

Decision No. 58297**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 WILLIAM C. WHITE, an individual,)
 doing business as INTER-VALLEY)
 TRANSPORTATION, for a certificate)
 of public convenience and necessity)
 as a highway common carrier.)

Application No. 40164

Willard S. Johnson and Frank Loughran, for applicant.
Robert S. Crossland, for Valley Express Company;
 Valley Motor Lines, Inc.; California Motor Express,
 Limited; California Motor Transport Company, Limited;
 Southern California Freight Lines; Southern California
 Freight Forwarders; Merchants Express of California;
 protestants.

O P I N I O N

Applicant holds a certificate of public convenience and necessity to operate as a highway common carrier and transport limited commodities between Fresno and Bakersfield and certain other points. Applicant also holds contract carrier and radial highway common carrier permits issued by this Commission. Applicant herein seeks authority to expand the area which he is now authorized to serve and to transport general commodities throughout the entire area encompassed by his operating rights.

A duly noticed public hearing was held in this matter before Examiner Donald B. Jarvis at Fresno on July 29, 30 and 31, 1958. The matter was submitted subject to the filing of a late-filed exhibit.

Applicant has the authority to transport restricted commodities between the following points:

"Fresno, on the one hand, and points on U. S. Highway 99 between Fresno and Bakersfield (including points 25 miles laterally of such portion of U. S. Highway 99).

"Fresno, on the one hand, and Coalinga and Avenal, on the other hand.

"The authority ... does not include the right to render service to, from or between intermediate points."

He seeks authority to transport general commodities with limited exceptions between the following points:

- "A. Fresno, Tulare, Visalia, Porterville, Delano, Hanford, Corcoran and Bakersfield.
- "B. Between each of the cities named in subparagraph A above, on the one hand, and all points and places on or within 25 miles laterally of U. S. Highway 99 between Fresno and Bakersfield, both inclusive, on the other hand.
- "C. Between Fresno, on the one hand, and all points and places on U. S. Highway 99 between Fresno and Modesto, including Modesto, and all points and places on State Highways 180 and 33 between Fresno and Patterson, including Patterson, on the other hand."

Applicant proposes to establish and maintain rates on a parity with Minimum Rate Tariff No. 2 and provide overnight service between Fresno and points in Kern County and same-day delivery in accordance with the following schedule:

"Tuesdays through Saturdays, between Fresno, on the one hand, and, on the other hand, all points south of Porterville, Tulare and Corcoran.

"Mondays through Saturdays, between Fresno, on the one hand, and, on the other hand, all other points to be served."

Applicant now renders certain same-day delivery and Saturday delivery service under his present operating rights.

Applicant further requests that if he is granted any additional operating rights in this proceeding that the Commission issue an in-lieu certificate of public convenience and necessity consolidating therein all of his operating rights.

The evidence presented at the hearing discloses that applicant has 11 pieces of operating equipment. He leases terminal facilities in Fresno. Applicant testified to his experience in the

trucking industry and financial ability to conduct the proposed additional operations.

The owner of a Visalia cabinet and furniture repair shop testified in behalf of applicant. He stated that Fresno was his prime source of supply for wood, builders' hardware and floor tile;^{1/} that he places most of his orders by telephone calls to suppliers in Fresno; that same-day delivery from his suppliers would help him in his business; that he also does business on weekends; and that Saturday deliveries would help his business.

The Fresno branch manager of Incandescent Supply Company testified on behalf of applicant. He stated that his company was a wholesaler of electrical fittings and residential and commercial electrical fixtures;^{1/} that Incandescent served customers from Fresno to Turlock on the north, Porterville on the south, and Gustine and Newman on the west; that daily shipments were made in said area; that competing wholesalers were located in Merced, Visalia and Hanford; and that the same-day delivery service proposed by applicant would help Incandescent compete for business in the area.

