

48899

ORIGINAL

Decision No. \_\_\_\_\_

## BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
 CONSTRUCTORS TRANSPORT CO., a corporation, )  
 for a certificate to operate as a highway )  
 common carrier of commodities generally )  
 between Los Angeles and points and places )  
 in the vicinity thereof, on the one hand, ) Application No. 32136  
 and San Francisco, Oakland, Sacramento, )  
 Stockton, and points and places in the )  
 vicinity thereof, on the other hand, )  
 serving certain intermediate and off-route )  
 points, subject to restrictions. )

Glanz and Russell, by Theodore W. Russell and Arthur H. Glanz,  
 for applicant.

Edward M. Berol and Bertram H. Silver, for Fortier Transporta-  
 tion Company and Culy Transportation Company, protestants.

Lloyd R. Guerra, for Western Truck Lines, Ltd., protestant.

Marvin Handler, for Machado Truck Lines, Lodi Truck Service,  
 Cal-Central Trucking Co., Inc., and Warren Transportation  
 Company, protestants.

Willard Johnson, for Nevis Truck Lines, protestant.

Frederick Mielke, for Delta Lines, Inc., protestant.

Douglas Brookman, for California Motor Transport and California  
 Motor Express, Ltd., protestants.

Warren H. Biscailuz, for Pacific Freight Lines and Pacific  
 Freight Lines Express, protestants.

Jackson W. Kendall, for Bekins Van Lines, Inc., Bekins Van and  
 Storage, Lyon Van Lines, Inc., Lyon Van and Storage Company,  
 W. Ray James, dba James Van Lines and Calmay Van Lines, Inc.,  
 protestants.

John B. Robinson, for Southern California Freight Lines and  
 Southern California Freight Forwarders, protestants.

C. A. Millen, for Valley Express Company and Valley Motor Lines,  
 protestants.

C. W. Cornell, E. L. H. Bissinger, Frederick E. Fuhrman and  
Walter A. Steiger, for Southern Pacific Company, Pacific Motor  
 Trucking Company and Pacific Electric Railway Company, San  
 Diego and Arizona Eastern Railroad Company, protestants.

Robert W. Walker, Wallace L. Ware and Henry M. Moffat, for the  
 Atchison, Topeka & Santa Fe Railway and Santa Fe Transporta-  
 tion Company, protestants.

R. W. Pierce, for E. J. Willig Truck Transportation, Inc.,  
 protestant.

## O P I N I O N

By its application, filed February 15, 1951, and as sub-  
 sequently amended, Constructors Transport Co. seeks authority to  
 render service as a highway common carrier for the transportation  
 of general commodities, with the exception of petroleum and

petroleum products in tank trucks and livestock, moving on government bills of lading for the account of the United States or an agency thereof as follows:

- (a) between the Los Angeles area as defined in Appendix A, attached hereto, on the one hand, and the San Francisco Bay area as defined in such appendix, on the other hand;
- (b) between the Los Angeles area, on the one hand, and Sacramento, on the other hand;
- (c) between the Los Angeles area, on the one hand, and Sacramento and Stockton, on the other hand;
- (d) between the San Diego area as defined in Appendix A, on the one hand, and the San Francisco Bay area and Sacramento, on the other hand.

In addition, applicant proposes to serve all intermediate points on the routes traversed as well as 25 miles laterally of said routes including points within 25 miles of Sacramento. Service is further proposed to named off-route points, said service being restricted to shipments of 20,000 pounds or more.

Applicant does not propose to transport shipments between George Air Force Base, the Marine Corps Depots near Barstow and Yermo, or Camp Irwin, on the one hand, and points in the Los Angeles area or San Bernardino, on the other hand. No traffic would be transported between the Naval Testing Station near Inyokern, on the one hand, and Los Angeles, on the other hand.

Public hearings were held before Examiner Daly on May 13, and 14, 1953, at San Francisco, and on January 14, 15 and May 26, 1953, at Los Angeles, the matter being submitted on the latter date.

The record discloses that applicant has been engaged in the transportation business as a permitted carrier for a number of years. Assertedly 85 or 90 per cent of this business has been in

the transportation of traffic moving on government bills of lading for the United States Government. Applicant asserts that it presently renders a type of service designed to meet the government's needs in the field of common carrier transportation. In support of this position it is alleged that, "the government installations are frequently located at some distances from established civilian population centers so that motor carriers who serve the civilian public generally must make substantial departures from established routes to serve military installations." It is further alleged that, "military demands frequently require large volume movements from points at some distance from established population centers on extremely short notice. The movements are such that transfer of lading en route is either forbidden or is extremely difficult to accomplish." Applicant also alleged that, "transportation for the United States frequently involves the handling and shipment of products requiring special care and knowledge by the carrier which can only be gained by a carrier specializing in government traffic."

