

ORIGINAL

Decision No. 46643

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application)
of JOE MACHADO, doing business)
as MACHADO TRUCKING COMPANY, for)
a certificate of public conven-)
ience and necessity to operate as)
a highway common carrier for the)
transportation of property.)

Application No. 31045

- Marvin Handler, for applicant.
- Louis M. Welsh, John B. Kramer and F. G. Pfrommer,
for Santa Fe Transportation Company and
Atchison, Topeka & Santa Fe Railway Company;
- E. L. H. Bissinger, Walter Steiger and John H. Gordon,
for Southern Pacific Company and Pacific Motor
Trucking Company;
- W. A. Gregory, Jr., for Southern Pacific Company,
Central California Traction Company and Pacific
Motor Trucking Company
- Reginald L. Vaughan and John G. Lyons, for the Highway
Common Carrier Conference of Truck Owners
Association of California;
- Donald Murchison, for Pacific Freight Lines;
- Scott Elder and Ralph E. Woolley, for Western
Transport Company;
- Douglas Brookman, for California Motor Express Ltd., and
California Motor Transport Ltd.;
- Willard S. Johnson, for Hills Transportation Company;
- H. J. Bischoff, Warren V. Glass and H. P. Merry,
for Southern California Freight Lines;
- Lloyd Guerra and Ralph T. Close, for Western Truck
Lines;
- Jack F. Kueper, for Associated Freight Lines, protestants.
- Wilson E. Cline and John Power, for the Field Division,
Public Utilities Commission.

O P I N I O N

Joe Machado, an individual doing business as Machado Trucking Company, herein requests a certificate of public convenience and necessity authorizing operations as a highway common carrier for the transportation of general commodities, with certain exceptions, between San Francisco Territory and Los Angeles Basin Territory (as defined in Item 270 Series of Highway Carriers' Tariff No. 2), serving the intermediate points of Fresno and Bakersfield,

and between Sacramento and Stockton on the one hand, and Los Angeles Basin Territory on the other; and for the transportation of canned goods only from Richmond and Gilroy to the Los Angeles Basin Territory.

Public hearings were held before Examiner Gillard in San Francisco, Los Angeles and San Jose, and the matter submitted on briefs on October 11, 1951.

Since 1937, applicant has operated under permits issued by this Commission between the points encompassed by this application. His equipment consists of 13 tractors, 20 semitrailers and six trucks. He maintains leased terminals in Oakland, San Jose and Vernon; agencies are situated in Fresno and Bakersfield. Applicant performs pickup and delivery service with his own vehicles in the San Francisco and Los Angeles areas, using line-haul equipment wherever practicable on the larger shipments, and also employs one carrier in the San Francisco area and two in the Los Angeles area to perform these services.

Exhibits of record disclose that applicant had operating revenues of \$224,812 in 1948, \$172,350 in 1949, and \$204,104 for the first seven months of 1950. The operation has been profitable and for the first seven months of 1950 showed a net income of \$17,682. During 1950, applicant transported 75,104,919 pounds of freight, of which 61,355,788 pounds were carried in 1,572 truckload shipments, and 13,749,131 pounds were transported in 6,805 less-truckload shipments.⁽¹⁾

(1) Commodities transported include bakery goods, candy, salt, prepared mustard, canned fruits and vegetables, canned Chinese dinners, conned and dry dog food, printing ink, paint, fish oil, varnish, rubber hose and gaskets, copper wire, cable and rods, steel sash, iron and aluminum pipe, machinery, pumps, motors, iron and steel products, empty reels, bobbins, drums and cartons, lubrication oils and greases, auto parts and supplies, printed labels, advertising materials, paper bags and napkins, toilet preparations, soap powder, floor wax, chemicals and glassware.

In January of 1950, applicant acquired 17 of the 175 accounts of California Freight Service, Inc., which went out of business at that time after a cease and desist order had been issued by this Commission. In 1950, applicant's tonnage and profits increased over prior years.

Applicant operates his line-haul equipment between his Vernon and San Jose terminals. From those two points, distribution is made in the Los Angeles and San Francisco areas, respectively, by his short-haul drivers, either directly from the line equipment for the larger shipments, or from delivery trucks. Line equipment with less-truckload freight may also be driven to Oakland, where it is transferred to delivery trucks for distribution in San Francisco and Oakland.

It is proposed that line equipment will leave San Jose from 6 p.m. to 9 p.m. and arrive at Vernon from 6 a.m. to 9 a.m. In the reverse direction, equipment will leave one hour earlier. Deliveries will be effected at each end commencing at 8 a.m. U. S. Highways 101 and 99 will be used. On the latter, freight will be discharged at agency stations in Fresno and Bakersfield, and any accumulated freight will be picked up. If there is freight destined to Stockton or Sacramento from Los Angeles, the equipment, instead of proceeding to San Jose via Pacheco Pass, will go directly to Stockton from Fresno, making deliveries from the line truck commencing at 8 a.m. (the truck will arrive in Stockton at 6 a.m.), then proceed to Sacramento, make both pickups and deliveries, return to Stockton to make pickups, leave Stockton at 3 p.m. and arrive in San Jose at 6 p.m.

