

ORIGINALDecision No. 63796

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 L.D.S. TRUCK LINES, a corporation,)
 for a certificate of public conven-)
 ience and necessity.)

Application No. 43755
 (Filed September 14, 1961)

Bertram S. Silver and William L. Cole, for the
 applicant.

Graham, James and Rolph, by Boris H. Lakusta and
Raymond A. Greene, Jr., for Blankenship Motors;
 Constructors Transport Co.; California Motor
 Express, Ltd., and California Motor Transport
 Co., Ltd.; Di Salvo Trucking Co.; Delta Lines,
 Inc.; Fortier Transportation Co.; Garden City
 Transportation Co., Ltd.; Merchants Express of
 California; Oregon-Nevada-California Fast Freight
 and Southern California Freight Lines; Pacific
 Motor Trucking Co.; Sterling Transit; Valley
 Motor Lines, Inc.; and Willig Freight Lines,
 protestants.

O P I N I O N

This application was heard before Examiner Edward G. Fraser on December 4 and 5, 1961 in Livermore; and January 9 and 10, February 27, 28, and March 2, 1962, in San Francisco. It was submitted on March 21, 1962, after the presentation of oral argument. Copies of the application and the notice of hearing were served in accordance with the Commission's procedural rules.

Applicant is now operating under permitted authority as a radial highway common carrier, a highway contract carrier and a city carrier. Applicant requests that a certificate of public convenience and necessity be granted to authorize the applicant to transport general commodities, with the usual exceptions, between "all points and

places over and along the following routes and all points and places within ten (10) miles thereof": (Exhibit No. 1)

- "1. All points and places in the San Francisco Territory, as described in Minimum Rate Tariff No. 2.
- "2. State Highway 9 between Sunnyvale and Saratoga.
- "3. State Highway 17 between Santa Clara and Los Gatos.
- "4. U. S. Highway 101 between San Francisco and Novato (provided that the 10-mile extension above noted shall not apply north of Novato).
- "5. U. S. Highway 40 between San Francisco and Vallejo.
- "6. U. S. Highway 50 between San Francisco and Livermore.
- "7. State Highway 4 between Pinole and Antioch.
- "8. State Highway 24 between Oakland and Antioch.
- "9. State Highway 21 between Cordelia and Mission San Jose.
- "10. Applicant may make use of any street, road, highway, ferry or toll bridge necessary or convenient for the purpose of performing the proposed service.
- "11. Through routes and rates may be established between any and all points specified in paragraphs 1 through 9 above."

The vice president of the applicant testified they were a partnership until approximately July 27, 1961, when the applicant became a corporation. Operations are now conducted out of a Livermore office, and a San Francisco terminal with a dock and offices, where the trucks are serviced and repaired. The applicant now serves as a permitted carrier an area bordered by Novato and Vallejo on the north; Pittsburg and Antioch to the east; Livermore to the south; San Jose to the southwest; and San Francisco to the west. Applicant now provides a daily same day and overnight service, hauling general commodities, with Sundays and holidays excepted. Operations are conducted with seven van type trucks and one tractor with trailer (Exhibit No.3).

Financial statements filed in this proceeding show that the net investment in the company's assets, as of September 30, 1961, amounted to \$22,842 and that the company had financed itself with current liabilities of \$6,977, long-term debt of \$484, and common stock and retained earnings of \$15,381. The statements further show, for the two months' period ended September 30, 1961, operating revenues of \$14,688 and net income of \$1,237, after making provision for depreciation and federal income taxes, indicating an operating ratio for the two months' period of 91.6 percent.

The witness testified that L.D.S. Truck Lines started one year and nine months ago with two trucks. It now has eight trucks and business has increased to where it is now operating daily between all points it is asking to serve as a certificated carrier. He stated the applicant has applied for a certificate because it cannot continue to operate legally under its permits.

If a certificate is granted the applicant will continue to operate daily, except Sundays and holidays, out of a terminal in San Francisco and an office in Livermore, charging the rates in Minimum Rate Tariff No. 2 and other minimum rate tariffs applicable to the commodities proposed to be transported between the points involved herein.

