

Decision No. 45133

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Commission investigation into the
 operations and practices of LILLIE
 TRANSPORTATION COMPANY, INC., a cor-
 poration.

Case No. 5150

ORIGINAL

Lafayette J. Smallpage and Edward M. Berol, for
 respondent.
Douglas Brookman, for California Motor Express, Ltd.,
 interested party.
Boris H. Lakusta, for Field Division, Public Utilities
 Commission.

O P I N I O N

This proceeding was instituted upon the Commission's own motion to determine whether Lillie Transportation Company, Inc., a corporation, hereinafter called respondent, has operated, since June 20, 1949, as a highway common carrier without prior authority, in violation of Section 50-3/4 of the Public Utilities Act.

A public hearing was held on November 9, 1950, at San Francisco before Examiner Silverhart, and the matter submitted for decision.

Respondent owns, controls, operates, or manages auto trucks used in the transportation of property for compensation over public highways in California. Since 1948 it has held permits to operate as a radial highway common carrier, highway contract carrier and city carrier. In addition, it has possessed, since November, 1947, pursuant to Decision No. 40935, certificated authority to transport fresh fruits and vegetables, eggs, poultry and live frogs, between
 X Modesto, Oakdale, Waterford, Montpelier, Turlock, Patterson, Vernalis and Salida, on the one hand, and San Francisco and Oakland on the other hand, and since August, 1949, pursuant to Decision No. 43003,

certificated authority to transport general commodities, with specific exceptions, between the Los Angeles territory, on the one hand, and North Sacramento and Turlock and intermediate points, on the other hand.

A summary of all respondent's highway carrier operations (except those performed pursuant to its certificates of public convenience and necessity), covering the periods December 15 and 16, 1949, January 17 and 18, and February 20 and 21, 1950, prepared as a result of an examination of its shipping records and an interview with its president, was introduced into evidence by the Field Division as Exhibit 2.

This exhibit discloses that one shipment destined for a place beyond the scope of respondent's certificates was picked up at its Sacramento terminal, a certificated point, by the consignee thereof; thirteen other shipments directed to places beyond respondent's certificated areas were delivered by it to other carriers, at a point respondent is authorized to serve, for transportation to destination. The evidence indicates that a combination of local rates was charged and collected for such movements. We conclude, therefore, that respondent did not unlawfully transport such shipments.

(1) These periods were selected by the Field Division as being representative of respondent's operations during the three months named.

Exhibit 2 shows that respondent carried various commodities during the periods surveyed, in the following manner:

<u>From</u>	<u>To</u>	<u>Number of Shipments</u>	<u>Number of Days Served</u>	<u>Commodity</u>
Auburn	San Jose	1	1	Lumber
Crockett	Los Angeles	3	2	Sugar
Crockett	Stockton	1	1	Sugar
Diamond Springs	Stockton	1	1	Shook
South Gate	Carmichael	2	1	Cleaning Com- pounds
Los Angeles	Merced	1	1	Magazines
"	Oakdale	1	1	Empty Barrels
"	Palo Alto	1	1	Shingles
"	San Francisco	2	2	Shingles, Bottles
"	San Leandro	1	1	Empty Drums
Torrence	Berkeley	1	1	Insulation Materials
Toyon	Los Angeles	1	1	Lumber
Vernon	Fresno	2	1	Drugs
Crows Landing	Santa Barbara	1	1	Beans
Los Banos	San Francisco	1	1	Butter
Modesto	Los Gatos	1	1	Poultry
"	Oakland	3	1	Canned Goods
"	San Francisco	3	3	Nuts, Canned Goods
"	San Jose	2	2	Poultry
White Pines	San Jose	1	1	Lumber
Stockton	Gridley	1	1	Paint
"	Pine Grove	2	2	Rugs
"	Redding	1	1	Paint
"	Sacramento	4	3	Petroleum Prod- ucts, Acetylene Gas.
"	Woodland	1	1	Petroleum Products.
"	Wilseyville	1	1	Machine Parts
Sacramento	Lodi	2	2	Tires, Tele- vision
"	Modesto	1	1	Engine Parts, Tires, Empty Cylinders, Canned Goods, Television, Anti-Freeze.
"	Stockton	17	6	Iron & Steel
"	Turlock	1	1	Lumber
West Point	Dublin	1	1	"
"	Fresno	1	1	"
"	Los Angeles	7	4	"
"	North Hollywood	1	1	"
"	Oakland	2	1	"
"	Rosemead	1	1	"
"	San Francisco	1	1	"
"	San Jose	5	2	"
"	Selma	1	1	"

