

ORIGINAL

Decision No. 60753

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
 JACK WOODMANSEE, doing business as
 WOODY'S TRANSFER, for a Certificate
 of Public Convenience and Necessity
 to operate as a highway common
 carrier for the transportation of
 property.

Application No. 41943

Donald Murchison, attorney, for applicant.
Glanz, Russell & Schureman, attorneys, by R. Y.
Schureman, for City Transfer, Inc., R. W.
Nielson, doing business as Comet Service,
 West Coast Warehouse Corporation and Handy
 Motor Lines, Inc., protestants.

O P I N I O N

By the application herein, filed with this Commission on February 10, 1960, Jack Woodmansee, doing business as Woody's Transfer, seeks a certificate of public convenience and necessity as a highway common carrier to transport:

- (1) Television and Hi-Fi sets and accessorial parts;
- (2) Electrical fixtures, supplies and fittings;
- (3) Household and commercial appliances;
- (4) Petroleum treating compounds;
- (5) Batteries, steel conduit and fittings, copper wires and toys; and
- (6) Uncrated new furniture,

between the following points and places:

(1) Between the Los Angeles Drayage Area, on the one hand, and Long Beach, Wilmington, and San Pedro, on the other hand, and

(2) Between the Los Angeles Drayage Area, Long Beach, Wilmington, and San Pedro, on the one hand, and all points and places in Orange County, on the other hand.

A public hearing was held in this matter in Los Angeles, California, on May 17, 1960, before Examiner Kent C. Rogers, evidence was presented, and the matter was submitted subject to the filing of concurrent briefs. These briefs were filed on August 1, 1960, and the matter is ready for decision. Prior to the hearing, notice thereof was given to carriers with which the applicant is likely to compete.

Since August, 1957, applicant has been transporting limited commodities by truck pursuant to radial highway common carrier, highway contract carrier, and city carrier permits issued by this Commission.

The service has principally been between Los Angeles and Long Beach, Los Angeles and Orange County points, and Long Beach and Orange County points.

The record herein shows that applicant has the facilities, equipment, and experience to render the proposed service, and that he has a sound financial position.

Applicant proposes to render twice-daily service five days per week and will make deliveries on Saturday, when requested. He will charge and collect rates in conformity with the minimum rates prescribed by this Commission.

Applicant called representatives of five receivers as witnesses. The companies represented were located in Anaheim and Santa Ana, and they deal in home appliances, televisions, Hi-Fi sets, electrical fixtures, batteries, chemicals and various other items the applicant desires authority to transport. The witnesses' companies receive the shipments from the Los Angeles Drayage Area or Long Beach. None of them desired service between the Los Angeles area and Long Beach and only one had any need for service from Orange County points into Los Angeles or Long Beach. All of these witnesses designate in whole or in part the carriers who carry the goods into their places of business. They all use applicant's services and have been using applicant's services for various periods of time varying from one and one-half to three years. These witnesses also use the services of competing carriers to a greater or lesser extent. All of them desire that the applicant continue to render service as it has in the past.

It was stipulated that if representatives of five other consignees were called as witnesses they would testify to the same effect as those who testified. Of the prospective witnesses, two have places of business in Garden Grove, one in Stanton, one in Fullerton, and one in Orange, all of which are in Orange County.

The record shows further that the protestants now provide a service similar to that proposed by the applicant, and

that they have satisfactory facilities, finances, and equipment to provide the service.

From the record herein it appears and we find that public convenience and necessity require that applicant be given the authority he has requested as a highway common carrier to carry limited commodities, as stated in the order herein, between the Los Angeles Drayage Area and the City of Long Beach, on the one hand, and the cities of Santa Ana, Anaheim, Fullerton, Orange, Stanton, and Garden Grove in Orange County, on the other hand, and that in all other respects the application should be denied.

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.

The protestant City Transfer, Inc., was the former employer of applicant. This protestant attempted to show throughout the hearing that Mr. Woodmansee had secured his customers by using confidential information he had obtained as an employee of City Transfer, Inc., during a period of approximately seven years, which employment terminated early in 1957. Shortly

thereafter applicant secured his permits and commenced operation as a permitted carrier. While he admitted during the hearing that he secured some knowledge of the customers' habits and desires as a result of his employment by City Transfer, Inc., the customers themselves denied that they switched from City Transfer, Inc., to applicant herein as a result of solicitation at or about the time applicant started his own trucking business, and stated that they were using applicant's company as a result of the good service rendered by him. Most of them still use the services of City Transfer, Inc., and the other carriers serving the areas.

At the close of the hearing the parties presented briefs on the question of whether or not the taking of customers from City Transfer, Inc., by applicant would constitute unfair competition which could be enjoined. It is our opinion that this Commission is not the appropriate forum for a determination of such an issue. The question for determination here is whether or not public convenience and necessity warrant the granting of the requested authority.

O R D E R

An application having been filed, a public hearing having been held thereon, the Commission having found that public convenience and necessity require that the authority set forth in the ensuing order be granted, and based on said finding,

IT IS ORDERED:

(1) That a certificate of public convenience and necessity be and it is granted to Jack Woodmansee authorizing him to transport specified commodities as a highway common carrier, as

defined in Section 213 of the Public Utilities Code, between the points as more particularly set forth in Appendices A and B 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.

IT IS FURTHER ORDERED that, except as specifically granted by the decision herein, Application No. 41943 be and it hereby is denied.

