

ORIGINAL

Decision No. 63716

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the application of Western Truck Lines, Ltd., a corporation, for a certificate of public convenience and necessity to operate as a highway common carrier for the transportation of property as herein described.

Application No. 43061
(Filed January 16, 1961)

Glanz, Russell & Schureman, by Theodore W. Russell, and Lloyd R. Guerra, for applicant. Graham James & Rolph, by Boris Lakusta, and Leo Vander Lans, for California Motor Express, Ltd., California Motor Transport Co., Ltd., Delta Lines, Inc., DiSalvo Trucking Co., Interlines Motor Express, Merchants Express of California, Oregon-Nevada-California Fast Freight and Southern California Freight Lines, Pacific Motor Trucking Co., Sterling Transit Co., Inc., and Willig Freight Lines, protestants.

O P I N I O N

This application was heard before Examiner Kent C. Rogers in Los Angeles, California, on March 14, May 9 and 10, August 28, September 6 and 22, 1961, in Fresno on May 11, 1961, and in San Francisco on August 30, 1961. On September 22, 1961, the matter was submitted subject to the filing of concurrent briefs. These briefs were filed on December 15, 1961, and the matter is ready for decision. Copies of the application and notices of hearings were served in accordance with the Commission's procedural rules. The protestants are set out above.

Applicant is a highway common carrier and, as such, transports general commodities between points in the State of

California from San Francisco, Sacramento and Tahoe on the north, to San Diego and Blythe on the south. Such service is rendered generally via U. S. Highways 101, 99 and 395, as well as lateral routes. Applicant requests authority to extend such highway common carrier operations to permit it to transport general commodities, including commodities requiring mechanically refrigerated equipment:

1. Between San Francisco Territory and San Rafael, California, serving all intermediate points on U. S. Highway 101 and California State Highway 17, and all off-route points within five miles laterally of said highways, as an extension of service to and from the San Francisco Territory. No local service is sought between San Francisco and San Rafael, nor the intermediate and off-route points, on or off U. S. Highway 101 and State Highway 17, here referred to.

2. Between Stockton and the San Francisco Territory, serving all intermediate points on State Highway 4 and U. S. Highway 40, and all off-route points within five miles laterally of State Highway 4 and U. S. Highway 40, as an extension of service to and from Stockton. No local service is sought between Stockton and the intermediate territory here referred to.

3. Between Sacramento and Nimbus, serving all intermediate points on U. S. Highway 50, and all off-route points within five miles laterally of U. S. Highway 50, as an extension of service to and from Sacramento. No local service is sought between Sacramento and Nimbus, nor the intermediate and off-route points, on or off U. S. Highway 50, here referred to.

4. Between Sacramento, Stockton, Modesto, Fresno and points within five miles of each, and all other points and places on U. S. Highway 99 and off-route points within five miles laterally of U. S. Highway 99, between Sacramento and Fresno, on the one hand, and, on the other hand, all points presently authorized to be served or proposed to be served by this application over all available routes.

5. Between Bakersfield and Fresno, and all intermediate points on U. S. Highway 99, and all points within twenty miles of U. S. Highway 99, on the one hand, and, on the other, all points presently authorized to be served, or proposed points authorized to be served. No local service is sought between Bakersfield and Fresno, nor the intermediate and off-route points, on or off U. S. Highway 99.

6. Between the Junction of U. S. Highway 50 and State Highway 89 (near Myers), and the Junction of State Highway 89, and U. S. Highway 395, serving all intermediate points on State Highway 89, and all points within five miles laterally of State Highway 89.

7. Between Westmoreland and Winterhaven, California, and all intermediate points on U. S. Highways 99 and 80, and all points within 20 miles laterally of U. S. Highways 99 and 80, on the one hand, and, on the other, all points presently authorized to be served or proposed to be served by this application.

In addition, applicant seeks authority to use Highways 60 to 70 to and from Blythe, a route now served by it in interstate commerce only.

Applicant will render a daily service to or from all points and places proposed to be served by this application.

