

ORIGINAL

Decision No. 41600

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
WESTERN TRANSPORT CO., a co-partner-)
ship, for a certificate of public)
convenience and necessity as a high-)
way common carrier for the trans-)
portation of fresh berries between)
Santa Clara Valley territory and)
Watsonville territory on the one)
hand, and Los Angeles territory, on)
the other hand.)

Application No. 29212

Scott Elder for applicant.

J. J. Deuel and Edson Abel for California Farm Bureau
Federation and Santa Clara County Farm Bureau,
interested parties supporting application.

Reginald L. Vaughan for Coast Line Truck Service, Inc.,
and Produce Express, protestants.

O P I N I O N

By this application, Western Transport Co., a copartner-
ship consisting of A. D. Woolley and R. E. Woolley, seeks a
certificate of public convenience and necessity authorizing
operations as a highway common carrier for the transportation of
fresh berries from the Santa Clara Valley and Watsonville producing
districts to the Los Angeles territory, as described in Item No.
270 of Highway Carriers' Tariff No. 2. Public hearings were held
at San Jose, Los Angeles and Watsonville.

Applicant now operates under radial highway common carrier
and highway contract carrier permits. It maintains terminal and
shop facilities at San Jose and Los Angeles. Although general
merchandise traffic has been transported, this carrier has for a
number of years specialized in the movement of perishables, including
from the Santa Clara Valley to Southern California.

A daily service, excluding Saturdays and days preceding holidays, is proposed as a highway common carrier. Applicant intends to render a farm pickup service in response to calls received prior to 12:30 p.m. Shipments delivered to its terminal at San Jose, as well as at a proposed terminal at Watsonville and such other places where loading facilities may be needed, will be accepted until 2 p.m. It is proposed to deliver such shipments at the Los Angeles produce markets in time to be unloaded and placed on display ready for sale upon the opening of the market the following morning.

A rate of \$1.60 per 100 pounds will be charged when farm pickup service is rendered. On shipments delivered to applicant's terminals the rate will be \$1.20 per 100 pounds. These rates are equivalent to 20 and 15 cents, respectively, per crate of strawberries and will include delivery at the consignees' places of business. A rate of \$1.04 per 100 pounds (equivalent to 13 cents per crate of strawberries) is also proposed on shipments received at applicant's terminals in the producing areas and delivered to consignees at its established terminal in Los Angeles.

It is proposed to publish a tariff rule providing that if shipments (a) are available to the carrier not later than the time of day during which calls for pickup service will be received or shipments will be accepted at its terminals and (b) are not delivered to consignees located at the Seventh Street or Ninth Street markets in Los Angeles prior to the opening hour of the market the following morning, applicant will pay any loss proximately caused thereby.

The record discloses that the Santa Clara Valley and Watsonville berry shipping season extends from approximately April 15th to November 15th, the peak being reached about June 1st. It also appears that the opening hour of the Los Angeles market is 6 a.m. prior to June 1st and 5 a.m. thereafter.

Applicant's general manager described the areas devoted to berry production. He estimated that, as compared with a bearing acreage of 300 acres in both the Santa Clara Valley and Watsonville districts in 1946, the bearing acreage in 1948 amounts to about 800 acres in the Santa Clara Valley and 600 acres in the Watsonville district. The number of growers having land in production was stated as being approximately 160. During 1947, applicant transported 210,000 crates of berries from these producing areas to the Los Angeles market.

Considerable testimony was presented by applicant's witness concerning the perishable nature of fresh berries, the necessity for careful handling and proper refrigeration while they are in transit and the alleged superior type of equipment applicant proposes to use in such transportation. An exhibit was introduced purporting to show that applicant's total cost of transporting a truck load of berries to Los Angeles amounts to \$285.15 as contrasted with a revenue under the proposed rates of \$350. It was asserted that there is no existing common carrier service for the transportation of fresh berries to Los Angeles, except the Railway Express Agency which does not provide either a pickup or refrigeration service.

Eleven berry growers, one former grower and seven representatives of produce commission merchants testified on behalf of applicant. The growers testified that the acreage in berry

production has increased; that shipments would be made to Los Angeles during the harvesting season; and that a reliable daily service is essential. They stated that careful handling, including refrigeration, in transit is necessary. The testimony also discloses that in order to realize top prices shipments must reach destination in time to be placed on display and ready for sale upon the opening of the market each day.

