

ORIGINAL

Decision No. 69129

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
FRANK L. MOORE and JERRE R. MOORE,)
a copartnership, doing business as)
MOORE TRUCK LINES, for a certificate)
of public convenience and necessity)
to extend the present operating)
authority for the purpose of providing)
split pickup and split delivery as)
a highway common carrier within a)
larger area.)

Application No. 46629
(Filed May 12, 1964)

Kellogg and George, by Marquam C. George, for Moore Truck Lines, applicant.
Graham James & Rolph, by Boris H. Lakusta and E. Myron Bull, Jr., for Boulevard Transportation Company; California Cartage Company; California Motor Transport Co. and California Motor Express; Constructors Transport Co. (T.I.M.E. Freight, Inc.); Delta Lines, Inc.; Di Salvo Trucking Company; Fortier Transportation Company; Garden City Transportation Company; Merchants Express of California; ONC Motor Freight System; Pacific Intermountain Express; Pacific Motor Trucking Company; Shippers Express; Sterling Transit Co., Inc.; Valley Express and Valley Motor Lines; and Willig Freight Lines, protestants.

O P I N I O N

This application was heard before Examiner Fraser at San Francisco on October 1 and December 1, 2, 3 and 4, 1964. It was submitted on the filing of final briefs on January 27, 1965. Copies of the application and the notice of hearing were served in accordance with the Commission's procedural rules.

Applicants are operating as a highway permit carrier in the hauling of general commodities under the authority of radial highway common carrier, highway contract carrier and city carrier.

permits. Applicants also operate as a highway common carrier under the authority of a certificate of public convenience and necessity granted by Decision No. 60627, in Application No. 40966, which authorizes transportation of general commodities between San Francisco, Richmond, El Cerrito, Albany, Berkeley, Emeryville, Oakland, Alameda, San Leandro, Livermore, Tracy, Carmichael, McClellan Air Force Base, Sanger, Locans, Reedley, Dinuba, Lindsay, Porterville, Visalia, and Hanford; and also between all points and places on or within three miles of U. S. Highway 99 between Sacramento and Bakersfield, inclusive.

By this application, applicants seek to extend their certificate to cover a substantially broader area, with the restriction that service to or from any of the new points shall be restricted to split pickup shipments of which one or more component parts are picked up and split delivery shipments of which one or more component parts are delivered within the territory authorized in its initial certificate under Decision No. 60627. The extended area sought to be added to applicants' certificate is as follows:

- (1) Points within 15 miles of U. S. Highway 40 between San Francisco and Sacramento, inclusive.
- (2) Points within the area bounded by U. S. Highways 40 and 50.
- (3) Points within 15 miles of U. S. Highway 50 and State Highway 120 between San Francisco and Manteca.
- (4) Points within 25 miles of U. S. Highway 99 between Sacramento and Bakersfield, inclusive.
- (5) Points within 5 miles of State Highway No. 33 between its intersection with U. S. Highway 50 and its intersection with State Highway 180.

(6) Points within 5 miles of State Highway 180 between its intersection with State Highway 33 and the City of Fresno.

(7) Points within a radius of 25 miles of the City of San Leandro.

Applicants propose to provide overnight service during a five-day week. No service will be performed on Saturdays, Sundays or holidays. The rates to be assessed and the rules governing their application will be the same as those established and published in Minimum Rate Tariff No. 2.

Mr. Frank L. Moore, one of the applicants, testified as follows: He has managed and operated Moore Truck Lines for over seventeen years; Jerre R. Moore was employed by the company until 1955, when he became a partner; they now operate seventeen two-axle tractors, two pickup trucks, fourteen single-axle van trailers, five single-axle flat racks and four dollies, out of their main terminal in Stockton, which includes a large dock, a parking area, an office, garage and repair shop, with storage for fuel and spare parts; they have a second terminal in Fresno, where they have an office and a parking lot; they maintain an office in Fresno and have direct telephone lines into their Stockton terminal from other points in their territory, i.e., Modesto, Sacramento, Oakland and San Francisco; they hope to acquire a new terminal in Sacramento but it is now only in the planning stage; applicants employ seventeen drivers, six dockmen, one terminal manager in Fresno, three office personnel and an accountant.

The financial statement on the applicant's trucking operation for the year ended December 31, 1963 (Exhibit No. 3)

shows total assets of \$193,293, current liabilities of \$10,000 and long-term obligations of \$68,000, including a \$15,000 note payable to Frank Moore. Their profit and loss statement for the year 1963 (Exhibit No. 4) shows total revenue of \$433,098.29 with operating expenses of \$373,863.26 and a profit of \$59,235.03.

