

ORIGINAL

Decision No. 45829

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
KINGS COUNTY TRUCK LINES, a corporation, )  
for a certificate of public convenience ) Application No. 31437  
and necessity to operate as a highway )  
common carrier, for the transportation )  
of property. )

Marvin Handler and Orville A. Schulenberg, by Marvin Handler, for applicant.

John H. Gordon, for Southern Pacific Company and Pacific Motor Trucking Company; Douglas Brookman, for California Motor Express, Ltd., and California Motor Transport Co., Ltd.; Donald Murchison, for Pacific Freight Lines and Pacific Freight Lines Express; R. A. Reader, for Desert Express; St. Clair, Connolly & Cerini, by Orla St. Clair, for Common Carrier Conference of the Truck Owners' Association of California; protestants.

J. B. Robinson, for Southern California Freight Lines and Southern California Freight Forwarders; Robert W. Walker, Frederick Jacobus and J. B. Kramer, by J. B. Kramer, for The Atchison, Topeka & Santa Fe Railway Company and Santa Fe Transportation Company, interested parties.

#### O P I N I O N

Applicant, Kings County Truck Lines, by its application, as amended, requests authority to transport: (a) General commodities, except petroleum products in bulk in tank vehicles, uncrated household goods, explosives and livestock, as a highway common carrier pursuant to the provisions of Section 50-3/4 of the Public Utilities Act, from Los Angeles Territory to points between Chowchilla and Bakersfield, both inclusive, via U. S. Highway 99, including off-route points within twenty-five (25) miles laterally of U. S. High-

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(1) By Los Angeles Territory is meant that area described as Los Angeles Territory in Item 270, Series of Highway Carriers' Tariff No. 2.

way 99 between Chowchilla and Bakersfield, all of said route and off-route territory being hereinafter called Chowchilla-Bakersfield area; and (b) Commodities requiring refrigeration all or part of the year, dairy products (including canned and powdered milk), and fresh fruits and vegetables, (1) from the Chowchilla-Bakersfield area to the Los Angeles Basin Territory with empty containers returning; and (2) between points and places in the Chowchilla-Bakersfield area.

Appearances in protest to the granting of the authority sought were made by the following: Southern Pacific Company, Pacific Motor Trucking Company, California Motor Express, Ltd., California Motor Transport Co., Ltd., Pacific Freight Lines, Pacific Freight Lines Express, Common Carrier Conference of the Truck Owners' Association of California, and Desert Express. Appearances as interested parties were made by Southern California Freight Lines and Southern California Freight Forwarders, The Atchison, Topeka & Santa Fe Railway Company and Santa Fe Transportation Company.

Public hearings were held before Examiner Daly at Los Angeles, Tulare, Fresno and San Francisco and the matter was submitted on April 19, 1951, following oral argument.

Applicant is at present operating under permits as a highway contract carrier and as a radial highway common carrier. M. S. Mancebo, applicant's predecessor and now its president and controlling stockholder, commenced operations as a highway

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(2) By Los Angeles Basin Territory is meant that area described as Los Angeles Basin Territory in Item 270, Series of Highway Carriers' Tariff No. 2.

carrier in the area covered by this application in 1940. Operating one truck, he transported dairy products southbound and general commodities northbound between Los Angeles Territory, on the one hand, and Chowchilla and intermediate points, on the other hand. According to applicant, its operations have increased to such an extent that it is in doubt as to their legality. As a result, and upon advice of counsel, applicant alleges that it filed the above entitled application pursuant to the Commission's announced policy in Decision No. 42646, in Case No. 4823.

Applicant owns and operates approximately thirty line and local tractors; thirty-seven insulated trailers; twenty-five insulated milk tankers; and four service and pickup cars. Terminals are maintained at Los Angeles, Bakersfield, Tulare and Fresno. The Los Angeles terminal, which is leased, can accommodate six trucks and six pickup trucks. Three pickup trucks and five local tractors are maintained at the Los Angeles terminal. The Bakersfield terminal, which is also leased, consists of dock space only. One pickup truck is permanently stationed at the Bakersfield terminal. The Tulare terminal, which is owned by applicant, consists of dock space and a repair shop and can accommodate about four trucks at one time. The Fresno terminal is also owned by applicant. One pickup truck and five local tractors are maintained at the Fresno terminal.

