

**ORIGINAL**Decision No. 65712

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
 KIYOSHI NOBUSADA, KENNETH H. SATO )  
 and RINZI MANAKA, a copartnership, )  
 doing business as CONSOLIDATED )  
 FACTORS, for a certificate of public )  
 convenience and necessity to operate )  
 as a highway common carrier for the )  
 transportation of property. )

Application No. 44562  
 Filed June 20, 1962

Frank Loughran and E. John Kleines, for applicants.  
Graham, James and Rolph, by Boris Lakusta and  
E. Myron Bull, for California Motor Transport Co.  
 and California Motor Express, Ltd.; Delta Lines,  
 Inc.; Di Salvo Trucking Company; Merchants  
 Express of California; Southern California  
 Freight Lines; Valley Express Co. and Valley  
 Motor Lines, Inc.; and Willig Freight Lines; and  
Emmett Lester, for Lester's Truck Service,  
 protestants.

O P I N I O N

This application was heard before Examiner Fraser on September 5 and 6, 1962, in Monterey, and on March 14, 1963, in San Francisco, on which latter date it was submitted. Copies of the application and the notice of hearing were served in accordance with the Commission's procedural rules.

Applicants are now operating under permitted authority as a radial highway common carrier and request herein that a certificate of public convenience and necessity be granted authorizing them to transport fish, fresh or frozen, between the San Francisco Territory, including Sausalito, to and including the Los Angeles Territory, and all intermediate points (the original application was amended on September 5, 1962 to exclude everything south of the Los Angeles Territory); also between Monterey, Santa Cruz, Morro Bay, and all

other points and territories mentioned, including intermediate points. The routes to be used include U. S. Highway 101, 101 Alternate, 101 Bypass (Bayshore), U. S. Highway 466 between Atascadero and Morro Bay; State Sign Routes 1, 17, 868; State Legislative Routes 118 between Castroville and Salinas; and State Legislative Route 56 between Morro Bay and San Luis Obispo. Applicants also request authority to traverse any and all public highways, streets, and roads between all points which they are authorized to serve, for operating convenience only. The application alleges that service will be on an on-call basis and that the rules and regulations and minimum rates to be applied will be those contained in Minimum Rate Tariff No. 2.

One of the applicants testified that: applicants are in the import and export business, and also have a gift shop, restaurant and fish processing business; they have been transporting fresh and frozen fish by truck under a radial highway common carrier permit issued in February of 1949; they now send their trucks six days a week from San Francisco and Oakland to Monterey and from Monterey south to the San Pedro Fish Market; intermediate stops are made at Santa Barbara, and occasionally at Morro Bay, Oxnard, San Pedro, and other points; Sunday service is also provided during certain seasons, usually for salmon in the spring and albacore in the fall; ten large wholesalers in the San Pedro area are served by this route, with the trucks arriving daily before 6 a.m., when the market opens; trucks returning north pick up fish at Santa Barbara and Morro Bay, with stops at Pismo Beach and Castroville; at Castroville a bobtail truck loads and delivers all fish destined to the Monterey-San Jose area, and the regular truck continues to the San Francisco-Oakland area, arriving about 7 a.m.; they transport freshly caught fish packed in dry ice; the frozen fish is

carried in mechanically refrigerated equipment; applicants operate with 4 tractors, 4 van trucks and one flatbed, along with 7 trailers, of which three are refrigerated and two are insulated.

The balance sheet of applicants' trucking operation, received herein as Exhibit No. 2, shows that on December 31, 1961 applicants' trucking operation had current assets of \$14,512.04 and fixed assets of \$61,013.28, with total assets of \$75,525.32; current liabilities were \$32,713.76 and long-term liabilities were \$8,244.74. The statement of profit and loss for the six months ending December 31, 1961 received herein as Exhibit No. 1, shows a total income from all operations of \$706,688.78, a gross income of \$228,499.18, and a net profit of \$39,205.10. The statement of trucking income and expenses for the same period (Exhibit No. 3) shows a total income of \$86,677.32 and expenses of \$72,000.21, with a net profit of \$14,677.11.

