

Decision No. 62285**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 JOHANSEN'S SUPERIOR TRUCK COMPANY,)
 a corporation, for a certificate of)
 public convenience and necessity to)
 extend highway common carrier)
 service.)

Application No. 43060
 (Filed January 16, 1961)

Bertram S. Silver, for applicant.
Graham, James and Rolph, by Boris H. Lakusta,
 for 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 and Southern California Freight
 Lines, Pacific Motor Trucking Co.,
 Shippers Express, Sterling Transit Co.,
 Inc., Valley Express Co., Valley Motor
 Lines, Inc., Willig Freight Lines and
 Boulevard Transportation Co.; and
Anthony J. Konicki, for Pacific Motor
 Trucking Company, protestants.

O P I N I O N

This application was heard before Examiner Edward G. Fraser at Los Angeles on March 21, and May 15, 1961 and the matter was submitted at San Francisco on May 25, 1961, after the presentation of oral argument. Copies of the application and the notice of hearing were served in accordance with the Commission's procedural rules.

Applicant is now operating under permitted authority as a radial highway common carrier, a highway contract carrier, a city carrier and a household goods carrier. Applicant is also a highway common carrier presently transporting general commodities within the Los Angeles Territory and between Los Angeles and certain points in the Los Angeles Basin Territory, Oceanside, National City, Chula Vista and San Diego.

Applicant requests authorization for an in lieu certificate and to extend such highway common carrier operations so as to transport general commodities between all points in the Los Angeles Basin Territory, and between points on highways connecting Los Angeles and San Ysidro, San Diego and San Bernardino, and Riverside and Indio. Applicant proposes to charge the rates provided in Minimum Rate Tariff No. 2 and to provide a daily scheduled service, with the exception of Sundays and holidays.

The applicant amended its application during the first day of hearing to provide for a limited expansion of territory (Exhibit No. 3 in evidence). The president of Johansen's Superior Truck Company testified that the applicant is presently certificated to serve Los Angeles and 17 other cities and towns in the Los Angeles Basin Area (Exhibit No. 8). Applicant not being certificated to serve all points in the Los Angeles Basin Territory, as its business increased, has served some points almost daily and other points nearby intermittently, as a permitted carrier. The witness stated that applicant's shippers are expanding to many of the noncertificated points in the Los Angeles Basin Territory and the applicant's operation may become unlawful in some areas due to frequency of service, unless the applicant performs as a certificated carrier. The applicant now serves Oceanside, San Diego, National City and Chula Vista under its certificate (Exhibit No. 8). It cannot serve points intermediate on the Los Angeles-San Diego route. This fact has prevented Johansen's Superior Truck Company from rendering a service competitive with that provided by other carriers recently certificated along the highways from Los Angeles to San Diego. The witness stated that the applicant cannot furnish a complete service to its shippers unless it can also operate daily between the described points. The applicant's service fleet consists of 13 trucks, 4 tractors, 5 semitrailers

and a service car (Exhibit No. 5 in the evidence). The Operating Statement of the applicant for the eleven months ending November 30, 1960 (Exhibit No. 6 in evidence) shows a total revenue of \$208,315.50 and total expenses of \$199,364.84, with a net income of \$9,029.93 before income taxes, and \$7,029.93 after the tax has been deducted. The applicant started operating in 1945 as a permitted carrier serving within a 5-mile radius. It obtained its first certificate in 1955 under the policy decision.

Three shipper witnesses testified for the applicant. They have been using Johansen service for 15, 10 and 6 years, respectively. A fourth witness was not called after it was stipulated by the parties that his testimony on direct and cross-examination would be the same as presented by the last witness.

The witnesses ship peanut butter and oils, soap and toilet preparations, bicycles, coffee, tea and miscellaneous spices. They testified they are using the applicant now as both a certificated and a permitted carrier, and since the service provided is excellent, they would prefer to have this application granted. A witness stated he tried other carriers, but became discouraged with their service. Another said he could not afford to try other carriers since he was satisfied with the service provided by the applicant.

Two of the witnesses stated they store goods in the applicant's warehouse and will receive the benefits of split delivery if this application is granted. All three testified that they require service throughout the Los Angeles Basin Territory, to San Diego and out to Indio on Highway 60. They prefer the specialized service offered by the applicant and hope it will be extended.

Four of the protestants presented evidence. California Motor Transport Co., Ltd., Southern California Freight Lines and Pacific Motor Trucking Co., each submitted oral and documentary

evidence. Oral testimony was presented by Boulevard Transportation Co., who first appeared as a protestant on May 16, 1961.

All four of these protestants maintain they have adequate equipment to handle any foreseeable increase in the public need for service throughout the area applied for by the applicant. All of them state they have equipment operating in this region at much less than full capacity, and several have trucks which are inoperative due to a lack of business. All of them testified they are losing business and revenue in the Los Angeles and San Diego districts, and in points intermediate over U. S. Highways 101 and 395, due to the consequences of too many carriers being authorized to operate therein. An exhibit (No. 14) was introduced in evidence to inform this Commission that 69 carriers are now certificated in all or some part of the circuit the applicant has applied to serve. The four protestants stated they were opposing this application because another certificated carrier is not needed in any part of the zone applied for and because the applicant can serve all of its customers adequately under the operating authorities it now holds. The record sustains the determination that the applicant is providing a necessary service for its shippers. It seems evident that the hauling to be provided under the proposed certificate will be for a limited number of customers who are expanding their business and that there will be no direct interference with the operations of the protestants.

