

Decision No. 45752

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
J. A. NEVIS doing business as JOE)
A. NEVIS TRUCKING, for a certificate)
of public convenience and necessity) Application No. 31331
to operate as a highway common)
carrier between various points in)
California.)

Willard S. Johnson, for applicant.
Frederick E. Fuhrman, for Southern Pacific Company and
Pacific Motor Trucking Company, protestants.
Robert W. Walker, by Frederic A. Jacobus, for The
Atchison, Topeka & Santa Fe Railway Company
and Santa Fe Transportation Company, protestants.
Donald Murchison, for Pacific Freight Lines and Pacific
Freight Lines Express, protestants.
Frederick W. Mielke, for Common Carrier Conference of
Truck Owners Association of California, and The
Members of the Conference, protestants.
Warren V. Glass, H. P. Merry and H. J. Bischoff, for
Southern California Freight Lines, protestant.

O P I N I O N

By his application, as amended, J. A. Nevis doing business as Joe A. Nevis Trucking, requests authority to extend his present certificated operations to permit the transportation of various commodities, subject to specific restrictions, between points throughout the state from points as far north as the Oregon-California State Line and the Mexican-California border on the south. ✓
Protests to the granting of the authority sought were made by Southern Pacific Company, Pacific Motor Trucking Company, The Atchison, Topeka & Santa Fe Railway Company, Santa Fe Transportation Company, Pacific Freight Lines, Pacific Freight Lines Express, Common Carrier Conference of Truck Owners Association of California and Southern California Freight Lines.

Public hearings were held before Examiner Daly at San Francisco on October 19 and 20, 1950, and December 19, 1950. The matter was submitted on oral argument, which was heard at San Francisco on April 10, 1951.

By Decision No. 43267, dated August 29, 1949, in Application No. 29916, applicant was authorized to transport iron and steel articles, tin plate, composition roofing, chemicals, and crude rubber from Pittsburg, on the one hand, and, on the other, points located in the San Francisco territory, ⁽¹⁾ the Los Angeles territory, Stockton, Sacramento, North Sacramento, Petaluma, Santa Rosa, Sebastopol, and from the Los Angeles territory to the San Francisco territory. By Decision No. 43484, dated November 1, 1949, and at applicant's written request his operations were limited to the transportation of iron and steel articles and tin plate in shipments of not less than 5,000 pounds and composition roofing and siding in shipments of not less than 30,000 pounds between Pittsburg and points located in the San Francisco territory; iron and steel and steel articles in shipments of not less than 30,000 pounds from Pittsburg to Los Angeles territory; iron and steel and related articles in shipments not less than 30,000 pounds from Los Angeles territory to San Francisco territory; iron, steel and related articles in shipments not less than 30,000 pounds from Pittsburg to Stockton, Sacramento and North Sacramento; iron, steel and related articles, tin plate and composition roofing and siding in shipments of not less than 30,000 pounds from Pittsburg to Petaluma, Santa Rosa and Sebastopol.

(1) When referring to the San Francisco territory, the Los Angeles territory and the Los Angeles Basin territory, reference is made to those territories as described in Item 270, series of Highway Carriers' Tariff No. 2.

By the above-entitled application, as amended, applicant requests permission to establish the following "on call" service as a highway common carrier in lieu of that which he is now authorized to render:

1. Iron; steel; iron and steel articles and tin plate;
2. Roofing; building and paving materials, as described in Item 810 of John M. Desch, Agent, Exception Sheet No. 2, Cal. P.U.C. No. 2; also waste paper, waste paperboard, waste pulpboard, waste fibre-board and waste rags;
3. Lumber and forest products;
4. Brick; fire clay, clay and clay products, including tile, mortar; sand;
5. Petroleum and petroleum products in packages;
6. Empty carriers and pallets, returning, ---
(2)
in shipments of 30,000 pounds or more, or where transportation charges are based upon a minimum of 30,000 pounds, from, to, and between all points on or within 25 miles of all major U. S. and State Highways within the State of California.

In addition to his presently certificated operations, applicant renders service as a highway contract carrier and as a radial highway common carrier. Terminals are maintained at Pittsburg and Los Angeles. Applicant owns and operates approximately one hundred pieces of equipment. This equipment is designed to transport heavy items such as steel and iron, roofing and bulky commodities.

