

ORIGINALDecision No. 62447

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
CALLISON TRUCK LINES, INC., a
corporation, for a Certificate of
Public Convenience and Necessity
to extend operations as a highway
common carrier for the transportation
of property.

Application No. 41397

In the Matter of the Application of
MERCHANTS EXPRESS OF CALIFORNIA, a
corporation, for a certificate of
public convenience and necessity to
extend highway common carrier service.

Application No. 41587

Bruce R. Geernaert, of Berol and Geernaert, for
Callison Truck Lines, Inc., and Merchants Express
of California, applicants.
J. Richard Townsend, for Walter E. Mendenhall and
Wilbur N. Mendenhall, doing business as
Mendenhall Transportation Co., protestants.
E. H. Griffiths, interested party.

OPINION AFTER REHEARING

By Decision No. 59825, dated the 22nd day of March, 1960, in Application No. 41397, this Commission granted the applicant, Callison Truck Lines, Inc., a corporation, an enlarged certificate of public convenience and necessity which included the right to serve all points located laterally within a ten-mile radius of U. S. Highway 101 between Laytonville and Crescent City.

By Decision No. 59884, dated April 5, 1960, in Application No. 41587, this Commission granted applicant Merchants Express of California, a corporation, a certificate of public convenience and necessity which also included the right to serve "all points and places laterally within 10 miles of Highway 101 between Laytonville and Crescent City".

The Petition for Rehearing

Protestants Walter E. Mendenhall and Wilbur N. Mendenhall, doing business as Mendenhall Transportation Co., filed a Petition for Rehearing and Reconsideration in each of the above applications on October 28, 1960. The petitions were filed more than six months from the date of the Commission decisions with which they are concerned. The protestants alleged they were not served with copies of the applications and had no notice or knowledge of the applications or decisions until a short time before filing the petitions for reconsideration.

The petitions of the protestants were granted in each of the two applications by a separate Order Granting Rehearing, dated December 28, 1960. These orders limited the issues on rehearing to the question of whether Decisions Nos. 59825 and 59884 should be modified regarding the lateral rights granted to the applicants therein with respect to:

- (a) Korbel and Blue Lake and all other points on U. S. Highway No. 299.
- (b) Hydesville and all points located on the county road from Fortuna to Hydesville via Rohnerville, all points on California State Route 36 east of Hydesville, and all points on county roads from junction of California State Route 36 and county road near Bridgeville to Fort Seward, Alderpoint and Zenia.

Public Hearing

These applications were consolidated for rehearing, which was held on May 3, 4 and 19, in San Francisco and May 10 and 11 in Eureka. The matters were submitted on May 26, 1961, in San Francisco, after the presentation of oral argument.

Evidence Presented by the Protestants

Walter E. Mendenhall testified that he and his brother Wilbur N. Mendenhall are a partnership doing business as Mendenhall

Transportation Company. They operate as a highway common carrier transporting general commodities along Highway 101 from Scotia to Trinidad, and east of Highway 101 along Highway 299 to Burnt Ranch; along State Route 96 from Willow Creek to Somesbar and on a county road to Forks of Salmon; also on county roads from Fortuna to Hydesville via Rohnerville and to Ruth, Bridgeville, Fort Seward, Alderpoint and Zenia (Exhibits Nos. 1 and 2 on Rehearing).

Mendenhall Transportation Company also holds a certificate authorizing them "to transport passengers, baggage and packages of express weighing 100 pounds or less on passenger-carrying vehicles only between Scotia, Trinidad, Forks of Salmon, Ruth, Bayside, Sunny Brae, Arcata-Eureka Airport, Crannel, Korbel and intermediate points" (Exhibit No. 3 on Rehearing). The witness testified that their passenger operation frequently carries freight because it is more convenient to put the article on a bus if it is small enough and ready when the bus is scheduled to leave.

The Mendenhalls have been serving the points within 10 miles of Highway 101 on the northern route (Exhibit No. 2 on Rehearing) since 1955. These rights were purchased from a predecessor who served the area for approximately 25 years. They have served points on State Route 36 easterly to and including Bridgeville, since 1947, and the points southerly from Bridgeville, which include Blocksburg, Fort Seward and Alderpoint, since 1955.

Mr. Mendenhall stated that prior to June 1960, the Mendenhalls transported freight from Eureka to points within 10 miles of Highway 101 on the northern route (from Arcata east on Highway 299, then to Forks of Salmon and Burnt Ranch) for each of the applicants herein. Since June 1960 the applicants have extended their service

into this area under the authority conferred by Commission Decisions Nos. 59825 and 59884. The protestants placed an exhibit (No. 6 on Rehearing) in evidence to show the total freight hauled over the northern route as compared with the freight hauled as an interline carrier for the applicants, during the years 1959 and 1960. The exhibit reveals that no interline freight was hauled for Merchants Express of California after June 1, 1960, only \$2.42 for Callison Truck Lines in July and none for Callison after August 1, 1960. Another exhibit (No. 7 on Rehearing) shows that there has been no diminution of the Mendenhall interline business from the applicants on the southern route (easterly from Fortuna to Bridgeville, Ruth and Zenia (Exhibit No. 2 on Rehearing)).