Under this latter schedule, any freight destined to the San Francisco area from Los Angeles would receive second morning delivery, and likewise freight picked up in Bakersfield and Fresno

would receive second morning delivery in the San Francisco area. Such an operation is inconsistent with applicant's general proposal to render an overnight service and would not be responsive to the usual demands of the public for following morning deliveries.

Twenty-eight public witnesses, representing 23 firms, testified on behalf of applicant. These witnesses testified, generally, that they shipped to points in either the San Francisco Territory or the Los Angeles Basin Territory, or the intermediate points of Fresno and Bakersfield and that they needed a carrier who would give them overnight service to all such points. Some of them have used applicant since January, 1950, and others for up to 10 years. All claimed that he gave excellent service, furnished to them the kind of equipment they needed when they required it, and consistently rendered an overnight service without damage to the cargo. Several had special problems, e.g., handling uncrated steel sash, and claimed applicant was the only carrier they had used who could fulfill their requirements. All would continue to use applicant as in the past, and some would extend their use of applicant if certificated herein, particularly with reference to collect shipments which he now refuses to carry.

The consignee witnesses testified, in general, that they were receiving excellent service from applicant; that he consistently renders overnight service with early morning delivery and handles the merchandise without damage. All desired his services and would not direct or request of their shippers a change in carrier so long as the service now being rendered remained unchanged.

The testimony of applicant's witnesses did not show that they needed or were presently receiving from him, a service to the entire Los Angeles Basin Territory. The testimony did establish a

need for his services to the Los Angeles Territory, and San Bernardino, Redlands, Riverside, Santa Ana and points intermediate thereto and such Los Angeles Territory. We find that any certificate granted to applicant should be limited to that area.

A representative of one firm testified to the need for applicant's services in moving canned goods from Richmond and Gilroy to Los Angeles. The operational methods of this concern necessitate split pickups at Richmond and Gilroy with delivery to Los Angeles. Applicant has been performing this service satisfactorily since January, 1950.

Applicant also introduced into evidence a study of William A. Spurr, Professor of Business Statistics, Stanford University, relative to future for-hire truck transportation demand between San Francisco Territory and Los Angeles Basin Territory. The ultimate forecast in this study is that the demand for truck transportation between these two areas will increase by 44 per cent between 1950 and 1960. Subsidiary estimates in support of this figure were made with reference to population and total production. It was estimated that California's population in 1960 would be 14,108,000 (a 33 per cent increase over 1950), while the total of the San Francisco area (five counties) and Los Angeles area (four counties) would be 9,498,000 or 67.3 per cent of the total. The study also discloses that the demand for all types of freight carriers closely parallels gross national production, and that since 1946 the demand for truck transportation has expanded more rapidly than total traffic because of its successful competition with railroads. In California, between the San Francisco and Los Angeles areas, the demand for truck transportation has risen more rapidly each year since 1940 than the

increase in total production of the two areas, again at the expense of other types of carriers.

This general increase in the trucking industry is reflected in the particular activities of the protestants herein. Exhibit No. 64, placed in evidence by the applicant, discloses that the protestants as a group enjoyed substantial increases in gross revenue in 1950 over 1949. Most of the protestants added new units of equipment during 1950 and maintained an excess of capacity over loadings.

The record leaves no doubt that the protestants have adequate facilities and equipment and are, for the most part, rendering satisfactory services. However, the evidence produced by some of them supports applicant's contention that there is a need for another carrier rendering a through service from the Bay area to Los Angeles Basin points.

We have given careful consideration to the arguments presented in the brief filed by protestants, and particularly the one asserting that applicant, as a contract carrier, has not and cannot establish a public need for his services through the testimony of his contract shippers only. The argument assumes that the persons served by a contract carrier cannot, by definition, be "the public or a portion thereof" since they are all persons served "privately." The assumption is not well founded, since the relation of these shippers to the carrier depends upon the intentions of the carrier.

✓ *deleted*

By filing an application herein, applicant seeks to be a highway common carrier. His intentions are clear and unequivocal.

The tenor of most of the balance of the argument is that there is adequate service being rendered by protestants, and the "liberal" policy of the Commission has been fully implemented in this territory by the 12 Savage group certificates. This argument disregards the testimony of witnesses herein (some produced by protestants and some produced by applicant who use protestants' services for portions of their shipping) that the expedited pickup service of applicant, the availability of flat rack equipment, or through service to Los Angeles Basin points, are some of the reasons why this proposed service will meet certain needs not being satisfied by the existing services.

