

Decision No. 32245

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
WESTERN TRUCK LINES, LTD. for an
amendment of that certain certificate
of public convenience and necessity
granted under Decision Nos. 8567 and
23482, being an extension of operating
rights thereunder between Blythe and
Midlands, California, etc.

Application No. 21833

OWEN C. EMERY and PHIL JACOBSEN, for Applicant.

GEORGE A. MONTROSE and A. S. WILLIAMS, JR., for
Mono Basin Transport, Inc., Protestant.

A. S. WILLIAMS, JR. for Southern Pacific Company,
Pacific Motor Trucking Company, Pacific Motor
Transport Company and Alexander and Larsen,
doing business as High Sierra Transport
Company, Protestants.

E. T. LUCEY for The Atchison, Topeka and Santa Fe
Railway, Protestant.

EDWARD STERN, for Railway Express Agency, Incorporated,
Protestant.

H. J. BISCHOFF, for Southern California Freight
Lines and Southern California Freight Forwarders,
Protestants.

C. G. ANTHONY, for Keystone Express System, Protestant.

BY THE COMMISSION:

O P I N I O N

By this application, as amended, Western Truck Lines, Ltd.,
a corporation, seeks a certificate of public convenience and nec-
essity authorizing extensions of its highway common carrier services
as follows: (a) from Blythe to Midland and to all points within a
radius of fifteen miles of Blythe; (b) from June Lake Junction
northerly to the California-Nevada State Line near Coleville; (c)
from Los Angeles to Los Angeles Harbor and intermediate points

including Vernon, Southgate, Huntington Park, Bell, Maywood, and including all points within an area roughly bounded by Whittier Boulevard and the Los Angeles River, thence to the mouth of said river and westerly along the shore line to include San Pedro, thence northwesterly to include the communities of Torrance, Hawthorne, El Segundo, Ingle-side, Culver City, Santa Monica and all points within the San Fernando Valley within the city limits of Los Angeles; and (d) a clarification of certain ambiguities alleged to exist in the Commission's decisions creating applicant's present operative rights or in the event that no ambiguities are found to exist then applicant requests the elimination of certain limitations or restrictions therein now contained. ⁽¹⁾

A public hearing was held by Examiner Paul at Bishop on May 24, 1938, at Los Angeles on May 25, 1938, at Blythe on May 27, 1938, at Los Angeles on June 24 and August 19, 1938. The matter having been submitted is now ready for decision. Based upon a request just prior to submission, the Commission issued an interim order and an order supplementary thereto extending all of applicant's operative rights to include service to or from the following points; Vernon, Maywood, Bell, Huntington Park, Southgate and intermediate points.

Applicant is now providing a highway common carrier service, under a certificate originally granted by Decision No. 3567, from Blythe to Mecca, Thermal, Coachella, Indio, Palm Springs and Whitewater and all points intermediate to Whitewater and Los Angeles--from Los Angeles to Blythe and all points intermediate to Blythe and Mecca but not including Mecca; ⁽²⁾ and between Los Angeles and Silver Lake via Mojave, Lone Pine, Bishop, June Lake Junction and June Lake, subject to certain

(1) Applicant's operating rights pertinent to this application are found in Decision No. 21195 of June 10, 1929, Application No. 14544 and in Decision No. 3567 of January 19, 1921, Application No. 6339.

(2) Applicant's authorized route to Blythe extends over the main highways through the following towns commencing at Blythe, thence to Mecca, thence to Thermal, thence to Coachella, thence to Indio, thence to Palm Springs, thence to Whitewater, thence to Banning, thence to Beaumont, thence to Riverside, thence to Ontario, thence to Pomona, thence to El Monte, and thence to Los Angeles.

(3)

intermediate restrictions.

LOS ANGELES - BLYTHE - MIDLAND EXTENSION

Applicant proposes to extend its present service now terminating at Blythe to include Midland, which is approximately nineteen miles northerly from Blythe, and intermediate points, and all points located within a fifteen mile radius of Blythe. Service to and from Midland will be provided on Monday, Wednesday, Friday and Saturday of each week. Service will be given within the fifteen mile radius of Blythe "on call."

