

ORIGINALDecision No. 51529

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
 KINGS COUNTY TRUCK LINES, a corporation,
 to remove restrictions contained in
 certificate of public convenience and
 necessity as a highway common carrier.

)
)
) Application No. 35023
) (Amended)
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Orville A. Schulenberg and James H. Lucas, for applicant.
Marvin Handler, for Associated Transportation Company;
Bertram S. Silver and Edward M. Berol, for Highway
 Transport, Inc., and Highway Transport Express; Frederick
E. Fuhrman and William Meinhold, for Southern Pacific
 Company and Pacific Motor Trucking Company; Douglas
Brookman, for Merchants Express Company, California Motor
 Express, Ltd., California Motor Transport Co., Ltd.,
 Valley Express Company and Valley Motor Lines, Inc.,
Gordon Knapp and Gill, by Joseph C. Gill, for Pacific
 Freight Lines and Pacific Freight Lines Express;
Frederick W. Mielke, for Delta Lines, Inc.; Robert W.
Walker and Henry M. Moffat, for Santa Fe Transportation
 Co.; and Willard S. Johnson, for J. Christenson Co.,
J. A. Nevis Trucking Company, Inc., Karlson Bros. Trucking
Service and Ted Peters Trucking Co., Inc., protestants.

O P I N I O N

The original application herein was filed on January 6, 1954. Applicant's object was to have the commodity restrictions discussed in the next paragraph removed from its certificate. No geographical expansion is desired or requested. A prehearing conference was held on August 16, 1954. Applicant filed an amendment to its application on September 16, 1954, and public hearings were held before Examiner John Power, at San Francisco, on November 3 and 4 and December 15 and 16, 1954. On the latter date oral argument was held and the matter submitted.

Decision No. 49412 states the authority under which Kings County now operates. First, it authorized transportation of commodities requiring refrigeration and a broad list of other

commodities when tendered with them between Los Angeles territory and points between Chowchilla on the south and Sacramento and San Francisco territory on the north, with 25-mile lateral rights off U. S. Highway 99 between Chowchilla and Manteca. Second, there are rights between the points north of Chowchilla to Highway 99 points below Chowchilla, with 25-mile lateral rights from Chowchilla to Delano. Third, there are "from-to" rights from Los Angeles Basin Territory to the points beyond Chowchilla. Fourth, there are rights restricted against local service between Sacramento and six Sacramento Valley cities. Fifth, there is a general commodity authority from Los Angeles territory to points between Bakersfield and Chowchilla with 25-mile lateral rights. Sixth, there is a right to transport refrigerated commodities, dairy products and produce, from the Chowchilla-Bakersfield lateral area to Los Angeles Basin territory with local rights. The present post merger authority may be more complex than is desirable.

Mr. Manuel S. Mancebo, the president and chief stockholder of applicant, went into the transportation business in 1935. Except for a brief interlude spent in farming he has been in it ever since. By February 16, 1948, Mancebo's fleet had grown to 70 units, and gross revenues to one-half million dollars per year. On that date Kings County Truck Lines was incorporated. On May 1, 1949, applicant's president purchased all of the outstanding stock of Moser's Frozen Food Freight Lines.⁽¹⁾ The territories of Moser and Kings County were such as to make them largely (though not entirely) complementary rather than competitive. The certificate of each authorized transport of refrigerated and other specified lading "tendered with" refrigerated commodities. The authorities of Moser and Kings County differed on the "tendered with" commodities

(1) Hereinafter called "Moser." Applicant will be referred to as "Kings County."

(2)
allowed.

The Moser transaction was not in all respects completed until 1953. The Mancobo management, however, took over on the purchase date. In 1953 Application No. 34820 was filed to secure the Commission's authority to merge Moser into Kings County. Permission was granted by Decision No. 49412, issued on December 8, 1953.

Between May 1949 and December 1953, Moser and Kings County were separately operated although having the same officers. To some extent Kings County had to "carry" Moser. Moser's difficulties cannot be laid to management for the identical management served the more successful Kings County operation.

Financial data concerning the combined operations may be found in Decision No. 49412 supra and in Decision No. 50311 (July 27, 1954) in Application No. 35593. The record in this proceeding shows that while management has been efficient and successful, profits have not been large. Applicant's witness attributed this principally to three factors: costliness of refrigerated equipment, certificate limitations and the difficulty of balancing load factors.