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]

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

Jack Woodmansee, by the certificate of public convenience and necessity granted in the decision noted in the margin, is authorized to transport:

- (1) BOILERS, FURNACES, RADIATORS, STOVES, RELATED ARTICLES OR PARTS NAMED, as described in Items 11960 through 13280. (See Note)
- (2) CONDUITS, PIPE, SMOKESTACKS, TUBING OR FITTINGS, iron or steel, as described in Items 29540 through 30200. (See Note)
- (3) COOLERS, COOLING BOXES, COOLING ROOMS OR REFRIGERATORS, as described in Items 30600 through 30740. (See Note)
- (4) ELECTRICAL APPLIANCES OR EQUIPMENT, OR PARTS NAMED, as described in Items 34020 through 35430. (See Note)
- (5) GAMES OR TOYS, as described in Items 44710 through 45200. (See Note)
- (6) UNCRATED NEW FURNITURE, viz; New furniture as described in Items 42360 through 44210, and lamp shades or reflectors and lamp standards or electric lamps and shades combined when the furniture or other articles are tendered to the carrier loose (not in packages nor completely wrapped). (See Note)
- (7) MISCELLANEOUS COMMODITIES, viz;
 - (a) Crude petroleum treating compound
 - (b) Radio receiving set, phonograph, talking machine, television set, amplifier or loud speaker box type or console type cabinets
 - (c) Radio or television aerial or antenna marts

NOTE: The term "Items" as used above refers to the specified items as listed in Western Classification 77, J. P. Hackler, Tariff Publishing Officer, on the issue date thereof and Supplements 9, 11 and 13 thereto.

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- (d) Radio or television cabinet backs
- (e) Radio or television roof aerial supports
- (f) Talking machine or phonograph operating and sound mechanism assemblies or turntables
- (g) Talking machine or phonograph parts or needles
- (h) Talking machines or phonographs, including coin operated talking machines, or recorders, tape or wire
- (i) Television image magnifying lenses
- (j) Television tables or stands
- (k) Wire, brass, bronze or copper

Between points in the Los Angeles Drayage Area as described in Appendix B attached hereto and Long Beach, on the one hand, and, on the other hand, Santa Ana, Anaheim, Fullerton, Orange, Stanton and Garden Grove.

The authority herein granted does not include the right to serve to, from or between intermediate points.

Applicant shall not transport any shipment having both point of origin and point of destination within the Los Angeles Drayage Area as described in Appendix B attached hereto.

End of Appendix A

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LOS ANGELES DRAYAGE AREA includes the area embraced by the following boundary:

Beginning at the intersection of 88th Street and Vermont Avenue; southerly along Vermont Avenue to 120th Street; easterly along 120th Street and its prolongation to Alameda Street; northerly along Alameda Street to Century Boulevard; easterly along Century Boulevard to Santa Fe Avenue; northerly along Santa Fe Avenue to Tweedy Boulevard; easterly along Tweedy Boulevard to Stanford Avenue; northerly along Stanford Avenue to Southern Avenue; easterly along Southern Avenue to Atlantic Avenue; southerly along Atlantic Avenue to Southern Avenue; easterly along Southern Avenue to the west bank of the Los Angeles River; northerly along the west bank of the Los Angeles River to Gage Avenue; easterly along Gage Avenue to Garfield Avenue; northeasterly along Garfield Avenue to Anaheim Telegraph Road; southeasterly along Anaheim Telegraph Road to Church Street; northeasterly along Church Street and its prolongation across the Atchison, Topeka and Santa Fe right of way to Vail Avenue; north-easterly along Vail Avenue to Ferguson Drive; westerly along Ferguson Drive to Gerhart Street; northerly along Gerhart Street to Hubbard Avenue; westerly along Hubbard Avenue and its prolongation to Eastern Avenue; southerly along Eastern Avenue to Whittier Boulevard; westerly along Whittier Boulevard to Downey Road; northerly along Downey Road to Hubbard Avenue; westerly along Hubbard Avenue to Indiana Street; northerly along Indiana Street and its prolongation to City Terrace Drive; northerly along City Terrace Drive to Ramona Boulevard; northeasterly along Ramona Boulevard to Eastern Avenue; northerly along Eastern Avenue and Marianna Avenue to the boundary line of the City of Los Angeles; easterly, northerly and westerly along the boundary of the City of Los Angeles to the boundary of Forest Lawn Memorial Park; southwestly and northwestly along the boundary of Forest Lawn Memorial Park to Rossllyn Street; southwestly along Rossllyn Street to San Fernando Road; southeasterly along San Fernando Road to Tyburn Street; southwestly along Tyburn Street to its intersection with the boundary of the City of Los Angeles; northwestly and westerly along the boundary of the City of Los Angeles to Barham Boulevard; southerly along Barham Boulevard to Cahuenga Boulevard; southeasterly along Cahuenga Boulevard to Mulholland Highway; westerly along Mulholland Highway to Coldwater Canyon Road; southerly along Coldwater Canyon Road to the boundary of the City of Beverly Hills; southeasterly along the boundary of the City of Beverly Hills to the intersection of La Cienega Boulevard and Olympic Boulevard; easterly along Olympic Boulevard to Victoria Avenue; southerly along Victoria Avenue to Exposition Boulevard; easterly along Exposition Boulevard to Crenshaw Boulevard; southerly along Crenshaw Boulevard to Stocker Street; westerly along Stocker Street to Victoria Avenue; southerly along Victoria Avenue to Slauson Avenue; westerly along Slauson Avenue to Brynhurst Avenue; southerly along Brynhurst Avenue to 59th Street; easterly along 59th Street to Van Ness Avenue; southerly along Van Ness Avenue to 74th Street; easterly along 74th Street to Normandie Avenue; southerly along Normandie Avenue to 88th Street; easterly along 88th Street to the point of beginning.