

ORIGINAL

Decision No. 46029

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of) STOCKTON MOTOR EXPRESS, a corporation,) for a certificate of public convenience) and necessity to operate as a highway) common carrier for the transportation) of property.)	Application No. 30286
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In the Matter of the Application of) ARTHUR R. ALTNOW, doing business as) LODI TRUCK SERVICE, for a certificate) of public convenience and necessity) to operate as a highway common carrier,) for the transportation of property.)	Application No. 30287
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- Marvin Handler for applicants.
Roy Jerome, William Meinhold and W. A. Gregory for Southern Pacific Company, Pacific Motor Trucking Company and Central California Traction Co., protestants.
Frederick W. Mielke for Delta Lines, Inc., Valley Motor Lines, Inc., and Valley Express Co., protestants.
Willard S. Johnson for J. Christenson Co., protestants.
E. L. Van Dellen for Western Pacific Railroad Co., protestant.
Reginald L. Vaughan, Varnum Paul and John G. Lyons for M & W Truck Line, protestant.
Scott Elder for G. & H. Motor Express, interested party.
F. W. Kerrigan for Moser's Frozen Food Freight Line, protestant.
Frank Loughran for Riske Trucking Co., interested party.
Joe A. Nevis Trucking Co. by Joe A. Nevis, protestant.
Glanz and Russell by Theodore W. Russell, for Moser's Frozen Food Freight Line, protestant.
William F. Brooks for The Atchison, Topeka and Santa Fe Railway Company and Santa Fe Transportation Co., protestants.
Charles L. Dickman for Dickman Overnight Car Service, protestant.
Douglas Brookman for Merchants Express Corporation, protestant.
T. A. Hopkins and Grant L. Malquist for Commission's staff.

O P I N I O N

Stockton Motor Express and Arthur R. Altnow (Lodi Truck Service), by the above-entitled applications, seek certificates of public convenience and necessity authorizing somewhat similar highway common carrier operations generally between the San Francisco Bay Area and Stockton and Sacramento. Altnow also requests the

right to serve Lodi. Because of the similarity of the applications they were consolidated for hearing and decision. Public hearings were held by Examiner Gannon at San Francisco, Sacramento and Stockton, and consumed some 14 days. Following the taking of evidence, the matters were submitted on concurrent opening and closing briefs which now have been received and considered. The record is unusually voluminous.

The proposal of each applicant and the testimony of their respective witnesses will be treated separately where feasible. Some of the evidence of record is equally applicable to both applicants.

Scope of Application of Stockton Motor Express

Stockton Motor Express requests a certificate of public convenience and necessity to perform highway common carrier service generally between San Francisco and East Bay points, on the one hand, and Stockton and Sacramento, on the other hand. More specifically this applicant seeks authority to transport general commodities, except uncrated household goods, livestock, articles of unusual value, petroleum products in bulk in tank truck equipment, and fresh fruits and vegetables (a) between South San Francisco, San Francisco, Oakland, Berkeley, Alameda, Emeryville, Richmond and San Leandro, on the one hand, and Tracy, Stockton, Lodi and Sacramento, on the other hand, via U. S. Highway 101 By-Pass, San Francisco Bay Bridge, and U. S. Highways 40, 50 and 99; (b) between Stockton and Sacramento, and intermediate points, via U. S. Highways 50 and 99; except that between the San Francisco Bay points above named, other than South San Francisco, on the one hand, and Sacramento, on the other hand, applicant does not propose to transport automotive parts, accessories and supplies when originating

at automotive parts houses, garages, or service stations.

The applicant proposes to charge minimum rates established by the Commission or rates which shall not be lower than those prescribed as minimum for shipments of 10,000 pounds.

Present Operation of Stockton Motor Express

For some period of time Stockton Motor Express has operated as a highway common carrier of automotive parts and certain related commodities, between San Francisco Bay points, on the one hand, and Tracy, Stockton, Livermore and Lodi, on the other hand. It also holds permits to operate as a highway contract carrier, radial highway common carrier and city carrier.

