

Decision No. 23419

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of WESTERN )  
 TRUCK LINES, LTD., a corporation, for a )  
 certificate of public convenience and neces- )  
 sity for the transportation of property (a) )  
 between Bishop and Laws, (b) between Lone Pine )  
 and Bishop, (c) from and to all points not )  
 further than four (4) miles from either side )  
 of U. S. Highway 395 between Bishop and June )  
 Lake Junction and unnumbered highway June Lake )  
 Junction to Silver Lake, (d) consolidation of )  
 rights of the Lone Pine-Keeler Auto Stage Line )  
 with those of High Sierra Motor Freight, and )  
 (e) abandonment of passenger service between )  
 Lone Pine, Lone Pine Station and Keeler. )

Application  
No. 23419

ORIGINAL

PHIL JACOBSON, for Applicant.

R. E. WEDEKIND, for Southern Pacific Company  
and Pacific Motor Trucking Company,  
Interested Parties.

GUY S. ALEXANDER, for Alexander and Larson,  
doing business as High Sierras Trans-  
port Company, Protestant.

BY THE COMMISSION:

O P I N I O N

Applicant Western Truck Lines, Ltd., a corporation,  
 seeks a certificate of public convenience and necessity author-  
 izing the establishment and operation of a highway common carrier  
 service between Bishop and Laws and intermediate points; between  
 Lone Pine and Bishop and intermediate points, and from and to  
 all points not more than four (4) miles on each side of its pres-  
 ent route of operation as a highway common carrier between Bishop,  
 June Lake Junction and Silver Lake. Applicant also requests  
 authority to abandon its operative right for the transportation

of passengers between Lone Pine, Lone Pine Station, and Keeler, and further requests that its highway common carrier operative right between those points be consolidated with the remainder of its operative rights.

A public hearing thereon was held before Examiner Paul, on August 15, 1940, at Lone Pine and Independence, and on August 16, 1940 at Bishop. The matter having been submitted, it is now ready for decision.

Guy S. Alexander, for himself and L. B. Larson, doing business as High Sierras Transport Company, is the only protestant.

Applicant is now performing a highway common carrier service in general between Los Angeles, and certain points nearby, and Silver Lake and intermediate points via Mojave and Lone Pine, subject to certain intermediate restrictions, one of which prohibits a local service between Lone Pine and Bishop. Applicant also provides service for the transportation of passengers and property between Lone Pine and Lone Pine Station and Keeler, under an operative right separate and distinct from that between Los Angeles and Silver Lake. Between Los Angeles and Bishop, applicant may now provide a service laterally for one mile on each side of its route of operation, subject to the prohibition that no transportation may be provided between Los Angeles and Mojave and intermediate points. Service between Bishop and the northerly terminus of applicant's operative right is provided to and from points located on the route, although over a portion of the route it may perform a lateral service five (5) miles therefrom. <sup>(1)</sup> Applicant's request for a certificate between Lone

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(1) Decision No. 27873 on Application No. 19339.

Pine and Bishop shall be construed herein as a request for a removal of the restriction imposed in the decision creating its operative right between Los Angeles and Bishop (Decision No. 21195, June 10, 1929, Application No. 14544).

Through applicant's traffic manager it was shown that applicant has never had any request for the transportation of passengers to or from Lone Pine, Lone Pine Station or Keeler. In support of applicant's request for the consolidation of its operative right between Lone Pine, Lone Pine Station and Keeler with the remainder of its operative rights, it was shown that many requests have been received for the transportation of shipments of property between Los Angeles and Keeler which, in the past, have been handled at a combination of local rates over Lone Pine. It was pointed out by applicant that if the consolidation sought was authorized it would then be in a position to quote and apply a through rate between such points.

The testimony of twelve public witnesses in addition to that of an operative witness was adduced in support of applicant's request for the removal of the local restriction between Lone Pine and Bishop, the extension of its operative right from Bishop to Laws, and the authorization of service at all points within four miles of applicant's present route of operation between Bishop and Silver Lake, via June Lake Junction. Four of these witnesses, who are engaged in the operation of pumice mills or bulk oil depots at or near Laws, stated that they are in need of a through service between Laws and other points served by applicant.

Twelve witnesses who are engaged in ranching, mining, newspaper publishing and job printing, laundry, telephone, automobile service stations, or other enterprises, testified that they

are in need of a highway common carrier service for the delivery of shipments to numerous points located off the main route of applicant's present operations between Bishop and Silver Lake. None of such lateral points appeared to be at a distance greater than four miles from that route. Some of these witnesses also stated that they are in need of a local service between Lone Pine and Bishop and intermediate points.

Guy S. Alexander testified that he is now providing a tri-weekly highway common carrier service between Bishop and Mono Lake serving a number of intermediate points now served by applicant. He opposed only the establishment of the four mile lateral service between Bishop and Silver Lake and intermediate points. Such opposition did not extend to the proposal between Lone Pine and Bishop nor the extension from Bishop to Laws. Alexander contends that he, as co-owner of an operative right which authorizes the transportation of express between Bishop and Mono Lake, is

(2)

The operative right referred to by Alexander was created by the Commission's Decision No. 11722, dated February 27, 1923, on Application No. 8027, which declared that public convenience and necessity "...require George W. Wilkins to operate automotive stages for the common carriage of passengers and express between Bishop and Cunningham, known also as Mono Lake, serving Rock Creek Station, Eaton's Ranch, Sumner's Ranch, Mammoth Camp and Cain's Ranch as intermediate points; said service to be rendered at least three round trips per week between May 31 and October 1 of each year, and as much longer each season to any point upon said route as weather, road and traffic conditions will permit."

