

ORIGINAL

Decision No. 46067

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)	
CALIFORNIA MOTOR TRANSPORT CO., LTD.,)	
for authority to operate via U. S.)	
Highway-99 for the transportation of)	Application No. 30683
express traffic of CALIFORNIA MOTOR)	
EXPRESS, LTD., between Los Angeles)	
and Fresno.)	

- Douglas Brookman, for applicant.
- William Meinhold, and E. L. H. Bissinger, for Southern Pacific Company and Pacific Motor Trucking Company, protestants.
- Robert W. Walker and John B. Kramer, by John B. Kramer and F. A. Jacobus, for The Atchison, Topeka & Santa Fe Railway Company and Santa Fe Transportation Company, protestants.
- Glanz & Russell, by Arthur Glanz, for Desert Express, protestant.
- Gordon, Knapp & Hennessy, by Hugh Gordon, for Pacific Freight Lines, Pacific Freight Lines Express, protestants.
- Raymond Tremaine, for Charles F. MacGregor, protestant.

O P I N I O N

In its original application California Motor Transport Co., Ltd., a highway common carrier, requested authority to transport express traffic of California Motor Express, Ltd., an express corporation, between Los Angeles and Fresno, via U. S. Highway No. 99 as an alternate route to its present circuitous route over U. S. Highway No. 101 and State Route No. 41 via Paso
(1)
Robles.

A public hearing thereon was held before Examiner Hunter at San Francisco on November 28, 1949, and before Examiner Paul at Los Angeles on January 20, 1950, and the matter was submitted.

(1) The two corporations are owned and managed by the same interests.

Thereafter the Commission issued its Decision No. 44905, dated October 10, 1950, setting aside submission and reopening the proceeding for further hearing. Eleven days were devoted to the further hearing before Examiner Paul at Los Angeles during November and December, 1950, and January and March, 1951, and the matter was resubmitted on March 19, 1951, subject to the filing of concurrent briefs which were received on April 19, 1951.

On December 29, 1950, during the course of the further hearing, applicant filed an amendment to its application to include a request for an order of the Commission declaring that public convenience and necessity require that it be authorized, not only to serve Fresno directly over U. S. Highway No. 99, but also to serve Bakersfield directly over the same highway instead of via Paso Robles or Fresno, and similarly to serve all other points in the San Joaquin Valley which applicant is authorized to serve. ✓

While applicant has not specifically eliminated its original request for authority to operate over the direct route (U.S. Highway No. 99) between the Los Angeles territory and Fresno as an "alternate route", we construe the application, in its amended form, as being a request for a highway common carrier certificate authorizing the transportation of the express traffic of California Motor Express, Ltd., over U. S. Highway No. 99 between the Los Angeles territory, on the one hand, and, on the other hand, Fresno and Bakersfield and other San Joaquin Valley points which applicant is authorized to serve.

(2) The Los Angeles territory, according to the amended application, is that territory as defined in Decision No. 43030, in Application No. 27910, which granted a certificate to applicant.

Granting of applicant's original proposal was protested 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, Desert Express, Valley Motor Lines and Valley Express. All of the foregoing carriers appeared as protestants at the further hearing with the exception of Valley Motor Lines, Inc. and Valley Express Co., which had waived their protests prior thereto. Charles F. MacGregor, a highway common carrier, appeared in protest to the application during the further hearing but produced no evidence.

Before discussing the evidence adduced, a brief general description of the operative rights of applicant and of California Motor Express between the points and in the territory involved in or directly affected by this proceeding will be given.

