

ORIGINAL

Decision No. 62485

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
 DANIEL GALLACHER TEAMING, MERCANTILE &
 REALTY COMPANY, a corporation, for an
 expansion and restatement of its
 certificate of public convenience and
 necessity authorizing highway common
 carrier service.

Application No. 43052
 (Filed January 11, 1961)

Daniel W. Baker of Handler and Baker, for
 applicant.

Boris H. Lakusta of Graham, James and Rolph,
 for Di Salvo Trucking Co., Delta Lines, Inc.,
 Fortier Transportation Co., Interlines Motor
 Express, Shippers Express, Pacific Motor
 Trucking Co., Valley Lines and Valley Express,
 Associated Freight Lines, Oregon-Nevada-
 California Fast Freight and Southern California
 Freight Lines, Sterling Transit Co., Merchants
 Express, Willig Freight Lines and California
 Motor Express and California Motor Transport
 Ltd.; and James Thomas Jensen, for Santa Fe
 Transportation, protestants.

O P I N I O N

This application was heard before Examiner Edward G. Fraser at San Francisco on March 2, 3 and 10, April 6 and 13, May 1 and 2, 1961. It was submitted on June 15, 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 and a city carrier. Applicant is also a highway common carrier presently transporting general commodities within the San Francisco - East Bay Cartage Zone under the authority of Decision No. 51070, dated February 1, 1955, in Application No. 35664.

Applicant requests authorization to extend such highway common carrier operations so as to transport general commodities between all points in or within 15 miles of the San Francisco Territory and between points on or within 15 miles of highways connecting San Jose and Salinas, Santa Cruz, Monterey, Sacramento, Stockton, Tracy, Gustine, Manteca, Merced and Bakersfield and for the issuance of a new certificate restating its operative rights. Applicant proposes to charge rates which will be on a level with those prescribed in the Commission's Minimum Rate Tariff No. 2 or other applicable minimum rate tariffs and to provide a daily service Monday through Friday with same day or overnight service, depending on the character and size of the shipments.

The applicant amended its application during the first day of hearing by adding a restriction prohibiting the transportation of "liquids in bulk when transported in tank vehicles" (Exhibit No. 1). The vice president of the applicant testified the applicant has been in the business of hauling goods for 95 years and has been owned and managed by the Gallagher family since its inception. The company was incorporated in 1942. The applicant has been serving Stockton, Sacramento, Santa Rosa and points intermediate since prior to 1926. Operations have been conducted to points south of San Jose and to Salinas since 1935 and to the valley points between Fresno and Bakersfield since 1950 (Exhibit No. 2). This service has been furnished as a permitted carrier but the movements between the points noted have become so frequent that the applicant is fearful of exceeding its permitted authority. If this hauling is rejected or discouraged the entire operation of the applicant will be jeopardized, as it will result in the loss of a large portion of

their local business. Many competitors of the applicant have recently received authority as certificated carriers in the areas applicant has been serving under its permits. The applicant cannot furnish a complete service to its shippers unless it can also operate daily between the described points. The applicant operates out of a main office in San Francisco which consists of an office building, warehouse, garage and vehicle storage shed. The company also has an Oakland terminal with a large warehouse, a garage, office, and a large paved and fenced storage yard. It has 5 dump trucks, 7 flat bed trucks, 11 tractors, 12 flat bed semi-trailers, and 4 service cars (Exhibit No. 5). There are 32 regular employees, with 24 drivers, 7 office workers and 1 garage mechanic. The balance sheet of applicant for the 11 months ending on November 30, 1960 (Exhibit No. 6) shows current assets of \$43,523.20 and total fixed assets of \$273,316.12; current liabilities are \$53,878.63 and long term obligations total \$60,227.52. The operating statement lists a net profit of \$32,705.61 for the first 11 months in 1960.

Thirteen shipper witnesses testified for the applicant. They ship plumbing and heating supplies, flour, bread, metals, copper, stainless steel, tubing, fittings, aluminum, iron, paper products, pipe, machinery, steel cylinders, rice, wheat germ, window and plate glass, sand, silica, bentonite, dairy products, dried milk, burlap and cotton bags, gasoline and food additives and other items. The shippers handling flour and milk stated the applicant always delivers their products in clean trucks and without spoilage. Several witnesses testified they ship dangerous gases and chemicals by the applicant and have never had a complaint. Others prefer Gallagher service because the pickups and deliveries are on schedule and special care is taken with shipments which are likely to absorb odors and become discolored from other products being hauled in the same

truck. The majority of those using other carriers have experienced delayed deliveries and suffered from damage claims. All of the witnesses require service throughout the area in which the applicant has requested authorization as a certificated carrier and all will use the extended service if the applicant receives a certificate.

Six of the protestants presented evidence. California Motor Transport, Ltd., Pacific Motor Trucking Co., Associated Freight Lines, Merchants Express of California, Valley Express Co. and Valley Motor Lines, and Delta Lines, Inc., each submitted oral and documentary evidence. Five shipper witnesses testified that the area the applicant is seeking to serve is adequately covered now and does not need another certificated carrier.