The Fresno warehouse manager of the Lake Sales Company testified for applicant. He stated his company was a wholesaler of floor tile, carpeting and related products;^{1/} that the Fresno warehouse served customers to Turlock on the north, Bakersfield on the south and Los Banos on the west; that Lake had two major competitors in the area; that the service proposed by applicant would help Lake be more competitive; and that if applicant were given the authority to transport commodities which Lake ships it would use the proposed service.

^{1/} Applicant is not now permitted to haul their commodities under his certificate of public convenience and necessity.

Eleven other witnesses testified in behalf of applicant. Most of these witnesses represented companies that shipped commodities which applicant does not have authority to transport under his existing operating rights. The others represented companies applicant now serves under his certificate of public convenience and necessity. Some of these witnesses testified to specific instances of dissatisfaction with existing certificated highway common carriers in the area embraced by this application. The witnesses representing companies applicant now serves testified that applicant renders good service; that if applicant were granted the additional territorial rights herein sought they would use the proposed service because of the same-day and Saturday delivery features thereof; and that the proposed service would be of benefit to their companies and help them be more competitive in the area. The witnesses representing companies shipping commodities applicant may not now transport under his certificate of public convenience and necessity testified that the type of service proposed by applicant was not now available to them; that they desired same-day and Saturday service as proposed by applicant; and that this would benefit their businesses and permit them to be more competitive.

Evidence was introduced to show that each of the protestants has authority to transport general commodities, with limited exceptions, in some or all of the area which applicant seeks to serve. In general the witnesses who appeared in behalf of protestants testified that each of their companies was not operating to its fullest capacity and that granting applicant the right to haul general commodities and the authority to serve additional points would dilute their business, thereby injuring each of the protestants.

Operating witnesses testified on behalf of the protestants. They included the traffic manager of Southern California Freight

Lines and Southern California Freight Forwarders; General Traffic Manager of Valley Motor Lines, Inc., and Valley Express Co.; and the traffic manager of California Motor Express, Ltd., and California Motor Transport Company, Ltd. Each of these witnesses testified that his company did not offer a Saturday delivery or give same-day service from Fresno to the points involved in this application. Each witness testified that his company was not willing to offer the type of service proposed by applicant at the rates applicant intends to charge, and that the service proposed by applicant was economically unsound.

Protestants called as a witness a former business associate of applicant. He testified about his business dealings with applicant and that there was a dispute between them concerning the business here involved which might result in a lawsuit. This testimony was introduced for the purpose of challenging applicant's financial ability and responsibility.

The Commission is of the opinion that even if all the intendments for which protestants contend were given to the testimony of applicant's former business associate this would show no more than the existence of a commonplace business dispute between the parties. This is, of course, not the proper forum to resolve that dispute which is a matter for adjudication by the courts. (Re William L. Carpenter, 46 CRC 775.) While the successful prosecution of a lawsuit for damages against applicant would result in a change in his financial picture we are not disposed to permit the assertion of an unlitigated claim to color the result in this matter. On the other hand, there is an abundance of evidence in the record to indicate that applicant has the financial ability and responsibility to operate the additional rights sought herein. The Commission finds that applicant has the financial ability and responsibility to

conduct operations under the additional rights herein sought if such authority be granted.

The record clearly indicates that applicant proposes a service at rates which none of the protestants is prepared to offer. Many members of the shipping public testified to their need and desire for the proposed service. Some of these witnesses testified that the proposed service would help them be more competitive within their industries.

There is no inherent flaw in applicant's proposed service. We cannot say that affording shippers same-day delivery and Saturday delivery at the rates established in Minimum Rate Tariff No. 2 is economically unsound. In fact, the record herein affirmatively shows that applicant now renders under his present certificate same-day and Saturday delivery at a profit. Applicant is in a field of "regulated competition." (Re Santa Fe Transportation Co., 41 CRC 239, 280-81.) Where it appears that the proposed operation is not economically unsound, the question of the financial success of the enterprise should be left to the law of the market place.

