

## ORIGINAL

Decision No. 46679

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
 JAMES P. NIELSEN, doing business as )  
 NIELSEN FREIGHT LINES, for a certifi- )  
 cate of public convenience and neces- )  
 sity to operate as a highway common )  
 carrier for the transportation of )  
 property. )

Application No. 32148

In the Matter of the Supplemental )  
 Application of JAMES P. NIELSEN, doing )  
 business as NIELSEN FREIGHT LINES, and )  
 EVELYN O. GLAESER, doing business as )  
 WEST BERKELEY EXPRESS AND DRAYING CO., )  
 for authority to establish joint rates.)

Marvin Handler, for applicant.  
Douglas Brookman and N. R. Moon, for  
 Merchants Express Corporation, protestant.  
Reginald L. Vaughan, for Kellogg Express &  
 Draying Company, interested party.  
William Meinhold, for Northwestern Pacific  
 Railroad Company and Pacific Motor  
 Trucking Company, interested parties.

## O P I N I O N

Applicant James P. Nielsen, doing business as Nielsen Freight Lines, presently rendering service as a highway common carrier for the transportation of general commodities between San Francisco, points and places on U. S. Highway 101 between Novato and Santa Rosa, and between said points and Sonoma, El Verano and Boyes Springs, requests authority to extend his operations between all points presently authorized to serve, on the one hand, and San Leandro, Berkeley, Emeryville, Albany, Alameda, Oakland, Piedmont, El Cerrito and Richmond, on the other hand.

By a supplemental application, James P. Nielsen, doing business as Nielsen Freight Lines (hereinafter referred to as Nielsen), and Evelyn O. Glaeser, doing business as West Berkeley

Express and Draying Co. (hereinafter referred to as West Berkeley),  
(1)  
seek authority to establish joint rates for the transportation of  
general commodities between points presently authorized to be served  
by applicant Nielsen and the East Bay points heretofore mentioned.

Public hearings were held before Examiner Daly at  
San Francisco, Petaluma, Santa Rosa and Oakland. The matter was  
submitted on October 23, 1951, upon the receipt of briefs since  
filed and considered.

The granting of the authority sought was protested by  
Merchants Express Corporation. Appearances as interested parties  
were made by Northwestern Pacific Railroad Company and Pacific Motor  
Trucking Company as to Nielsen's requested extension and as protes-  
tant to the joint rate authority. The appearance of Kellogg Express &  
Draying Co. as an interested party was withdrawn upon the assurance  
of applicant's counsel that applicant sought no operative rights in  
Marin County south of Novato.

Applicant proposes to render a service to and from East Bay  
points comparable to that which he presently provides to and from  
San Francisco. To render such service, applicant testified that he  
now owns approximately 47 pieces of equipment. During the course of  
the hearing, this equipment was supplemented by the addition of two  
tractors, two sets of double vans, four van tractors and two con-  
verters. His principal place of business, he stated, was located at  
Petaluma, which consists of a building, dock and platform. This  
terminal is used as a break bulk point for less than truckload ship-  
ments destined to Petaluma and Sonoma. Leased terminal facilities  
are maintained by applicant at Santa Rosa.

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(1) The proposed rates would be those as set forth in Highway  
Carriers' Tariff No. 2.

In the event the authority here sought is granted, applicant stated that necessary space would be made available at the West Berkeley Express and Draying terminal located in Berkeley. This terminal consists of a yard, office building and shed for equipment.

If applicant is authorized to enter into joint rates with West Berkeley, it is his intention to use one of his own vans to provide a pickup and delivery service on large shipments, with the pickup and delivery equipment of West Berkeley providing service on the smaller shipments. To provide an expeditious northbound movement, applicant proposes to disburse an empty van from Petaluma to East Bay points to pick up the large shipments. Upon picking up such shipments, the van would proceed to West Berkeley's terminal and pick up the smaller shipments serviced by West Berkeley equipment.

Applicant's balance sheet as of April 3, 1951, indicated total assets amounting to \$64,962.61 and liabilities in the amount of \$7,664.85. As of the same date, his profit and loss statement indicated a net income of \$8,657.64.

The testimony of 27 public witnesses, who testified on behalf of Nielsen, may be briefly summarized as follows: They have used applicant's service from San Francisco and have found it to be an overnight service and in many instances same-day; they also have shipments from East Bay points and use the services of Merchants Express, Pacific Motor Trucking and contract carriers; the existing service is not entirely satisfactory, due to delays in transit which vary from two to three days; as a result of this delay, a number of witnesses testified that they utilize their own trucks, a practice which they stated they would discontinue in the event applicant's proposed service were authorized; several of the firms which ship

via Nielsen from San Francisco have moved to points in the East Bay and desire the same service to be there made available.

Representatives of the Santa Rosa and Petaluma Chambers of Commerce testified that their respective chambers had passed resolutions favoring the proposed service.

Merchants Express Corporation introduced evidence as to its existing operations between the points here involved. In general, it renders an overnight service between all points served; two schedules are operated daily between the San Francisco territory, Sonoma and Santa Rosa and intermediate points; a pickup and delivery service is rendered on Saturdays, Sundays and holidays upon request; deliveries on large shipments are made directly from the line-haul equipment.