Applicant's president testified that the character of the proposed operation is substantially the same as that conducted in 1940, the only distinction being the ever increasing volume of business from year to year. He stated that the total revenue increased from \$152,159.04 in 1942, to \$652,451.16 for the first

nine months of 1950. As of August 31, 1950, applicant's financial status reflected total assets in the amount of \$494,291.63, and a net worth of approximately \$200,035.72. A net profit before bonuses and Federal income tax for the first eight months of 1950, amounted to \$57,081.58.

According to this witness, applicant operates ten schedules a day for milk in tank trucks moving from the Bakersfield-Chowchilla area to the Los Angeles Territory, as well as to and between points within the Bakersfield-Chowchilla area. Milk and dairy products originate at such points as Hanford, Chowchilla, Fresno, Tulare, Riverdale and Lemoore. In addition to this movement, the witness stated, applicant transports on an average of eight schedules a day for perishable commodities southbound. These include such items as fresh and frozen fruits and vegetables, which originate at such points as Fresno and Sanger. Processing plants are located at each of these points. The traffic also includes such items as cottage cheese, fresh and frozen meats, poultry, ice cream, ice cream mix, cheese, eggs and prepared dough. Such commodities originate at points throughout the Bakersfield-Chowchilla area. The witness testified that applicant provides 24-hours a day, seven days a week, service on shipments moving southbound. At present applicant provides a same day service on southbound movements of milk in tank trucks. On all other commodities moving southbound the service is never longer than overnight. According to the witness applicant proposes the same service if certificated.

On northbound movements, the witness asserted, applicant is presently operating eight schedules a day. Of these, one schedule goes to Bakersfield, three to Tulare and four to Fresno. The

tank trucks return empty except for an occasional tank of skimmed milk. It proposes a 24-hours a day, seven days a week, pickup and delivery service upon request on shipments moving northbound. He further testified that applicant now provides a same day service on perishable commodities moving northbound. Nonperishable commodities are provided an overnight service with early morning deliveries; however, same day service is provided on such commodities upon request. According to the witness the existing service on northbound shipments is that which is proposed if certificated.

To facilitate early morning deliveries on northbound shipments, applicant begins deliveries at 2:00 a.m. each morning. This service is presently afforded to such businesses as meat packing companies, which remain open all night. To those businesses which do not open until later in the morning, but which request an early delivery, applicant now provides a key stop service. This is accomplished by providing applicant with a key to the place of business. To further facilitate early morning deliveries, the witness stated that applicant utilizes the double box or train system of operation. Shipments designated to an area adjacent to one of applicant's terminals are loaded in one box and shipments destined to an area served by one of applicant's other terminals are loaded in another box. The boxes are attached in a train and detached at the appropriate terminal. The box is then attached to a local tractor and deliveries are made directly from the box. According to the witness this operation eliminates handling of shipments over the terminal dock and results in an expeditious delivery service.

Exhibits Nos. 3, 4, 5, 6, 7 and 10 reflect applicant's

past operations. These exhibits covered a five week period. A selected week was taken from each of the first five months of 1950. They provide the following information during the specified period: Applicant transported 9,916,211 pounds of fresh milk and milk products within the proposed area. It also transported 2,136,349 pounds of refrigerated commodities. It transported empty cans returning totaling 869,830 pounds from the Los Angeles Basin Territory to points such as Hanford, Lemoore, Tulare and Fresno. It also transported 2,680,270 pounds of general commodities northbound from Los Angeles Territory. Exhibits Nos. 3, 5, 6 and 7 indicate a grand total of 14,990,660 pounds.

During the month of November, 1950, applicant served 51 freight paying customers northbound. The total weight of general commodities northbound amounted to 2,060,011 pounds and resulted in a total revenue of \$9,167.12. During the same month it transported a total of 1,011,866 pounds of refrigerated commodities northbound which resulted in a total revenue of \$6,179.82.

In support of the proposed service, applicant introduced the testimony of 49 public witnesses. It was stipulated that the testimony of two individuals, if called as witnesses, would be substantially the same as that of previous witnesses engaged in similar businesses. Four public witnesses testified to southbound shipments only. Thirty public witnesses testified to northbound shipments while 15 public witnesses testified that they had shipments in both directions. These public witnesses operated businesses at the following points: 11 were at Tulare, 2 at Vernon, 7 at Los Angeles, 1 at Visalia, 3 at Porterville, 4 at Hanford, 1 at Bakersfield, 1 at Armona, 1 at Lemoore, and 18 at

Fresno. These witnesses testified to a substantial movement of dairy products and perishable commodities moving from the Chowchilla-Bakersfield area to the Los Angeles Territory. They also testified to a substantial movement of general commodities northbound from the Los Angeles Territory.

