

ORIGINALDecision No. 49185

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of W. H. GILBERT for)
 a Certificate of Public Conven-)
 ience and Necessity to Operate as)
 a Highway Common Carrier between)
 Tulelake, California, and Dorris,)
 California.)

Application No. 34752

O P I N I O N

In this proceeding W. H. Gilbert seeks a certificate of public convenience and necessity authorizing him to provide a seasonal highway common carrier service between Tulelake and Dorris for the transportation of wild ducks and geese. The seasonal dates are October 16 to November 18 inclusive, and December 8 to January 10 inclusive.

Applicant states that he owns a 1952 model, 3/4-ton, Dodge pickup truck which he plans to operate daily during the season to provide the proposed service. The proposed rate would be 50 cents and 75 cents for shipments weighing approximately 20 pounds and 40 pounds respectively. Applicant says that he owns a dry duck and goose picking and eviscerating plant at Tulelake. During the duck and goose season he operates such plant and packs the processed birds in dry ice.

As justification for the authority sought applicant alleges, in substance, that under the Fish and Game Code of the State of California a hunter may not have more than one limit of ducks and geese in his possession at one time and that a hunter after delivering a day's kill into the custody of a public carrier is deemed, under that code, as having parted with the possession of that day's kill and may lawfully shoot and kill ducks and geese on the following day.

It is further alleged that no passenger or express trains serve Tulnelake; that there is no transportation service between Tulnelake and Dorris 30 miles away on the main line of the Southern Pacific Company and that at the latter point the shipments would be transferred to Southern Pacific Company for further transportation.

The application also states:

That Pacific Motor Trucking Company during the last duck season made one trip per day, except on Saturday and Sunday, between the towns of Klamath Falls, Oregon, and Tulnelake, California; during the last season all ducks delivered from Tulnelake, California, were shipped on the Pacific Motor Trucking Company lines; your applicant during the last duck season received the majority of the wild birds for picking and packing late in the day after said Pacific Motor Trucking Company had passed through the town of Tulnelake, California; that for that reason the majority of the wild birds picked and packed could not be transported until the next day, and then were transported to Klamath Falls, Oregon, where they were held another day before they were finally shipped on the train; this delay of two days resulted in the evaporation of the dry ice in which said ducks and geese were packed before they were shipped; thus, in many cases the birds arrived at their destination in a soft, spoiled and unsatisfactory condition; and your applicant proposes to remedy this situation by delivering the birds himself to the train at Dorris, California, at 9:30 the following morning after they are shot.

According to applicant, Mr. Horne, who is in charge of the Fish and Wildlife Service in the Tulnelake area, and Mr. William J. Silva, President of the Fish and Game Commission of California, have requested applicant to establish the proposed service. A letter from the latter to that effect is attached to the application herein.

Applicant stresses the urgency of the situation as the duck season opens October 16. After full consideration of the

application, we find that public convenience and necessity require the establishment of the proposed service which will be authorized effective on the date hereof.

Applicant avers that a copy of the application has been served upon Pacific Motor Trucking Company. No protest to the application has been received and a public hearing does not appear to be necessary.

The rates proposed by applicant are lower than the minimum charges established for general highway common carrier service. However, in view of the specialized nature of this transportation, it appears that an exemption from the minimum rates is justified and should be authorized.

Furthermore, applicant must publish and file rates which will be definite and certain in their application. He may not use in his tariff such terms as "packages weighing approximately 20 pounds" and "packages weighing approximately 40 pounds."

Applicant 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

An application therefor having been filed and the Commission having found that public convenience and necessity require the establishment of the proposed operation,

IT IS ORDERED,

(1) That a certificate of public convenience and necessity is hereby granted W. H. Gilbert 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 dressed wild ducks and geese between Tulelake and Dorris during the annual duck season between the approximate dates of October 16 and November 18 inclusive, and December 8 and the following January 10 inclusive;

(2) That pursuant to the certificate granted in Paragraph (1) of this order applicant shall

- (a) File a written acceptance of the certificate herein granted within a period not to exceed thirty days after the effective date hereof,
- (b) Within thirty days after the effective date hereof and on not less than three days' notice to the Commission and the public, establish the service authorized and file in triplicate and make effective appropriate tariffs.

(3) That Decision No. 31606, in Case No. 4246, as amended, be and it is hereby further amended, by adding W. H. Gilbert to the list of carriers contained in Paragraph (b) of Finding No. 14

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thereof, but restricted to the transportation authorized in paragraph (1) hereof. }

The effective date of this order shall be the date hereof.

Dated at San Francisco, California, this 16th day of October, 1953..

P. J. [Signature]
 President
Justin J. [Signature]
[Signature]
[Signature]
 Commissioners

