

ORIGINALDecision No. 73891

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
 KINGS COUNTY TRUCK LINES, a corporation,
 for expansion of its present certificate of
 public convenience and necessity authorizing
 highway common carrier service and the
 removal of certain restrictions therefrom.

Application No. 49327
 (Filed May 1, 1967)

Marvin Handler and Raymond A. Greene, Jr., for
 Kings County Truck Lines, applicant.
Graham and James by Boris Lakusta, for California
 Motor Transport Company, Delta Lines, Inc.,
 Oregon-Nevada-California Fast Freight and Southern
 California Freight Lines, Ringsby-Pacific, Ltd.,
 Pacific Motor Trucking Company and Desert Express;
Willard S. Johnson, for Ted Peters Trucking Co.,
 protestants.

O P I N I O N

Kings County Truck Lines, presently providing service as a highway common carrier, requests an extension of its certificated area as well as the removal of certain operating restrictions.

Public hearings were held before Examiner Daly at San Francisco on July 18, 19 and 20, 1967, and September 18, 19 and 20, 1967, with the matter being submitted on the receipt of concurrent opening and closing briefs, the latter being filed with this Commission on January 8, 1968.

In addition to operations being performed pursuant to Radial Highway Common Carrier Permit No. 54-3146 and Highway Contract Carrier Permit No. 54-3147, applicant also conducts certificate operations pursuant to Decision No. 71127, dated August 16, 1966, in Application No. 48465. Said certificate authorizes the transportation of:

- (a) Frozen foodstuff and beverages;
- (b) Any food product requiring refrigeration all or part of the year when transported with a simultaneous shipment of frozen foodstuffs in category (a) above, from the same consignor at same point of origin to the same consignee at same destination;
- (c) Dry ice;

between San Francisco, South San Francisco, Richmond, El Cerrito, Albany, Oakland, Alameda, Emeryville, Berkeley, Piedmont, San Leandro, Hayward, Yuba City, Sacramento, Lodi, Stockton, Tracy, Manteca, Patterson, Modesto, Turlock, Merced, Fresno, Sanger, Bakersfield, points and places in the Los Angeles Territory, Brea, La Habra, Pomona, El Monte, Santa Ana, Oxnard, Ventura, Santa Barbara, San Luis Obispo, Paso Robles, King City, Salinas, Watsonville, Gilroy, San Martin, Santa Clara, San Jose, Sunnyvale, Mountain View and Redwood City.

The certificate is restricted as follows:

- (a) The line-haul (intercity) transportation of all authorized commodities shall be performed in insulated equipment under refrigeration.
- (b) No transportation is authorized of smoked, cooked, cured or preserved meat.

By its application as amended applicant requests an in lieu certificate authorizing the transportation of (a) frozen foodstuffs and beverages; (b) commodities requiring refrigeration and/or temperature or atmospheric control all or any part of the year; (c) food and foodstuffs not otherwise requiring refrigeration and/or temperature or atmospheric control when tendered with a shipment of those commodities described in (a) or (b) to all points and places generally between San Francisco and Yuba City in the north and San Diego on the south, serving all intermediate points on all existing highways and roads between said points as well as all points within 20 miles from said highways and roads.

Pursuant to the provisions of Section 206(a)(b) of the Interstate Commerce Act, applicant requests authority to act as a motor common carrier in interstate and foreign commerce to and from all points and for the transportation of those commodities for which it requests intrastate authority. Notice of the filing of the application was published in the Federal Register.

Seven carriers protested the application. Four made an affirmative showing in support of their respective protests. They included California Motor Transport Company (hereinafter referred to as "CMT"), which provides a refrigerated service through its Christenson Division (hereinafter referred to as "Christenson"), Ted Peters Trucking Co., Inc. (hereinafter referred to as "Peters"), Oregon-Nevada-California Fast Freight and Southern California Freight Lines (hereinafter referred to as "ONC"), and Ringsby-Pacific, Ltd. (hereinafter referred to as "Ringsby"). By letter dated February 2, 1968, Ringsby withdrew its protest.

