

66251

ORIGINAL

Decision No. _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

CONSTRUCTORS TRANSPORT COMPANY,
 CALIFORNIA MOTOR TRANSPORT COMPANY,
 DELTA LINES, INC., DI SALVO TRUCKING
 COMPANY, FORTIER TRANSPORTATION COMPANY,
 MERCHANTS EXPRESS OF CALIFORNIA,
 OREGON-NEVADA-CALIFORNIA FAST FREIGHT
 AND SOUTHERN CALIFORNIA FREIGHT LINES,
 PACIFIC INTERMOUNTAIN EXPRESS, PACIFIC
 MOTOR TRUCKING COMPANY, SHIPPERS EXPRESS,
 STERLING TRANSIT CO., INC., VALLEY MOTOR
 LINES, INC., AND WILLIG FREIGHT LINES,
 corporations,

Complainants,

vs.

Case No. 7697

SIERRA DISTRIBUTING, LTD., a corporation,
 F.T.S. TRANSPORT SYSTEM, INC., a
 corporation, and C. J. MORRISSEY, Trustee
 in Bankruptcy, an individual,

Defendants.

PRELIMINARY ORDER

Complainant carriers seek revocation of highway common carrier operating rights. Defendants are a carrier, its trustee in bankruptcy, and a prospective purchaser of the rights.

The complaint alleges that F.T.S. Transport System, Inc. discontinued all operations on December 12, 1962, when its assets were seized by the Internal Revenue Service. It was adjudicated a bankrupt in January of 1963. Its operating rights were sold on May 21, 1963 to Sierra Distributing, Ltd., in a sale conditioned upon approval by this Commission and by the Interstate Commerce Commission. In July of 1963 defendants applied for authority for the conditional sale. (Application No. 45639.) A like application is pending before the Interstate Commerce Commission.

It is alleged that a portion of the operating rights sought to be transferred to Sierra was purchased from J. A. Nevis in 1960, and that Nevis had also been adjudged a bankrupt.

Cessation of operations by F.T.S. and its trustee, and continued failure to operate since December 12, 1962, are alleged to constitute a breach of public utility obligation under the certificate and filed tariffs. If the rights are perpetuated and operations performed at non-compensatory rates, as was done by F.T.S., further financial difficulties are inevitable. A third bankruptcy or insolvency would be adverse to the carrier, and also to shippers and suppliers who must stand a portion of the loss.

Since F.T.S. ceased operating, its former traffic has been handled by complainants and other carriers. Absent public need for a perpetuation of the rights, and in light of the experience of two carriers operating under those rights, perpetuation of the rights would be contrary to the public interest. Complainants will be injured by revival of the rights.

Complainants seek revocation of the rights, whether in the hands of F.T.S., its trustee, or Sierra.

Complainants are entitled to be heard on issues raised by alleged unauthorized discontinuance of public utility operations. (Delta Lines v. Todd, Decision No. 66009 in Case No. 7695.)

IT IS ORDERED as follows:

1. The Secretary of the Commission is directed to cause to be served upon defendants copies of this order, together with copies of the complaint herein.

2. Defendants are directed to answer the complaint within ten days after service thereof, but only as to two issues,

(a) Whether or not there has been an unauthorized discontinuance of public utility operation, and

(b) Whether or not, for that reason, the F.T.S. certificate should be revoked.

3. Case No. 7697 will be consolidated for hearing with Application No. 45639.

4. In all other respects Case No. 7697 is hereby dismissed.

Dated at San Francisco, California, this 5th day of NOVEMBER, 1963.

William C. Burns
President

John G. Mitchell
Robert H. Page

George L. Trover

Friedrich B. Holoboff
Commissioners