

ORIGINAL

Decision No. 46407

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
 MOSER'S FROZEN FOOD FREIGHT LINE, )  
 a California corporation, for a )  
 Certificate of Public Convenience ) Application No. 30571  
 and Necessity authorizing extension )  
 of operations as a common carrier )  
 for the transportation of property )  
 by motor vehicle. )

Marvin Handler and Orville A. Schulenberg,  
 for applicant.  
Orla St. Clair, for the Common Carrier  
 Conference of the Truck Owners Association  
 of California, protestant.  
Joseph Gill, for Pacific Freight Lines and  
 Pacific Freight Lines Express, protestant.

O P I N I O N

By Decision No. 45650, dated May 1, 1951, in Application No. 30571, applicant, Moser's Frozen Food Freight Line, was granted as an extension of its existing operative rights authority to transport commodities requiring refrigeration all or part of the year in addition to certain specified nonperishable commodities, when transported in mixed shipments with perishable commodities, between various points within the state.

On June 5, 1951, the Commission granted applicant's petition for rehearing for the purpose of determining whether additional dry or nonperishable commodities should be added to those specifically described in Decision No. 45650.

Rehearing was held before Examiner Daly on October 15, 1951 at San Francisco and the matter submitted.

Applicant introduced in evidence the testimony of four witnesses. The first was applicant's Los Angeles manager, who has recently taken over the duties of general manager. He testified

that applicant transports many mixed shipments of perishable and nonperishable food products; that the present authority restricting mixed shipments to perishable commodities and the specified dry commodities such as canned meats, sausage casings, packaging supplies, and advertising materials, has resulted in a substantial loss of business; that due to its inability to transport mixed shipments, thus affording volume rates on total weights, the business of Borden's Cheese Company and Swift and Company has been lost to applicant; that due to the same inability, applicant may possibly lose the business of Challenge Company and Victory Packing Company; that applicant frequently receives calls from business establishments inquiring as to its rates on mixed shipments; that the business lost is diverted to contract carriers, which can afford volume rates on mixed shipments; that as a result of this loss, applicant was required to discontinue its leased terminals located at Sacramento and Manteca; that the present service out of San Francisco to Sacramento has been reduced to three a week with deliveries at Sacramento on Tuesdays and Fridays. The witness further testified that points north of Sacramento, such as Yuba City, Marysville and Auburn, are now served on a truckload basis only; that if authorized to transport additional dry commodities in mixed shipments with perishable commodities, applicant would not only be able to operate at a profit but would be able to reactivate its Sacramento and Manteca terminals and thus provide a regular service to Sacramento and points north thereof.

Three public witnesses testified substantially as follows: That they have mixed shipments within the area involved; that they are interested in shipping all of their commodities, both perishable and nonperishable, via one carrier not only for the sake of convenience but also to avail themselves of the lower volume rates; that

they have no existing common carrier which can provide service both on refrigerated and dry commodities, and as a result they utilize contract carriers.

One witness, the traffic manager for Kraft Western Division, testified that his company has recently inaugurated a sales discount policy on purchases weighing 10,000 pounds, 20,000 pounds and 36,000 pounds.

The record on rehearing indicates that a variety of dry commodities related to the food industry is shipped concurrently with commodities requiring refrigeration. Briefly, the commodities are as follows: Powdered milk, casein, soap, hides, animal food, poultry feed, glue, salad dressing, mayonnaise, macaroni and cheese, dried milk solids which include skimmed milk and buttermilk, chocolate stabilizer powder, sandwich spread, table sauces, salad oils, bouillon cubes, vinegar, salt, spices, animal foods, coffee, tea and malt syrup.

In his closing statement, counsel for applicant argued that applicant's service is meeting a need for those industries engaged in the food industries where refrigerated service is essential; however, the requirement for refrigerated service is coupled with a need for a carrier which can provide a complete service to these business establishments. To meet this need, applicant has in the past transported the refrigerated commodities under its certificate and the dry commodities as a contract carrier. This, he argued, penalizes the shipper in that he is required to pay two rates--one on the dry freight and one on the perishable--rather than pay a lower rate based upon a combined weight.

It was further argued that rather than divert traffic from the existing carriers, the dry freight, which applicant now hauls in straight loads under its permits, would more than likely

go to the existing certificated carrier of general commodities if the authority sought restricting applicant to mixed shipments were granted. (Section 3542 California Public Utilities Code) <sup>(1)</sup> It is not the purpose of applicant, he stated, to invade the field of general commodities, but, rather, to give a complete service in the specialized field of refrigerated transportation.

Rather than specify the dry commodities to be hauled, applicant's counsel requested that the certificate be modified so as to authorize the transportation of commodities requiring refrigeration all or part of the year and food and food products in mixed shipments.

