

**ORIGINAL**

Decision No. 72138

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of THOMAS H. MARROW TRUCKING CO., a corporation, for an alternate route for operating convenience only, for the transportation of property in intrastate and interstate and foreign commerce, and for an In Lieu Certificate of Public Convenience including said alternate routes.

Application No. 48679  
(Filed July 29, 1966)

Murchison & Stebbins by Donald Murchison for applicant.  
Arthur H. Glanz for Southern California Freight Lines, Inc. and Pacific Motor Trucking Co. Inc.; Turcotte & Traviss by F. W. Turcotte for Lom Thompson dba Thompson Truck Lines; Russell & Schureman by R. Y. Schureman for Imperial Truck Lines, Inc.; protestants.

O P I N I O N

Public hearings on the above-entitled application were held before Examiner Rogers in Los Angeles on October 27 and December 19, 1966, and the matter was submitted for decision on the latter date. Prior to the first day of hearing, notice of the filing of the application was given to interested persons through publication in The Federal Register (Exhibit 1) and by service by United States Mail.

Applicant has authority from this Commission<sup>1/</sup> to transport general commodities with exceptions: 1. Between points in a

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<sup>1/</sup> Decision No. 61179 dated December 13, 1960 in Application No. 42558.

described Los Angeles Basin Area. 2. Between points in a described San Diego-Escondido Territory. 3. Between points in said Los Angeles Basin Area, on the one hand, and, on the other hand, points in said San Diego-Escondido Territory over the routes as follows:

- (a) U. S. Highway No. 101 serving all intermediate points and all off-route points on and along and within 3 miles laterally of said highway and the off-route points of El Toro Marine Base, Camp Pendleton, Fallbrook Valley Center and Bonsall.
- (b) U. S. Highway 395 serving all intermediate points and all off-route points on and along and within 3 miles laterally of said highway between Escondido and San Diego and the off-route point of Poway.

4. Between said San Diego-Escondido Territory, on the one hand, and, on the other hand, El Centro and points within 30 miles of El Centro, over U. S. Highway 80 serving all intermediate points on and along said highway.

Said authority was registered with the Interstate Commerce Commission, which thereafter, on November 29, 1963, in accordance with the provisions of Section 206(a)(7) of the Interstate Commerce Act, issued an in-lieu grandfather certificate authorizing service in interstate commerce coextensive with the service authorized by Decision No. 61179, supra.<sup>2/</sup>

By the application herein, applicant, pursuant to Section 1063 of the Public Utilities Code, requests permanent alternate routes for operating convenience only, with no service at any intermediate point thereon, to be used in the transportation of property between the Los Angeles Basin Area and the El Centro area over alternate routes as follows:

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<sup>2/</sup> Exhibit 3.

U. S. Superhighways<sup>3/</sup> 60 or 10 and California State Thruway Highway 86 or 111, and as is more particularly described as follows:

Commencing at two eastern points of the Los Angeles Basin Territory at the Los Angeles and Riverside County boundary line and their junction with Superhighway U. S. 60 and Superhighway U. S. 10, thence over said Superhighways to their junction at or near Beaumont, California, thence over said U. S. Superhighway 60 to its junctions with California State Thruways Highways 86 and 111 at or near Indio, California, thence over said State Thruway 86 to an imaginary 30 radius mile point of El Centro, California, at or near Felipe Creek, and from said junction with State Thruway Highways 86 and 111 over California Thruway State Highway 111 to an imaginary 30 radius mile point of El Centro at or near Niland, California.

In addition, the applicant requests an in-lieu certificate.

At the outset of the hearings applicant's counsel stated that the application in no way proposes any new or different service from that which it is presently rendering by way of its present authority, both in inter and intrastate commerce; that "the reason for the request of the in-lieu certificate is for the purpose if the same be necessary with regard to the filing for a certificate of registration with the Interstate Commerce Commission, assuming the grant of the authority here sought"; that in order to obtain the requested route deviation or alternate route in the application, it was not the intent of the applicant to produce any

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The terms Superhighways and Thruways are used by the Interstate Commerce Commission and are defined in the Code of Federal Regulations, Title 49, Part 211. In granting highway common carrier authority via designated routes the Commission does not distinguish between types of highways to be used.

public witnesses since it was applicant's contention that this is not a new service; that there is no contention that the service rendered by protestants is not adequate to meet the needs of their customers; that there is no intention to divert any traffic; and that the application is singularly and only that of a route deviation or alternate route.

Applicant's Evidence

Exhibit 2 shows applicant's service areas and routes, all of which have been authorized by this Commission and by the Interstate Commerce Commission. Its Los Angeles Basin Area, hereinafter sometimes called the Basin Area, extends to Yucaipa and Riverside on the east, and Tustin and Costa Mesa on the south. Between the Basin Area and applicant's San Diego-Escondido Territory, hereinafter sometimes called the San Diego Territory, applicant is authorized to operate via U. S. Highway 101 and U. S. Highway 395. The San Diego Territory extends from the junctions of State Highway 76 with U. S. Highways 101 and 395 on the north to the junction of U. S. Highway 80 with the El Cajon-Ramona Highway on the east. Applicant is authorized to operate via U. S. Highway 80 between the San Diego Territory and the El Centro area, hereinafter sometimes called the Imperial Valley. The present authority is set forth in Decision No. 61179, supra (Exhibit 4).