Applicant also requests a clarification of its operative right between Los Angeles and Blythe or a removal of any limitations or restrictions which may be considered as preventing it from transporting freight as a common carrier between points east of Mecca, on the one hand, and all points west of Mecca, intermediate to Los Angeles, on the other hand, on its authorized route.

These proposals were protested by the Railway Express Agency, Incorporated, Southern California Freight Lines, Southern California Freight Forwarders, Keystone Express System and The Atchison, Topeka and Santa Fe Railroad. The Santa Fe, which serves Los Angeles, Blythe and Midland by rail, withdrew its protest at the conclusion of the hearing.

The evidence shows that Blythe is a distribution point for the territory north thereof as well as for the surrounding farm area in the Palo Verde Valley, and that Midland is the location of a large plant, manufacturing gypsum products, and has a population in excess of 500 persons. The evidence adduced in support of the extension to Midland, and the intermediate points, purports to show the inadequacy of the present rail and highway common carrier service between those points. Numerous witnesses testified that the present rail freight service from Los Angeles was slower than that proposed by applicant by at least one day, and that considerable delay was experienced in the delivery of freight even after the train arrived. The latter delay was said to exist

(3) Applicant's authorized route to Bishop from Los Angeles is over the main highways through Mojave.

even with express shipments via rail. These delays were said to be especially detrimental to shippers in view of the heat and climatic conditions experienced in this locality.

Applicant's witnesses testified that no highway common carrier service is available between Los Angeles and the area surrounding Blythe. They also testified that there is a need for an "on call" common carrier service between the farming area near Blythe and Los Angeles, stating that the pickup and delivery service proposed by applicant would enable them to ship directly from their farms to Los Angeles markets.

The record clearly shows that there is an inadequacy of common carrier service from and to Blythe, Midland, and intermediate points and the territory contiguous to Blythe, and is persuasive that applicant should be permitted to extend its operations as proposed, with certain exceptions relating to the description of the area in the vicinity of Blythe.

In connection with applicant's request for a clarification of its operative right between Los Angeles and Blythe, applicant alleges that it has interpreted such right to permit it to transport property originating at points intermediate to Los Angeles and Mecca when destined to points east of Mecca. However, in spite of such interpretation, applicant has never published rates from such points, but has confined its published rates to those points covered by Decision No. 8567, supra. No showing was made that the right as originally granted by Decision No. 8567, dated January 19, 1921, is in any way ambiguous. ⁽⁴⁾ The points between which service may be given and the route over which trucks may be operated is plainly evident from the order of said Decision No. 8567. No authority is contained in said

(4) Decision No. 8567 granted a certificate to A. E. Campbell to establish an automotive truck service, in general between Los Angeles and Blythe and certain intermediate points subject to definite intermediate limitations. Through a number of successive transfers the right was finally acquired by applicant herein under the authority conferred by the Commission's Decision No. 23482, dated March 9, 1931, on Application No. 17233.

decision for the movement of traffic from points lying intermediate to Mecca and Los Angeles, to points east of Mecca including Blythe. Neither does such decision indicate that San Bernardino, Redlands, or Colton are on the route authorized therein.

In support of its request for elimination of the limitations or restrictions existing in its Los Angeles-Blythe operative right created by Decision No. 8567, supra, several witnesses testified that they desired to use applicant's service on shipments originating at San Bernardino, Riverside and Redlands, which are intermediate to Los Angeles and Mecca and destined to points east of Mecca and that this service had been and now is being used by them. Applicant introduced a list of freight bills (Exhibit 7) covering shipments transported by him during the months of July, 1937, and March, 1938, originating at San Bernardino, Colton, Indio, and Riverside and destined to Desert Center, Cactus City, Shaver's Summit and Blythe, which points of destination are located east of Mecca. Over 80 per cent of this tonnage was destined to Blythe.

It was shown that the services of the Atchison, Topeka and Santa Fe Railway Company are available for the transportation of shipments to Blythe from San Bernardino, Colton, Indio, and Riverside.