Applicant's witness gave some data on costs in his prepared testimony. For example, a fully insulated, 21-foot van with mechanical refrigeration sells for \$8,197 while without insulation and refrigeration the price would be \$4,446 a difference of \$3,751. The witness testified that the refrigerated service requires extensive terminal facilities which the presently certificated traffic has not proved entirely able to support. The witness also testified to the difficulty of balancing load factors, and how in an effort to solve this last problem, applicant

(2) The authority designated "First" through "Fourth" in the preceding paragraph was originally granted to Moser; that designated as "Fifth" and "Sixth" to Kings County. See Page 6, infra, for Moser's "Tendered with" commodities.

has not only used its "tendered with" dry freight authority but has also resorted to permitted carrier operations.

Applicant has 293 units of equipment divided as follows: 33 trucks; 83 tractors; 127 trailers and semitrailers, including 37 tank units; 42 dollies; 7 converters and 1 bolster. Terminals are maintained at San Francisco, Sacramento, Modesto, Fresno, Tulare, Bakersfield and Los Angeles. All but Sacramento are connected by leased wire teletype. The main repair shop is in Tulare with others at San Francisco, Fresno and Los Angeles. Adequate personnel are employed to carry on the business.

The Commission finds that the finances, equipment, facilities, experience and personnel of Kings County Truck Lines have been shown to be adequate for the purposes of this application.

In support of its application, applicant urged that the public would gain from a fuller use of applicant's equipment and facilities; that the Commission's policy of developing a sound transportation system would be enhanced thereby; that the restrictions on its service were uneconomic and confusing to its employees and shippers; that it has accordingly held out a permitted carrier service to the public; that the permitted carrier service places it in danger under the Nolan decision.⁽³⁾

Protestants countered with certain arguments respecting both local and general matters. They urged, on the general question, that applicant wanted its extension for its own benefit not for that of the public; that applicant was in no financial distress; there was no showing of inadequate service by the established carriers; that there were no shipper witnesses; and that the application is not within the policy decision.

Two traffic exhibits were introduced by applicant through

(3) Nolan v. Commission (1953) 41 Cal. 2d. 392.

its operating witness. Exhibit No. 7 showed permitted carrier shipments for two days each month for 12 months, August 1953 to July 1954, a total of 24 days. Later, in response to the request of a protestant, another exhibit (No. 8) was filed covering the first 7 months of 1953, 5 days each month or 35 days in all. This exhibit was also restricted to traffic moved under applicant's permits.

These exhibits reveal that applicant is rendering service throughout the area it is authorized to serve. Service to, from and between the larger cities of Sacramento, Stockton, Fresno and Bakersfield was considerable. The amount of service shown to lesser points is also impressive. For example in the 4 days reported for August and September 1953, we find service to or from Chowchilla, Merced, Modesto, Los Banos, Dos Palos, Gustine, Newman, Tracy, Hanford, Corcoran, Visalia, Tulare, Porterville, Turlock, Alpaugh, Firebaugh, Lodi, Sanger and Delano.

The traffic exhibits also reveal operations between the Los Angeles and San Francisco areas. The exhibits clearly indicate that applicant is in danger under the rule approved by the Supreme Court of this State in the Nolan case, supra. Exhibit No. 8 shows service between San Francisco and Los Angeles territories on 33 days out of 35. One hundred seventy shipments in all were transported on the 35 days for an average of just under 5 per day. On Exhibit No. 7 service is shown on 22 days out of 24. The average on that exhibit based on a total of 77 shipments was a little over 3 per day. All were carried on regular common carrier schedules.

The Commission is of the opinion that applicant has met the burden imposed on it. The Commission observes that applicant has the requisite organizational qualifications for an extension of

authority. Management appears sound and efficient and has been able to attract traffic from a section of the public.

The Commission accordingly finds that public convenience and necessity have been established for general commodity authority between Los Angeles territory on the one hand and San Francisco territory plus the points between there and Stockton-Sacramento and the San Joaquin valley points applicant is presently authorized to serve on the other hand; also, between San Francisco territory on the one hand and valley points from Manteca south on the other hand; also locally between the various valley points.

