities which require refrigeration at one time or another. He asserted that applicant lost approximately \$55,000 during 1949, or about \$4,500 a month. During 1950 the loss averaged approximately \$250 per month. Unless applicant is authorized to transport the commodities sought, he stated that it was his opinion that applicant would not be able to continue in business.

Twenty-seven witnesses were called by applicant and testified as to their shipping needs and requirements. With several exceptions these witnesses represented businesses which were engaged in some phase of the food industry. Stipulations by counsel were

made with respect to the expected testimony of five other prospective witnesses.

Fifteen of the witnesses testified that they required transportation for mixed shipments, while 12 witnesses stated that they shipped only commodities that required refrigeration either all or part of the year. Of the 12 witnesses who stated they had no mixed shipments, two stated they required a return service on empty containers. Three of the witnesses who testified they had mixed shipments stated that the dry freight consisted of advertising materials, which accompanied the perishable commodities. Two of the latter witnesses were engaged in the candy business and another was engaged in the poultry business.

Five of the public witnesses represented meat packing companies, four of which are located in San Francisco and one in Los Angeles. Most of their commodities require refrigeration with the exception of such commodities as certain canned meats, packaging supplies, and sausage casings. Two such witnesses stated that 10 per cent of their total shipments constituted dry freight, while another witness testified that 15 per cent of his total shipments constituted dry freight.

One witness representing Kraft Foods Company, Western Division, testified that 50 per cent of their total shipments were of dry commodities, while the other 50 per cent consisted of commodities requiring refrigeration all or part of the year. Another witness engaged in the manufacture of candles and who was also engaged in the grocery business, testified that 50 per cent of his total shipments required refrigeration and the other 50 per cent did not. A representative of Standard Brands, Inc., testified that along with items that required refrigeration were shipped such items as coffee,

tea, baking powder, coffee extract and malt syrup which do not require refrigeration. Several witnesses testified that they had frequent shipments of paraffin wax, which although it does not require refrigeration, must be shipped in metal-lined equipment that is absolutely clean and free of possible contamination.

These witnesses were in complete accord in their statement that a refrigerated service is absolutely essential to the successful operations of their respective businesses. They ship their various products throughout the Sacramento and San Joaquin Valleys, which encompass the areas sought to be served by applicant. Although they admit that the existing common carriers could adequately serve them on their dry commodities, they felt that in most cases the transportation of their perishable commodities was of primary importance and they were unaware of any existing certificated carrier of general commodities that provided a mechanically refrigerated service. Unless they use contract carriers they are required to split their shipments. That is, send the dry commodities of a shipment via one of the certificated carriers and the perishables via applicant. This they claim results in a great deal of inconvenience due to double handling of shipments, too many carriers occupying a limited dock space, and the inability to take advantage of volume rates.

Exhibit No. 2, consisted of a list of shipments transported by applicant for representative periods in 1950 showing commodities transported and points served beyond the apparent scope of applicant's certificate. The points which were in doubt, were in the main, intermediate points between points which applicant is presently authorized to serve. Relatively few commodities over and above those which would require refrigeration all of the year and those which, under certain circumstances, would appear to require refrigeration part of the year moved with any degree of regularity.

The showing made by protestants consisted exclusively of operating testimony and stipulations between counsel. Representatives of Highway Transport, Inc., Merchants Express Corporation, Pacific Freight Lines and Pacific Freight Lines Express as well as The Atchison, Topeka and Santa Fe Railway Company testified as to the existing operation of their respective companies in the proposed area. In general their respective operations are designed for the transportation of general or non-perishable commodities. In the field of general commodities they stated that they are presently transporting all of the general commodities that are offered to them; that they are actively engaged in the solicitation of additional business and are presently ready, willing and able to transport additional tonnage. It was stipulated that the existing common carriers, who are members of the Common Carrier Conference, presently transport all of the general commodities, excluding those commodities which require refrigeration, offered to them between the San Francisco area and the Los Angeles area and intermediate points. It was also stipulated that Southern Pacific Company offers service on less-than-carload traffic, excluding commodities requiring refrigeration, within the proposed area as follows:

Between San Francisco territory and Gilroy, on the one hand, and the Los Angeles territory, on the other hand, it offers overnight service; between the Los Angeles territory, on the one hand, and Stockton and Sacramento, on the other hand, it offers second-day service, with an overnight service to points relatively close to the Los Angeles territory; from the San Francisco territory to Sacramento and Stockton it offers overnight service; from Stockton and Sacramento to the San Francisco territory it offers second-day service.

