

ORIGINAL

Decision No. 44493

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
COAST LINE TRUCK SERVICE, INC., a)
corporation, for a certificate of)
public convenience and necessity to)
operate a motor truck service, as a)
common carrier, for the transportation)
of fresh field and orchard products)
between the Northern California and)
Southern California territories more)
particularly described herein, as an)
enlargement of its present certificate)
of public convenience and necessity.)

Application No. 22856

Reginald L. Vaughan, John G. Lyons and Fred Chesnut,
for applicant.
Scott Elder and Emory C. Woolley, for Western Transport Co.,
protestant.
Warren V. Glass, for Southern California Freight Lines,
protestant.

O P I N I O N

In its Decision No. 32733, dated January 16, 1940, in ✓
Application No. 22856, the Commission made an order granting the
applicant, Coast Line Truck Service, Inc., a certificate of public
convenience and necessity as a highway common carrier, for the
transportation of fresh fruits and fresh vegetables, excepting and
excluding potatoes in sacks, onions in sacks, apples and fresh berries,
generally between certain Santa Clara Valley points and Los Angeles.
(1)
In the matter before us the petitioner requests the elimination of
said restriction and of eight certain other restrictions which are

(1) While this proceeding is filed as a petition for the removal
of certain restrictions, it is in effect an application for
a certificate of public convenience and necessity to engage
in transportation prohibited by the restrictions.

stated fully in footnote (2) below. Specifically, the petition

(2) Restrictions 1 through 8 in Decision No. 32733:

1. Applicant shall have authority to render a pickup service beyond its terminals only at commission markets, farms (including loading platforms in the vicinity of farms), ranches, produce packing houses, and produce packing sheds located within the originating area it is authorized to serve.
2. With respect to grapefruit, oranges, and lemons, such pickup service beyond its terminals is authorized only at commission markets, produce packing houses, and produce packing sheds located in the Eighth and Ninth Street Markets in Los Angeles, and at other commission markets, produce packing houses and produce packing sheds which are not served by rail spur or team tracks and which are located within a radius of one mile from the present depot of applicant at 820 Gladys Street in Los Angeles, California.
3. Applicant is authorized to render a delivery service beyond its terminals only at commission markets, packing houses, wholesale produce distributing depots, and depots of common carriers at the destination points it is authorized to serve.
4. Applicant is not authorized hereunder to transport commodities from produce packing sheds at originating points named or described herein to produce packing sheds at points of destination named or described herein.
5. Applicant is not authorized to transport fresh cherries to Los Angeles, California, from points and places north of, but not including, San Jose, California, on or within three miles laterally of State Highway No. 17 between San Jose and San Leandro, California, nor from points and places on or within three miles laterally of the highway extending from Warm Springs, California, to San Leandro, California, via Niles and Hayward.
6. Applicant is not authorized to transport oranges, grapefruit, and/or lemons from Los Angeles, California, to any points or places named or described herein, except to San Jose, Salinas, Watsonville, and Santa Cruz, California.
7. Applicant shall not transport as a highway contract carrier or as a radial highway common carrier, fresh fruits or fresh vegetables from or to Los Angeles, on the one hand, and to or from any of the other points contained in the certificate granted herein, on the other hand.
8. Applicant shall not on the same piece of equipment commingle with any shipment of produce transported under the certificate granted herein any shipment of general merchandise transported as a highway contract carrier or as a radial highway common carrier.

requests the deletion of the words "excepting and excluding potatoes in sacks, onions in sacks, apples and fresh berries", appearing in the first paragraph of the order in Decision No. 32733; also, the deletion of the eight subparagraphs numbered 1 through 8 appearing on pages 12 and 13 of said decision.

Public hearings were held before Examiner Gannon at San Jose and the matter was submitted on concurrent briefs.

The request is predicated upon the assumption that conditions have changed since 1940, that petitioner has received frequent requests from shippers to transport those particular commodities together with other commodities tendered for transportation; that the removal of these restrictions will enable petitioner to realize substantial operating economies, and that presently authorized carriers are not furnishing adequate service for the transportation of potatoes in sacks, onions in sacks, apples and berries in the territory served by petitioner under its certificate.

The only active opposition to the granting of the petition came from Western Transport Co. Southern California Freight Lines entered an appearance at the hearing but produced no evidence in support of its protest.

The testimony offered by petitioner's witnesses was uniformly to the effect that they were seriously handicapped by the operation of the provision which excluded the transportation of berries. The San Jose manager of petitioner testified that from an operational standpoint it would be profitable for his company to pick up the excluded commodities together with other commodities. Eight shipper-witnesses testified to the need for petitioner's

service in the transportation of berries. Other witnesses shipped onions and apples, and all testified they would use the proposed service were it authorized. One shipper-witness produces annually about 1,000,000 pounds of berries, 25 per cent of which he ships to Los Angeles, using Western Transport Co., but believes another carrier would be of material advantage. Another witness ships between 4,500 and 5,000 crates of berries southbound per year. Still another transported last year, in quantity, onions and apples. Some ten or twelve witnesses testified similarly, that they shipped substantial quantities of their products, especially berries, that a reasonable and just amount of competition would best serve the public interest, and that they would gladly avail themselves of an additional service.

