

ORIGINAL

Decision No. 72921

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 co-partnership, doing business as
MOORE TRUCK LINES, to remove certain
restrictions from present operative
rights and for a certificate of
public convenience and necessity to
extend the present operating authority
to include Marysville and Yuba City.

Application No. 48799
(Filed September 20, 1966)

Marquam C. George, for applicants.

Graham James and Rolph, by Boris H. Lakusta,
and E. Myron Bull, Jr., for protestants.

O P I N I O N

This application was heard before Examiner Fraser at San Francisco on December 13, 14, 15, 16, 1966, February 28 and March 1, 1967. It was submitted on March 1, 1967 after closing arguments. Copies of the application and the notice of hearing were served in accordance with the Commission's procedural rules. The protestants are California Cartage Company, Inc., California Motor Transport Co., Delta Lines, Inc., DiSalvo Trucking Company, Ringsby-Pacific, Ltd., Garden City Transportation Company, Walkup's Merchants Express, Southern California Freight Lines, Pacific Motor Trucking Company, Shippers Express, Sterling Transit Co., Inc. and Willig Freight Lines.

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. 69129 in Application No. 46629, authorizing operations as a highway common carrier for the transportation of general commodities as follows:

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.
 - (a) All points and places on and within 15 air-miles laterally of U.S. Highway No. 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;
 - (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, any or all streets, roads and highways connecting the above points, places and routes may be used.

Applicants now request that their certificate be amended by the deletion of the restriction and by the expansion of their service area to include Highway No. 99-E between Yuba City, Marysville and Sacramento, with a ten-mile lateral (Exhibit 3).

Applicants propose a daily, overnight delivery service, except for Saturdays, Sundays and holidays and to adopt the rates, rules and regulations in Minimum Rate Tariff No. 2.

Applicants operate out of a main terminal in Stockton, which includes an office, shop and garage; an installation in Fresno with an office and parking lot and an office in Emeryville. They have twenty-two tractors, four pickups, seventeen single axle van trailers, seven single axle flat-rack trailers and five dollies (Exhibit 4). There are twenty-two employees in Stockton, six in Fresno and one in Emeryville. The two partners divide their time between Stockton and Emeryville. Their profit and loss statement for the eleven months ended on November 30, 1966, shows operating expenses of \$566,350.01, with a net income before taxes of \$115,531.11 (Exhibit 3).

Frank L. Moore, one of the applicants, testified as follows: He has been in the business of hauling freight by truck for over twenty years; his brother Jerre was employed by the company until 1955, when he became a partner; applicants serve

from the Bay Area to Sacramento and down Highway 99 to Bakersfield; on May 25, 1965, the Commission issued Decision No. 69129, which granted a restated certificate. The 1965 certificate provided applicants with a much larger service area, but limited the service in the expanded area to either split pickup or split delivery shipments, with part of each shipment picked up or delivered in the old service area and the remainder in the newly granted area; applicants' customers are expanding and many have asked if applicants can provide service on single shipments to their newly certificated area; the single shipments are now carried under applicants' permits, if they are not too frequent; removing the restriction will permit the applicants to provide the daily service requested by their shippers; customers of the applicants have also requested that daily service be provided to the Yuba City-Marysville area; most of the business firms the applicants serve are expanding and now require daily shipments to a much larger area than a few years ago. Exhibit 1 lists 384 single shipments hauled by applicants as a permitted carrier during August of 1966, in the recently certificated (by Decision No. 69129) area wherein service is restricted to split pickup and delivery. Exhibit 2 lists the split pickup and split delivery shipments to the same area, during the same month. Exhibit 2 refers to 43 shipments which applicants transported under their certificated authority.

Applicants placed a list (Exhibit 5) of 128 cities, towns and populated areas in evidence. Frank Moore testified that under their present operating authority they provide only split pickups or deliveries to these points; six months ago one of their better customers (Rylock) moved to one of the cities (Union City)

listed; this shipper requires a daily pickup and many of its shipments are directed to a single consignee; other shippers have requested daily service on single shipments and special pickups on critical items that have to be transported without delay; due to shipper requirements applicants haul mostly as a permitted carrier in their newly certificated area; this is noted by reference to Exhibits 1 and 2 at the end of the preceding paragraph, which are indicative of the deficiency in applicants' certificated authority.

Ten shippers appeared for the applicants. All of them testified that they ship to most of the points on Exhibit 5; some have incoming shipments on repaired or returned items, or on needed supplies.

