

ORIGINAL

Decision No. 46783

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
GARDEN CITY TRANSPORTATION CO., LTD.,)
for a certificate of public convenience) Application No. 32329
and necessity to operate as a highway)
common carrier between certain points.)

J. Richard Townsend, for applicant.
Frederick W. Mielke, for Delta Lines, Inc., interested party.

Douglas Brookman, for California Motor Transport Co., Ltd., California Motor Express, and Merchants Express Corporation; M. R. Moon, for Merchants Express Corporation; Bertram S. Silver and Edward M. Berol, for Highway Transport, Inc.; Reginald L. Vaughan, Varnum Paul and John G. Lyons, for Clark Bros. Motor Transport, Inc., Coast Line Truck Service, Inc. and Security Truck Line; Gordon, Knapp & Gill, by Joseph Gill, for Pacific Freight Lines, Pacific Freight Lines Express; Marvin Handler, for Bisnett Bros.; and Willard Johnson, for J. A. Nevis Trucking, Inc. and J. Christenson Co., protestants.

O P I N I O N

Garden City Transportation Co., Ltd. seeks a certificate of public convenience and necessity to operate as a highway common carrier for the transportation of:

- (a) General commodities, except fruit, dried, unmanufactured and unprocessed (applies only to dried fruit in the natural state and which has not been cleaned, washed, stemmed or otherwise prepared or partially prepared for human consumption); fruit, fresh; nuts, in the shell; vegetables, fresh; carriers (used packages), empty returning, or forwarded for return loads, in connection with a paying load of any of the items above described; used household goods; livestock; petroleum and petroleum products in bulk; and explosives

between all points on:

- (1) U. S. Highway 101 and By-Pass 101 between Bradley and San Francisco;
- (2) State Highways 9 and 17 and U. S. Highway 40 between San Jose and Richmond;

- (3) State Highway 1 between Monterey and Santa Cruz;
- (4) State Highway 17 between Santa Cruz and San Jose;
- (5) Unnumbered highway between Monterey and Salinas;
- (6) State Highway 156 between Hollister and U. S. Highway 101;
- (7) Unnumbered highway between Hollister and U. S. Highway 101 at a point approximately 2 miles south of Gilroy;
- (8) Unnumbered highway between Watsonville and San Juan Bautista;
- (9) State Highway 152 between Watsonville and Gilroy;
- (10) State Highway 9 between Sunnyvale and Milpitas;
- (11) Dumbarton Bridge route between U. S. Highway 101 and Centerville and Niles;
- (12) San Mateo Bridge route between San Mateo and Mt. Eden and Hayward;
- (13) San Francisco-Oakland Bay Bridge route between San Francisco and Oakland;
- (14) Including the off-route points of Alameda and all points within 10 miles of the city limits of San Jose;

except that no service will be rendered between any two of the following points: San Francisco, San Leandro, Oakland, Alameda, Berkeley, Albany, El Cerrito, Richmond, Piedmont and Emeryville; and

- (b) canned goods; dried fruit, and cannery and dried fruit packing plant machinery, materials, and supplies between San Jose and points within 10 miles of the city limits of San Jose, on the one hand, and Stockton and Sacramento, on the other hand.

Applicant requests that it be authorized to transport shipments in weight groups as follows:

- (1) In lots of not less than 20,000 pounds.
- (2) In lots of less than 20,000 pounds occupying the full practicable capacity of a unit of equipment or combinations thereof having a minimum loading space of 30 feet in length.

- (3) In lots of less than 20,000 pounds bearing a total charge applicable to a shipment of not less than 20,000 pounds.
- (4) In lots of less than 20,000 pounds of intrastate traffic moving with interstate tonnage received as a single shipment of not less than 20,000 pounds on which the intrastate portion is charged for at the rate which would be applicable on such portion were the entire quantity intrastate in character.

Delta Lines, Inc., California Motor Express, Ltd., California Motor Transport Co., Ltd., Merchants Express Corporation, Highway Transport, Inc., Clark Bros. Motor Transport, Inc., Coast Line Truck Service, Inc., Security Truck Line, Pacific Freight Lines, Pacific Freight Lines Express, J. Christenson Co., J. A. Nevis Trucking Co. and Bisnett Bros. opposed the granting of the application.

