

ORIGINAL

Decision No. 57711

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of:
(a) PAXTON TRUCKING COMPANY, a corporation to purchase, and of ARTHUR D. PAXTON, an individual doing business as PAXTON TRUCK COMPANY, to sell, a certificate of public convenience and necessity for transportation of general commodities between various points in southern California, pursuant to Sections 851-853 of the California Public Utilities Code.

Application No. 40615

(b) PAXTON TRUCKING COMPANY, a corporation, to issue shares of its common capital stock pursuant to Sections 816-830 of the California Public Utilities Code.

In the Matter of the Application of: ARTHUR D. PAXTON, an individual, doing business as PAXTON TRUCK COMPANY, for a certificate of public convenience and necessity to operate as a highway common carrier of specified iron and steel and other commodities from Pittsburgh to various other points and places in California presently authorized.

Application No. 39384

(PETITION FOR SUBSTITUTION)

Glanz and Russell, by Arthur Glanz, for applicant.
Frank Loughran, for A. Nevis Trucking, Inc.,
interested party.

O P I N I O N

Arthur D. Paxton filed Application No. 39384 on August 31, 1957. At that time Paxton had received three grants of operating authority from the Commission. Collectively they covered virtually the entire state south of San Francisco, Marysville and the point where U. S. Highway 395 first intersects the California-Nevada state line north of San Diego. This authority authorizes transport of metals, metal products, clay products and a number of related commodities.

The authority of applicant is restricted against shipments having origin at Pittsburg, California. The purpose of this application is to secure the removal of this restriction. Public hearing was held before Examiner John Power at Los Angeles on October 22, 1958, at the conclusion of which the matter was submitted. A protest, filed before the hearing by the competitor most seriously affected, was withdrawn. There were no others.

Applicant presented an operating and three public witnesses. Five other public witnesses were proffered but not heard, being considered cumulative.

Applicant's fitness was thoroughly established. Applicant was able to show that he has enjoyed considerable patronage from Pittsburg shippers as a permitted carrier. By this means applicant has been able to balance his loads northbound and southbound. Such a balance is desirable as a factor in holding down rates on these commodities.

Public convenience and necessity require that the restriction complained of be eliminated from applicant's operating authority. Applicant's certificates are not now stated in current form. Therefore, these rights will be restated in the following order.

Application No. 40615

By this application Paxton and Paxton Trucking Company, a corporation, seek: (1) to have the operating rights and property of Paxton transferred to the corporation; (2) substituting the corporation for Paxton as applicant in Application No. 39384; (3) restating Paxton's authority as a highway common carrier in an in-lieu certificate granted to the corporation; and (4) authorizing the issue of stock to Paxton in return for the requested transfers.

The Commission is of the opinion and finds that the authority sought by Arthur D. Paxton and Paxton Trucking Company is not adverse to the public interest and should be granted. A public

hearing is not necessary. Applicants are placed on notice that nothing in the following order shall be construed as a finding of the value of the property and operating rights sought to be transferred.

The Commission finds that the money, property or labor sought to be procured or paid for by the issue of stock authorized by the following order is reasonably required for the purposes specified in the order, and that such purposes are not, in whole or in part reasonably chargeable to operating expenses or to income.

Paxton Trucking Company is hereby placed on 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, such rights extend to the holder a full or partial monopoly of a class of business over a particular route. This monopoly feature may be modified or canceled at any time by the State, which is not in any respect limited as to the number of rights which may be given.

In view of the fact that there were no protests to Application No. 39384, and that important tax advantages may accrue to applicants if they are able to consummate the transfer herein authorized before the end of the year, the following order will be made effective upon its date.

O R D E R

Public hearing having been held in Application No. 39384 and the Commission basing its decision upon the findings and conclusions set forth in the foregoing opinion,

IT IS ORDERED that:

1. Paxton Trucking Company may issue to Arthur D. Paxton for the purposes specified in Application No. 40615, 13,000 shares of

its \$10 par value, common capital stock (total par value \$130,000).

(2) That on or before December 31, 1958, Arthur D. Paxton, may sell and transfer, and Paxton Trucking Company may purchase and acquire, the operative rights and property referred to in the application.

(3) That within thirty days after the consummation of the transfer herein authorized, Paxton Trucking Company shall notify the Commission, in writing, of that fact and within said period shall file with the Commission a true copy of any bill of sale or other instrument of transfer which may be executed to effect said transfer.