APPLICANT'S CASE

Applicant and its predecessor in interest have engaged in the transportation of refrigerated commodities within the State for many years. Operations have been conducted pursuant to both certificated and permitted authorities. According to applicant's Operating Manager, the demand for its service is constantly increasing; however, because of the existence of both geographical and commodity restrictions, applicant assertedly is unable to provide its customers with the most economical service. The witness testified that because of the restrictions applicant is unable to provide more favorable split pickup and delivery rates where component parts of a shipment are destined to points within and beyond its certificated authority and where the commodities offered by the same consignor

fall within and without the scope of its certificate. According to the witness, applicant now performs a split pickup and delivery service where possible as a contract carrier, but is fearful that the ever increasing public demand could lead to a status proceeding.

In addition to its refrigeration service applicant transports liquid dairy products, which applicant estimates would account for sixty-five percent of its total traffic if the service as herein proposed were authorized. Being an exempt item the transportation of dairy products is excluded from the scope of the application.

Applicant operates terminals at Montebello, Tulare, Fresno, Modesto, San Francisco and Oakland. It owns and operates 92 trailers (87 of which are refrigerated vans), 126 tractors, 6 refrigerated van trucks and 88 dollies. As of May 31, 1967, it indicated a net worth in the amount of \$1,258,460. Its operating revenues for the years 1962 through May 1967 were as follows:

<u>Year</u>	<u>Amount</u>
1962	\$ 3,040,091
1963	3,039,491
1964	2,947,467
1965	3,354,472
1966	4,298,106
1967 (May)	2,049,760

Applicant proposes a daily service Monday through Friday, with special service provided on Saturdays and holidays upon request. The proposed time in transit is the same day and overnight depending upon when the request for service is received, and the nature of the shipment. The proposed rates would be substantially the same as those prescribed in the Commission's applicable minimum rate tariffs.

PUBLIC WITNESS TESTIMONY IN SUPPORT OF APPLICANT

Twelve public witnesses appeared on behalf of the proposed service and the testimony of one individual was stipulated. The testimony in brief is as follows:

1. WALLACE P. GUNN (San Francisco)

District Traffic Manager for Corn Products Co., Best Foods Division. Distributes food products to any point in California where a supermarket or wholesale warehouse is located. Oleomargarine requires temperature control. Although the company has used Christenson in the past, primarily to the Salinas and Santa Cruz areas, it was not satisfied because Christenson failed to provide a Tuesday service to Fort Ord. It would be an advantage to use applicant's proposed service on mixed shipments as well as split delivery shipments.

2. JAMES S. BOWMAN (Los Angeles)

General Traffic Manager for Leo's Quality Foods. The company distributes smoked meats. It also represents East Asiatic Company, Inc. of Denmark for the distribution of ham and bacon and Lazio Company for the distribution of smoked and frozen fish. All shipments originate in Los Angeles and range in weight from 100 to 200 pounds. Ships to Stockton, Sacramento, Modesto, Santa Cruz, San Jose, Santa Clara, San Luis Obispo, Fresno, Burlingame, Tracy, Walnut Creek, Concord, Pittsburg, Antioch, Emeryville, San Leandro, Los Gatos, Victorville, Bakersfield and Lancaster. Shipments require a temperature control ranging between 32 and 35 degrees. The company uses Milton's Express and El Sobrante Desert Express on shipments south of San Luis Obispo and Christenson and applicant on shipments north thereof. Because of late pickups by Christenson (3:00 P.M. pickups, but desires noon pickups) a search for a new carrier was made. ONC and Willig refused the business completely; PMT stated that it was interested in truckload shipments only. As a result applicant's service was engaged and has proven to be excellent. Christenson is used once a week because of company's desire to have two carriers. Ships weekly to Japan and Okinawa through the Alameda Cold Storage Company in Alameda. Uses applicant on these shipments and Christenson on shipments moving to the Port of San Francisco.