The commodities moving northbound were as follows:

oleomargarine, lard substitutes, vegetable oil, shoes, hosiery, rubber goods, dry groceries, greases, oil, soap, animal by-products, carbon dioxide in cylinders, office supplies, machinery, equipment supplies, camelback, tires, batteries, hardware, drugs, tobacco, liquor, roofing material, pumps, disinfectants, electric appliances, floor covering, plywood, doors, dry goods, feed and grain, as well as commodities which require refrigeration all or part of the year. These commodities moved from the Los Angeles Territory to such points as Bakersfield, Tulare, Fresno, Hanford, Reedley, Porterville, Visalia, Delano, Shafter, Oildale, Kingsburg, Madera, Riverdale, Lemoore, Terra Bella, Dinuba, Armona and Chowchilla. The public witness testimony was to the effect that applicant's service is overnight and faster than that provided by the existing common carriers. The time in transit attributable to the existing carriers varied from overnight service with afternoon delivery to as long as five days. Several public witnesses stated that they used applicant exclusively on emergency shipments as a result of his expeditious service. Many witnesses testified that applicant's service on weekends was essential to meet their business needs and requirements. In almost every case each witness testified that he would use, continue to use, or use to a greater extent applicant's proposed service if the latter were authorized. ✓

Exhibit No. 9 consisted of a formal resolution passed by the Tulare Chamber of Commerce favoring applicant's proposed service. This exhibit was introduced through the secretary of the Chamber, who testified to the recent growth and development of Tulare County. Exhibit No. 23 consisted of information taken from the United States Department of Commerce, Bureau of the Census, and indicated that the Counties of Madera, Fresno, Kings, Tulare, Kern, Los Angeles, San Bernardino, Riverside and Orange experienced a growth in population from 3,662,358 in 1950, to 5,521,996 in 1950, which reflects an increase of 50.8 per cent.

Only Pacific Freight Lines and Pacific Freight Lines Express introduced oral and documentary evidence of its present certificated operations insofar as they affected the area sought to be served by applicant. The service offered within the area by three of the protestants was stipulated. Desert Express; The Atchison, Topeka & Santa Fe Railway Company; Santa Fe Transportation Company; Southern California Freight Lines and Southern California Freight Forwarders made no showing as to their respective operations.

The salesmanager for Pacific Freight Lines and Pacific Freight Lines Express testified that the carrier maintains terminals at Bakersfield, Tulare and Fresno; that it has adequate facilities and equipment to provide an overnight service on general commodities from Los Angeles Territory to that portion of the area between Bakersfield and Chowchilla covered by its operative rights. He stated that his company has never refused any shipment offered to it for transportation. It will render a Saturday service upon request and terminals are open six days a week. It does not have authority at the present time to serve points on the west side



along State Highway 33. However, it presently has an application before this Commission for such authority. It operates no tank trucks for milk products nor dairy products in refrigerated form. It offers a refrigerated service using dry ice. This service is provided by means of 13 insulated vans which are used chiefly in the transportation of produce from the San Joaquin Valley and Imperial Valley.

A stipulation was entered into between counsel for applicant and counsel for Pacific Freight Lines and Pacific Freight Lines Express wherein it was agreed that 28 shippers and/or receivers, if called, would testify substantially as follows:

That Pacific Freight Lines and Pacific Freight Lines Express transport general commodities except products in bulk in tank vehicles, uncrated household goods, explosives, livestock and commodities requiring refrigeration from the Los Angeles Territory to points between Chowchilla and Bakersfield area both inclusive, including the Visalia, Exeter, Lindsay, Porterville area; that the service presently being rendered is dependable, consistent and satisfactory to said shippers and/or receivers; that said service is adequate to meet their business needs and requirements; that all claims filed or presented to Pacific Freight Lines and Pacific Freight Lines Express are settled in an efficient and expeditious manner; and that insofar as these shippers and/or receivers were concerned there is no need for additional highway common carriers.

