

ORIGINALDecision No. 63297

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
 AIRWAY TRUCKING CO., a corporation,
 for a certificate of public convenience
 and necessity to extend highway
 common carrier services and to
 consolidate certain of its operating
 authorities.

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) Application No. 43067
) (Filed January 16, 1961)
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Wade & Wade, by James W. Wade, for applicant.
William M. Edwards, Graham, James & Rolph, by
Boris H. Lakusta, A. E. Reader, Arthur H.
Glanz, and Gus M. Somlyo, for the protestants.

O P I N I O N

This application was heard before Examiner Robert D. DeWolf on March 20, 21, 27; June 5 and 6, and August 7 and 8, 1961, and was submitted on August 8, 1961, subject to the filing of concurrent opening briefs and concurrent reply briefs which are now filed. Copies of the application and the notice of hearing were served in accordance with the Commission's procedural rules. The protestants are Paxton Trucking Company, California Motor Express, Ltd., and California Motor Transport Co., Ltd., Delta Lines, Inc., Di 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 Co. and Valley Motor Lines, Inc., Willig Freight Lines, Peters Truck Lines, Nielsen Freight Lines, Desert Express and Victorville-Barstow Truck Line.

The applicant is a highway common carrier presently transporting specific commodities necessary or incidental to oil and water wells, pipe lines and refineries and equipment used in farming over most major highways in California, with two limitations; first, a requirement of a minimum charge applicable to a weight of 10,000 pounds, and, second, the restriction that traffic be limited to commodities originating at or destined to an oil well site or storage yard, or construction sites and farms. Applicant also holds a petroleum irregular route certificate and radial and contract carrier permits. Applicant requests authorization for removal of existing restrictions and to extend such highway common carrier operations so as to transport general commodities between the Los Angeles Basin Territory and San Francisco and San Diego Territories and Sacramento and El Centro and nearby adjoining towns.

Applicant proposes to charge rates and to apply the rules and regulations applicable thereto as published by the Western Motor Tariff Bureau, Inc., Agent, Local and Proportional Freight Tariff No. 6, Cal. P.U.C. No. 14 (J. L. Beeler, Agent, Series), supplements thereto and successive issues thereof. Service will be daily, Saturdays, Sundays and holidays excepted, on a regular scheduled basis.

Applicant operates a total of 92 pieces of equipment consisting of 29 trucks and tractors, 50 trailers and 13 miscellaneous items. It has terminals in the City of Commerce consisting of five acres with offices and shops, a branch terminal at San Leandro, California, of one acre for the Bay area, and harbor operations in the San Pedro area, with three fork lifts and two foremen.

Applicant called 12 shipper witnesses, ten of whom testified that applicant is providing a necessary and specialized transportation service when they need it, with next-day delivery. Eight of these witnesses testified that the size of their shipments had decreased in weight in the past few years due to maintaining of smaller inventories by their customers and the ordering of materials on a next-day delivery basis.

Each of applicant's shipper witnesses, but one, was engaged in shipping metal, steel, wire, pipe steel furniture, and hardware products and had been doing so for from two to ten years. One shipper witness who testified to a need for applicant's service was engaged in the shipping of general department store merchandise in wholesale lots to retailers and at retail by mail order, and was opening a new showroom in San Francisco.

The applicant's shipper witnesses testified to the increasing frequency of the number of shipments and the variety of items shipped, such as office furniture, pipe and pipe fittings, water heaters, and coolers, electrical conduits and cables, copper, aluminum and plastic tubes and fittings, light gauge metal products, bar and restaurant equipment, flexible conduit, cable and metal raceways, corrugated drainage pipe, diesel engine parts and repaired engines, sheet metal pipe, and general department store

merchandise. All of these witnesses favored the removal of the restrictions to and the expansion of applicant's authority.

The testimony of the applicant's witnesses indicates that a reduction of the weight and commodity restrictions along main routes between San Francisco, Los Angeles, and San Diego in applicant's authority will afford advantages to applicant's shippers by permitting single-line operations over main routes, reduce time in transit, reduce dock congestion, and provide more efficient service.

The protestants submitted testimony of 12 witnesses representing protesting carriers who testified to the effect that they have unused space in their equipment and claimed that any increase in applicant's authority will reduce their traffic and cause increases in rates. The representatives of two carriers operating a specialized service in the sparsely settled desert areas testified that they presently have unused space in their equipment, and that they would have difficulty in giving their present service in the event of a substantial reduction in traffic in these areas.

Upon consideration of the evidence the Commission finds and concludes as follows:

1. Public convenience and necessity require the removal of the restrictions in applicant's present operative authority which prohibit it from transporting any shipment which shall carry a charge lower than that applicable to a shipment of 10,000 pounds and which limits its transportation to commodities originating at or

destined to an oil-well site, construction site or farm or originating at or destined to a storage yard.