The record shows that the service from San Bernardino, Colton, Indio and Riverside to Desert Center, Cactus City, Shaver's Summit and Blythe was provided by applicant as a common carrier service for compensation without any operative right therefor. Such operations should be immediately discontinued. The Commission has heretofore stated in Growers' Refrigeration Company (40 CRC 442, 444) that an application for the elimination of restrictions has many of the elements of an application for a certificate de novo

and in either instance it is incumbent upon the applicant to show affirmatively a public need for the proposed service. It is also stated in numerous decisions that an application for a certificate may not be based upon evidence of unlawful operations. (Asbury Truck Co., 38 CEC 887, 893, and cases cited.)

In the light of these rules it is apparent that there is no competent evidence nor any evidence in this record to support the issuance of a new certificate or the removal of the limitations as cited and the proposal will be denied.

JUNE LAKE JUNCTION OPERATION

In connection with this branch of its operations, applicant proposes to extend its highway common carrier operation beyond June Lake Junction on U. S. Highway No. 395 to the intersection of that highway with the California-Nevada state line near Coleville, a distance of approximately eighty-three miles. Mono Basin Transport, Inc. and Alexander and Larsen, doing business as High Sierra Transport Company, protested such proposed extension.

Applicant also requests a "clarification" of its operative right or a removal of any restrictions therein contained which may be construed as preventing it from transporting property as a common carrier, between points north of Mojave, on the one hand, and Mojave and points south of Mojave, on the other hand, on and along its authorized route. Railway Express Agency, Incorporated, Pacific Motor Transport Company, Pacific Motor Trucking Company, and the Southern Pacific Company, protested such proposal.

Applicant now operates between Los Angeles and Silver Lake via Mojave, Lone Pine, Bishop, June Lake Junction and June Lake. June Lake Junction is the northernmost point on U. S. Highway No. 395 now served by applicant. June Lake and Silver Lake lie westerly from

(5)
such highway. By Decision No. 27766, dated February 25, 1935, in Case No. 3860, applicant and Mono Basin Transport, Inc. were authorized to issue joint rates connecting at June Lake Junction. Mono Basin Transport, Inc. is conducting a highway common carrier service between June Lake Junction and points north thereof along U. S. Highway No. 395.

The evidence introduced by applicant in support of its proposal to extend service north of June Lake Junction purports to show that the joint service provided by applicant and Mono Basin Transport, Inc. had been unsatisfactory subsequent to September of 1935; and that in emergencies which followed, applicant was compelled to make deliveries north of the junction point to points served by said Mono Basin Transport, Inc. Applicant also showed that the joint rates now published are nearly 100 per cent higher than it would publish if granted the right to serve the territory in question. In further support of its contention that there is a need for transportation service north of June Lake Junction, applicant introduced in evidence interline settlements with protestant Mono Basin Transport, Inc. for the period of May 1, 1937, to May 1, 1938, showing that numerous shipments were made into the territory served by said protestant. During that period, applicant testified no freight was interchanged with said protestant although it continued to remit to protestant, in accordance

(5) The right between Los Angeles and Bishop was created by Decision No. 21195, dated June 10, 1929, on Application No. 14544.

(33 CRC 154) in the following language:

"THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA HEREBY DECLARES that public convenience and necessity require the establishment of automotive truck freight service by ROBERT V. HARDIE between Los Angeles and Bishop, serving as intermediates all points between Mojave and Bishop; provided, that such service shall be daily (except Sundays and holidays throughout the year); and provided, that no transportation may be conducted between Los Angeles and Mojave, or intermediates; provided further, that such service shall include free pickup or delivery one mile either side of the route traversed on all shipments; and provided further, that applicant shall conduct no local transportation between Lone Pine and Bishop or intermediates;..."

The right between Bishop and Silver Lake was acquired by applicant herein under authority of Decision No. 27766, as amended by Decision No. 27873, both on Application No. 19339. It was consolidated with the Los Angeles-Bishop right.

with their prior agreement, -18-per cent of the through rate. No evidence was introduced to show that protestant Mono Basin Transport, Inc. ever refused to interchange freight at the junction point or that it did not put forth reasonable efforts to effect such interchange. L. N. Anderson, testifying on behalf of protestant Mono Basin Transport, Inc. of which he is general manager, stated that he had made numerous and repeated attempts to make arrangements with Mr. Hardie, general manager of applicant herein, for the erection of a freight shed for the safekeeping of interchange traffic at June Lake Junction but that Mr. Hardie was unresponsive (Tr. 46, et seq). The evidence is decisive on the question of failure to interchange freight and points to reasonable efforts having been made by said protestant to cooperate with applicant. The evidence shows that applicant has transported freight for compensation as a common carrier, beyond any alleged emergency period, between June Lake Junction and Coleville and intermediate points via Fales Hot Springs, Leevining, and Bridgeport, over and along U. S. Highway No. 395 without any operative right therefor. Such operations should be immediately discontinued.

