

ORIGINAL

Decision No. 63475

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of  
 MUELLER TRUCK CO., a corporation,  
 for a certificate of public conven-  
 ience and necessity to operate as a  
 highway common carrier for the trans-  
 portation of property.

Application No. 42926

Edward M. Berol and Bruce Geernaert, for the  
 applicant.

Edgar J. Langhofer, for the San Diego Chamber  
 of Commerce, interested party.

Leo J. Vander Lans, Boris Lakusta, of Graham,  
 James and Rolph, appearing for: Boulevard  
 Transportation Co.; California Cartage Co.;  
 California Motor Express, Ltd., and California  
 Motor Transport Co., Ltd.; Delta Lines, Inc.;  
 Merchants Express of California; Oregon-Nevada-  
 California Fast Freight and Southern California  
 Freight Lines; Pacific Motor Trucking Co.;  
 Sterling Transit Co., Inc.; and Willig Freight  
 Lines, protestants.

O P I N I O N

This application was heard before Examiner Edward G.  
 Fraser on June 19 and 23, September 12 and 14, 1961. It was sub-  
 mitted on January 11, 1962, after the presentation of oral argument.

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 certificated highway common  
 carrier presently transporting general commodities between the  
 Los Angeles Territory, on the one hand, and the San Diego Territory,  
 on the other hand, serving certain intermediate and off-route  
 points (Decision No. 53261, dated June 19, 1956, Decision No. 59154,

dated October 13, 1959, and Decision No. 59325, dated December 1, 1959).

Applicant requests authorization to extend such highway common carrier operations to transport general commodities and commodities requiring special refrigeration control between the points presently served by applicant, on the one hand, and, on the other hand, all points in the Los Angeles Basin Territory. Amendments to the original application were filed on May 31, 1961, to eliminate the restriction quoted below from Application No. 42926, and on June 19, 1961, to request that the same restriction be removed from the applicant's present certificate.

"(4) Commodities requiring the use of special refrigeration or temperature control in specially designed and constructed refrigerator equipment."

The president of the applicant testified he has been associated with the applicant since 1943. Operations are now handled out of a terminal in San Diego with complete repair facilities and additional terminals in Chula Vista, National City and Los Angeles. The Los Angeles terminal has a large dock and parking area. If additional operating authority is granted another terminal is planned in San Bernardino. The applicant now has 15 daily runs from San Diego to Los Angeles on five days a week; Saturday service is also furnished, if requested. Applicant maintains 11 trucks, 26 tractors and a total of 44 trailers (Exhibit No. 3); 4 bobtail trucks and 4 reefer vans were just purchased and are not included in the other equipment listed.

Applicant's Balance Sheet for 1960 shows total assets of \$439,998.58, current liabilities of \$173,588.27 and long-term obligations of \$95,320.56 (Exhibit No. 4). The Statement of Income

for 1960 shows a total freight revenue of \$772,935.54 and other revenue of \$11,033.97; operating expenses are \$774,073.94 and other expenses are \$6,517.50; the net profit for the year is \$3,378.07 (Exhibit No. 5). The applicant's witness testified that 1960 earnings were somewhat depressed due to expansion and the leasing of large parking areas for the applicant's trucks. The development and construction of new terminals will eliminate this expense in 1962.

The witness testified that many of the applicant's shippers have moved their factories and warehouses from the Los Angeles Territory out to the Los Angeles Basin Territory; if the applicant fails to extend its service into the Los Angeles Basin Territory it will lose this business. The witness further testified that the applicant has been hauling produce and other products requiring refrigeration by utilizing wet and dry ice packs. Customers have complained and requested that the perishables be carried in mechanically refrigerated equipment because it is necessary to maintain a constant temperature which cannot be done with ice packs.

The witness testified that if the requested authority is granted the applicant will provide an overnight five-day-a-week on-call service from San Diego to Los Angeles. Same-day and Saturday service will be available on special request. The rates to be assessed for this service will be those contained in Minimum Rate Tariff No. 2 and other minimum rate tariffs applicable to the commodities proposed to be transported between the points involved herein.

