

ORIGINALDecision No. 63510

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
 B.B.D. TRANSPORTATION CO., INC., a
 corporation, for an in-lieu certifi-
 cate of public convenience and
 necessity and to extend highway
 common carrier service.

Application No. 43351
 (Filed April 26, 1961)

Bertram S. Silver, for applicant.
Graham, James & Rolph and Leo J. Vander Lans,
Raymond A. Greene and Boris Lakusta for
 California Motor Express, Ltd., and California
 Motor Transport Co., Ltd., Delta Lines, Inc.,
 Interlines Motor Express, Di Salvo Trucking
 Company, Merchants Express of California,
 Oregon-Nevada-California Fast Freight and
 Southern California Freight Lines, Pacific
 Motor Trucking Company, Shippers Express,
 Valley Express Co. and Valley Motor Lines, Inc.
 and Willig Freight Lines, protestants.

O P I N I O N

This application was heard before Examiner Rowe at Los Angeles on November 7, 8 and 9, 1961, and on December 15, 1961, and at San Francisco on October 20, 1961, December 11, and December 12, 1961 and on January 4, 1962. On January 26, 1962, the matter was argued in San Francisco and duly submitted for decision.

Copies of the application and the notices of hearing were served in accordance with the Commission's procedural rules. On May 29, 1961, the above named protestants filed their petition for intervention alleging that each of these carriers operates in the area covered by the application; each believes that the public is now fully served with highway common carriage in such area and that it would be contrary to the public convenience and necessity to grant the certificate prayed for. This allegation was later supplemented

by counsel's statement that the application should be denied because the field is already amply covered by highway common carrier service and that the effect of additional certification would have a tendency to produce higher rates or cause a drop in the quality of service.

Applicant is a highway permit carrier engaged in the transportation of many specified commodities generally between Los Angeles and the Los Angeles Basin Territory and Fresno and intermediate points. The Company has also been operating between Pittsburg and southern points carrying steel and steel products. In the service rendered and proposed applicant has used and expects to use a substantial portion of open and flat bed equipment. By Decision No. 61658 applicant was authorized to and did acquire the certificate of public convenience and necessity of McCurdy & Son Transportation Service. This certificate authorized the transportation of many enumerated articles, some of a heavy type between all points in the Los Angeles Drayage Area and between said area and the points of Long Beach, Pasadena and Pittsburg.

Since this certificate while extensive was less inclusive than its present permitted operation both as to territory and articles to be transported, the Commission has been asked to allow applicant to defer operating under it pending the outcome of this proceeding. Applicant now requests authority to transport general commodities between all points in the Los Angeles Basin Territory and between said Territory, on the one hand, and Fresno, on the other hand, serving intermediate points and between all of said points and Sacramento and intermediate points along U. S. Highway 99 and also Bay Area points along U. S. Highways 40 and 50 and State Highways 4 and 24.

These rights are to be subject to the restriction that applicant will carry no shipments, except those originating in Pittsburg, which have both origin and destination at points north of Fresno.

Applicant has approximately 55 pieces of equipment with which to perform the service proposed. As of June 30, 1961, applicant had total assets valued at \$285,743.99 and liabilities of \$216,935.93. For six months ending June 30, 1961, applicant's net profit was \$7,861.30 on revenues of \$581,763.41.

Applicant presented some 21 shipper witnesses who testified as to their use of applicant throughout the territory requested. They expressed a definite preference for applicant's service because of their need for applicant's open, flat bed equipment and because applicant's personnel are efficient, capable and willing to meet the shippers' schedules. These witnesses indicated that in their opinion the protestants would not handle their freight movements now transported by applicant to their satisfaction.

The evidence shows that applicant's movements are primarily truckload. It has a large southbound movement of steel from Pittsburg to the Los Angeles Basin territory and northbound movements of finished steel products and other commodities through the San Joaquin Valley as far as Sacramento and including the San Francisco Bay Area.

The protestants presented evidence as to the increased number of certificated carriers serving the area sought by applicant and their willingness and ability to meet shipper needs within this area. This evidence, however, does not convince the Commission that the granting of this application would have a tendency to produce higher freight rates or cause a drop in the quality of protestants' service. The record also indicates that the majority of these protestants have enjoyed increased revenues and income as well as acquiring more and better operating equipment during recent years.

Findings and Conclusions

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

Applicant possesses the experience, equipment, personnel and financial resources to institute and maintain the proposed service. Public convenience and necessity require that the application be granted as set forth in the ensuing order. The authority acquired pursuant to Decision No. 61658 should be revoked concurrently with the tariff filing required by the following order.

B.B.D. Transportation Co., 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.

O R D E R

Public hearings 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 is granted to B.B.D. Transportation Co., Inc., a corporation, authorizing it to operate as a highway common carrier, as defined in Section 212 of the Public Utilities Code, between the points and over the routes more particularly set forth in Appendices A, B and C, 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, applicant shall establish the service herein authorized and file in the Commission's office in triplicate tariffs satisfactory to the Commission, which tariff filings shall be made effective concurrently with the establishment of the service and on not less than thirty days' notice to the Commission and the public. The tariff filings made pursuant to this order shall comply with the regulations governing the construction and filing of tariffs set forth in the Commission's General Order No. 80.

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 by Decision No. 61658, 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 3rd day of APRIL, 1962.

Everett C. McKeage
President

C. Lyn Fox

Frederick B. Holoboff

Commissioners

EVERETT C. McKEAGE
President
C. LYN FOX
FREDERICK B. HOLOBOFF
Commissioners

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

B. B. D. Transportation Co., 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 as follows:

1. Between all points and places in the Los Angeles Basin Territory as described in Appendix B attached hereto.
2. Between all points and places in the San Francisco Territory as described in Appendix C attached hereto (See Restriction).
3. Between all points and places on and within 25 miles laterally of the following routes (See Restriction).
 - a. U.S. Highway 99 between San Fernando and Sacramento, inclusive.
 - b. State Highway 65 between its junction with U.S. Highway 99 near Bakersfield and its junction with State Highway 63 north of Elderwood.
 - c. State Highway 63 between its junction with State Highway 65 and Orosi, inclusive.
 - d. Unnumbered highways known as El Monte Way, Alta Avenue, Manning Avenue and Reed Avenue between Orosi and Minkler via Dinuba and Reedley.
 - e. State Highway 180 between Minkler and Fresno, inclusive.
 - f. U. S. Highway 40 between Richmond and Sacramento, inclusive.
 - g. U. S. Highway 50 between Castro Valley and Stockton, inclusive.
 - h. State Highway 120 between its junction with U.S. Highway 50 near Tracy and Manteca, inclusive.
 - i. State Highway 4 between its junction with U.S. Highway 40 near Pinole and Stockton, inclusive.
 - j. State Highway 24 between Oakland and Sacramento, inclusive.
4. Through routes and rates may be established between any and all points described in subparagraphs 1 through 3(j) above subject to the Restriction below.

Issued by California Public Utilities Commission

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

End of Appendix A

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APPENDIX B TO DECISION NO. 63510

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 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; southwesterly 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; southwesterly 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.