This applicant presently maintains a terminal in San Francisco. In the event its application is granted, terminals would be constructed at Sacramento and Stockton. Terminal space would be made available at the Lodi Truck Service terminal in Lodi. According to applicant, \$10,000 would be sufficient to provide the needed facilities. It presently maintains 17 pieces of equipment, with four pickup and delivery units being operated in the Bay Area. Applicant's financial statement for the year ending December 31, 1948, discloses assets in the amount of \$29,859.24; however, Mr. Keller, the sole shareholder of applicant, testified that he would provide as much as \$75,000 of his personal assets, if needed.

Scope of Application of Lodi Truck Service

Arthur R. Altnow, doing business as Lodi Truck Service, by his application as amended, requests authority to render an on-call service as a highway common carrier for the transportation of general commodities (c) between the San Francisco Territory, as described in

Item 270, Series of Highway Carriers' Tariff No. 2, and Lodi and intermediate points via U. S. Highways 50, 40 and 99, State Highways Nos. 12, 82, 104, 24 and two unnumbered state highways, with the right to serve points within a three-mile lateral of said routes. No local service is proposed between San Francisco territory and the westerly city limits of Pittsburg, and on westbound traffic no shipment would be picked up west of Rio Vista; (b) between Stockton, Sacramento, and intermediate points, via U. S. Highways Nos. 99 and 50, with the right to serve lateral points within five miles of said routes and between said points and the San Francisco Territory via U. S. Highways 99 and 50; the foregoing proposed services to be subject to a restriction that applicant will transport no shipments of less than 4,000 pounds, or subject to a charge no lower than that applicable to a shipment of 4,000 pounds; (c) between Lodi, Stockton, and intermediate points, via State Highways 88 and 12; and between Lodi and the junction of State Highways Nos. 12 and 88, via State Highway No. 12, through Victor; between these points no restriction as to weight is proposed, nor are any lateral rights sought.

Applicant also requests a certificate of public convenience and necessity to transport fuel oils, petroleum emulsions, and black oils, in tank trucks between Tracy and Lyoth, on the one hand, and all points which he proposes to serve in this application.

Present Operations of Lodi Truck Service

Applicant possesses a permit from this Commission authorizing operation as a radial highway common carrier and a highway common carrier certificate from the Interstate Commerce Commission. He owns and maintains approximately fifty-six pieces of equipment as well as a 3½-acre terminal located in Lodi. Applicant's financial statement

discloses a net worth in excess of \$83,000 as of June 30, 1949. He started in the trucking business fourteen years ago hauling only farm products. He anticipates a 25 per cent increase in his business next year and is amply equipped to carry on the proposed service.

Both applicants state that they were motivated in filing their present applications because of doubt as to the legal status of their permitted operations, which have continuously grown and developed in the past few years.

Witnesses who appeared in support of the applications testified similarly as to the service they receive from the applicants and the basis of their adherence to such service as is presently available. As a rule, the testimony went to the proposed service of both applicants. One cannot review the transcript and fail to be impressed by the character and apparent responsibility of those witnesses, drawn from all the points, and of their emphatic testimony as to the need for additional service.

More than fifty public witnesses testified for applicants, and included such establishments as Blake, Moffitt and Towne, Montgomery Ward, Italian Swiss Colony Wine, W. P. Fuller and Company, E. I. du Pont de Nemours & Co., and Stokely's Foods, Inc.

At Stockton the California Farm Bureau Federation entered an appearance through one of its employees in support of both applications. The Federation consists of 51 county organizations and includes some 58,000 Farm Bureau families throughout the state. The Bureau has approximately 2365 members in San Joaquin County and 2000 in Sacramento County. In 1945 the production in San Joaquin County was 1,592,450 tons; in Sacramento County approximately 500,000 tons. Among other activities, the Bureau is interested in

seeing that its members have sufficient available transportation facilities to take care of the normal movement of general commodities. They have caused to be made a study of such facilities for San Joaquin and Sacramento Counties as well as the other counties within which the Federation is active.