All six 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. They claim they are losing business due to the consequences of too many carriers being certificated in the areas where they operate. An exhibit (No. 12) was introduced in evidence to inform this Commission that 83 carriers are now certificated in all or some part of the circuit the applicant has applied to serve. The six protestants state they are 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, who are expanding

their business operations and prefer to use the applicant to carry their merchandise into the area the applicant has applied to serve.

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.

Daniel Gallagher Teaming 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

An application having been filed, a public hearing having been held and based on the evidence therein adduced,

IT IS ORDERED:

1. That a certificate of public convenience and necessity be and it is granted to Daniel Gallagher Teaming, Mercantile & Realty 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 more particularly set forth in Appendices A and B attached hereto and hereby 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 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 certificate of public convenience and necessity granted by Decision No. 51070, which certificate is 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 order shall be twenty days after the date hereof.

Dated at San Francisco, California, this 29th day of August, 1961.

Everett R. Roy
President
Frederick B. McLaughlin
Commissioners

I. Daniel Gallagher Teaming, Mercantile & Realty Company, a corporation, by the certificate of public convenience and necessity granted by the decision noted in the margin, is authority to transport general commodities as follows:

- A. Between all points and places in the San Francisco Territory as described in Appendix B attached hereto including all points and places within 15 miles laterally of the San Francisco Territory.
- B. Between all points and places on and within 15 miles laterally of the following routes:
 - 1. U. S. Highway 101 between San Jose and Salinas, inclusive;
 - 2. State Highway 17 between San Jose and Santa Cruz, inclusive;
 - 3. State Highway 1 between Santa Cruz and Monterey, inclusive;
 - 4. Unnumbered highway between Salinas and Monterey, inclusive;
 - 5. U. S. Highway 40 between San Francisco and Sacramento, inclusive;
 - 6. U. S. Highway 50 between San Francisco and Sacramento, inclusive;
 - 7. State Highway 4 between junction with U. S. Highway 40, near Pinole, and Stockton, inclusive;

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Decision No. 62485, Application No. 43052.

8. State Highway 24 between Oakland and Sacramento, inclusive;
 9. State Highway 33 between junction with U. S. Highway 50, near Tracy, and Gustine, inclusive;
 10. U. S. Highway 99 between Sacramento and Merced, inclusive;
 11. State Highway 120 between U. S. Highway 50 and U. S. Highway 99, at Manteca;
 12. State Highway 132 between Vernalis and Modesto, inclusive;
 13. State Highway 140 between Gustine and Merced, inclusive;
 14. State Highway 152 between Gilroy and Califa, inclusive.
- C. Through routes and joint rates may be established between any and all points designated in subparagraphs A and B 1 through 14 above.
- D. Applicant may operate over any and all available alternate routes for operating convenience only.
- E. 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.

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Decision No. 62485, Application No. 43052.

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 protection from heat by the use of ice (either water or solidified carbon dioxide) or by mechanical refrigeration.
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.
9. Fresh fruits and vegetables.

Issued by California Public Utilities Commission.

Decision No. 62485, Application No. 43052.

II. Applicant is also authorized to transport the following commodities:

CONDUITS, PIPE, SMOKESTACKS, TUBING OR FITTINGS,
OTHER THAN CLAY, CONCRETE OR EARTHEN, as
described in Items 28980 through 30440 (See Note);

FLOUR as described in List No. 7 of Item No. 653-B
of the Commission's Minimum Rate Tariff No. 2;

GLASS as described in Items 45890 through 46180
(See Note);

GLASSWARE as described in Items 46210 through
46720 (See Note);

GRAIN PRODUCTS as described in List No. 2 of
Item No. 652-C of the Commission's Minimum
Rate Tariff No. 2;

IRON OR STEEL as described in Items 53610
through 55290 (See Note);

PAPER as described in Items 75260 through
75885 (See Note);

PAPER ARTICLES as described in Items 75890
through 76980 (See Note);

PLUMBERS GOODS OR BATHROOM OR LAVATORY FIXTURES
as described in Items 77890 through 78770 (See Note);

NOTE: The term "Items" as used above refers to the
specified items published in Western Classification
77, J. P. Hackler, Tariff Publishing Officer,
on the issue date thereof, including Supplements
9, 10, 11, 15, 18, 22 and 25 thereto.

Issued by California Public Utilities Commission.

Decision No. 62485, Application No. 43052.

Between all points and places on and within 15 miles
laterally of the following routes:

1. U. S. Highway 101 between San Francisco
and Santa Rosa, inclusive;
2. U. S. Highway 99 between Merced and
Bakersfield, inclusive.
3. Through routes and rates may be established
between any and all points designated in
Paragraph I and II above.

End of Appendix A

Issued by California Public Utilities Commission.

Decision No. 62485, Application No. 43052.

APPENDIX B TO DECISION NO. 62485

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; 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.