



A. 49596 hjh

Applicant proposes to transport general commodities, with the usual exceptions, from, to and between all points and places on or within 10 miles of:

1. California State Highway 1 between San Francisco and Watsonville.
2. U.S. Highway 101 between San Francisco and San Jose.
3. California State Highway 35 between San Francisco and junction of California State Highway 9 (near Saratoga Gap).
4. California State Highway 9 between Santa Cruz and Los Gatos.
5. California State Highway 17 between Richmond and Santa Cruz.

Applicant has registered its operating authorities with the Interstate Commerce Commission and published this application in the Federal Register of September 19, 1968, to give notice that any additional authority received would also be registered and used in interstate and foreign commerce.

Applicant will provide a daily service with the exception of Saturdays, Sundays and holidays. Rates to be charged for the proposed service will be commensurate with those contained in the Western Motor Tariff Bureau Tariffs Nos. 111 and 107 and in Minimum Rate Tariffs Nos. 2 and 8.

Tesi has been in business since 1937; 1937 to 1941 as an individual; 1946 to 1955 as a partnership and since 1955 as a corporation. Twenty-three years ago Tesi hauled vegetables, fruit, flowers, bulbs, ranch produce and containers. Customers were almost exclusively ranchers transporting their ranch products to town. Applicant now hauls many different commodities throughout its certificated area. Present customers include manufacturers, distributors and consumers, who require a more varied service.

Applicant employs ten truck drivers and two office workers. It operates out of a single terminal with a capacity to load 14 trucks simultaneously; it has 22 pieces of operating equipment, including tractors, 2-axle van trucks, and both van and flat-bed trailers. Applicant's testimony reveals that no additional equipment or terminals will be required if this application is granted. Applicant has the financial ability to purchase new equipment if it should become necessary. Applicant has requested ten-mile lateral authority off its routes because of the tendency of shippers to construct their plants off the highways and away from centers of population.

Four shipper witnesses testified for the applicant. They ship candles, wax, flowers, plants, trees, shrubs, nursery supplies and electronic components and systems. These shippers have plants located in Half Moon Bay, Mountain View and Santa Cruz. They have used Tesi service for varying periods from ten to twenty years. One of the shippers uses her own truck to pick up shipments from abroad at the San Francisco International Airport. She would use applicant's service if it is provided, rather than her own truck. A second shipper testified he finds it necessary to use a company truck for deliveries and to pick up loads coming up from Mexico. If the requested authority is granted to the applicant, Tesi will be available to provide this service. The shippers all testified that the service presently available - where applicant seeks to serve - is not adequate. Other carriers take too long to deliver and fail to provide the extra services needed by individual customers, which Tesi drivers furnish regularly as requested.

The three protestants presented testimony on the number of terminals, employees and trucks they have in the Bay Area. It was emphasized that all of their terminals and equipment are operating well under the capacity they were designed to accommodate and that certificating another carrier will place an additional trucker in an area which already has too many competitors for the available business. The witnesses testified that if the number of property haulers authorized to operate in an area is allowed to reach the saturation point, no one has sufficient business and the survivors must seek frequent rate increases to counteract their dwindling income and business. One protestant advised that a small carrier operating in a small area is frequently more competition than a large carrier. The small carriers usually serve only where business is concentrated and therefore can afford faster service to select shippers than a large carrier operating over one or more states. Protestants also argued that applicant does not haul loads with sufficient frequency to qualify for a certificate. They maintain that all of the shippers who testified can be served under applicant's permitted authority.

Issues and Discussion

Protestants raised the following issues that:

1. Applicant's shippers are satisfied with the present service available from applicant and other carriers.

Applicant's shipper witnesses testified they now use applicant and occasionally other carriers in the area applicant seeks to serve. If this application were denied the shippers could continue to utilize the available operators to carry their merchandise. They prefer applicant's service, however, and this is a compelling argument, especially where applicant has served a shipper for many years. A second factor is the reticence of the average shipper to

criticize any existing carrier; even under extensive questioning shippers may only compare the types of service offered in such categories as "same day or overnight delivery", "equipment available" or "time of pickup and delivery".

