

ORIGINALDecision No. 47901

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
 WESTERN TRUCK LINES, LTD.. for a
 certificate of public convenience
 and necessity to operate motor trucks
 for the transportation of property
 between points and places in the Los
 Angeles Territory, on the one hand,
 and Sacramento, Stockton, Modesto,
 and Fresno, California, and points
 and places within 5 miles thereof,
 and all intermediate points on
 U. S. Highway 99 and 5 miles on
 either side of the highway between
 Sacramento and Fresno, on the other
 hand.

Application No. 30657

Lloyd R. Guerra for applicant. Joseph C. Gill, Gordon Knapp and Gill, for Pacific Freight Lines, Pacific Freight Lines Express, California Motor Transport Co., Ltd., California Motor Express, Ltd., Santa Fe Transportation Company, and The Atchison, Topeka & Santa Fe Railway Company; E. L. H. Bissinger, John H. Gordon, William Meinhold, Frederick E. Fuhrman and Walt A. Steiger, for Southern Pacific Company, Pacific Motor Trucking Company and Pacific Electric Railway Company; H. J. Bischoff, for Southern California Freight Lines and Southern California Freight Forwarders; Douglas Brookman, for California Motor Express, Ltd. and California Motor Transport Co., Ltd.; C. A. Millen for Valley Express Company and Valley Motor Lines, Inc.; and Orville A. Schulenberg, for Kings County Truck Lines and Moser Frozen Food Freight Lines, protestants.

O P I N I O N

Applicant herein seeks authority to conduct operations as a highway common carrier in the transportation of general commodities except used household goods uncrated, livestock, liquid commodities in bulk, and articles of extraordinary value,

between the Los Angeles Territory, as described in Item 270-A, Highway Carriers' Tariff No. 2, on the one hand, and Sacramento, Stockton, Modesto and Fresno and points within five miles of each, and all other points and places on U. S. Highway 99, and five miles on either side of said highway between Sacramento and Fresno, on the other hand.

Public hearings were held on March 15 and 16, 1951, at Los Angeles, before Examiner Bradshaw. Thereafter twenty additional days of public hearings were held before Examiner Syphers as follows: April 25 and 26, 1951, at Los Angeles; May 8 and 9 at Sacramento; May 21 and 22 at Fresno; May 24 and June 20 at Stockton; July 11, September 5, 6 and 7 at Los Angeles; October 2 at Fresno; October 16 and 17 at Sacramento; December 3 at Fresno; December 4 at Modesto; December 5 at Stockton; January 29, 1952, at Sacramento; and February 20 at Los Angeles. During these hearings evidence was adduced, and on the last-named date the matter was submitted, subject to the filing of briefs. Briefs were filed on July 10, 1952, by applicant, and on July 11, 1952, by protestants. The matter now is ready for decision.

At the hearings it was developed that this applicant previously had requested substantially the same authority as is applied for herein. The prior application, No. 27100, was filed November 19, 1945. The matter was consolidated with other applications and by Decision No. 43003, dated June 14, 1949, in Application No. 27100 (48 P.U.C. 712), this applicant was granted authority to conduct highway common carrier operations between the San Francisco territory and the Los Angeles territory, but was denied the authority to operate between the Los Angeles area and Sacramento

and intermediate points on U. S. Highway 99. In that decision this Commission stated, at page 722:

"Lillie, Hart, P.F.L., P.I.E., Western Truck, Southern Cal. and Santa Fe all propose to operate between Sacramento and Los Angeles and various intermediate points. The consolidated record leaves no doubt that there is a need for additional common carrier service between Sacramento and Fresno, and intermediate points located on U. S. Highway 99, on the one hand, and the Los Angeles territory, on the other hand. Sufficient evidence of the amount of traffic moving between these areas has not been developed to enable the Commission to determine the number of carriers the traffic would support. However, from this record we believe that available traffic would support at least two additional carriers. Lillie is in a favorable position, because of its existing certificated operation, to provide efficient economical service between Los Angeles territory and points located on U. S. Highway 99 between North Sacramento and Turlock, inclusive.

"P.F.L. is also in a favorable position to provide service between the points involved ..."

Subsequently, various parties, including applicant, petitioned for rehearing, reconsideration, or modification, in respect to Decision No. 43003, supra. These petitions were denied by Decision No. 43274, dated August 29, 1949, on Application No. 32877, et al.