Public hearings were held on June 25 and 26, July 30 and 31, August 20, September 17 and 18, and October 4, 1951, at San Francisco and San Jose before Examiner Silverhart.

Applicant (incorporated in 1948) and its predecessors have engaged in the trucking business since 1931 and it has held and now holds permits to operate as a radial highway common carrier and highway contract carrier. Its terminal and principal place of business is at San Jose. The Interstate Commerce Commission granted applicant a certificate of public convenience and necessity on October 5, 1949, authorizing the transportation in interstate or foreign commerce as a common carrier by motor vehicle over regular routes of dried fruit, canned goods, cannery machinery and materials and supplies, fertilizer, spray materials, newsprint paper, feed and fuels, between points in the San Francisco Bay area and, also over irregular routes, of general commodities, with certain

exceptions, and certain named commodities to, from and between various points in California.

Applicant's initial equipment consisting of one truck, by 1940 had increased to 32 units and it presently possesses and owns 45 tractors; 3 trucks; 1 fork lift; 57 semi-trailers, 1 side dump semi-trailer and 11 dollies. Such equipment is, for the most part, of the flat bed type. Applicant maintains an office, shop, service station, bunk house and warehouse at its terminal.

Applicant's income statement for the years ended December 31, 1949 and 1950, shows net operating revenues of \$463,633.20 and \$484,351.67, respectively, and total expenses of \$440,835.01 and \$467,140.47, respectively. Applicant's balance sheet, as of December 31, 1950, discloses current assets of \$67,937.56 and total assets of \$298,499.66. This statement sets forth current liabilities as \$83,212.06; secured liabilities \$96,172.00, and total liabilities of \$179,384.06.

The proposed service will continue applicant's present operating procedures. An on-call service will be furnished daily, 24 hours a day, 7 days a week, including holidays; line haul equipment is dispatched to point of pickup from which delivery is effected directly to point of destination. Same day delivery is rendered to San Francisco and East Bay points when a request for service is received at or prior to 11 a.m. Shipments picked up pursuant to a call made in the late afternoon are transported to the terminal and delivered to destination at opening time next morning; if requested, delivery of such shipments will be effected the same evening. Applicant proposes to publish the rates and enact such rules and regulations as are contained in the Commission's Highway Carriers' Tariff No. 2.

Applicant's secretary and treasurer indicated that it seeks primarily to continue to engage in truck load service and to furnish less than truck load transportation in such situations as its customers' needs require. The witness asserted that applicant serves 128 shippers to all the points here involved and 40 or 50 of such number are steady shippers who regularly call upon it to furnish transportation. He further stated applicant was not seeking authority to conduct a refrigerated service.

Applicant placed in evidence several exhibits derived from its freight bills. Such exhibits covered periods from January 4, 1949, to September 26, 1949, January 1, 1950 to May 22, 1951, May 23, 1951 to June 27, 1951, and the month of November, 1950, and showed that applicant transported over 3,440 shipments of various commodities such as case goods (including canned fruits and vegetables, groceries and dry fruit) pipe, machinery, fibre, foil, sugar, salt, woodwork, petroleum products, empty cans, cylinders, pallet boards and barrels, firebrick, bean poles, flamo, shells, shell flour, cannery trays, bags, cans, brine stock, aluminum sulphate, feed, apricots and cherries in barrels, vinegar, cement, lumber, labels, ice, pits, seed, shook and soap; for the most part such shipments are in the heavy weight category, to points encompassed within the scope of the application, with varying degrees of intensity. Of such shipments, 302 were received by applicant as single shipments and each was composed of intrastate and interstate traffic totalling not less than 20,000 pounds, the intrastate portion of which was transported at the rate applicable to the entire quantity.

