

ORIGINAL

Decision No. 46030

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 M. A. GILARDY (G & H MOTOR EXPRESS))
 for a certificate to transport general)
 commodities between San Francisco and) Application No. 30313
 certain East Bay points on the one)
 hand, and Sacramento and certain)
 intermediate points on the other hand.)

- Scott Elder, for applicant.
- Douglas Brookman, for Merchants Express Corporation, protestant.
- Frederick W. Mielke, for Delta Lines, Inc., Valley Motor Lines, Inc., Valley Express Co. and Oregon-Nevada-California Fast Freight, protestants.
- W. L. Warner, for Sacramento Auto Truck Company, protestant.
- Reginald L. Vaughan, Varnum Paul and John G. Lyons, for M & W Truck Line and Kellogg Express and Draying Company, protestants.
- Roy Jerome for Southern Pacific Company, Pacific Motor Trucking Company, Central California Traction Company, protestants.
- F. W. Kerrigan, for Moser Frozen Food Freight Line, protestant.
- Willard S. Johnson, for J. Christenson Company, protestant.
- E. L. Van Dellen, for Western Pacific Railroad Company, protestant.
- Frank Loughran, for Johnson Truck Lines, protestant.

O P I N I O N

M. A. Gilardy, by the instant application, seeks a certificate of public convenience and necessity authorizing operations as a highway common carrier for the transportation of general commodities, excepting dynamite or other high explosives; any and all kinds of livestock or live animals; commodities in bulk; used uncrated household goods and used uncrated office furniture and fixtures; freight likely to impregnate, contaminate or otherwise damage other freight or carrier's equipment; any article, the dimensions of which exceed 7 feet by 7 feet by 18 feet; articles over 21 feet in length; freight which may require special government permits or special type of equipment; freight

tendered at or destined to locations where operation of carrier's equipment is impracticable; property of extraordinary value as defined in Rule 3 of the Current Western Classification, generally between the San Francisco Bay Area on the one hand, and Vallejo, Napa, Fairfield, Vacaville, Dixon, Davis and Sacramento, on the other hand.

Public hearings were held by Examiner Gannon at San Francisco and Sacramento and the matter submitted on briefs, since filed. The instant application was consolidated with Application No. 30286 of Stockton Motor Express and Application No. 30287 of Arthur L. Altnow doing business as Lodi Truck Service, insofar as the testimony of the protestants is concerned with such territories as are common to each application.

Applicant's present highway common carrier operation between San Francisco, Oakland, San Leandro, Berkeley, Alameda and Emeryville, on the one hand, and Vallejo, Napa, Fairfield, Vacaville, Dixon and Sacramento, on the other hand, is limited to the transportation of automotive parts, accessories and supplies for automotive parts houses, garages and service stations. Applicant also operates between such points as a highway contract carrier transporting general commodities. Terminals are owned and maintained by applicant at Oakland and Sacramento. If the authority sought herein is granted, applicant proposes to render daily service, excepting Sundays and holidays, upon the same schedules ⁽¹⁾ set forth in his Timetable No. 1 on file with the

(1) Applicant's general agent testified that one schedule leaves the Oakland terminal eastbound for Sacramento at approximately 7:00 p.m. A schedule leaves Sacramento westbound at 1:00 p.m. for Oakland and way points to Fairfield. Another schedule leaves Oakland for Napa and Vallejo at approximately 6:30 a.m., arriving at Napa at 8:00 a.m., via Vallejo and returning to Oakland terminal at noon.

Commission, over U. S. Highway No. 40 between San Francisco and Sacramento with diversion over California State Route No. 29 to Napa and also with diversions over all public thoroughfares to and from East Bay Cities permitted to be served; further applicant will cease his highway contract carrier activities as to the points here involved. Rates and charges, rules and regulations will be those established in Highway Carriers Tariff No. 2.

The trucking equipment listed as being owned and operated by applicant includes five trucks; 10 truck tractors; 12 semi-trailers and two dollies. The record indicates applicant possesses adequate financial resources to institute and maintain the proposed service.

Applicant's general agent testified that automotive parts houses, garages and service stations handle articles other than automotive parts and supplies; that shipments of general commodities are tendered applicant every day; that at times general commodities are presented in conjunction with shipments of auto parts, often on the same bill of lading; that applicant's drivers are instructed to refuse the general commodities; that shippers are then required to obtain another carrier with resultant delay; that some shippers would not separate a shipment so that the entire shipment, including auto parts, was withdrawn from applicant and given to another carrier.

Representatives of business establishments and manufacturing concerns making shipments between or receiving shipments at the points comprehended herein testified upon behalf of applicant. Their testimony in the main, was of similar import. They will utilize the proposed service if authorized; an overnight service with early-morning delivery is necessary to meet their needs; such a service is

now being provided them by applicant as to automotive parts; general commodity highway common carriers now serving the area often effect deliveries in the afternoon or later. Several witnesses stated Saturday morning deliveries were important in their businesses but were not made available by the existing general commodity highway common carriers. Some witnesses complained they could not obtain adequate pickup service from such carriers. Many witnesses dealing in automotive parts and also handling a wide range of unrelated items testified that a saving in time and expense would result if applicant were authorized to transport all their shipments without need for segregation as to automotive or nonautomotive items.