3. GROVER C. WILLIS (San Francisco)

Traffic Manager for Krafts Foods, Western Division. Distributes cheese, candy, salad dressing, macaroni and cheese, malted milk, shortening and salad dressing, some of which commodities require temperature control. Shipments originate at San Francisco and Buena Park near Los Angeles. Shipments are made five days a week and range in weight from 200 pounds to truckload. From San Francisco shipments are made to all Peninsula points, Gilroy, the Monterey area, Emeryville, Richmond, Oakland, Sacramento, Yuba City, Marysville, Stockton and Merced. From Buena Park shipments are made to Riverside, San Bernardino, Oceanside, Escondido, San Diego, Miramar, Oxnard, Ventura, Santa Barbara, San Luis Obispo, Salinas, Hanford, Fresno and Lemoore. In the past the company

has used the service of PMT, ONC, Valley-Copper State and Christenson. The service of Christenson to some extent was satisfactory; however, service was refused on occasions because of a lack of equipment. Christenson also refused to handle shipments in excess of 10,000 pounds to the Alameda Army Base. These shipments consisted of numerous drop-offs within the base resulting in delays for which Kraft was unwilling to pay demurrage delay charges.

Five times a week the company has shipments destined for Hong Kong and Singapore. These shipments move from Buena Park to the San Francisco, Los Angeles and Oakland Harbors. The company uses Christenson on these shipments and the service overall has been good.

At the present time Kraft uses applicant pursuant to a contract and the service is excellent; however, the company prefers to use a certificated carrier.

4. EUGENE P. SWEET (Los Angeles)

Division Traffic Manager of the Refrigerated Division for Pillsbury Company. The company distributes prepared dough consisting of biscuits, rolls, and pastries. Shipments average approximately 30,000 pounds and consist of split deliveries moving from Los Angeles to such points as Stockton, Marin, Sacramento, Santa Clara, San Francisco, Yuba City, Emeryville, Marysville, San Leandro, Modesto, Gilroy, San Jose, Burlingame, Colma, Richmond, Yuba City, Daly City, Fresno, Riverside, Tulare, Porterville, Dinuba, Visalia, Northridge, San Diego, Santa Ana, Arlington, Glendale, La Habra, Lancaster, Oxnard, Reseda, Torrance, Santa Fe Springs, Buena Park, Ventura, Santa Barbara, Culver City, Bellflower, Pasadena, Colton, Vernon, and El Monte. Shipments move six days a week to chain stores, warehouses, jobbers, wholesalers and institutions. They require temperature control between 38 and 45 degrees. The commodities have a 60-day shelf life, therefore, time in transit is important. Is presently using applicant pursuant to contract and the service is outstanding. In the past the company has used the services of Christenson, Market Express, Hardy, Stierle and Milton Express, but these services were not as good as applicant's service. The company desires to perpetuate the service of applicant as a certificated carrier.

Pillsbury has weekly shipments which originate in Los Angeles and are destined to Hawaii via the Port of San Francisco.

5. ROBERT C. PROUTY (Gardena)

Vice President of Larry's Food Products, which makes and distributes frozen sandwiches. Shipments range in weight from 5,000 pounds to 20,000 pounds and move to points within the San Francisco Bay Area, Sacramento, San Diego and Fresno. At one time used the services

of Merrifield, Time Delivery and Christenson. Merrifield has gone out of business and the witness discontinued the combined services of Christenson and Time Delivery because of missed, as well as late, pickups. On one occasion Christenson refused to pick up a 10,000 pound shipment, because it assertedly did not have a trailer available.

Also engages in the distribution of fresh sandwiches. Presently engaging in the solicitation of various school districts and anticipates that the volume of fresh sandwiches will soon equal that of the frozen. These shipments will consist of split deliveries. Prefers to combine the frozen and fresh sandwiches for rate purposes.

Presently uses applicant pursuant to its certificate, but under its present authority applicant cannot handle mixed shipments nor provide a split delivery service to points beyond its certificate.

6. DONALD A. CHUTE (South San Francisco)

Transportation Manager for Armour & Company, which has facilities in San Francisco and South San Francisco and distributes meat products including fresh, frozen, cured and meat by-products. Presently uses the services of Christenson to points north of San Francisco and applicant to Los Angeles, El Monte, Fontana, La Crescenta, Long Beach, National City, San Diego, Montebello, San Bernardino, Colton and Santa Fe Springs. Also owns and operates 32 proprietary trucks.

Shipments range from 150 pounds to 70,000 pounds. Ninety-five percent of its shipments are split deliveries. Requires service seven days a week. Processed meats require temperature control between 34 and 40 degrees, fresh meats between 32 and 34 degrees and frozen meats must be kept between zero and 10 degrees below. Presently using applicant as a contract carrier and the service is excellent. Applicant provides a prompt pickup service. It also provides compartmentalized equipment, with the temperature of each compartment maintained according to the requirements of the commodity transported.