On October 18, 1949, the Commission instituted an investigation into the operations of Western Truck Lines, Ltd., and after hearings thereon issued Decision No. 45099, dated December 5, 1950, in Case No. 5143, directing Western Truck Lines, Ltd. to cease and desist from conducting operations generally in the territory for which authority is herein sought.

At the outset of these proceedings a motion to dismiss was made, based upon the allegation that the instant application constituted, in effect, a second petition for rehearing, or an

attempt to secure a second hearing of an application already denied by this Commission. This motion was denied inasmuch as this Commission is not bound by the doctrine of res adjudicata. Further, it appears that the application of Western Truck Lines, Ltd. contains sufficient allegations to warrant a hearing thereon.

Testimony was presented by applicant as to its present operations. Exhibit 1 is a map of the authorized routes over which applicant now operates, both in intrastate and interstate commerce in the State of California, and Exhibit 2 shows all territory presently served by applicant. Exhibits 3, 4 and 5 show summaries of existing operating authorities, both interstate and intrastate. A balance sheet as of December 31, 1950, and an income statement for the year ending December 31, 1950, were presented in Exhibits 6 and 7, whereas Exhibits 8, 9 and 10 show applicant's terminals and equipment and a list of leased equipment. Exhibits 11 to 21 are photographs of the Los Angeles terminal and representative types of equipment. Exhibit 22 is a photograph of a portable icebox which is used by applicant to handle refrigerated commodities in small quantities, and Exhibits 23 to 25 are photographs of the Fresno, Stockton and Sacramento terminals. An examination of these exhibits and testimony presented in connection therewith discloses that applicant is financially able to conduct the operations proposed. It is one of the largest carriers in the State of California, maintaining terminals at all of the principal points proposed to be served, and operates more than 400 pieces of equipment which it owns, in addition to leased equipment. This equipment is

kept in good repair, and consists of all types including vans; refrigerated, open, and pickup equipment.

The applicant presently conducts interstate operations between the points proposed to be served, the volume of which, for the year 1950, is shown in Exhibit 28. It proposes daily operations for intrastate traffic between the points requested herein, a schedule of these proposed operations being set up in Exhibit 27. The rates proposed to be charged are set out in Exhibit 26.

The total revenue of applicant is shown in Exhibit 29, and for the year 1950 amounted to \$6,292,915.97. Of this amount, \$990,869.80 was attributable to intrastate revenue within the State of California. The testimony shows applicant's claim record to be good, the claims amounting to less than one-half of one per cent of the gross revenue (Exhibit 30).

If the proposed authority is granted, it was testified that applicant proposes to establish terminals at Modesto and Merced. It presently maintains a teletype system throughout its various stations and this system would be extended to the new terminals.

In this application authority is also requested to transport frozen foods and explosives. With relation to the explosives, testimony shows that applicant has had a broad experience in handling them, and, as to the frozen foods, there was considerable testimony relating to portable iceboxes which would be used to transport small quantities of commodities requiring refrigeration. This service would be in addition to refrigerated trucks. No extra charge is proposed for this portable icebox service.

In connection with its operating testimony, the applicant presented evidence as to the growth of population in the areas involved, including increases in retail sales, industrial growth and military installations. Some of this data is set out in Exhibits 31 to 34, inclusive.

Operating testimony likewise was presented by six companies who are opposed to the granting of this application and by three companies, representatives of which appeared and testified as to their operating conditions, but offered no opposition to the instant application. Those companies which presented testimony in opposition to the application were Pacific Freight Lines and its affiliate Pacific Freight Lines Express, California Motor Transport Co., Ltd. and its affiliate California Motor Express, Ltd., the Santa Fe Transportation Company, Valley Motor Lines, Inc. and its affiliate Valley Express Company, Kings County Truck Lines, and Moser Frozen Food Freight Lines. While there were other protestants, these were the only ones which presented operating testimony.