The rate expert analyst of California Packing Corporation testified that applicant's and its predecessors' service has been utilized for eight years for the transportation of canned goods and vinegar between San Jose and Stockton and Sacramento and for the movement of dried fruit, salt, empty cans, fibre containers, aluminum sulphate, paper labels, canning machinery and canned goods to other points set forth in the application. According to the witness outbound shipments from the San Jose area are all handled by applicant and range from one to fifty truckloads a day. He stated that the preponderance of the shipments were 20,000 pounds or over; that the shipments have both interstate and intrastate destinations; that his production is greater than his storage facilities; and that applicant's proposal to make available the provisions of Item 90-E, paragraph 3 of Highway Carriers' Tariff No. 2 (Intrastate and Interstate Tonnage: (a) When property consisting of part intrastate and part interstate tonnage is received as a single shipment, the intrastate portion may be charged for at the rate which would be applicable on such portion were the entire quantity intrastate in character. In no event shall the aggregate charge on the intrastate and interstate portions be less than the charge herein provided for an intrastate shipment of the same combined quantity.), would enable his company to better move out its intrastate shipments. He further stated that applicant furnishes a satisfactory 24 hour, 7 day a week service with suitable equipment and that it is important to his business that applicant provide such service in the future.

The shipping department manager of a manufacturer of frames, doors, wood mill products and cabinet work located at Santa Clara testified that shipments are made to San Francisco,

Richmond, San Jose, Santa Cruz, Watsonville, Monterey, Salinas, Hollister, King City and Bradley. According to this witness, applicant possesses the type of equipment he requires, its service is excellent, is utilized three times weekly, is available upon short notice, and is needed. The witness stated that applicant's service is used only for transportation of truck load quantities, the weight of which very often are less than 20,000 pounds.

The sales and traffic manager of a canning company situated in Hollister testified that his company has used applicant's service for seven or eight years; that applicant transports his shipments in full truck loads from Hollister to the Bay Area; that interstate and intrastate shipments are combined so as to make a complete truck load; that applicant carries shipments of sugar, fibre board and empty cans from Oakland, San Jose and San Francisco to his plant at Hollister; that applicant's service has been very satisfactory; that the proposed service is needed and will be used.

Testimony also was presented by other shipper witnesses representing concerns making shipments to various points covered by the application. Such testimony was to the effect that they had used applicant's service; that it was satisfactory; that applicant's equipment is adequate and supplied on short notice and on Saturdays and evenings; that the proposed service is needed and will be used, if authorized.

Protestants California Motor Express, Ltd., California Motor Transport Co. Ltd., Pacific Freight Lines, Pacific Freight Lines Express, Clark Bros. Motor Transport, Inc., Coast Line Truck Service, Inc. and J. A. Nevis Co. did not testify or offer any witnesses in their behalf.

Protestants Merchants Express Corporation, Highway Transport, Inc., Bisnett Bros. and J. Christenson Company testified as to the services they rendered within the area here involved.

Ralph E. Bisnett of Bisnett Bros. testified that the principal commodity transported by his company from Monterey is canned fish and that such transportation is most intense during the period August 1 to February 1. The witness asserted that his company could handle more business and that granting the application would result in a diversion of a portion of his outbound business to applicant. Cross-examination disclosed that, among others, the witness has employed applicant as a subhauler in the transportation of northbound shipments and so utilized applicant's service as recently as several weeks last past. Exhibit 33, a profit and loss statement of Bisnett Bros., shows that during the period from January 1, 1951, to July 31, 1951, \$19,729.66 was paid to subhaulers.

The evidence indicates that applicant not only has not furnished a service in insulated equipment provided with mechanical refrigerating units in the past but that there is presently no public need requiring such a service by applicant.

After careful consideration of the entire record in this proceeding, the Commission finds that public convenience and necessity require the establishment and operation of service by applicant as a highway common carrier for the transportation of general commodities between the points set forth in and subject to the conditions and limitations contained in the ensuing order.

A specific provision concerning the transportation of

shipments in lots of less than 20,000 pounds occupying the full practicable capacity of a unit of equipment or combinations thereof having a minimum loading space of 30 feet in length will not be included in the authority here granted as applicant's proposal to carry a shipment weighing less than 20,000 pounds at a total charge applicable to a shipment of not less than 20,000 pounds affords it adequate operating flexibility and latitude within the framework of its service hitherto rendered and here proposed.