The applicant presented 21 witnesses; 17 in San Diego and 4 in Los Angeles. There were 19 shippers, with 5 claiming a need for refrigerated service. The general commodity witnesses

ship food and paper products, tile, carpeting and fluorescent lights, tires, military scrap, roofing materials and asphalt, building materials, prefabricated steel sections, dried beans, peas and rice, corrugated cartons and boxes, wall board, gypsum and candies. All but two of these witnesses use the applicant's present service from San Diego to Los Angeles and most use the applicant as a permitted carrier to the Los Angeles Basin Territory. Several testified they prefer the applicant because it will deliver to a job site on the date and at the time promised. Other carriers are late in bringing the merchandise causing expensive work crews to stand around with nothing to do. Two witnesses favored the applicant because flat rack trailers up to 40 feet in length have always been available when needed. Other carriers did not have this equipment when a haul was to be made. Three witnesses testified they supported the application because of prompt pickups; other carriers missed pickups thereby causing unnecessary delay to the shippers. Most of those who testified have used the applicant for varying periods from one to six years; although two of the witnesses planned to use the applicant for the first time as a result of the applicant's excellent reputation. Neither of these had used the applicant prior to the date of hearing and one stated the other carriers he used gave satisfactory service. Five witnesses ship tomatoes, cucumbers, beans, squash, bell peppers, chocolate and candies. They testified that they require mechanically refrigerated vans or trailers, which must be kept at a constant temperature. Ice packs are not practical because the temperature rises as the ice starts to melt or evaporate. The size of their shipments vary from 1,000 to 40,000 pounds; four ship to the Los Angeles Market only, the fifth has occasional

shipments to points in the Los Angeles Basin Territory. Representatives of the San Diego and Covina Chambers of Commerce testified for the applicant. They presented oral and documentary evidence to show the growth of the San Diego and Los Angeles areas. They testified they were authorized to appear by the organizations they represent because of a need for more good carriers in these expanding areas.

Four of the protestants presented evidence. Southern California Freight Lines; California Motor Express, Ltd., and California Motor Transport Co.; and Shippers Express Co., each submitted oral and documentary evidence. It was stipulated that if a representative of California Cartage Co. were called, he would testify that his company operates in the area the applicant is seeking to serve by this application with terminals in Los Angeles and San Diego. Exhibits were filed to show the terminals and equipment operated by the California Cartage Co.

All four 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 and along with other carriers will be forced to petition this Commission for a substantial raise in rates if many more carriers are certificated in the area where they operate. An Exhibit (No. 22) was introduced in evidence to inform this Commission that 29 carriers were certificated to operate from the Los Angeles Basin Territory

to the San Diego Territory on January 12, 1961. The four protesters state they are opposing this application because another certificated carrier is not needed in any part of the area for which authority is sought herein and because the applicant can serve all of its customers adequately under the operating authorities it now holds.

Findings and Conclusions

Based upon the evidence herein, we find that public convenience and necessity require that the applicant's general commodity authority be extended to include from the points presently served by the applicant, on the one hand, and, on the other hand, points not now served in the Los Angeles Basin Territory, with authority to use any appropriate route, for operating convenience only, in rendering service between any of the points it will be authorized to serve. We further find that applicant should be authorized to carry "commodities requiring the use of special refrigeration or temperature control in specially designed and constructed refrigerated equipment," from the San Diego Territory to Los Angeles.

Mueller Truck Co., a corporation, 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 that:

(1) A certificate of public convenience and necessity be and it is granted to Mueller Truck Co., 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 C attached hereto and hereby made a part hereof.

(2) Appendix A of Decision No. 53261, as amended, is further amended by incorporating therein Third Revised Page 1 in revision of Second Revised Page 1 and First Revised Page 2 in revision of Original Page 2 and adding Original Page 3. Decision No. 53261, as amended, is further amended by incorporating therein Appendix C attached hereto.

(3) In providing service pursuant to the authority 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.

Except as herein authorized the application is denied.