A review of this testimony shows that Pacific Freight Lines conducts very extensive operations in the area proposed to be served by applicant. Exhibits 40 to 47 show the operating authority, stations, agents, terminals, equipment, and other properties of this carrier. An analysis of these exhibits and the testimony in relation thereto points up the fact that this carrier is one of the largest in the west, operating an extremely large trucking fleet consisting of open equipment, flat beds and vans, as well as pickups and other types of equipment. This

carrier makes pickups and deliveries in all of the principal points concerned herein, and during the course of the hearings introduced many exhibits listing shipments transported to and from various consignees and shippers in the area, as well as exhibits showing tonnage hauled and revenue received. Many of these exhibits were in rebuttal to the testimony presented by applicant relating to an alleged need for a new service, which testimony will be subsequently discussed herein. This testimony, presented by Pacific Freight Lines, is found in Exhibits 48 to 54, 56 to 63, 99 to 119, inclusive, 117-A and 119-A. A technical point which should be noted is that this carrier has published tariff rules relating to light and bulky articles (Exhibits 35, 36 and 55), whereas it was testified that other carriers such as the Santa Fe Transportation Company and the Pacific Motor Transport could transport this type of shipment at somewhat lower rates.

Further testimony showed that the tonnage of Pacific Freight Lines was heavier going northbound from Los Angeles than it was southbound from Sacramento, amounting to about seventy per cent of the total in the northerly direction, as compared to thirty per cent in the southerly direction. In addition, other operating testimony of this carrier was presented by General Transfer Company which is a division of Pacific Freight Lines. This carrier maintains terminals jointly with Pacific Freight Lines, and operates about sixty pieces of equipment.

The California Motor Transport Co., Ltd. presented testimony showing that it conducts highway common carrier operations throughout southern and central California as an underlying carrier for California Motor Express, Ltd. It maintains terminals at the principal points in the territory herein concerned, and operates approximately 645 pieces of equipment.

Exhibit 88 is a copy of a stipulation entered into between this carrier and the applicant herein, which stipulation generally sets out the operating authority of this carrier, the terminals maintained and the equipment operated. This carrier has pickup and delivery services at all of the principal points herein involved, and averages more than two trains of trucking equipment per day between Los Angeles and the Sacramento territory. It provides service to more than 10,000 regular shippers and/or consignees, has a minimum of 650 employees and an annual payroll in excess of \$3,000,000.

The Santa Fe Transportation Company presented Exhibits 64 to 72, setting out the service offered by that carrier, the areas served, the operating authority it has, and the equipment it operates. This carrier likewise is a large, well-equipped carrier conducting general operations in the area herein proposed to be served, with the exception of the Sacramento territory. This carrier does not hold itself out to transport frozen foods, and, further, has no authority to operate in Modesto. (Exhibit 70, Decision No. 43355, dated October 4, 1949, on Application No. 27203, 49 Cal. P.U.C. 98.) This carrier also presented testimony as to shipments it had made

to and from various consignees and shippers in the area. Here again this testimony was presented principally as a rebuttal to applicant's testimony relating to an alleged need for the service proposed. Exhibits 73 to 87 relate to this testimony. (Exhibits 84 and 85 were not received in evidence since they did not pertain to the territory herein involved.)

The Valley Motor Lines presented testimony showing that it, too, conducts a general highway common carrier service in the area involved, maintaining terminals in the principal cities, making daily pickups and deliveries and, in general, operating all types of trucking equipment. Exhibits 90 to 92 consist of a map of operations and a list and description of the equipment. This carrier maintains terminals at principal points in the area concerned, and if arrangements are made is equipped to conduct hauls of large items, although it concentrates on less-than-truckload traffic. It should be pointed out that this carrier likewise conducts operations as an underlying carrier for its affiliate the Valley Express Company, in addition to its other hauling. Exhibits 120, 118-A and 120-A are lists of shipments made by this carrier in the territory herein concerned.

The Kings County Truck Lines presented Exhibits 93 and 94, showing its operating rights and lists of equipment. It maintains terminals at Los Angeles, Bakersfield, Tulare and Fresno, rendering a daily service between Los Angeles and Fresno. It transports general commodities and is particularly equipped to transport refrigerated commodities.

The Moser Frozen Food Lines presented Exhibits 95 to 98, showing its operating authority, list of equipment and financial statements for August 1951. This company is principally a hauler of refrigerated commodities between Los Angeles and Sacramento.

In addition to the foregoing operating testimony presented by protestants, three carriers who do not oppose the instant application presented operating testimony. These were the Sacramento Freight Lines, Fortier Transportation Company, and Lillie Transportation Company.