As hereinabove stated, the Commission has repeatedly held that evidence of unlawful operations cannot be used to show a need of service proposed to be rendered by an applicant. This doctrine has been recently reaffirmed by Decision No. 31801, dated March 6, 1939, in Application No. 20135. Moreover, the record lacks any semblance of a showing that protestant, Mono Basin Transport, Inc., has at any time subsequent to the time the joint rate arrangement was entered into in February, 1935, been unwilling to carry out the provision of the joint rate arrangement heretofore authorized by the Commission. And in this connection, it is not clear why applicant and protestant cannot now jointly effect a reduction in freight rates to the same level as those proposed by applicant. The proposal to serve the territory north of June Lake Junction will therefore be denied.

In regard to applicant's request for a "clarification" of the restriction on its operative right between Los Angeles and Mojave,

such restriction as imposed by Decision No. 21195 (see footnote 5) contemplated that no service of any kind should be performed to or from or between Los Angeles and Mojave and intermediate points. In support of the request for a modification of the restriction, applicant offered the testimony of three shipper witnesses who stated that they have used applicant's service for the following kinds of shipments, from and to the following points: (1) soiled and finished laundry between Lancaster, on the one hand, and Lone Pine and Bishop, on the other hand; (2) miscellaneous commodities from Lancaster to Olancho; and the products of one shipper at Bartlett, to Rosamond and San Fernando.⁽⁶⁾

Protestant, Railway Express Agency, Incorporated, introduced a schedule of its operations over the lines of the Southern Pacific Company and connecting truck line to show that an overnight service is now being conducted between the points involved. Express shipments leave Lancaster at 12:01 A.M., daily except Sundays and holidays, arrive at Lone Pine at 7:40 A.M. where the shipments are picked up by Pacific Motor Trucking Company and moved to Bishop, arriving at 11:30 A.M. The Southern Pacific Company introduced evidence showing that all the points between Los Angeles and Bishop are served by rail or its co-ordinating truck line. However, there is some evidence that the rail service as now rendered does not satisfy all of the needs of the public.

As hereinbefore pointed out in Growers Refrigeration Company supra, an application for the elimination or modification

(6) Bartlett lies between Mojave and Bishop; and Rosamond and San Fernando lies between Los Angeles and Mojave.

of restrictions has many of the elements of an application for a certificate de novo. It is apparent that the evidence of record in this proceeding in regard to the modification of the restriction between Los Angeles and Mojave falls short of the showing required by such rule.

LOS ANGELES - LOS ANGELES HARBOR ETC.

In regard to applicant's request for authority to serve all points between Los Angeles and Los Angeles Harbor, and numerous points near Los Angeles, the record is restricted to two public witnesses representing oil refineries. The testimony of these witnesses is not convincing that the prevailing public transportation in this area is inadequate or that applicant would offer a better service than is now available. In regard to service to or from Vernon, Maywood, Bell, Huntington Park and Southgate, such service was authorized in the interim order of Decision No. 31223 herein, dated August 27, 1938, as modified by Decision No. 31265, dated September 12, 1938. The record in this respect justifies only the authority granted by said interim order which will be incorporated in the order of this decision.

Western Truck Lines, Ltd. is hereby placed upon notice that "operative rights" do not constitute a class of property which should be capitalized or used as an element of value in determining reasonable rates. Aside from their purely permissive aspect, they extend to the holder a full or partial monopoly of a class of business over a particular route. This monopoly feature may be changed or

destroyed at any time by the state which is not in any respect limited to the number of rights which may be given.