The testimony of public witnesses was of the usual type. The proposed service area has experienced a tremendous growth in population as well as a corresponding growth in agricultural and industrial development; business in the various fields represented by the witnesses is continually growing; time in transit is important with respect to their business needs and requirements; they desire additional service and would use the service proposed if authorized. The demand is general for an overnight service.

At the present time carriers serving between the Bay Area and Sacramento include highway common carriers of general commodities such as Delta Lines, Valley Lines, and M & W, the coordinated rail and truck service of Southern Pacific Company, Pacific Motor Trucking Company, Western Pacific, Sacramento Northern Railway, the refrigerated truck service of J. Christenson Company, and the express service of Railway Express Agency. Between the Bay Area and Stockton the present common carrier service is provided by the aforementioned carriers in addition to that rendered by The Atchison, Topeka & Santa Fe Railway Company and Santa Fe Transportation Co.

Performance records of protestants covering various periods of time within the recent past, and introduced in evidence in the form of exhibits, disclose that, with few exceptions, the existing service is overnight between points in the proposed area.

Protestants called witnesses from many of the points

proposed to be served. These witnesses testified in substance that the existing service was overnight and in every respect adequately met their business needs and requirements. They categorically described the existing service as "excellent", "very satisfactory" and "very good".

The applications were protested by Southern Pacific Company, Pacific Motor Trucking Company, Central California Traction Company, Delta Lines, Inc., Valley Motor Lines, Inc., Valley Express Co., J. Christenson Co., Western Pacific Railroad Company, M & W Truck Line, Moser's Frozen Food Freight Line, Joe A. Nevis, The Atchison, Topeka & Santa Fe Railway Company and Santa Fe Transportation Co., Dickman Overnight Car Service and Merchants Express Corporation. The burden was carried for protestants by Delta Lines, Valley Express and M & W Truck Line. The operation of M & W is adverted to elsewhere in this opinion. Valley Express Company's operation extends from San Francisco and East Bay territory to Sacramento, Lodi and Stockton as part of its system. Delta operates between San Francisco, East Bay points, Sacramento and Stockton but does not include Lodi. It performs a highway common carrier service between the Bay Area, on the one hand, and Stockton, Sacramento and certain intermediate points, on the other hand, serving points along Highway 40 and service between Sacramento and Vallejo including Fairfield, Suisun, Vacaville and Dixon. It also serves several East Bay points, including Oakland, Berkeley and Emeryville. This protestant contends that it renders overnight service throughout the territory. They operate with leased terminals at San Francisco, Stockton and Sacramento. A witness for Delta described in detail their method of handling traffic in the area with which we are here concerned. They do not receive calls for pick-up after 3:00 P. M.

There was very little testimony concerning the existing service rendered by M & W. This is a comparatively new operation as a highway common carrier, having been certificated May 4, 1949, just prior to the filing of the instant applications. It would be difficult to judge the service rendered by this protestant. Practically none of the shipper-witnesses had used it. It is significant, however, that the record shows this protestant has retained the shippers who formerly used its permitted service and has further increased its business since it was granted a certificate.

The Commission's Engineering Division, Transportation Department, has from time to time conducted transportation studies for the purpose of determining the volume of general freight moving between traffic centers in the State, and the percentage of freight transported by each class of carrier.