The Commission finds that public convenience and necessity require that the application be granted to the extent hereinafter set forth and that all of applicant's operating rights be set forth in a new certificate of public convenience and necessity.

Applicant 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.

O R D E R

A public hearing having been held and based upon the evidence therein adduced,

IT IS ORDERED that:

1. A certificate of public convenience and necessity is granted to William C. White, doing business as Inter-Valley Transportation, authorizing him 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.
2. (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 ten 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.

3. All certificates of public convenience and necessity held by applicant other than the one provided for in paragraph 1 herein are cancelled concurrently with the effective date of the tariffs required in paragraph 2 (subsection b) of this order.

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

Dated at San Francisco, California, this 21st
day of April, 1959.

L. J. Fox
President
E. L. Smith
Heard & Jensen

Commissioners

Commissioner Everett C. McKeage, being necessarily absent, did not participate in the disposition of this proceeding.

1. William C. White, doing business as Inter-Valley Transportation, by the certificate of public convenience and necessity granted in the decision noted in the margin, is authorized to transport general commodities between the points and over the routes hereinafter set forth, provided, however, that applicant shall not transport any shipments of the following:

- a. Used household goods and personal effects not packed in accordance with the crated property requirements set forth in paragraph (d) of Item No. 10-C of Minimum Rate Tariff No. 4-A.
- b. Automobiles, trucks and buses, viz.: new and used, finished or unfinished passenger automobiles (including jeeps), ambulances, hearses and taxis; freight automobiles, automobile chassis, trucks, truck chassis, truck trailers, trucks and trailers combined, buses and bus chassis.
- c. Livestock, viz.: bucks, bulls, calves, cattle, cows, dairy cattle, ewes, goats, hogs, horses, kids, lambs, oxen, pigs, sheep, sheep camp outfits, sows, steers, stags or swine.
- d. Commodities requiring the use of special refrigeration or temperature control in specially designed and constructed refrigerated equipment.
- e. Liquids, compressed gases, commodities in semi-plastic form and commodities in suspension in liquids in bulk, in tank trucks, tank trailers, tank semitrailers or a combination of such highway vehicles.
- f. Commodities when transported in bulk in dump trucks or in hopper-type trucks.
- g. Commodities when transported in motor vehicles equipped for mechanical mixing in transit.

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h. Logs.

2. Applicant shall have the authority to transport the commodities set forth in paragraph 1 of this Appendix between the points and over the routes as follows:

- a. Between Fresno, on the one hand, and all points located on U. S. Highway 99 between and including Bakersfield, on the other hand, including also all points located laterally within 25 miles of U. S. Highway 99 between Fresno and Bakersfield.
- b. Between Fresno, on the one hand, and Coalinga and Avenal, on the other hand.
- c. Between Fresno, on the one hand, and all points located on U. S. Highway 99 between and including Modesto, on the other hand.
- d. Between Fresno, on the one hand, and all points located on State Highway 180 to and including the point at which State Highway 180 intersects with State Highway 33, on the other hand.
- e. Between the point of intersection of State Highways 180 and 33, on the one hand, and all points located on State Highway 33 between and including Patterson, on the other hand.

The operating authorities herein granted do not include the right to render service to, from or between intermediate points unless otherwise stated.

3. a. Applicant's tariff shall provide for the rendering of overnight service between Fresno and points in Kern County and same-day service between all points north of Kern County which are included in the operating rights herein granted.
- b. The tariff shall also provide for pickup and delivery service Tuesdays through Saturdays between Fresno, on the one hand, and all points south of Porterville, Tulare and Corcoran, on the other hand.

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- c. The tariff shall also provide for pickup and delivery service Mondays through Saturdays between all points included in applicant's operating authority other than those enumerated in subparagraph "b" of this paragraph.
- d. Applicant shall have the right to set up reasonable schedules in complying with the terms of this paragraph 3.

End of Appendix A

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