(4) That on not less than five days' notice to the Commission and to the public, effective concurrently with the consummation of such transfer, applicants shall amend or reissue the tariffs on file with the Commission, naming rates, rules and regulations governing the operations here involved to show that Arthur D. Paxton has withdrawn or canceled, and Paxton Trucking Company has adopted or established as its own, said rates, rules and regulations. The tariff filings made pursuant to this order shall comply with the regulations governing the construction and filing of tariffs set forth in the Commission's General Order No. 80.

(5) A certificate of public convenience and necessity is granted to Paxton Trucking Company 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 as more particularly set forth in Appendix A attached hereto and made a part hereof.

(6) That in providing service pursuant to the certificate herein granted, applicant shall comply with the following additional 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 on 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 sixty days after the effective date hereof, and on 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.

(7) Applicant shall report the transactions herein authorized to the Commission in writing as follows:

(a) Issuance of the stock authorized by paragraph No. 1 hereof, to be reported as required by General Order No. 24-A which General Order so far as applicable is hereby made a part hereof.

(b) The transfer authorized by paragraph 2 hereof within thirty days after the consummation thereof, attaching thereto a copy of the instrument or instruments of transfer.

(8) Simultaneously with the institution of service under the authority herein granted in Paragraph (5) the operating authorities authorized to be transferred in Paragraph (2) hereof shall be revoked, canceled and annulled.

The effective date of this order shall be the date hereof.

Dated at Los Angeles, California, this

9th day of December, 1958.

E. I. Fox
President
W. H. ...
...
Theodore ...
Commissioners

Paxton Trucking Company, by the certificate of public convenience and necessity granted in the decision noted in the margin, is authorized to transport:

1. Iron and steel and iron or steel articles including tinplate.
2. Aluminum, brass, bronze, copper, lead, magnesium, tin, zinc and other non-ferrous metals, and articles manufactured therefrom not further finished than bars, castings, forgings, pigs, plates, shapes, sheets or structural components.
3. Clay and clay products including calcined magnesite, crude or roasted dolomite and other commodities normally manufactured and shipped in straight or mixed shipments by clay products mills or manufacturing plants.
4. Heavy machinery and machinery parts, and heavy electrical equipment and supplies and parts thereof.
5. Oil, water, or gas well outfits and supplies, and other articles, as described in Item 365 on Third Revised Page 38-A of Minimum Rate Tariff No. 2.
6. Machinery, equipment, materials and supplies used in the drilling, maintenance or operation of wells for the production of water, petroleum, or natural gas.
7. Construction and road building equipment, machinery, materials and supplies, and contractors' equipment used in the construction or erection of bridges, roads or highways, power transmission lines or power production projects, sewer or sewerage disposal projects, aqueducts, pipelines, oil refineries or processing plants, iron or steel mills or processing plants, fabricated steel or metal buildings and other structures.
8. Empty pallets or empty containers returning or to be returned.

between points on or within 50 miles airline distance laterally, subject to the limitation set forth in paragraph (B) below, of the following highways:

- (a) U. S. Highway 101, 101 Alternate, and 101 Bypass between San Francisco and the Mexican border.

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- (b) U. S. Highway 99 between Sacramento and the Mexican border; also U. S. Highway 99 East between Roseville and Marysville.
- (c) U. S. Highway 395 between San Diego and the Nevada state line.
- (d) U. S. Highway 40 between San Francisco and the Nevada state line.
- (e) U. S. Highway 50 between San Francisco and Stockton.
- (f) U. S. Highway 91 between Barstow and the Nevada state line.
- (g) U. S. Highway 66 between Los Angeles and the Arizona state line.
- (h) U. S. Highway 60 between Los Angeles and the Arizona state line.
- (i) U. S. Highway 80 between San Diego and the Arizona state line.
- (j) All points within a radius of 50 miles of San Francisco and within a radius of 5 miles of Marysville.

Paxton Trucking Company shall conduct the operations herein authorized along any street, road, highway or combination of such thoroughfares necessary or convenient to the rendering of the service herein authorized, including, but not limited to, the highways set forth in paragraphs (a) through (i) above.

The authority granted by this order is subject to the following restrictions:

- (A) No service shall be rendered in the transportation of shipments having both origin and destination north of a straight line extending from the Pacific Ocean to the California-Nevada state line passing through King City and Madera.
- (B) Except for deliveries to and from job sites such as construction projects, oil, gas, or water wells, or mines, oil fields, warehouses or field storage yards, no freight shall be transported in excess of ten miles on either side of the highway designated in paragraphs (a) through (i) above.

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