Number of Consignors	26
Number of Consignors by whom Charges were Paid	16
Number of Consignees to whom Collect Shipments were Directed	27
Number of Persons (so far as ascertainable) who engaged respondent's services:	
Consignors	20
Consignees	4
Range in Weight of Shipments (in pounds)	29 to 44, 720

Respondent's president testified that it had 21 oral contracts, eight of which no longer are in force.

It appears from his testimony that while several of the alleged oral contracts have extended over long periods of time, none are of definite duration nor make provision for stated minima of freight to be tendered respondent; that all such arrangements can be cancelled at will by either party thereto.

The evidence demonstrates that respondent's services were engaged by 24 persons; that it transported collect shipments to 27 consignees, that it carried a variety of commodities, nine of which required unusual treatment; that the 21 alleged oral contracts imposed no legal obligation. Further, the evidence fails to show that respondent maintained a close identification or relationship with the business or operations of those to whom it renders transportation services and that the kind of equipment it used was possessed of unusual features. The record shows that the degree of restrictiveness or limitation sufficient for contract carriage is not present in respondent's operations. (See Pacific Southwest Railroad Association, et al, vs. J. P. Nielsen, 49 Cal. P.U.C. 216) We conclude therefore that respondent is not engaged in operations between the points with which we are concerned as a highway contract carrier.

During the six days covered by Exhibit 2 respondent served 15 different points of origin and 27 different points of destination comprising 39 pairs of termini; one pair received service each day, one pair 4 days, two pairs 3 days, six pairs 2 days, and 29 pairs one day. The evidence discloses that a pattern of regularity is readily discernible between the following pairs of termini, viz:

Stockton to Sacramento
Sacramento to Lodi
Sacramento to Stockton
Sacramento to Modesto
Sacramento to Turlock
West Point to Dublin
West Point to Oakland
West Point to San Francisco
West Point to San Jose
West Point to Fresno
West Point to Selma
West Point to Rosemead
West Point to North Hollywood
West Point to Los Angeles

and that respondent's entire business is a single unit, in the conduct of which the same personnel, equipment and facilities are employed.

Application of our holding enunciated in the Stapel Case (49 Cal. P.U.C. 407,413) to the evidence of record herein requires the conclusion, and we hereby so find, that since June 20, 1949, respondent has been engaged in the transportation of property as a highway common carrier for compensation over the public highways of the State of California between fixed termini and over regular routes, to wit: between the points and places hereinabove set forth at page 3; without possessing a prior operative right therefor and without first having secured a certificate of public convenience and necessity, in violation of Section 50-3/4 of the Public Utilities Act.

An order will be entered directing respondent to cease and desist from conducting the operations herein found to be unlawful and suspending its permits to operate as a radial highway common carrier and highway contract carrier.

O R D E R

A public hearing having been had in the above-entitled proceeding, evidence having been received and duly considered, the Commission now being fully advised and basing its order upon such evidence and the findings and conclusions set forth in the preceding opinion,

IT IS ORDERED:

(1) That Lillie Transportation Company, Inc., a corporation, is directed and required to cease and desist from operating directly or indirectly, or by any subterfuge or device, any auto truck as a highway common carrier (as defined in Section 2-3/4 of the Public Utilities Act), for compensation, over the public highways, between fixed termini, to wit: between all points and places the authority to serve which is not contained in Decisions Nos. 43003 and 40935.

(2) That Radial Highway Common Carrier Permit No. 39-3789 and Highway Contract Carrier Permit No. 39-3790 heretofore issued to Lillie Transportation Company, Inc., are suspended until, for good cause shown, the Commission by supplemental order herein otherwise directs.

The Secretary is hereby directed to cause a certified copy of this decision to be personally served upon respondent.

The effective date of this order shall be forty (40) days after the date of such service.

Dated at San Francisco, California, this 12th day of December, 1950.

R. J. Anderson
Justus J. Coe
David Powell
Harold Hula
Herbert Pottel
Commissioners