

ORIGINAL

Decision No. 62598

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the application of
 (a) BARGSTEN TRUCK LINES, INC., a corporation,
 to purchase, and of WILLIAM F. MCVEIGH, an
 individual doing business as PIONEER TRANSFER
 and PACIFIC MOTOR EXPRESS, to sell, motor
 vehicle equipment, pursuant to Sections 851-
 853 of the California Public Utilities Code;
 (b) BARGSTEN TRUCK LINES, INC., a corporation,
 to issue shares of its common capital stock
 pursuant to Sections 816-830 of the California
 Public Utilities Code; (c) BARGSTEN TRUCK LINES,
 INC., a corporation, for a certificate of public
 convenience and necessity as a highway common
 carrier of general commodities between points
 in the Los Angeles Basin Territory, and between
 said Territory and the San Diego Territory
 serving intermediate points, pursuant to
 Sections 1063-64 of the California Public
 Utilities Code; (d) WILLIAM F. MCVEIGH, an
 individual doing business as PIONEER TRANSFER
 and PACIFIC MOTOR EXPRESS, for revocation of
 all certificates of public convenience and
 necessity owned and held by him, pursuant to
 Section 1070 of the California Public Utilities
 Code.

Application
 No. 43265
 (Filed
 March 28, 1961)

Russell and Schureman, by R. Y. Schureman, for
 applicant.

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

Walter Dennison, for Merrifield Trucking Company,
 interested party.

A. L. Gielegghem, for the Finance and Accounts
 Division of the Commission.

O P I N I O N

This application was heard before Examiner Kent C. Rogers in Los Angeles on May 25 and 26 and August 4, 1961. On the latter date the matter was argued and submitted subject to the filing of Exhibit No. 10. This exhibit has been filed and the matter is ready for submission. Copies of the application and notices of hearing were served in accordance with the Commission's procedural rules. Appearing protestants and interested parties are listed below.

Applicant Bargsten Truck Lines, Inc. (Bargsten) is a California corporation engaged in the transportation of frozen food products and general commodities in and around the Los Angeles Basin Territory and between said territory and the San Diego Territory, among other points. This transportation is pursuant to permits issued by this Commission. It has no certificate of public convenience and necessity.

Applicant William F. McVeigh (McVeigh) is operating as a highway common carrier of general commodities between Corona, Elsinore, Temecula, Los Angeles, and intermediate points and specified commodities between Corona and Los Angeles and the Los Angeles Harbor. He also has the various types of permits issued by this Commission.

By the application herein, Bargsten seeks a certificate of public convenience and necessity as a highway common carrier for the transportation of general commodities, with exceptions,

(a) Between points in the Los Angeles Basin Territory.

- (b) Between points in the Los Angeles Basin Territory, on the one hand, and points in the San Diego Territory, on the other hand, serving all intermediate points on U. S. Highways Nos. 101 and 395, and on State Highway No. 78 between U. S. Highways Nos. 101 and 395, and all points laterally within five miles of that portion of U. S. Highway No. 101 between said territories.

It is contemplated that Bargsten will acquire all of McVeigh's equipment and facilities, including the use of his terminal in Corona, and serve the highway common carrier customers of McVeigh and request issuance of a new certificate restating the highway common carrier operative rights then held by Bargsten.

Bargsten was incorporated as a permitted carrier and hence secured authority to issue stock from the Commissioner of Corporations. The corporation's articles permit 25,000 shares of \$10 per share par value common stock to be issued. The Corporation Commissioner has authorized Bargsten to issue 500 of such shares, including 250 shares to John J. Bargsten, 100 shares to Lloyd G. Blount, and 50 shares to Henry S. Dahl. Through inadvertence, the corporation issued said stock to said individuals and their wives as joint tenants for cash. It is requested that the Commission authorize the replacement of the said improperly issued certificates or shares with shares issued to the proper parties with no additional consideration. One hundred of said shares were properly issued and require no action.

In addition, applicant Bargsten requests authority to issue to William F. McVeigh and Dorothy L. McVeigh, as joint tenants, 250 shares of its stock in exchange for the motor vehicle equipment now owned by McVeigh, Bargsten to assume any obligations thereon.

The motor vehicle equipment had a claimed net book value of \$6,216.33 at the end of December 1960 (Exhibit No. 6).

The officers of the corporation will be John J. Bargsten, President, William F. McVeigh, Vice President, and Henry S. Dahl, Secretary-Treasurer. The directors will be John J. Bargsten, Lloyd G. Blount, Henry S. Dahl, William F. McVeigh, Frances S. Taylor, Thomas A. Henry and Richard M. Wagner. All stock issued will be held by members of this group, plus, in some instances, their wives as joint tenants.

Service will be on call daily, except Sundays and holidays. Regular service will be overnight, but a same-day service will be provided on request between points in the Los Angeles Basin Territory, if requests for pickups are made before approximately 10:00 a.m.

The rates will be in substantial conformity with those set forth in Minimum Rate Tariff No. 2 of this Commission.

Bargsten has approximately 20 pieces of equipment of all types and will acquire approximately 20 more from McVeigh.

