

Decision No. 62396**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 JAMES L. BLOCH, an individual doing)
 business as TRI-CITY DELIVERY, for)
 a certificate of public convenience)
 and necessity to operate as a)
 highway common carrier.)

Application No. 43158
 (Filed February 15, 1961)

James F. Mastoris, for applicant.
Boris Lakusta and Raymond A. Greene, Jr., for ✓
 California Motor Express, Ltd. and
 California Motor Transport Co., Ltd.,
 Delta Lines, Inc., Merchants Express of
 California, and Pacific Motor Trucking
 Co., protestants.

O P I N I O N

This application was heard before Examiner Rowe at San Francisco on April 4th and 28th, May 8th and 23rd, and June 5, 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.

Applicant possesses the following permits issued by this Commission: Highway Contract Carrier Permit No. 41-1518; Radial Highway Common Carrier Permit No. 38-6656; Household Goods Carrier Permit No. 41-1578; and City Carriers Permit No. 38-6657. Operations have been conducted under these permits only, since applicant possesses no highway common carrier or other certificated rights.

This application requests the issuance of a certificate of public convenience and necessity for the transportation of general commodities, with certain exceptions, between all points and places in the San Francisco Territory, as more particularly described in

Item 270-3-C of Minimum Rate Tariff No. 2, and between points within the San Francisco Territory and Half Moon Bay, including intermediate points.

It is alleged that the requested certificate is essential to applicant's business to enable him to serve existing customers properly. By the granting of the proposed operating rights, applicant feels that he will be able to satisfy the transportation needs of his shippers, and can eliminate the threat of loss and diversion of traffic to competitors because of his asserted inadequate operative authority.

Applicant presently possesses three van type trucks (two of 2½-ton capacity and one of 1½-ton), one 1-ton walkin type truck, and a ½-ton Panel Volkswagon. He is of the opinion that this equipment is adequate for his proposed operation, but he is prepared to acquire additional equipment as needed.

During the last calendar year applicant grossed \$45,933.63, with a net profit of \$10,299 before taxes. His balance sheet dated December 31, 1960, reveals a net worth of only \$2,251.09, but in view of his successful operation during the last few years it is considered adequate for at least the operations hereinafter authorized.

The evidence reveals a present operation consisting of two separate phases, one the transportation of general commodities for retail department stores, and the other, the movement of new furniture either crated or blanket wrapped from wholesalers to the ultimate user or to applicant's warehouse for temporary storage and perhaps reconditioning and cleaning and with final delivery to the residence or place of business of such user.

Two public witnesses testified that their department stores needed applicant's service for the transportation of many varied articles sold by them. They are presently served under contract. One of these witnesses would like to have applicant's expedited service to points not presently included in its contract. Most of the witnesses produced by applicant represented furniture stores or were themselves dealing in the business of buying furniture and household furnishings for their customers. They presently use applicant for the purpose of assembling such articles in his warehouse for cleaning, unpacking, and repair and with later delivery to their customers blanket wrapped. Applicant also on occasion picks up such furniture or furnishings from the wholesaler and takes it to his warehouse for such accessorial service. These latter witnesses were, like the department store representatives, entirely satisfied with the type of service presently received from applicant. They also made it clear that they would not wish any slowing of service if such would result from certification.

The testimony of protestants consisted of a description of their operations and of their equipment and facilities, whereby they assert that they render an adequate highway common carrier service for the transportation of general commodities in this area. There was no evidence that protestants are furnishing a specialized service for the transportation of new furniture and household and office furnishings, blanket wrapped, from wholesalers, warehouses, and furniture stores to the ultimate purchasers.

The Commission finds that the evidence of record fails to establish that public convenience and necessity require applicant's service as a highway common carrier for the transportation of

general commodities but that public convenience and necessity are established by the evidence for applicant's proposed highway common carrier service for furniture and household furnishings. The Commission finds, therefore, that public convenience and necessity require that applicant be authorized to transport new furniture, either crated or uncrated, for the public in the area requested and that except as to the transportation of new furniture, household appliances, and other home furnishings, the application should be denied.

Applicant is 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.

C R D E R

A public hearing having been held and based upon the evidence adduced therein and the findings and conclusions set forth in the foregoing opinion,

IT IS ORDERED that:

1. A certificate of public convenience and necessity is granted to James L. Bloch authorizing him to operate as a highway common carrier as defined by Section 213 of the Public Utilities Code for the transportation of new furniture, household appliances,

and other home furnishings between the points and over the routes particularly set forth in Appendices A and B attached hereto and made a part hereof.

2. 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-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 and 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. Except as provided in ordering paragraph 1 above, Application No. 43158 is denied.

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

Dated at San Francisco, California, this 8th day of August, 1961.

Robert R. Rago
 President
John E. Mitchell
Sam Fox
George T. Brown
Fredrick B. Hallock
 Commissioners

James L. Bloch, by the certificate of public convenience and necessity granted in the decision noted in the margin, is authorized to transport new furniture, household appliances and other home furnishings, blanket wrapped, crated or in packages:

- (1) Between all points and places in and within five miles laterally of San Francisco Territory as described in Appendix B.
- (2) Between all points and places on and within one mile laterally of the following highways:
 - a. State Highway 1 between San Francisco and Half Moon Bay, inclusive;
 - b. Half Moon Bay Road between the junction of said road with State Highway 5 and Half Moon Bay, inclusive.
- (3) Through routes and rates may be established between any and all points and places specified in paragraphs 1 and 2 above.

End of Appendix A

Issued by California Public Utilities Commission.

Decision No. 62396, Application No. 43158.

APPENDIX B TO DECISION NO. 62396

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; northeasterly along Tully Road to White Road; northwesterly along White Road to McKee Road; southwestwesterly 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; southwestwesterly 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.