Seven public witnesses testifying on behalf of Merchants Express Corporation at the Oakland hearing stated that they ship to many of the points encompassed by the application; that they have found the service to be overnight; that it adequately meets their business needs and requirements and that they have no need for an additional service. It was stipulated by counsel that if called as witnesses 15 individuals doing business in and adjacent to Santa Rosa would testify to substantially the same effect.

The record indicates that applicant is rendering a valuable service to his customers from San Francisco; that many of these same customers have shipments originating in the East Bay and desire a service comparable to that from San Francisco; that if such a service were made available it would eliminate the necessity of shipping via several carriers and thus more fully meet their shipping needs and requirements.

The single issue involved in the supplemental application is whether it is proper for the Commission to grant a highway common

carrier an extension of its highway common carrier certificate to serve additional points and simultaneously authorize such highway common carrier to establish joint rates with another highway common carrier already serving such additional points. Protestants take the position that such action is improper and unlawful; however no cases were cited by protestants in support of such a position other than an attempt to justify their position by construing Section 1065 of the Public Utilities Code, which holds that highway common carriers may not establish joint rates without the express approval of the Commission. Protestants' contention is answered by the fact that applicant is here requesting such approval of the Commission.

Applicant argues that the joint rate application was designed to provide applicant with a supplemental pickup and delivery service and is not designed to take the place of his direct and independently controlled operations. In answer to protestants' position that no protest to the joint rate authority would be made in the event the authority for extension were denied, applicant argues that inasmuch as he does not have at present any right to serve the East Bay, no interline with West Berkeley could be accomplished except at San Francisco, which would be undesirable. The utilization of West Berkeley pickup and delivery service, it is argued, would be in the nature of local drayage or a terminal carrier picking up and delivering in a commercial area for a line carrier, which applicant claims constitutes a good operating practice and would result in an economical operation.

In Decision No. 41367 dated March 23, 1948, in Application No. 27991, the Commission authorized Callison to extend his operations to certain East Bay points and at the same time permitted and authorized the establishment of joint rates and through routes with East Bay Drayage, which was then authorized to serve the same East Bay points as a highway common carrier.

Upon full consideration of all the evidence of record, the Commission finds that public convenience and necessity require the establishment and operation of the service proposed, and the application, therefore, will be granted.

O R D E R

An application having been filed, a public hearing held thereon, the matter submitted, the Commission being fully informed and it having been found that public convenience and necessity so require,

IT IS ORDERED:

1. That a certificate of public convenience and necessity is hereby granted to James P. Nielsen authorizing the establishment and operation of service as a highway common carrier, as defined in Section 213 of the Public Utilities Code, for the transportation of general commodities, except ~~unpacked~~<sup>R. J. D.</sup> livestock, uncrated household goods, and liquid commodities in bulk in tank trucks between all points presently authorized to serve, except San Francisco, on the one hand, and San Leandro, Berkeley, Emeryville, Albany, Alameda, Oakland, Piedmont, El Cerrito and Richmond, on the other hand.

2. That James P. Nielsen and Evelyn O. Glaeser, highway common carriers, are hereby authorized to establish and maintain joint rates and through routes for the transportation of property moving between the following points served by Evelyn O. Glaeser: San Leandro, Berkeley, Emeryville, Albany, Alameda, Oakland, Piedmont, El Cerrito and Richmond, on the one hand, and points served by James P. Nielsen between Novato and Santa Rosa and intermediate points; Sonoma, El Verano and Boyes Springs, on the other hand, and that the point of interchange of property between these carriers shall be at Berkeley.

3. That in providing service pursuant to the certificate granted in paragraph 1 of this order, applicant Nielsen shall comply with and observe the following service regulations:

- (a) Applicant Nielsen shall file a written acceptance of the certificate herein granted within a period of not to exceed thirty (30) days after the effective date hereof.
- (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 Nielsen 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 schedules.
- (c) 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:
  - (1) San Francisco Bay Bridge between Oakland and San Francisco, thence via presently authorized routes between San Francisco, Santa Rosa, El Verano, Boyes Springs and Sonoma.
  - (2) Between Richmond and Point San Quentin via Richmond-San Rafael Ferry, unnumbered highway between Point San Quentin and Junction U. S. Highway 101 near San Rafael, thence via said presently authorized routes.
  - (3) Between Richmond and Junction State Highway 48 via U. S. Highway 40, or between Richmond and Junction U. S. Highway 40, via U. S. Highway 40, thence via State Highway 29 to its intersection with State Highway 48, thence via State Highway 48 between said junction and Junction State Highway 37, thence via State Highway 37 between said junction and Junction State Highway 12, thence via State Highway 12 between said junction and Sonoma, thence via presently authorized routes.
  - (4) Alternate routes - State Highway 12 between Santa Rosa and Sonoma; State Highway 37 between Sears Point and Junction U. S. Highway 101.
  - (5) All available highways, streets and roads between East Bay points.

4. Within sixty (60) days after the effective date hereof, and on not less than five (5) days' notice to the Commission and the public, applicants Nielsen and Glaeser shall comply with the

provisions of General Order No. 80 by filing in triplicate, and concurrently making effective, appropriate tariffs and time schedules.

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

Dated at San Francisco, California, this 22nd day of January, 1952.

R. T. [Signature]  
President

Justice F. [Signature]

Harold P. [Signature]

[Signature]

Commissioners

Commissioner Kenneth Potter, being necessarily absent, did not participate in the disposition of this proceeding.