Presently working on a program to discontinue all proprietary operations and have entire transportation performed by a certificated carrier. An investigation of certificated carriers disclosed that Delta didn't have the necessary equipment; Desert Express, PMT, Ringsby, and ONC do not provide any LTL service on these commodities. Approximately one year prior to the hearing witness discussed with applicant the possibility of discontinuing the proprietary operation and emphasized the necessity of turning the business over to a certificated carrier because of its more permanent status. Believes that this discussion led to the filing of the application. Has to use applicant as a contract carrier at the present time because of applicant's certificated restriction against the transportation of cooked and cured meats.

Receives many shipments at South San Francisco that originate from eastern states. These shipments are specifically addressed to customers located in California and are transported from South San Francisco by local carriers or own trucks. Also has shipments destined to Hawaii that move through the port of San Francisco. Presently uses own trucks on these shipments, but if certificated would use applicant.

7. JACK VASS (Los Angeles)

Traffic Supervisor for Sunkist Growers. Distributes concentrated juices both frozen and nonfrozen. Also manufactures and distributes citrus oils, concentrates, flavoring compounds, pharmaceuticals and cow feed made from orange peelings. Frozen concentrates require a temperature of zero or below. Shipments originate at Ontario and move to such points as San Francisco, Petaluma, Stockton, Fresno, Tracy, San Leandro, San Jose, San Diego, and San Ysidro. Uses CME, ONC and PMT on dry freight. Neither ONC nor PMT provide an LTL service on refrigerated commodities. Presently uses applicant on shipments to northern points. Had previously used the combined services of Christenson and Citizen, but the service was unsatisfactory because of delays and deterioration of products caused by changes in temperatures as a result of interchange. On truckload shipments Christenson would pick up directly. Would use applicant's proposed service because it would permit the combination of dry and frozen commodities and would thereby allow the company to avail itself of volume rates.

Has occasion to ship out of state via the ports of San Francisco and Los Angeles.

8. DONALD CARL MOONEY (Los Angeles)

Assistant Traffic Manager for Nally's Fine Foods, a division of W. R. Grace Company. Distributes salads, pizza pies, tamales, enchiladas and tortillas. These commodities must be shipped at a temperature control between 35 and 40 degrees. Also distributes pickled products and chili con carne, which do not require temperature control, but are combined for shipment with commodities that do. All shipments are split deliveries. Ships to National City, Chula Vista, San Diego, Fresno, Modesto, Stockton, Sacramento, Carmichael, Mountain View, San Jose, San Francisco, Vallejo, Hayward, Oakland, Martinez, Berkeley, Richmond and Chico. Has used Christenson and Milton Express. Christenson's service was not satisfactory because pickup was made as late as 8:00 P.M. On several occasions the driver left shipments on the dock because he was ordered in by the dispatcher. One account in Sacramento requires an early morning delivery and on occasions Christenson did not deliver

until the afternoon. Presently uses applicant as a contract carrier and the service is excellent. Is concerned that if not certificated, applicant's contract operations may be curtailed.

9. FRANK GILBERT (Brea)

President of Polar Chilled Products Company which processes bottled orange juice. Ships orange juice in bulk and in bottles to practically all points between Marysville and San Diego. Uses own equipment between Los Angeles and San Diego. Uses applicant as a contract carrier to northern points. Ships truckload with split deliveries. These shipments move in tank trailers and in insulated vans. They require a temperature control ranging between 28 and 40 degrees. Ships daily and requires a Saturday delivery. Applicant's service is responsive to shipping needs. Desires to perpetuate the service.

10. JOHN P. BARROW (San Francisco)

Route Foreman for Bob Ostrow Distributing Company an affiliate of John Morrell & Company. Distributes smoked meats and prepared delicatessen supplies to Los Angeles, Costa Mesa, San Diego and National City. Shipments range in weight from 2,000 to 4,000 pounds. Commodities require a temperature control ranging between 35 and 40 degrees. Has been using applicant for the past six months as a contract carrier and its service is excellent. Previously used Christenson, but discontinued because of late pickup and deliveries. Products were warm on delivery. Complained to Christenson without result.