The first witness appeared for the Howard C. Fletcher Co. of Oakland, which represents the Anaconda Copper Company; he testified his company ships copper tubing, fittings, and brass valves from Visalia to the Oregon border and from the coast to Reno, Nevada; the shipments range in weight from 25 to 20,000 pounds and are almost exclusively prepaid. He stated shipments go only to plumbers, contractors and wholesalers located in towns or cities; although an occasional shipment is delivered to a jobsite. He testified he has used Moore Truck Lines for over four years and has had no problems. He has not used Moore for single shipments, as yet, but will do so if new authority is granted. He stated the point of origin for all shipments is Oakland and he uses at least six other truck carriers, as needed, in addition to the applicants.

A witness from the Maltby Co. in Oakland testified as follows: His company manufactures and ships petroleum additives, lubricating oils, rust inhibitors and glass cleaners; they ship to automobile dealers and wholesalers in drums up to 55 gallons;

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shipments weigh from 100 to 4,000 pounds; he uses Moore now primarily for split delivery and split pickup, due to the restriction in their operating authority; he has used Moore service for four years and is satisfied; he has a small warehouse with only one door and the fewer truck lines he has to use the better for his business; he now has six other carriers besides Moore, depending on the area to which he ships; these other carriers are satisfactory; his shipments are pre-paid and he tries to ship on the day the customer's order is received; if this application is granted, he will use the applicants' new service; he prefers the applicants' service to that of other carriers.

A witness from the Pittsburg Plate Glass Co. in Berkeley testified that his company handles paint, sandpaper and allied products; it ships all over northern California north of Fresno to paint dealers, wholesale jobbers and contractors, in one or five-gallon containers, with shipments averaging from 600 to 7,000 pounds. He stated he prefers the service provided by the applicants due to on-time pickups and personal service; the applicants also provide the early morning delivery most of his customers require. He noted that his company has used numerous carriers in the past and about six haul for him now; if the applicants get the new extension of authority, he will transfer most of his business in the area to them; he prefers the service of Moore to that of other carriers.

A vice president of the Walter N. Boysen Co., Oakland, testified the Boysen Co. manufactures paint, brushes, glue, sandpaper, plaster and allied products which are shipped in metal containers, drums, or cartons, with shipments varying in weight from 10 to 3,000 pounds; his company supplies more than 650 dealers and stores in California - all north of Bakersfield; all shipments

move out of the Oakland plant and 90% are prepaid; his company has relied on applicants' service for more than twenty years; they provide a superior service due to on-time pickups and deliveries; many of the Boysen customers are small stores who do not keep any paint supplies on the premises; a prompt delivery, as promised, is a great benefit to the customers of the small paint store; if the Moores expand their service he will give them all the business he can; he uses at least four other carriers regularly; one of them because the parent company of the carrier buys a lot of paint from Boysen.

The plant superintendent of the Grinnell Company, Emeryville, testified as follows: He ships fire prevention equipment, sprinkler systems and general plumbing supplies, with the shipments averaging from 100 to 40,000 pounds to Sacramento and Fresno, including intermediate points, on Moore equipment; he prefers the applicants' service because they pick up and deliver on time; prompt delivery is essential when plumbing supplies are consigned to a jobsite or a contractor; frequently an expensive crew is standing by awaiting delivery of the item they are to install; Moore equipment will also come on call; this is helpful since his customers occasionally phone in rush orders for immediate delivery; most of his shipments are prepaid; he ships all over the area the Moores have asked to serve, although he does not ship more than three times a week to most of the area concerned; he uses seven or eight other carriers, including several of the protestants and has been using the applicants' service for twenty years; plumbing supplies, especially heavy items, frequently require flatbed equipment; the Moores always provide flatbeds; other carriers he has used have promised flatbeds and then have not had them available at the

time needed and have either delayed the pickup or sent an unsuitable van type truck which could not be loaded; he will use the Moores in any area where they are certificated.

The material manager of Brooks Products, Inc., Oakland, testified as follows: The Brooks Company manufactures pre-cast concrete products for large water, gas or electric installations; the shipments vary in size from 100 to 40,000 pounds, but frequently are large and heavy; many shipments require care in handling, since a concrete frame can crack or bend out of alignment; the Moores have provided him with superior service; they always seem to have flat-racks available when needed, other carriers do not; and they deliver the load on time and in good condition; he may ship anywhere in the zone the applicants have asked to serve, but his shipments are intermittent or occasional to all but the largest jobsites; he has used other carriers but prefers the Moores and will ship with them whenever possible. He now uses Moore as a permitted carrier and would like to see their authority expanded. His company also sent a representative to testify for the Moores the last time they requested an increase in authority.