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

Dated at San Francisco, California, this 27th day of MARCH 3, 1962

[Signature]  
President  
[Signature]  
[Signature]  
[Signature]  
Commissioners



Mueller Truck Co., 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 (See Restrictions):

1. Between the Los Angeles Territory as described in Appendix B attached hereto, on the one hand, and the San Diego Territory as described in Appendix B attached hereto, on the other hand.
2. Between the Los Angeles Territory and the San Diego Territory, on the one hand, and points on the following highways, on the other hand:
  - a. U.S. Highways 101 and 101-Alternate between the southern boundary of the Los Angeles Territory and the northern boundary of the San Diego Territory.
  - b. U.S. Highway 395 between the Riverside-San Diego County Line near Rainbow and the northern boundary of San Diego Territory.
  - c. State Highway 78 between Escondido and its junction with U.S. Highway 101 near Oceanside.
  - d. State Highway 76 between Oceanside and its junction with U.S. Highway 395.
  - e. Unnumbered highways known as Vista Way and Mission Road between Vista and Fallbrook, inclusive, via Bonsall.
3. Between the Los Angeles Territory, the San Diego Territory and points on the highways described in paragraph 2a through e above, on the one hand, and the Los Angeles Basin Territory as described in Appendix C attached hereto, on the other hand.

Issued by California Public Utilities Commission.

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Restrictions: (1) Applicant shall not provide service to or from the Naval Ammunition and Net Depot of Seal Beach, Fallbrook Annex.

(2) Applicant shall not provide local service between points of origin and destination both of which are:

- (a) Within the San Diego Territory.
- (b) Within the Los Angeles Basin Territory except as otherwise provided.
- (c) On the highways described in paragraph 2a through e above except as otherwise provided.

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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 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 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.

\*Does not apply for shipments between the San Diego Territory, on the one hand, and the City of Los Angeles, on the other hand, serving no intermediate points.

End of Appendix A

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LOS ANGELES BASIN TERRITORY includes that area embraced by the following boundary: Beginning at the point the Ventura County-Los Angeles County boundary line intersects the Pacific Ocean; thence northeasterly along said county line to the point it intersects State Highway No. 118, approximately two miles west of Chatsworth; easterly along State Highway No. 118 to Sepulveda Boulevard; northerly along Sepulveda Boulevard to Chatsworth Drive; northeasterly along Chatsworth Drive to the corporate boundary of the City of San Fernando; westerly and northerly along said corporate boundary to McClay Avenue; northeasterly along McClay Avenue and its prolongation to the Angeles National Forest boundary; southeasterly and easterly along the Angeles National Forest and San Bernardino National Forest boundary to the county road known as Mill Creek Road; westerly along Mill Creek Road to the county road 3.8 miles north of Yucaipa; southerly along said county road to and including the unincorporated community of Yucaipa; westerly along Redlands Boulevard to U. S. Highway No. 99; northwesterly along U. S. Highway No. 99 to the corporate boundary of the City of Redlands; westerly and northerly along said corporate boundary to Brookside Avenue; westerly along Brookside Avenue to Barton Avenue; westerly along Barton Avenue and its prolongation to Palm Avenue; westerly along Palm Avenue to La Cadena Drive; southwestly along La Cadena Drive to Iowa Avenue; southerly along Iowa Avenue to U. S. Highway No. 60; southwestly along U. S. Highways Nos. 60 and 395 to the county road approximately one mile north of Perris; easterly along said county road via Nuevo and Lakeview to the corporate boundary of the City of San Jacinto; easterly, southerly and westerly along said corporate boundary to San Jacinto Avenue; southerly along San Jacinto Avenue to State Highway No. 74; westerly along State Highway No. 74 to the corporate boundary of the City of Hemet; southerly, westerly and northerly along said corporate boundary to the right of way of The Atchison, Topeka & Santa Fe Railway Company; southwestly along said right of way to Washington Avenue; southerly along Washington Avenue, through and including the unincorporated community of Winchester to Benton Road; westerly along Benton Road to the county road intersecting U. S. Highway No. 395, 2.1 miles north of the unincorporated community of Temecula; southerly along said county road to U. S. Highway No. 395; southeasterly along U. S. Highway No. 395 to the Riverside County-San Diego County boundary line; westerly along said boundary line to the Orange County-San Diego County boundary line; southerly along said boundary line to the Pacific Ocean; northwesterly along the shoreline of the Pacific Ocean to point of beginning.