Shipments of these producers varied from a few hundred crates to several thousand crates. They each have an average of 12 to 15 acres under cultivation. Several witnesses testified that there was need for an additional service as a means of stimulating competition and thus improving the service. One witness stated that his company has 15 to 20 acres in berry production in the Campbell district and that it would be a convenience to him to have his berry shipments picked up along with other produce. Another witness testified that, in his opinion, there should be two carriers in the field because of the need for greater stability of transportation in times of emergency.

Petitioner's president was called as a witness by protestant and testified that his company has sufficient equipment, partly leased, to handle any increased business. The witness was questioned at some length concerning the financial position of the

petitioner but the testimony is not convincing that its financial condition would be impaired by the purchase or lease of additional equipment.

The testimony of a consulting engineer, called by petitioner, purported to show an average underloading of petitioner's trucks of 10.2 per cent, aggregating 3,818,111 pounds, southbound from San Jose to Los Angeles, for the year 1949. The contention of this witness was that an improved load factor would be realized by filling this voidage with commodities now excluded by the restriction.

The petition is supported by the Central California Berry Growers Association, a marketing co-operative, representing approximately 185 members who are strawberry growers, with operations in eight counties. Eighty five per cent of the berry growers in the territory belong to the Association. The president testified that there has been a substantial increase in tonnage moving to Los Angeles within recent years and that it was the feeling of his directors and a number of his members that there is a distinct need for an additional service in order to insure adequate delivery to the Los Angeles market. As evidence of the prospective increase in tonnage, it was pointed out by the manager that the Association shipped 6,000 crates of berries to the Los Angeles market in 1947, 221,000 crates in 1948 and 365,000 crates in 1949. This witness estimated that the current year would see a 40 to 50 per cent increase in production over 1949 and that Los Angeles could absorb up to a 50 per cent increase. Another witness, however, disputed this estimate and was of the opinion that the saturation point had about been reached. The total bearing acreage of Association

members this year will be approximately 2,300 acres, according to these witnesses.

The Santa Clara County Farm Bureau, an organization of 1,800 members, was represented at the hearing by its secretary who testified that his board of directors had adopted a resolution in support of the petition. The Bureau is an organization representing all types of farmers interested in legislation, commodity activities and problems affecting farmers generally. He estimated that of the total membership, at least 150 are berry growers, who generally felt that there is a disadvantage to these producers in not having at least two carriers who could render a complete common carrier service.

In this application, petitioner requests that the Commission issue its order modifying its order in Decision No. 32733 for the following purposes: (a) removing the said exclusion of potatoes in sacks, onions in sacks, apples and fresh berries; and (b) removing restrictions numbered 1 through 8.

As to (a), petitioner asserts that it has received frequent requests to transport potatoes in sacks, onions in sacks, apples and fresh berries, between the points in Santa Clara County and Los Angeles. It is urged that shippers served by petitioner are subjected to inconvenience because of petitioner's inability to transport these particular commodities, together with other commodities, tendered for transportation. The petitioner further alleges that presently authorized carriers are not furnishing adequate service to the general public for the transportation of the excluded commodities in the territory served by petitioner under its certificate granted in said Decision No. 32733.

With respect to (b) involving the elimination of restriction Nos. 1 through 8, petitioner alleges that the justification for these restrictions no longer exists, and that they result in great inconvenience to the shippers. This was likewise the attitude of the witnesses who testified.

It is obvious from a casual study that the first five restrictions are largely operational in character and have only what may be termed a nuisance value. The order herein will eliminate them. While the petitioner requests removal of the remaining three restrictions, we are of the opinion that they should not be disturbed for the following reasons:

Restriction No. 6 - No evidence justifying the lifting of this restriction was adduced at the hearing because of petitioner's pending Application No. 30421.

Restriction No. 7 - This restriction is merely a restatement of Section 4 of the Highway Carriers' Act, and while superfluous, may remain in the order in Decision No. 32733.

Restriction No. 8 - This restriction is the subject of an investigation by the Commission and has no place in the present proceeding.

During the course of the original hearings on Application No. 22856, which resulted in the issuance of Decision No. 32733, Railway Express Agency, Inc., Clark Bros., Pacific Coast Conference, Santa Cruz Motor Express, Inc., California Motor Transport, Ltd., California Motor Express, Valley and Coast Transit Co., Coast Line Express, Southern Pacific Company and Pacific Motor Trucking Company withdrew their protests,⁽³⁾ leaving only Valley Motor Lines, Inc., and Valley Express Co as protestants to the amended application which excluded the transportation of potatoes in sacks, onions in sacks,

(3) The record in the original Application No. 22856 shows that a stipulation was entered into between the parties by which it was agreed that the carriers named would withdraw their protests on condition that applicant withdraw its offer to transport as a common carrier potatoes in sacks, onions in sacks, apples and fresh berries. An amended application was accordingly filed embodying the terms of said stipulation.

apples and fresh berries. It is significant that none of the above-named protestants appeared as protesting the instant petition, notwithstanding that it seeks to restore the transportation of the forbidden commodities.

