

ORIGINALDecision No. 62448

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of:
 BRAKE DELIVERY SERVICE, a corporation,
 for an in lieu certificate of public
 convenience and necessity as a high-
 way common carrier of general commodi-
 ties between all points in the Los
 Angeles Basin Region as herein de-
 scribed and between said territory
 and the San Diego Territory as herein
 described, serving intermediate points,
 pursuant to Section 1063-1064 of the
 California Public Utilities Code.

Application No. 42800
 (Filed October 28, 1960)

Glanz, Russell & Schureman, by Theodore Russell,
 for applicant.

Graham James & Rolph, by Boris H. Lakusta and
 Leo Vander Lans, for California Motor
 Express, Ltd., and California Motor Transport
 Co., Ltd., Delta Lines, Inc., D. Salvo
 Trucking Co., Fortier Transportation Co.,
 Interlines Motor Express, Merchants Express
 of California, Oregon-Nevada-California Fast
 Freight and Southern California Freight
 Lines, Pacific Motor Trucking Co.,
 Shippers Express, Sterling Transit Co., Inc.,
 Valley Express and Valley Motor Lines, Inc.,
 and Willig Freight Lines, protestants.

O P I N I O N

Hearing was held in the above-entitled matter at Los An-
 geles on March 8, April 14 and 18, 1961, before Examiner Mark V.
 Chiesa. It was submitted for decision subject to the filing of
 concurrent briefs which have been received. Copies of the appli-
 cation and notice of hearing were served in accordance with the
 Commission's procedural rules. Protestants are listed above.

By Decision No. 59643 applicant was authorized to trans-
 port general commodities, subject to the usual exceptions, between

(a) all points and places in the Los Angeles Basin Territory, and between (b) Inglewood and Los Angeles and points in the San Diego Territory, including intermediate points along U. S. Highways Nos. 101 and 101-A, all as more particularly described in Appendix B of said decision.¹ The authority does not include the right to serve between points within the San Diego Territory. Applicant also has authority to operate as a radial highway common carrier, highway contract carrier, and city carrier.

By this application additional authority is sought (a) to enlarge applicant's present Los Angeles Basin Territory by adding thereto a portion of the west San Fernando Valley, (b) to serve between all points in the enlarged Los Angeles Basin Territory, on the one hand, and all points in the San Diego Territory, on the other hand, and (c) to include, as intermediate points of service, portions of State Highway No. 78 and U. S. Highway No. 395, including points laterally within five miles of said highways, all as more specifically set forth in the application.

Applicant is a party to Western Motor Tariff Bureau, Inc., Agent, Local, Joint and Proportional Freight Tariff No. 17-A, Cal. P.U.C. No. 33 (Elmer Ahl, Agent, Series) W. J. Knoell, issuing officer. In addition, it publishes its own Brake Delivery Service Parcel Tariff No. 1, Cal. P.U.C. No. 1. It proposes to establish rates substantially in conformity with rates published in the above-described tariffs. Applicant is not a party to any through routes or joint rates.

¹ The Los Angeles Basin Territory description in said Appendix B is not as extensive as the Los Angeles Basin Territory description in Minimum Rate Tariff No. 2 - Item 270.

Applicant proposes service five days per week, with following-day delivery to all areas and same-day delivery in some areas contiguous to Los Angeles, provided early-morning pickups are arranged. Fifteen routes are now operated in the Los Angeles Basin area and it is proposed to continue or revise said routes to meet shipper needs. The record shows that applicant now frequently serves the west San Fernando Valley area, not at present certificated, and that permit carriage shipments are handled between points in the Los Angeles Basin area, other than Inglewood and Los Angeles, and points in the San Diego Territory.

The evidence of record shows and we find that applicant has adequate terminal facilities and motor vehicle equipment, and that it employs trained personnel.

Its financial condition, as of December 31, 1960, was as follows:

Total Assets	\$144,936.07	
Total Liabilities	<u>47,123.73</u>	\$97,812.34
Represented by		
Capital Stock	\$ 47,190.00	
Surplus	<u>50,622.34</u>	\$97,812.34

Its net profit for the years 1959 and 1960 were \$12,981.28 and \$21,355.72, respectively.

Eight shipper witnesses testified in support of the application. Generally, they testified that they are now using applicant's service either as a highway common carrier or a permitted carrier; that said service is satisfactory; that they need and want applicant's proposed highway common carrier service for shipments into the new areas, and that it would be convenient and economical for them to use applicant's proposed service. Several of the

shipper witnesses testified that their business is expanding into the area outside of Los Angeles and Inglewood; that they have an increasing need to ship from and to new points and places not included in applicant's present certificated area.