Garden City Transportation Co., Ltd. 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 had and based upon the evidence therein adduced,

IT IS ORDERED:

(I) That a certificate of public convenience and necessity is granted to Garden City Transportation Co., Ltd., authorizing it to operate as a highway common carrier, as defined by Section 213 of the Public Utilities Code, for the transportation of

(a) General commodities, between all points on:

U. S. Highway 101 and By-Pass 101 between Bradley and San Francisco;

State Highways 9 and 17 and U. S. Highway 40 between San Jose and Richmond;

State Highway 1 between Monterey and Santa Cruz;

State Highway 17 between Santa Cruz and San Jose;

Unnumbered highway between Monterey and Salinas;

State Highway 156 between Hollister and U. S. Highway 101;

Unnumbered highway between Hollister and U. S. Highway 101 at a point approximately 2 miles south of Gilroy;

Unnumbered highway between Watsonville and San Juan Bautista;

State Highway 152 between Watsonville and Gilroy;

State Highway 9 between Sunnyvale and Milpitas;

Dumbarton Bridge route between U. S. Highway 101 and Centerville and Niles;

San Mateo Bridge route between San Mateo and Mt. Eden and Hayward;

San Francisco-Oakland Bay Bridge route between San Francisco and Oakland;

Including the off-route points of Alameda and all points within 10 miles of the city limits of San Jose.

(b) Canned goods; dried fruit, and cannery and dried fruit packing plant machinery, materials, and supplies between San Jose and points within 10 miles of the city limits of San Jose, on the one hand, and Stockton and Sacramento, on the other hand.

(II) That the certificate herein granted is subject to the following conditions and limitations:

(a) Applicant shall not transport any shipments in insulated vehicles, equipped with mechanical refrigerating systems.

- (b) Applicant shall not transport any shipments of fruit, dried, unmanufactured and unprocessed (applies only to dried fruit in the natural state and which has not been cleaned, washed, stemmed or otherwise prepared or partially prepared for human consumption); fruit, fresh; nuts, in the shell; vegetables, fresh; carriers (used packages), empty returning, or forwarded for return loads, in connection with a paying load of any of the items above described; used household goods; livestock; petroleum and petroleum products in bulk; and explosives.
- (c) Applicant shall not transport any shipments between any two of the following points: San Francisco, San Leandro, Oakland, Alameda, Berkeley, Albany, El Cerrito, Richmond, Piedmont and Emeryville.
- (d) Applicant shall not transport any shipments of less than 20,000 pounds or subject to a charge lower than applicable on a shipment of 20,000 pounds except that when property consisting of part intrastate and part interstate tonnage is received as a single shipment, from one shipper on one shipping document at one point of origin at one time, the intrastate portion may be charged for at the rate which would be applicable on such portion were the entire quantity intrastate in character.

(III) 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 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 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) Between San Jose and points within 10 miles of the city limits of San Jose, on the one hand, and Stockton and Sacramento, on the other hand.

Via California Highway 9 from San Jose to Niles, thence unnumbered highways from Niles to U. S. Highway 50 via Sunol, Pleasanton and Livermore, and thence U. S. Highway 50 to Stockton and Sacramento, and via connecting highways from points within 10 miles of the city limits of San Jose to the foregoing route, with an alternate route over the old Altamont Pass route via Altamont between a point on U. S. Highway 50 approximately 3 miles east of Livermore and a point on U. S. Highway 50 approximately 10 miles west of Tracy; and via California Highways 9 and 17 from San Jose to Oakland, and thence U. S. Highway 40 from Oakland to Sacramento, and via connecting highways from points within 10 miles of the city limits of San Jose to the latter route.

(2) All highways and routes hereinabove enumerated in paragraph (1)(a).

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

Dated at San Francisco, California, this 19th day of February, 1952.

R. F. [Signature]
President
Justus F. Creever
[Signature]

Commissioners