It is claimed that applicant's proposed service is necessary or will prove to be a great convenience. Some of the witnesses declared that it is impossible to determine in advance the volume of berries which will be available for shipment each day and that an ample reserve of trucking equipment is necessary. Other witnesses stated that applicant's proposal to guarantee deliveries in time for the opening of the Los Angeles market was a very important consideration.

While applicant's service was characterized as having been satisfactory in the past, most of the growers who testified stated that they did not desire to be bound by commitments to patronize a certain carrier or that they were unable to guarantee to ship a certain volume of freight. A few of the witnesses said that it would be desirable to have available the services of a carrier which could not lawfully discontinue operations without first securing authority to do so. A number of them declared that the service of other carriers had been unsatisfactory in that they failed to pick up berry shipments or the shipments had not been delivered at the Los Angeles market on time.

The representatives of the commission houses testified that daily shipments of berries are received from the Santa Clara

and Watsonville areas; that indications are that shipments will exceed those received last year; and that in order to bring top prices it is important that consignments arrive in time for the opening of the market and in good condition. These witnesses indicated that the proposed service would be beneficial to shippers and consignees because applicant proposes to guarantee shippers against delayed deliveries and that, although applicant rendered a satisfactory service last year, it is necessary that a dependable service be available to all growers.

The California Farm Bureau Federation and Santa Clara County Farm Bureau appeared in support of the application. Testimony was presented by a director of the last named organization. He referred to various instances in which increased acreage has recently been planted to berries. The importance of satisfactory transportation service was stressed. In the opinion of this witness, shippers should have available the services of more than one carrier because considerable fluctuations occur in the volume of daily shipments due to changes in weather conditions. It was stated that a common carrier service would be an advantage over available contract carrier services in instances where shippers are required to guarantee contract carriers a certain volume of tonnage.

Coast Line Truck Service, Inc., a highway common carrier, and Produce Express, a copartnership consisting of two officers of Coast Line Truck Service, Inc., engaged in contract carrier operations, oppose the granting of the application. Coast Line is authorized to transport certain farm perishable products between, among other points, Los Angeles and points in Monterey and Santa Cruz counties. Its operative rights do not include the transportation

of fresh berries from either the Santa Clara Valley or Watsonville districts to Los Angeles. By Application No. 27082, now pending, this carrier seeks authority permitting the transportation of general commodities between the Los Angeles area and Salinas, Pacific Grove, Watsonville, Santa Cruz and Davenport and points intermediate thereto in Monterey and Santa Cruz counties. Produce Express has for a number of years transported under contract berries destined to the Los Angeles market.

Several witnesses in the employ of protestants, based upon an examination of claim files and other records, undertook to refute the allegations of unsatisfactory service on the part of Produce Express made by witnesses called by applicant. According to the testimony, claims presented to this carrier in 1947 in connection with the transportation of berries amounted to only .4 per cent of the revenue received. It is asserted that shipments have always been delivered in time for the opening of the Los Angeles market when not tendered for transportation too late in the day to enable the carrier to do so.

Protestants' traffic manager described the trucking equipment which is claimed to be available to Produce Express as needed, including ten new refrigerator trailers upon which deliveries will be made during the current season. This carrier has entered into an agreement with Central California Berry Growers Association to transport all berry shipments of the Association's members in the vicinity of San Jose, Gilroy, Salinas and Watsonville when consigned to the Association at Los Angeles during 1948. It is claimed that of an estimated total of 140 growers in the Santa Clara Valley and Watsonville districts, 116 are members of the

Association and additional growers are being admitted to membership. The traffic manager asserted that Produce Express will be able to take care of all transportation requirements of the Association's members during the present season.

Applicant, upon oral argument, contends that, by reason of the present and potential increase in berry production, there exists a definite need for a substantial amount of transportation service by truck to Los Angeles, including service available to small shippers. It is urged that, under such circumstances, the absence of existing common carrier truck service is in itself sufficient to justify the granting of the application. Counsel for the farm bureaus concur in this view and assert that service of the nature proposed by applicant under the Commission's supervision is essential.

Protestants call attention to Application No. 27301, in which applicant seeks a certificate authorizing the transportation of general commodities, including fresh berries, between the Santa Clara Valley and Los Angeles, now being considered in connection with numerous other applications for authority to operate as highway common carriers between points in Northern and Southern California. They, therefore, regard the instant application as a plea for an interim certificate pending the disposition of applicant's other application and contend that no showing of an immediate need for the proposed service has been made upon the record in this proceeding.