Applicant holds certificates authorizing it to transport the traffic of California Motor Express between San Francisco and Oakland and Los Angeles over the coast route (U. S. Highway 101) and over the valley route (U. S. Highway 99). Access to the valley route from San Francisco is accomplished by diversion from the coast route at Gilroy thence via State Route No. 152 (Pacheco Pass) joining the valley route at Califa. These operative rights were established in 1930, 1934 and 1935 and were limited to service between the termini only. Thereafter in November, 1944, applicant was authorized to purchase highway common carrier operative rights which extend along the coast route from San Francisco to but not including Santa Barbara, and contain certain restrictions and limitations. San Luis Obispo and Paso Robles are among the intermediate points which may be served. These latter operative rights

include authority to provide an on-call service between points on 52 described routes extending from the coast route area easterly into the San Joaquin Valley as far as U. S. Highway 99 and beyond that highway to Sanger, Visalia, Exeter and Porterville. The northerly and southerly termini on the latter highway are Fresno and Bakersfield, respectively. These rights authorize service to all points within ten miles laterally of those 52 routes and ten miles beyond the termini of each route. A minimum truck load of 5,000 pounds is required. (Decision No. 37472, dated November 9, 1944, Application No. 24371, 45 C.R.C. 502). In December, 1948, a certificate was issued to applicant authorizing it to transport express traffic of California Motor Express, Ltd., originating at or destined to Los Angeles or points south and east thereof, on the one hand, and, on the other hand, all points north of San Luis Obispo along State Route No. 1 and also along U. S. Highway No. 101 intermediate to San Francisco which applicant was authorized to serve by virtue of the rights which it had acquired in 1944 above referred to. Thus applicant gained operative rights to provide service for traffic of the express corporation between San Francisco and Los Angeles, on the one hand, and, on the other hand, points in the San Joaquin Valley through the Paso Robles gateway. In 1947, applicant received authority to transport express traffic of California Motor Express via Pacheco Pass and U. S. Highway 99 between San Francisco and Fresno and other San Joaquin Valley points it had acquired the right to serve by said Decision No. 37472. (Decision No. 40473, dated June 28, 1947, Application No. 27220, 47 Cal. P.U.C. 319). Later by Decision No. 43262, issued August 28, 1949, in Application No. 30295, applicant was granted a highway common carrier certificate authorizing service between Califa, Sacramento and intermediate points.

Under this certificate, applicant is able to provide an overnight service for express traffic of California Motor Express between Los Angeles and authorized points north of Fresno along U. S. Highway 99 to and including Stockton and Sacramento.

The express corporation operative rights of California Motor Express, Ltd., involved herein, are prescriptive rights. It acquired them from Coast Line Express, a corporation. (Decision No. 37475, November 9, 1944, Application No. 24366, Case No. 4601; 45 C.R.C. 519). These rights were established by E. L. McConnol, doing business as Coast Line Express, as evidenced by his tariff C.R.C. No. 1 filed with the Commission July 27, 1933, and bearing the effective date July 29, 1933. This tariff showed local express rates between Los Angeles and Paso Robles. It also contained basing express rates between Paso Robles, on the one hand, and Fresno and other San Joaquin Valley points, on the other hand, which were used to construct through rates between Los Angeles and those San Joaquin Valley points via Paso Robles. Rates between these points were continued in subsequent tariff filings by Coast Line Express and its successors. Effective June 1, 1945, and pursuant to the authority of Decision No. 37475, supra, California Motor Express, Ltd., upon acquisition of these express rights, adopted the express tariff of Coast Line Express, a corporation. (Supplement No. 1 to C.R.C. No. 3).

The evidence shows that Fresno is the central point for the assembly and distribution of traffic originating at or destined to points served by applicant and California Motor Express in the San Joaquin Valley north of Delano. Traffic of the Bakersfield area which includes points from Delano to Taft, McKittrick,

Buttonwillow and other points in that area, is handled through Bakersfield. All of this traffic originating at or destined to the Los Angeles territory presently moves over U. S. Highway No. 101 through the Paso Robles gateway. The traffic to be distributed through Fresno and the less-truckload traffic destined to the Bakersfield area moves from Paso Robles over State Highway No. 41 to Fresno. The less-truckload traffic consigned to the Bakersfield area is consolidated at Fresno with other less-truckload traffic from San Francisco Bay territory and other points north of Fresno destined to the Bakersfield area, and is transported via U. S. Highway No. 99 from Fresno to Bakersfield for distribution. Full truckloads moving from the Los Angeles territory to Bakersfield or the Bakersfield area move through the Paso Robles gateway thence along U. S. Highway No. 466 to Bakersfield.

