

Decision No. 59847**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 DEVINE & SON TRUCKING CO., a corpo-)
 ration, for a certificate of public)
 convenience and necessity to extend)
 highway common carrier service.)

Application No. 41525

Willard S. Johnson, for applicant.

F. S. Kohles & Ed Mores by Ed Mores, for Valley Motor Lines, Inc., and Valley Express Co.; Don F. McDonald, for Oregon-Nevada-California Fast Freight Inc., and Southern California Freight Lines; Milton Gomes, for Merchants Express of California; Robert C. Ellis, for California Motor Transport Co., Ltd., Circle Freight Lines, California Motor Express, Ltd., and Stockton Motor Express; Ray L. Harris, for Delta Lines, Inc.; Murl Rigmaiden, for Interlines Motor Express; protestants.

O P I N I O N

In this application, filed on September 28, 1959, and amended on January 6, 1960, Devine & Son Trucking Co., a corporation, requests authority to expand its highway common carrier operating rights in northern California. Public hearings on this matter were held before Examiner James Mastoris on December 3, 1959, in Sacramento and on January 7, 1960, in San Francisco.

Specific Authorization Requested

At present this carrier operates as a highway common carrier transporting lumber and forest products in shipments of 20,000 pounds or more between San Francisco and points in north central and northeastern California. In addition, it holds radial highway common carrier, highway contract and city carrier permits. Specific authorization is sought by this application to extend its

certificate in order to transport on an on-call basis general commodities, with certain limitations, from, to and between the following points and places, including 50 mile laterals:

1. U. S. Highway 40 between San Francisco and California-Nevada State Line.
2. U. S. Highways 99, 99-E and 99-W, between California-Oregon State Line and Fresno.
3. U. S. Highway 50 between San Francisco and California-Nevada State Line.
4. U. S. Highway 299 between Redding and California-Oregon State Line.
5. U. S. Highway 101 between San Francisco and Salinas.
6. California Highway 36 between Red Bluff and Susanville.
7. California Highway 24 between Sacramento and Reno Junction.
8. California Highway 20 between Lakeport and Emigrant Gap.
9. California Highway 49 between Satterly and Jackson.

Evidence in Support of Application

Ten shipper witnesses testified on behalf of the applicant as to the present and prospective needs of their respective business concerns for the proposed service. They declared that they have been utilizing applicant's present service under its permitted authority for many years and that they desire to continue using this service in the future. The majority of said witnesses testified that most of the shipments tendered to this carrier in the past have been truckload shipments and that the bulk of their future transportation requirements is expected to be for such carriage. In addition, these witnesses preferred the applicant over other existing highway common carriers serving

the proposed area. This preference was attributed to the applicant's past dependable and individualized service along with the carrier's efficient and solicitous handling of their freight. Moreover, many of these witnesses wanted to remain with the applicant because of its expeditious and skillful handling of heavy construction and industrial equipment shipments. All shippers claimed that the metropolitan and rural areas proposed to be served are developing from the viewpoint of population as well as agriculture and industry and that this growth is expected to continue in the immediate future.

The applicant claimed that the requested authority is needed in order that its company expand with the needs and demands of its shippers. It was alleged that the present operating rights are inadequate, particularly in view of the increasing frequency of operations between certain cities. In order to clarify its status and to remove any possible suggestion of improper operations, a general commodity certificate between the aforementioned points is requested. Because its past operations have been based almost exclusively upon truckload traffic the carrier, at the hearings, requested that the extended certificate include a 20,000-pound or more weight limitation.

Position of the Protestants

The protestants are primarily concerned with the loss or possible diversion of less-than-truckload traffic. The larger protestants such as California Motor Transport, California Motor Express, and Delta Lines, Inc., declared that they have no objection to the carrier restricting itself to truckload lots of freight above a 20,000-pound minimum. They claim that they are rendering an adequate service in most of the area proposed to be served and that they are capable of carrying more freight.

Findings

Based upon the foregoing evidence, the Commission finds and concludes that public convenience and necessity require that the application be granted to the extent set forth in the following order and appendix. The evidence does not appear to be sufficient to award a grant of general commodities carriage nor to authorize the carrier to serve between Manteca and Fresno over Highway 99. In addition, ten mile lateral rights are sufficient for the purposes proposed.

However, because of the special circumstances of this case the Commission will authorize a 20,000-pound minimum weight restriction similar to the applicant's present limitation on lumber and forest products. As a general rule such a restriction is not in the best interests of the public but in this matter the evidence justifies a departure from this policy in view of the limited commodity grant and the lack of the carrier's experience in small lot hauls.