Sacramento Freight Lines operates about 45 pieces of equipment daily between Los Angeles and Sacramento. This equipment includes refrigerated equipment. At the time this testimony was presented this carrier was restricted to shipments of 20,000 pounds or more (Decision No. 42352, dated December 21, 1948, in Application No. 28326, as modified by Decision No. 45259, dated January 16, 1951, in Application No. 30533), but had an application pending to lift this restriction.⁽¹⁾ The general manager of this carrier testified that, in his opinion, there should be a greater number of certificated carriers and a fewer number of permitted carriers in the area, and for this reason he supported the application of Western Truck Lines, Ltd.

The Fortier Transportation Company operates about 400 units of equipment, both open and closed type, and conducts

(1) Subsequently this restriction was removed by Decision No. 47175, dated May 16, 1952, in Application No. 32163.

operations between Los Angeles and San Francisco and specified areas in the middle of the state, particularly around Fresno. It maintains its principal terminal in Fresno, and in its hauling is presently limited to shipments of 5,000 pounds or more. (Decision No. 42405, dated January 4, 1949, in Application No. 27278). There now is pending an application to remove this restriction (Application No. 32514). This carrier likewise presented testimony that its principal competition comes from the permitted carriers.

The Lillie Transportation Company, Inc. operates between Los Angeles and Sacramento under authority of Decision No. 43003, supra, maintaining terminals at Stockton, Modesto, Sacramento and Los Angeles. This carrier is not a protestant in this proceeding, and presented testimony that it considered the so-called regulated or certificated carriers a better type of competition than the existing permitted carriers.

A fair view of all of this operating testimony leads to the conclusion, and we now find, that applicant is willing and able to conduct the proposed operations, and that the protestants are now conducting operations to all of the points herein proposed to be served by applicant, and are willing and able to continue such operations. Our problem is to determine whether under such circumstances public convenience and necessity have been shown.

Throughout the hearing references were made to the fact that, in addition to the certificated carriers operating in the territory, hauling is being performed by so-called permitted carriers holding permits as radial highway common carriers and highway contract carriers. No specific testimony as to the amount of such hauling was presented except for Exhibits 121, 122, 121-A and 122-A, which listed the permitted carriers hauling from the Los Angeles territory to the Valley Wholesale Grocery Company at Sacramento during specified periods.

The applicant presented testimony from 67 public witnesses representing various shippers and consignees in the area involved. An analysis of this testimony indicates that these shippers and consignees deal in a wide variety of commodities, including commodities which can be hauled on regular equipment, commodities requiring refrigeration, and commodities requiring open equipment. An almost unanimous opinion was expressed by these shippers that their businesses required overnight service. Most of them were familiar with the service of applicant as it is now provided in other areas and many of them had previously used the services of this applicant when it conducted operations as a permitted carrier in the territory involved prior to 1950. These witnesses testified that the services they were now receiving or had received from applicant were satisfactory. Most of the witnesses testified that they would use applicant's services if they were available in the territory involved. They further presented various criticisms of the existing service, the bulk of which were complaints as to slow pickups, failure to make overnight deliveries, lack of refrigerated service, failure

to provide open equipment for large and bulky items, and, in general, that they had not received the type of service that is required in their businesses.

The protestants presented testimony from 71 public witnesses, and, in addition, stipulations were entered concerning the testimony of 25 additional public witnesses. These witnesses, representing various shippers and consignees in the area, testified in general that they were now using the existing carriers and that the service they were receiving was satisfactory. Many of them stated that there was no need for any additional service, while a few stated they had no objection to a service being inaugurated by applicant. Some of them had used applicant with satisfactory results, and a few voiced objections to the service they had received from applicant. For example, one witness stated that applicant had not been prompt in making pickups, and another that applicant had failed to furnish open equipment when required. Some of the witnesses pointed out that they were opposed to additional carriers in that they were fearful that increased competition would increase the operating costs of the carriers. Others testified that in their opinion an additional carrier would merely congest the field. Some of these shippers and consignees now use permitted carriers. The commodities they ship cover a wide variety of items requiring all types of equipment.

