

Decision No. 61450

**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
 BURTON TRUCK & TRANSFER CO., a cor- )  
 poration, for an in lieu certificate )  
 of public convenience and necessity )  
 as a highway common carrier of gen- )  
 eral commodities between points in )  
 the Los Angeles Basin Territory, and )  
 between said Territory and San )  
 Diego serving intermediate points, )  
 pursuant to Sections 1063-1064 of )  
 the California Public Utilities )  
 Code. )

Application No. 42813

Glanz, Russell & Schureman, by R. Y. Schureman, for applicant.

O P I N I O N

By the application herein, filed on November 1, 1960, applicant, a highway common carrier operating as such pursuant to authority from this Commission, seeks to extend such authority and to have its certificate of public convenience and necessity restated to include its present rights and whatever additional authority may be granted herein. Applicant now seeks to transport general commodities with exceptions:

1. Between points in the Los Angeles Basin Territory as described in Item 270-B of Minimum Rate Tariff No. 2.
2. Between the Los Angeles Basin Territory, on the one hand, and on the other hand, the San Diego Territory as described in Item 271-C of Minimum Rate Tariff No. 2, serving all intermediate points on U. S. Highways Nos. 101 and 395 and on State Highway No. 78 between said highways, and all points laterally within five miles of the portion of U.S. Highway No. 101 extending from the Los Angeles Basin Territory to the San Diego Territory.

A public hearing on the application was held before Examiner Kent C. Rogers in Los Angeles on December 13, 1960.

Prior to said hearing, notice thereof was served on all parties with which applicant was likely to compete. There were no protests.

Service is proposed between all points in the Los Angeles Basin Territory and between all points in said territory, on the one hand, and, on the other hand, all points in the San Diego Territory and all points on U.S. Highways Nos. 395 and 101 and on State Highway No. 78 between the said Los Angeles Basin Territory and the San Diego Territory. No local service is proposed outside of the Los Angeles Basin Territory.

Applicant will use the most direct route in performing the service.

As justification for the granting of the requested authority, applicant alleges that it and its predecessors have been engaged in the For-hire transportation business in Southern California for approximately half a century; that it is authorized to haul general commodities, with exceptions, between points in an area comprising most of Los Angeles County south of the Angeles National Forest, and the western half of Orange County; that the present operations are conducted pursuant to an in lieu certificate of public convenience and necessity received in 1956 based upon its motor carrier operations conducted on September 10, 1953; that since the grant of its latest authority, there has been a continuous and substantial growth not only in the Los Angeles Basin Territory, but also between said territory and the San Diego Territory, including intermediate points along the coast and on U.S. Highway No. 395; that as a result the point has been reached where the area applicant seeks to serve has become one vast residential.

commercial and industrial area; and that shippers require and demand the services of individual carriers providing transportation between all points in the entire area.

Applicant called as witnesses representatives of six manufacturers or distributors of general commodities having shipments originating in the Los Angeles Basin Territory which companies use or would use applicant's services for the transportation of substantial tonnages and numbers of shipments between points in the Los Angeles Basin Territory, and between the Los Angeles Basin Territory, on the one hand, and the San Diego Territory and points intermediate between the two territories along U.S. Highways Nos. 101 and 395, on the other hand. These parties now use the applicant's services as a permitted carrier and as a certificated carrier and desire that applicant be authorized to serve the entire proposed service area as a highway common carrier.

The service will be daily, except Sundays and holidays, between points in the Los Angeles Basin Territory and between said territory and the San Diego Territory.

Applicant is a party to Western Motor Tariff Bureau, Inc., Agent, Local, Joint and Proportional Freight Tariff No. 17-A, California P.U.C. No. 33 (Elmer Ahl, Agent, Series) in the publication of its rates and charges with respect to the general commodities which it presently transports between those points which it now serves as a highway common carrier. In connection with the proposed service, it proposes to establish rates substantially in conformity with rates presently published in the said tariff.

Applicant has a terminal in Los Angeles and if given the authority it has requested will establish a terminal in San Diego. It owns and operates approximately 47 pieces of revenue equipment.

Upon a review of the record, it appears that applicant's financial condition is adequate to warrant an order granting its request.

The Commission having considered the matter is of the opinion and finds and concludes that public convenience and necessity require that applicant be authorized to establish and operate a highway common carrier service as hereinafter set forth. An in lieu certificate will be granted for the purpose of clarification in place of applicant's present operating authority which will be canceled.