Bargsten's current assets as of December 31, 1960, totaled \$14,549 and its current liabilities, including \$20,456 of obligations due within one year, totaled \$34,211. Of this sum \$13,212 represents unsecured notes, and \$5,500 represents indebtedness to John J. Bargsten and Lloyd G. Blount. For the year 1960 it had a net income, before taxes, of \$5,285.

Bargsten has a terminal in Fullerton which it leases from Anaheim Cold Storage Company. This terminal is 1½ acres in size. McVeigh has a 100-foot by 100-foot terminal in Corona on which he has a shop and a dock with space for about four trucks.

McVeigh will rent this terminal to Bargsten. These are the only terminal areas to be used by Bargsten.

Bargsten operates as a contract, radial and city carrier. The majority of such operations are performed in the Los Angeles Basin Territory with the balance being service north to Ventura and Santa Barbara County points and a lesser volume south to San Diego and Imperial County points. The record reflects a consistent growth in population and business in the area for which a certificate is requested.

McVeigh said he is selling the assets of and discontinuing his highway common carrier business because, first, he has no joint rates and therefore cannot compete for any business to or from places not directly served by him, and, second, his name, Pacific Motor Express, is so similar to Pacific Motor Trucking Co., a state-wide carrier, that he loses business to said carrier. In addition, he does not have enough equipment and has to turn down business due to such lack. He contends that adding Bargsten's equipment to his will enable the surviving company to compete for business. In addition, his service area is such that he cannot serve the northwestern nor the northeastern portion of the Los Angeles Basin Territory, nor that portion thereof in Orange County,

south of Buena Park and Fullerton, and that portion east of Signal Hill in Los Angeles County.

During the year 1960, approximately 65 per cent of McVeigh's revenue was attributable to his certificated operations. McVeigh carries some property out of this certificated area under his permits. About 90 per cent of the shipments originate in Ontario or Corona. Shipments are carried to the San Diego area two or three times a week. He also carries two loads a day to Escondido. The latter shipments are mainly carried for the Corona Citrus Association, except that about one shipment a week to Escondido is a shipment of non-citrus products. McVeigh has also carried some shipments since January 1, 1961, to points on U. S. Highway No. 395 and on U. S. Highway No. 101 in the proposed service area and has carried some shipments to Orange County points such as Huntington Beach and Costa Mesa.

The applicants called 11 shippers' representatives as witnesses.

A producer of frozen fruits and vegetables ships from a warehouse in Fullerton into the proposed service area. Truckload

shipments are carried in its own vehicles. It only ships less than carload to points in the Los Angeles Basin Territory and for three years used, and now uses, Bargsten for these shipments.

A citrus-products producer in Anaheim ships to all points in the proposed service area except Camp Pendleton. Ninety percent of its shipments are carried in its own equipment and it will try to move all its shipments therewith. Bargsten has helped the company move its shipments in the past.

A frozen citrus concentrate producer has shipments from Hollywood and Fullerton to chain stores in Riverside, La Habra and Anaheim, and between Hollywood and Fullerton. A large part of this shipping is by Bargsten.

A wire cloth producer ships wire cloth to the proposed service area except the City of San Diego. It uses Bargsten exclusively.

A manufacturer of roofing granules (crushed rock) in Corona ships this product in sacks. It ships approximately 40 truckloads a week to points in the proposed service area. It uses McVeigh where possible but he does not have enough equipment so he only carries about 10% of the traffic.

An employee of Anaheim Cold Storage Company in Anaheim said that many of the storage customers authorized him to select the carriers for their shipments. He has selected Bargsten as the carrier for the various commodities, including fruit juices and concentrates, refrigerated and nonrefrigerated; bicycles; frozen meats; frozen pastries and fowl stuffing; charcoal briquettes; and canned goods. These products are shipped to all parts of the proposed service area.

A roofing contractor with warehouses in Escondido and Fullerton ships to the proposed service area. He installs about 200,000 pounds of roofing a month therein. About 15 to 40% of this transportation is carried by Bargsten.

A Santa Ana sugar producer ships all over the proposed service area. It uses several carriers, and about 20% of its shipments are by Bargsten.

A distributor of plywood panels ships them from San Diego to Corona and ships finishing machinery into the Los Angeles area for repairs (a constant process). It uses McVeigh for the shipments from Corona to Los Angeles.

A distributor of precast concrete wall panels, weighing 660 pounds per panel and shipped in packages of four, appeared for applicants. Shipments originate in Ontario and go to the entire service area. They must be made at night as the panels must be on the job site for use when the men arrive in the morning. They are very fragile and require special handling. McVeigh handles 90% of this shipper's business.

A producer of citrus products ships from Anaheim, Los Angeles and Fullerton to all the proposed area. It ships one-half a million tons per year, has a regular carrier but uses Bargsten for 10 to 15% of its hauling.

The above witnesses use the service by one or the other of the applicants and desire that the services be left available to them whether or not Bargsten receives its certificate. The representative of the precast concrete panel manufacturer had been able to get no one but McVeigh to handle his panels without excessive damage.

