

ORIGINAL

Decision No. 56177

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 ARTHUR M. SEPULVEDA, doing business as)
 A & J TRUCKING CO., for a certificate of)
 public convenience and necessity to oper-) Application No.
 ate as a highway common carrier between) 36220
 Oakland, San Francisco, Salinas, Santa Rosa,)
 Chico, Sacramento, Stockton, Fresno, Visalia,)
Hanford and intermediate points.)

Margam C. George, for applicant.
Frederick W. Mielke, for Delta Lines Inc.; Bruce R. Geernaert, for Highway Transport, Inc.; Daniel W. Baker and Marvin Handler, for Nielsen Truck Lines, Warren Transportation Co., Lodi Truck Service and Associated Transportation Co.;
 protestants.
Allen K. Penttila, for The Sherwin Williams Co.,
 interested party.

O P I N I O N

Arthur M. Sepulveda, doing business as A & J Trucking Company, is engaged in the transportation of property in California pursuant to permits issued by this Commission. He seeks an order authorizing him to conduct service as a highway common carrier for the transportation of specifically named commodities between various points in the San Francisco Bay Area.

Notice of filing of this application was given all common carriers subject to the jurisdiction of this Commission. A public

hearing was held in San Francisco on November 4 and November 18, 1957. Evidence was presented to the Commission in this matter.

At the hearing, applicant sought leave to amend his application by restricting the area for which the certificate was sought. Leave to file such an amendment was granted. In the light of said amendment the protestants sought leave to withdraw their protests. Leave to withdraw as protestants was granted.

This application was filed pursuant to Decision No. 50448, in Case No. 5478, dated August 17, 1954. In that decision, the Commission enunciated a policy under which it may consider operation as a highway permit carrier up to and including September 10, 1953, as evidence of public convenience and necessity, if it appears that such operation may be found to constitute common carriage under the terms of the Nolan decision (Nolan v. Public Utilities Commission, 41 C (2nd) 392). The allegations of the application, the representations filed in this matter and the evidence adduced at the hearing indicate, however, and the Commission finds that as of September 10, 1953, applicant was conducting its operations within the scope of the permits heretofore issued by this Commission. Such operations not having constituted highway common carriage, the sought certificate of public convenience and necessity is not a requisite for continuance of applicant's operations as conducted on the said date; and the application will be denied.

The applicant is hereby placed on notice that the Commission, by this decision, makes no finding and expresses no

opinion as to whether applicant has or has not been conducting his operations within the scope of his permitted authority since September 10, 1953; and that the provisions of Section 1063 of the Public Utilities Code will be strictly enforced.

ORDER

A public hearing having been held and based upon the evidence adduced therein and the application and representations filed herein,

IT IS ORDERED that Application No. 36220 is denied.

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

Dated at San Francisco, California, this 27th day of January 1958.

[Signature]
President

[Signature]

[Signature]

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Commissioners