

Decision No. 51022**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
 TRANSPORTATION SERVICE COMPANY, a )  
 corporation for a certificate of public )  
 convenience and necessity to operate as )  
 a highway common carrier for the trans- )  
 portation of general commodities between )  
 San Pablo and Gilroy and intermediate )  
 points, between San Francisco and Gilroy )  
 and intermediate points, and between )  
 San Jose, Saratoga and Los Gatos and )  
 various other points in the vicinity )  
 thereof. )

Application No. 35331

Marquam C. George, for applicant.  
Frederick E. Fuhrman, for Pacific Motor Trucking  
 Company and Southern Pacific Company; Willard S.  
 Johnson, for J. Christenson Co.; Bertram S. Silver,  
Edward M. Berol and Thomas P. Brown, Jr., for  
 Highway Transport, Inc., and Peninsula Motor Express,  
 Inc.; Vaughan, Paul and Lyons and Bertram S. Silver  
 for Kollogg Express and Draying Co.; and Douglas  
 Brookman, for Merchants Express Corporation and  
 California Motor Transport Co., Ltd., protestants.

O P I N I O N

This application filed April 9, 1954 alleges that applicant and its predecessors, (the present owners of all its corporate stock), have since 1948 been engaged continuously in the transportation of general commodities with certain named exceptions between Gilroy and San Francisco and San Pablo and Los Gatos and intermediate points under Highway Contract Carrier Permit No. 43-4091 and Radial Highway Common Carrier Permit No. 43-4067 issued by this Commission. Permission is requested to establish service as a highway common carrier as defined in Section 213 of the Public Utilities Code for the transportation of general commodities except uncrated household goods, livestock and liquids in bulk between the points above named

over designated highways. The rates proposed are generally the same as those established in Highway Carriers' Tariff No. 2 and Highway Carriers' Tariff No. 8.

Public hearings were held before Examiner John Rowe in San Jose on August 17, 18 and 19, 1954 and in San Francisco on November 8, 1954. Evidence both oral and documentary was adduced and the matter has been duly submitted for decision.

Applicant has a terminal building in Santa Clara. It has transportation equipment with a depreciated value of \$86,600. It has carried a wide variety of freight since September 4, 1952. The revenue and volume of this freight has substantially increased. For example, in January 1953 it carried 2,348,638 pounds with a gross revenue of \$8,026 while in August, 1954 the weight had increased to 5,164,310 pounds and the revenue to \$16,383. As of June 30, 1954 applicant's total assets amounted to \$126,937.87, its total liabilities, to \$64,434.96. For the five months ending June 30, 1954 applicant realized a net profit of \$2,234.12.

Mr. Todd commenced the business in 1948 and in June, 1952 acquired all the stock in the corporation which is the present applicant. The corporation since that time has owned the business and property and has exercised the operative rights under the permits and also under a certificate of public convenience and necessity issued by the Interstate Commerce Commission. Mr. Todd, the general manager, has had extensive experience in the trucking business. At first the freight consisted mostly of meat carried under refrigeration. At present, however, many different commodities are carried.

Applicant has offered its services generally to the public. The operation has been under its radial permit. The business has grown to such an extent, and the service between the points and along

the routes for which rights are sought has become so regular, and the needs expressed by the public witnesses is of such a nature, that the discontinuance of this service would adversely affect the public interest. Fourteen public witnesses representing substantial shippers of freight testified as to the public need for the proposed highway common carrier service. About the same number of additional witnesses would have appeared and furnished similar testimony if called, according to the stipulation of counsel. According to the testimony submitted by protestants they operate a regular highway common carrier service in this area, some serving all points, others only the chief points involved. Based upon the entire record the Commission finds as a fact that the highway common carrier service hereinafter described and authorized is required by public convenience and necessity and that applicant has sufficient experience and financial ability to successfully perform said service.

Transportation Service Company 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 particular routes. This monopoly feature may be changed or destroyed at any time by the State, which is not in any respect limited as to the number of rights which may be given.

O R D E R

Application therefor having been filed, public hearings having been held, and the Commission having found that public convenience and necessity so require,

IT IS ORDERED:

(1) That a certificate of public convenience and necessity be, and it hereby is, granted to Transportation Service

Company, a corporation, authorizing the establishment and operation of service as a highway common carrier as that term is defined in Section 213 of the Public Utilities Code, for the transportation of — general commodities except uncrated used household goods, livestock and liquid in bulk, between San Pablo and Gilroy, Los Gatos and all points intermediate thereto and between said intermediate points, and between San Francisco and Gilroy, Los Gatos, and all points intermediate thereto and between said intermediate points serving all points within five miles on either side of the highways described.

(2) That in providing service pursuant to the certificate herein granted, applicant shall comply with and observe the following service regulations:

- (a) Within thirty days after the effective date hereof, applicant 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 applicant shall establish the service herein authorized and file in triplicate and concurrently make effective, tariffs satisfactory to the Commission.
- (c) Subject to the authority of the Commission to change or modify them by further order applicant shall conduct operations pursuant to the certificate herein granted over and along the following public highways:
  1. U. S. Highway 40 between San Pablo and Oakland.
  2. U. S. Highway 50 between Oakland and its intersection with State Highway 9 near Hayward.
  3. State Highway 9 between its intersection with U. S. Highway 50 near Hayward and Saratoga.
  4. State Highway 17 between Oakland and Los Gatos.
  5. U. S. Highway 101 and U. S. Highway 101 Bypass between San Francisco and Gilroy.
  6. Unnumbered county road between Saratoga and Los Gatos.

7. Unnumbered county road between Santa Clara and Saratoga.
8. Any public road, street or highway to reach off route points applicant is authorized to serve.

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

Dated at Los Angeles, California, this 25<sup>th</sup> day of JANUARY, 1955.

*John E. Mitchell*  
President  
*Justina J. Cassin*  
*Rose Polunski*  
*Michael J. Dwyer*  
COMMISSIONERS