Applicant, Western Truck Lines, Ltd., is the owner of Gillette Motor Transport, Inc., which, in turn, operates an interstate trucking service between El Paso, Houston, Oklahoma City and Tulsa. This company, in turn, has temporary authority to manage and operate Voss Truck Lines, Inc., which operates between Oklahoma City, Tulsa, Chicago, St. Louis, Memphis, Kansas City, and Springfield, Missouri.

Applicant, in turn, is owned by Cantlay & Tanzola, Inc., which transports bulk petroleum and chemicals pursuant to highway common carrier certificates from this Commission. Most of the terminals operated by applicant are owned by C & T Corporation, a real estate holding corporation. The stock in Cantlay & Tanzola, Inc., and the C & T Corporation is owned by Richard Cantlay and Joseph Tanzola.

Western Truck Lines, Ltd., has 13 terminals in California, including terminals in Los Angeles, San Francisco, Oakland, San Jose, Sacramento, Stockton, Fresno, Tahoe Valley, Bishop, Lone Pine, Blythe, San Diego and Ridgecrest. In addition, it has terminals in Arizona at Phoenix, Tucson and Yuma, one in Reno, Nevada, and one in El Paso, Texas.

Spread among its terminals applicant has 205 pickup and delivery trucks, including four refrigerator pickup units, 70 pickup tractors, 59 pickup semitrailers, 147 line tractors, 274 line semitrailers, including 65 refrigerator semitrailers.

As of November 30, 1960, applicant's current assets amounted to \$1,277,009, and its carrier operating property had a depreciated value of \$4,123,798. At that time, its earned surplus amounted to \$1,942,134.

For the 11 months ending November 30, 1960, its carrier operating revenues amounted to \$12,326,941 and its total expenses amounted to \$11,678,732 before income taxes. For the month of January 1961, it had a net income, before income taxes, of \$122,591.

The rates to be assessed by applicant and the rules and regulations governing the transportation service to be performed will be those rates established as minimum rates and the rules and regulations provided by this Commission in its Highway Carriers' Tariff No. 2.

From applicant's history with this Commission, it appears, and we find, that applicant has the experience, equipment, and finances with which to render the proposed service.

The commodities carried by the applicant are general commodities, including automobile and airplane tires, drugs, farm equipment, foods, floor coverings, and paper products, among other things.

Applicant called as witnesses in support of the application 47 public witnesses. These witnesses came from 25 different communities, including Los Angeles, Vernon, Riverside, Fullerton, Monrovia, Anaheim, Montclair, Azusa, Glendale, Hawthorne, San Francisco, Oakland, Berkeley, San Jose, San Leandro, Sausalito, Emeryville, Redwood City, Fresno, Sacramento, Lodi, Modesto, Stockton, Visalia, and Tulare.

The various shippers and consignees, collectively, who appeared for applicant, desire that service be rendered to and from all points proposed to be served by the applicant, and ship or receive all types of commodities applicant proposes to carry, including products requiring mechanical refrigeration.

Ten competing highway common carriers appeared in opposition to the application. Seven of the protesting carriers presented evidence in support of their protests. These carriers do not individually serve the entire area which the applicant proposes to serve, although, collectively, such a service is provided. The evidence shows that protestants have the equipment to handle the business they are authorized to handle and do handle, and are adequately financed. All are actively soliciting and desire additional business.

On the other hand, witnesses for the applicant testified that they used the applicant's services where it is authorized to serve, desired that the service be extended as proposed herein, are generally familiar with the services of the protestants and do not feel, collectively, that those existing services meet their needs.

Findings and Conclusions

Upon consideration of the evidence, the Commission finds and concludes that public convenience and necessity require that the application be granted as requested by the applicant and as set forth in the ensuing order.

Western Truck Lines, Ltd., 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, a public hearing having been held, and based upon the evidence therein adduced,

IT IS ORDERED that:

1. A certificate of public convenience and necessity be and it is granted to Western Truck Lines, Ltd., 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 and B attached hereto and hereby made a part hereof.