2. There is no need for regular service between points covered by the proposed extension.

Protestants emphasized that two of applicant's shipper witnesses have outbound shipments hauled by other carriers; a third witness uses his own truck on most deliveries in the bay area and the fourth employs Tesi under contract. Not all of Tesi's customers testified. Those who did show a pattern of expansion which indicates a need for a carrier who can provide a complete service. Tesi fills the need since the shippers prefer its service and its requested expansion of service area is restricted to the bay area, where it has served for twenty-five years. It is also obvious that the shippers would not have testified if they were content to employ Tesi as a contract carrier. Finally, the applicant rests on the horns of a dilemma; if the frequency of service to points to be certificated is substantially less than every day, the argument is advanced that the service needed is not frequent enough to justify the issuance of a certificate; conversely if the applicant is providing an almost daily transportation service to the area where an extension is sought, the protestants argue that applicant has extended its service to a new area without authority and the certificate should be denied because of an unlawful extension into the area to be certificated.

3. Applicant has been continually operating in violation of the law and Public Utilities Code by transporting general commodities - without authority - between all points which it presently serves as a highway common carrier.

Tesi's operating authority is derived mostly from a series of decisions issued more than twenty years ago. These decisions

authorized Tesi to transport farm produce, farm supplies and agricultural necessities between certain points. A later grant of authority included farm produce and freight related to the operation of an agricultural enterprise. A 1960 decision authorized applicant to haul general commodities only along Highway No. 1 between Ano Nuevo Point and Santa Cruz, including intermediate points. Tesi advised that the applicant has been hauling many different commodities throughout its service area for some time. Its original customers were farms or ranches and the hauling was agricultural; then a gradual change started as farms or ranches expanded into other fields and their transportation requirements broadened; they were old customers and Tesi continued to haul what they needed; this process was accelerated by a change in applicant's service area. New houses, stores, and municipalities replaced most of the ranches and the requirements of the residents were no longer satisfied by an operating authority issued to supply rural ranches. Applicant's operating authority stems from a series of decisions twenty or more years old. Several of the decisions have not been in print and were acquired by purchase. There is some doubt whether they were ever in applicant's records or seen by its officers. There is also a strong presumption that what applicant has been hauling would be included in one or more of the descriptive terms found in applicant's old certificates.

4. Entry of a new carrier into the market will harm the shipping public.

Protestants argue that each additional trucker allowed to operate in an area further dilutes the available business by providing another one to compete against all the others. They further argue that at various intervals all of the truckers have to petition for a raise in transportation rates to bolster their declining revenues,

due to too much competition. This argument has some merit but it must be weighed against the fact that a small carrier expanding to a new area frequently brings his own shippers along and does not compete with a large carrier by taking over the latter's accounts. The record identifies Tesi as the typical small carrier who is forced to apply for additional operating authority due to its favored shippers either moving out of the carriers' old operating area or the shipper requiring service to new customers in areas not formerly served by the carrier. The possibility that a new carrier operating in an area may in time take some of the business from prior operators is not sufficient reason to arbitrarily limit the number of operators in a particular area.

Findings

1. From 1946 to date Tesi has provided truck service for residents along Highway No. 1 south of San Francisco.
2. During early years the service consisted of hauling ranch produce to town and returning with needed supplies.
3. A steady population increase in the area in recent years has prompted the construction of new homes, shipping areas, manufacturing plants and recreational facilities.
4. The area served by the applicant is now suburban rather than rural and the trucking needs of its residents are different than they were twenty-odd years ago.
5. Many of applicant's customers have used Tesi's service for many years and would like to see the service expanded.
6. Applicant's customers include shippers who receive merchandise hauled from Mexico by truck; from other states by truck; and from foreign nations by air carrier.

7. Applicant should be authorized to haul general commodities between all points in its service area to adequately serve its present group of shippers.