Applicant's San Joaquin Valley manager testified that trucks of applicant serving those points leave the Los Angeles terminal of applicant from about 5 p.m. to 8 p.m. daily, except Saturdays, Sundays and holidays, and arrive the next morning at the Fresno terminal of applicant from about 5 a.m. to about 8 a.m., and at the Bakersfield terminal between the hours of about 5 a.m. and 7 a.m. Some of this traffic moving from Los Angeles to Fresno is hauled for applicant by another carrier under contract. This traffic arrives at Fresno between the hours of 3 a.m. and 8 a.m. The service is overnight and deliveries begin at about 8 a.m. and are approximately 90 per cent completed by noontime. Approximately 30 semi-trailer units and 22 tractors are maintained at Fresno for pickup and delivery service. Nine of these units are used for pickup and delivery service within the city. Nine pickup and delivery units are maintained at the Bakersfield terminal, six of which

are used for such service within the city and three for pickup and delivery service at outlying points extending from Delano to and including Maricopa, Taft, McKittrick, Wasco, Shafter, Oildale and other points in the Bakersfield area.

It was shown that the distance between Los Angeles and Fresno via the present coast route through Paso Robles is 348 miles, while the distance between those points over the direct route (U. S. Highway No. 99) is 218 miles. Thus, a saving of 130 route miles and four hours of transit time could be accomplished by operation over the direct route. On the basis of two round trips a day between Los Angeles and Fresno for an average of 22 operating days each month, use of the direct route would result in monthly savings of \$2,377.76 or more than \$28,000 annually. The evidence shows that notwithstanding the length of the coast route used, applicant is able to provide an overnight service with early morning deliveries at Fresno and at Bakersfield.

During the period of five months, June to October, 1949, inclusive, applicant transported from Los Angeles to San Joaquin Valley points, excluding points north of Fresno, a total of 25,888 shipments, having a total weight of more than 8,000,000 pounds. The daily average number of shipments during this period was 233, having a combined weight of 72,507 pounds. The daily average southbound movement for the same period, between the same points, was nine shipments, having a gross weight of 6,718 pounds. These tonnage movements were shown by Exhibit No. 2 to be as follows:

From Los Angeles To
San Joaquin Valley Points

Month	Operating Days	Shipments	Pounds	Avg. Shpts. Per Day	Avg. Weight Per Day
1949					
June	22	4,669	1,501,809	212	68,264
July	20	4,317	1,406,542	216	70,327
August	23	5,518	1,768,308	240	76,883
September	23	5,660	1,739,090	246	75,612
October	23	5,724	1,632,589	249	70,982
Totals	111	25,888	8,048,338	233	72,507

From San Joaquin Valley Points
to Los Angeles

1949					
June	22	163	75,192	7	3,418
July	20	142	128,669	7	6,433
August	23	224	172,228	10	7,488
September	23	218	160,490	9	6,978
October	23	230	209,069	10	9,089
Totals	111	977	745,648	9	6,718

On cross-examination the Fresno area manager of applicant and of California Motor Express testified, in substance, that solicitation of express traffic between Los Angeles and the Fresno-Bakersfield area now is and has been continuously conducted as long as he could recall. Another official of applicant and of California Motor Express, on cross-examination, testified that the express traffic moving from Los Angeles to San Joaquin Valley points has shown a constant and gradual increase for some time. Illustrative of this, he pointed out that such traffic amounted to approximately 909,000 pounds and 742,000 pounds in the months of November and December 1948, respectively, and 1,056,000 pounds during March 1949. The tonnages transported during the period June to October 1949, inclusive, as shown by Exhibit No. 2, supra, on the average exceed the March 1949 tonnage by approximately 40 per cent according to the latter witness.

