

ORIGINAL

Decision No. 60722

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of:)
 PAXTON TRUCKING COMPANY, a corporation,)
 for a certificate of public convenience)
 and necessity to operate as a highway)
 common carrier of iron and steel and)
 certain specified other commodities be-)
 tween various points in the State of)
 California as an extension of its)
 presently authorized service as a high-)
 way common carrier pursuant to Public)
 Utilities Code Section 1063.)

Application
No. 41619

Glanz, Russell & Schureman, by Theodore W. Russell,
 for applicant.
Frank Loughran, for Bigge Drayage Co., Wilkins
 Drayage Co., Belyea Truck Co. and Warren
 Transportation Company; Berol and Geernaert,
 by Bruce R. Geernaert, for Jos. D. Sheedy
 Drayage and Thomas Drayage Co.; protestants.
Russell Bevans, for Draymen's Association of San
 Francisco, interested party.

O P I N I O N

Applicant now has highway common carrier authority to transport iron, steel and aluminum products, heavy machinery and equipment, construction and road building equipment, clay products, and related commodities and supplies, between all points in California, generally, south of Santa Rosa, Woodland, Marysville and Truckee, to the Mexican border, except along portions of some inland secondary routes such as Highways Nos. 33, 466, 190 and 127, as more specifically set forth in Decision No. 57711. (1) Applicant

(1) Applicant is restricted against serving between points both of which are north of a line extending from the Pacific Ocean to the California-Nevada state line passing through King City and Madera. Service to off-route points situated in excess of 10 miles of the principal named routes is also restricted in some instances, as set forth in the Appendix to the said decision.

also is authorized to operate as a radial highway common carrier, highway contract carrier and city carrier and holds motor carrier certificate from the Interstate Commerce Commission (hereinafter referred to as I.C.C.), No. MC 13522. Its present California highway common carrier authority was registered with the I.C.C. January 30, 1959.

By this application it seeks authority to enlarge its operating authority by including in its service area those portions in the southern part of the State along certain alternate routes within the area now served and all points and places in California northerly of its present authorized service area to the Oregon border. Some additional commodities of the same type and character as those now authorized are proposed to be added. Applicant's operations have been extensive throughout the area served. It operates heavy-type trucking equipment for commodities requiring special equipment or handling because of their unusual size, weight or shape. Some of the commodities proposed to be added to its list are heavy electrical appliances, road building and paving equipment, electrical transmission or communication cable, junk and scrap, and fire fighting equipment, as well as related materials and supplies incidental to the specified commodities.

Protestants oppose the granting of a certificate extending applicant's intrastate authority unless this Commission restricts such authority against registration with the I.C.C. Only one protestant opposes the granting of any additional intrastate authority if such restriction is imposed.

Public hearings were held on March 15, 1960, in Los Angeles, and March 23, 24, and April 12, 1960, in San Francisco, before Examiner Mark V. Chiesa. Evidence having been adduced and briefs filed, the matter is ready for decision.

Jos. D. Sheedy, doing business as Sheedy Drayage, who protests extension of applicant's intrastate rights, holds two highway common carrier certificates and radial, contract and city permits from this Commission, and a motor carrier certificate from the I.C.C. Decision No. 51000 authorizes Sheedy, generally, to transport general commodities between points in the San Francisco-East Bay Drayage Area, and Decision No. 59769, dated March 8, 1960, is an in lieu certificate which enlarged Sheedy's prior operating right, which was limited to the San Francisco, Sacramento and San Jose areas, to include an area from the Oregon border as far south as San Luis Obispo, Bakersfield and Baker in Southern California. The latter certificate also increased the number of commodities which Sheedy was previously authorized to transport. The additional commodities are similar to those which applicant is authorized to transport. At the time of the hearing protestant had not fully established his business in the new territory, much of which is in the area previously certificated to applicant. An employee testified in behalf of this protestant to the effect that the protest was based upon said recently granted authority and because, in his opinion, the common territory which applicant and protestant would serve might not sustain a profitable operation for both carriers. Although the Sheedy application, No. 41264, requested intrastate authority quite similar to that which applicant is seeking, which authority has since been

granted and registered with the I.C.C., the protestants herein who are strenuously objecting to the registration of any certificate that may be issued to applicant, made no protest at the time the Sheedy application was heard. In fact, the latter application requested a much greater extension of operating authority both as to commodities and territories, than the extension now sought by applicant. The restriction against registration with the I.C.C. will be further considered later in this opinion.