The witness stated that freight destined for customers on the northern route was sent by truck or passenger bus, depending on the size of the item and the time it is received at the Mendenhall terminal. Freight hauled on the buses provides more income than the passenger operation. If the freight business lost as a result of the applicants' new certificates is not recovered the Mendenhalls may have to curtail or discontinue their bus service to Blue Lake - Korbelt and possibly to other points.

Mendenhall buses run to Blue Lake and Korbelt from Eureka at 9:45 a.m. and 4:50 p.m., six days a week. A bus leaves Eureka for Orleans (50 miles northeast) three days a week (Monday, Wednesday and Friday) at 8:30 a.m. and returns the following day. The latter route serves all intermediate points including Blue Lake and Korbelt. The Mendenhalls operate two other routes on Highway 101, from Eureka north to Arcata and Eureka south to Scotia. These buses serve all intermediate points. They also operate a limousine from Eureka and Arcata to the local airport and handle several mail contracts.

Mr. Mendenhall testified that the truck serving Blue Lake and Korbel formerly left Eureka daily at 1:30 or 2:00 p.m., with stops at Arcata, Blue Lake and Korbel, then returned to Eureka and left the goods picked up at the Mendenhall terminal. Next day the goods are delivered to other carriers or carried by Mendenhall if destined to other points in the protestants' service area. Since June or July of 1960 this truck goes only to Arcata as there is no longer any appreciable business to or from Blue Lake or Korbel.

The protestants called a witness who testified she used the bus from Blue Lake to Eureka about once a week for shopping and to obtain necessary medical treatment. She stated the Mendenhall bus is the only way she can get from her home to Arcata and Eureka, since she cannot drive. It was stipulated that the testimony of four other bus riders would be the same on direct and cross-examination as that of the first witness to testify.

The protestants testified that Mendenhall Transportation Company has received no interline business from the applicants on the northern route since this Commission granted the applicants the right to serve within ten miles of Highway 101. Since 90% of their business into this region comes from the Bay Area it has seriously affected their entire operation. The applicants still utilize the Mendenhalls as an interline carrier from Fortuna east to Hydesville, Bridgeville and Mad River and south to Ruth and Zenia (protestants' southern route), but there is not as much activity as on the northern route and operating costs are higher due to poor roads and greater distances between pickups and deliveries. If the protestants lose their interline business within 10 miles of Highway 101 on the southern route, they will have to discontinue all of their operations as it will not be economically feasible to continue.

The protestants operate with 3 tractors, 4 trucks and 6 trailers. They also use 3 pickup trucks, 2 panel delivery trucks, 3 passenger buses and one station wagon (Exhibit No. 4 on Rehearing). Freight is delivered and picked up six days a week by bus or truck. The statement of operations of the Mendenhall Transportation Company for the year 1960 shows total revenues from motor carrier operations of \$133,540.94 and total operating expenses of \$135,142.88, with a net loss of \$1,601.94 after income taxes and the deduction of salaries paid to Walter and Wilbur Mendenhall. The liabilities include a "current liability" entry of \$15,014.52 and a "capital stock and surplus" entry of \$77,243.85 for a total of \$92,258.37. There are no long-term obligations listed (Exhibits Nos. 8 and 9 on Rehearing).

Evidence Presented by the Applicants

Each applicant presented both oral and documentary evidence. A total of 12 witnesses testified; five for each applicant and two who used both of the applicants. Their testimony may be summarized by asserting that prior to June 1960, when delivery was made by the Mendenhalls, it took 2 or 3 and occasionally 4 days to receive goods ordered from the Bay Area. Since Callison and Merchants have been providing service directly to Blue Lake and Korbel (after June 1960) they have an overnight service on all shipments. Several witnesses declared they received goods by air on their emergency deliveries, prior to June 1960. After Callison and Merchants started deliveries they discontinued air shipments because of the certainty of overnight service. Three of the shippers mentioned that it now costs less to ship items from the Bay Area to Korbel and Blue Lake. The applicants charge a single rate for the service. When Mendenhall delivered there was one rate to Eureka and a second charge for hauling from

Eureka to the shipper's place of business. One receiver of goods testified that it is more efficient when one carrier performs the entire service. Where two or more are involved there is greater chance of delay, loss, or theft of shipments.