Exhibit No. 9, introduced in these proceedings, sets forth the results of a survey relating to the movement of general freight between the San Francisco-Oakland Metropolitan Area on the one hand, and the Sacramento Area and the Stockton Area on the other hand. A summary on Page 2 of the report shows that the tonnage moving between the San Francisco-Oakland Metropolitan Area and the Sacramento Area is divided as follows:

<u>Class of Carrier</u>	<u>Per Cent</u>
(a) Highway Common Carriers	26.3
(b) Permitted Carriers	49.5
(c) Proprietary Carriers	24.2

A summary on Page 3 of the report shows that the tonnage moving between the San Francisco-Oakland Metropolitan Area and the Stockton Area is divided as follows:

<u>Class of Carrier</u>	<u>Per Cent</u>
(a) Highway Common Carriers	15.1
(b) Permitted Carriers	56.2
(c) Proprietary Carriers	28.7

Counsel for applicants has pointed to the preponderance of traffic handled by permitted carriers as constituting ample evidence that there is room in the field for additional common carriers.

Counsel for protestants rely substantially on the tabulation on Page 33 of Exhibit 9, which sets forth a summarization by weight groups of a portion (slightly over one-tenth) of the shipments classed as general commodities which were handled by permitted carriers during the traffic check. This summarization indicates a relatively small volume of shipments in the weight groups of 10,000 pounds and less. Protestants argue that the volume of general commodities in shipments of 10,000 pounds and less handled by permitted carriers is insignificant and "wholly negligible" in comparison with the volume of such shipments handled by the existing certificated carriers. Protestants then point to the foregoing as conclusive evidence of the complete lack of any need for additional common carrier services, and as evidence that the only source of traffic for the applicants is the traffic now being handled by the protestants.

The foregoing arguments would be valid if the applicants were to be limited to carrying general commodities only; to shipments of 10,000 pounds or less; were not to be permitted to continue to handle their present traffic; and were not to be permitted to seek new traffic now handled by proprietary carriers or new traffic resulting from the economic growth of the areas in question.

It is the contention of protestants that the existing

service is adequate and that there is no need for any additional service. They fear that the certification of the proposed services would result in such a diversion of traffic from the existing certificated carriers as to cause serious economic losses to said existing carriers. This, they feel, would lead to a substandard service, which would have a detrimental public effect.

The record discloses that the existing carriers are conducting a service that is satisfactory and adequate for that portion of the traffic which they transport between points here involved. The question to be resolved then is whether protestants' contention with respect to diversion of their present traffic is meritorious.

The Commission's report shows that the bulk of freight moving between the proposed points is being transported by permitted carriers. This conforms with a previous finding made by the Commission in Decision No. 42646, dated March 29, 1949, Case No. 4823.

The record also disclosed that those public witnesses who are presently using the services of protestants found that service fully satisfactory and there is no reason to believe that these satisfied customers would be diverted to the proposed services. By the same token it is safe to conclude that applicants' customers would continue to use applicants' services if certificated.

It is undoubtedly true that there will be some diversion of traffic, but the logical place for this diversion to occur would be from the tremendous amount of over-all traffic presently handled by the permitted carriers. The granting of the application for the reasons herein stated is in accord with this Commission's policy as

set forth in Decision No. 42646.

Based upon the evidence of record, the Commission is of the opinion, and finds, that public convenience and necessity require that Stockton Motor Express and Arthur R. Altnow, the latter doing business as Lodi Truck Service, be authorized to establish and operate highway common carrier services as requested by their respective applications.

Applicants Stockton Motor Express and Arthur R. Altnow are hereby placed on 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

Applications having been made as above entitled, a public hearing having been had, the matters having been duly submitted, and the Commission now being fully advised,

IT IS ORDERED as follows:

(1) That a certificate of public convenience and necessity be and it hereby is granted to Stockton Motor Express, authorizing the establishment and operation of service as a highway common carrier, as defined by Section 2-3/4 of the Public Utilities Act, for the transportation of property as follows:

General commodities, except uncrated household goods, livestock, articles of unusual value, petroleum products in bulk in tank truck equipment, and fresh fruits and vegetables,

- (a) Between South San Francisco, San Francisco, Oakland, Berkeley, Alameda, Emeryville, Richmond, and San Leandro, on the one hand, and Tracy, Stockton, Lodi, and Sacramento, on the other hand, via U. S. Highway 101 By-Pass, San Francisco Bay Bridge, and U. S. Highways 40, 50 and 99.