Considerable reliance is placed upon the agreement between Produce Express and the Central California Berry Growers Association. Protestants argue that at least 115 growers have thereby chosen

the contract carrier form of transportation for the movement of berries to the Los Angeles market during 1948. It is insisted that, having made the contract through their Association, the growers are under compulsion to patronize Produce Express during the present year and that carrier has guaranteed to provide an expeditious service and is equipped to do so. According to protestants, the balance of the growers will have available applicant's service as a contract carrier which has been testified to as having been satisfactory in the past.

For these reasons, protestants urge that the broad question of public convenience and necessity should be held in abeyance - and applicant thereby not receive prior consideration on the basis of an emergency situation - until (1) its companion application, (2) certain pending complaints against it, and (3) the application of Coast Line Truck Service, Inc. are disposed of.

In reply, applicant points out that the Santa Clara County shipping area is not embraced in the pending application of Coast Line. It asserts that with respect to the Watsonville district protestant's offer of service is not of a nature to indicate an intent to engage in the berry traffic at the time the application was filed. The necessity for common carrier service, according to applicant, arose since the filing of both the Coast Line application and applicant's other application. Finally, it is contended that the contract between Produce Express and Central California Berry Growers Association does not preclude the Association's members from availing themselves of applicant's proposed service and, in any event, the existence of contract carrier service is not proof that public convenience and necessity do not require a common carrier operation.

In our opinion, the necessity for adequate and continuous service available to all shippers has been demonstrated by the evidence in this proceeding. We, therefore, find that public convenience and necessity require the establishment and operation by applicant of a highway common carrier service for the transportation of fresh berries from the Santa Clara Valley and Watsonville districts to the Los Angeles territory, as proposed in the application.

A. D. Woolley and R. E. Woolley are hereby placed upon 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, 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

Public hearings having been had and the Commission, upon the evidence received, having found that public convenience and necessity so require,

IT IS ORDERED:

(1) That a certificate of public convenience and necessity be and it is hereby granted to A. D. Woolley and R. E. Woolley, copartners, authorizing the establishment and operation

of a service as a highway common carrier, as defined in Section 2-3/4 of the Public Utilities Act, for the transportation of fresh berries from (a) Santa Clara Valley territory, viz.: All of the territory within the limits of the following cities and towns: San Jose, Palo Alto, Mountain View, Los Altos, Sunnyvale, Cupertino, Monte Vista, Permanente, Saratoga, Los Gatos, Campbell, Santa Clara, Agnew, Alviso, Milpitas, Madrone, Morgan Hill, San Martin, Gilroy, Old Gilroy, and all territory in Santa Clara County within a distance of five miles on either side of the following roads and highways:

- U. S. Highway No. 101 By-pass between East Palo Alto and San Jose,
- U. S. Highway No. 101 between Palo Alto and Gilroy,
- Sunnyvale-Saratoga Road,
- Stevens Creek Road and Permanente Road between Cupertino and Permanente,
- Saratoga - Los Gatos Road,
- San Jose-Los Gatos Road and Santa Clara - Los Gatos Road between Los Gatos and Santa Clara,
- Santa Clara - Alviso Road,
- Alviso Road between Alviso and Milpitas,
- State Highway No. 17 between Milpitas and San Jose,
- Pacheco Pass Road between Gilroy and Old Gilroy,

and (b) Watsonville territory, viz.: All points and places located within a radius of fifteen miles by highway of the city limits of the City of Watsonville, to Los Angeles territory, as described in Item No. 270 of Highway Carriers' Tariff No. 2.

(2) That in providing service pursuant to the certificate herein granted, applicants shall comply with and observe the following service regulations:

- (a) Applicants shall file a written acceptance of the certificate herein granted within a period of not to exceed 30 days from the effective date hereof.
- (b) Applicants shall commence the service herein authorized within a period of not to exceed 60 days from the effective date hereof and shall comply with the provisions of General Order No. 80 and Part IV of General Order No. 93-A, by filing, in triplicate, and concurrently making effective, appropriate tariffs and time schedules on not less than 5 days' notice to the Commission and the public.

- (c) Subject to the authority of the Commission to change or modify it by further order, the route to be used by applicants shall be over and along U. S. Highway No. 101, or State Highway No. 152 and U. S. Highway No. 99, including connecting roads, streets and highways within Santa Clara Valley, Watsonville and Los Angeles territories, as defined herein.

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

Dated at San Francisco, California, this 18th day of May, 1948.

R. Z. Dominguez
Justus R. Calmes
Gray H. Russell
Harold P. Kila
Samuel L. Lott
COMMISSIONERS