According to applicant's president the type of service proposed has been provided by applicant as a permitted carrier. He testified that with the growth of the operation and the fear of possible unlawful operations an application for the authority here sought was filed on the advice of counsel.

Terminals are maintained by applicant at Los Angeles, Oakland and San Diego. It owns and operates approximately thirty-four pieces of equipment. If needed, the existing fleet is augmented by ten owner-drivers, who lease their equipment to applicant on a short term basis. It was asserted the lease owner-driver arrangement permits applicant to provide diversified equipment to transport traffic that varies widely.

#### PUBLIC WITNESS TESTIMONY

Five public witnesses testified on behalf of applicant. These witnesses, with the exception of one, represented businesses

which shipped on government bills of lading to various points within the proposed area. They stated that they have used applicant in the past and wish to continue its use as a certificated carrier. One witness was called who had been employed as a traffic manager in a civilian capacity at Camp Irwin from July 1951 to August 1952. He merely testified to the government's shipping and receiving practices at said camp.

PAST OPERATIONS

Applicant introduced in evidence Exhibit No. 5, which consisted of a summary of shipments which it had transported. A breakdown of this exhibit disclosed that applicant had transported a total of 9,516 shipments totaling 234,705,683 pounds which originated from 213 different points. Exhibits Nos. 6, 7 and 8 consisted of a list of commodities and number of times such commodities were handled, lists of consignors and consignees and their respective origins and destinations. The commodities transported appear to be numerous as well as various. The consignors and consignees were likewise numerous with the major portion being governmental agencies. Exhibit No. 9 contained information respecting approximately five hundred shipments transported on selected days during the months of July to December 1952 inclusive. Applicant's office manager and treasurer testified that applicant transported the following tonnage from all sources:

<u>Year</u>	<u>Tonnage</u>
1949	35,113
1950	47,989
1951	47,113
1952	57,856

Of the above tonnage it was estimated that less than five per cent moved in interstate commerce.

PROTESTANT CASE

Protestants limited their showing to operating testimony, exhibits and stipulations setting forth the nature of their existing

operations. They described the method and means used to transport traffic moving on government bills of lading. Based upon their experience they contended that the government follows the policy of proportionately splitting the traffic between the existing carriers. Additional carriers, they claim, would necessarily result in a diversion of this traffic from the existing carriers. It was their position that the major portion of shipments moving on government bills of lading are interstate in nature and if the certificate here sought is granted, applicant, by registering such certificate with the Interstate Commerce Commission would receive corresponding interstate authority which would lead to a substantial diversion of interstate traffic, a factor which they claim should be seriously considered by this Commission.

CONCLUSIONS

The record indicates that applicant has been extensively operating as a permitted carrier in the transportation of the commodities and in the area for which it here seeks a certificate. There appears little likelihood that applicant will divert any more intrastate traffic from the existing carriers if certificated than it is now doing and has been doing for some time past as a permitted carrier.

After full consideration the Commission is of the opinion and so finds that public convenience and necessity require the granting of the authority sought.

Constructors Transport Co. 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.

ORDER

An application having been filed, a public hearing held thereon and it having been found that public convenience and necessity so require,

IT IS ORDERED:

(1) That a certificate of public convenience and necessity is hereby granted to Constructors Transport Co. 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 of petroleum and petroleum products in tank trucks and livestock, moving on government bills of lading for the account of the United States or an agency thereof between the following points:

- a. between the Los Angeles area as defined in Appendix A (attached hereto and by reference made a part hereof), on the one hand, and the San Francisco Bay area as defined in Appendix A, on the other hand;
- b. between the Los Angeles area as defined herein, on the one hand, and Sacramento, on the other hand;
- c. between the San Francisco Bay area, on the one hand, and Sacramento and Stockton, on the other hand;
- d. between the San Diego area, as defined in Appendix A, on the one hand, and the San Francisco Bay area, as defined herein, and Sacramento, on the other hand.

(2) That in providing the service herein authorized, applicant shall operate over the following routes:

- a. U. S. Highway 101 and 101 Alternate between San Diego and San Francisco.
- b. U. S. Highway 99 between Los Angeles and Sacramento.

- c. U. S. Highway 40 between San Francisco and Sacramento.
- d. U. S. Highway 50 between San Francisco and Stockton.
- e. State Highway 4 between San Francisco and Stockton.

(3) That service is authorized to all intermediate points on all routes described in paragraph (2) hereof and all points within a radius of 25 miles on either side of said routes including points within a 25 mile radius of Sacramento.

(4) That service is also authorized to the following off-route points:

- a. U. S. Naval Base, El Centro.
- b. Mira Loma Quartermaster Depot, Mira Loma.
- c. Norton Air Force Base, near San Bernardino.
- d. George Air Force Base, near Victorville.
- e. Marine Corps Depots, near Barstow, Twenty-nine Palms and Yermo.
- f. Naval Ordnance Testing Stations, near Inyokern.
- g. Sierra Ordnance Depot, near Herlong.
- h. Camp Irwin, between Yermo and Baker.
- i. March Field, near Riverside.