11. EUGENE L. SCARMELLA (Fresno)

General Manager of Danish Creamery Association. Has plants in Fresno and Chowchilla. Distributes bulk milk, butter, dry and evaporated milk. Shipments move to San Francisco, Sacramento, San Jose, Santa Barbara, Stockton, Bakersfield, Modesto, Chico, San Jose, Salinas, Fort Ord and Monterey. Shipments require a temperature control ranging between 35 and 40 degrees. Ships butter with dry commodities in truckload lots with split deliveries. Presently uses applicant as a contract carrier, but would prefer a certificated service. Previously used Christenson and the service on the whole was satisfactory except that the schedules were not frequent enough to be convenient.

Ships to the ports of Stockton and Oakland, the Supply Depot at Lyoth and military installations on the San Francisco and Monterey Peninsulas. Some of these shipments are destined for overseas delivery. Would like to use applicant on these shipments, but the government requires use of certificated carriers. The government usually designates the carrier and it usually designates American Transfer.

12. LEROY HACK (San Francisco)

Branch Manager of Rath Packing Company in San Francisco. It was stipulated that if called the witness would testify that the company ships meats, smoked, cured and processed from San Francisco to Los Angeles in truck-load quantities averaging approximately 100,000 pounds a week; that the shipments require temperature control and the company uses the service of applicant as a contract carrier.

13. WILLARD G. PITTMAN (Pasadena)

W. G. Pittman Company Food Broker. Represents food packers primarily engaged in the processing of vegetables and fruits. Shipments originate in Pasadena and move to Fresno, Modesto, Stockton, Sacramento, Salinas, San Jose, Oakland, San Francisco, South San Francisco, Redwood City and Merced. Ships to approximately 60 accounts. Shipments require a temperature of zero or below. Previously used Merrifield Trucking and Consolidated Freightways. Merrifield was satisfactory until it went out of business. Consolidated was also satisfactory until difficulties developed over certain shipments. Then used Christenson, but on several occasions the proper temperature was not maintained and the commodities were damaged. Christenson delivered late to customers requiring early deliveries and early to customers requiring late deliveries. Presently uses applicant's service. Many of the shipments require split deliveries.

PROTESTANTS' CASE

CMT

CMT is primarily a dry freight carrier, but it provides a refrigerated service through its Christenson Division. CMT purchased the operating authority of J. Christenson in 1962, and up to 1966, the refrigerated service was conducted as an integral part of CMT. Because of system wide operating losses and acting upon the recommendation of operating consultants the Christenson operations were subsequently conducted on an independent basis.

Christenson is certificated to all points covered by the instant application. It maintains terminals at Oakland, Sacramento, Fresno, Los Angeles, Gilroy, Modesto, Bakersfield, Chico and San Luis Obispo. It owns and operates 38 tractors, 148 refrigerated trailers and 93 local terminal units.

Christenson is primarily engaged in transporting LTL traffic and according to a traffic study covering the month of July 1967, provides an overnight service on 90 percent of its shipments. The remaining shipments assertedly receive second day service because of geographical difficulties.

In 1966 CMT lost approximately \$467,000 of which \$205,000 was attributed to Christenson. With the improvements suggested by a team of management consultants it is the opinion of management that Christenson is now as efficient as it can possibly be for the extensive type of service which it provides. According to CMT the cost of providing less-than-truckload service to rural areas is exceedingly high and therefore unattractive to contract carriers. Although it is company policy to adhere to the obligations imposed by its certificated authority it is the position of CMT that because of the already precarious economic position of Christenson a diversion of traffic by applicant could lead to a curtailment, if not a discontinuance of service to outlying points.

With the exception of Polar Chilled Products Company, Christenson is serving or has served all of the companies which appeared on behalf of applicant. A summary of revenue and weight for traffic handled by Christenson on behalf of ten of said companies during July 1967, indicates a total revenue of \$295,322, and a total weight of 21,739,451 pounds. This represents 9 percent of Christenson's total revenue and 11 percent of its total weight.

