

Decision No. 67126

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
SIERRA DISTRIBUTING, LTD., a corpora-
tion, F. T. S. TRANSPORT SYSTEM, INC.,
a corporation, and C. J. MORRISSEY,
Trustee in Bankruptcy for authority
for SIERRA DISTRIBUTING, LTD. to
purchase the certificates of public
convenience and necessity of F. T. S.
TRANSPORT SYSTEM, INC.

Application No. 45639

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,

Case No. 7697

Complainants,

VS:

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

Defendants.

Graham, James & Rolph, by Boris H. Lakusta and Myron Bull, Jr., for 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, complainants and protestants.

Berol, Loughran & Geernaert, by Bruce R. Geernaert, for Sierra Distributing, Ltd., applicant and defendant.

Marvin Handler, and Milton Maxwell Newmark, for Rose M. Morrissey, Trustee in Bankruptcy of F. T. S. Transport System, Inc., applicant and defendant.

O P I N I O N

By their complaint filed August 30, 1963, complainants request the revocation of certain highway common carrier operating authority. Said authority was granted by Decision No. 51313, dated April 12, 1955, in Application No. 36786, Decision No. 52515, dated January 23, 1956, in Application No. 35493, Decision No. 53166, dated May 28, 1956, in Application No. 35493 (First Supplemental), and Decision No. 59499, dated January 12, 1960, in Application No. 41434. The certificates authorize the transportation, among other things, of iron, steel, building materials, machinery, chemicals and aluminum, between many points within the State. On December 12, 1962, the assets of F. T. S. Transport System, Inc. (hereinafter referred to as F. T. S.) were seized by the Internal Revenue Service and on January 24, 1963, C. J. Morrissey (hereinafter referred to as Morrissey) was appointed trustee in bankruptcy. On August 2, 1963, F. T. S. by Morrissey filed Application No. 45639 requesting authority to sell and transfer the operating authority to Sierra Distributing, Ltd. (hereinafter referred to as Sierra). The transfer was authorized on October 22, 1963, by ex parte Decision No. 66186. The Commission in said decision refused to entertain a protest by complainants herein which was predicated upon the ground that the affected area was adequately served and that authorization of the transfer would result in a diversion of traffic from complainants. The Commission found that the protest was an attempt to again raise the issue of public convenience and necessity and was, therefore, a collateral attack upon a prior Commission decision. On November 5, 1963, the Commission issued a preliminary order in Case No. 7697 dismissing the complaint in all respects except as ✓
to the following issues:

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

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

On December 23, 1963, defendants filed their answer.

A public hearing was held before Examiner Daly on February 25, 1964, at San Francisco. No evidence was introduced on the aforementioned issues. They will, therefore, be determined upon the pleadings.

During the course of hearing complainants requested that defendants be required to produce all of the freight bills of F. T. S. for intrastate transportation for the 12-month period prior to December 12, 1962. The presiding examiner ruled that the request would be beyond the issues raised by the complainants and denied the motion. On February 28, 1964, complainants filed an amendment to their complaint alleging a partial discontinuance of service prior to December 12, 1962, and requesting that defendants be required to produce the freight bills for the period aforementioned.

Complainants allege that on or about December 12, 1962, the Internal Revenue Service seized the assets of F. T. S. and operations were suspended and that continued failure to operate since December 12, 1962, constitutes a breach of F. T. S.'s public utility obligation under its certificated authority.

Defendants admit that the assets of F. T. S. were seized by the Internal Revenue Service on December 12, 1962, that F. T. S. was adjudged bankrupt and that operations were suspended as of said date. As an affirmative defense defendants allege that pursuant to Application No. 45031, filed on December 13, 1962, the Commission by Decision No. 64955 authorized a temporary suspension of the certificates pending further order of the Commission; and that the

Commission set aside and vacated said suspension in the transfer proceeding (Decision No. 66136).

By their amended complaint, complainants allege upon information and belief that, as to a substantial part of the operating authority held by F. T. S. on December 12, 1962, said defendant had either discontinued service under such part or had never activated service under such part. They further allege on information and belief that 95 percent or more of F. T. S.'s intrastate shipments for a substantial period prior to December 12, 1962, consisted of the transportation of iron and steel, and iron or steel articles, and did not extend to the transportation of general commodities or other specified commodities. Complainants therefore requested that defendants be required to produce all intrastate freight bills of F. T. S. for intrastate transportation performed for the 12-month period prior to December 12, 1962. They also requested that the matter be set for further hearing. These requests are denied for the reasons hereinafter appearing.

After consideration, the Commission finds that:

1. F. T. S. discontinued all certificated operations on December 12, 1962, and that said discontinuance was the result of an involuntary bankruptcy.
2. Pursuant to application filed on December 13, 1962, the Commission by Decision No. 64955 authorized the suspension of service under the certificated authority herein considered.
3. Said certificates remained suspended pursuant to Commission order until the Commission authorized their transfer to Sierra by Decision No. 66186 dated October 22, 1963.
4. There was no unauthorized discontinuance of service justifying the revocation of the certificates in question.

5. The issue of partial discontinuance of service was raised as an afterthought. Based upon the foregoing findings the Commission concludes that the complaint, as amended, should be dismissed in its entirety.

O R D E R

IT IS ORDERED that Case No. 7697 as amended is hereby dismissed.

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

Dated at San Francisco, California, this 21st day of April, 1964.

William A. Smith
President

Everett B. Stearns
George T. Traver
Frederick B. Haloboff
Commissioners