2. 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.
- (c) The tariff filings shall be made effective not earlier than thirty days after the effective date of this order on not less than thirty days' notice to the Commission and the public, and the effective date of the tariff filings shall be concurrent with the establishment of the service herein authorized.
- (d) 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. The certificate granted to Western Truck Lines, Ltd., by paragraph (1) (e) of Decision No. 43003 dated June 14, 1949, in Application No. 27100, is hereby amended by substituting for the commodity exclusion contained in subparagraph (7) thereof the following:

"Commodities requiring special equipment except refrigeration."

4. Within one hundred twenty days after the effective date hereof, Western Truck Lines, Ltd., shall amend its tariffs to reflect the authority granted in paragraph 3 hereof, such tariff filings

to be made effective not earlier than thirty days after the effective date of this order on not less than thirty days' notice to the Commission and the public.

5. Within one hundred eighty days after the effective date of this order, Western Truck Lines, Ltd., shall file an application with this Commission seeking the consolidation of all of its operating rights in a restated certificate of public convenience and necessity.

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

Dated at San Francisco, California, this 22nd day of May, 1962

Charles W. Page
President

J. E. Mitchell

S. L. Fox

Fredrick H. Hoff

Commissioners

Western Truck Lines, Ltd., by the certificate of public convenience and necessity granted in the decision noted in the margin, is authorized to transport general commodities as an extension and enlargement of its existing operating authorities as follows:

1. Between the San Francisco Territory as described in Appendix B attached hereto, on the one hand, and San Rafael and all intermediate points on and within five miles laterally of U. S. Highway 101 and State Highway 17, on the other hand, as an extension of service to and from the San Francisco Territory.
2. Between Stockton, on the one hand, and the San Francisco Territory and all intermediate points on and within five miles laterally of the following highways, on the other hand, as an extension of service to and from Stockton:
 - a. State Highway 4 between Stockton and its junction with U. S. Highway 40 near Pinole.
 - b. U. S. Highway 40 between its junction with State Highway 4 near Pinole and the San Francisco Territory.
3. Between Sacramento, on the one hand, and Nimbus and all intermediate points on and within five miles laterally of U. S. Highway 50, on the other hand, as an extension of service to and from Sacramento.
4. Between Sacramento, Stockton, Modesto, Fresno and points within five miles of each, and all other points and places on and within five miles laterally of U. S. Highway 99 between Sacramento and Fresno, on the one hand, and, on the other hand, all other points served as a highway common carrier either authorized herein or in previous decisions of the Commission.

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5. Between Bakersfield and Fresno and all intermediate points on and within twenty miles laterally of U. S. Highway 99, on the one hand, and, on the other hand, all other points served as a highway common carrier either authorized herein or in previous decisions of the Commission.
6. Between all points on and within five miles laterally of State Highway 89 between its junctions with U. S. Highway 50 near Meyers and U. S. Highway 395 near Topaz Lake.
7. Between Westmoreland and Winterhaven and all intermediate points on and within twenty miles laterally of the following highways, on the one hand, and, on the other hand, all other points served as a highway common carrier either authorized herein or in previous decisions of the Commission:
 - a. U. S. Highway 99 between Westmoreland and El Centro.
 - b. U. S. Highway 80 between El Centro and Winterhaven.

Applicant is authorized to operate over any and all routes between the areas described for operating convenience only. Applicant is also authorized to operate over U. S. Highway 60-70 between Whitewater and the junction with U. S. Highway 60-70 and State Highway 195 east of Mecca serving no points on said highway except as previously authorized.

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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. 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.
3. 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.
4. Articles of extraordinary value as set forth in Rule 3 of Western Classification No. 77, J. P. Hackler, Tariff Publishing Officer, on the issue date thereof.

End of Appendix A

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SAN FRANCISCO TERRITORY includes 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 one mile west of U. S. Highway No. 101; southerly along an imaginary line one mile west of and paralleling U. S. Highway No. 101 to its intersection with the corporate boundary of the City of San Jose; southerly, easterly and northerly along said corporate boundary to its intersection with State Highway No. 17; northerly along State Highway No. 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 No. 40 (San Pablo Avenue); northerly along U. S. Highway No. 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 water front and shore line to the Pacific Ocean; southerly along the shore line of the Pacific Ocean to point of beginning.

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