PETERS

Peters is presently authorized to operate as a certificated carrier for the transportation of general commodities between various points within the State. Its service is for the most part conducted between San Francisco and Los Angeles. It maintains terminals in Gustine, Montebello and San Leandro. This carrier operates 95 units

of equipment. As of July 31, 1967, it indicated a net worth in the amount of \$179,844. The protest of Peters is based upon the belief that the granting of the application would result in a dilution of traffic. The president of Peters testified that the only competition in the refrigerated service comes from Christenson.

ONC

ONC provides no refrigerated service. Its protest is directed towards applicant's proposal to transport commodities, other than food products, that require temperature control. This includes commodities such as batteries, plastics, chemicals and drugs.

PUBLIC WITNESS TESTIMONY IN SUPPORT OF PROTESTANTS

The public witness testimony of those appearing in support of the protesting carriers is as follows:

1. ROBERT L. SKILLMAN (San Francisco)

Food broker. Distributes cheese and imported ham to many points within the State including points in the outlying area. Uses Christenson and the service is overnight and excellent in all respects. Opposes the application because an additional carrier might dilute existing traffic and result in an increase in rates.

2. SYMOUR MICHELSON (Burlingame)

In charge of traffic for Turek & Meck, Frozen Foods. Distributes frozen meat throughout California. Uses Christenson and the service is satisfactory. Opposes application because an additional carrier may force Christenson to cut back service to outlying areas in an attempt to reduce losses.

3. DOUGLAS S. METCALFE (Gustine)

Avoset Company. Ships dairy products to San Francisco Bay Area, Sacramento, Marysville, Chico, Los Angeles, San Diego, San Luis Obispo, and Salinas. Requires a refrigerated service and uses Peters. Occasionally uses the service of Christenson and is not interested in the proposed service of applicant.

4. JAMES LONG (Gustine)

Distribution Manager for Borden Company. Ships food products to points in California. All or some part of the shipments require refrigeration. Uses Peters and occasionally uses Christenson. Has no need for the proposed service.

5. CHARLES I. HINES, JR., (Sacramento)

C. I. Hines & Co. Meat Jobber. Ships meat to restaurants located in Sacramento, Oakland, Redding, Red Bluff, Vallejo, Davis, Alameda, Fairfield and Marysville. Uses Christenson and the service is good. Opposes the granting of the application because the granting thereof might force Christenson to discontinue service to outlying areas, which would have an adverse effect on his business.

6. RICHARD KADERLICK (Modesto)

North Pole Frozen Foods. Wholesale distributors. Ships to Modesto, Stockton, Tracy and Merced. Uses Christenson and Central Coast. Occasionally uses applicant. Service of Christenson is wholly satisfactory. Opposes application because of possible discontinuance of service by Christenson to outlying points.

7. MELVIN F. SOUTHWARD, JR., (Los Angeles)

Oscar Mayer & Company. Distributes meat products to Sacramento, Applegate, Porterville, Pumpkin Center, Los Angeles, San Diego, El Centro, Calexico and Palm Springs. Uses Milton Express, Reliable, Christenson, Western Gillette and Ringsby. Uses own trucks to El Centro, Calexico, Palm Springs and Los Angeles area. Ships approximately 160,000 pounds per week between Los Angeles and San Leandro. Uses Christenson and the service is good. Opposes the application if the granting thereof results in an increase in rates or a decrease in existing service.

8. BERRY BERNBAUM (Burbank)

MacBern Packing Company, Assistant Plant Manger. Ships to Marysville, Sacramento, San Francisco Bay Area, Modesto, Fresno, Bakersfield, Santa Barbara and Monterey. Ships an average of 40,000 pounds a month. Uses Christenson and is very satisfied with the service. Opposes the granting of the application if it would result in an increase in rates or decrease in service.

9. ROBERT M. MORALES (Anaheim)

Alix Foods Incorporated. Distributes Spanish foods to San Leandro, Bakersfield and Sacramento. Uses Christenson and is satisfied with the service. Opposes the granting of the application if it would result in an increase in rates or a decrease in service.

10. WILLIAM J. MALAMIS (Gardena)

General Manager of Twentieth Century Meat Company. Distributes fresh and frozen meats to most counties within the State. Uses Christenson and is satisfied. Has used applicant on occasions and was not completely satisfied because of late deliveries and discrepancies with billings. Opposes granting of application if it would result in an increase in rates or a decrease in service.