The application was protested by Merchants Express Corporation, Sacramento Auto Truck Company, M & W Truck Line, Kellogg Express and Draying Company, Southern Pacific Company, Pacific Motor Trucking Company, Central California Traction Company, Delta Lines, Inc., Valley Motor Lines, Inc., Valley Express Co., Oregon-Nevada-California Fast Freight, Moser Frozen Food Freight Line, J. Christenson Company, Western Pacific Railway Company and Johnson Truck Lines.

The review of protestant's evidence contained in Decision No. 46029, dated July 31, 1951, in Application Nos. 30286 and 30287 is incorporated herein as if more fully set forth at length. The disposition there made of protestant's contentions apply with like force and effect here.

In view of the fact that protestants leaned heavily upon

(2)
 Exhibit 9 for support of their position that permitted carrier shipments in weight groups under 10,000 pounds were wholly negligible it should be noted that the senior transportation engineer under whose supervision such exhibit was prepared testified that all permitted carrier traffic which was transported by certificated carriers who also engaged in permitted operations was classified therein entirely as certificated tonnage; that permitted carriers undoubtedly transport shipments in hundred and thousand pound weight groups;⁽³⁾ that Exhibit 9 is only an estimate; that if a check were made once a month to determine tonnage moving and the carriers transporting it, such information would be more accurate than that set forth in Exhibit 9.

(2) Page 33 of Exhibit 9 contains the following tabulation:

| Weight Group | Number of Shipments | Total Weight (Pounds) |
|---------------------|---------------------|-----------------------|
| Less than 100 lbs | 0 | 0 |
| 100 - 500 lbs | 0 | 0 |
| 500 - 1000 lbs | 1 | 975 |
| 1000 - 2000 lbs | 7 | 11,011 |
| 2000 - 4000 lbs | 6 | 15,995 |
| 4000 - 10,000 lbs | 4 | 29,515 |
| 10,000 - 20,000 lbs | 6 | 92,814 |
| 20,000 - 30,000 lbs | 9 | 230,700 |
| 30,000 lbs and over | <u>11</u> | <u>416,132</u> |
| | 44 | 797,147 |

(3) The evidence shows that the tabulation on Page 33 of Exhibit 9 was based upon an examination of the shipping records of but 24 permitted carriers of the 110 involved, for the day of the transportation check.

Further, applicant's Exhibit 30 discloses that in his permitted operations during the month of August 1949, between Sacramento and the Bay District, he transported 1,405 shipments of which 1,392 were less than 10,000 lbs. in weight, 70.3% of the shipments weighed less than 500 lbs., 83.9% less than 1,000 lbs., 90.3 less than 2000 lbs. and 97.1 less than 5000 lbs. This exhibit also shows that applicants permitted operation, eastbound, handled 8 shipments under 100 pounds, 27 between 100 and 500 pounds and 2 between 500 and 1000 pounds on August 2, 1949, the day on which, according to Exhibit 9, the Pinole-Eastbound traffic field check was made and that on August 3, 1949, the day of the westbound survey, he moved 10 shipments under 100 lbs., 5 between 100 and 800 pounds and 3 between 500 and 1000 lbs.

Based upon the evidence of record the Commission is of the opinion and finds that public convenience and necessity require that M. A. Gilardy be authorized to establish and operate a highway common carrier service as requested by his application.

Applicant M. A. Gilardy is 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

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

IT IS ORDERED as follows:

(1) That ordering paragraph 1 of Decision No. 41179, dated February 2, 1948, in Application No. 28884 is amended to read as follows:

(1) That a certificate of public convenience and necessity is hereby granted to M. A. Gilardy 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 dynamite or other high explosives, any and all kinds of livestock or live animals, commodities in bulk, used uncrated household goods and used uncrated office furniture and fixtures, freight likely to impregnate, contaminate or otherwise damage other freight or carrier's equipment, any article, the dimensions of which exceed 7 feet by 7 feet by 18 feet, articles over 21 feet in length, freight which may require special government permits or special government permits or special type of equipment, property of extraordinary value as defined in Rule 3 of the current Western Classification,

(a) Between San Francisco, Oakland, San Leandro, Berkeley, Alameda and Emeryville on the one hand, and Vallejo, Napa, Fairfield, Vacaville, Dixon, Davis and Sacramento on the other hand.

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

(c) Subject to the authority of this Commission to change or modify it by further order, applicant shall conduct operations pursuant to the certificate herein granted over and along U. S. Highway No. 40 between San Francisco and Sacramento with diversion over California State Route No. 29 to Napa and also with diversions over all public thoroughfares to provide service to and from East Bay Cities authorized to be served.

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

Dated at San Francisco, California, this 31st day of July, 1951.

[Signature]
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COMMISSIONERS