

Decision No. 71354

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
EVANS TANK LINE, INC., a corporation,
for an extension of its certificate
of public convenience and necessity
to operate as a highway common car-
rier for the transportation of
property in intrastate and interstate
and foreign commerce, and for an
in lieu certificate of public
convenience and necessity.

Application No. 47932
(Filed September 30, 1965)

Murchison and Stebbins, by Donald Murchison,
for applicant.

Arthur H. Glanz, for Pacific Intermountain
Express Co., Ringsby Truck Lines, Inc.,
Ringsby Pacific Ltd., Garrett Freight
Lines, Inc., Milne Truck Lines, Inc.,
IML Freight, Inc., and Arizona Pacific
Truck Lines, interested parties.

O P I N I O N

A duly noticed public hearing was held at Los Angeles
before Examiner Power on May 5, 1966 and the matter was submitted.

Evans possesses a certificate of public convenience and
necessity to transport general commodities between Los Angeles
(including points within 30 miles of First and Main Streets) and
points between Los Angeles and Yermo, on the one hand, and points
on State Highway 127 between Baker and the California-Nevada State
Line north of Death Valley Junction with 15-mile^{1/} lateral rights,
on the other hand. Evans also has authority between Death Valley
Junction and Stove Pipe Wells which does not affect this applica-
tion. The service route is over U.S. Highway 66 from Los Angeles
to Barstow, thence via U.S. 466 renumbered U.S. 15.

1/ Amended to 10 miles at the hearing.

By the instant application Evans seeks to extend its authority over U.S. 15 to its junction with Nipton Road, thence via Nipton Road to Nipton, this also to include 15-mile^{2/} lateral rights.

The intrastate phase of this application provoked no protests. However, when notice was given in the Federal Registers of December 22, 1965 and January 19, 1966, under Section 206(a)(6) of the Interstate Commerce Act for authority to operate in interstate and foreign commerce the situation changed. In all, ten protests were filed. Three of these were withdrawn, however, leaving seven protestants of whom three are parts of one organization. In other words, there were five organizations protesting at the hearing.

Applicant, at the hearing, amended its application. Thereupon counsel for the protestants changed the appearance to interested parties and withdrew. Thereafter there were no protests to any phase of the application.

Applicant then presented three public witnesses who supported the request of applicant.

It should be pointed out that the protestants were no more interested in the area between Baker and Nipton than the intrastate carriers were. Their concern was over the possibility that operating authority between these two points might be linked with other operating rights to produce a service between Los Angeles and Las Vegas or beyond, competitive with existing carriers.

The Commission finds that:

1. Applicant has the financial resources, personnel, experience and equipment necessary to perform the service proposed in the application.

^{2/} See Footnote ^{1/}.

2. Public convenience and necessity require that a certificate be granted to applicant in intrastate commerce as provided by the following order.

3. Public convenience and necessity require that applicant be authorized to register a portion of the intrastate operating authority herein granted, as provided by paragraph 3 of the order following, with the Interstate Commerce Commission so as to provide service in interstate and foreign commerce within said portion.

The Commission concludes that the application should be granted as provided by the following order.

Evans Tank Line, Inc. 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.

In view of the fact that Evans' present operating rights are registered with the Interstate Commerce Commission, its request for an in-lieu certificate was withdrawn.

O R D E R

IT IS ORDERED that:

1. A certificate of public convenience and necessity is granted to Evans Tank Line, Inc., a corporation, authorizing it to operate as a highway common carrier in intrastate commerce as

defined in Section 213 of the Public Utilities Code, between Baker, California and Nipton, California via U.S. Highway 15 between Baker and its junction with San Bernardino County, Nipton Road and Nipton Road between its junction with U.S. Highway 15 and Nipton, including points within ten miles laterally of said highways and between said points and points applicant is presently authorized to serve under authority acquired by applicant pursuant to Decision No. 57860 in Application No. 40626.

2. The authority granted by paragraph 1 of this order shall be subject to the restrictions contained in said certificate acquired pursuant to said Decision No. 57860.

3. 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. Applicant is placed on notice that, if it accepts the certificate of public convenience and necessity herein granted, it will be required, among other things, to comply with and observe the safety rules of the California Highway Patrol and the insurance requirements of the Commission's General Order No. 100-D. Failure to comply with and observe the safety rules, or the provisions of General Order No. 100-D, 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 tariffs, in triplicate, in the Commission's office.
- (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-A.
- (e) Applicant shall maintain its accounting records on a calendar year basis in conformance with the applicable Uniform System of Accounts or Chart of Accounts as prescribed or adopted by this Commission and shall file with the Commission, on or before March 31 of each year, an annual report of its operations in such form, content, and number of copies as the Commission, from time to time, shall prescribe.

4. Applicant is authorized to register a portion of the operating authority granted by paragraph 1 hereof with the Interstate Commerce Commission pursuant to the terms of Section 206(a)(6) of the Interstate Commerce Act, namely between points applicant is presently authorized to serve under the purchase authorized by said Decision No. 57860 and points between Baker, California and Mountain Pass Mine, California, inclusive, approximately one mile north of U.S. Highway 15, including service to points within ten miles laterally of U.S. Highway 15, subject to the restriction that the authority granted herein shall not be combined, united or consolidated with any authority now held or hereafter acquired by applicant so as to create a through route between points south or west of Baker and points north or east of Mountain Pass Mine, provided, however, that nothing in this

order shall be construed to effect a revocation of any operating authority presently held by applicant.

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

Dated at San Francisco, California, this 4th day of OCTOBER, 1966.

[Signature]
President

[Signature]

[Signature]

[Signature]
Commissioners

Commissioner George G. Grover did not participate in the disposition of this proceeding.