8. The four shippers who testified prefer to use applicant's service in the Bay Area and Peninsula.

9. A shipper is entitled to prefer the service of a particular carrier over that provided by all the others who are available and the favored carrier is entitled to rely on this preference as a basis for extending its service.

10. Protestants are large carriers who serve adequately but are not able to cater to the personal requirements of each shipper as conveniently as the applicant.

11. Protestants will not be affected by applicant's service along or in the vicinity of Highway No. 1.

12. Applicant's service on the other routes and highways will be primarily to extend the service provided for present customers and should not impair protestants' operations.

13. Applicant's present operating authority is derived from a group of Commission decisions, granted at varied intervals over a period of more than twenty years.

14. Applicant's authority should be consolidated and restated in a new certificate.

15. Applicant's authority should include a five-mile lateral in each direction off all routes served.

16. Applicant possesses the experience, equipment, personnel and financial resources to institute and maintain the proposed service.

17. There is no evidence in the record of this matter which shows any unlawful operations by the applicant, or that applicant hauled any commodities not authorized by its operating authorities.



18. Granting this application will not harm the shipping public.

19. Public convenience and necessity require that the application be granted as set forth in the ensuing order and that an in lieu certificate be issued which authorizes Tesi Drayage Company to engage in intrastate, interstate and foreign commerce as specified in the order which follows.

Conclusion

The Commission concludes that the application should be granted as set forth in the ensuing order.

Tesi Drayage Company is 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 Tesi Drayage Company, 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. The certificate of public convenience and necessity granted in paragraph 1 of this order shall supersede all existing certificates of public convenience and necessity authorizing the transportation of general commodities heretofore granted to or acquired by Tesi Drayage Company and presently possessed by it, which certificates are revoked effective concurrently with the effective date of the tariff filings required by paragraph 3(b) hereof.

3. 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-E.
- (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.

- (f) Applicant shall comply with the requirements of the Commission's General Order No. 84-Series for the transportation of collect on delivery shipments. If applicant elects not to transport collect on delivery shipments, it shall make the appropriate tariff filings as required by the General Order.

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

Dated at San Francisco, California, this 14<sup>th</sup> day of APRIL, 1970.

William Synow Jr.  
President

James L. Stinson  
Commissioners

Commissioner J. P. Vukasin, Jr., being necessarily absent, did not participate in the disposition of this proceeding.

Tesi Drayage Co., by the certificate of public convenience and necessity granted by the decision noted in the margin is authorized to conduct operations as a highway common carrier for the transportation of general commodities in intrastate and interstate and foreign commerce upon and along the following routes and between the points hereinafter specified including all intermediate points and with the right to make lateral departures therefrom within a radius of five (5) miles of said routes.

- (1) California State Highway 1 between San Francisco and Watsonville.
- (2) U. S. Highway 101 between San Francisco and San Jose.
- (3) California State Highway 35 between San Francisco and junction California State Highway 9 (near Saratoga Gap).
- (4) California State Highway 9 between Santa Cruz and Los Gatos.
- (5) California State Highway 17 between Richmond and Santa Cruz.

The carrier 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, live poultry, mules, oxen, pigs, sheep, sheep camp outfits, sows, steers, stags, or swine.

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4. Liquids, compressed gases, commodities in semi-plastic form and commodities in suspension in liquids in bulk, in tank trucks, tank trailers, tank semi-trailers, or a combination of such highway vehicles.
5. Commodities when transported in bulk in dump trucks or in hopper type trucks.
6. Commodities when transported in motor vehicles equipped for mechanical mixing in transit.
7. Articles of extraordinary value as set forth in Section 1 of Rule 780 of National Motor Freight Classification No. A-10, H. J. Sonnenberg, Tariff Publishing Officer, on the issue date thereof.
8. Logs.
9. Portland or similar cement, either alone or in combination with powdered limestone transported on any vehicle substantially loaded to capacity with such commodities.

END OF APPENDIX A

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