At the further hearing applicant introduced a summary of intrastate shipments transported from the Los Angeles territory, served by applicant, to points in the San Joaquin Valley during the month of August, 1950 (Exhibit No. 5). This exhibit shows that on 23 operating days during that month applicant transported 6,592 shipments, having a gross weight of 2,040,484 pounds, or an average of 83 shipments per day and an average weight of 25,560 pounds. The testimony is that about 29 per cent and 71 per cent, respectively, of the shipments were consigned to the Bakersfield and Fresno areas. A summary of this traffic is as follows: (Exhibit No. 13)

	Bakersfield Area		Fresno Area		Totals	
	Shipments	Pounds	Shipments	Pounds	Shipments	Pounds
Totals	1,916	587,887	4,676	1,452,597	6,592	2,040,484
Daily Averages	83	25,560	203	63,156	286	88,716
	<u>Shipments</u>		<u>Per Cent</u>	<u>Weight</u>	<u>Per Cent</u>	
Bakersfield Area	1,916		29.06%	587,887	28.81%	
Fresno Area	<u>4,676</u>		<u>70.94%</u>	<u>1,452,597</u>	<u>71.29%</u>	
Totals	6,592		100 %	2,040,484	100 %	

According to the testimony of the witness for applicant, south-bound traffic from San Joaquin Valley points involved to the Los Angeles territory during the month of August 1950, amounted to 254 shipments having a total weight of 80,317 pounds.

Exhibits Nos. 7 and 8 indicate that of the 467 shipments and 250 shipments destined to Fresno and Bakersfield, respectively, during the week of August 21 to 25, 1950, inclusive, 98 per cent received overnight service. According to the testimony, failure to provide next-day delivery for most of the remainder of those shipments was through no fault of applicant. According to the

testimony of applicant's witness, the average number of shipments per day during the month of August 1950 was 112 per cent greater than in November 1948, and 20 per cent more than the average shipments per day during August 1949. The average pounds per day during August 1950 was 105 per cent greater than during November 1948, and 16 per cent more than during August 1949.

At Los Angeles applicant called 35 shipper witnesses who testified with respect to their transportation needs. Thirty of these witnesses represented firms established at Los Angeles. Of the remainder, one shipped from Whittier, two from Pasadena, one from Glendale and one from Inglewood.

The commodities shipped by the firms represented by these witnesses were the usual commodities of a general nature. (3)

Some of the witnesses used applicant's service from origin points to only one or two destination points. Others made shipments to a number of points served by applicant in the San Joaquin Valley, and still others made frequent shipments to practically all points served by applicant in the San Joaquin Valley area from Fresno and Coalinga on the north to Bakersfield and Westside oil field points on the south. The frequency of the shipments varied from one or two a week in some cases to daily shipments in others. The weights of the shipments varied from a nominal minimum to several thousand pounds, depending upon the character and type of the commodities shipped. A characteristic note of all this testimony was that the service provided by applicant is essential to the transportation needs of the witnesses and that they desire its continuance. Many of the witnesses stressed the satisfactory character of applicant's service,

(3) The commodities consisted of soap, cleaning compounds, candy, electrical supplies, clothing, shoes, plumbing supplies, paints, drugs, pharmaceuticals, cash registers, insecticides, general hardware, industrial lighting supplies, athletic goods, plastic articles, floor coverings, auto parts, drafting and engineering supplies and other commodities. A few of these commodities were of a perishable nature which require expeditious handling.

30683
A.5097 GH*

especially in the matter of pickup service. Some witnesses pointed out that while applicant gave a regular daily pickup service, they would be accorded an additional pickup when requested, which they asserted was valuable to them and could not be obtained so well from many of the other carriers used.

Most of the witnesses stated that the next-day delivery service at San Joaquin Valley points provided by applicant for them was essential to their transportation needs, while some were satisfied with delivery on the second day. Some of the witnesses would use no other carrier to points served by applicant, while others used a number of carriers to San Joaquin Valley points. On cross-examination, most of the witnesses stated that taking the transportation facilities of all carriers as a whole between the Los Angeles area and the San Joaquin Valley points involved, their present transportation needs are adequately fulfilled.