The witness testified that applicants are seeking a certificate because of the constant growth of their business and because they were advised to apply for a certificate by a Public Utilities Commission investigator after his last inspection of their records.

Applicants presented eight shipper witnesses during the September 5 and 6, 1962 hearings in Monterey.

The president of the Los Angeles Smoking and Curing Co. testified that: his company processes, smokes and cures salmon, sable, herring and shrimp; they have been in business since 1921 and now have from 110 to 120 employees; from April 15 to September 15 they ship daily to Los Angeles from wherever they pick up their fish; the rest of the year they ship intermittently, but all of their

fish goes into Los Angeles, where it is processed; the loads vary from 500 to 30,000 pounds, and are mostly fresh fish although they ship some frozen fish also; a Saturday service is required during their busy season, which is April to September; they send fish to Los Angeles from their suppliers in Sausalito, Oakland, San Francisco, Santa Cruz, Moss Landing, Monterey, Avila and Santa Barbara; the frequency varies depending on the catch, the season, and the point of origin; his company has used applicants' service since the early 1950's, but especially during the last four years; they prefer applicants because of their good equipment and their reliable pickup service; they will use applicants' service if the requested certificate is granted, although due to the volume and extent of their business they use other carriers in certain areas.

The Secretary-Treasurer of the State Fish Co., Inc., and the Del Mar Fish Co., Inc., of San Pedro testified that: they are wholesale fish dealers and have been in business over ten years; they own a few of their own boats and handle mackerel, sardines, anchovies and bass; they receive fish (at San Pedro) from San Francisco, Oakland, and Monterey; and send fish north from San Pedro to Monterey, Oakland, San Francisco, Santa Cruz, San Jose, and Watsonville; their southbound shipments to San Pedro average from 200 to 5,000 or 6,000 pounds, and come in every week with an occasional Saturday pickup; it is the same on their northbound shipments; they ship to the San Francisco-Oakland area everyday, all year-round; they use applicants for all their hauling because of the superior service they provide.

A buyer for the Terminal Island installation of Starkist Foods, Inc., testified that: they handle only tuna and employ 1300 to 1500 persons in season to put out a gross of over 50 million pounds yearly; they use applicants for all inbound shipments from

Oakland, Morro Bay, Moss Landing and Monterey, during the season from around June 17 to October, when they ship 90 percent full truckloads of 38,000 to 41,000 pounds, during a six-day week; most of their fish comes in frozen, since the fishing boats usually have refrigerators; during the off season they do not ship and their plant closes down; they have used Consolidated Factors for five or six years on incoming shipments and are well satisfied; their outgoing shipments are handled according to instructions received from the buyers.

The president of the Independent Fish Co. of San Pedro testified that: his organization is a wholesaler of tuna, sea bass, barracuda, and mackerel; they have 8 or 9 employees and process about 500 tons of fish a year; they have inbound shipments from Moss Landing, Morro Bay, Avila, and Santa Barbara; they ship out to Santa Barbara, Monterey, Oakland, Santa Cruz, San Jose, and occasionally to San Francisco; they require a Saturday pickup on incoming shipments only, during their eight months fishing season; their northbound shipments are delivered at 7 a.m., and the inbound shipments must be received from 6 to 8 a.m.; if the fish arrives after the time specified it cannot be sold until the following day; they have been using the applicants since they started their truck line and have been very well satisfied; other truck lines they tried failed to deliver on time.

A representative from Regal Sea Food of Monterey testified that: they are wholesale fish dealers in squid, filet of sole, and other varieties; during 1962 their company did a gross business of one million dollars; they ship occasionally to Los Angeles, San Pedro, Santa Barbara, Santa Maria and Morro Bay; southbound shipments average from 100 to 6,000 pounds; they have used applicants since 1949, primarily because applicants will pick up on six days a week;

other carriers furnish no Friday or Saturday pickup, and some are not reliable; they now use other carriers in addition to applicants.

A partner in the Monterey Fish Co. of Monterey testified that: they handle fresh and frozen seafood, especially rock cod, salmon, albacore tuna, and squid; they have 30 employees and processed 1,000 tons of fish in 1961; they ship from Monterey to San Pedro almost every day, with shipments averaging from 100 to 1500 pounds; they also ship to Santa Monica and Los Angeles and they have incoming shipments up to two or three tons from San Pedro two or three times a week; they use applicants exclusively for their southbound shipments and for some northbound shipments, because applicants provide an early delivery and a Friday and Saturday pickup.