The warehouse manager of Goerlich's Inc., San Francisco, testified that his company manufactures exhaust pipes, mufflers, tail pipes and shock absorbers for cars and trucks; his freight moves collect on shipments under 200 pounds, otherwise it is prepaid; the size of shipments varies from 6 to 2,000 pounds. He stated that his company uses Moore to Sacramento and down Highway 99 to Bakersfield; Moore has been a favorite for three years. He further testified that van type trucks are adequate and all carriers have them available. He stated that other carriers have damaged tail pipes due to packing them in bundles; Moore packs them individually

and none have been damaged. He stated his customers either order only when some item is needed or else order on one load a sufficient inventory to last some time; he therefore ships less than twice a week to all but the most populated areas. He is supporting this application because of the quality of the service provided by the applicants.

The next witness represented the Rylock Company of Union City (moved from San Leandro six months ago). He testified they manufacture and ship aluminum doors, windows, and screens - all of their products are fragile and must be handled and packed with care. He stated the weight of shipments varies from 150 to 18,000 pounds, but usually shipments weigh from 3,000 to 10,000 pounds. He noted that all shipments originate in Union City, which is thirteen miles south of San Leandro, near Hayward. He stated Moore service is used to all points in the valley, to Sacramento and Bakersfield. He has used the applicants for at least eight years; their service is good and Moore is preferred by his customers as well. He has used numerous other carriers and prefers Moore service to all others he has employed. He stated he occasionally uses local carriers because Moore sometimes does not carry small shipments. If this application is granted he will use the expanded service, although his customers do not require daily deliveries.

The dispatcher of the Joseph T. Ryerson Co., in Emeryville, testified as follows: His company handles all types of steel except prefabricated; they ship from 100 to 40,000 pounds on a prepaid basis; applicants' service is used regularly to Modesto, Lodi, Stockton, Sacramento and Fresno; his company has shipped by Moore for at least five years and there have been no claims to date; the Moores pick up on time and always have flatbed equipment available;

other carriers either do not have flatbeds or do not have them available, when needed; he uses his own trucks to all points served, but there is still a large volume to the Moores; he has used numerous other carriers, including some of the protestants, but the Moores give the best service; he will give additional business to Moore if this application is granted.

The last witness appeared for the Laher Spring and Electric Car Corporation of Oakland. He testified his company manufactures batteries, brake linings and shoes, tires, electric cars (golf carts and small cars used in factories, warehouses, markets, etc.), and automobile and truck springs; shipments weigh from 50 to 40,000 pounds. He further testified that his company has used the applicants' service for twenty years to Sacramento and down Highway 99 to Bakersfield; he prefers Moore because of prompt pickups and generally good service. He stated that to most areas he ships about once a month; the larger towns would average possibly once a week. He will use Moore's expanded service if the application is granted and will also use other truckers, although Moore service is preferred.

Seven of the protestants presented oral and documentary evidence. All of them presented evidence to show 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 all are ready and willing to provide the shippers who testified for the applicants with all the service they need. Three of the seven already haul for one or more of these shippers. The protestants who presented witnesses have more than forty terminals in the area the applicants seek to serve. They have more

than 3,500 modern trucks and trailers and over 1,500 employees. More than 100 salesmen and shipper representatives contact the public for the seven protestants, in the area concerned. All seven advertise their service on radio, in newspapers and trade magazines and issue lists of points served and information brochures to the public. They noted that at least twenty-five certificated carriers and hundreds of permitted and local truckers operate in the area now. They advise there are too many carriers already in the area for the available business and with every new certificate granted, carriers already there lose some customers and business to the newcomer. 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 concerned herein. The seven 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.

Discussion and Findings

It is evident that the protestants are large enough to absorb all of the applicants' business. It is probable they have sufficient capacity to absorb any new business the area is likely to generate in the foreseeable future. Due to their size they do not satisfy the needs of certain shippers. Large carriers are programmed to deal with thousands of customers a week in both interstate and intrastate commerce. Trucks visit hundreds of customers a day; too many to afford anyone personalized service.

The testimony supporting this application includes typical shipper complaints about the service provided by the larger carriers.

They advise of frequent late or missed pickups, of poor delivery service, improperly packed merchandise, no equipment available, poor claim service and sometimes a "too busy to bother" attitude. Some shippers prefer pickups or delivery at a specified time, personalized service in packing or cartage and rapid processing of claims. It seems the smaller carrier, with fewer customers, can better satisfy these requirements, which constitute a continuing public need.

Protestants contend that the applicants can serve all of their customers under their permitted authority. They maintain that Exhibits 1 and 2, along with the testimony of the shippers fail to show the need for a daily service to any point the applicant seeks to serve. The protestants imply that applicants should have delayed filing until their operation expanded sufficiently to require daily service to most points. When a carrier requests a certificate it is exposed to one of two repeatedly expressed objections: It has filed too soon and does not have sufficient business to justify a certificate; or it is seeking to legalize an unlawful operation of long standing by obtaining a certificate. It is unreasonable to expect a carrier to synchronize the precise date on which its permitted operation becomes too frequent with the date upon which it files its application. The present application has been timely filed.