F I N D I N G S A N D O R D E R

A public hearing having been held in the above-entitled proceeding, the matter having been duly submitted, and the Commission now being fully advised,

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA FINDS AS FACTS that Western Truck Lines, Ltd., a corporation, has been operating as a highway common carrier for the transportation of property for compensation from San Bernardino, Riverside, Colton, and Indio to Blythe, Desert Center, Shaver's Summit, and Cactus City; and between June Lake Junction and Coleville, via Bridgeport, Leevining, and Fales Hot Springs, over and along the U. S. Highway No. 395, without any operative rights therefor.

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA HEREBY DECLARES that public convenience and necessity require the establishment and operation by Western Truck Lines, Ltd., as a highway common carrier as defined in section 2 3/4 of the Public Utilities Act, of an automotive service for the transportation of property for compensation between Blythe and Midland and intermediate points; between Blythe and a point on U. S. Highway No. 60 where such highway intersects the California-Arizona state line east of Blythe, and intermediate points, and all points laterally within ten (10)

miles of U. S. Highway No. 60, between the point where said highway intersects the California-Arizona state line east of Blythe and a point fifteen (15) miles westerly thereof on said U. S. Highway No. 60, not as a separate operative right, but, as an extension and enlargement of the operative right heretofore created by Decision No. 8567, dated January 19, 1921, on Application No. 6339 and acquired by applicant by virtue of authority granted by the Commission's Decision No. 24066, dated September 26, 1931, on Application No. 17474:⁽⁷⁾

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA HEREBY FURTHER DECLARES that public convenience and necessity require the establishment and operation by Western Truck Lines, Ltd., as a highway common carrier as defined in section 2 3/4 of the Public Utilities Act, of an automotive service for the transportation of property for compensation, to or from Los Angeles, Vernon, Maywood, Bell, Huntington Park, Southgate and intermediate points, not as a separate operative right, but, as an extension and enlargement of each of the operative rights heretofore granted by Decision No. 7217, dated March 5, 1920, on Application No. 5409, Decision No. 21195, dated June 10, 1929, on Application No. 14544, Decision No. 23482, dated March 9, 1931, on Application No. 17233, and Decision No. 24066, dated September 26, 1931, on Application No. 17474.

IT IS ORDERED that a certificate of public convenience and necessity therefor is hereby granted to Western Truck Lines, Ltd. a corporation, subject to the following conditions:

(7) 36 CRC 635.

1. The authority herein granted shall lapse and be void if applicant shall not have complied with all of the conditions within the periods of time fixed herein unless, for good cause shown, the time shall be extended by further order of the Commission.
2. Applicant shall file a written acceptance of the certificate herein granted within a period of not to exceed fifteen (15) days from date hereof.
3. Applicant shall commence the service herein authorized within a period of not to exceed thirty (30) days from the effective date hereof, and shall file in triplicate, and concurrently make effective on not less than ten (10) days' notice to the Railroad Commission and the public, a tariff or tariffs constructed in accordance with the requirements of the Commission's General Orders and containing rates and rules which in volume and effect shall be identical with the rates and rules shown in the exhibit attached to the application in so far as they conform to the certificate herein granted, or rates and rules satisfactory to the Railroad Commission.
4. Applicant shall file in duplicate, and make effective within a period of not to exceed thirty (30) days after the effective date of this order, on not less than five (5) days' notice to the Railroad Commission and the public, a time schedule or time schedules covering the service herein authorized in a form satisfactory to the Railroad Commission.
5. The rights and privileges herein authorized may not be discontinued, sold, leased, transferred nor assigned unless the written consent of the Railroad Commission to such discontinuance, sale, lease, transfer or assignment has first been obtained.
6. No vehicle may be operated by applicant herein unless such vehicle is owned by said applicant or is leased by applicant under a contract or agreement on a basis satisfactory to the Railroad Commission.
7. Applicant shall, prior to the commencement of service authorized herein and continuously thereafter, comply with all of the provisions of this Commission's General Order No. 91.

IT IS FURTHER ORDERED that the application herein is in all other respects denied.

IT IS FURTHER ORDERED that Decision No. 31223, dated August 27, 1938 and Decision No. 31265, dated September 12, 1938 are hereby revoked and annulled.

For all other purposes the effective date of this order shall be twenty (20) days from the date hereof.

Dated at San Francisco, California, this 15th day of August, 1939.

Robert W. [unclear]
Francis [unclear]
[unclear]
Justin J. Casanova
COMMISSIONERS