The president of the Central Fish Co. of Oakland testified that: they are wholesale fish dealers with three-quarters of a million gross business in 1961; they have mackerel, shark, and kingfish coming in from Santa Cruz, squid from Monterey, gaspergou and cod from Los Angeles, and mackerel, sardines, tuna, pompano, and sea bass from San Pedro; the incoming shipments average from 100 to 3000 pounds; they have shipments to Santa Cruz or San Pedro occasionally, which are always under 1000 pounds; they have used applicants for at least five years and have found their service to be excellent; applicants deliver early and on time, which is essential in hauling fresh and frozen fish.

The manager of Frank Spenger's restaurant in Berkeley testified: that he manages a fish grotto restaurant, along with a wholesale and retail fish business which averages about one to two tons a week; their business is almost all incoming from Los Angeles and San Pedro, with a few loads from Santa Barbara and Moss Landing;

they ship out to San Pedro and to points in the Los Angeles area, averaging loads of 1000 to 3000 pounds three or four times a week during the season; their incoming shipments from Los Angeles are large, with some as high as 20,000 pounds; they have been using Consolidated Factors for two or three years, and now use them for all hauling except to Santa Cruz; they are the only fish wholesaler in Berkeley and their business has increased considerably during the last two or three years.

All of the shipper witnesses stated that the fish business is seasonal and usually lasts from four to six months. Some extend this period by handling different types of fish. Most of them testified they favored applicants because of reliable, on-time pickups and deliveries. Several tried other carriers, including some of the protestants, and were forced to discharge them because of late or missed pickups and deliveries. Several use carriers other than applicants and will continue to do so, either because of the volume of their business, or for other reasons.

Two of the protestants, California Motor Transport Co. and Merchants Express of California, submitted oral and documentary evidence.

Both 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 applicants. They have refrigerated vans and trucks operating in this region at much less than full capacity and are operating on a five-day-week schedule. Neither protestant will pick up or deliver on Saturday because of the cost involved, but they have the capacity to serve all of the applicants' customers and are willing to do so on their present schedules. They claim they are losing business and their revenues are steadily

declining due to increased competition in the area applicants are seeking to serve. They contend all carriers, operating in the area of this application, will be forced to petition this Commission for a substantial raise in the rate on "fish, fresh or frozen," if many more carriers are certificated in the area where they operate. However, no specific evidence to support this contention was offered. Protestants stated 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 applicants can serve all of their customers adequately under the radial highway common carrier permit they now hold.

Based upon the evidence we hereby find that:

1. The shippers served by applicants are almost all wholesalers or retailers in fish, fresh or frozen, who require service exclusively during the four to nine months when the fish are in season and are being caught.
2. The shippers require a six-day-week service when they operate, due to the necessity of processing the fish as soon as possible after it is caught and they need a carrier who will pick up and deliver at the time stipulated by the shipper, so the fish will not discolor and decay.
3. Applicants operate on a six-day-week schedule and will pick up and deliver at the time specified which satisfies their customers.
4. Protestants have sufficient personnel and refrigerated equipment to serve all of applicants' customers, but they do not provide six-day-week service.
5. There is a need for service of varying frequency between and from San Francisco, Oakland, Sausalito, Berkeley and Richmond, to San Jose, Santa Cruz, Watsonville, Moss Landing, Castroville, Monterey, Morro Bay, Avila, Pismo Beach, Santa Maria, Santa Barbara, Oxnard, San Pedro and the Los Angeles Territory. If applicants were certificated to serve only between a few points most frequently visited, they would have to serve all other points and areas under their permits. This would create problems since fishing boats with a good catch may unload at any number of the many cities or towns

available. Operations under a certificate and a permit under these circumstances would place a heavy burden on applicants and would not be in the public interest. Public convenience and necessity require that applicants be authorized to serve all of the points enumerated in the order which follows, under a certificate as a highway common carrier.

