

ORIGINALDecision No. 61032

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of:
 NEEDLES-BLYTHE FREIGHT LINES, a
 California corporation, for an in
 lieu certificate of public conven-
 ience and necessity as a highway
 common carrier of general com-
 modities between Needles and Blythe,
 California, and certain points in
 Southern California, pursuant to
 Sections 1063-1064 of the California
 Public Utilities Code.

Application No. 41528

Glanz, Russell and Schureman, by Arthur Glanz,
 for applicant.

Gordon, Knapp, Gill and Hibbert, by Wyman Knapp,
 for Milne Truck Lines, Inc., protestant.

OPINION AFTER REHEARING

Needles-Blythe Freight Lines, a California corporation, is operating under permitted authority as a radial highway common carrier and as a highway contract carrier. The applicant also operates as a highway common carrier under certificates of public convenience and necessity granted by Decision No. 54200, dated December 4, 1956, in Application No. 35945 and Decision No. 54651, dated March 12, 1957, in Application No. 35975 and transferred to Claypool and Co. by Decision No. 56436, dated April 1, 1958, in Application No. 39805. All of said certificates were transferred to the applicant by Decision No. 58859, dated August 11, 1959, in Application No. 41309. These certificates authorize the applicant to serve the following points and routes:

1. Between San Bernardino, on the one hand, and points on U. S. Highway No. 66 between Ludlow and Needles, both inclusive, on the other hand. (This service is restricted against refrigerated service).

2. Between Los Angeles and Riverside, on the one hand, and Blythe and points within 25 miles thereof, on the other hand. (This certificate includes the right to render refrigerated service).

Applicant filed the present application on September 29, 1959, seeking to enlarge its authority to transport general commodities, including commodities requiring refrigeration, over the routes and to the points described as follows:

- a. "Between Los Angeles, Riverside and San Bernardino, on the one hand, and points on U. S. Highway No. 66 between Ludlow and Needles, both inclusive, on the other hand."
- b. "Between Los Angeles and Riverside, on the one hand, and Blythe, and points within 25 miles thereof, on the other hand."
- c. "Between Needles and Blythe, serving all intermediate points on U. S. Highway No. 95 between said points, and, in addition thereto, the off route point of Earp."

Original Hearings and Decision

Hearings on the application were held on December 9, 1959 in Needles, and on December 13, 1959 in Los Angeles. The application was protested by Milne Truck Lines, Inc., a carrier with authority to carry general commodities, with exceptions, between Los Angeles, on the one hand, and Needles and points intermediate to Needles and the United States Army Base Hospital eight miles east of Daggett, on the other hand, via U. S. Highways Nos. 99 and 66. Following the hearings, Decision No. 59665, dated February 16, 1960, effective February 26, 1960, was issued herein.

Petitions for Reconsideration and Further Hearings

The applicant and the protestant each filed a Petition for Reconsideration. This Commission granted a rehearing and further hearings were held on June 15 and August 3, 1960, before Examiner Edward G. Fraser. Further evidence was received from both applicant

and the protestant and the matter was submitted twenty days from the receipt of the transcript on the final day of hearing, to allow time for the filing of concurrent briefs. The briefs have been received and the matter is now submitted and ready for a decision to issue.

Shipper Evidence and Support of Application

The president of the applicant testified that Needles-Blythe Freight Lines was incorporated during August of 1959 to take over the trucking operation of Claypool and Company, a family partnership. Claypool and Company owns and operates several enterprises in the Needles-Blythe area, including a supermarket and wholesale business in Blythe, and a dry goods, retail, and wholesale grocery in Needles. They also own a feed mill in San Bernardino and have retail and wholesale interests in Arizona. Claypool and Co. started in 1947 or 1948 to haul its own goods in a proprietary capacity. Other people requested service and Claypool and Co. started operations as a permitted carrier during 1952. In 1954 they applied under the policy decision (Decision No. 50448 in Case No. 5478, 53 P.U.C. 366) and received a certificate to operate from San Bernardino to Needles.

In 1959 all of Claypool and Co.'s operating authorities were transferred to the applicant herein. Needles-Blythe Freight Lines presently operates 9 tractors, 7 trailers, and 5 special trailers equipped with mechanical refrigeration plants. Applicant also leases 2 tractors, 2 trailers and 2 refrigeration units from Claypool and Co.

Seventeen shipper witnesses testified that the service proposed by the applicant was needed. Most of these witnesses

ship only to Blythe or Needles, although several testified they would occasionally use a highway common carrier service along U. S. Highway 95 between Blythe and Needles if it was dependable. One witness operated a motel and general store at Vidal on U. S. Highway 95. He stated regular service was needed along said highway from Blythe to Needles to serve resorts, motels, stores and the people who reside in the area. He testified that he is now required to pick up whatever he orders in Needles or Blythe.

The Protestant's Case

Milne Truck Lines, Inc., is an interstate carrier with its principal place of business in Salt Lake City, Utah. It holds operating rights from the Interstate Commerce Commission, the Public Service Commission of Utah and the California Public Utilities Commission. It serves the states of California, Nevada, Utah, Arizona and Colorado as an interstate carrier and employs about 300 men and women.