DISCUSSION OF INTRASTATE SHOWING

The record indicates that applicant is providing a specialized service for which there is an increasing need as demonstrated by the growth of the frozen food industry. Because of the restrictions contained in its operating authority, which originally were imposed to protect the dry freight carriers, applicant is placed at an operational disadvantage. It is clear that the dry freight carriers are not providing refrigerated services and, therefore, are not responsive to the shipping needs and requirements of businesses engaged in the processing and distribution of perishable and frozen commodities. These same businesses distribute to a wide area within the State and many of them have occasion to ship commodities requiring temperature control along with commodities that do not. To require them to use a refrigerated carrier for certain commodities and a dry freight carrier for other commodities places these companies at a decided disadvantage as to rates. Where possible these business concerns are entitled to use a single carrier for all of their shipments and they are also entitled to a selection of carriers.

It is evident from this record that permitted carriers are not entirely responsive to the needs of the shipping public in the field of refrigerated service, particularly on less-than-truckload shipments. Of the protesting carriers only two are engaged in the transportation of refrigerated commodities. Peters operates primarily between the Los Angeles and San Francisco areas. CMT, through Christenson, performs the only major certificated service in the refrigerated field. Although Christenson has been operating at a loss in the past few years it apparently reflects a system wide deficiency that may be more attributable to management.

This Commission is mindful of the fact that the operating authority of CMT, including that of the Christenson Division, is presently the subject of a transfer proceeding. By Decision No. 73609, dated January 9, 1963, in Application No. 49900, this Commission issued an interim order authorizing CMT to lease its operating authority to Illinois-California Express pending final approval of the transfer by the Interstate Commerce Commission.

Applicant is presently authorized to provide service to specified points within a wide area. The requested authority would permit applicant to provide service to intermediate points. It would also eliminate antiquated restrictions that prevent applicant from providing its customers with a complete service.

DISCUSSION OF INTERSTATE SHOWING

Although the testimony in support of the interstate part of the application is not as strong as that in support of the intrastate portion it does demonstrate that there are occasions when certain of the public witnesses have occasion to ship in interstate commerce and it would be convenient for them to use a single carrier for both types of shipments. As previously noted Ringsby, the only interstate carrier to introduce evidence in this aspect of the application, withdrew its protest subsequent to submission.

Protestants argue that even if the Commission could make a finding of public convenience and necessity based upon this record, an interstate certificate of public convenience and necessity could not be granted covering routes and commodities for which this Commission had at an earlier date granted intrastate rights. In other words, protestants contend that this Commission can make a finding only to the extent that the application constitutes an extension or enlargement of applicant's authority and can make no finding with respect to applicant's existing authority. Protestants

cite as authority Edward T. Molitor dba Standard Truck Lines - Extension - Certificate of Registration, 105 M.C.C. (September, 1967, 1967 FCC P 36, 143).

In the case cited the applicant had been granted an intrastate right and thereafter filed an application under Section 206(a) (6) for the interstate authority only. The Interstate Commerce Commission ruled that the State Commission must make a concurrent finding of public convenience and necessity for both intrastate and interstate commerce. Because the question of need for intrastate service was not before the State Commission when Section 206(a) (6) was invoked it was determined that the requirements of the statute had not been complied with.

By the instant application authority is sought to operate in both intrastate and interstate commerce. It is not merely an extension of an existing service to additional points. With the removal of the restrictions as requested the proposed operation would in effect constitute a new service to all points encompassed by the application.

FINDINGS

After consideration the Commission finds that:

1. Applicant is presently conducting a refrigerated service as a highway common carrier pursuant to certificated authority heretofore granted by this Commission. It also performs service as a permitted carrier pursuant to permits duly issued by this Commission.
2. Applicant's certificated authority is limited to specified points and is also limited by commodity and equipment restrictions.
3. Applicant is presently rendering service to companies engaged in the processing and distribution of food and food products. Many of these concerns have occasion to ship frozen commodities as

well as commodities that require temperature control all or some portion of the year. They also have occasion to ship commodities that require no refrigeration or temperature control. Because of applicant's restrictive type of authority these companies cannot utilize applicant's service on mixed shipments nor can they avail themselves of the more favorable split pickup and split delivery rates.