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- (2) Applicant does not propose a 30,000 pound restriction on the following:
1. On iron; steel, iron and steel articles and tin plate the minimum shall be
 - (a) Between Pittsburg and San Francisco territory - 2,000 pounds.
 - (b) Between Pittsburg, on the one hand, and Stockton, Sacramento and points between Stockton and Sacramento, on the other hand - 4,000;
 - (c) Between San Francisco territory, Pittsburg and Sacramento, on the one hand, and Los Angeles Basin territory, and intermediate points, on the other hand - 4,000 pounds.
 2. On empty carriers and pallets, returning, no minimum weight restriction is proposed.

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According to applicant he has conducted his operations since 1944. One of his chief shippers is Columbia Steel, located at Pittsburg, which he serves under a contract. Recently Columbia Steel Company, along with other steel companies commenced to ship collect to conform with a recent Supreme Court decision. Columbia Steel Company also maintains a plant at Torrance, which is the origin of many shipments of steel destined to points within the Imperial Valley, San Diego and points north to Yreka. ✓

Applicant stated further that he is presently serving approximately two hundred and fifty freight paying accounts. He has shipments of steel and iron, brick, sand, mortar, lumber, packaged petroleum and empty containers throughout the state. However, seventy-five per cent of his gross revenue for the first eight months of 1950 was derived from commodities and between points which he is presently certificated to serve. Twenty-five per cent of applicant's gross revenue is derived from commodities and between points not covered by his certificate. Five per cent of the twenty-five per cent is derived from commodities moving under contracts and not covered by the present application.

In justification for the proposed twenty-five mile lateral rights applicant testified that many shipments of steel and construction equipment are destined to points off highways such as bridge and dam sites, pipe moving to pipe lines and poles to pole line constructions.

According to applicant seventy per cent of his gross revenue for the first eight months of 1950 was derived from the transportation of iron and steel. Twenty per cent of total revenue is derived from the transportation of roofing materials. There

is very little movement of brick, while the principal points of origin for petroleum are Richmond, Martinez, Taft and Los Angeles and move to such points as San Francisco, Oakland, Corning, Willows and Chico.

Seven public witnesses testifying on behalf of the proposed service were representatives of industries who were engaged in the manufacture or use of steel, iron, bricks, mortar, sand and roofing materials. Although they testified that they used applicant's service and had shipments destined to many points throughout the state, the largest portion of their shipments moved with greatest frequency between points, which applicant is presently authorized to serve. With but few exceptions these shipments moved in truckload lots.

Applicant introduced in evidence two exhibits. Exhibit No. 18 covered applicant's operations during selected months from October, 1944, through April, 1950. Exhibit No. 19 consisted of a statement listing shipments of commodities transported by applicant during the period from June, 1950, through September, 1950, from and to points shown. Movements covered by applicant's certificate of public convenience and necessity were eliminated.

The protestants limited their showing to the testimony and exhibits relating to their present operations. Briefly summarized, protestants contend that they have the necessary financial means, equipment and facilities to provide an adequate overnight service to all points within the areas covered by their operative rights. They stated that they are ready, willing and able to transport all shipments offered to them between points and over routes which they are certificated to serve and operate. Their chief protest

was apparently directed toward any authorization permitting applicant to haul shipments of steel and related articles weighing less than the present minimum weight restriction of 5,000 pounds in addition to the granting of a state-wide certificate.

Applicant's proposed operations are essentially different from that provided by protestants. The type of commodities hauled as well as the equipment utilized distinguish it from the average highway common carrier of general commodities. Protestants failed to show that they now offer and provide the on-call special type of truckload service proposed and presently being provided by applicant.

The record does not demonstrate a need for applicant's services on a state-wide basis. Although he has transported shipments to almost every point within the state, at one time or another, the major portion of his non-certificated operations are between or adjacent to points which he is presently certificated to serve. As to the intermediate points between Pittsburg, the San Francisco territory, Santa Rosa and Sacramento, on the one hand, and the Los Angeles territory, on the other hand, applicant has transported a number of shipments under his permits. In conformity with Decision No. 42646, dated March 29, 1949, in Case No. 4823, the evidence indicates that applicant has made a sufficient showing based upon his past operations to justify the granting of a new certificate in the place and stead of that which he presently holds to cover those intermediate points.