2. Public convenience and necessity do not require that applicant be authorized to transport general commodities as requested but do establish that applicant should be authorized to transport the commodities set forth in the ensuing order.

3. Public convenience and necessity require that the application be granted as set forth in the ensuing order.

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.

O R D E R

Public hearing having been held and based upon the evidence therein adduced,

IT IS ORDERED:

1. That a certificate of public convenience and necessity be, and it hereby is, granted to Airway Trucking Co., a corporation, authorizing it to operate as a highway common carrier, as defined in Section 213 of the Public Utilities Code, between the points and over the routes more particularly set forth in Appendices A, B, C and D 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 satisfactory to the Commission.

3. That the certificate of public convenience and necessity granted in paragraph 1 of this order supersedes the certificate of public convenience and necessity granted by Decision No. 44262, dated May 26, 1950, and Supplementary Decision No. 51095, dated February 7, 1955, in Application No. 30691, and transferred to the applicant by Decision No. 59800, dated March 22, 1960, in Application No. 41831, which certificate is hereby revoked, said revocation to become effective concurrently with the effective date of tariff filings required by 2 (b) above.

4. That, except as provided in paragraphs 1 and 2 above, the application is denied.

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

Dated at San Francisco, California, this 20th day of FEBRUARY, 1962.

Arvid W. Berg
President

E. J. Fox

Fredrick B. Holbrook

Commissioners

Commissioner George G. Grover, being necessarily absent, did not participate in the disposition of this proceeding.

Airway Trucking Co., a corporation, by the certificate of public convenience and necessity granted in the decision, noted in the margin, is authorized to transport property necessary or incidental to the establishment, maintenance, or dismantling of oil, gas, or water wells, pipe lines, refineries, and cracking or casing head plants, equipment and material used in construction, and equipment used in farming, between all points and places on and along the following described routes, including all intermediate points, with the right to make lateral departures therefrom within a radius of 50 miles of such routes.

U. S. 101 and U. S. 101 By-Pass between Oregon-California State Line and California-Mexico Line;

U. S. 99, 99-E and 99-W between Oregon-California State Line and the Mexican Border;

U. S. 299 between Redding and Alturas, California;

U. S. 395 between the Oregon-California State Line and the California-Nevada State Line, via ALTURAS and Johnstonville;

State Highway 36 between Junction U. S. 99-E near Red Bluff, California, and Junction U. S. 395 at Johnstonville;

State Highway 20 between Marysville, California, and Junction U. S. 40;

U. S. 40 between San Francisco and California-Nevada State Line;

U. S. 50 between Sacramento, California, and California-Nevada State Line;

U. S. 395 between California-Nevada State Line at Topaz Lake and Junction U. S. 66;

U. S. 66 between Los Angeles and Needles, California;

U. S. 60 between Los Angeles, California, and California-Arizona State Line;

U. S. 91 and 466 between Barstow and Nevada-California State Line;

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U. S. 80 between San Diego and California-Arizona
State Line;

State Highway 127 between Baker and Nevada-California
State Line.

Airway Trucking Co., by the certificate of public convenience and necessity granted in the decision noted in the margin, is further authorized to transport the following commodities:

1. CONDUITS, PIPE, SMOKESTACKS, TUBING OR FITTINGS, OTHER THAN CLAY, CONCRETE OR EARTHEN, as described in Items 29220 through 30440 (See Note).
2. ELECTRICAL APPLIANCES OR EQUIPMENT, OR PARTS NAMED, as described in Items 34020 through 35430 (See Note).
3. MACHINERY OR MACHINES, OR PARTS NAMED, as described in Items 58470 through 67390 (See Note).
4. METALS OR ALLOYS NOT NAMED IN OTHER MORE SPECIFIC GROUPS, as described in Items 68110 through 68790 (See Note).
5. OFFICE OR STORE EQUIPMENT, as described in Items 71140 through 71380 (See Note).
6. Pipe or tubing or pipe fittings, as described in Item 77790 (See Note).
7. PLUMBERS' GOODS, OR BATHROOM OR LAVATORY FIXTURES, as described in Items 77890 through 78770 (See Note).
8. Restaurant or hotel kitchen equipment, as described in Item 83310 (See Note).
9. Any general commodity sold in a general department store and shipped to or between its branch stores, wholesale customers or mail-order customers (See Condition).

NOTE: The term "Items" as used above refers to the specific items published in Western Classification No. 76, J. P. Hackler, Tariff Publishing Officer, on the issue date thereof, including Supplements 9, 11, 15, 18, 22 and 25 thereto.