After careful consideration of the entire record, we find that public convenience and necessity require that the application be granted to the extent set forth in the ensuing order. The extent of the relief from the provisions of Section 24(a) of the Public Utilities Act (Section 460, Public Utilities Code) or the justification therefor is not clearly shown and the request for such relief will be denied without prejudice.

Joe Machado 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

Public hearings having been held in the above-entitled proceeding, and the Commission upon the evidence received having found that public convenience and necessity so require,

IT IS ORDERED:

(1) That a certificate of public convenience and necessity be and it is hereby granted to Joe Machado authorizing the establishment and operation of a service as a highway common carrier (as defined in Section 213 of the Public Utilities Code) for (a) the transportation of general commodities except uncrated household goods, livestock, liquid petroleum products in bulk, explosives, articles of unusual value, fresh fruits and vegetables, and commodities requiring refrigeration, between San Francisco territory as defined in Appendix "A" attached hereto, and the Los Angeles territory as defined in Appendix "B" attached hereto, serving the intermediate points of Fresno and Bakersfield, and (b) the transportation of canned goods only between Richmond and Gilroy, and between each of such points on the one hand, and the Los Angeles territory herein defined in Appendix "B" attached hereto 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) 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 upon 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, tariffs and time schedules satisfactory to the Commission.

APPENDIX "A"

SAN FRANCISCO TERRITORY includes that area embraced by the following boundary: Beginning at the point the San Francisco-San Mateo County Boundary Line meets the Pacific Ocean; thence easterly along said boundary line to a point 1 mile west of U. S. Highway No. 101; southerly along an imaginary line 1 mile west of and paralleling U.S. Highway No. 101 to its intersection with the corporate boundary of the City of San Jose; southerly, easterly and northerly along said corporate boundary to its intersection with State Highway No. 17; northerly along State Highway No. 17 to Warm Springs; northerly along the unnumbered highway via Mission San Jose and Niles to Hayward; northerly along Foothill Boulevard to Seminary Avenue; easterly along Seminary Avenue to Mountain Boulevard; northerly along Mountain Boulevard and Moraga Avenue to Estates Drive; westerly along Estates Drive, Harbord Drive and Broadway Terrace to College Avenue; northerly along College Avenue to Dwight Way; easterly along Dwight Way to the Berkeley-Oakland boundary line; northerly along said boundary line to the campus boundary of the University of California; northerly and westerly along the campus boundary of the University of California to Euclid Avenue; northerly along Euclid Avenue to Marin Avenue; westerly along Marin Avenue to Arlington Avenue; northerly along Arlington Avenue to U. S. Highway No. 40 (San Pablo Avenue); northerly along U. S. Highway No. 40 to and including the City of Richmond; southwesterly along the highway extending from the City of Richmond to Point Richmond; southerly along an imaginary line from Point Richmond to the San Francisco Waterfront at the foot of Market Street; westerly along said water front and shore line to the Pacific Ocean; southerly along the shore line of the Pacific Ocean to point of beginning.

APPENDIX "B"

LOS ANGELES TERRITORY includes that area embraced by the following boundary: Beginning at the intersection of Sunset Boulevard and U. S. Highway No. 101, Alternate; thence northeasterly along Sunset Boulevard to State Highway No. 7; northerly along State Highway No. 7 to State Highway No. 118; northeasterly along State Highway No. 118 through and including the City of San Fernando; continuing northeasterly and southeasterly along State Highway No. 118 to and including the City of Pasadena; easterly along U. S. Highway No. 66 to State Highway No. 19; southerly along State Highway No. 19 to its intersection with U. S. Highway No. 101, Alternate, at Ximeno Street; southerly along Ximeno Street and its prolongation to the Pacific Ocean; westerly and northerly along the shore line of the Pacific Ocean to a point directly south of the intersection of Sunset Boulevard and U. S. Highway No. 101, Alternate; thence northerly along an imaginary line to point of beginning.

Also San Bernardino, Redlands, Riverside and Santa Ana, and all points and places along and within three miles of U. S. Highways Nos. 66, 99, 60, 101 and 101 By-Pass between State Highway No. 19 and San Bernardino, Redlands, Riverside and Santa Ana; and all points and places within three miles of State Highway No. 19.

(e) Subject to the authority of this Commission to change or modify them by further order, applicant shall conduct operations pursuant to the certificate herein granted over and along the following routes:

✓ Between the San Francisco territory and the Los Angeles territory: U. S. Highways 99 and 101 and State Highway 152 between such highways; within San Francisco territory and Los Angeles territory: all available highways.

X (3) In all other respects the application is hereby denied.

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

Dated at San Francisco, California, this 20th day of January, 1952.

R. J. [Signature]
President

Harold P. Kula

Benjamin W. Potter

Ed E. [Signature]

Commissioners

Justus E. Craomer
Commissioner..... being
necessarily absent, did not participate
in the disposition of this proceeding.