

ORIGINAL

Decision No. 77034

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,
 for a certificate of public
 convenience and necessity to
 extend their present operating
 authority to include Auburn and
 Redding and intermediate points,
 and for a determination of appli-
 cants' operations "between fixed
 termini or over a regular route".

Application No. 51182

Marquam C. George, for Moore Truck Lines,
 applicant.

Graham & James, by Boris H. Lakusta and
David J. Marchant, for Delta Lines,
 Inc., Pacific Motor Trucking Co.,
 Peters Truck Lines, System 99, and
 Walkup's Merchants Express, protestants.

ORDER DENYING MOTION TO DISMISS
AND SETTING ASIDE SUBMISSION

The Moores filed an application on June 20, 1969 to request that their highway common carrier certificate be extended east of Sacramento to Auburn and north of Yuba City to Redding. Applicants advise that the application was filed because of necessity. Commission representatives notified applicants on May 17, 1968, that their hauls to Auburn and Redding were so frequent they were operating unlawfully as a highway common carrier. Applicants were provided with a list of shipments which were identified as the basis of the charge and received a letter from the Commission on May 27, 1968 which advised that a survey of Moore operations during the month of January 1968 disclosed that some of the

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transportation service performed constituted an unauthorized extension of certificated highway common carrier operations. The Commission representatives involved were not able to advise whether any part of the questionable operation was lawful, or how it could be made lawful. Applicant thereupon filed Application No. 50536, on September 5, 1968, to request operations to Redding and Auburn be classified by the Commission. A public hearing was held on February 4, 1969. The staff argued that applicants should obtain relief by filing a conventional application to request that their certificated authority be extended to Redding and Auburn. Decision No. 75413, dated March 11, 1969 dismissed Application No. 50536, whereupon applicants filed this application as indicated.

Public hearing on the second application was held on November 25, 1969. One of the applicants testified and placed in evidence a Commission report listing the shipments which were alleged to be unlawful, along with correspondence and the transcript of an informal conference between Commission representatives and the applicants. The latter then advised they were presenting no shipper witnesses and rested their case. Protestants made an oral and a written motion to dismiss the application. It was based on the testimony of one of the applicants that it was considered to be and was rated as a radial permitted operation, and the failure to present shipper testimony to prove a public need. Protestants emphasize that the frequency and consistency of the Redding-Chico-Auburn hauls are far less than the standard required to justify an expansion in the applicants' operating authority. Due to the circumstances involved the application was submitted on the Motion to Dismiss.

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Discussion

A warning or an informal opinion expressed by Commission representatives either orally or in writing does not constitute final proof of the facts therein alleged. It does not prove herein that applicants' questionable operation should be certificated. Applicants have filed two applications within nine months, however, in an effort to determine what portion of their operation is lawful. If this application is dismissed a third filing could be anticipated. Time and expense can be reduced by setting aside the submission and reopening this proceeding to permit the applicants and protestants to present shipper witnesses and other evidence as required.

Findings

We therefore find that the present record is insufficient to justify the issuance of additional operating authority to the applicants, but we further find that the principal lack is the absence of shipper testimony and additional proof of frequency of operation, which could be presented at another hearing.

We conclude therefore that the submission of the matter should be set aside; further hearing should be held and the Motion to Dismiss should be denied.

IT IS ORDERED that:

1. The submission of Application No. 51182 is hereby set aside.

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2. The Motion to Dismiss the application is denied.

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

Dated at San Francisco, California, this
31st day of MARCH, 1970.

William S. Brown
President
Augusta

James L. Stinger
Commissioners

I dissent. I would grant the motion to dismiss.
Applicant has failed to make the conventional
showing required in this type of case.
William S. Brown