

ORIGINALDecision No. 63220

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
 MILO R. BROWN and MAURICE C. BROWN
 doing business as TODD FREIGHT LINES
 for permission to remove restrictions
 and an in-lieu certificate to operate
 as a highway common carrier.

Application No. 43030
 (Filed January 3, 1961)

Francis X. Vieira, for applicants.
Graham, James and Rolph, by Boris H. Lakusta and
Leo J. Vander Lans, for California Motor
Express, Ltd., California Motor Transport
Co., Ltd., Delta Lines, Inc., 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., Ltd., Valley
Express Co. and Valley Motor Lines, Inc.,
and Willig Freight Lines, protestants.

O P I N I O N

This application was heard before Examiner Edward G. Fraser on April 11 and 12 at Modesto, June 16 at Sonoma and August 9 and 10 at San Francisco. The matter was submitted on November 8, 1961 after the presentation of oral argument and concurrent briefs. Copies of the application and the notice of hearing were served in accordance with the Commission's procedural rules.

The applicants are now operating under permitted authority as a radial highway common carrier, a highway contract carrier and a city carrier. The applicants also have a highway common carrier certificate, granted by Decision No. 59702, dated February 23, 1960, and Decision No. 60029, dated May 3, 1960, in Application No. 41496.

This certificate authorizes the transport of general commodities with the usual exceptions, between Turlock and Manteca via U. S. Highway 99, and all places within a 20-mile lateral; between Modesto and Strawberry via State Highways 108 and 120, and all places within a 5-mile lateral; between Modesto and Camp Connell via State Highways 4, 49 and 120, and all places within a 5-mile lateral; finally between Modesto and Linden, San Andreas, Angels Camp and Jamestown, via State Highways 4 and 49, and all places within a 5-mile lateral. Applicants also hold interstate rights from the Interstate Commerce Commission, under Docket No. MC 120505, as of June 1, 1960.

Applicants request authorization to extend such highway common carrier operations so as to transport refrigerated items and general commodities between all points in or within the Counties of Madera, Merced and Stanislaus; also, between Tracy and Manteca, on the one hand, and San Francisco Territory, intermediate points on U. S. Highways 50 and 99 between Castro Valley and Sacramento, U. S. Highway 101 and State Highway 152 between San Jose and Los Banos, on the other hand. All points and routes listed to include a 25-mile lateral, including the applicant's present authority.

The applicant, Maurice Brown, testified he and his father purchased Todd Freight Lines three years ago. They started by providing an overnight service, seven days a week, from Modesto to Sonora. They now furnish a certificated service from Modesto to the Mother Lode area seven days a week and an overnight service under their permits, five days a week to San Francisco, Sacramento, Merced, Stockton, and to the Counties of Merced, Madera, and Stanislaus. Their service to the latter named points and areas has become so frequent that the applicants are afraid they may be exceeding their permitted authority. They have found that they cannot furnish a complete service to their shippers unless they are authorized to operate daily between the described points.

If their certificate is extended the applicants propose to render service between all points in their present certificated area and between all points in the Counties of Merced, Madera and Stanislaus. They will not serve between points in the new areas, except for the three counties mentioned. If this application is granted their primary function will be providing transportation from points in their present area to points in their new areas. The service proposed will be five days a week, excluding Saturday, Sunday and holidays, with same-day or overnight delivery to all points in the extended zone. The applicants will apply the same scale of rates as those contained in Minimum Rate Tariff No. 2; also, the same rules, regulations and exception sheets which are now effective under their current tariff.

The applicants operate out of their terminal in Modesto with a tractor and trailer, a one-half ton pickup, a one-ton stake truck, and four van trucks, one of which is equipped with a mechanical refrigeration unit. They have two office employees and four full-time drivers. Both applicants also drive and they employ part-time drivers if extra help is needed. The record shows that applicants had a combined net worth as of December 31, 1960, of \$63,400, that they have been operating successfully for many years, and that during 1960 their carrier operations produced gross revenues of \$41,572 and generated internal cash funds of \$10,313, before personal income taxes and partners' withdrawals, which withdrawals amounted only to \$5,000. According to Exhibit 2, the business, as of December 31, 1960, had current assets of \$5,849 and current liabilities of \$3,079, exclusive of notes and contracts payable.

The applicants called 31 shipper witnesses; 15 at Modesto, 11 at Sonora and 5 at San Francisco. They ship or receive tires and

tubes, wheels, electrical supplies, paints, wallpaper, ladders, wholesale foods, plumbing supplies, new and used automobiles and automotive parts, fire fighting equipment and chemicals, glass, hardware of all kinds, steel, paint supplies, milk products, refrigerated meats, ice cream and syrups, air conditioners and heaters, building materials, furniture, carpets, engines and pipes, candy, soda fountain supplies, soda fountains, vending machines and other articles. The Modesto witnesses were primarily concerned with receiving same-day service which applicants have promised. The Sonora witnesses all need an early morning delivery prior to 8:00 a.m. Applicants are the only ones who have steadily furnished this service along with Saturday deliveries when requested. Other carriers, including some of the protestants give much later deliveries from 9:00 a.m. at the earliest, to as late as 5:00 p.m. These witnesses stated Todd Freight Lines is their favored carrier because of a daily early morning pickup the other truckers do not provide. Several also used applicants for an early pickup on goods routed from Sonora. Several of the San Francisco witnesses indicated a need for refrigerated service which they prefer to receive from the applicants. The latter also provide an early pickup and same-day service to Oakley, Livermore, and Tracy from the Bay Area, with overnight service to Sacramento, Stockton, Pittsburg, Modesto, Turlock, Los Banos, Merced, Madera and the Mother Lode area. Other carriers take two days, or more, to deliver in this area and occasionally the goods they carry are damaged in transit. All of the witnesses called stated they will use the applicants' new service if it becomes available.