Burton Truck & Transfer Co. 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

An application having been filed, the Commission having found that public convenience and necessity require that applicant be granted the authority it has requested and based on said finding,

IT IS ORDERED:

(1) That a certificate of public convenience and necessity is granted to Burton Truck & Transfer Co., 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 as more particularly set forth in Appendix A, Appendix B, and Appendix C 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 one hundred twenty 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 as a highway common carrier heretofore granted to Burton Truck & Transfer Co. by Decision No. 54051, dated November 5, 1956, in Application No. 35924, 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 7th day of FEBRUARY, 1961

Ernest W. Rade  
President  
John E. Mitchell  
E. J. Fox  
George H. Brewer  
Frederick B. Halaloff  
Commissioners

Burton Truck & Transfer Co., a corporation, by the certificate of public convenience and necessity granted in the decision noted in the margin, is authorized to transport general commodities:

1. Between all points and places within the Los Angeles Basin Territory as described in Appendix B attached hereto.
2. Between the Los Angeles Basin Territory, on the one hand, and on the other hand, all points and places within the San Diego Territory, as described in Appendix C attached hereto.
3. From the Los Angeles Basin Territory, on the one hand, to (a) all points on U. S. Highways Nos. 101 and 395 between the Los Angeles Basin Territory and the San Diego Territory; (b) all points laterally within five miles of U. S. Highway No. 101 between the Los Angeles Basin Territory and the San Diego Territory; (c) all points on State Highway 78 between junction with U. S. Highways 101 and 395, on the other hand.

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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.
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 refrigerated 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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APPENDIX B TO DECISION NO. 61450

LOS ANGELES BASIN TERRITORY includes that area embraced by the following boundary: Beginning at the point the Ventura County-Los Angeles County boundary line intersects the Pacific Ocean; thence northeasterly along said county line to the point it intersects State Highway No. 118, approximately two miles west of Chatsworth; easterly along State Highway No. 118 to Sepulveda Boulevard; northerly along Sepulveda Boulevard to Chatsworth Drive; northeasterly along Chatsworth Drive to the corporate boundary of the City of San Fernando; westerly and northerly along said corporate boundary to McClay Avenue; northeasterly along McClay Avenue and its prolongation to the Angeles National Forest Boundary; southeasterly and easterly along the Angeles National Forest and San Bernardino National Forest boundary to the county road known as Mill Creek Road; westerly along Mill Creek Road to the county road 3.8 miles north of Yucaipa; southerly along said county road to and including the unincorporated community of Yucaipa; westerly along Redlands Boulevard to U. S. Highway No. 99; northwesterly along U. S. Highway No. 99 to the corporate boundary of the City of Redlands; westerly and northerly along said corporate boundary to Brookside Avenue; westerly along Brookside Avenue to Barton Avenue; westerly along Barton Avenue and its prolongation to Palm Avenue; westerly along Palm Avenue to La Cadena Drive; southwestwesterly along La Cadena Drive to Iowa Avenue; southerly along Iowa Avenue to U. S. Highway No. 60; southwestwesterly along U. S. Highways Nos. 60 and 395 to the county road approximately one mile north of Perris; easterly along said county road via Nuevo and Lakeview to the corporate boundary of the City of San Jacinto; easterly, southerly and westerly along said corporate boundary to San Jacinto Avenue; southerly along San Jacinto Avenue to State Highway No. 74; westerly along State Highway No. 74 to the corporate boundary of the City of Hemet; southerly, westerly and northerly along said corporate boundary to the right of way of The Archison, Topeka & Santa Fe Railway Company; southwestwesterly along said right of way to Washington Avenue; southerly along Washington Avenue, through and including the unincorporated community of Winchester to Benton Road; westerly along Benton Road to the county road intersecting U. S. Highway No. 395, 2.1 miles north of the unincorporated community of Temecula; southerly along said county road to U. S. Highway No. 395; south-easterly along U. S. Highway No. 395 to the Riverside County-San Diego County boundary line; westerly along said boundary line to the Orange County-San Diego County boundary line; southerly along said boundary line to the Pacific Ocean; northwesterly along the shore line of the Pacific Ocean to point of beginning.

APPENDIX C TO DECISION NO. 61450

SAN DIEGO TERRITORY includes that area as embraced by the following imaginary line, starting at the northerly junction of U. S. Highways Nos. 101E and 101W (4 miles north of La Jolla); thence easterly to Miramar on U. S. Highway No. 395; thence southeasterly to Lakeside on the El Cajon-Ramona Highway; thence southerly to Bostonia on U. S. Highway No. 80; thence southeasterly to Jamul on State Highway No. 94; thence due south to the International Boundary Line, west to the Pacific Ocean and north along the coast to the point of beginning.