It was further stipulated that Southern Pacific Company in conjunction with its subsidiary carrier Pacific Motor Trucking Company offers service on less-than-truck load traffic excluding commodities requiring refrigeration and milk and dairy products in tank cars as follows:

From Los Angeles Territory to Bakersfield first day; from Los Angeles Territory to points on the north side of U. S. Highway 99 as far north as Hanford and on the east side as far north as Visalia and Exeter first day; between Bakersfield and Chowchilla and intermediate points first day; from all points between Chowchilla and Bakersfield inclusive to the Los Angeles Territory second day.

It was also stipulated that California Motor Express, Ltd. and California Motor Transport Co., Ltd. offer service on northbound movements of general commodities excluding refrigerated commodities in truck loads and less-than-truck load quantities as follows:

Five days a week Monday through Fridays the service from Los Angeles Territory to all points located on State Highway 41 to and including Fresno and to Bakersfield first day; to all other points within the proposed area from the Los Angeles Territory second day.

It was stipulated that Valley Motor Lines, Inc. and Valley Express Co. offer a service Monday through Friday on shipments of general commodities excluding commodities requiring refrigeration in truck load and less-than-truck load movements as follows:

From the Los Angeles Territory to all points on U. S. Highway 99 to and including Fresno first day; from the Los Angeles Territory to all other points within the proposed area off U. S. Highway 99 second day.

No evidence was introduced by California Motor Express, Ltd., California Motor Transport Co., Ltd., Valley Express Co. or Valley Motor Lines, Inc. with respect to the service southbound to Los Angeles.

The record indicates that the proposed area has experienced a tremendous growth and development in the past ten years. In keeping pace with the development of this area, applicant's operations have reached the point where they are of a questionable legal status. This is particularly true of its northbound operation. The Commission recognized the problems with which applicant is faced as early as March 26, 1946, when it instituted an investigation, on its own motion, of all carriers within the

state, in Case No. 4823. In Decision No. 42646, dated March 29, 1949, the Commission pointed out that the number of permitted carriers far outnumbered the certificated common carriers. It further pointed out that the overwhelming majority of freight hauled within the state was being transported by permitted carriers. This, the Commission found, was a situation which was working inequities and hardships not only on the shipping public, but also on the existing carriers. The existing common carriers were held to rigid regulation in the conduct and operation of their public service, while the permitted carriers were enjoying all the benefits of common carriers without assuming the duties and obligations as such.

As a result, the Commission invited those permitted carriers, whose operations were of a questionable legal status, to apply for certificates based upon their past performance. It was the opinion of the Commission that this would eventually stabilize the truck transportation situation within the state by providing the shipping public with sufficient highway common carriers over which the Commission would have more complete jurisdiction.

Applicant's past operations clearly fall within the scope of the Commission's announced policy in Case No. 4823. In addition to its past operations, applicant has, through its public witnesses, established a public need for the type of service it is presently rendering. The contention urged by protestants that certification of this applicant would result in the divergence of traffic is untenable. It is not a question of certificating a new operation, but rather is the certification of an existing service that has been highly competitive within the area in question for

ten years. Therefore, based upon applicant's past operations and the testimony of public witnesses, the Commission is of the opinion that public convenience and necessity require the granting of the authority sought.

Kings County Truck Lines 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

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

IT IS ORDERED:

(1) That a certificate of public convenience and necessity is hereby granted to King County Truck Lines, 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:

- a. General Commodities, except petroleum products in bulk in tank vehicles, uncrated household goods, explosives and livestock, from Los Angeles Territory to points between Chowchilla and Bakersfield both inclusive, via U. S. Highway 99, including off-route points within 25 miles laterally of U. S. Highway 99 between Chowchilla and Bakersfield, hereinafter called the Chowchilla-Bakersfield area.

b. Commodities requiring refrigeration all or part of the year, dairy products (including canned and powdered milk), and fresh fruits and vegetables,

1. From the Chowchilla-Bakersfield area, on the one hand, to the Los Angeles Basin Territory, on the other hand, with empty containers returning via U. S. Highway 99; and
11. Between Chowchilla and Bakersfield and intermediate points via U. S. Highway 99, with the right to make lateral departures of 25 miles therefrom.

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

- a. Within 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 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 tables on not less than 5 days' notice to the Commission and the public.

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

Dated at San Francisco, California, this 12th day of June, 1951.

R. D. [Signature]  
Harold Kula  
John E. [Signature]

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COMMISSIONERS