Many of the public witnesses for both applicant and protestants testified that their business was growing and that the communities they served were growing. In this connection,

Exhibits 38 and 39 were received in evidence, showing the growth of business in the Sacramento District and in the so-called Central Valley, including Kern, Tulare, Kings, Fresno, Merced and Stanislaus Counties.

An analysis of this public witness testimony shows that the public witnesses presented by applicant desire the trucking services proposed in this application, and it further shows that many of these witnesses are not entirely satisfied with the existing trucking services. In rebuttal the witnesses presented by the protestants showed that they are receiving satisfactory service from the existing carriers. In many instances protestants' witnesses represented shippers and consignees who dealt in the same type of commodities as did the witnesses for applicant.

This situation is not new in this type of case. In Decision No. 46550, dated December 18, 1951, on Application No. 31516, in considering a situation very similar to that presented herein, we observed, "As to the public witnesses produced by applicant we are impressed with the strong desire they have expressed to have applicant's services. As to the public witnesses produced by protestants we observe that there appears to be no doubt but that protestants are providing satisfactory services to a number of shippers. However, in a public convenience and necessity matter all of the shippers must be considered. It does not follow from the fact that a good many shippers are now receiving satisfactory service and need nothing additional in that respect that all shippers are

in the same position. When, as in this case, the testimony of a number of shippers is very favorable to applicant, that testimony should be given weight in arriving at a determination of public convenience and necessity."

Those observations are applicable here, and we reiterate that while a large number of shippers now are being satisfactorily served by the existing carriers, nevertheless the testimony of the shipper witnesses who appeared for applicant must be given weight in arriving at a determination of public convenience and necessity since that testimony was, in the main, very favorable to the service proposed herein.

After a full consideration of all of the evidence presented herein and of the briefs submitted by the parties, we find that public convenience and necessity require the services as proposed by applicant in the application as originally filed on September 26, 1949, and as amended by the amendment to the application filed on April 16, 1951. At the hearing on May 24, 1951, the applicant made an oral motion to further amend the application so as to include Crestview Winery which, according to the statement of the assistant commissioner of Public Works for Fresno County, as set out in Exhibit 37, is more than five miles from the city limits of Fresno. However, since this constitutes an attempt to extend the territorial limits of the application at the hearing, this second amendment will not be allowed.

While it was contended that the granting of this application would divert business from the existing carriers the evidence in this respect was not conclusive.

The applicant's proposal includes a request to transport

explosives. There was no opposition to this request so far as the protestants were concerned, and the testimony shows that applicant is able and willing to perform such transportation.

Western Truck Lines, Ltd. is 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

Application as above entitled having been filed, public hearings having been held thereon, the matter having been submitted, the Commission being fully advised in the premises and hereby finding that public convenience and necessity so require,

IT IS ORDERED:

(1) That a certificate of public convenience and necessity authorizing the establishment and operation of a service as a highway common carrier, as defined in Section 213 of the Public Utilities Code, for the transportation of general commodities except used household goods uncrated, livestock, liquid commodities in bulk, and articles of extraordinary value, be, and it hereby is, granted to Western Truck Lines, Ltd., a

corporation, between the Los Angeles territory as described in Item 270-A of Highway Carriers' Tariff No. 2, on the one hand, and Sacramento, Stockton, Modesto and Fresno and points within five miles of each, and all other points and places on U. S. Highway 99 and off-route points within five miles of U. S. Highway 99 between Sacramento and Fresno, on the other hand.

(2) That, in providing service pursuant to the certificate herein granted, there shall be compliance with the following service regulations:

- (a) Within thirty (30) days after the effective date hereof, applicant shall file a written acceptance of the certificate herein granted.
- (b) Within sixty (60) days after the effective date hereof, and upon not less than five (5) days' notice to the Commission and the public, applicant shall establish the service herein authorized and file in triplicate, and concurrently make effective, tariffs and time schedules satisfactory to the Commission.
- (c) Subject to the authority of this Commission to change or modify such at any time, Western Truck Lines, Ltd. shall conduct said highway common carrier service between the following points and over the following route:

From Los Angeles via U. S. Highway 99 to Sacramento and return via the same route.

In all other respects Application No. 30657, as amended, will be denied.

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

Dated at San Francisco, California, this 7th day of November, 1952.

R. J. Smith
President

Justin F. Cooney
Robert Kida

Herbert P. ...
John E. Whitcomb
Commissioners