

ORIGINALDecision No. 61260

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 GUS A. MELHAFF, an individual,)
 doing business as Melhaff Trucking)
 Co., for a certificate of public)
 convenience and necessity.)

Application No. 42110

Bertram S. Silver, for applicant.
Marvin Handler, of Handler and Baker, for Lodi
 Truck Service and Delta Lines, Inc.;
Willard S. Johnson, for J. Christenson Company,
 Ted Peters Trucking Company, Inc., and Karlson
 Bros. Trucking Service; Bruce R. Geernaert, of
 Berol and Geernaert, for Merchants Express
 Corp., California Motor Transport and California
 Motor Express, protestants.

O P I N I O N

Gus A. Melhaff, an individual, doing business as Melhaff Trucking Co., is operating under permitted authority as a radial highway common carrier and a highway contract carrier.

The applicant now requests a certificate of public convenience and necessity pursuant to Sections 1063 and 1064 of the Public Utilities Code authorizing the applicant to transport general commodities, with certain exceptions, from the San Francisco Territory to Sacramento along Highways 40 and 50; and, along Highway 120 between Tracy and Manteca and Highway 99 from Modesto to Sacramento. Service will be provided six days a week, excluding Sundays and holidays.

Public Hearings

Public hearings on this application were held before Examiner Edward G. Fraser in Sacramento on June 20th, in Lodi on June 21st and July 1st, and in San Francisco on August 1 and 2, 1960, at which time evidence was presented by the applicant and by the

various protestants who participated in said hearings. The matter was submitted ten days after the receipt of the final transcript.

Shipper Evidence and Support of Application

The applicant testified that he now operates out of a terminal located in Galt, California. His equipment consists of seven tractors, four trucks and fifteen trailers. He has been serving Sacramento, Galt, Lodi, Stockton, Modesto, Tracy, and through the Bay Area, as a permitted carrier. Occasional trips are also made to Los Angeles. He now employs twenty people, including drivers, and handles both truckload and less-than-truckload shipments.

The applicant stated that he has just converted two units into van-type trailers and will purchase any other equipment he finds necessary, if he is granted a certificate. The financial records of the applicant (Exhibits Nos. 4 and 5) show a total revenue of \$142,363.54, for the year ending December 31, 1959, along with a gross profit of \$15,813.70 and a net profit of \$7,417.70. Current liabilities total \$59,000.24, in which the principal items are two \$11,000 chattel mortgages and a \$19,592.00 account owed to the Pike Trailer Company. Applicant stated that both mortgages also cover loans made to purchase equipment. All three accounts are paid in installments and all payments are made on time.

Fourteen shippers testified for the applicant. They stated his present service is excellent and they hope he will receive a certificate. Half of those called admitted they use other carriers, since it is their policy to do so. Most of the witnesses were representing substantial business firms which shipped regularly into all areas the applicant is asking to serve. The majority testified they had utilized the services of one or more of the available certificated carriers and found their hauling

to be satisfactory. Several stated they were not aware of the number of certificated carriers serving the area.

The Protestants' Case

Six of the protestants presented testimony and several introduced documentary evidence. Their testimony revealed that all opposed the current application because if granted it would authorize another trucker to compete for the limited business in an area now served by approximately fifty carriers.

Several of the protestants have recently purchased new equipment, including two-way radios for their trucks and they feel that this investment may be nullified if additional carriers are allowed to operate in their zone.

Findings and Conclusions

Upon consideration of the record in this proceeding, the Commission finds that public convenience and necessity require that the application be granted. We find and conclude that there is a present need for the proposed service and that the applicant has the required experience, the financial resources, and the necessary equipment to institute and maintain the operation to be authorized.

Applicant is hereby placed on 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, such rights extend to the holder a full or partial monopoly of a class of business over a particular route. This monopoly feature may be modified or canceled 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 having been filed, public hearings having been held and based upon the above findings,

IT IS ORDERED:

1. That a certificate of public convenience and necessity is granted to Gus A. Melhaff, authorizing him to operate as a highway common carrier as defined by Section 213 of the Public Utilities Code for the transportation of property between the points and along the routes as more particularly set forth in Appendices A and B hereto.

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. By accepting the certificate of public convenience and necessity herein granted, applicant is placed on notice that he will be required, among other things, to file annual reports of his operations and to comply with and observe the safety rules and other regulations of the Commission's General Order No. 99 and insurance requirements of the Commission's General Order No. 100-A. Failure to file such reports, in such form and at such time as the Commission may direct, or to comply with and observe the provisions of General Orders Nos. 99 and 100-A, may result in a cancellation of the operating authority granted by this decision.
- (b) Within one hundred twenty days after the effective date hereof, and on not less than ten days' notice to the Commission and to the public, applicant shall establish the

service herein authorized and file in triplicate, and concurrently make effective, tariffs satisfactory to the Commission.

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

Dated at San Francisco, California, this 28th day of December, 1960.

[Signature]
President
[Signature]
Theodore J. Jensen
[Signature]
Commissioners

*I dissent. Grounds
therefor will be filed later.
Maurice J. Rosen.*

*I dissent.
C. Lynn Fox.
Commissioner*

Gus A. Melhaff, by the certificate of public convenience and necessity granted in the decision noted in the margin, is authorized to transport general commodities as follows:

1. Between all points and places in the San Francisco Territory as described in Appendix B attached hereto.
2. Between all points and places located on and within 15 miles laterally of the following named highways:
 - a. U. S. Highway 40 between Richmond and Sacramento, inclusive.
 - b. U. S. Highway 50 between Hayward and Sacramento, inclusive.
 - c. U. S. Highway 99 between Modesto and Sacramento, inclusive.
 - d. State Highway 120 between junction with U. S. Highway 50 and Manteca, inclusive.
3. Between all points and places located within a 15-mile radius of Sacramento and Modesto.
4. Through routes and rates may be established between any and all points described in subparagraph 1 through 3 above.