Findings and Conclusions

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

1. Applicant possesses the experience, equipment, personnel and financial resources to institute and maintain the proposed service.
2. Public convenience and necessity require that the application be granted as set forth in the ensuing order.

Johansen's Superior Truck Company, a corporation, 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

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

IT IS ORDERED:

1. That a certificate of public convenience and necessity be and it is granted to Johansen's Superior Truck Company, a corporation, authorizing it to operate as a highway common carrier, as defined in Section 213 of the Public Utilities Code, between the points and over the routes as more particularly set forth in Appendices A and B attached hereto and made a part hereof.

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 it will be required, among other things, to file annual reports of its 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-B. 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-B, 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.

3. That the certificate of public convenience and necessity granted in paragraph 1 of this order supersedes the certificates granted by Decisions Nos. 54011 and 54647, and acquired by Decision No. 56355, which certificates are hereby revoked, said revocation to become effective concurrently with the effective date of the tariff filings required by paragraph 2(b) hereof.

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

Dated at San Francisco, California, this 18th day of July, 1961.

[Signature]
President

[Signature]

[Signature]

Frederick B. Hallock
Commissioners

Johansen's Superior Truck Company, a corporation, 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 Los Angeles Basin Territory as described in Appendix B attached hereto.
2. Between all points and places on and within 10 miles laterally of the following highways:
 - (a) U.S. Highway 101 between the southerly limits of the Los Angeles Basin Territory and San Ysidro, inclusive.
 - (b) U.S. Highway 395 between the southerly limits of the Los Angeles Basin Territory and San Diego, inclusive.
 - (c) U.S. Highway 60 between Riverside and Indio, inclusive.
3. Applicant may make use of any street, road, highway, ferry or toll bridge necessary or convenient for the purpose of performing the service herein authorized.
4. Through routes and rates may be established between any and all points specified in paragraphs 1 and 2 (a) through (c) above.
5. Applicant shall not transport any shipments of:
 - (a) 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.

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- (b) 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.
- (c) 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.
- (d) 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.
- (e) Commodities when transported in bulk in
dump trucks or in hopper-type trucks.
- (f) Commodities when transported in motor
vehicles equipped for mechanical mixing
in transit.
- (g) Logs.

End of Appendix A

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LOS ANGELES BASIN TERRITORY includes that area embraced by the following boundary: Beginning at the point the Ventura County-Los Angeles County boundary line intersects the Pacific Ocean; thence northeasterly along said county line to the point it intersects State Highway No. 118, approximately two miles west of Chatsworth; easterly along State Highway No. 118 to Sepulveda Boulevard; northerly along Sepulveda Boulevard to Chatsworth Drive; northeasterly along Chatsworth Drive to the corporate boundary of the City of San Fernando; westerly and northerly along said corporate boundary to McClay Avenue; northeasterly along McClay Avenue and its prolongation to the Angeles National Forest boundary; southeasterly and easterly along the Angeles National Forest and San Bernardino National Forest boundary to the county road known as Mill Creek Road; westerly along Mill Creek Road to the county road 3.8 miles north of Yucaipa; southerly along said county road to and including the unincorporated community of Yucaipa; westerly along Redlands Boulevard to U. S. Highway No. 99; northwesterly along U. S. Highway No. 99 to the corporate boundary of the City of Redlands; westerly and northerly along said corporate boundary to Brookside Avenue; westerly along Brookside Avenue to Barton Avenue; westerly along Barton Avenue and its prolongation to Palm Avenue; westerly along Palm Avenue to La Cadena Drive; southwestwardly along La Cadena Drive to Iowa Avenue; southerly along Iowa Avenue to U. S. Highway No. 60; southwestwardly along U. S. Highways Nos. 60 and 395 to the county road approximately one mile north of Perris; easterly along said county road via Nuzvo and Lakeview to the corporate boundary of the City of San Jacinto; easterly, southerly and westerly along said corporate boundary to San Jacinto Avenue; southerly along San Jacinto Avenue to State Highway No. 74; westerly along State Highway No. 74 to the corporate boundary of the City of Hemet; southerly, westerly and northerly along said corporate boundary to the right of way of The Atchison, Topeka & Santa Fe Railway Company; southwestwardly along said right of way to Washington Avenue; southerly along Washington Avenue, through and including the unincorporated community of Winchester to Benton Road; westerly along Benton Road to the County road intersecting U. S. Highway No. 395, 2.1 miles north of the unincorporated community of Temecula; southerly along said county road to U. S. Highway No. 395; southeasterly along U. S. Highway No. 395 to the Riverside County-San Diego County boundary line; westerly along said boundary line to the Orange County-San Diego County boundary line; southerly along said boundary line to the Pacific Ocean; northwesterly along the shoreline of the Pacific Ocean to point of beginning.