We find that this carrier possesses the experience and equipment to expand its certificate and to maintain the operations to be authorized. We further find that the applicant possesses the financial ability to support the proposed service and the resources to acquire such additional equipment as may be required to conduct such operations. Its terminal facilities and personnel are adequate and suitable for the purposes intended in this application.

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.

In consonance with the foregoing, an in lieu certificate will be granted to applicant in the order of this decision, attached to which will be Appendix A, in loose-leaf form, categorically setting forth all the points and routes of operations and the commodities authorized, together with all of the rights, restrictions, limitations and privileges applicable thereto. All presently existing certificates of public convenience and necessity or other highway common carrier operative rights held by the applicant will be revoked and annulled.

O R D E R

Application having been filed, public hearings having been held, and based upon the above evidence and findings,

IT IS ORDERED that:

1. A certificate of public convenience and necessity is hereby granted to Devine & Son Trucking Co., a corporation, authorizing the establishment and operation of service as a highway common carrier as that term is defined in Section 213 of the Public Utilities Code, for the transportation of property between the points and over the routes set forth in Appendix A, attached hereto and made a part hereof, but subject to the conditions and restrictions of said Appendix A. Operating rights established and set forth in Decision No. 49018 in Application No. 34316 and

transferred in Decision No. 54964 in Application No. 39007 are hereby revoked and annulled, said revocation and annulment to become effective concurrently with the effective date of the tariff filings required by paragraph 2 (b) hereof.

2. In providing service pursuant to the certificate herein granted, Devine & Son Trucking Co. shall comply with and observe the following 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 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.

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

Dated at San Francisco, California, this 29th day of March, 1960

Cecil R. Bess
President
Theodore J. Deane
Commissioners

A. Devine & Son Trucking Co., by the certificate of public convenience and necessity granted in the decision noted in the margin, is authorized to transport the following commodities from, to, and between the points and over the routes described in paragraph B.

- a. ALUMINUM, as listed under that heading in Items 5380 through 5870 (see note below).
- b. ASPHALT PITCH OR TAR, as listed under that heading in Items 6780 through 6920.
- c. BRICK, BLOCKS, SLABS, TILE OR RELATED ARTICLES, as listed under that heading in Items 15170 through 15535.
- d. BUILDING OR PAVING MATERIAL, MISCELLANEOUS, as listed under that heading in Items 15860 through 16870.
- e. BUILDING METAL WORK, INCLUDING ROOF TRIMMING OR GUTTERING OR VENTILATORS, as listed under that heading in Items 16885 through 18260.
- f. BUILDING WOODWORK OR SHIPS' JOINER WORK, WOODEN, as listed under that heading in Items 18265 through 18821.
- g. BUILDING OR HOUSES, FABRICATED OR PORTABLE, as listed under that heading in Items 18835 through 19030.
- h. CEMENT, LIME OR PLASTER, as listed under that heading in Items 21660 through 21750.
- i. COMMODITIES, not specifically named herein, which, because of abnormal size or weight, require the use of and are transported on low-bed trucks and/or trailers.
- j. CONDUITS, DRAIN TILE, SEWER PIPE, OR RELATED ARTICLES, CLAY, CONCRETE OR EARTHEN, as listed under that heading in Items 28980 through 29210.
- k. CONDUITS, PIPE, SMOKESTACKS, TUBING OR FITTINGS, OTHER THAN CLAY, CONCRETE OR EARTHEN, as listed under that heading in Items 29220 through 30440.

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- l. ELECTRICAL APPLIANCES OR EQUIPMENT, OR PARTS NAMED, as listed under that heading in Items 34020 through 35430.
- m. GLASS, as listed under that heading in Items 45890 through 46181.
- n. HARDWARE, as listed under that heading in Items 48640 through 51180.
- o. INSULATING MATERIAL, as listed under that heading in Items 53165 through 53470.
- p. INSULATORS, as listed under that heading in Items 53490 through 53570.
- q. IRON OR STEEL, as listed under that heading in Items 53610 through 55290.
- r. MACHINERY OR MACHINES, OR PARTS NAMED, as listed under that heading in Items 58470 through 67392.
- s. OUTFITS, as listed under that heading in Items 73380 through 74240 (includes said outfits, which because of their size or weight require the use of and are transported on low-bed trucks and/or trailers).
- t. PAINTS, PAINT MATERIAL OR PUTTY, as listed under that heading in Items 74750 through 75200.
- u. PLUMBERS' GOODS, OR BATHROOM AND LAVATORY, FIXTURES, as listed under that heading in Items 77890 through 78771.
- v. POLE OR TRANSMISSION LINE CONSTRUCTION MATERIAL, as listed under that heading in Items 78800 through 79110.
- w. RAILWAY MATERIAL OR EQUIPMENT, as listed under that heading in Items 80835 through 82950.
- x. ROOFING OR SIDING, OR ROOFING OR SIDING MATERIAL, as listed under that heading in Items 83530 through 83770.
- y. TANKS, as listed under that heading in Items 88710 through 89300.
- z. TILE OR TILING, FACING OR FLOORING, OR FACING COVE OR MOULDING, as listed under that heading in Items 89470 through 89630.