Applicant operates 227 pieces of equipment, most of which is adaptable to applicant's present and proposed type of transportation service. Applicant's financial condition, as of December 31, 1959, was as follows:

Total Assets	\$690,626.80	
Total Liabilities	<u>529,667.70</u>	
Net Worth		\$160,959.10
Represented By		
Capital Stock Outstanding	\$130,000.00	
Surplus	30,959.10	\$160,959.10

Applicant's operating revenue for said year was \$2,233,891.15, and its net income before Federal income taxes was \$30,959.10.

Representatives of eight large concerns which ship commodities of the kind described testified in Los Angeles that their respective companies have need for a service as proposed and that it would be a convenience to them if applicant's operating authority was enlarged. An additional twelve shippers' witnesses similarly testified in support of the application at the San Francisco hearings. There is substantial evidence of record that public convenience and necessity require applicant's proposed service,

and we so find. We also find that applicant has the financial ability, equipment and facilities, and experienced personnel, to perform a service as proposed. ⁽²⁾ The testimony of the said shippers' witnesses also clearly shows, and we find, that the restrictions noted in the margin in footnote (1) are no longer justified.

Protestants' position is (a) that this Commission has authority to impose the restriction against the registration of the certificate with the I.C.C.; (b) that if such restriction is not imposed, applicant could compete for interstate shipments with each of protestants to the extent of their respective authority; and (c) that if applicant has not made a showing that public convenience and necessity require that it perform interstate service, registration should be denied by this Commission.

As to point (a), hereinabove set forth, this Commission if it so deemed could impose the restriction requested by protestants. Point (b) merely states a truism, that is, that registration would place applicant on a competitive basis. As to point (c), it can first be said that applicant did not attempt to establish interstate public convenience and necessity. However, the evidence of record does not justify a restriction against registration. This Commission has not heretofore placed such restriction when granting carriers intrastate certificates of public convenience and necessity and it does not believe that it should do so in the

(2) Exhibits Nos. 3, 4 and 11.

instant case. Protestants' chief point is that if no restriction is imposed applicant might register its State authority with the Federal Commission and thereby become a competitor. It has already registered its present State authority which covers the greater portion of the State. No specific evidence was presented showing that registration would have a detrimental effect on either the national transportation policy or the transportation policy of this State. Nor was there any showing that protestants would be materially adversely affected, except the bare statements of protestants' operating witnesses to the effect that I.C.C. traffic might be further diluted if applicant also became a competitor. Nothing was said as to the number of other carriers, if any, who either by reason of I.C.C. certificates or by registration of California intrastate operating rights are also present competitors of the protestants. The record in this proceeding is not such that would justify protestants' request.

The Commission finds that public convenience and necessity require that the application be granted.

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.

O R D E R

A public hearing having been held, the Commission being fully advised in the premises and having found facts as hereinabove set forth,

IT IS ORDERED:

1. That a certificate of public convenience and necessity is granted to Paxton Trucking Company, a corporation, 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 routes 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 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 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 the public, applicant shall establish the service herein authorized and file in triplicate, and concurrently make effective, tariffs satisfactory to the Commission.

3. That the certificate of public convenience and necessity granted in paragraph 1 of this order is in lieu of and supersedes the existing certificate of public convenience and necessity heretofore granted to Paxton Trucking Company by Decision No. 57711 in Application No. 40615, which certificate is hereby canceled and revoked, said revocation to become effective concurrently with the effective date of the tariff filings required by paragraph 2 b hereof.