Protestant operates in California intrastate through the Los Angeles Basin Area and from Los Angeles to Newberry, Ludlow, Amboy and Needles (Exhibits 14, 15) via U.S. Highways 66 and 95 with intermediate service as described in the certificate. It maintains terminals in both Los Angeles (Exhibit 18) and Needles (Exhibit 19) with overnight service operating five days a week, Monday through Friday. Protestant operates 90 trucks and more than 100 tractors and trailers in its varied operations.

The president of the protestant testified that it has been providing service on the Los Angeles-Needles route since June of 1957. Protestant has hauled for everyone who applied for its service and it wishes to protest this application because granting of the

requested authority will seriously deplete its business and because it can adequately handle the present demand and any foreseeable growth with the trucks, tractors and trailers it now has assigned to the operation. Protestant further charges that the present applicant is owned by Claypool and Co., the most substantial shipper in the Needles area and that applicant may be granting Claypool and Co. a concession on the rates to be charged for split pickups. Protestant also alleges that the applicant has been hauling unlawfully as a highway common carrier from Los Angeles to Needles with increasing frequency since this application has been filed.

Discussion

The operation of a truck line by a large wholesale and retail grocery is certainly not unlawful in itself and seems to follow naturally from the basic needs of the original business. It is also evident that there is a need for regular service between Needles and Blythe along U. S. Highway 95 and that no one, other than the applicant, has requested the opportunity to provide this benefit.

Applicant holds a certificate as a highway common carrier to operate between "San Bernardino, on the one hand, and points on U. S. Highway No. 66 between Ludlow and Needles, both inclusive, on the other hand" (Exhibit No. 2). The applicant is therefore authorized to make regular pickups and deliveries in Needles. Applicant also has certificated authority to serve Los Angeles and Riverside, on the one hand, and Blythe, on the other hand, (Exhibits 1, 3 and 4). It seems logical to authorize an extension of applicant's certificates so that its operation in the Los Angeles area can be combined with that in the

Needles-Blythe area. The present application is in effect a request to combine the certificates the applicant now holds and to extend its authority into a zone along U. S. Highway 95 between Needles and Blythe, which no one else seems willing to serve. A contrary decision would undoubtedly force the applicant out of business or into an unlawful operation, since it is doubtful whether any grant of authority which did not include the right to provide service between the Los Angeles Area and Needles-Blythe could be a profitable operation.

The protestant's charge of unlawful operation cannot be resolved in a proceeding to determine public convenience and necessity. The applicant is therefore entitled to the benefit of the presumption that everyone is presumed to be operating legally (1963.1, 1963.33, Code of Civil Procedure, State of California).

Findings and Conclusions

Upon consideration of the record in this proceeding, the Commission finds that public convenience and necessity require that the application be granted. We find and conclude that there is a present and prospective need for the proposed extension and that the applicant possesses the experience and equipment to undertake and maintain the operations to be authorized. We are satisfied the applicant is capable of rapid and efficient service and that its specialized operations will aid it in service to the public. The Commission is of the opinion that the carrier's financial position is adequate and satisfactory for the purposes intended. We further find that the applicant possesses the resources to acquire such additional equipment as may be required.

O R D E R

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

IT IS ORDERED:

1. That an in-lieu certificate of public convenience and necessity is granted to Needles-Blythe Freight Lines, a California 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 along the routes as more particularly set forth in Appendix A hereto.
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 to 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 operating authority granted by Decisions Nos. 54200, 54651, 56436, and 58859 is hereby canceled, said cancellation to become effective concurrently with the effective date of the tariff filings required by paragraph 2(b) hereof.

4. That ordering paragraphs nos. 1, 2, 3 and 4 of Decision No. 59665, dated February 16, 1960, in this proceeding, are hereby vacated and set aside.

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

Dated at San Francisco, California, this 7th day of November, 1960.

Commissioner Everett C. McKeage . being necessarily absent. . . not participating in the disposition of this proceeding.
in the disposition of this proceeding.

[Signature] President
[Signature]
[Signature]
Theodore J. Jenner Commissioners

Needles-Blythe Freight Lines, by the certificate of public convenience and necessity granted in the decision noted in the margin, is authorized to transport general commodities over the routes and between all points hereinafter described.

- (1) Between Los Angeles, Riverside and San Bernardino, on the one hand, and points on U. S. Highway 66 between Ludlow and Needles, both inclusive, on the other hand.
- (2) Between Los Angeles and Riverside, on the one hand, and Blythe and points within twenty-five miles thereof, on the other hand.
- (3) Between Needles and Blythe serving all intermediate points on U. S. Highway 95 between said points, and in addition thereto the off-route point of Earp.

Applicant may establish through routes and joint rates, charges and classifications as to the separate authorities hereinabove described.

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.
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.

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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. 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.
5. Commodities when transported in bulk in dump trucks or in hopper-type trucks.
6. Commodities when transported in motor vehicles equipped for mechanical mixing in transit.

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