Pacific Freight Lines provides a highway common carrier service in general between the Los Angeles area and other points in Southern California, and as far north as San Francisco and Sacramento, operating over both U. S. Highways 99 and 101. Pacific Freight Line's subsidiary, Pacific Freight Lines Express, serves common points with Pacific Freight Lines from San Luis Obispo and Fresno on the north to the Mexican border on the south. The Santa Fe Transportation Company is a wholly owned subsidiary of The Atchison, Topeka & Santa Fe Railway Company. It provides a highway common carrier service between Santa Fe rail points in general from San Francisco on the north through the San Joaquin Valley to Los Angeles territory and other points not involved herein. Southern Pacific Company operates a freight train between Los Angeles, Bakersfield and Fresno called the "Valley Merchandiser".

which in conjunction with Southern Pacific's affiliate, Pacific Motor Trucking Company, provides service between the Los Angeles area and all the principal and many other San Joaquin Valley points served by applicant. Valley Motor Lines, a highway common carrier, with its affiliate, Valley Express Co., serves between Fresno and an area on the west side of the San Joaquin Valley, including Raisin City, Lemoore, Hanford, Avenal and Corcoran, (4) on the one hand, and the Los Angeles area, on the other hand. Desert Express provides a highway common carrier service between Los Angeles and Bakersfield via Mojave and is also authorized to use U. S. Highway 99 between Los Angeles and Bakersfield as an alternate route. The operative right of Desert Express over U. S. Highway 99 is subject to a condition, among others, that such route may be used only to transport consolidated truck loads of not less than 16,000 pounds for each truck or unit used.

Officials of the foregoing protestants testified with respect to the facilities and service rendered by them. It was shown that these carriers have ample equipment to meet all demands upon them for transportation service and none of them is receiving sufficient traffic to make full use of such equipment. A witness testified that Pacific Freight Lines has sufficient unused equipment to transport from 100 to 250 more tons of freight a day than is now offered for transportation between the points involved.

The pickup and delivery service afforded by the protestants and the facilities used were described in detail. The

(4) No further reference will be made to the service and facilities of Valley Motor Lines and Valley Express Co. as they waived protest to the application at the further hearing.

A.30683 - GH*

testimony indicates that each of these carriers is now providing an overnight service between Los Angeles and the San Joaquin Valley points involved which they serve with next-day early deliveries, most of which are completed before noon time.

The protesting carriers called 26 public witnesses representing business concerns in the Los Angeles area. They testified concerning their transportation needs and the service which they are now receiving with respect to shipments between the Los Angeles area and points in the San Joaquin Valley involved in this proceeding. This testimony concerned the commodities handled, size, frequency and volume of shipments. All of them testified, in substance, that they had used the transportation facilities of one or more of the protestants; that they had found such service ✓ satisfactory and adequate to meet their needs; and that they have no need for any new or additional common carrier service to fulfill their transportation requirements for shipments moving between the Los Angeles territory and points in the San Joaquin Valley. They stated, however, that they were not opposing the application and did not object to an improvement of service between those points, including that of applicant and other carriers. A stipulation was entered into between the parties that if a hearing were had at Bakersfield, Pacific Freight Lines would produce 15 shipper witnesses, Southern Pacific and Pacific Motor Trucking Company would produce six shipper witnesses, and Santa Fe Transportation Company would produce ten shipper witnesses who would testify that from the respective carriers which they use they are receiving an overnight service on shipments from Los Angeles with next-morning delivery at Bakersfield; that the service rendered by said carriers to those shippers is entirely adequate

and fully satisfies their transportation requirements, including pickup and delivery service, and that said witnesses do not require any other or additional common carrier service.

Protestants contend that equipment operated for applicant on a lease basis between Los Angeles, Fresno and Bakersfield in most cases operated over the direct route, U. S. Highway No. 99, instead of over the regular route via Paso Robles. Such contention is based upon a road survey conducted by protestants at a point about 19 miles east of Paso Robles on State Route No. 41 and U. S. Highway No. 466 during the period November 15, 1950, to November 21, 1950, inclusive (Exhibit No. 19). In refutation of protestants' showing in that regard, applicant produced most of the drivers of that equipment as well as drivers employed by applicant on that run, all of whom stated that with one exception they always operated over the regular route, via Paso Robles. The only exception was during the period about November 21, 1950, when flood conditions existed on State Route No. 41 between Fresno and Paso Robles when trips were made on certain days over U. S. Highway No. 99 under direction of applicant's manager. In view of that testimony and certain discrepancies shown to exist in the exhibit referred to, we find that this contention by protestants is not supported by the record.