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

Dated at San Francisco, California, this 13th day of September, 1960

[Signature]
President
[Signature]
[Signature]

Commissioners

Matthew J. Dooley
Commissioner ~~Theodore M. Jenner~~, being necessarily absent, did not participate in the disposition of this proceeding.

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, and products or products of iron and steel mills, steel processing and steel fabricating plants.
2. Aluminum, brass, bronze, copper, lead, magnesium, tin, zinc and other non-ferrous metals, and articles manufactured therefrom except household appliances and housewares, and except articles manufactured from such metals when consigned to a retail business establishment.
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 or appliances 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, road building, and paving equipment, materials and supplies used or which may be used in the construction, erection, maintenance, repair or dismantling of bridges, roads or highways, power, or communication transmission lines or production projects, sewer or sewerage disposal projects, aqueducts, pipelines, oil refining or processing plants, mines, iron or steel mills or processing plants, military or demolition projects, fabricated steel or metal building and other structures.

Issued by California Public Utilities Commission.

Decision No. 60722, Application No. 41619.

8. Such commodities as require special equipment or handling by reason of their unusual size, weight or shape and in connection therewith parts, equipment, materials and supplies not requiring special equipment or handling that are appurtenant to or a necessary part of the same project or transaction.
9. Electrical transmission or communication cable including clamps, joints, racks, hooks, terminals and other appurtenant articles used in connection therewith.
10. Junk, scrap or waste material having value only for remelting or reprocessing.
11. Firefighting equipment, materials and supplies.
12. Empty pallets or empty containers returning or to be returned.

Between points on or within 50 miles airline distance laterally of the following highways:

- (a) U. S. Highway 101, 101 Alternate and 101 By-Pass between the Mexican border and the California-Oregon line.
- (b) U. S. Highway 99, 99 E and 99 W between the Mexican border and the California-Oregon line.
- (c) U. S. Highway 395 between San Diego and the Nevada-California state line near Topaz, and between the California-Nevada line near Peavine and the California-Oregon line.
- (d) U. S. Highway 40 and 40 Alternate between San Francisco and the Nevada state line.
- (e) U. S. Highway 50 between San Francisco and the Nevada state line.
- (f) U. S. Highway 60 between Los Angeles and the California-Arizona state line.

Issued by California Public Utilities Commission.

Decision No. 60722, Application No. 41619.

- (g) U. S. Highway 80 between San Diego and the Arizona state line.
- (h) U. S. Highway 66 between Los Angeles and the Arizona state line.
- (i) U. S. Highway 91 between Barstow and the Nevada state line.
- (j) U. S. Highway 97 between its junction with U. S. Highway 99 and the California-Oregon state line.
- (k) U. S. Highway 95 between its junction with U. S. Highway 60 and the California-Nevada state line.
- (l) U. S. Highway 299 between its junction with U. S. Highway 101 and U. S. Highway 395.
- (m) U. S. Highway 399 between Ventura and its junction with U. S. Highway 99.
- (n) U. S. Highway 466 between Paso Robles and the California-Nevada state line.
- (o) California State Highway 20 between its junction with U. S. Highway 101 and U. S. Highway 40.
- (p) California State Highway 36 between its junction with U. S. Highway 99 and U. S. Highway 395.
- (q) California State Highway 139 between its junction with U. S. Highway 299 and the California-Oregon state line.
- (r) California State Highway 33 between Wheeler Ridge and Tracy.
- (s) California State Highway 127 and California Highway 190 between junction of California State Highway 127 and U. S. Highway 466 near Baker and junction of California State Highway 190 with U. S. Highway 395.

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Decision No. 60722, Application No. 41619.

Applicant may conduct its operation along any street, road, highway or combination of such thoroughfares necessary or convenient to the rendering of its service, including but not limited to the highways set forth in paragraphs (a) through (s) above.

The authority herein granted shall be subject to the following restriction:

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 (s) above.

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Decision No. 60722, Application No. 41619.