The applicant presented 22 witnesses, 13 from Livermore and 9 from San Francisco. The Livermore witnesses receive auto parts, engines, paints, hardware, tires and tubes, drugs, furniture and appliances, records and musical instruments, jewelry and tape recorders. These items come from various points in the San Francisco-Oakland area and are delivered by L.D.S. Truck Lines. Several

witnesses testified that L.D.S. picks up and delivers promptly; other carriers will not pick up for several days or will not deliver a load when promised. One witness stated L.D.S. is the only carrier he has contacted who will provide a reliable Saturday delivery. The Livermore witnesses were all proprietors or representatives of local Livermore stores, service stations or auto sales and repair agencies. A great deal of their transportation concerned shipments destined from factories or plants in the San Francisco-Oakland area to their Livermore stores. Most of them also required service to the Bay Area from Livermore to enable them to return damaged engines, tires, appliances, radios, and other items for repair or replacement. The service required varied in frequency from almost daily to less than twice a month. Several witnesses advised their requirements on service are erratic because they order items after they obtain customers. They do not carry any inventory and during periods when business is poor, have little need for transportation. The San Francisco witnesses ship whiskeys and alcoholic beverages, soap, detergents, canned foods, meat, animal foods, coffee, paper, wood, aluminum, plastic, draperies, hardware, auto parts, insulation materials, structural steel, construction material, copper, brass and aluminum. The latter group represent large shippers who use the applicant's trucks daily. They ship to most towns within the area the applicant seeks to serve. Several testified they prefer the applicant because of prompt pickup and deliveries, same day service when required and prompt settlement of claims. One witness stated the applicant is the only carrier they have found who will haul their large insulating and fiberglass components. Other carriers have refused to carry these bulky items

and have skipped pickups. A majority of the witnesses had used carriers other than the applicant and some still do, either to areas not served by the applicant or due to the volume of their business. All of the shippers who testified stated they desired and would use the applicant in the area applied for if a certificate is granted.

Five of the protestants presented evidence. Delta Lines, Inc.; Pacific Motor Trucking Co.; Merchants Express of California; Valley Express Co. and Valley Motor Lines; and Garden City Transportation Co., Ltd., each submitted oral and documentary evidence.

All five of these protestants maintain they have adequate equipment to handle any foreseeable increase in the public need for service throughout the area applied for by the applicant. All of them state they have equipment operating in this region at much less than full capacity and several have trucks which are inoperative due to a lack of business. They now haul for many of the witnesses who testified for the applicant and can easily carry additional freight for these shippers on their present schedules. They claim they are losing business and their revenues are steadily declining due to increased competition in the area the applicant is seeking to serve. They contend all carriers, operating in the area of this application, will be forced to petition this Commission for a substantial raise in rates if many more carriers are certificated in the area where they operate. The five protestants state they are opposing this application because another certificated carrier is not needed in any part of the area for which authority is sought herein and because the applicant can serve all of its customers adequately under the operating authorities it now holds.

Findings and Conclusions

The Commission finds and concludes that public convenience and necessity require the granting of the authority sought; and further finds and concludes that the applicant possesses the experience and equipment to maintain the operations to be authorized and the financial ability to support the proposed service.

L.D.S. Truck Lines 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.

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

IT IS ORDERED that:

1. A certificate of public convenience and necessity be and it is granted to L.D.S. Truck Lines, 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.

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

Dated at San Francisco California, this 15th day of JUNE, 1962.

[Signature]
President

[Signature]

Frederick B. Halbach

Commissioners

L.D.S. Truck Lines, 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 San Francisco Territory as described in Appendix B attached hereto.
2. Between all points and places on and within ten miles laterally of the following highways:
 - a. State Highway 9 between Cupertino and Saratoga, inclusive.
 - b. State Highway 17 between Campbell and Los Gatos, inclusive.
 - c. U.S. Highway 101 between San Francisco and Novato, inclusive (provided that the ten mile lateral rights shall not apply to any point north of Novato).
 - d. U.S. Highway 40 between Richmond and Vallejo, inclusive.
 - e. U.S. Highway 50 between Hayward and Livermore, inclusive.
 - f. State Highway 4 between its junction with U.S. Highway 40 near Pinole and Antioch, inclusive.
 - g. State Highway 24 between Oakland and Antioch, inclusive.
 - h. State Highway 21 between Cordelia and Fremont, inclusive.
3. Through routes and rates may be established between any and all points specified in paragraphs 1 and 2a through h above.
4. Applicant may make use of any street, road, highway, ferry or toll bridge between the areas described for operating convenience only.

Issued by California Public Utilities Commission.

Decision No. 63796, Application No. 43755.

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 requiring protection from heat by the use of ice (either water or solidified carbon dioxide) or by mechanical refrigeration.
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.
9. Commodities requiring special equipment and handling because of unusual size, weight or shape.
10. 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 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; southwestwardly 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; southwestwardly 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.