6. The hauling of fish, fresh or frozen, differs from that of general commodities in being a seasonal rather than a year-round operation. The seasons may vary in length and period for each class of fish and usually start and finish on different dates each year. The certificate granted to applicants therefore should not be restricted to specific periods in the year.
7. Applicants have the experience, equipment and personnel to maintain the operations to be authorized and the financial ability to support the proposed service.

The Commission concludes from the foregoing findings of fact that authority should be granted to the applicants as specified 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

IT IS ORDERED that:

1. A certificate of public convenience and necessity be and it is granted to Kiyoshi Nobusada, Kenneth H. Sato and Rinzi Manaka,

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 Appendices A and B attached hereto and 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, applicants shall establish the service herein authorized and file in the Commission's office, in triplicate, tariffs satisfactory to the Commission.
- c. The tariff filings shall be made effective not earlier than thirty days after the effective date of this order on not less than thirty days' notice to the Commission and to the public, and the effective date of the tariff filings shall be concurrent with the establishment of the service herein authorized.
- d. 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-A.

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

Dated at San Francisco, California, this 16th day of JULY, 1963.

[Signature]  
President

[Signature]

[Signature]

[Signature]

[Signature]  
Commissioners

Appendix A

KIYOSHI NOBUSADA  
KENNETH H. SATO  
and RINZI MANAKA

Original Page 1

Kiyoshi Nobusada, Kenneth H. Sato and Rinzi Manaka, by the certificate of public convenience and necessity granted in the decision noted in the margin, are authorized to transport fish, fresh or frozen, from, to and between San Francisco, Sausalito, Oakland, Berkeley, Richmond, San Jose, Santa Cruz, Watsonville, Moss Landing, Castroville, Monterey, Morro Bay, Avila, Pismo Beach, Santa Maria, Santa Barbara, Oxnard and all points in the Los Angeles Territory as described in Appendix B attached hereto. No service is authorized from, to or between intermediate points other than those specified above. Applicants may use any and all streets, roads or highways between the points authorized to be served for operating convenience only.

Issued by California Public Utilities Commission.

Decision No. 65712, Application No. 44562.

APPENDIX B to Decision No. 65712

LOS ANGELES TERRITORY includes that area embraced by the following boundary: Beginning at the intersection of Sunset Boulevard and U. S. Highway No. 101, Alternate; thence northeasterly on Sunset Boulevard to State Highway No. 7; northerly along State Highway No. 7 to State Highway No. 118; northeasterly along State Highway No. 118 through and including the City of San Fernando; continuing northeasterly and southeasterly along State Highway No. 118 to and including the City of Pasadena; easterly along Foothill Boulevard from the intersection of Foothill Boulevard and Michillinda Avenue to Valencia Way; northerly on Valencia Way to Hillcrest Boulevard; easterly and northeasterly along Hillcrest Boulevard to Grand Avenue; easterly and southerly along Grand Avenue to Greystone Avenue; easterly on Greystone Avenue to Oak Park Lane; easterly on Oak Park Lane and the prolongation thereof to the west side of the Sawpit Wash; southerly along the Sawpit Wash to the north side of the Pacific Electric Railway right of way; easterly along the north side of the Pacific Electric Railway right of way to Buena Vista Street; south and southerly on Buena Vista Street to its intersection with Meridian Street; due south along an imaginary line to the west bank of the San Gabriel River; southerly along the west bank of the San Gabriel River to Beverly Boulevard; southerly on Beverly Boulevard to Painter Avenue in the City of Whittier; southerly on Painter Avenue to Telegraph Road; westerly on Telegraph Road to the west bank of the San Gabriel River; southerly along the west bank of the San Gabriel River to Imperial Highway; westerly on Imperial Highway to State Highway No. 19; southerly along State Highway No. 19 to its intersection with U. S. Highway No. 101, Alternate, at Ximeno Street; southerly along Ximeno Street and its prolongation to the Pacific Ocean; westerly and northerly along the shore line of the Pacific Ocean to a point directly south of the intersection of Sunset Boulevard and U. S. Highway No. 101, Alternate; thence northerly along an imaginary line to point of beginning.