

ORIGINALDecision No. 63300

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 HENRY STOVALL, doing business as)
 HENRY'S FREIGHT LINES, and the UNITED)
 STATES (INTERNAL REVENUE SERVICE), to)
 Sell, and JAMES L. CHASE, doing busi-)
 ness as KERN VALLEY TRANSFER, to Buy)
 Operative Rights.)

Application No. 43901

Jack O. Goldsmith, for applicant James L. Chase.
Henry Stovall, in propria persona.

Paul D. Ritter, Jr., for the U. S. Internal
 Revenue Service.

Boris H. Lakusta, for Blankenship Motors, Inc.,
 California Motor Express, Ltd., and California
 Motor Transport Co., Ltd., Delta Lines, Inc.,
 Merchants Express of California, Pacific
 Motor Trucking Company, Southern California
 Freight Lines, Valley Express Company and
 Valley Motor Lines, Inc., and Willig Freight
 Lines, protestants.

O P I N I O N

Henry Stovall, doing business as Henry's Freight Lines,
 and the United States (Internal Revenue Service) request authority
 to sell and James L. Chase, doing business as Kern Valley Transfer,
 requests authority to purchase certain highway common carrier
 operative rights.

A public hearing was held before Examiner Thomas E. Daly
 on December 18, 1961, at San Francisco.

The rights herein considered were created by Decision No.
 60875 dated October 11, 1960, as amended by Decision No. 61031 dated
 November 7, 1960, in Application No. 42530 and authorize the trans-
 portation of general commodities, with the usual exceptions, to, from
 and between all points and places on and along:

- (a) U. S. Highways 99, 99E and 99W from Dunnigan and Lincoln on the north to a point 25 miles south of Bakersfield, including all points within 25 miles laterally of U. S. Highway 99 between Fresno, including said point, and 25 miles south of Bakersfield, and all points and places within a radius of 20 miles of the City of Sacramento as well as the off-route points of Escalon, Oakdale and Riverbank. No shipment shall be transported having both points of origin and destination within a 20-mile radius of Sacramento.
- (b) U. S. Highway 50 between Tracy and Stockton, including said points.
- (c) State Highway 33 between Tracy and Maricopa, including said points.
- (d) To, from and between all points and places set forth in paragraphs (a), (b) and (c) above, including Huron and Kettleman City.

James L. Chase is presently operating as a highway common carrier pursuant to Decision No. 61846 dated April 18, 1961, as amended by Decision No. 62024 dated May 22, 1961, and Decision No. 62858 dated November 29, 1961, in Application No. 42507, authorizing the transportation of general commodities, with certain exceptions, between all points and places on and within 10 miles laterally of the following highways:

1. U. S. Highway 99 between Los Angeles Territory and Fresno, inclusive, including the off-route points of Taft, Ford City and Corcoran. (Subject to exceptions below)
2. State Highway 65 between junctions with U. S. Highway 99 near Bakersfield and State Highway 198 near Exeter, inclusive.
3. State Highway 198 between junctions with State Highway 65 near Exeter and State Highway 41 near Lemoore, inclusive.
4. State Highway 41 between junction with State Highway 198 near Lemoore and Fresno, inclusive.
5. State Highway 63 between Visalia and Orosi, inclusive.

6. Unnumbered highways known as Palm Avenue, Sumner Avenue and Valley Road between Orosi and junction of Valley Road and State Highway 180, inclusive, via Orange Cove.
7. State Highway 180 between its junction with unnumbered highway known as Valley Road and Fresno, inclusive.

Through routes and rates may be established between any and all points specified in subparagraphs 1 through 7 above.

Exceptions:

1. Applicant is not authorized to serve Newhall, Saugus or Castaic.
2. Applicant is not authorized to provide local service between points within said Los Angeles Territory.

Applicant Chase presently owns and operates 11 tractors, 22 trailers and 20 trucks. As of August 31, 1961, he indicated a net worth in the amount of \$125,179.68 and for the eight months ending August 31, 1961, realized a net profit in the amount of \$36,792.90.

The record indicates that applicant Stovall in the course of his operations became indebted to the United States (Internal Revenue Service) for internal revenue taxes in an amount in excess of \$12,525; that pursuant to Section 6331 of the Internal Revenue Code, the United States seized certain of applicant Stovall's property including the certificate of public convenience and necessity granted by this Commission by its Decision No. 60875, as amended, for nonpayment of delinquent internal revenue taxes; that on September 29, 1961, pursuant to the provisions of Section 6335 of the Internal Revenue Code, with the consent of applicant Stovall, the United States sold said operative rights, subject to the approval of this Commission, for the sum of \$12,525 to applicant

Chase as the highest bidder at a public sale under sealed bids; and that all of applicant Stovall's certificated operations have been suspended by this Commission by Decision No. 62535 dated September 5, 1961.

During the course of the hearing, counsel for protestants indicated an intention to conduct cross-examination and to present affirmative evidence showing that public convenience and necessity for applicant Stovall's certificate no longer exists. The presiding examiner refused to receive such evidence, but granted leave to file a formal written motion requesting the full Commission to rule on the admissibility of such evidence. The motion was filed on December 27, 1961, and the answer thereto was filed on January 8, 1962.

