

to the amended application was filed on May 8, 1964, wherein it was requested that Milton's Express, Inc., be substituted for Milton Amundson as the applicant herein.

The applicant has permits to operate as a radial highway common carrier, highway contract carrier and city carrier. The applicant also operates as a highway common carrier under a certificate of public convenience and necessity granted by Decision No. 62895, dated December 5, 1961, in Application No. 43403 which authorizes transportation of general commodities "requiring the use of special refrigeration or temperature control and specially designed and constructed equipment" between all points in the Los Angeles Basin Territory and from the Basin to the San Diego Territory, Calexico, Santa Barbara, Ventura, Bakersfield, and Lancaster, serving all intermediate points and all off-route points within five miles of the authorized routes. The applicant's certificate includes a restriction which forbids the transportation of missiles or parts thereof, propellants or explosives, electronic devices, commodities moving for the account of the Atomic Energy Commission, nuclear devices, space craft and component parts thereof, even though "said commodities require the use of special refrigeration or temperature control devices and move in specially designed and constructed equipment." However, the above-mentioned restriction does not apply between points in the Los Angeles Basin Territory and from the Basin to Santa Barbara, San Diego, Ventura, Bakersfield, Lancaster, San Bernardino, Colton and Riverside, including all intermediate points and all points within five miles of authorized routes.

Applicant requests the removal of the following restriction from its certificate granted by Decision No. 62895:

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

The removal of this restriction would authorize applicant to operate as a general commodity carrier with the usual restrictions. Applicant does not seek any extension of its service area. The applicant also seeks to have the restriction quoted above removed from its interstate operating authority, which is identical to the certificate issued by this Commission and is set forth in Interstate Commerce Commission Docket No. M.C. 96981, issued January 25, 1962, and Docket No. M.C. 96981 (Sub. No. 1) served on September 17, 1963 per BOR 99 Application. Notice of the filing of Application No. 45364 before this Commission was published in the Federal Register on December 11, 1963, as required by Section 206 (a)(6) of the Interstate Commerce Act.

Applicant proposes to provide service during a five-day week, although Saturday pickups and deliveries will be provided on special order at extra charge. Applicant usually does not operate on Sundays and holidays but can provide, and has provided this service on occasion when it was required to unload perishables from ships docked at the Los Angeles Harbor. Applicant is now a party to several Western Motor Tariff Bureau, Inc. tariffs and proposes to charge the rates published for general commodities for other carriers.

The vice president of the applicant corporation testified as follows: Milton C. Amundson started operating in 1945 as a sole proprietor with three trucks and three employees; the present (April 14, 1964) operating fleet (Exhibit No. 8) consists of 34 van trucks, one pickup, 6 passenger cars, 3 Chevrolet Corvans, 15 2-axle tractors and 30 trailers; in 1964 the applicant corporation employed 3 officers, 7 office personnel, 13 operations personnel and 38 drivers and helpers; applicant maintains only one terminal located in Los Angeles which consists of a large enclosed dock 200 by 55 feet which

can accommodate over fifty trucks, a warehouse, fuel facilities, wash racks, a maintenance shop, the office of the company and a fenced, asphalt covered yard; applicant now serves nine pickup and delivery routes within a 30-mile radius on five days a week, picking up in the morning with delivery being made the same afternoon; goods for points outside of the 30-mile radius are brought to the terminal, loaded in line-haul equipment and delivered the next morning; eighteen routes service the remaining area covered by the applicant, six routes thereof going to San Diego and three to the Pasadena-Riverside area; applicant uses equipment with mechanical refrigeration for all hauling under its present certificate since only refrigerated items can be transported under its certificated authority; applicant also hauls only goods requiring refrigeration in interstate and foreign commerce; 95 percent of the interstate business is out of the Los Angeles Harbor Area and 5 percent from the railroads; 75 percent of the interstate goods which applicant hauls out of the harbor area is delivered in the Los Angeles commercial zone; applicant's entire fleet is refrigerated with the exception of three van trucks, a pickup truck, three corvan trucks and eight trailers; two of these trailers are 28 feet long and six are either 21 or 24 feet long; refrigeration units are attached on the outside of the other trucks and trailers and they can be used to haul nonrefrigerated commodities when the refrigeration units are turned off; it is also possible, with the modern equipment available, to partition a long trailer so goods under refrigeration are carried in one part of the trailer and general commodities in the other part; applicant has not as yet carried goods this way because of a lack of proper operating authority, and applicant does carry general commodities in separate trucks as a contract carrier.

The financial statement on the applicant's trucking operation for the year ended December 31, 1963 (Exhibits Nos. 6 and 7) shows total assets of \$127,885.96, current liabilities of \$41,738.04 and total liabilities of \$107,696.89. Operating revenues total \$900,306.88 with a net profit of \$14,311.16. Applicant estimates that 25 percent of the 1963 gross revenue has been received from the transportation of goods in interstate or foreign commerce.

Applicant alleges that it filed this application for the following reasons. Its certificate is so limited that it cannot compete with other certificated carriers in the area. It transports regular general commodities for some shippers as a permitted carrier under contract. When these shippers use the applicant for refrigerated items they are required to pay two rates on separate shipping documents and are denied the advantage of combining the weight of the two shipments so a lower rate can be obtained on the larger single shipment. Certain items carried by the applicant require refrigeration only part of the time. The applicant cannot provide a complete service on these items now due to its restricted certificate. Applicant states that it will continue to use the same equipment if this application is granted and that new equipment will be purchased if needed.