The manager of the Corona Chamber of Commerce appeared in support of the application and presented a copy of a resolution of the chamber supporting McVeigh.

The protestants called as witnesses representatives of Merchants Express of California, California Motor Transport Co., Ltd., Boulevard Transportation Co., Southern California Freight Lines, and Sterling Transit Co., Inc.

Each of the protestants serves the area proposed to be served, has at least two terminals in the service area (one has seven), advertises extensively, has numerous personnel and excess equipment, and particularly desires that the application be denied at least as far as the San Diego operations are concerned. (Some of the protestants provide same-day service in the Los Angeles Basin Territory.) It was pointed out that there are about forty certificated highway common carriers operating between San Diego and Los Angeles daily, and that the movement is mainly southbound with very little northbound traffic.

Upon consideration of the evidence, we find and conclude that Bargsten's proposed personnel has sufficient experience and that it will have sufficient personnel and financial resources to institute and maintain the proposed service in the Los Angeles Basin Territory. We further find and conclude that public convenience and necessity require that Bargsten receive a certificate of public convenience and necessity as a highway common carrier between all points in the Los Angeles Basin Territory. This considers the fact that applicant McVeigh has authority as a highway common carrier to serve a large part of the said basin territory and that the principal result of this certificate is to extend one carrier's rights rather than to add a new carrier. We further find and conclude that the evidence fails to show that public convenience and necessity require that Bargsten extend service as a highway common carrier beyond the Los Angeles Basin Territory and this portion of the application will be denied.

Bargsten Truck Lines, Inc., 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.

Bargsten will be authorized to exchange the 400 shares of stock erroneously issued as hereinabove stated and to issue, in lieu thereof, 400 shares of stock to any or all of the corporate directors above listed and/or their respective wives. In addition, Bargsten will be authorized to issue to William F. McVeigh and Dorothy L. McVeigh as joint tenants 250 shares of stock in exchange for the motor vehicle equipment owned by McVeigh and listed on Exhibit No. 6 herein, and William F. McVeigh will be authorized to transfer his motor vehicle equipment to Bargsten.

The Commission finds that the money, property or labor to be procured or paid for by the issue of the stock and indebtedness herein authorized is reasonably required for the purposes specified herein, and that such purposes are not, in whole or in part, reasonably chargeable to operating expenses or to income.

O R D E R

An application having been filed, public hearings having been held and based on the evidence therein adduced,

IT IS ORDERED:

1. That a certificate of public convenience and necessity be and it is granted to Bargsten Truck Lines, Inc., a corporation, authorizing it to operate as a highway common carrier, as defined

in Section 213 of the Public Utilities Code, between the points more particularly set forth in Appendix A attached hereto and made a part hereof.

2. That in providing service pursuant to the certificate herein granted, Bargsten Truck Lines, Inc., 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 satisfactory to the Commission.

3. That Bargsten Truck Lines, Inc., may issue not to exceed 250 shares of its \$10 par value common stock to William F. McVeigh and Dorothy L. McVeigh, as joint tenants.

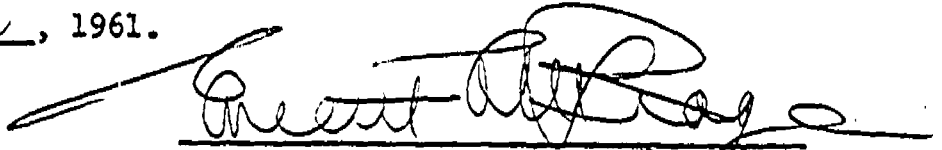
4. That Bargsten Truck Lines, Inc., may cancel 400 shares, its \$10 par value common stock heretofore issued to John J. Bargsten, Lucille E. Bargsten, Lloyd G. Blount, Nina I. Blount, Henry S. Dahl and Dorothy P. Dahl, and in lieu thereof issue 400 shares of such stock to the directors of the corporation and/or their wives as joint tenants, or any of said parties.

5. That William F. McVeigh may sell and transfer to Bargsten Truck Lines, Inc., the transportation equipment referred to in the opinion herein in exchange for said stock in said corporation and said corporation may acquire said equipment.

6. That the certificates of public convenience and necessity as a highway common carrier heretofore granted to or acquired by William F. McVeigh, and presently possessed by him, are hereby 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 25th day of September, 1961.



President



L. Fox



Frederick B. Holoboff

Commissioners

Commissioner Peter E. Mitchell, being necessarily absent, did not participate in the disposition of this proceeding.

Bargsten Truck Lines, Inc., a corporation, by the certificate of public convenience and necessity granted in the decision noted in the margin, is authorized to transport general commodities between all points within the Los Angeles Basin Territory, as more particularly described in Appendix B attached hereto.

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. 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.

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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.
7. Logs.

End of Appendix A

Issued by California Public Utilities Commission.

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APPENDIX B TO DECISION NO. 62598

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; southwesterly along La Cadena Drive to Iowa Avenue; southerly along Iowa Avenue to U. S. Highway No. 60; southwesterly 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 Atchison, Topeka & Santa Fe Railway Company; southwesterly 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; southeasterly 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.