

**ORIGINAL**Decision No. 49018

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
 J. H. DEVINE and J. J. DEVINE, co- )  
 partners, doing business as DEVINE )  
 AND SON TRUCKING COMPANY, for a ) Application No. 34316  
 certificate of public convenience )  
 and necessity to transport lumber )  
 and forest products. )

Willard S. Johnson, for applicant.O P I N I O N

By their application as amended, filed May 1, 1953, applicants J. H. Devine and J. J. Devine, doing business as Devine and Son Trucking Company, seek authority to operate as a highway common carrier for the transportation of lumber and forest products as described in Highway Carriers' Tariff No. 2 in shipments of 20,000 pounds or more to and between points on or within 50 miles laterally of the following highways:

U. S. 99-E and 99-W from Red Bluff to intersection with U. S. 40.

(1)  
 California 36 from Red Bluff to Susanville.

California 24 from Sacramento to Reno Junction.

California 20 from Lakeport to Emigrant Gap.

California 49 from Satterly to Jackson.

U. S. 40 from San Francisco to California-Nevada State Line.

U. S. 50 from San Francisco to California-Nevada State Line.

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(1) Exception: No service is proposed to or from points more than 10 miles north of California 36.

Public hearing was held before Examiner Daly on July 8, 1953 at Sacramento. No appearance was entered in protest to the authority sought.

Applicant J. J. Devine testified that his father commenced, operating with a partner by the name of Harrison in 1923. Harrison's interests were acquired by Devine's father and subsequently transferred to the witness. According to him, the operations as here proposed are substantially the same as those presently performed under permits. Terminals are maintained at Sacramento and Auburn. Applicants own and operate 25 pieces of equipment, and for the period August 1, 1952 to May 31, 1953 applicants indicate a net profit of \$36,919.60. The instant application was filed, it was asserted, because of a doubt as to the lawfulness of the operations presently performed under the permits.

Six public witnesses, representing concerns engaged in the lumber business, testified that they have used applicants' service in the past throughout the area encompassed by the application and found the service completely satisfactory. They felt that a certificate, if granted, would assure continuance of applicants' service as heretofore rendered. Support was given to the wide lateral authority sought. A large number of the mills, it was asserted, are located at points many miles off highway.

Exhibit 3 consisted of a list of shipments of lumber and forest products transported by applicants during the year 1952. It contained a total of 2,064 shipments to a great many of points covered by the applicants and showed service was performed for numerous shippers. Exhibit 4 consisted of a similar list of 1,091 shipments for the period January 1, 1953 to June 30, 1953 and likewise indicated a wide territorial service with many business concerns paying the freight charges.

By Decision No. 47452 dated July 8, 1952, in Application No. 32441, applicants were authorized to transport lumber from Elk Creek to Sacramento as a highway contract carrier for rates lower than the minimum. The rate authorized was 17 cents per 100 pounds, minimum weight 40,000 pounds. They wish to continue to observe a rate less than the minimum if the certificate as applied for is granted. It is proposed, however, to increase the rate from 17 cents to 18 cents per 100 pounds to offset increases experienced in the cost of operation. According to Exhibit 6, which was prepared by a consulting engineer, the cost of performing the service amounts to 0.1618 cents per 100 pounds before provision for income taxes. He gave effect in his calculations to all known advances which have occurred in the cost of operations. On the basis of the sought rate before taxes the operating ratio would be 89.9 per cent.

An official of a large lumber firm testified that his company shipped a large volume of traffic from Elk Creek to Sacramento via applicants. The witness corroborated applicants' testimony regarding the volume of traffic and the conditions under which it is to be handled. He stated his company would continue to use applicants' service provided the rate as here sought is granted. If it is not, he felt that the company would discontinue the use of for-hire carriers and institute the use of its own equipment.

After full consideration of the evidence, the Commission is of the opinion and so finds that public convenience and necessity require that the authority sought should be granted, and the Commission further finds that the rate which applicants propose to charge is reasonable. However, because the conditions under which the transportation is performed may change, the authority to

observe the proposed 18-cent rate will be limited to a period of one year unless sooner canceled, changed or extended by order of the Commission.

Applicants 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

An Application having been filed, a public hearing held thereon and based upon the evidence adduced therein,

IT IS ORDERED:

(1) That a certificate of public convenience and necessity is hereby granted to J. H. Devine and J. J. Devine authorizing the establishment and operation of service as a highway common carrier, as defined in Section 213 of the Public Utilities Code, for the transportation of lumber and forest products as described in Highway Carriers' Tariff No. 2 in shipments of 20,000 pounds or more to, from and between points on or within 50 miles laterally of the following highways:

U. S. 99-E and 99-W from Red Bluff to intersection with U. S. 40.

California 36 from Red Bluff to Susanville. No service shall be provided 10 miles north of said California 36.

California 24 from Sacramento to Reno Junction.

California 20 from Lakeport to Emigrant Gap.

California 49 from Satterly to Jackson.

U. S. 40 from San Francisco to California-Nevada State Line.

U. S. 50 from San Francisco to California-Nevada State Line.

(2) That applicants are hereby authorized to publish and file, and to make effective on not less than five days' notice to the Commission and the public, a rate of 18 cents per 100 pounds, minimum weight 40,000 pounds, for the transportation of lumber from Elk Creek to Sacramento; and that the rate established under the authority herein granted shall be published to expire one year after the effective date of this order unless sooner canceled, changed or extended by order of the Commission.

(3) That in providing service pursuant to the certificate granted in paragraph (1) of this order, 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 thirty days after the effective date hereof.
- (b) Within sixty days after the effective date hereof, and on not less than five days' notice to the Commission and the public, applicants shall file in triplicate, and concurrently make effective, appropriate tariffs.

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

Dated at San Francisco, California, this 15<sup>th</sup> day of August, 1953.

A. J. Johnson  
President

Justice J. Casper

Robert E. ...

Commissioners

Harold P. Huls

Commissioner Kenneth Potter, being necessarily absent, did not participate in the disposition of this proceeding.