Twenty-three shipper witnesses testified for applicant. They ship yeast, frozen products, coffee, baking powders, liquid malt, ice cream, candy, sauces and syrups for ice cream sundaes, milk shake flavors, frozen fruits, cookies, cones, canned meats, frozen pork, hams, luncheon meat, frozen orange juice, concentrated flavors, frozen and fresh shrimp, fruit juice, canned vegetables, cartoned foods, chocolate, cocoa, syrups, jams, and sauces, confectionery products, nuts, peanut butter, vegetable oils, dates, peanuts, tuna, almonds, potatoes, sardines, canned groceries, adhesives, steel tubing and pipe, auto parts, auto accessories, packing material,

charcoal, cleaning compounds, housewares, beauty aids, insecticides, oven cleaner, cat litter, and hides. Shipments vary in size from a few pounds to more than a truckload. Most of these shippers have been using the applicant's service for periods ranging from one to eight years on the transportation of refrigerated items. One company has used applicant for three months, another shipper, in business a month, will use the applicant in the future as it obtains new customers. All require five or six-day a week service and many now obtain Saturday delivery of refrigerated items from applicant. Most are substantial shippers who move more than one hundred thousand pounds a week. They require daily service through parts of the Los Angeles area and to San Diego. The need for service to other points varies from three or four deliveries a week to less than one a month. All have used other carriers or their own trucks in the area that applicant has asked to serve and most will continue to do so if this application is granted. Almost all require service from or to the Los Angeles Harbor on interstate or foreign commerce. The applicant hauls refrigerated items to and from the harbor for the majority of these shippers. Other carriers are used for general commodities or dry freight. They prefer the service offered by the applicant because of prompt pickup and delivery of all refrigerated items which many other carriers refuse to haul. Several shipper witnesses testified that they have limited dock space and for this reason would transfer a portion of the business now hauled by other carriers to the applicant, if the latter's authority is expanded, since they prefer to be served by fewer carriers. All of the witnesses require intrastate service throughout the area in which the applicant has requested authority to operate as a general commodity carrier and all testified they will use the applicant to haul a greater variety of items if the restriction is removed from the applicant's certificate.

Twenty 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 either interstate or intrastate service throughout the area the applicant has applied to serve as a general commodity carrier. All of them contended that they have equipment operating in this region at much less than full capacity, and several have trucks which are idle due to lack of business. Testimony was presented purporting to show that at least sixty general commodity carriers serve the Los Angeles Basin along with hundreds of permitted carriers and proprietary haulers. Protestants serving San Diego stated it is a consumer rather than a production area and all of the profit is in the haul from Los Angeles to San Diego; trucks returning to Los Angeles are normally about one-quarter loaded; the commodities moved out of San Diego are now hauled by so many carriers that all are losing money on the return to Los Angeles. Representatives of Thompson and Imperial Truck Lines testified that their companies provide refrigerated and general commodity service from Los Angeles through Indio and Imperial County to the Mexican border. They stated that recent rate increases have prompted Safeway and Mayfair to become proprietary haulers out of Imperial County. It was emphasized that more than eleven carriers now serve the sparsely settled areas on Highways 99 and 111 between Indio and the Mexican border.

Three carriers protested the granting of any extension of authority from Los Angeles to Bakersfield and along Highway 6 to Lancaster and Palmdale. They presented testimony to show that four regular carriers now serve the desert area out to Lancaster and that numerous carriers serve Bakersfield. They maintain that the desert routes are too sparsely populated to justify any increase in service and that any new carriers will have to get most or all of their

business from the carriers who now serve the area. Protestants all carry goods in interstate commerce between the California points they serve. Many have extensive interline connections with large interstate operators which serve the entire United States. Most prefer to haul goods in interstate commerce and all are opposed to the granting of interstate authority to any additional carriers. Protestants allege they are opposing this application because another general commodity carrier is not needed in any part of the zone applied for and because applicant can serve all of its customers adequately under the operating authorities it now holds. A total of twenty-one shipper witnesses testified for the protestants.

Applicant is primarily a transporter of food and allied products. All of the shipper witnesses who testified for the applicant were either food or candy dealers with three exceptions, these being representatives of an auto dealer, a steel distributor and a chemical company. The auto dealer last used the applicant a month prior to testifying and uses its own trucks and other carriers. The steel distributor is located a block from the applicant and uses the latter occasionally because late pickups are provided. The chemical company has only been operating a month and was not using applicant at the time its representative testified.

Upon consideration of the evidence, the Commission finds that:

1. The applicant is now providing a specialized service on items requiring special refrigeration or temperature control in the Los Angeles Basin Territory and from the Los Angeles Basin to the San Diego Territory, Calexico, Santa Barbara, Ventura, Bakersfield and Lancaster, and has identical interstate authority.

2. Applicant seeks authority herein to serve in intrastate and interstate commerce as a general commodity carrier in the same area.

3. The shipper witnesses who appeared for the applicant were almost exclusively shippers of food and grocery products and almost all of these shipper witnesses now use other carriers in addition to the applicant, and some also use their own trucks. None of the witnesses is familiar with all of the carriers who now serve the area.

4. The applicant now provides a limited general commodity service under the authority of its permits.

5. The majority of the protesting carriers serve both in interstate and intrastate commerce and have the equipment, facilities and finances to enable them collectively to render services to all points proposed to be served by applicant.

6. The needs and requirements of applicant's customers for highway common carrier service and trucking service in intrastate, interstate and foreign commerce can be met by the presently certificated and authorized interstate and intrastate carriers.

7. Applicant has failed to establish that public convenience and necessity require that applicant render the proposed service or any part thereof either in intrastate or interstate and foreign commerce.

Upon the foregoing findings the Commission concludes that the application should be denied.

O R D E R

IT IS ORDERED that Application No. 45364 is denied.

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

Dated at San Francisco, California, this 7th day of DECEMBER, 1965.

Fredrick B. Holshoff
President
John E. Dillbeck
George E. Trover
Augustin
William W. Bennett
Commissioners