Protestants took the position that under the application as amended, applicant is now seeking authority to operate over U. S. Highway No. 99 under two theories, viz.: (1) an alternate route theory based upon operating economies to be effected by use of the direct route, and (2) the conventional theory of public convenience and necessity supported by public witness testimony and

other evidence. As above noted the Commission is construing the application with the amendment thereto as being a request for a certificate over the direct route, U. S. Highway No. 99. The evidence adduced in support of applicant's request for authority to operate over that highway as an alternate route will be considered only in connection with its request for a certificate.

Protestants further contend that applicant failed to show that its present operations over the circuitous route are or can be made profitable and in fact have been unprofitable; that the operation over the circuitous route cannot be conducted on an equally competitive basis with those of the carriers using the shorter route via U. S. Highway No. 99, and that the testimony of witnesses of applicant to the effect that they are satisfied with the present service falls short of establishing that the existing carriers cannot provide a reasonable and adequate service.

In support of protestants' contention that applicant's present operations via Paso Robles were unprofitable, certain computations were made. These were based upon Exhibits Nos. 17 and 18, to which were applied applicant's system-wide cost without consideration of the fact that the trucks operated between Los Angeles and the other points involved handled some traffic which was discharged at San Luis Obispo. Exhibits of applicant indicate that traffic transported between Los Angeles and Bakersfield produced revenue of approximately two dollars per ton in excess of the system cost per ton (Exhibits Nos. 17 and 18). Protestants' contention that this segment of applicant's operation is unprofitable has not been sustained. Exhibit No. 14 of applicant shows that for the nine months period ending September 30, 1950,

it had a net operating income of \$49,296 after provision for income taxes. The operating ratio for the period was 96 per cent.

The record shows that applicant has been serving all of the points involved herein over a circuitous route for which it seeks a certificate to operate over a direct route. It further shows that the amount of traffic handled by applicant has gradually increased until it has reached a very substantial volume. From the point of view of shippers using that service it must be considered of the same kind as that performed by protesting carriers. The rates charged by applicant are not different and many elements of the service it affords distinguish its service from that rendered by others. The evidence does not show that applicant's costs of handling the traffic involved were in excess of the revenue derived therefrom. One of the outstanding features of this proceeding is that effective competition already lawfully exists between the applicant and the other carriers. This coupled with a full consideration of all the evidence of record and the arguments contained in the briefs of the parties leads to the conclusion and we so find that public convenience and necessity require that a certificate of public convenience and necessity be granted to applicant authorizing operation over U. S. Highway No. 99 between the Los Angeles area and points in the San Joaquin Valley presently served by it. Therefore, the application will be granted.

O R D E R

An application therefor having been filed, a public hearing having been held thereon, the matter submitted, the Commission being fully advised in the premises and based upon the conclusions and findings in the foregoing opinion,

IT IS ORDERED:

(1) That a certificate of public convenience and necessity is hereby granted to California Motor Transport Co. Ltd., authorizing operation as a highway common carrier, as defined in Section 2-3/4 of the Public Utilities Act, for the transportation of traffic of the California Motor Express, Ltd., an express corporation, as defined in Section 2(k) of the Public Utilities Act, between the Los Angeles territory defined in Decision No. 43030, on the one hand, and, on the other hand, Bakersfield and Fresno and other points served by applicant in the San Joaquin Valley which it acquired the right to serve by Decision No. 37472, in Application No. 24371.

(2) 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 hereof, applicant shall file a written acceptance of the certificate herein granted.
- b. Within sixty (60) days after the effective date hereof, and on not less than five (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 tables.

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

Dated at San Francisco, California, this 7th day of August, 1951.

Justus F. Casper
Harold P. Kula
Francis J. [unclear]
John L. [unclear]

COMMISSIONERS