

Decision No. 71806**ORIGINAL**

## BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of  
 C. L. TILDEN, JR. and IRVING S. CULVER,  
 partners doing business as GIBRALTAR  
 WAREHOUSES, for a certificate of public  
 convenience and necessity authorizing the  
 transportation of property between San  
 Francisco, on the one hand, and, on the  
 other, Union City, as an extension of  
 present operations.

Application No. 48383  
 (Filed April 7, 1966)

John G. Lyons, for Gibraltar Warehouses, applicant.

Boris H. Lakusta, for Garden City Transportation Co.,  
 Interlines-Blankenship Motor Express, Walkup's  
 Merchants Express, Willig Freight Lines, Pacific  
 Motor Trucking Company, Haslett Company,  
 protestants.

O P I N I O N

This application was heard before Examiner Porter at San Francisco July 21, 28, 29, and on the latter date it was submitted.

Applicants are partners, doing business as Gibraltar Warehouses, with their address and principal place of business at 1920 Army Street, San Francisco, California 94124.

Applicants are engaged in business as a public utility warehouseman in the City and County of San Francisco, and operate as a highway common carrier in the transportation of general commodities between San Francisco, on the one hand, and points on U.S. Highway 101 between Daly City and San Jose, on the other hand, and between San Francisco, on the one hand, and Oakland, Emeryville, Berkeley, Alameda, San Leandro, Richmond, Albany and El Cerrito, on the other hand. Applicants perform such highway common carrier

operations under authority granted by Decision No. 54396, dated January 15, 1957, in Application No. 36065.

Pursuant to Section 1063 of the Public Utilities Code of the State of California, applicants request a certificate of public convenience and necessity authorizing the transportation of general commodities, with exceptions, between San Francisco, on the one hand, and, on the other, Union City, California, as an extension of applicants' present authority.

Applicants propose daily overnight service, applying rates, rules and regulations provided in the Commission's Minimum Rate Tariff No. 2.

Applicants also possess radial highway common carrier, contract carrier and household goods carrier permits.

Applicants' assistant manager testified that thirteen customers of long standing recently have required sizeable and frequent shipments to two wholesale food centers in Union City. These customers (except for one intrastate shipper) are out-of-state food and food accessory manufacturers who ship interstate to Gibraltar Warehouses in San Francisco for storage and subsequent shipment. They desire and request Gibraltar to transship their products to Union City upon order.

For candy customers (two), applicants have developed and maintained a specialized air-conditioned cooler for candy storage, and special tempering, handling and delivery required for this product.

Gibraltar's volume to the two grocery wholesalers in Union City is sizeable. In January, 1966, ten of Gibraltar's customers shipped 57 orders totaling 90,462 pounds. In March of 1966, eleven of Gibraltar's customers shipped 73 orders totaling 116,690 pounds to the same consignees in Union City.

Applicants now serve these customers under their radial highway common carrier permit. Applicants presently have no return business from Union City.

Applicants presented four shipper witnesses who testified in general that they used Gibraltar Warehouses for both storage and transportation, and that the service has been satisfactory, or better, and that they wish it to continue. The reason for not presenting additional shipper witnesses was that these customers were eastern concerns, and the applicants did not feel that there was economic justification for bringing them to the hearing.

Four protestants testified that they represent presently certificated common carriers operating to Union City. They testified in general that they oppose the granting of the authority herein sought on the ground that competition is now extensive in the area, and any additional certification would dilute the existing traffic available for transportation.

Counsel for protestants argued that applicants could perform this service by contract, but justification for imposing such a condition upon applicants does not readily appear. Applicants' customers have not asked for contract service.

The record shows that applicants have a net worth of \$122,634.15 and are able financially to support this extension of their business. Applicants have sufficient trucking equipment (28 items) for the proposed extension. In the event additional equipment is required, applicants are in a position to obtain it. The record indicates, and the Commission recognizes, that Union City is a fast growing industrial and residential area. Exhibit "A", a map of applicants' certificated points, and the point of Union City requested to be certificated, establishes that

Union City is a logical link to complete the loop indicated by the pattern of applicants' prior common carrier operations. This is especially clear in light of the demand herein indicated by applicants' customers. Furthermore, applicants having the storage base for their customers' cargo, offer a significant advantage over the service rendered by protestants. Applicants can and do ship direct from their San Francisco warehouse to Union City; whereas protestants' evidence indicates that in the normal course of their business they would run cargo through their terminal, requiring additional handling.

