

62196

Decision No. _____

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 HILLS TRANSPORTATION CO., a corpor-)
 ation, for an Order Removing)
 Exception from its Certificate of)
 Public Convenience and Necessity to)
 operate as a Highway Common Carrier.)

Application No. 43040
 (Filed January 4, 1961)

Willard S. Johnson, for Hills Transportation Co.,
 applicant.

Graham, James & Rolph, by Boris M. Lakusta and
Ray Greene, for California Motor Express, Ltd.,
 and California Motor Transport Co., Ltd.,
 Delta Lines, Inc., Di Salvo Trucking Co.,
 Fortier Transportation Co., Interlines Motor
 Express, Merchants Express of California,
 Oregon-Nevada-California Fast Freight and
 Southern California Freight Lines, Pacific
 Motor Trucking Co., Shippers Express, Sterling
 Transit Co., Inc., Valley Express Co., and
 Valley Motor Lines, Inc., and Willig Freight
 Lines, protestants.

OPINION

This application was heard before Examiner J. E. Thompson at San Francisco on March 29 and April 17, 1961, on which latter date it was submitted. Copies of the application and the notice of hearing were served in accordance with the Commission's procedural rules. The protestants are California Motor Express, Ltd., California Motor Transport Co., Ltd., Delta Lines, Inc., Di Salvo Trucking Co., Fortier Transportation Co., Interlines Motor Express, Merchants Express of California, Oregon-Nevada-California Fast Freight, Southern California Freight Lines, Pacific Motor Trucking Co., Shippers Express, Sterling Transit Co., Inc., Valley Express Co., Valley Motor Lines, Inc., and Willig Freight Lines.

Applicant is a highway common carrier presently transporting general commodities, with certain exceptions, between points located generally along U.S. Highways 101 and 99 extending from Santa Rosa and Sacramento on the north to Los Angeles Basin Territory and San Ysidro on the south. One of the commodities applicant is not authorized to transport is:

"Commodities requiring the use of special refrigeration or temperature control in specially designed and constructed refrigerator equipment."

Applicant requests the removal of that exception from its certificate of public convenience and necessity so as to enable it to transport commodities under temperature control with mechanical refrigeration devices in insulated van type equipment between points and over routes it presently is authorized to serve.

A balance sheet for November 30, 1960, shows that applicant has no long-term debt. Almost 75 percent of the total liabilities is represented by stockholders' equity; the remainder is in the nature of current liabilities which amount is less than the current assets. For the eleven months ended November 30, 1960, applicant earned \$86,053, before taxes, from transportation operations for an operating ratio of 90.3 percent. Its income from all sources, after taxes, was \$51,540. E. A. Hills, who is president and sole stockholder of applicant, testified that if the authority is granted, applicant will acquire and operate additional equipment which is insulated and equipped with mechanical refrigeration devices to the extent that the traffic may require. Applicant owns and operates 13 tractors, 14 trucks and 44 semitrailers, none of which are insulated or equipped with mechanical refrigeration. From time to time it rents motor vehicle equipment from Publisher's Motor Transport Co., a corporation owned by E. A. Hills.

Applicant's president testified that it is presently transporting commodities under refrigeration or temperature control in noninsulated van type equipment through the medium of dry ice. These commodities include oleomargarine, vegetable oil shortenings, butter and mayonnaise. The witness stated that one of applicant's shippers had notified him that it required mechanical refrigeration for transportation of its oleomargarine and the retention of that shipper's traffic was one of the principal reasons for the filing of the application. He testified that applicant maintains class rates and commodity rates on almost all articles that are shipped and also maintains rates and charges for refrigeration service although commodities requiring intense refrigeration or a close degree of control of temperature are not tendered to it because shippers know that it does not provide insulated and mechanically refrigerated equipment. The witness stated that if the application is granted, applicant will continue to accept all freight for which rates are named in its tariff; however, he thought it probable that applicant would be tendered freight, such as frozen foods, which heretofore it has not received.

The divisional traffic manager for Durkee Famous Foods, Division of Glidden Co., testified on behalf of applicant. Durkee manufactures margarine, vegetable oil shortening, mayonnaise and numerous vegetable oil products, spices and table sauces. Durkee has split delivery shipments containing a mixture of those articles from Berkeley to San Diego and Los Angeles Basin Territory daily. For the past 15 years it has used Mills Transportation Co. to perform that transportation. Of the articles that it ships, some of the shortenings require a greater degree of temperature control. This