The Commission does not have enough evidence before it to render a decision on the question of an expanded local service between San Francisco territory and Stockton-Sacramento. Our difficulty arises in part from the widely inclusive authority applicant already has between those areas. Applicant has authority between those points to carry commodities requiring refrigeration "all or part of the year" and other lading when tendered with refrigerator items. The latter category includes, among other things, "... commodities described in Item 360-C series ... Item 730-D series" of Minimum Rate Tariff No. 2 of this Commission, adhesive paste, animal food, commercial fertilizer and packaging materials. Item 360 series is an exception to the Western classification and exception sheet for "groceries and grocers' supplies", Item No. 730 series includes "soap, lard and related articles." While these items do not exhaust the list of general commodities, they move frequently and in volume.

The items listed in the last paragraph do not cover all of applicant's "tendered with" authority. They are, however,

enough to show that it is very broad and since applicant restricted its showing in the San Francisco-Sacramento area to shipments moved under its permits, the evidence was insufficient to show public convenience and necessity in this area. However, applicant's traffic there may have been understated.

Similar observations might be made concerning applicant's authority and showing in that part of Los Angeles Basin territory which lies outside of Los Angeles territory. In the case of the basin applicant has certain from-to authority which could also prove difficult both in interpretation and operation.

Since the Commission has not enough evidence before it to decide these last two problems, that part of the sought authority will be denied without prejudice.

O R D E R

Application having been filed and public hearings held thereon and the Commission having considered the same and being of the opinion and finding that public convenience and necessity so require; therefore,

IT IS ORDERED that:

1. A certificate of public convenience and necessity is hereby granted to Kings County Truck Lines, a corporation, authorizing the establishment and operation of a service as a highway common carrier, as defined in Section 213 of the Public Utilities Code, for the transportation of general commodities except petroleum products in bulk in tank vehicles, uncrated household goods, explosives and livestock between:

A. All points and places on U. S. Highway No. 99 or within twenty-five miles laterally (air line distance) thereof between

Manteca and Bakersfield via any and all streets, roads and highways. These points will hereafter be referred to in this order as the "valley points."

B. Between the valley points on the one hand and Los Angeles territory as defined in Item No. 270-3, Minimum Rate Tariff No. 2 on the other hand.

C. Between the valley points and Los Angeles territory on the one hand and

(1) points on State Highway No. 152 between the valley points and Gilroy;

(2) points on U. S. Highway No. 101 between Gilroy and San Francisco territory, as defined in Item No. 270-3; Minimum Rate Tariff No. 2;

(3) San Francisco territory;

(4) points on U. S. Highway No. 40 between San Francisco territory and Sacramento;

(5) points on U. S. Highway No. 50 between San Francisco territory and Stockton;

(6) points on State Highway No. 24 between San Francisco territory and Sacramento;

(7) points on U. S. Highway No. 99 between North Sacramento and Manteca and between Bakersfield and Los Angeles territory, all on the other hand.

D. The authority granted herein is subject to the following exceptions:

(1) No service shall be performed on fresh dairy products between Los Baños, Patterson and intermediate points on State Highway No. 33, on the one hand, and San Francisco and the East Bay cities from Richmond on the north to Hayward on the south, including

Richmond and Hayward, on the other hand:

(2) No service shall be performed on iron and steel articles or tinplate offered in lots of 10,000 pounds or more and having origin or destination at Pittsburg, California.

E. In performing the transportation herein authorized applicant may use all routes authorized to it by Decision No. 49412, dated December 8, 1953, in Application No. 34820 together with routes specifically authorized herein:

2. In providing service pursuant to the authority herein granted, applicant shall comply with the following service regulations:

- a. Within thirty days after the effective date of this order, 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 comply with the provisions of General Order No. 80 by filing in triplicate and concurrently making effective tariffs satisfactory to the Commission.

3. Decision No. 49412 is hereby amended by striking therefrom ordering paragraph No. 4 (b) 1 thereof reading as follows: —
"1. the line haul portion of the service shall be rendered by means of refrigerated or insulated equipment;"

4. The authority now held by applicant under ordering paragraph No. 4 of said Decision No. 49412 is hereby revoked and canceled to the extent necessary to prevent duplication of the authority herein granted.

5. Except to the extent that it is herein granted Application No. 35023 as amended is hereby denied without prejudice.

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

Dated at San Francisco, California,
this 31st day of May, 1955.

John E. Mitchell
President

Paul J. ...

...

B. H. ...

Commissioners

Commissioner Justus F. Craemer, being necessarily absent, did not participate in the disposition of this proceeding.