

ORIGINALDecision No. 52603

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Victorville-Barstow)
 Truck Line, a corporation, for an)
 order under Section 1063 of the) Application No. 36605
 Public Utilities Code authorizing)
 a change in route.)

Wyman C. Knapp, of Gordon, Knapp & Gill,
 for applicant.
Raymond Tremaine, for Desert Express, and
E. L. H. Bissinger, for Southern Pacific
 Company and Pacific Motor Trucking
 Company, protestants.

OPINION ON REHEARING

By Decision No. 51622, dated June 28, 1955, in Application No. 36605, an application of the Victorville-Barstow Truck Line for a certificate of public convenience and necessity between Los Angeles and Palmdale via U. S. Highways 99 and 6 was denied. Under date of July 15, 1955, a petition for rehearing was filed, to which the protestants filed an answer on August 1, 1955. Rehearing having been granted, the matter was heard before Examiner Grant E. Syphers in Los Angeles on October 18, 1955, at which time the parties presented oral argument and the matter was submitted. It is now ready for decision.

The position of applicant and petitioner herein was based upon two contentions: (1) that Section 1066 of the Public Utilities Code, as applied to applicant's existing certificates, gives it the authority to perform service from Los Angeles to the Palmdale area via Colton and San Bernardino, and (2) since the existing application is for authority over an alternate route from Los Angeles to Palmdale via U. S. Highways 99 and 6, which alternate route is for operating convenience only, the usual showing of public convenience and

necessity is not required. The protestants dispute both of these contentions.

Consistent with its theory of the proof required in a matter of this kind, applicant's principal presentation at the original hearing consisted of a description of its present operations and facilities, reference to its existing operating authorities, financial statements, expected savings in costs of service and other pertinent data relative to applicant's operations, as well as a list of shipments which applicant has transported from Los Angeles to the area concerned during stated periods in 1953 and 1954. This evidence was discussed in Decision No. 51622 so it will not be repeated herein. No public witnesses were produced and no new evidence was presented at the rehearing.

With regard to applicant's contentions concerning the application of Section 1066 of the Public Utilities Code, an analysis of the existing operating authorities of applicant indicates that there are connecting points between the various certificates, and resultantly applicant may perform service between Los Angeles and the area in question via Colton and San Bernardino. Therefore, the issue in this matter is reduced to the question whether applicant need make a conventional showing of public convenience and necessity to obtain authority to conduct operations between Los Angeles and the area in question via U. S. Highways 99 and 6, as an alternate route.

The Public Utilities Code does not specifically treat with applications for alternate routes. It should be noted, however, that Section 1063 of such code, relating to the certification of highway common carriers, contains the following language: "no highway common carrier * * * shall begin to operate any auto truck * * * for the transportation of property for compensation on any public highway

in this State without first having obtained from the Commission a certificate declaring that public convenience and necessity require such operation."

Interpreting this language strictly it might be argued that the Legislature intended that the same showing of public convenience and necessity for authority to use an alternate route must be made as is required for the inauguration of a new service. Such argument has in fact been advanced on various occasions when the Commission has had before it for consideration requests for relief similar to that involved in this proceeding. Two of the leading Commission decisions, among the many concerned with this question, are California Motor Transportation Co., Ltd., 47 P.U.C. 319 and Desert Express, 48 P.U.C. 371. The facts in the two cited cases were almost identical with those with which we are here interested. The Commission, in granting the alternate route authority in the two decisions referred to above, expressed itself on the subject of the quantum of proof necessary to show public convenience and necessity in applications for such relief. The following language was used in the California Motor decision on page 323:

"It is protestants' claim that applicant has failed to prove that public convenience and necessity require granting of the certificate. This theorem assumes a new service, not an alternate route. In a situation, such as here presented, where applicant seeks to use another route between points it is authorized to serve, the nature and degree of proof is different than it would be if applicant sought permission to inaugurate service to new or additional points. The evidence shows that operating economies, expedition and efficiency will result from the use of the shorter alternate route. These are advantages which will accrue to the public. They will be

realized through faster service, more flexible and effective operation and lower costs. Such factors considered with the other evidence of record are persuasive in determining public convenience and necessity. There have been a number of Commission decisions in the past which have followed this reasoning. Two of the most recent are in Re Valley Motor Lines, Inc., Decision No. 38760 in Application No. 27032, decided March 12, 1946, and in Re Highway Transport, Inc., Decision No. 40016 in Application No. 27618, decided March 4, 1947."

Similar reasoning is found in the Desert Express decision at pages 372 and 373. Also to the same effect is California Motor Transport, Ltd., Decision No. 46067, in Application No. 30683. Incidentally, Desert Express is the protestant in the matter under present consideration.

Because of the views heretofore expressed by the Commission in the decisions above cited and as the evidence introduced by the applicant herein conforms therewith, consistency and equity require that Decision No. 51622 be reversed and authority to use the sought alternate route be granted. The Commission finds from all of the evidence of record that public convenience and necessity have been established and that applicant should be authorized to conduct operations between Los Angeles and Palmdale via U. S. Highways 99 and 6 but restricted, as requested by applicant, against service south and west of the latter point.

ORDER ON REHEARING

Rehearing having been held in the above-entitled proceeding, the Commission being fully advised in the premises and good cause appearing therefor,

IT IS ORDERED: -

1. That a certificate of public convenience and necessity is granted to Victorville-Barstow Truck Line, authorizing it to operate as a highway common carrier as defined by Section 213 of the Public Utilities Code for the transportation of property between the points and over the route more particularly set forth in Appendix A attached hereto and made a part hereof.

2. 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 hereof, applicant shall file a written acceptance of the certificate herein granted. By accepting the certificate of public convenience and necessity herein granted, applicant is placed upon notice that it will be required, among other things, to file annual reports of its operations and to comply with and observe the safety rules and other regulations of the Commission's General Order No. 99. Failure to file such reports, in such form and at such time as the Commission may direct, or to comply with and observe the provisions of General Order No. 99, may result in a cancellation of the operating authority granted by this decision.
- b. Within thirty days after the effective date hereof, and upon not less than five days' notice to the Commission and the public, applicant shall establish the service herein authorized and file in triplicate, and concurrently make effective, tariffs satisfactory to the Commission.

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

Dated at San Francisco, California, this 17th day of February, 1956.

I dissent

Ray Gutierrez

John E. Mitchell
 President
Walter F. Casper
William J. Kelly

Commissioner Rex Hardy, being necessarily absent, did not participate in the disposition of this proceeding.

Decision No. 52603

Dated FEB 7 - 1956

Application No. 36605

APPENDIX A

Victorville-Barstow Truck Line, by the certificate of public convenience and necessity granted in the above-numbered decision, is authorized to operate as a highway common carrier between Los Angeles and Palmdale via U. S. Highways 99 and 6 as an alternate and additional route to those it possesses under its existing certificated operating authority. The right to use such alternate route does not include authority to render service from, to or between points intermediate to Los Angeles and Palmdale along U. S. Highways 99 and 6.