After consideration of the evidence, the Commission finds that (1) applicants possess the experience, equipment and financial resources to institute and maintain the proposed service, and (2) public convenience and necessity require the extension of applicants' present authority as requested. We conclude that the application should be granted.

C. L. Tilden, Jr. and Irving S. Culver, partners doing business as Gibraltar Warehouses, are each 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 a 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.

The order which follows will provide for the revocation of the certificate presently held by C. L. Tilden, Jr. and Irving S. Culver and the issuance of an in-lieu certificate to them.

O R D E R

IT IS ORDERED that:

1. A certificate of public convenience and necessity is granted to C. L. Tilden, Jr. and Irving S. Culver, a partnership, authorizing them to operate as a highway common carrier, as defined in Section 213 of the Public Utilities Code, between the points and over the routes particularly set forth in Appendix A attached hereto and made a part hereof.

2. In providing service pursuant to the certificate herein granted, applicants shall comply with and observe the following service regulations:

- (a) Within thirty days after the effective date hereof, applicants shall file a written acceptance of the certificate herein granted. Applicants are placed on notice that, if they accept the certificate of public convenience and necessity herein granted, they 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, applicants 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) Applicants shall maintain their 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 their operations in such form, content, and number of copies as the Commission, from time to time, shall prescribe.

3. The certificate of public convenience and necessity granted in paragraph 1 of this order shall supersede the certificate of public convenience and necessity granted by Decision No. 53625, as amended by Decision No. 54396, which certificate shall be revoked effective concurrently with the effective date of the tariff filings required by paragraph 2(b) hereof.

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

Dated at San Francisco, California, this 14<sup>th</sup> day of JANUARY, 1967.

[Signature]  
President

[Signature]  
[Signature]

Commissioners

C. L. Tilden, Jr., and Irving S. Culver, by the certificate of public convenience and necessity granted in the decision noted in the margin, are authorized to transport general commodities between:

- A. San Francisco, on the one hand, and Oakland, Emeryville, Berkeley, Alameda, San Leandro, Richmond, Albany, Union City and El Cerrito, on the other hand.
- B. San Francisco, on the one hand, and points on U.S. Highway 101 between Daly City and San Jose, and points on U.S. Highway 101 By-Pass between Bayshore and San Jose, on the other hand.

Applicant shall not transport any shipments of:

1. Used household goods and personal effects not packed in accordance with the crated property requirements set forth in Item No. 5 of Minimum Rate Tariff No. 4-B.
2. Automobiles, trucks and buses, viz.: new and used, finished or unfinished passenger automobiles (including jeeps), ambulances, hearses and taxis; freight automobiles, automobile chassis, trucks, truck chassis, truck trailers, trucks and trailers combined, buses and bus chassis.
3. Livestock, viz.: bucks, bulls, calves, cattle, cows, dairy cattle, ewes, goats, hogs, horses, kids, lambs, oxen, pigs, sheep, sheep camp outfits, sows, steers, stags or swine.
4. Commodities requiring the use of special refrigeration or temperature control in specially designed and constructed refrigerated equipment.

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5. Liquids, compressed gases, commodities in semiplastic form and commodities in suspension in liquids in bulk, in tank trucks, tank trailers, tank semitrailers or a combination of such highway vehicles.
6. Commodities when transported in bulk in dump trucks or in hopper-type trucks.
7. Commodities when transported in motor vehicles equipped for mechanical mixing in transit.

Such authority does not include the right to render service to, from or between intermediate points.

Applicants shall not establish through routes and joint rates, charges and classifications as to the separate authorities hereinabove set forth in paragraphs A and B.

End of Appendix A

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