

ORIGINALDecision No. 56746

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 E. M. THARP TRUCKING, INC. to operate) Application No. 36492
 a highway common carrier service.)

O P I N I O N

E. M. Tharp Trucking, Inc. is engaged in the transportation of property in California pursuant to permits issued by this Commission.

Applicant seeks an order authorizing it to conduct service as a highway common carrier for the transportation of limited commodities between San Francisco, Sacramento and El Centro.

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

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 (2d) 392). The allegations of the application and the representations filed in this matter 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 applicart'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 its operations within the scope of its permitted authority since September 10, 1953; and that the provisions of Section 1063 of the Public Utilities Code will be strictly enforced.

ORDER

Based upon the application and representations filed herein,

IT IS ORDERED that Application No. 36492 be, and it 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 May, 1958.

John E. Mitchell
 President

Robert L. Lister

William H. Dale

Thomas H. Jensen
 Commissioners