Restrictions: Between the San Francisco Bay points above named, other than South San Francisco, on the one hand, and Sacramento, on the other hand, applicant shall not transport automotive parts, accessories and supplies when originating at automotive parts houses, garages, or service stations.

Applicant shall not publish any rates for shipments over 10,000 pounds. On a shipment in excess of 10,000 pounds, the rates applicable shall be those prescribed by this Commission as minimum for shipments of 10,000 pounds.

(2) That a certificate of public convenience and necessity be and it hereby is granted to Arthur R. Altnow, authorizing the establishment and operation of an on-call service as a highway common carrier as defined by Section 2-3/4 of the Public Utilities Act, for the transportation of property as follows:

General commodities (including fuel oils, petroleum emulsions, and black oils in tank trucks), except articles of unusual value, uncrated household goods, petroleum products in bulk except as above specified, livestock, explosives, fresh fruits and vegetables destined to processing plants or ice houses;

- (a) Between San Francisco territory, as described as such in Item 270 Series of Highway Carriers' Tariff No. 2, and Lodi, via U. S. Highway 40 to Junction State Highway 4 near Pinole, thence via State Highways 4, 24 and 12 to Lodi; as partial alternate routes;
- (a1) From Rio Vista to Lodi via State Highway 12 to Junction unnumbered highway, thence via unnumbered highway through Terminus U. S. Highway 50, thence via U. S. Highway 50 to Lodi (unnumbered highway between State

Highway 12 and Junction unnumbered highway near Terminus via unnumbered highway as connecting road between routes herein described);

- (a2) From Rio Vista to Lodi via State Highway 12 to State Highway 24, thence via State Highway 24 to Junction unnumbered highway near Locke, thence via unnumbered highway to Thornton, thence via State Highway 104 to Galt; thence via U. S. Highway 99 to Lodi; service is authorized to and from all intermediate points and points within three (3) miles laterally of the routes described, except that no local service shall be performed between San Francisco Territory and the westerly city limits of Pittsburg, and on westbound traffic no shipment shall be picked up west of Rio Vista;
- (b) Between Stockton and Sacramento and intermediate points and off-route points within five (5) miles laterally of the authorized routes via U. S. Highways 99 and 50;
- (c) Between all of the points named in (b) above, on the one hand, and San Francisco Territory, on the other hand, via U. S. Highways 99 and 50.

The service proposed in (a) (a1), (a2), (b) and (c) is subject to the restriction that applicant shall transport no shipment of less than 4,000 pounds or subject to a charge no lower than that applicable to a shipment of not less than 4,000 pounds;

- (d) Between Stockton and Burson and intermediate points, via State Highways 88 and 12;
- (e) Between Lodi and Junction State Highways 12 and 88 and intermediate points, via State Highway 12 through Victor.
- (f) Fuel oils, petroleum emulsions and black oils in tank trucks, between Tracy and Lyoth, on the one hand, and all points as above set forth in subparagraphs (a) to (e), inclusive, on the other hand.

(3) That in providing service pursuant to the certificates herein granted, applicants shall comply with and observe the following service regulations:

- (a) Applicants shall file a written acceptance of the certificates herein granted within a period of not to exceed 30 days after the

effective date hereof.

- (b) Within 60 days after the effective date hereof and on not less than 5 days' notice to the Commission and the public, applicants shall establish the service herein authorized and comply with the provisions of General Order No. 80 and Part IV of General Order No. 93-A, by filing in triplicate and concurrently making effective appropriate tariffs and timetables.

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

A.M. Dated at San Francisco, California, this 31st day
of July, 1958.

A. J. ...
Justin J. ...
Harold ...
... Stott
... Mitchell
COMMISSIONERS