Applicants filed this application for the following reasons: Applicants operate as both a permitted and a certificated carrier but the authorities cannot be used to supplement each other due to a recent Commission determination that under existing statutes a carrier may not handle property as a single shipment, part of which is for delivery at a point authorized to be served under its common carrier certificate and part at a point or points not authorized to be served under the certificate (Sunset Transfer Service, Decision No. 67337, dated June 3, 1964, in Application No. 44123, 62 Cal. P.U.C. 760, 762). This ruling prompts shippers to make a greater use of certificated carriers who serve a large area due to the effect of a prior Commission decision which altered the Commission rate structure on general commodities. Prior to January 1964 the Commission's minimum rate tariffs contained weight breaks at 2,000 and 4,000 pounds. Shipments rated as 2,000 pounds or more were accorded a rate lower than the any-quantity rate which applied on less than 2,000 pounds, while shipments rated as 4,000 pounds or more were accorded a rate lower than the 2,000-pound rate. On January 18, 1964, the rate structure was modified and the 2,000- and 4,000-pound brackets were eliminated. The any-quantity rate was then made applicable on all shipments to 5,000 pounds, which was designated as the first weight bracket under the modified tariff. When the former brackets were in effect a

shipper could save money by sending more than 2,000 pounds, but was not seriously inconvenienced on smaller shipments. The present system, however, requires a shipper to have more than 5,000-pound shipments or pay charges on 5,000 pounds to gain the advantage of the first rate reduction. Shippers are therefore prompted to increase the weight of their shipments in order to make use of the 5,000-pound rate. In so doing, shippers are now combining more shipments to different points and are requesting split deliveries under a master freight bill. Some of these shipments are to points within the applicants' certificate and some are to points outside of applicants' certificated zone. Applicants cannot provide service under a master bill unless all delivery points are within their certificated area. Their shippers prefer applicants' service but have also advised applicants that the latter should obtain authority to serve a larger area so their shippers can benefit from the lower rates on larger shipments. This application has been filed to request that their certificated area be expanded so as to include the important points to which their present shippers regularly consign merchandise under the split delivery provisions of the applicable tariffs.

Six shipper witnesses testified for applicants. They ship plumbing supplies, brass fittings, copper tubing, paint, auto parts and accessories, sponges, brushes, tapes, buckets, cans, sheet metal, furnaces, air-conditioning and heating equipment, steel, and precast concrete items designed to hold meters or valves. They ship to most of the municipalities within the area applicants have requested. Their requirements vary from daily service to less than one delivery a week, depending on the location and the

commodity. All testified they prefer the service of Moore Truck Lines: one, because next-day delivery is provided; another, because Moore drivers are prompt in pickups and handle the merchandise carefully; a third, because they are prompt on claims and always provide the type of truck or trailer needed by the shipper. Most send frequent split delivery shipments and all want to ship as cheaply as they can. All have used other carriers and most still use other carriers in the area applicants have applied to serve. They have used Moore Truck Lines for periods varying from two years to twelve years and on shipments from less than 40 pounds in weight to occasional shipments over 50,000 pounds. All of the witnesses have many customers in the area applicants have requested and all will use the extended service if applicants are granted additional authority.

Six of the protestants presented oral and documentary evidence. All of them presented evidence to show that they have adequate equipment to handle any foreseeable increase in the public need for service throughout the area applied for by 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. The protestants who presented witnesses have more than twenty-five terminals in the area the applicants seek to serve. 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. The evidence shows that at least twenty certificated carriers operate in the area applicants seek to serve. The six protestants 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 applicants can serve all of their customers adequately under the operating authorities they now hold.

Protestants presented a member of the Rate Committee of California Trucking Association who testified that the 2,000- and 4,000-pound weight brackets were removed from the tariff so the rates could be raised on small shipments to a level where the carrier handling these shipments would be able to profitably handle shipments under 5,000 pounds. Most small carriers approve the rate change and all carriers were given an opportunity to file suggestions or protests with the rate committee, which applicants failed to do. A second witness testified that a certificated carrier can handle the split delivery of components outside of its certificated zone by establishing joint rates with another certificated carrier which serves the area out of the certificated zone of the first carrier. The latter delivers all components within its zone and the other carrier, or carriers, deliver those shipments outside of the first carrier's area and a joint rate is charged and divided among the participating carriers.

The Commission finds that:

1. Applicants are operating under a general commodity highway common carrier certificate which authorizes service between designated points only and along Highway No. 99 between Sacramento and Bakersfield.

2. This certificate has now become unduly restrictive since applicants' customers are demanding a split delivery service with many deliveries destined to points outside of applicants' certificated authority.