A vice president testified for Merchants Express of California. He stated that the original application was filed to provide a through rate and a single movement of freight for their shippers. Freight hauled from Bay Area points to Eureka, Arcata and points nearby is on an overnight basis. The line rigs are normally unloaded by noon and prior to June 1960 the deliveries to the Mendenhall terminal were made between 9:00 a.m. and 2:00 p.m. The freight destined for points within 10 miles of Highway 101 is now delivered each day about noon.

The operating testimony for Callison was presented by the Eureka terminal manager and a vice president of the company. They testified regarding Callison's schedules, routes and operations. Their line haul rigs arrive in Eureka between 5:00 and 6:00 a.m. (Transcript, Page 351). The freight destined for Blue Lake and Korbelt has usually left their terminal by approximately 11:30 a.m. (Transcript, Page 356) and is delivered by 1:00 p.m. Prior to June 1960 they made five or six deliveries to the Mendenhall terminal in Eureka every day from 9:30 a.m. to 2:00 p.m.

Operating witnesses for each applicant testified that they had numerous complaints from their shippers prior to June 1960, because freight sent from the Bay Area took two or more days to reach the customer in Blue Lake or Korbelt. They alleged that an extra day in transit must be added for every carrier hauling goods between two points other than the one making the initial pickup. They have received no complaints since June of 1960 when they expanded their service so as to deliver with their own equipment.

Protestant Walter Mendenhall was called in rebuttal and testified that he had never received any complaints on delays or time in transit from shippers or the applicants. He stated that if the applicants would deliver the freight to his Eureka terminal by noon or shortly thereafter on the date it is received, the protestants would also be able to provide overnight service from the Bay Area.

Findings and Conclusions

The Commission finds and concludes as follows:

1. That public convenience and necessity do not require that the applicants provide service in the areas described in the two following paragraphs.

2. That the certificate granted to Callison Truck Lines, Inc., by Decision No. 59825, as amended by Decision No. 60374, in Application No. 41397 should be amended by inserting a restriction therein to prevent the applicant from serving Korbelt and Blue Lake and all other points on U. S. Highway No. 299; also Hydesville and all points on county road from Fortuna to Hydesville, via Rohnerville; all points on California State Highway 36 east of Hydesville, and all points on county roads from junction of California State Highway 36 and county road near Bridgeville to Fort Seward, Alderpoint and Zenia.

3. That the certificate granted to Merchants Express of California, a corporation, by Decision No. 59884, in Application No. 41587, should be amended by inserting a restriction therein to prevent the applicant from serving Korbelt and Blue Lake and all other points on U. S. Highway No. 299; also Hydesville and all points on county road from Fortuna to Hydesville, via Rohnerville; all points on California State Highway 36 east of Hydesville, and all points on county roads from junction of California State Highway 36 and county road near Bridgeville to Fort Seward, Alderpoint and Zenia.

Callison Truck Lines, Inc., a corporation, and ✓
Merchants Express of California, a corporation, are 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 the certificate of public convenience and necessity
granted to Callison Truck Lines, Inc., by Decision No. 59825, as
amended by Decision No. 60374, in Application No. 41397, is hereby
further amended by the substitution of First Revised Page 1, Second
Revised Page 2 and Original Page 3 of Appendix A, as attached to
Decision No. 59825.

2. That a certificate of public convenience and necessity be
and it is granted to Merchants Express of California, 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 more particularly set forth in Appendix A attached
hereto and hereby made a part hereof.

3. That the certificate of public convenience and necessity
granted in paragraph 2 of this order supersedes the certificate

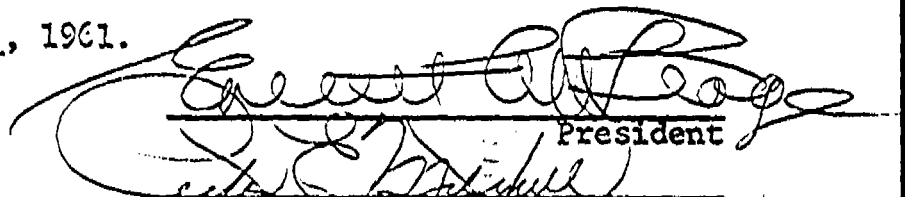
of public convenience and necessity granted by Decision No. 59884, which certificate is hereby revoked, said revocation to become effective concurrently with the effective date of the tariff filings required by paragraph 4 hereof.


4. 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, the applicants shall amend their tariffs to conform with the restrictions imposed herein in their certificates.