4. The proposed service would have no appreciable effect upon carriers of dry freight. CMT, through Christenson, is the only major certificated carrier in the field of refrigerated service. The demand for this type of service, particularly on less-than-truckload shipments, is steadily increasing and the need for an additional carrier to meet the complete shipping needs and requirements of business concerns having occasion to use a refrigerated service has been demonstrated.

5. Notice of the filing of the application was published in the Federal Register and all parties interested therein were afforded an opportunity to be heard on the issues of intrastate and interstate public convenience.

6. Public convenience and necessity require the granting of the application with respect to the intrastate portion thereof.

7. This Commission has duly considered the question of the proposed interstate and foreign operations and finds that public convenience and necessity require that applicant be authorized to operate in interstate and foreign commerce to the same extent that it is hereinafter authorized to operate in intrastate commerce.

O R D E R

IT IS ORDERED that:

1. A certificate of public convenience and necessity is granted to Kings County Truck Lines, 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 particularly set forth in Appendix A attached hereto and made a part hereof.

2. In providing service pursuant to the certificate herein granted, applicant shall comply with and observe the following service regulations. Failure so to do may result in a cancellation of the operating authority granted by this decision.

- (a) Within thirty days after the effective date hereof, applicant shall file a written acceptance of the certificate herein granted. Applicant is placed on notice that, if it accepts the certificate of public convenience and necessity herein granted, it 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.
- (b) Within one hundred twenty days after the effective date hereof, applicant 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 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.
- (e) Applicant shall maintain its accounting records on a calendar year basis in conformance with the applicable Uniform System of Accounts or Chart of Accounts as prescribed or adopted by this Commission.

and shall file with the Commission, on or before March 31 of each year, an annual report of its operations in such form, content, and number of copies as the Commission, from time to time, shall prescribe.

3. The certificate of public convenience and necessity granted in paragraph 1 of this order shall supersede the certificate of public convenience and necessity granted by Decision No. 71127, dated August 16, 1966, in Application No. 48465, which certificate is revoked 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 Los Angeles, California, this 26th day of MARCH 1968.

[Signature]
President

[Signature]
[Signature]
[Signature]
Commissioners

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

By the decision noted in the margin below Kings County Truck Lines is authorized to transport:

- (a) Frozen foodstuff and beverages;
- (b) Commodities requiring refrigeration and/or temperature or atmospheric control all or any part of the year;
- (c) Food and foodstuffs not otherwise requiring refrigeration and/or temperature or atmospheric control when tendered with a shipment of those commodities described in (a) and (b) above;

to and between the following named points over and along the following routes including all points located thereon, all intermediate points and points within 20 miles thereof;

1. All streets and highways between points within the San Francisco Territory;
2. U. S. Highway 40 (Interstate 80) between Oakland and Roseville;
3. U. S. Highway 99E between Roseville and Marysville;
4. State Highway 20 between Marysville and Yuba City;
5. State Highways 99 and 113 between Yuba City and Woodland;
6. U. S. Highway 99W (Interstate 5) between Woodland and its junction with U. S. Highway 40 (Interstate 80);
7. U. S. Highway 50 between Oakland and Stockton;
8. State Highway 120 between its junction with U. S. Highway 50 and Manteca;
9. State Highway 33 between Tracy and its junction with State Highway 152;

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10. State Highway 132 between Vernalis and Modesto;
11. State Highway 152 between Watsonville and Gilroy.
12. State Highway 129 between Watsonville and its junction with U. S. Highway 101 three miles south of Sargent;
13. U. S. Highway 99 and Interstate Highway 5 between Sacramento and San Diego;
14. State Highway 17 between Oakland and San Jose;
15. State Highway 82 between San Francisco and San Jose;
16. U. S. Highway 101 between San Francisco and the Los Angeles Territory;
17. All streets and highways and points and places within the Los Angeles Territory;
18. Any direct route or routes between points in the Los Angeles Territory on the one hand and on the other, Brea, La Habra, Pomona and Santa Ana;
19. State Highway 180 between Fresno and Sanger;
20. State Highway 152 between Los Banos and its junction with State Highway 99; and
21. Interstate Highway 10 between Los Angeles Territory and Redlands.

Restriction: No transportation is authorized of liquid dairy products and whole fresh eggs.

End of Appendix A

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