

ORIGINALDecision No. 57115

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Balser Truck Co., a corporation, for a certificate of public convenience and necessity to operate as a highway common carrier of property within the State of California between the points and places herein designated.

Application
No. 36464
(As Amended)

ORDER DENYING REHEARING

Applicant has filed a petition seeking a rehearing or reconsideration in respect to Decision No. 56820. The Commission having considered each of the allegations contained in said petition and being of the opinion that no good cause has been shown for granting a rehearing or reconsideration in this matter,

IT IS HEREBY ORDERED that said petition be and it is hereby denied.

Dated at Los Angeles, California, this 5th day of August, 1958.

L. Lynn Fox
President
Charles W. Lawrence
Walter H. ...
Theodore H. ...
Commissioners

July 22, 1958

TO THE COMMISSION: RE: Decision No. 56820 in Application No. 36464 (as amended)

The above-numbered application was filed pursuant to Decision No. 50448 in Case No. 5478. On June 9, 1958 the Commission issued Decision No. 56820 which granted applicant a certificate of public convenience and necessity to operate as a highway common carrier for a portion of the area sought to be served by applicant and for certain of the commodities which applicant sought to transport. On July 8, 1958 applicant filed a "Petition for Reconsideration and for Rehearing of Decision No. 56820".

The petition is entirely without merit in all particulars. In general it raises the following points:

- (1) Applicant avers that the Commission erred in not processing this application in the conventional manner under the rules and regulations of the Commission, other than its policy decisions under Decision No. 50448, Case No. 5478.
- (2) Applicant avers that the Commission erred in not finding, in addition to its finding "Notice of filing of application was given all common carriers subject to the jurisdiction of this Commission," that (a) copy of application was furnished all of said carriers and not one of them filed a protest; that (b) while two carriers appeared at the hearing, neither of them made a statement in protest at the close of hearing.
- (3) Applicant avers that the Commission erred in disregarding the facts stated in verified petition, verified amendment, and testimony of the president and general manager for applicant at the hearing.
- (4) It is error for the Commission in an uncontested application and hearing to go outside the record, outside the application, outside the authority vested in it by law, to whittle an application down to practically nothing without substantial evidence to justify it.

(5) The Commission is without authority to say what commodities a carrier may carry or between what points and places he will operate; only the carrier and the shipper can determine that subject to the carrier's authority or authorities and the laws regulating intrastate or interstate commerce.

(6) The only evidence before this Commission is the application, the amended application, and the testimony of the president and general manager for applicant.

Such allegations can be briefly answered as follows:

(1) The applicant filed, processed its application and went to hearing under the Policy Decision rules, practices and procedures; it is somewhat late now to ask for conventional procedure treatment. Moreover, under conventional procedures it is very doubtful whether this carrier could have been granted any authority.

(2) A finding in the decision regarding the copy of the application being served is not necessary. The fact that the two protestants did not make closing arguments does not mean that there was no protest. The evidence of the protest is clear.

(3) It would have been improper to have considered any evidence of applicant's operations subsequent to September 10, 1953. Unless the Commission desires to reverse Decision No. 50448, applicant's contention must be overruled.

(4) The failure to process the application under the conventional procedure is included under the applicant's first averment.

(5) The law is clearly contrary to this allegation.

(6) This is a repeat of the first and fourth allegations.

No ground for reconsideration or rehearing has been stated in the petition filed by applicant and it is recommended the petition be denied.

JAMES F. MASTORIS