PROTEST BY WESTERN TRANSPORT CO.

Western Transport Co. holds a certificate of public convenience and necessity to transport general commodities, also fresh fruits and vegetables, including berries, between Santa Clara Valley territory and the Los Angeles area; also a berry route from the Watsonville area to the Los Angeles area. Its protest against the granting of the instant petition is based generally on the assumption that the present service is adequate and satisfactory, and that any competition in the field would have the effect of impairing the present service. There is ample testimony in the record to support a finding that the petition should be granted. On the other hand, there is no reason to believe that any substantial diversion of traffic would follow the granting of the petition.

The testimony of public witnesses indicates that shippers who used it were satisfied with protestant's service. The shipments of berries to the Los Angeles territory is substantial and there are few complaints over the manner of packing and shipping fresh berries. Terminals are maintained at San Jose, Los Angeles, Gilroy, Santa Clara and Watsonville.

The principal witness for protestant was the manager of the company. He testified at some length and presented a rather complete outline of the mechanics of picking, packing and shipping fresh berries, which is the only commodity of the four which is transported in substantial quantities. Fresh berries are highly

perishable and require careful handling. Protestant maintains fleets of pickup trucks and makes daily stops at the farms of each berry grower who is served. The season for berries is approximately from April 20 to December 10. Shipments are required to be in Los Angeles when the market opens at 5 a.m. The witness stated that protestant has a provision in its tariff guaranteeing the shippers against damage resulting from failure to deliver shipments before the opening of the produce market, regardless of the reason therefor. It is not required that claims be filed by the shipper for delay or damage. If arrival of shipments is late, the berries are sold for what they will bring and a check is promptly delivered to growers for loss sustained.

Protestant argues that if revenue is reduced by the competition of an additional carrier, Western Transport Co. cannot continue the guaranty. This claim of course is purely speculative and not supported by any evidence in the record. At any rate, the petitioner has voluntarily pledged itself to render a like guaranty service, and will offer the same rule in its tariff.

THE DRISCOLL MATTER

There is considerable testimony in the record concerning the alleged domination of petitioner by one Ned Driscoll. The undisputed facts are these: Ned Driscoll and his family are extensive berry growers in the Santa Clara Valley; all are members of the Central California Berry Growers Association, and as such are influential in the operation and policy making of that organization of which Don Driscoll is a director. The record does not show that either of the brothers exercised any sinister influence over the activities of the Association or attempted to dictate the policy

of the Association. Ned Driscoll invested \$25,000 in the Los Angeles property of Coast Line. He retired the bank loan and took back a mortgage on the Los Angeles terminal as security. The money was used to retire a previous loan and the balance went toward purchasing other lot and dock facilities there. Western does no berry hauling for the Driscolls, and protestant admits that the Driscolls are held in high esteem in the community.

The record in this proceeding contains no testimony which would justify a continuance of the restrictions imposed in the order over ten years ago. On its face it would seem incompatible that growers may use the services of a highway common carrier for the transportation of any of their products, save and except fresh berries, and three other products moved in relatively small quantities. The restriction places the producer in a confused and uncertain position, especially in case of emergency shipments.

Protestant, in its brief, relies heavily on its tariff provision guaranteeing the shippers against damage resulting from delay in delivery at the Los Angeles market. This argument loses much of its force in the face of a counter offer by petitioner to the same effect, made by its counsel at the hearing.

Witnesses for petitioner were almost unanimous in their testimony that a healthy competitive service is desirable. Indeed, counsel for protestant admits in his brief that the competitive argument is ordinarily sound, but pleads an exception in this case, alleging that its service has reached such a high state of perfection that little is left to be desired.

We take it that the petition herein is not filed in

protest against any inadequacy of protestant's service, but rather to correct a situation that, under present operating circumstances, is cumbersome and annoying and works to the disadvantage of a large number of berry producers. It does not appear from the testimony that protestant will suffer any appreciable impairment of service as a result of the granting of the petition.

We find that the proposed removal of the restrictions as prayed for is reasonable and in the public interest, and the petition will be granted except as to Restrictions Nos. 6, 7 and 8.

O R D E R

A petition having been filed, public hearing held, the matter submitted, the Commission being fully advised, and it having been found that public convenience and necessity so require,

IT IS ORDERED:

(1) That the words "excepting and excluding potatoes in sacks, onions in sacks, apples and fresh berries", appearing in the first paragraph of the order at lines 2 and 3 of page 11 of Decision No. 32733, are deleted.

(2) That the five subparagraphs numbered 1 through 5, following the words "subject to the following restrictions" appearing on pages 12 and 13 of said Decision No. 32733, are deleted.

(3) That in all other respects the said order in Decision No. 32733 shall remain unchanged.

The effective date of this order shall be twenty (20) days

after the date hereof.

Dated at San Francisco, California, this 27th day
of August, 1950.

R. Z. [Signature]
Justice J. Callahan
[Signature]
[Signature]

COMMISSIONERS