(5) That in providing the service herein authorized, applicant shall observe the following restrictions:

- a. Traffic moving to or from the off-route points described in paragraph (4) hereof shall be restricted to shipments of 20,000 pounds or more per shipment.
- b. No traffic shall be transported between George Air Force Base, the Marine Corps Depots near Barstow and Yermo, or Camp Irwin, on the one hand, and points in the Los Angeles area or San Bernardino, on the other hand.
- c. No traffic shall be transported between the Naval Ordnance Testing Station near Inyokern, on the one hand, and Los Angeles, on the other hand.

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

- a. Within thirty days after the effective date of this order, applicant shall file a written acceptance of the certificate herein granted.
- b. Within sixty days after the effective date hereof, applicant shall file in triplicate and concurrently make effective, appropriate tariffs on not less than five days' notice to the Commission and the public.

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

Dated at San Francisco, California, this 21<sup>st</sup> day of July, 1953.

R. E. Mittelstaedt  
President

Justus F. Craemer

Harold P. Huls

Kenneth Potter

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Commissioners

Commissioner Peter E. Mitchell, being necessarily absent, did not participate in the disposition of this proceeding.

R. E. MITTELSTAEDT  
President  
JUSTUS F. CRAEMER  
HAROLD P. HULS  
KENNETH POTTER  
Commissioners



APPENDIX A.

SAN FRANCISCO BAY AREA TERRITORY includes that area embraced by the following boundary: Beginning at the point where the South San Francisco southerly limits meet San Francisco Bay; thence westerly along said boundary line to U. S. Highway No. 101; northerly along U. S. Highway No. 101 to the San Francisco-San Mateo County Boundary Line; westerly along said boundary line to the Pacific Ocean; northerly and easterly along the shore line of the Pacific Ocean and San Francisco Bay to the foot of Market Street; northerly along an imaginary line from the foot of Market Street to Point Richmond; northeasterly along the highway extending from Point Richmond to the City of Richmond; northerly and easterly along the City Limits Boundary Line of the City of Richmond, including Richmond and the unincorporated community of San Pablo, to U. S. Highway No. 40; southerly along U. S. Highway No. 40 to Arlington Avenue; southerly along Arlington Avenue to Marin Avenue; easterly along Marin Avenue to Euclid Avenue; southerly along Euclid Avenue to the campus boundary of the University of California; easterly and southerly along the campus boundary of the University of California to the Berkeley-Oakland boundary line; southerly along the Berkeley-Oakland boundary line to Dwight Way; westerly along Dwight Way to College Avenue; southerly along College Avenue to Broadway Terrace; easterly along Broadway Terrace, Harbor Drive and Estates Drive to Moraga Avenue; southerly along Moraga Avenue and Mountain Boulevard to Seminary Avenue; westerly along Seminary Avenue to MacArthur Boulevard; southerly along MacArthur Boulevard to the southerly limits of the City of San Leandro; southwesterly along said City Limits Boundary Line to State Highway No. 17; thence along State Highway No. 17 to Williams Street; southwesterly along Williams Street to Mulford Landing on the shoreline of San Francisco Bay; westerly along an imaginary line across San Francisco Bay from Mulford Landing to the southerly limits of the City of South San Francisco, the point of beginning.

LOS ANGELES TERRITORY includes that area embraced by the following boundary: Beginning at the intersection of Sunset Boulevard and U. S. Highway No. 101, Alternate; thence northeasterly along Sunset Boulevard to State Highway No. 7; northerly along State Highway No. 7 to State Highway No. 118; northeasterly along State Highway No. 118 through and including the City of San Fernando; continuing northeasterly and southeasterly along State Highway No. 118 to and including the City of Pasadena; easterly along U. S. Highway No. 66 to State Highway No. 19; southerly along State Highway No. 19 to its intersection with U. S. Highway No. 101, Alternate, at Ximeno Street; southerly along Ximeno Street and its prolongation to the Pacific Ocean; westerly and northerly along the shore line of the Pacific Ocean to a point directly south of the intersection of Sunset Boulevard and U. S. Highway No. 101, Alternate; thence northerly along an imaginary line to point of beginning.

SAN DIEGO TERRITORY includes that area embraced by the following imaginary line starting at the northerly junction of U. S. Highway 101E and 101W (4 miles north of La Jolla); thence easterly to Miramar on State Highway No. 395; thence southeasterly to Lakeside on the El Cajon-Ramona Highway; thence southerly to Bostonia on U. S. Highway No. 80; thence southeasterly to Jamul on State Highway No. 94; thence due south to the International Boundary Line, west to the Pacific Ocean and north along the coast to point of beginning and Coronado and North Island.