Counsel for the Common Carriers Conference stated that although he felt applicant had made a showing for additional dry commodities, the difficulty with the proposal of "food or food products" was the inherent uncertainty that would arise in an attempt to ascertain what applicant could or could not transport. He further stated that this uncertainty was the chief concern of the Common Carriers Conference with respect to applicant's proposal. He argued that applicant should be restricted to those dry commodities for which it has actually made a showing and has transported in the past under its permits.

The record discloses that applicant should be authorized to transport additional dry commodities in mixed shipments with commodities requiring refrigeration all or part of the year. Rather than use the generic term "food or food products," reference will be made to those specific commodities as now described in Item 360-C Series, Item 610-H Series and Item 730-D Series of Highway Carriers' Tariff No. 2 in addition to the following specific commodities: (1) adhesive paste, (2) animal food, (3) bouillon cubes, (4) bread-making compounds, (5) cascain, (6) cheese canned, (7) cheese and

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(1) No carrier may transport property both as a common carrier and as a highway contract carrier of the same commodities between the same points.

macaroni in packages, (8) eggs powdered, (9) fertilizer commercial, (10) glue, and (11) malt syrup or powder.

Although the public witnesses did not mention each of the commodities above described, those which they did describe constitute a reasonable cross section of the commodities which are related to food or food products which applicant seeks to transport.

After full consideration of the facts, the Commission is of the opinion that public convenience and necessity require that applicant be authorized to transport the above-described commodities in mixed shipments with those requiring refrigeration all or part of the year.

Rather than amend applicant's existing certificate, a new one will be issued in its place and stead.

#### O R D E R

A public hearing having been held and evidence adduced therein,

#### IT IS ORDERED:

(1) That a certificate of public convenience and necessity is hereby granted to Moser's Frozen Food Freight Line authorizing the establishment and operation of an automotive truck service as a highway common carrier, as said term is defined in Section 213 of the Public Utilities Code, for the transportation of commodities which require refrigeration all or part of the year, as well as empty containers returning, shipments of paraffin and the following commodities when offered along with commodities requiring refrigeration all or part of the year: Those commodities as now described in Item 360-C Series, Item 610-E Series, and Item 730-D Series of Highway Carriers' Tariff No. 2; (1) adhesive paste, (2) animal food, (3) bouillon cubes, (4) bread-making compound, (5) casein, ✓

(6) cheese canned, (7) cheese and macaroni in packages, (8) eggs powdered, (9) fertilizer commercial, (10) glue, and (11) malt syrup or powder:

(a) Between the San Francisco Territory, Los Angeles Territory, Sacramento and intermediate points via U. S. Highway No. 99, and 25 miles laterally of U. S. Highway No. 99, between Manteca and Delano; U. S. Highway No. 152 between Gilroy and U. S. Highway No. 99 (near Califa); U. S. Highway No. 101 and 101 By-Pass between Gilroy, San Jose and San Francisco; U. S. Highway No. 50 between San Francisco Territory and Stockton; State Highways Nos. 33 and 132 between U. S. Highway No. 50 (near Tracy) and U. S. Highway No. 99 (Modesto); U. S. Highway No. 20 between U. S. Highway No. 50 and U. S. Highway No. 99 (Manteca); State Highway No. 140 between Merced and Kadota; U. S. Highway No. 40 between the San Francisco Territory and Sacramento; State Highway No. 24 between Pittsburg and Sacramento;

(b) From Los Angeles Basin Territory, on the one hand, to points between Bakersfield and Sacramento, both inclusive, on U. S. Highway No. 99, and to the San Francisco Territory, on the other hand;

(c) Between Sacramento, on the one hand, and Woodland, Yuba City, Marysville, Grass Valley, Nevada City, Auburn and intermediate points, on the other hand, via U. S. Highway No. 40, State Highway No. 24, State Highway No. 20, State Highway No. 49, and U. S. Highways 99E and 99W.

The pickup and delivery areas in the San Francisco, Los Angeles, and Los Angeles Basin Territories are those as described in Item 270 Series of Highway Carriers' Tariff No. 2.

(2) That applicant's service shall be provided subject to the following restrictions:

(a) The line-haul portion of the service shall be rendered by means of refrigerated or insulated equipment.

(b) No service shall be performed locally between Chowchilla and points in the Los Angeles Territory and Los Angeles Basin Territory and intermediate points on, and off-route points within 25 miles laterally of, U. S. Highway No. 99.

(c) No service shall be performed on fresh dairy products between Los Banos and Patterson and intermediate points on State Highway No. 33, on the one hand, and San Francisco and the East Bay points, from Richmond on the north to Hayward on the south, inclusive, on the other hand.

(3) 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.

(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.

(4) That the operative rights granted in the following decisions are hereby revoked and annulled.

<u>Decision No.</u>	<u>Date</u>	<u>Application No.</u>
40775	9/30/47	27611
41232	2/17/48	27611
45650	5/1/51	30571

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

Dated at San Francisco, California, this 13<sup>th</sup> day of November, 1951:

*R. I. ...*  
President

*Harold P. ...*

*...*

*...*

Commissioners