

Decision No. 65700

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 conven-)
ience and necessity to extend high-)
way common carrier services and to)
consolidate certain of its operating)
authorities.)

Application No. 43067
Filed January 16, 1961

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 protestants.

O P I N I O N

The Supreme Court of the State of California, on March 7, 1963 annulled Commission Decision No. 63297, dated February 20, 1962 and directed the Commission to state separately findings and conclusions upon the material issues of fact and law that determine the ultimate issue of public convenience and necessity.

The record is complete on all of the issues in this case and no further hearing is necessary.

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, pipelines 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.

The Commission, in determining whether public convenience and necessity require the service proposed by applicant, considers the resolution of the following issues material to the making of such determination:

1. Does applicant possess the experience, financial ability, equipment and facilities to conduct the proposed service?
2. Is the proposed service adequately responsive to the need of applicant's shippers?

3. Does the public or a portion thereof, in addition to applicant's present shippers, require the proposed service?

4. Will the granting of the application adversely affect the protestants?

The evidence discloses that applicant's service is becoming substantially daily between San Francisco, Los Angeles and San Diego under its present authority. All of the shipper witnesses testified to the high standard of service of applicant to the shipping public, and supported the need for the type of service proposed by applicant between said points for certain commodities hereinafter named.

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.

Protestants testified as to their operating authorities, equipment utilized and available, and the number of personnel employed. In the main, protestants, many of whom obtained substantial certificated operating authority within 18 months of these hearings, testified that the application was being opposed because, in their opinion, there was no need for an additional carrier; that they had space available in their equipment; and that granting the application would dilute their traffic and provoke requests for rate increases.

Consideration of this testimony reveals it is not probatively compelling except as to Victorville-Barstow Truck Lines

and Desert Express. As to these two carriers the record shows that each operates a specialized service in the sparsely settled desert areas and that placing a new carrier therein could result in an impairment of such existing service.

Upon consideration of the evidence, the Commission finds that:

1. Applicant possesses the experience, equipment, personnel and financial resources to institute and maintain the transportation service hereinafter authorized.

2. The oil-well drillers, operators and construction companies shipping under applicant's oil-well farm authority do not have other adequate transportation service available from protestants, or otherwise, to satisfy their requirements in handling shipments of less than 10,000 pounds.

3. The wholesale merchants and shippers of certain commodities set forth in Appendix A who patronize applicant's transportation service do not now have and have not had adequate transportation service available from protestants, or otherwise, to satisfy said shippers' requirements in an efficient and speedy manner.

4. The wholesale merchants and shippers of those certain and specific commodities set forth in Appendix A will be afforded shipping advantages, reduced dock congestion, and more efficient service if applicant is granted authority to transport said commodities over routes from San Francisco, Los Angeles and San Diego as hereinafter authorized.

5. Granting the application will not adversely affect protestants except Victorville-Barstow Truck Lines and Desert Express.

6. Authorizing applicant to perform the proposed service in the desert areas presently served by Victorville-Barstow Truck Lines and Desert Express could adversely affect such carriers.

7. 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.

8. Public convenience and necessity require that applicant be authorized to transport only the specifically described commodities and only between San Francisco, Los Angeles and San Diego, as more particularly set forth in the ensuing order.

The Commission concludes from the foregoing findings of fact that authority should be granted to applicant as specified 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

IT IS ORDERED that:

1. 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. 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 to 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. 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. 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 9th day of July, 1963.

William W. Bennett
President
Eric H. Stahl
Robert W. Page

Commissioners

Commissioners GEORGE G. GROVER and
FREDERICK B. HOLOBOFF present but
not voting.

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;

Issued by California Public Utilities Commission.

Decision No. 65700, Application No. 43067.

- 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;
- U. S. 80 between San Diego and California-Arizona State Line;
- State Highway 127 between Baker and Nevada-California State Line.

That the foregoing oil well farm authority herein granted be subject to the following restriction:

Transportation performed under the authority herein granted shall be limited to commodities originating at or destined to an oil-well site, construction site or farm or originating at or destined to a storage yard.

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).

Issued by California Public Utilities Commission.

Decision No. 65700, Application No. 43067.

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.

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.

Issued by California Public Utilities Commission.

Decision No. 65700, Application No. 43067.

Lateral and radial miles referred to in this appendix are statute miles of 5,280 feet each, measured in a straight line without regard to terrain features.

To the extent of any duplication of operative rights set forth in this appendix, such operative rights may not be separated to permit Airway Trucking Co. to sell or transfer one certificate authority and retain another certificate authority to perform the same service.

End of Appendix A

Issued by California Public Utilities Commission.

Decision No. 65700, Application No. 43067.

APPENDIX B TO DECISION NO. 65700

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

APPENDIX C TO DECISION NO. 65700

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 Capital 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.

SAN DIEGO TERRITORY consists of the area bounded as follows: Beginning at the junction of Torrey Pines Road and U. S. Highway 101 (4 miles north of La Jolla); thence easterly to Miramar; thence southeasterly to Lakeside, located on State Highway 67; thence southerly to Bostonia; thence southeasterly to Jamul, located on State Highway 94; thence due south to the International Boundary; thence westerly along the International Boundary to the Pacific Ocean; thence along the Pacific coast to a point due west of the point of beginning; thence due east to the point of beginning.