Following a study of applicant's waybills, which covered the periods set forth in Exhibit No. 2, the attorney for the Common Carrier Conference testified in detail to many of the shipments, which he stated were in his opinion over and beyond the scope of

applicant's existing authority. The purpose of his study he stated was to show the small amount of dry freight applicant carried during these admittedly typical periods.

On oral argument protestants stated that their protest was not directed to applicant's proposed service on commodities that require refrigeration all or part of the year nor to the transportation of advertising matter or empty containers. Their protest they stated was limited to applicant's proposal to haul dry freight in either less-than-truckload or truckload quantities.

The record does not establish a need for additional common carrier service for the transportation of dry or non-perishable commodities. The record does disclose a need in the area considered for the type of service applicant proposes on commodities requiring refrigeration all or part of the year. The problem of mixed shipments is admittedly one of inconvenience not only as to physical handling but also from an economic point of view. This problem appears to be felt more keenly by those engaged in the meat packing industries and is experienced on the transportation of such commodities as certain canned meats, sausage casings and packaging supplies. In the candy industry the shipment of advertising matter, which often accompanies shipments of candy, presents a problem. In the food manufacturing and processing industry, the shipments of paraffin wax, which do not require refrigeration, but which must move in clean, metal-lined equipment, such as applicant operates, presents another problem. The record also discloses difficulties in the handling of returning empty containers.

The record indicates that the majority of the commodities transported by applicant require refrigeration either all or part of the year. As to those few items, with the exception of those heretofore mentioned, which would not fall within such a classification,

there is little or no support either by public witness' testimony or applicant's past operations to justify authorizing applicant, a specialized carrier, to transport them in view of the service presently available through the existing common carriers of general commodities.

After full consideration of the evidence the Commission is of the opinion that public convenience and necessity require the service of applicant as a highway common carrier to the points heretofore described for the transportation of commodities which require refrigeration all or part of the year as well as empty containers returning, shipments of paraffin and the following commodities when offered along with commodities requiring refrigeration all or part of the year: Canned meats, sausage casings, packaging supplies, advertising material.

O R D E R

An application having been filed, a public hearing having been held thereon, the matter having been submitted, the Commission being fully advised in the premises and having found that public convenience and necessity so require,

IT IS ORDERED as follows:

(1) That as an extension and enlargement of applicant's existing rights a certificate of public convenience and necessity is hereby granted to Moser Frozen Food Freight Line authorizing the establishment and operation of an automotive truck service, as a highway common carrier, as said term is defined in Section 2-3/4 of the Public Utilities Act for the transportation of commodities which require refrigeration all or part of the year as well as empty containers returning, shipments of paraffin and the following

commodities when offered along with commodities requiring refrigeration all or part of the year: Canned meats, sausage casings, packaging supplies, advertising material, between the following points:

- (a) Between all points on the routes presently served by applicant, including all intermediate points on said routes; and between all intermediate and off-route points between Manteca and Delano, and points and places within twenty-five miles laterally of U. S. Highway 99 between Manteca and Delano.
- (b) From Los Angeles Basin Territory, on the one hand, to points between Bakersfield and Sacramento, both inclusive, on U. S. Highway 99, and to the San Francisco territory, on the other hand, via presently authorized routes.
- (c) Between Sacramento, Woodland, Yuba City, Marysville, Grass Valley, Nevada City, Auburn and Sacramento, and intermediate points, via U. S. Highway 40, State Highway 24, State Highway 20, State Highway 49, and U. S. Highways 99E and 99W.
- (d) Between Pittsburg and Sacramento and intermediate points, via State Highway 24.