CONDITION: Applicant shall not transport property sold at retail by a retail merchant and transported from a retail store or retail store warehouse to residences of retail customers, or transported from residences of retail customers to retail stores or retail store warehouses.

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Applicant is authorized to transport the commodities described in subparagraphs 1 through 9 above between points and places in the Los Angeles Basin Territory as described in Appendix B attached hereto, on the one hand, and the following, on the other hand:

- (1) All points and places in the San Francisco Territory as described in Appendix C attached hereto.
- (2) All points and places in the San Diego Territory as described in Appendix D attached hereto.
- (3) All points and places on and within ten miles laterally of the following routes:
 - a. U.S. Highways 101 and 101 Alternate between the northern boundary of the Los Angeles Basin Territory and the southern boundary of the San Francisco Territory.
 - b. U.S. Highways 101 and 101 Alternate between the southern boundary of the Los Angeles Basin Territory and the northern boundary of the San Diego Territory.
 - c. State Highway 4 between its junction with U.S. Highway 40 near Pinole and Stockton, inclusive.
 - d. U.S. Highway 99 between Stockton and the northern boundary of the Los Angeles Basin Territory.

RESTRICTION: Applicant shall not provide local service between points of origin and destination both of which are within the Los Angeles Basin Territory, the San Francisco Territory, the San Diego Territory, or on and laterally of the above highways.

End of Appendix A

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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; southwestward along La Cadena Drive to Iowa Avenue; southerly along Iowa Avenue to U. S. Highway No. 60; southwestward 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; southwestward 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 shoreline of the Pacific Ocean to point of beginning.

SAN FRANCISCO TERRITORY includes all the City of San Jose and that area embraced by the following boundary: Beginning at the point the San Francisco-San Mateo County boundary line meets the Pacific Ocean; thence easterly along said boundary line to a point 1 mile west of U. S. Highway 101; southerly along an imaginary line 1 mile west of and paralleling U. S. Highway 101 to its intersection with Southern Pacific Company right of way at Arastradero Road; southeasterly along the Southern Pacific Company right of way to Pollard Road, including industries served by the Southern Pacific Company spur line extending approximately 2 miles southwest from Simla to Permanente; easterly along Pollard Road to W. Parr Avenue; easterly along W. Parr Avenue to Capri Drive; southerly along Capri Drive to E. Parr Avenue; easterly along E. Parr Avenue to the Southern Pacific Company right of way; southerly along the Southern Pacific Company right of way to the Campbell-Los Gatos city limits; easterly along said limits and the prolongation thereof to the San Jose-Los Gatos Road; northeasterly along San Jose-Los Gatos Road to Foxworthy Avenue; easterly along Foxworthy Avenue to Almaden Road; southerly along Almaden Road to Hillsdale Avenue; easterly along Hillsdale Avenue to U. S. Highway 101; northwesterly along U. S. Highway 101 to Tully Road; northeasterly along Tully Road to White Road; northwesterly along White Road to McKee Road; southwestly along McKee Road to Capitol Avenue; northwesterly along Capitol Avenue to State Highway 17 (Oakland Road); northerly along State Highway 17 to Warm Springs; northerly along the unnumbered highway via Mission San Jose and Niles to Hayward; northerly along Foothill Boulevard to Seminary Avenue; easterly along Seminary Avenue to Mountain Boulevard; northerly along Mountain Boulevard and Moraga Avenue to Estates Drive; westerly along Estates Drive, Harbord Drive and Broadway Terrace to College Avenue; northerly along College Avenue to Dwight Way; easterly along Dwight Way to the Berkeley-Oakland boundary line; northerly along said boundary line to the campus boundary of the University of California; northerly and westerly along the campus boundary of the University of California to Euclid Avenue; northerly along Euclid Avenue to Marin Avenue; westerly along Marin Avenue to Arlington Avenue; northerly along Arlington Avenue to U. S. Highway 40 (San Pablo Avenue); northerly along U. S. Highway 40 to and including the City of Richmond; southwestly along the highway extending from the City of Richmond to Point Richmond; southerly along an imaginary line from Point Richmond to the San Francisco Waterfront at the foot of Market Street; westerly along said waterfront and shore line to the Pacific Ocean; southerly along the shore line of the Pacific Ocean to point of beginning.

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SAN DIEGO TERRITORY includes that area embraced by the following imaginary line starting at the northerly junction of U. S. Highways 101-E and 101-W (4 miles north of La Jolla); thence easterly to Miramar on U. S. Highway 395; thence southeasterly to Lakeside on the El Cajon-Ramona Highway (State Highway 67); thence southerly to Bostonia on U. S. Highway 80; thence southeasterly to Jamul on State Highway 94; thence due south to the International Boundary Line, west to the Pacific Ocean and north along the coast to point of beginning.