

ORIGINALDecision No. 49769

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application)
of PAUL KUNDE and R. M. CARROLL,)
copartners doing business as)
ASSOCIATED TRANSPORTATION CO.,) Application No. 34856
for a certificate of public con-)
venience and necessity extending)
highway common carrier operations.)

Marvin Handler, for applicant.
Frederick W. Mielke, for Delta Lines, Inc.,
protestant.
Douglas Brookman, for Merchants Express
Corporation, Valley Express Company,
and Valley Motor Lines, Inc., protestants.

O P I N I O N

This application was filed on November 7, 1953 for the purpose of extending applicants' highway common carrier certificate. A public hearing was held before Examiner Power in San Francisco on February 15, 1954 and the matter was submitted.

Applicants have been in business since about 1936. One of the partners was their operating witness. This witness went to work for them in 1943 and became a partner in 1945. There were then three partners but one withdrew in 1949.

On October 24, 1950 a certificate was granted to applicants by Decision No. 44932 in Application No. 30525. Authority was granted to serve between San Francisco territory as defined in our minimum rate orders, on the one hand, and Marysville, Yuba City and points within ten miles of either, on the other hand. The authority was for the transportation of general commodities subject to certain exceptions. There was a 4,000-pound weight restriction affecting points north of San Leandro and South San Francisco in San Francisco territory except on insecticides to and from Richmond.

To this certificate they now request an extension. The northern terminus would be expanded to include Gridley, Oroville and intermediate points. Authority is also sought between the whole northern terminal area and Sacramento and Stockton, and also between Oroville and Lodi. No service is proposed between the Delta points requested and San Francisco territory.

The commodities proposed to be carried are "canned goods; equipment, materials and supplies used by canneries; and empty containers and pallets."

Representatives of three highway common carriers appeared and protested the application. Applicants amended their application to exclude "equipment, materials and supplies used by canneries" from the language quoted in the last paragraph. The protestants then all withdrew, leaving the application without opposition.

Applicants made a very complete presentation at the hearing. Five exhibits were introduced and were expanded by the testimony of the operating witness. It appeared by one exhibit that applicants have extensive interstate rights in this area, over both regular and irregular routes but all for common carriage. Another exhibit showed a net profit for each year from 1947 to 1953, inclusive, and a general trend to higher grosses and higher nets. Exhibit 3 showed current assets almost five times current liabilities and much larger than total liabilities. An exhibit filed as part of the application shows 55 pieces of equipment including 25 with motive power.

Applicants presented three shipper witnesses. According to Exhibit 5, they shipped 193 shipments aggregating 7,606,806 pounds between November 1, 1952 and November 1, 1953. All the witnesses were assistant traffic managers of their respective companies which are all food processors. All ship by applicants in interstate as

well as intrastate commerce. It would be a convenience to have one tariff covering both types of shipment. All prefer common carrier responsibility. All have used applicants for a period of years and found their service satisfactory.

The evidence was sufficient to show a need for the service proposed. Likewise, there was sufficient evidence to show that applicants have the necessary equipment, experience and financial ability to assume the increased responsibilities entailed. For these reasons the proposed extension will be granted as modified at the hearing.

Paul Kunde and R. M. Carroll, copartners doing business as Associated Transportation Co., are 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 hearing having been held in the above-entitled and numbered proceeding, evidence having been received and considered, the matter having been submitted, the Commission now being fully advised and having found that public convenience and necessity so require,

IT IS ORDERED:

(1) That Paul Kunde and R. M. Carroll, copartners doing business as Associated Transportation Co., be and they hereby are granted a certificate of public convenience and necessity authorizing the establishment and operation of service as a highway common carrier as defined in Section 213 of the Public Utilities Code of the State of California for the transportation of canned goods as set forth in Item 610 Series, Highway Carriers' Tariff No. 2, empty containers (exclusive of empty cans) and pallets:

- (a) Between Oroville, Gridley, Yuba City and Marysville, and intermediate points, via U. S. Highway 99E and State Highway 24, and connecting highways between said routes.
- (b) Between Oroville, Gridley, Yuba City, Marysville and intermediate points, on the one hand, and Sacramento and Stockton, on the other hand, via U. S. Highway 99E, State Highway 24, U. S. Highways 40, 50 and 99 and connecting highways between said routes.
- (c) Between Oroville and Lodi, via the routes set forth in ordering paragraph (1)(b) hereof.

(2) That the authority granted herein shall be an extension of and consolidated with the existing highway common carrier operative rights of the applicants.

(3) That the authority herein granted shall be subject to the following restrictions, namely:

- (a) Applicants shall transport no shipment of less than 4,000 pounds or which is subject to a charge lower than applicable to a shipment of not less than 4,000 pounds, provided however that this restriction shall not apply to shipments of empty containers and pallets.
- (b) No service as a highway common carrier shall be performed locally between Marysville, on the one hand, and Yuba City, on the other hand.
- (c) No service as a highway common carrier shall be performed between Sacramento, Lodi and Stockton, on the one hand, and San Francisco territory, on the other hand.

(4) That in providing service pursuant to the authority herein granted, applicants shall comply with and observe the following service regulations:

- (a) Within thirty days after the effective date hereof, applicants shall file a written acceptance of the certificate herein granted.
- (b) Within sixty days after the effective date hereof, and upon not less than five days' notice to the Commission and the public, applicants shall establish the service herein authorized and file in triplicate, and concurrently make effective, appropriate tariffs satisfactory to the Commission.
- (c) Prior to commencement of operations as a highway common carrier, applicants shall file evidence of adequate liability protection as required by G. O. #100 and in the form prescribed therein.

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

Dated at Los Angeles, California, this 9th day of March, 1954.

R. F. Anderson
President
James D. Caswell
Bennett P. Potter
John L. Mitchell
James Deagan
Commissioners