Protestants take the position that applicant Stovall's financial failure presents a compelling setting in which the Commission should receive pertinent evidence bearing upon public convenience and necessity. With this position, however, the Commission does not agree. By Decision No. 59029 dated September 22, 1959, in Application No. 40731, following a public hearing in which applicant Stovall and a number of instant protestant carriers presented affirmative evidence, the Commission found that public convenience and necessity required the proposed service of applicant Stovall. By Decision No. 60875 dated October 11, 1960, following a public hearing at which no appearance was made in protest, the Commission found that public convenience and necessity required an extension of applicant Stovall's service and the extension was granted by restating his operating authority in the form of a new certificate. Such findings in themselves do not constitute a guarantee that the operations will be a financial success. As in

any venture one's business acumen is usually the deciding factor. In the instant proceeding applicant Stovall testified that he extended his operations too fast by hiring too many employees and purchasing too much equipment. His equipment payments alone amounted to \$3,300 a month.

In a transfer proceeding the Commission is primarily concerned with determining whether the proposed transfer would be adverse to the public interest and not in determining whether a more competent carrier would unbalance the competitive status among the existing carriers. Protestants' offer to adduce evidence on the issue of public convenience and necessity would constitute a collateral attack upon the decisions heretofore rendered by the Commission finding that public convenience and necessity support the instant operation. The motion of protestants will be denied.

After consideration the Commission finds and concludes that the proposed transfer would not be adverse to the public interest and that applicant Chase has the necessary experience and financial ability to provide service in the area covered by Decision No. 60875.

O R D E R

Application having been filed and the Commission being informed in the premises,

IT IS ORDERED that:

1. On or before June 1, 1962, Henry Stovall and the United States (Internal Revenue Service) may sell and transfer and James L. Chase may purchase and acquire the operative rights granted by Decision No. 60875 dated October 11, 1960, as amended by Decision No. 61031 dated November 7, 1960, in Application No. 42530.

2. Within thirty days after the consummation of the transfer herein authorized, the purchaser shall notify the Commission, in writing, and within said period shall file with the Commission a true copy of any bill of sale or other instrument of transfer which may be executed to effect said transfer.

3. On not less than five days' notice to the Commission and to the public, effective concurrently with the consummation of the transfer, applicants shall amend or reissue the tariffs on file with the Commission, naming rates, rules and regulations governing the highway common carrier operations here involved, to show that Henry Stovall has withdrawn or canceled, and that James L. Chase has adopted or established as his own, said rates, rules and regulations. The tariff filings made pursuant to this order shall comply with the regulations governing the construction and filing of tariffs set forth in the Commission's General Order No. 80.

4. Effective concurrently with the effective date of tariff filings required by paragraph 3 hereof, the certificate of public convenience and necessity granted to Henry Stovall by Decisions Nos. 60875 and 61031 is hereby revoked, and, simultaneously therewith, a certificate of public convenience and necessity is hereby granted to James L. Chase authorizing him to operate as a highway common carrier, as defined in Section 213 of the Public Utilities Code, between the points more particularly set forth in Appendix A, attached hereto and made a part hereof, and that Appendix A of Decision No. 61846, as amended, is further amended by incorporating therein Third Revised Page 1, attached hereto, in revision of Second Revised Page. 1.

5. In providing service pursuant to the certificate granted in paragraph 4 hereof, James L. Chase shall file a written acceptance of said certificate.

6. The motion of protestants filed December 27, 1961, is hereby denied.

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

Dated at San Francisco, California, this 20th day of FEBRUARY, 1962.

Quentin T. Page
 President

[Signature]

[Signature]

Fredrick B. Hallock

Commissioners

Commissioner George G. Grover, being necessarily absent, did not participate in the disposition of this proceeding.

James L. Chase, by the certificate of public convenience and necessity granted in the decision noted in the margin, is authorized to transport general commodities between all points and places on and along the following routes:

1. U. S. Highway 99, including points within ten miles laterally therefrom, between the Los Angeles Territory, as described in Appendix B attached hereto, and Wheeler Ridge, inclusive. (See Exceptions 1 and 2 below.)
2. U. S. Highway 99, including points within twenty-five miles laterally therefrom, between Wheeler Ridge and Fresno, inclusive, including points within a ten-mile radius of the following:
 - a. The junction of U. S. Highway 99 and State Highway 180 within the City of Fresno.
 - b. The junction of State Highways 198 and 41 near Lemoore.
 - c. The junction of State Highway 180 and unnumbered highway known as Valley Road near Squaw Valley.
3. U. S. Highways 99, 99W and 99E between Fresno and Dunnigan and Lincoln, inclusive, including points and places within a twenty-mile radius of the corporate limits of the City of Sacramento (See Exception 2 below), and including the off-route points of Escalon, Riverbank and Oakdale.
4. U. S. Highway 50 between Stockton and Tracy, inclusive.
5. State Highway 33 between junction with U. S. Highway 50 near Tracy and Maricopa, including the off-route points of Auron, Kettleman City and Ford City.

Through routes and rates may be established between any and all points specified in subparagraphs 1 through 5 above.

- EXCEPTIONS.
1. Applicant is not authorized to serve Newhall, Saugus and Castaic.
 2. Applicant is not authorized to provide local service between points
 - a. Within the Los Angeles Territory.
 - b. Within a 20-mile radius of the corporate limits of the City of Sacramento.

Issued by California Public Utilities Commission.

Decision No. 63300, Application No. 43901.