With the exception of steel and related articles applicant does not propose to transport any shipment weighing less than 30,000 pounds or that which would require a transportation charge less than

that applicable to a shipment of 30,000 pounds. Applicant is presently authorized to transport shipments of steel weighing 5,000 pounds or more between Pittsburg and the San Francisco territory. He requests authority to lower this restriction to 2,000 pounds. He proposes a 4,000 pound restriction on shipments of steel and related articles between Pittsburg, on the one hand, and Stockton, Sacramento and points within Stockton and Sacramento, on the other hand. A further 4,000 pound restriction on such items is proposed between the San Francisco territory, Pittsburg and Sacramento, on the one hand, and the Los Angeles Basin territory and intermediate points, on the other hand. These points include many that applicant is now authorized to serve, subject to a 30,000 pound weight restriction. Applicant excluded from his exhibits all certificated operations from 1949 on. As a result there is very little support to warrant the modification of existing weight restrictions based upon past operations. The testimony of public witnesses also fails to justify the altering of existing weight restrictions, for as previously stated the major portion of their shipments moved in truckload quantities. The proposal to transport empty carriers and pallets returning, without any weight restriction, is justified. This movement is a necessary and integral part of such an operation and to impose a weight restriction would serve no apparent purpose.

After careful consideration of the record, the Commission finds that public convenience and necessity require the establishment and operation of service by applicant as a highway common carrier for the transportation of those commodities and between those points described in the ensuing order.

Applicant describes the commodities which he proposes to transport, in generic terms. The use of such terms is specifically prohibited by the Commission's tariff circulars. Applicant will be required, therefore, to submit to the Commission proper listings of the commodities herein involved.

O R D E R

Public hearing having been held and the Commission having found that public convenience and necessity so require,

IT IS ORDERED:

(1) That in lieu of that which he presently holds, a certificate of public convenience and necessity is hereby granted to J. A. Nevis authorizing the establishment and operation of a service as a highway common carrier, as defined in Section 2-3/4 of the Public Utilities Act, for the transportation of:

Iron, steel; iron and steel articles and tin plate;

Roofing, building and paving materials;

Waste paper, waste paper board, waste pulp-board, waste fibre-board and waste rags;

Lumber and forest products;

Brick; fire clay; clay and clay products, including tile, mortar, and sand;

Petroleum and petroleum products in packages;

in shipments of 30,000 pounds or more, or where transportation charges are based upon a minimum weight of 30,000 pounds, and

Empty carriers and pallets, returning;
from, to and between all points on or within 25 miles of the following routes:

U. S. Highway 101 and U. S. Highway 101 By-Pass,
between Santa Rosa, on the north, and Santa Ana,
on the south;

U. S. Highway 99 from North Sacramento, on the north,
to Colton, on the south;

State Highway 1 from San Francisco to Monterey;

State Highway 4 from Pinole to Stockton;

U. S. Highway 40 from San Francisco to Sacramento;

U. S. Highway 50 from San Francisco to Manteca;

State Highway 152 from Gilroy to Califa;

State Highway 198 from San Lucas to Visalia;

U. S. Highway 466 from Paso Robles to Famosa.

(2) That the certificate herein granted is subject to
the following condition:

- (a) Applicant shall transport no shipment of steel; iron
and steel articles and tin plate weighing less than
5,000 pounds between Pittsburg and the San Francisco
territory.

(3) That the operative rights granted in Decision No.
43267, dated August 1, 1949, in Application No. 29916, and as
amended by Decision No. 43484, dated November 1, 1949, are hereby
revoked and annulled.

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

- a. Within thirty (30) days after the effective date
of this order, applicant shall file a written
acceptance of the certificate herein granted and
specific listings of commodities to be transported.

- b. Within sixty (60) days after the effective date hereof, applicant shall 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 on not less than five (5) days' notice to the Commission and the public.

(5) That in all other respects the application, as amended, in this proceeding is hereby denied.

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

Dated at San Francisco, California, this 22nd day of May, 1951.

R. J. Anderson
Justus F. Cravens
Harold H. Hils
Robert L. Mitchell
COMMISSIONERS