

**ORIGINAL**Decision No. 60494

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of  
 GLENN SPEAR, doing business as  
 UNITED TRUCK LINE, for a certificate  
 of public convenience and necessity  
 as a highway common carrier between  
 points in Northern California.

Application No. 41857

Graham, James & Rolph, by Boris H. Lakusta, for  
 applicant.

Handler & Baker, by Daniel W. Baker, and James P.  
 Nielsen, for Nielsen Freight Lines; E. H.  
 Griffiths, for T & S Motor Express Lines,  
 protestants.

O P I N I O N

By application filed January 19, 1960, Glenn Spear, doing business as United Truck Line, seeks a certificate of public convenience and necessity authorizing operations as a highway common carrier of general commodities between San Francisco and South San Francisco, on the one hand, and, on the other hand, Los Gatos and San Jose via U.S. Highways 101 and 101 By-Pass and various connecting roads, hereinafter referred to as the peninsula route; points between Richmond on the north and San Jose on the south, hereinafter called the east bay route; and points on U.S. Highway 101, State Highways 12 and 37 and various connecting roads to and including Santa Rosa, Sebastopol and Sonoma, hereinafter called the Santa Rosa route.

The granting of the application was opposed by Nielsen Freight Lines and T & S Motor Express Lines.

Public hearing was held in the application on March 9 and 10 and May 12, 1960 before Examiner J. E. Thompson at San Francisco. The matter was taken under submission May 13, 1960 upon the filing by applicant of late-filed Exhibit No. 8.

Applicant holds permits authorizing operations as a radial highway common carrier, as a highway contract carrier and as a city carrier. He conducts operations from San Francisco and South San Francisco to points in the general area for which authority is sought to conduct operations as a highway common carrier. A daily service, except for Saturdays and Sundays, is provided to points on the main highways. An "on-call" service is provided to points five miles laterally from the main highway routes. This is the service applicant proposes to perform as a highway common carrier.

On July 7, 1959, a representative of the Commission's transportation division informed applicant that an examination of his transportation records had disclosed that the transportation service conducted was approaching highway common carriage requiring a certificate of public convenience and necessity from the Commission. By letter dated July 13, 1959 over the signature of the secretary, the Commission confirmed the statements of the representative and stated further,

"You were informed that a representative of the Commission will, at some future date, conduct another examination of your records and if highway common carriage is indicated, you may be subject to formal action by the Commission. Such action could result in a suspension of your present permitted operating authority."

Following receipt of the above letter, applicant sought legal advice, and as a result thereof, and after consideration, filed this application.

The evidence shows that applicant is, and has been, transporting substantial tonnage between the points involved, most of which is less-than-truckload quantities. Twelve years ago he started in the trucking business with a partner whom he bought out in 1955. His business has increased from about \$24,000 the first year to around \$200,000 in 1959. He now has 29 pieces of equipment.

Applicant stated that he was of the opinion that about 75 percent of the service performed was under his highway contract carrier permit. Over the past twelve years the number of his regular customers has grown. Applicant stated that he has been refusing new business that he could well accommodate because of the aforesaid letter he received from the Commission.

A financial statement dated October 1, 1959 shows applicant has a net worth of \$45,000. His motor vehicle equipment numbering 28 pieces, which had an historical cost of \$86,730 has a book value of \$39,175, or about 45 percent. For the ten months ended October 31, 1959, applicant had a gross operating revenue of \$178,253 and total expenses of \$157,284.

Nielsen Freight Lines is a highway common carrier of general commodities between points on the Santa Rosa route and between points in the San Francisco-East Bay Cartage Zone, among other places. It received a certificate of public convenience and necessity authorizing highway common carrier service on the Santa Rosa route by Decision No. 43556 dated November 22, 1949 in Application No. 29105. Nielsen provides an overnight service and a same-day service daily from San Francisco to points on the Santa Rosa route. The annual reports filed by Nielsen show a growth from December 31, 1950 of equity capital of \$51,049 including investment in 26 pieces of motor vehicle equipment to \$134,046 on December 31, 1959 including 87 pieces of motor vehicle equipment. In 1950 Nielsen had 13 employees with a payroll of \$61,678 as compared with 58 employees with a payroll of \$459,657 in 1959. During that period Nielsen was authorized to increase the scope of highway common carrier operations; however, an analysis of all of the annual reports filed from 1950 shows a pattern of consistent and continuous growth and a very successful operation.

Richard Thornhill, doing business as T & S Motor Express Lines, is a highway common carrier engaged in the transportation of limited commodities between San Francisco and numerous points on the Santa Rosa route. He, and a partner whom he had recently bought out, obtained a certificate of public convenience and necessity by Decision No. 52217 dated November 7, 1955 in Application No. 36120, authorizing highway common carrier operations in the transportation of certain commodities including drugs, liquors, copper wire and automobile parts, from San Francisco to certain points on the Santa Rosa route. Since that date the scope of the operations was expanded; those operations, however, are not generally competitive with those proposed herein by applicant. Thornhill has 27 employees and 21 pieces of motor vehicle equipment.

A number of shippers testified that they are using applicant's service and propose to continue to do so if the authority sought is granted. One witness testified that applicant refused to transport his company's shipments as a contract carrier, that applicant's schedule met his needs and that he would be able to ship via applicant if the authority is granted. In general, however, most of the witnesses had little complaint regarding protestants' services; either they were not fully aware of the extent of the schedules maintained by protestants, or those that were, merely liked applicant's service better than protestants'.