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Applicants shall not transport any shipments of:

1. Used household goods and personal effects not packed in accordance with the crated property requirements set forth in paragraph (d) of Item No. 10-C of Minimum Rate Tariff No. 4-A.
2. Automobiles, trucks and buses, viz.: new and used, finished or unfinished passenger automobiles (including jeeps), ambulances, hearses and taxis; freight automobiles, automobile chassis, trucks, truck chassis, truck trailers, trucks and trailers combined, buses and bus chassis.
3. Livestock, viz.: bucks, bulls, calves, cattle, cows, dairy cattle, ewes, goats, hogs, horses, kids, lambs, oxen, pigs, sheep, sheep camp outfits, sows, steers, stags or swine.
4. Commodities requiring the use of special refrigeration or temperature control in specially designed and constructed refrigerator equipment.
5. Liquids, compressed gases, commodities in semi-plastic form and commodities in suspension in liquids in bulk, in tank trucks, tank trailers, tank semitrailers or a combination of such highway vehicles.
6. Commodities when transported in bulk in dump trucks or in hopper-type trucks.
7. Commodities when transported in motor vehicles equipped for mechanical mixing in transit.
8. Logs.

End of Appendix A

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SAN FRANCISCO TERRITORY includes all the City of San Jose and that area embraced by the following boundary: Beginning at the point the San Francisco-San Mateo County boundary line meets the Pacific Ocean; thence easterly along said boundary line to a point 1 mile west of U. S. Highway 101; southerly along an imaginary line 1 mile west of and paralleling U. S. Highway 101 to its intersection with Southern Pacific Company right of way at Arastradero Road; southeasterly along the Southern Pacific Company right of way to Pollard Road, including industries served by the Southern Pacific Company spur line extending approximately 2 miles southwest from Simla to Permanente; easterly along Pollard Road to W. Parr Avenue; easterly along W. Parr Avenue to Capri Drive; southerly along Capri Drive to E. Parr Avenue; easterly along E. Parr Avenue to the Southern Pacific Company right of way; southerly along the Southern Pacific Company right of way to the Campbell-Los Gatos city limits; easterly along said limits and the prolongation thereof to the San Jose-Los Gatos Road; northeasterly along San Jose-Los Gatos Road to Foxworthy Avenue; easterly along Foxworthy Avenue to Almaden Road; southerly along Almaden Road to Hillsdale Avenue; easterly along Hillsdale Avenue to U. S. Highway 101; northwesterly along U. S. Highway 101 to Tully Road; north-easterly along Tully Road to White Road; northwesterly along White Road to McKee Road; southwesterly along McKee Road to Capitol Avenue; northwesterly along Capitol Avenue to State Highway 17 (Oakland Road); northerly along State Highway 17 to Warm Springs; northerly along the unnumbered highway via Mission San Jose and Niles to Hayward; northerly along Foothill Boulevard to Seminary Avenue; easterly along Seminary Avenue to Mountain Boulevard; northerly along Mountain Boulevard and Moraga Avenue to Estates Drive; westerly along Estates Drive, Harbord Drive and Broadway Terrace to College Avenue; northerly along College Avenue to Dwight Way; easterly along Dwight Way to the Berkeley-Oakland boundary line; northerly along said boundary line to the campus boundary of the University of California; northerly and westerly along the campus boundary of the University of California to Euclid Avenue; northerly along Euclid Avenue to Marin Avenue; westerly along Marin Avenue to Arlington Avenue; northerly along Arlington Avenue to U. S. Highway 40 (San Pablo Avenue); northerly along U. S. Highway 40 to and including the City of Richmond; southwesterly along the highway extending from the City of Richmond to Point Richmond; southerly along an imaginary line from Point Richmond to the San Francisco Waterfront at the foot of Market Street; westerly along said waterfront and shore line to the Pacific Ocean; southerly along the shore line of the Pacific Ocean to point of beginning.

POOR QUALITY DOCUMENT

POOR QUALITY DOCUMENT

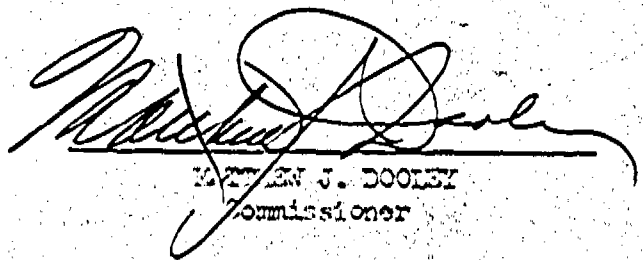
POOR QUALITY DOCUMENT

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My dissent is predicated upon the ground that the test of public convenience and necessity has not been met by the applicant.

The record in this case indicates that some fifty carriers presently serve the area in which the applicant is seeking certification. The majority of the fourteen shippers who testified on behalf of the applicant, stated that they had utilized the services of one or more of the available certificated carriers in the area and found their services to be adequate and satisfactory.

In my opinion, where adequate service is being afforded to the shipping public by existing carriers, a very strong and substantial showing should be made by any applicant seeking to serve in the area. In this case, the essence of the showing of the applicant was that he desired a certificate to serve in the area without a scintilla of evidence being adduced that there was a need for his service or that the present service was inadequate. Under the circumstances, in my opinion, there was no showing of public convenience and necessity such as to warrant the certification of the applicant in the said area.



MATTHEW J. DOOLEY
Commissioner