The principal place of business and shipping point of the companies represented by said witnesses were located as follows: two in Los Angeles, three in the City of Commerce, and one each in Glendale, Whittier and San Gabriel. Four shipped drugs and sundries, one business forms, one cameras and film, one ladies garments, and one packaged goods for others. Four now use applicant's service exclusively either as a highway common carrier and/or permitted carrier, and four use applicant and one or more other carriers. The principal destinations of said shipments were the Los Angeles Basin and San Diego Territories and the proposed San Fernando Valley area. All witnesses testified that they were satisfied with the services they are now receiving from applicant and that they were aware that other highway common carriers are authorized to operate in the areas to which they ship merchandise. Their principal reason for not using other carriers is that they have been receiving satisfactory service from applicant.

The protestants presenting evidence in this proceeding were California Motor Express, Ltd., Southern California Freight Lines, and Merchants Express of California. The evidence shows that said protestants, as well as other highway common carriers, serve all or portions of the areas proposed in this application. Their position is that no public need exists for additional highway common carrier service in the area as proposed; that adequate highway common carrier transportation is now available to the public and that they are

ready, able and willing to take care of the shipping needs of applicant's witnesses and others; that certification of additional carriers tends to dilute the business, reduce revenue, deteriorate service, and increase rates. Evidence presented by the protesting witnesses shows that they are qualified, able and willing to transport the commodities shipped by applicant's witnesses.

The evidence shows and we find that there is a public need for some of applicant's proposed highway common carrier service; that applicant's present Los Angeles Basin authority should be enlarged to include the western portion of the San Fernando Valley and that it should be authorized to serve between all points in the Los Angeles Basin Territory, as described in the application, and the San Diego Territory, and that applicant now has authority to operate as a highway common carrier between the principal shipping area in the Los Angeles Basin (Los Angeles and Inglewood) and the San Diego Territory serving intermediate points along U. S. Highways Nos. 101 and 101-A.

Having considered the record, the Commission finds and concludes that public convenience and necessity require that applicant's operating authority be extended and enlarged as hereinafter set forth, and that applicant possesses the experience, facilities and equipment, personnel, and financial resources to establish and maintain said transportation service. However, we are unable to find that public convenience and necessity require that applicant be authorized to serve points and places along portions of State Highway No. 78 and U. S. Highway No. 395, as proposed in the application. Except as hereinafter authorized, the application will be denied.

Applicant will be issued a certificate which will supersede its present highway common carrier operating authority.

Brake Delivery Service 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, public hearing having been held, and based on the evidence therein adduced,

IT IS ORDERED:

1. That a certificate of public convenience and necessity is granted to Brake Delivery Service, a corporation, authorizing it 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 more particularly set forth in Appendix A and Appendix B attached hereto and hereby 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-B. 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-B, 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 and timetables 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 certificate of public convenience and necessity granted to Brake Delivery Service, a corporation, by Decision No. 59643, dated February 9, 1960, on Application No. 41678, which certificate is hereby revoked, said revocation to become effective

concurrently with the effective date of the tariff filing 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 22nd day of AUGUST, 1961.

Arnold R. Rose
President

[Signature]

[Signature]

Frederick B. Holshoff
Commissioners

Brake Delivery Service, a corporation, by certificate of public convenience and necessity granted in the decision noted in the margin, is authorized to transport general commodities between:

- A. All points and places in the Los Angeles Basin Area as said area is described in Appendix B hereto attached.
- B. Points in said Los Angeles Basin Area, on the one hand, and the San Diego Territory as also described in said Appendix B, including intermediate points on and along U. S. Highways Nos. 101 and 101-A.

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.

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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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LOS ANGELES BASIN AREA:

Beginning at the intersection of the westerly boundary of the City of Los Angeles and the Pacific Ocean, thence along the westerly and northerly boundaries of said city to its point of first intersection with the southerly boundary of Angeles National Forest, thence along the southerly boundary of Angeles and San Bernardino National Forests 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; north-westerly along U. S. Highway No. 99 to and including the City of Redlands; westerly along U. S. Highway No. 99 to U. S. Highway No. 395; southerly along U. S. Highway No. 395 to State Highway No. 18; southwesterly along State Highway No. 18 to U. S. Highway No. 91; westerly along U. S. Highway No. 91 to State Highway No. 55; southerly on State Highway No. 55 and the prolongation thereof to the Pacific Ocean; westerly and northerly along the shoreline of the Pacific Ocean to a point of beginning.

SAN DIEGO TERRITORY:

Includes that area embraced by the following imaginary line starting at the northerly junction of U. S. Highways Nos. 101-E and 101-W (four miles north of La Jolla); thence easterly to Miramar on State 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 point of beginning.

End of Appendix B

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