Protestants express concern that they may suffer a loss due to over-certification. They admit the applicants' operation itself would not affect them and several advised they already serve some of applicants' shippers. General complaints and a speculative future loss are not sufficient bases for a denial of this application. The applicants have sustained their burden of proof by showing

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a shipper need and shipper dissatisfaction with the other available service. Such dissatisfaction is made manifest when the shippers prefer the service of the applicants to that of the other carriers operating in the requested territory. The applicants are not required to show local shippers have tried all or most of the other carriers and found each to be inadequate.

Protestants referred to the certificate requested by applicants on May 12, 1964 (Application No. 46629), and granted on May 25, 1965 (Decision No. 69129). It was alleged that applicants applied for a restricted certificate "to get a foot in the door", and now ask for a removal of the restriction to obtain a general commodity certificate. This argument does not merit serious consideration. The applicants have been in business for over twenty years. They operated as a general commodity highway common carrier between certain named cities in the Bay Area and along Highway 99 before they applied for the certificate granted by Decision No. 69129. It took a year to get the latter certificate and applicants have operated under it for the past two years. It is evident from the testimony provided in the present and past proceedings that applicants' business is substantial and that satisfied shippers have requested additional service into the area where applicants could not provide daily deliveries. This expanding clientele has prompted the applicants to request additional operating authority by Applications Nos. 46629 and 48799. The filing of these applications has been timely and is supported by the record.

Upon consideration of the evidence, the Commission finds that:

1. Applicants are now serving as a highway common carrier from the Bay Area to Sacramento and down Highway 99 to Bakersfield.

2. Applicants' certificate authorizes service from certain points in the Bay Area to other named points; then from all points named east to Sacramento and south to Bakersfield over a greatly expanded service area, providing all service into the latter zone is split pickup or delivery.

3. This restricted certificate is an inconvenience to applicants and to shippers. The latter receive only partial satisfaction in the area served and the applicants' representatives and salesmen are burdened by the problem of trying to correctly advise the public of the extent of the partial service, a service which is not as attractive to the shippers as an unrestricted authority.

4. Applicants operate out of terminals in Fresno and Stockton and a dispatch office in Emeryville. They provide an overnight delivery service five days a week, omitting Saturdays, Sundays and holidays, at the rates in Minimum Rate Tariff No. 2. Their over-the-road equipment consists of twenty-two tractors, seventeen single axle van trailers, seven single axle flatbed trailers and five dollies.

5. Shippers who testified prefer the applicants' service to that of other carriers they have used. All have used a number of the available competing carriers and several use the services of one or more of the protestants to other areas or under special circumstances.

6. A grant of the requested authority will not inconvenience the protestants. Applicants do not have sufficient equipment to

serve more of the public than a few selected shippers, who are furnished a specialized personal service which a large carrier with numerous accounts could never provide.

7. The protestants' claim that all new certificates are a serious threat due to the cumulative effect of many new operators is illusory and an insufficient basis for denying all applications.

8. Each application must be decided on the basis of evidence presented. The public requires operators of different size and technique to maintain a high standard of service.

9. Applicants' service area should be extended to include Highway 99-E between Yuba City, Marysville and Sacramento, with a ten-mile lateral.

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

2. A restated certificate should be issued.

Frank L. Moore and Jerre R. Moore 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 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. Applicants are placed on notice that, if they accept the certificate of public convenience and necessity herein granted, they will be required, among other things, 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-D. Failure to comply with and observe the safety rules, or the provisions of General Order No. 100-D, 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 on not less than thirty days' notice to the Commission and the public, and

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 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 including all points and places within 15 air-miles laterally of said highways;
2. Between all points and places within a radius of 25 air-miles of the City of San Leandro;
3. Between all points and places:
 - (a) On and within 10 air-miles laterally of U. S. Highway No. 99-E between Yuba City, Marysville and Sacramento, inclusive;
 - (b) On and within 25 air-miles of U. S. Highway No. 99 between Sacramento and Bakersfield, inclusive;
 - (c) On and within 15 air-miles laterally of State Highway No. 120 between the intersection of said highway and U. S. Highway No. 50 and Manteca, inclusive;
 - (d) 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;
 - (e) On and within 5 air-miles laterally of State Highway No. 180 between its intersection with State Highway No. 33 and Fresno, inclusive.

Issued by the California Public Utilities Commission.

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Through routes and rates may be established between any and all points described in paragraphs 1 through 3(e) above.

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.
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)

Issued by the California Public Utilities Commission.

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