A certificate therefor was granted subject to certain conditions, among which is the following:

"3. IT IS HEREBY ORDERED that applicant shall, within fifteen days from the date hereof, file with the Railroad Commission schedules and tariffs covering said proposed service, which shall be in addition to proposed schedules and tariffs accompanying the application; shall show each point proposed to be served and quote rates to and from each such point:"

In compliance with the order of Decision No. 11722, George W. Wilkins, predecessor in interest of Alexander and Larson, on March 14, 1923, filed his Local Passenger and Express Tariff C.R.C. No. 1. Only passenger fares were shown in this tariff which were between Bishop, Round Valley, Summit, Rock Creek Bridge, Rock Creek Gas Station, Eaton's Ranch, Convict Lake, Sumner's Ranch, Mammoth, Cain's Ranch, Toga Lodge and Mono Lake. Express rates were not filed until May 21, 1924, in C.R.C. No. 2.

now providing service to and from the June Lake area, Silver Lake, Grant Lake and other off-route points between termini.

From a careful review of the evidence adduced in this record, it is our conclusion that it has been shown that there is a need for a removal of the restriction on applicant's present operative right between Lone Pine and Bishop and intermediate points; that it is in the public interest to authorize applicant to abandon the transportation of passengers between Lone Pine, Lone Pine Station and Keeler; that the highway common carrier operative right of applicant between Lone Pine, Lone Pine Station and Keeler should be consolidated with the remainder of its operative rights; that there is a public need for an extension of applicant's service from Bishop to Laws; that there is a public need for the extension of applicant's operative right to and from all points within four miles of the route of applicant's right between Bishop, June Lake Junction and Silver Lake. In arriving at this conclusion we are not unmindful of the service now provided by protestant Alexander. It is clear from the language of the decision cited in the margin, which is the source of the Alexander and Larson right, that the authority therein granted is not as broad as contended by Alexander. The off-route service which he may perform appears to be limited to only a few points between Bishop and Mono Lake (Cunningham), notably Mammoth Camp, which is not in the area of June, Silver, or Grant Lakes. The route of operations of applicant and protestant apparently are coincidental only between Bishop and June Lake Junction at which point the route of applicant turns westerly toward Silver Lake, while that of Alexander appears to proceed northerly to Mono Lake. The distance

between Bishop and June Lake Junction is about sixty-two miles and the distance between June Lake Junction and Mono Lake is approximately twenty-three miles.

Based upon the foregoing conclusions we are of the opinion that the application should be granted. The order will so provide.

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.

O R D E R

A public hearing in the above-entitled matter having been had, the matter submitted, and the Commission now being fully advised therein,

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA  
HEREBY DECLARES that public convenience and necessity require:

(a) The consolidation of the highway common carrier operative right between Lone Pine, Lone Pine Station and Keeler, acquired by applicant Western Truck Lines, Ltd., a corporation, under authority of the Commission's Decision No. 24066, dated September 26, 1931, on Application No. 17475, with said applicant's

operative right created by Decision No. 21195, dated June 10, 1929, on Application No. 14544.

(b) The establishment and operation by Western Truck Lines, Ltd. of a highway common carrier service between Bishop and Laws and intermediate points over U. S. Highway No. 6 as an extension and enlargement of the operative right created by Decision No. 21195, dated June 10, 1929, and Decision No. 26995, dated April 30, 1934.

(c) The establishment and operation of a highway common carrier service to and from all points within four miles of U.S. Highway No. 395, between Bishop and June Lake Junction and the public highway between June Lake Junction and Silver Lake, as an extension and enlargement of the operative right heretofore created by Decision No. 26995, dated April 30, 1934, as amended by Decision No. 27873, dated April 1, 1935, on Application No. 19339, not in addition to, but in lieu of, present lateral rights between such points.

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

IT IS FURTHER ORDERED that the following language appearing in the order of Decision No. 21195 (Application No. 14544) to wit:

"...and provided further, that applicant shall conduct no local transportation between Lone Pine and Bishop or intermediates;..."

is hereby deleted therefrom.

IT IS FURTHER ORDERED that Western Truck Lines, Ltd. is hereby authorized to abandon the transportation of passengers between Lone Pine, Lone Pine Station and Keeler, and the operative right therefor heretofore created by Decision No. 22368 (Application No. 16479) is hereby revoked and annulled.

The authority herein granted is subject to the following conditions:

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 thirty (30) days from the effective 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 triplicate, 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 the Commission's General Order No. 91.

The effective date of this order shall be twenty (20) days from the date hereof.

Dated at San Francisco, California, this 21<sup>st</sup> day of January, 1941.

[Signature]  
[Signature]  
[Signature]  
Justin J. Coe  
Francis R. Havenner  
COMMISSIONERS