Five of the protestants presented evidence. Valley Motor Lines, Inc. and Valley Express Co., California Motor Transport Co., Ltd., Pacific Motor Trucking Company, Merchants Express of

California and Delta Lines, Inc., each submitted oral and documentary evidence.

All five 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 applicants. 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. 17) was introduced in evidence to inform this Commission that 41 carriers are now certificated in all or some part of the circuit applicants have applied to serve. The five 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 applicants can serve all of their customers adequately under the operating authorities they now hold.

The protestants' operating witnesses testified that the applicants cannot serve the area they have applied for with the equipment they now have. Protestants also maintain the representative of the applicants testified the applicants will neither advertise nor solicit new business if they receive a new certificate authorizing an extension of their highway common carrier operations and therefore will not be holding out to serve the public as required of one who operates as a certificated carrier.

The Commission having heard the evidence makes its findings and conclusions as follows:

1. The record does not show a need for the applicants' service to be extended to San Francisco Territory, points on U.S. Highways 50 and 99 between Castro Valley and Sacramento, and points on U.S. Highway 101 and State Highway 152 between San Jose and Los Banos.

2. The record does show that a substantial segment of the public requires the proposed service in all other respects. Accordingly, public convenience and necessity require that the application be granted in part and denied in part, all as more particularly set forth in the ensuing order.

3. The eight items of equipment the applicants are now utilizing are sufficient for the extension of service granted herein and this equipment is adequately dispatched with four full-time drivers, two part-time drivers and the applicants who drive part time. ✓

4. The applicants are experienced and responsible operators with over three years experience as highway carriers. ✓

5. The applicants have sufficient current and fixed assets to provide financial stability for the extension of service authorized and appear likely to conduct their business efficiently and at a profit.

6. The "holding out to serve the public" demanded of a certificated highway common carrier requires neither advertising nor continuous solicitation of business. Advertising and solicitation are merely means of advising the public the carrier is ready, willing, and able to serve. ✓

7. The record demonstrates that applicants are ready, willing, and able to perform the proposed service. ✓

8. Public convenience and necessity require that the application be granted as set forth in the ensuing order. ✓

Applicants 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

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

IT IS ORDERED that:

1. A certificate of public convenience and necessity be and it is granted to Milo R. Brown and Maurice C. Brown, authorizing them 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.

2. In providing service pursuant to the certificate herein granted, applicants shall comply with and observe the following service regulations:

- (a) Within thirty days after the effective date hereof, applicants shall file a written acceptance of the certificate herein granted. By accepting the certificate of public convenience and necessity herein granted, applicants are placed on notice that they will be required, among other things, to file annual reports of their 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

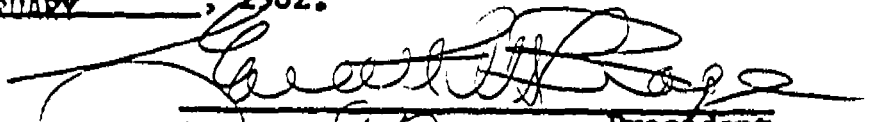
result in a cancellation of the operating authority granted by this decision.


- (b) Within one hundred twenty days after the effective date hereof, and on not less than five days' notice to the Commission and to the public, applicants shall establish the service herein authorized and file in triplicate, and concurrently make effective, tariffs satisfactory to the Commission.


.3. Appendix A of Decision No. 59702, as amended, is further amended by incorporating therein First Revised Page 2 and Original Page 3, attached hereto, in revision of Original Page 2.

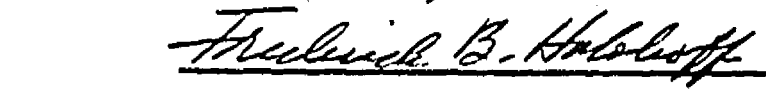
The effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco, California, this
6th day of FEBRUARY, 1962.



President






Commissioners

B. Milo R. Brown and Maurice C. Brown, doing business as Todd Freight Lines, are authorized to transport the commodities set forth in paragraph A of this appendix between the following points:

1. Between all points and places on and within twenty miles laterally of U.S. Highway 99 between Manteca and Turlock, inclusive.
2. Between all points and places on and within ten miles laterally of the following highways:
 - a. State Highway 120 between its junction with U.S. Highway 50 and its junction with State Highways 49 and 108 at Yosemite Junction, inclusive.
 - b. U.S. Highway 50 between Tracy and its junction with State Highway 120, inclusive.
 - c. State Highway 108 between its junction with State Highway 120 at Yosemite Junction and Strawberry, inclusive.
 - d. State Highway 49 between Sonora and San Andreas, inclusive.
 - e. State Highway 4 between Angels Camp and Camp Connell, inclusive.
 - f. Unnumbered county highway between Escalon and Bellota, inclusive.
 - g. State Highway 8 between Bellota and Valley Springs, inclusive.
 - h. State Highway 12 between Valley Springs and San Andreas, inclusive.
3. Between all points and places in the Counties of Madera, Merced and Stanislaus.

Issued by California Public Utilities Commission

Decision No. 63220, Application No. 43030.

/ds *

Appendix A

MILO R. BROWN and
MAURICE C. BROWN,
dba
TODD FREIGHT LINES

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4. Through routes and rates may be established between any and all points described in subparagraphs 1, 2 and 3 above.



End of Appendix A

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