The pick-up and delivery areas in the San Francisco and Los Angeles Territories and the Los Angeles Basin Territory are those as described in Item 270 Series of Highway Carriers' Tariff No. 2.

(2) That applicant's service shall be provided subject to the following restrictions:

- (a) The line-haul portion of the service shall be rendered by means of refrigerated or insulated equipment.
- (b) No service shall be performed locally between Chowchilla and points in the Los Angeles Territory and Los Angeles Basin Territory and intermediate points on, and off route points within twenty-five miles laterally of U. S. Highway 99.
- (c) No service shall be performed on fresh dairy products between Los Banos and Patterson and intermediate points on State Highway 33, on the one hand, and San Francisco and the East Bay points, from Richmond, on the north, to Hayward, on the south, inclusive, on the other hand.

(d) No local service shall be performed between the intermediate points within the Sacramento area, as for example between Marysville and Grass Valley.

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

(a) Applicant 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, 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 schedules.

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

Dated at San Francisco, California, this 1st day of May, 1951.

R. J. Imperia
Arthur J. Caswell
Harold P. Auld

Lawrence P. Patten
John L. Mitchell
Commissioners

APPENDIX "A"

Adhesive paste	Cheese and Macaroni, in combine packages (unprepared)
Advertising matter	Clams, canned
Ammonia	Coconut, canned or dehydrated
Animal food, dry	Coffee, fresh or canned
Animal food, fresh or canned	Coffee, powdered
Appetizers, canned	Coffee, substitutes ⁽¹⁾
Baking Powder	Condensed Skim Milk
Beer, in kegs	Containers, empty ⁽¹⁾
Berries, fresh or canned	Cream, fresh
Blood, human	Cream, frozen
Bones, Meat, fresh or frozen	Cream, sterilized
Bouillion cubes	Dairy Products
Bread making compounds	Dessert preparations
Butter, canned ⁽¹⁾	Display Cases and Refrigerator cabinets
Buttermilk	Dough, prepared, with or without meat, fish, fruit or vegetable ingredients
Buttermilk, powdered	Easterline
Candles	Egg whites or yolks, powdered
Candy	Extracts
Carriers, empty, returning	Fertilizer, commercial
Casings, Sausage, frozen or salted	Fish, canned ⁽¹⁾
Cereals	Flavoring, liquid or powdered
Cheese, canned ⁽¹⁾	Flowers, cut
Cheese, curd	
Cheese, with fruit and vegetable ingredients	

(1) In Cans, Bottles, Paper Containers, Barrels, Milk Shipping Cans, Tank Trailers, etc.

APPENDIX "A"

Foods, cooked, cured or preserved	Paper Liners
Foods, fresh or cooked	Paraffin
Frog legs, fresh or frozen	Pickles, preserved or in brine
Fruit, canned	Plants, Shrubs or Trees
Fruit, fresh	Pork skins, fresh or frozen
Gelatine	Poultry, fresh or frozen
Glue, liquid	Rabbits, fresh or frozen
Ice Cream Mix, liquid (1)	Relish
Ice Cream Preparation, dry (1)	Reproduction Paper
Ice Water Mix	Salad Dressing
Juice, Clam, canned	Salad Oil
Juice, Vegetable or Fruit, fresh	Salads, prepared, fresh
Labels	Salads, prepared, canned
Lard	Sandwich spread
Lobsters, canned	Sausage, cooked, cured or preserved
Machinery	Sausage, fresh, frozen or canned
Malt, Syrup or Powdered	Shrimps, canned
Meat, Fish, Fruit, or Vegetable Ingredients	Shrimps, fresh
Meats, canned	Soap
Meats, pickled or preserved	Spices
Milk, evaporated or canned (1)	Stationery or Printed Matter
Milk, fresh	Sugar
Milk, powdered	Table Sauce
Nuts, edible	Tea, dry
Office Equipment or Supplies	Vegetables, canned
Oils, Oleo	Vegetables, fresh
Oils, vegetable	Wax
Oysters, canned	Wrapping Paper
Paper and Foil Wrappers	Yeast, dry
Paper Cups or Containers	Yoghurt