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- aa. TOOLS, OR PARTS NAMED, as listed under that heading in Items 89950 through 91970.
- bb. VEHICLES, OTHER THAN MOTOR, as listed under that heading in Items 92635 through 93300.
- cc. VEHICLE PARTS, as listed under that heading in Items 93445 through 94790.
- dd. WALLBOARD, as listed under that heading in Items 94890 through 95020.
- ee. WHEELS OR WHEEL BLANKS, as listed under that heading in Items 96570 through 96780.
- ff. MISCELLANEOUS COMMODITIES, Viz.:

Asbestos

Bags or bagging, burlap, bunny, jute or sisal

Cordage, viz.: Rope, fodder or lath yarn, or twine

Fire Fighting apparatus

Fireplace air heaters and ventilators combined, iron

Fireplaces, water jacketed, iron

Fireplaces and chimneys combined, steel, with ceramic firebox

Flashlights

Furnace

Gases, Compressed; viz.:

Acetylene, in steel cylinders

Oxygen, in steel cylinders

Gravel, in sacks

NOTE: The term "Items" as used above refers to the specified items listed in connection with the specified commodity groups as published in Western Classification 77, J. P. Hackler, Tariff Publishing Officer, on the effective date of said classification.

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Heaters, roof or street construction:
Asphalt, pitch or tar heating kettles;
street surface or tool (fire wagons)

Ladders
Lanterns
Lighting fixtures or parts, electric or gas

Packing
Pallets, platforms or skids for lift trucks
Pallets, brick, or cement or concrete block or
concrete sewer pipe
Paper, building, roofing or sheathing, incl. felt
paper
Pontoons or Pontoon bridge sections or parts

Sand, in sacks
Searchlights
Signals or signs, road traffic or vehicle

Tires, rubber, pneumatic or solid
Tubes or tubing, rubber
Tower or tower parts

Ventilators, foundation, window or door

Welding or welding accessory kits
Welding bars, rods or wire (welding electrodes)

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B. Devine & Son Trucking Co. is hereby authorized to transport commodities described in paragraph A of this appendix, in shipments of 20,000 pounds or more to, from, and between points, including intermediate points, on or within 10 miles laterally of the following highways:

1. U. S. Highway 40 between San Francisco and California-Nevada State Line.
2. U. S. Highways 99, 99-E and 99-W, between California-Oregon State Line and Manteca.
3. U. S. Highway 50 between San Francisco and California-Nevada State Line.
4. U. S. Highway 299 between Redding and California-Oregon State Line.
5. U. S. Highway 101 between San Francisco and Salinas.
6. California Highway 36 between Red Bluff and Susanville.
7. California Highway 24 between Sacramento and Reno Junction.
8. California Highway 20 between Lakeport and Emigrant Gap.
9. California Highway 49 between Satterly and Jackson.

Exception: No local service will be rendered between points and places in San Francisco - East Bay Cartage Zone, on the one hand, and points and places in Marin, Sonoma or Napa Counties north of San Rafael, on the other hand.

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C. Devine & Son Trucking Co. is hereby authorized to transport lumber and forest products in shipments of 20,000 pounds or more to, from and between points on or within 50 miles laterally of the following highways:

1. U. S. 99-E and 99-W from Red Bluff to intersection with U. S. 40.
2. California 36 from Red Bluff to Susanville. No service shall be provided 10 miles north of said California 36.
3. California 24 from Sacramento to Reno Junction.
4. California 20 from Lakeport to Emigrant Gap.
5. California 49 from Satterly to Jackson.
6. U. S. 40 from San Francisco to California-Nevada State Line.
7. U. S. 50 from San Francisco to California-Nevada State Line.

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