

Decision No. 64053

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of LESTER LEON HILLIARD, an individual doing business as HILLIARD TRUCK LINE, for an in lieu certificate of public convenience and necessity to operate as a highway common carrier for the transportation of property and to extend his present certificate of public convenience and necessity.

Application No. 43729

Donald Murchison for applicant.
Russell & Schureman, by William R. Pippin, for Western Truck Lines, Ltd., Arthur H. Glanz for Boulevard Transportation Company, California Cartage Company, California Motor Express, Ltd., Constructors Transport Co., Delta Lines, Inc., Desert Express, Di Salvo Trucking Company, Merchants Express of California, ONC-So. Cal., Pacific Motor Trucking Company, Shippers Express Company, Sterling Transit Company, Valley Motor Lines, Inc., Valley Express Co., and Victorville-Barstow Truck Line; protestants.

O P I N I O N

By Decision No. 56579, on Application No. 36437, dated April 22, 1958, and Supplemental Opinion and Order thereto, in Decision No. 61544, dated February 21, 1961, applicant was authorized "to transport general commodities, including commodities requiring the use of special refrigeration or temperature control in specially designed and constructed refrigerated equipment," between all points and places in the Los Angeles Drayage Area, as described

in Appendix B of said Decision No. 61544, and between points within said drayage area and some twenty-nine named points situated generally along U. S. Highway No. 6 between Newhall and Mojave, along U. S. Highway No. 466 between Keene and Kramer Junction, and along county roads between Inyokern and Trona, including the towns of Johannesburg, Randsburg and Red Mountain along U. S. Highway No. 395. Applicant was enjoined from transporting some eleven commodities, including the usual exceptions. Applicant is also operating as a Radial, Contract and City permit carrier.

Applicant desires to continue to transport general commodities, subject to all the present exceptions, but requests an enlargement of his operating rights to include service between: (1) points and places within the Los Angeles Basin Territory, (2) between points within said basin area, on the one hand, and, on the other hand, all points along and within ten miles laterally of Highway No. 6 between San Fernando and Mojave, Highway No. 466, between Mojave and Yermo, Highway No. 66 between San Bernardino and Barstow and Highway No. 18 and unnumbered highways between Victorville and Twentynine Palms, including (3) the presently served points, not within said lateral areas, of Pearblossom, Monolith, Tehachapi, California Institute for Men, Keene, Inyokern, China Lake, Ridgecrest, Westend, Argus, Trona, Johannesburg, Randsburg and Red Mountain, and (4) the additional off-route points of Castaic and Camp Irwin, the latter two points also being outside the proposed ten-mile lateral areas (route map, Exhibit A, filed with application).

Fifteen highway common carriers entered appearances as protestants, of which five, Desert Express, Pacific Motor Trucking

Company, Western Truck Lines, Victorville-Barstow Truck Line and Southern California Freight Lines presented evidence in support of their protests.

Public hearings were held in Los Angeles on November 21 and 22, 1961, and February 27 and 28, 1962, before Examiner Mark V. Chiesa. The matter was submitted for decision on the latter date.

The evidence shows that Mr. and Mrs. Hilliard are experienced in the trucking business in the Los Angeles area and vicinity, having established the business thirteen years ago. They have eight employees, 29 pieces of equipment, and a terminal in Los Angeles. Applicant's financial condition as of October 31, 1961, shows Assets of \$52,594.03 and Liabilities of \$11,601.86, or a Net Worth of \$40,992.17. Net Income for the ten months ending October 31, 1961, was \$16,369.63.

Fourteen shipper witnesses testified in support of applicant's request. Generally their testimony shows that they have used applicant's services for various periods of time, either as a permit carrier or highway common carrier, that the service has been satisfactory and that they would use his proposed service. Some of said witnesses are required to use other carriers to points within the proposed areas and others have moved their businesses from the drayage area into the basin territory, placing applicant at a disadvantage due to the restricted area wherein he is now required to operate and resulting in the loss of present customers as they move out of the drayage area.

The evidence shows and we find that a public need exists for applicant's proposed service along the indicated routes and

lateral areas of Highways Nos. 6 and 466 and along the county roads between Inyokern and Trona, the area now partially served by applicant; however, the evidence does not justify a finding that public convenience and necessity require applicant's service as a highway common carrier to points and places in the Barstow or Twentynine Palms area, or the off-route point of Camp Irwin. The testimony of witnesses for service in the latter areas shows clearly that the past use of applicant's service and present needs have been and could be continued on the basis of either contract or radial highway common carriage.

Protestants presented evidence of their respective authorities, present service to the areas proposed to be served and elsewhere, personnel, equipment, facilities, and financial conditions. Their witnesses testified that additional certification as proposed would be detrimental to their companies and to the shipping public. Sufficient evidence supporting these opinions, however, is lacking.

The Commission, having considered the matter, is of the opinion and finds that public convenience and necessity require that applicant establish and operate a highway common carrier service subject to outstanding commodity exceptions as hereinafter set forth, and we find also that applicant possesses the experience, personnel, facilities and financial resources to institute and maintain said service. The application will be granted in part and denied in part.

Lester Leon Hilliard 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 on the evidence therein adduced,

IT IS ORDERED that:

1. A certificate of public convenience and necessity be and it is granted to Lester Leon Hilliard, authorizing him 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 he will be required, among other things, to file annual reports of his 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 five days after the effective date of this order on not less than five 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-A.

3. Appendix A of Decision No. 56579, as amended, is further amended by incorporating therein Second Revised Page 1, attached hereto, in revision of First Revised Page 1; and Appendix B of Decision No. 61544 is amended by substituting First Revised Appendix B attached hereto.

4. Except as provided in paragraph 1 above, Application No. 43729 is denied.

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

Dated at San Francisco, California, this 31st day of JULY, 1962.

President

[Signature]

[Signature]

[Signature]

[Signature]

Commissioner's

(A) Lester Leon Hilliard, doing business as Hilliard Truck Line, by the certificate of public convenience and necessity granted in the decision noted in the margin, is authorized to transport general commodities, including commodities requiring the use of special refrigeration or temperature control in specially designed and constructed refrigerated equipment, between the following points and places:

1. Between all points and places in the Los Angeles Basin Territory as described in First Revised Appendix B attached hereto.
2. Between all points and places in the Los Angeles Basin Territory, on the one hand, and all points and places on and within ten miles laterally of the following highways, on the other hand:
 - a. U.S. Highway 6 between San Fernando and Mojave, inclusive.
 - b. U.S. Highway 466 between Keene and Kramer Junction, inclusive.
3. Between all points and places in the Los Angeles Basin Territory, on the one hand, and the following points and places in the Counties of Los Angeles, Kern or San Bernardino: Castaic, Pearblossom, Inyokern, China Lake, Ridgecrest, Westend, Argus, Trona, Johannesburg, Randsburg and Red Mountain. (See Note)

NOTE: For service to and from the points designated in Paragraph 3 above, applicant may use the most direct or convenient highways or roads, serving no intermediate points except those designated in Paragraph 2 above.

Issued by California Public Utilities Commission.

Decision No. 64053, Application No. 43729.

"FIRST REVISED
APPENDIX B TO DECISION NO. 64053
Cancels Appendix B to Decision No. 61544"

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; southwestly along La Cadena Drive to Iowa Avenue; southerly along Iowa Avenue to U. S. Highway No. 60; southwestly 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; southwestly 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.