5. That Callison Truck Lines, Inc., and Merchants Express of California shall cease and desist from serving to, from or between Korbel and Blue Lake, and all other points on U. S. Highway 299; Hydesville and all points located on the county road from Fortuna to Hydesville via Rohnerville, all points on State Highway 36 east of Hydesville, and all points on county roads from junction with State Highway 36 and county road near Bridgeville to Fort Seward, Alderpoint and Zenia; and that all rates, rules and regulations currently published in applicants' tariffs applicable to, from or between the above-mentioned points and areas are hereby suspended on the effective date of this order. A copy of this order shall be filed with said tariffs in the office of the Commission.


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

Dated at San Francisco, California, this 22nd day of AUGUST, 1961.



President


E. Lynn Fox


George L. Grover


Frederick B. Hallock
Commissioners

1. Callison Truck Lines, Inc., 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:

- a. Between all points and places located on and within ten miles laterally of U.S. Highway 101 between Crescent City and Laytonville, inclusive, subject to the restriction set forth in subparagraph d of this paragraph.
- b. Between all points and places enumerated in subparagraph a of this paragraph, on the one hand, and, on the other hand, the San Francisco Territory as more particularly delineated and described in Appendix B attached hereto, subject to the restriction set forth in subparagraph d of this paragraph.
- c. Callison Truck Lines, Inc., is authorized to operate over the following route for operating convenience only:

U.S. Highway 40, streets and unnumbered roads or highways connecting with Richmond - San Rafael Bridge, over said Bridge, unnumbered roads or highways connecting with U.S. Highway 101.

- d. Applicant shall not serve the following points and areas:
 - (1) Korbek and Blue Lake and all other points on U.S. Highway 299.
 - (2) Hydesville and all points located on the county road from Fortuna to Hydesville via Rohnerville, all points on State Highway 36 east of Hydesville, and all points on county roads from junction of State Highway 36 and county road near Bridgeville to Fort Seward, Alderpoint and Zenia.

Issued by California Public Utilities Commission.

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e. Applicant shall not transport any shipments of the following:

- (1) Livestock, viz.: bucks, bulls, calves, cattle, cows, dairy cattle, ewes, goats, hogs, horses, kids, lambs, oxen, pigs, sheep, sheep camp outfits, sows, stags or swine.
- (2) 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.
- (3) Articles of unusual value.
- (4) Liquids, compressed gases, commodities in semi-plastic form and commodities in suspension in liquids in bulk, in tank trucks, tank trailers, tank semi-trailers or a combination of such highway vehicles.

2. a. Callison Truck Lines, Inc., by the certificate of public convenience and necessity granted in the decision noted in the margin, is authorized to transport dormant nursery stock, potted plants and cut flowers between McKinleyville and Eureka and points within three miles of Eureka, on the one hand, and, on the other hand, Santa Rosa and San Jose and intermediate points via Napa, Vallejo, Oakland, Hayward, Petaluma and San Francisco.

Issued by California Public Utilities Commission.

Decision No. 62447, Application No. 41397.

b. Subject to the authority of the Commission to change or modify them by further order, applicant shall conduct operations, pursuant to the certificate herein granted, over and along the following routes:

Over U.S. Highway No. 101 between McKinleyville and San Jose; over Bayshore Highway and El Camino Real between San Francisco and San Jose; and over State Highway 12 between Santa Rosa and Napa; over State Highway 29 between Napa and Vallejo; over U.S. Highway No. 40 between Vallejo and Oakland; and over U.S. Alternate Highway No. 101 and State Highways 17 and 21 between Oakland and San Jose; over U.S. Highways Nos. 40 and 50 between Oakland and San Francisco; and over the public highway and San Mateo toll bridge between Hayward and San Mateo.

End of Appendix A

Issued by California Public Utilities Commission.

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Merchants Express of California, a corporation, by the certificate of public convenience and necessity granted in the decision noted in the margin, is authorized to transport general commodities between:

1. San Francisco and Oakland, on the one hand, and intermediate points between Laytonville and Fernbridge on U. S. Highway 101, inclusive, on the other hand; and between Laytonville and Fernbridge, inclusive, serving all intermediate points.
2. San Francisco and Oakland, on the one hand, and all points and places laterally within 10 miles of U. S. Highway 101 between Laytonville and Crescent City, on the other hand; and between all points and places laterally within 10 miles of U. S. Highway 101 between Laytonville and Crescent City, using all U. S., State and County roads within such lateral areas.
3. Applicant shall not serve the following points and areas:
 - (1) Korbek and Blue Lake and all other points on U. S. Highway 299.
 - (2) Hydesville and all points located on the county road from Fortuna to Hydesville via Robnerville, all points on State Highway 36 east of Hydesville, and all points on county roads from junction with State Highway 36 and county road near Bridgeville to Fort Seward, Alderpoint and Zenia.

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Applicant 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, 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

Issued by California Public Utilities Commission.

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