3. If applicants are not authorized to handle these split delivery shipments they may lose the entire business of the shippers they serve who prefer to send split delivery shipments; or as an alternative, be forced to combine with other certificated carriers under the application of joint rates.

4. The shippers appearing for applicants have comparatively few split delivery shipments, but they are of sufficient volume to prompt the sender to seek the most inexpensive means of delivery.

5. Applicants have applied to provide a split pickup and split delivery service to their present customers. They do not anticipate or seek to attract new customers.

6. Applicants have been operating for seventeen years and the shippers who testified have used Moore Truck Lines for a minimum of two years.

7. All of the protestants who testified stated that they are willing and able to handle additional business and all serve the entire area applicants are seeking to serve.

8. The protestants will not be unreasonably affected by an expansion of authority which merely increases the area in which split pickup or split delivery shipments can be hauled for the customers now served by applicants.

9. The Commission has granted the type of authority requested herein in at least two prior proceedings, one of which (Di Salvo) was contested (Willig Freight Lines, Decision No. 58055, dated February 24, 1959, in Application No. 39116 (not reported) and Di Salvo Trucking Co., Decision No. 57913, dated January 27, 1959, in Application No. 39986 (not reported)).

10. Applicants possess the experience, equipment, personnel and financial resources to institute and maintain the proposed service.

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

Based upon the findings herein, the Commission concludes that:

1. Applicants should not be required to provide service by another carrier through the application of joint rates as an alternative to requesting an expansion of service area.

2. The application should be granted to the extent set forth in the ensuing order.

3. An in-lieu certificate should be issued.

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 is granted to Frank L. Moore and Jerre R. Moore, 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 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 of the California Highway Patrol and the insurance requirements of the Commission's General Order No. 100-C. Failure to file such reports, in such form and at such time as the Commission may direct, or to comply with and observe the safety rules, or the provisions of General Order No. 100-C, 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 tariffs, in triplicate, in the Commission's office.
- (c) The tariff filings shall be made effective not earlier than thirty days after the effective date of this order or not less than thirty days' notice to the Commission and 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.

3. 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. 60627, 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 25th day of May, 1965.

Paul E. Mitchell President
George J. Dwyer
Alvarez

Commissioners

Commissioner Frederick B. Holoboff, being necessarily absent, did not participate in the disposition of this proceeding.

Commissioner William M. Bennett, being necessarily absent, did not participate in the disposition of this proceeding.

Frank L. Moore and Jerre R. Moore, by the certificate of public convenience and necessity noted in the margin, are authorized to transport general commodities:

1. Between San Francisco, Richmond, El Cerrito, Albany, Berkeley, Emeryville, Oakland, Alameda, San Leandro, Livermore, Tracy, Carmichael, McClellan Air Force Base, Sanger, Locans, Reedley, Dinuba, Lindsay, Porterville, Visalia and Hanford and all points within 3 air-miles of such points.
2. Between all points and places on and within 3 air-miles laterally of U. S. Highway No. 99 between Sacramento and Bakersfield, inclusive.
3. Between all points listed in paragraph 1 and all points and places designated in paragraph 2.
4. Between all points and places listed in paragraphs 1, 2 and 3 (See Restriction).
 - (a) All points and places on and within 15 air-miles laterally of U.S. Highway 40 between San Francisco and Sacramento, inclusive;
 - (b) All points and places within the area bounded by U. S. Highway No. 40 between San Francisco and Sacramento, inclusive, and U. S. Highway No. 50 between the same two cities;
 - (c) All points and places on and within 15 air-miles laterally of U. S. Highway No. 50 and State Highway No. 120 between San Francisco and Manteca, inclusive;
 - (d) All points and places on and within 25 air-miles laterally of U. S. Highway No. 99 between Sacramento and Bakersfield, inclusive;
 - (e) All points and places on and within 5 air-miles laterally of State Highway No. 33 between its intersection with U. S. Highway No. 50 and its intersection with State Highway No. 180, inclusive;

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- (f) All points and places on and within 5 air-miles laterally of State Highway No. 180 between its intersection with State Highway No. 33 and Fresno, inclusive; and
- (g) All points and places within a radius of 25 air-miles of the City of San Leandro.

RESTRICTION: Service to or from points and places set forth in subparagraphs (a) through (g) of paragraph 4 is restricted to split pickup shipments of which one or more component parts are picked up at, and split delivery shipments of which one or more component parts are delivered to, points and places designated in paragraphs 1, 2 and 3.

For operating convenience, Frank L. Moore and Jerre R. Moore may use any or all streets, roads and highways connecting the above points, places and routes.

Frank L. Moore and Jerre R. Moore 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 Item No. 5 of Minimum Rate Tariff No. 4-B.
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.

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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.

(End of Appendix A)

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