is because the texture of the product may change if it becomes over-heated or overly chilled. Oleomargarine requires refrigeration some of the time. While, insofar as Durkee is concerned, the transportation of margarine with dry ice as performed by applicant is satisfactory to it, it is not satisfactory to at least three of its customers in the Los Angeles area. Those customers have stated that either Durkee ship via mechanically refrigerated equipment or they would place their business elsewhere. Durkee now ships to those customers via another common carrier with refrigerated equipment. It considers this an unsatisfactory arrangement and would prefer applicant transport all of the shipments to the Los Angeles-San Diego area. Most of the shipments it tenders are split delivery shipments of about 30,000 pounds having a number of points of destination and a mixture of commodities in each component part including some articles requiring refrigeration and other articles that do not. The divisional traffic manager stated that under the circumstances, a large portion of its traffic which does not require refrigeration will be diverted if Hills does not provide mechanically refrigerated equipment. The witness stated that for movements between Berkeley and Southern California Durkee had also used the services of California Motor Express, Valley Express and Pacific Motor Trucking Company, and he had found that California Motor Express would not provide refrigerated equipment, Valley Express could not always furnish refrigerated equipment on the days required and that while Pacific Motor Trucking has generally provided refrigerated equipment when needed, it preferred the transportation services of applicant.

Protestants called the regional sales manager of Merchants Express of California and the general traffic manager of Valley

Express Co. and Valley Motor Lines, Inc., who testified concerning the facilities and services offered by their respective companies. Merchants Express of California is a highway common carrier engaged in transporting general commodities, among other places, between points served by applicant. Included in Merchant's fleet of vehicles are twelve trucks with fully installed mechanically refrigerated units and forty-three 24-foot semitrailers equipped with temperature control. At the present time those vehicles are being operated at about 35 percent load factor. Valley Express Company also transports general commodities between the same points served by applicant. On March 22, 1960, by Decision No. 59823 the Commission authorized it to transport commodities requiring refrigeration in vehicles designed for that purpose. Since attaining that authority Valley has solicited that traffic, and according to the general manager has been able to furnish equipment when required other than on and about Thanksgiving Day. According to the general manager there are too many certificated carriers in California providing a refrigerated service and that is why this application is being protested.

Regulation by the State is for the protection and welfare of the public and only incidentally for the protection of the regulated business. In re Investigation of Transportation Systems of Calif., 38 CRC 81 (1932). While aside from their purely permissive aspect, operative 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. Transportation does not flourish best as a regulated monopoly. Historically it always has been a highly

competitive undertaking. Investigation of All Carriers of Property, 48 Cal. P.U.C. 527 (1949). The pattern of transportation regulation has been "regulated competition". Santa Fe Transportation Co., 41 CRC 239 (1938), Investigation of All Carriers of Property, supra. Competition, to the extent that it does not impair the economic stability of the transportation industry, is desirable in the field of highway common carriage. Savage Transportation Company, et al., 48 Cal. P.U.C. 712 (1949).

Applicant presently transports commodities under refrigeration over its authorized routes. It has been informed, and its president believes, that it will lose a portion of this traffic together with other traffic to competitors unless it provides equipment better suited to that service. It is ready, willing and able to provide that equipment so that it can compete on more nearly equal terms. A granting of the authority sought will not place a new carrier on the public highways or add to the number of vehicles traversing the highways, nor will it result or tend to result in the removing of property from a beneficial public or private use. It will merely allow applicant to provide a better service than it presently offers the public and to meet the services offered by competitors. That the public, or a portion thereof, desires the improved service and will use it is evident from the record.

With respect to the showing made by protestants, the record shows that Merchants and Valley have equipment of the type applicant proposes to offer. According to the testimony of the representative of Durkee Famous Foods, Pacific Motor Trucking Co. has insulated and mechanically refrigerated equipment but California Motor Transport Co. and California Motor Express either have not such equipment or would not furnish it to the shipper. The record

is silent regarding the operations or services of other protestants. The assertions by Valley's general traffic manager that there are too many carriers and that a granting of the authority sought will dilute the traffic have no support whatsoever.

Upon consideration of the evidence the Commission finds and concludes as follows:

1. Applicant possesses the experience, personnel and financial resources to institute and maintain the proposed service.
2. Public convenience and necessity require that the application be granted.

O R D E R

Public hearing having been held and based upon the evidence therein adduced,

IT IS ORDERED:

1. That Appendix A of Decision No. 59987 is amended by incorporating therein First Revised Page 1, attached hereto, in revision of Original Page 1.

2. That 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 amend its tariffs on file with the Commission to reflect the authority herein granted.

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

Dated at San Francisco, California, this 27th day of June, 1961.

[Handwritten Signature]

 President

[Handwritten Signature]

[Handwritten Signature]

Commissioners

Hills Transportation Co., by the certificate of public convenience and necessity granted in the decision noted in the margin, is authorized to transport:

GENERAL COMMODITIES, except the following:

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, 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. 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.
 5. Commodities when transported in bulk in dump trucks or in hopper-type trucks.
 6. Commodities when transported in motor vehicles equipped for mechanical mixing in transit.
 7. Logs.
- I. Between all points in the following Territories via any and all highways, streets and roads:

Issued by California Public Utilities Commission.

Decision No. 62196, Application No. 43040.