Under the Highway Carriers' Act, any person may enter the trucking business by obtaining a permit. Any person entering the field for the first time may secure such a permit upon paying the necessary filing fee and showing that he is financially responsible and has secured insurance or other protection against liability imposed by law in the amount of \$25,000/\$100,000 for bodily injury and \$10,000 for property damage. When applicant entered the

trucking business the filing fee for a highway contract carrier permit was \$3.00 and, as has been said, the person did not even have to have a truck. Nielsen and Thornhill, as did applicant, entered the trucking business as permitted carriers. As protestants were successful in their operations performed under permits, so applicant's operations have been successful to the point where he has been informed by the Commission that further expansion of operations may result in his conducting services beyond the scope of his authority and may result in the suspension of his permits.

There is a demand for applicant's service as evidenced by the amount of tonnage transported during the first seven months of 1959. Applicant hauled 1,700,256 pounds in July 1959 of which 1,001,803 moved on the peninsula route, 461,392 pounds on the Santa Rosa route and 237,061 pounds on the east bay route.

Applicant has the equipment and the finances to perform the proposed service. That he has the knowledge and ability to conduct the operation is found from the fact that he is and has been conducting such operations.

Protestants offered in evidence a population and economic study of Route 101 in Sonoma and Mendocino Counties prepared by a professor of business statistics of the graduate school of business of Stanford University. This study, which was received as Exhibit No. 7, has been received in other proceedings before the Commission. The transcript of the professor's testimony in Application No. 41179 (Merchants Express of California) was received in evidence as Exhibit No. 8. According to the witness, since 1940 the rate of growth of Sonoma County has been nearly that of the State as a whole because the historical trend of the general decline in population in the forest and agricultural regions in the northern part of the county has been offset by "the spreading out of the

San Francisco metropolitan area with a peripheral growth and concentrations which have affected the southern part of the county and, in particular, Santa Rosa." Applicant proposes to serve that part of Sonoma County south of, and including, Santa Rosa.

Protestants contend that there is not enough traffic on the Santa Rosa route to support another highway common carrier and that the granting of authority to applicant will result in a diversion of traffic from protestants. The evidence shows that applicant is well established in the field now. There is no evidence that applicant provides or will provide a better service than that offered by protestants which would take business from them. The record indicates that more traffic will be generated in the area proposed to be served by applicant. There is no evidence that such additional traffic will be secured in whole or even in part by applicant.

Upon consideration of all of the facts, we are of the opinion and find that public convenience and necessity require the operation by applicant in the transportation, as a highway common carrier, of commodities specified in the order which follows and between the points and over the routes specified in the ensuing order.

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.

ORDER

A public hearing having been held, and based on the evidence adduced therein and the findings and conclusions set forth in the preceding opinion,

IT IS ORDERED:

1. That a certificate of public convenience and necessity is granted to Glenn Spear authorizing him to operate as a highway common carrier as defined in Section 213 of the Public Utilities Code for the transportation of property between the points and over routes as 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 of public convenience and necessity herein granted, applicant is placed on notice that he will be required, among other things, to file annual reports of his operations and to comply with and observe the safety rules and other regulations of the Commission's General Order No. 99 and insurance requirements of the Commission's General Order No. 100-A. 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 Orders Nos. 99 and 100-A, 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 to 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 2nd day of August, 1968.

*[Handwritten signature]*  
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President  
*[Handwritten signature]*  
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*[Handwritten signature]*  
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Commissioners

Glenn Spear, by the certificate of public convenience and necessity granted in the decision noted in the margin, is authorized to transport general commodities other than those specified herein, between San Francisco and South San Francisco, on the one hand, and points and places located on, or within five miles laterally of, the following routes:

- A. U.S. Highways 101 and 101 By-Pass between San Francisco and San Jose, State Highway 17 between San Jose and Los Gatos, and all connecting roads between said highways.
- B. U.S. Highways 40, 50 and State Highways 9 and 17, along the eastern shore of San Francisco Bay, from Richmond, on the north, to San Jose on the south.
- C. U.S. Highway 101 between San Francisco and Santa Rosa, State Highway 37 from Ignacio to Shellville, and State Highway 12 from Shellville to Sebastopol.

Service between said points shall be subject to the following conditions and limitations:

1. Service to points within any one of the three areas may be made via any available street or highway within said area. Service between San Francisco and South San Francisco, on the one hand, and points in area B (East-Bay), on the other, may be made via U.S. Highway 40 (San Francisco-Oakland Bay Bridge) or via U.S. Highway 101 and any of the bridges across San Francisco Bay.
2. Applicant shall not transport any shipments of:
  - (1) 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.

Issued by California Public Utilities Commission.

Decision No. 60494, Application No. 41857.

- (2) 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.
- (3) 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.
- (4) Commodities requiring the use of special refrigeration or temperature control in specially designed and constructed refrigerator equipment.
- (5) 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.
- (6) Commodities when transported in bulk in dump trucks or in hopper-type trucks.
- (7) Commodities when transported in motor vehicles equipped for mechanical mixing in transit.
- (8) Logs.

End of Appendix A

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Decision No. 60494, Application No. 41257.