Applicant has 18 line haul tractors, 16 pickup and delivery units, and 37 two-axle trailers plus other types of vehicles, including converter gears (Exhibit 6). Its services between the terminals are performed by means of trains consisting

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of a tractor and two 27-foot trailers or a tractor and one 40-foot trailer.

Applicant has terminals in the cities of Vernon, San Diego, El Centro and Calexico.

As of June 30, 1966, applicant had current assets which totaled \$98,558 and current liabilities which totaled \$102,103. For the six-month period ending June 30, 1966, applicant's operating revenues were \$390,598, its operating expenses were \$393,309 and its operating loss for the period, including an allowance for income taxes, was \$1,107.

For the six months ending September 30, 1966, applicant carried 2,297,109 lbs. of less than truckload traffic and 869,277 lbs. of truckload traffic between the Basin Area and the Imperial Valley (Exhibit 7).

The less-than-truckload shipments were 62.5 percent intrastate, 9.5 percent interstate, and 28 percent foreign. The foreign shipments originated intrastate or interstate and were destined Mexico. The interstate shipments were destined the El Centro area (Exhibit 9).

The truckload shipments were also intrastate, interstate, interstate and foreign, or foreign.

Applicant handles interstate traffic for freight forwarding companies. The freight charges for the service are arrived at by contract and are not specified by tariffs.

Applicant requests authority to render service between the Basin Area and the El Centro area via alternate routes, as hereinbefore stated, for its operating convenience only. No new equipment will be required, no new service will be provided, and

no service will be performed via the proposed alternate routes to points intermediate between the Basin Area and the Imperial Valley. The present service between the Basin Area and the Imperial Valley is through San Diego and between San Diego and El Centro via U. S. Highway 80. This latter highway reaches an elevation of approximately 4,000 feet, and there are occasions when, due to snow, ice or fog, the highway cannot be used. These conditions occurred two times in the past year and each time occasioned a delay of approximately one day.

Applicant intends to use the alternate route only when it has enough traffic, either less than truckload or truckload, to require a full set of doubles between the Basin Area and the Imperial Valley.

Exhibit 8 purports to show the actual mileage between applicant's terminal in Los Angeles and its terminal in El Centro via the presently-authorized routes and the proposed routes. According to this exhibit, the shortest distance between the Los Angeles terminal and the El Centro terminal via San Diego is 233.9 miles and the shortest distance between said Los Angeles terminal and the El Centro terminal via the proposed route is 212.8 miles or 21.1 miles less than the shortest distance via the existing route. On December 14, 1966, applicant's president drove one of applicant's trains carrying a gross weight of 75,340 lbs. from the Los Angeles terminal to the El Centro terminal via Indio. The return trip was made with an empty 40-foot trailer. The round-trip driving time was eight hours and 50 minutes. The witness concedes that if the return trip had been made loaded, the round-trip time would have been approximately nine hours and ten minutes.

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The witness further testified that the round-trip distance was 429.5 miles or approximately 215 miles each direction.

If the applicant is authorized to use the proposed route, it will realize monetary savings in that under the present method of operation it is required to have one line driver per round trip between Los Angeles and San Diego and one line driver per round trip between San Diego and El Centro. Each of these trips requires a total round-trip driving time of approximately six hours, but each driver is paid for eight hours.<sup>4/</sup> On the other hand, the round-trip time between the Los Angeles terminal and the El Centro terminal via the proposed alternate route requires a driving time of between nine and 9½ hours.

Applicant employs union drivers. The drivers receive a base salary of \$3.46 per hour plus approximately \$1.20 per hour fringe benefits, for a total of \$4.66 per hour. Each driver between Los Angeles and San Diego, and each driver between San Diego and El Centro, is paid a total of approximately \$37.28 per round trip, making total drivers' wages between Los Angeles and El Centro via San Diego of \$74.56. The trip between Los Angeles and El Centro via the proposed route will be performed by one driver in a total elapsed driving time of approximately 9½ hours. The time over eight hours is paid at 1½ times the regular time. This results in a cost for the driver of approximately \$47.77 per round trip as compared to the cost of \$74.56 via the present route, a saving of approximately \$26.79 per round trip.

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<sup>4/</sup> This time includes time for coffee breaks but does not include eating time, for which the drivers are not paid and which time is in addition to the elapsed time referred to.

The Protestants' Evidence

Evidence in opposition to the application was presented by Southern California Freight Lines, Inc. and Imperial Truck Lines, Inc. In addition, the parties stipulated that Lom Thompson would have presented certain evidence hereinafter referred to if he were called as a witness. No evidence was presented by Pacific Motor Trucking Co. Inc.

Southern California Freight Lines, Inc.

This carrier has authority to serve between Los Angeles and the Imperial Valley through San Diego and through Indio, both in intra and interstate commerce (Exhibits 10 and 11). It has approximately 2,190 pieces of equipment of all types (Exhibit 12) and terminals in Los Angeles, San Diego and Calexico, among other places (Exhibit 13). It operates two or three schedules per day between Los Angeles and the Imperial Valley through Indio, provides over-night service between said points, and offers its customers approximately five or six hours' service in each direction between Los Angeles and the Imperial Valley via U. S. Highway 99 (State Highway 86). Its witness stated that if the applicant is authorized to use the shorter route via Indio between Los Angeles and the Imperial Valley, applicant could give faster service because of the extra mileage required by its present route through San Diego and that this extra mileage adds to the expenses of operation.

Imperial Truck Lines, Inc.

A witness for the Imperial Truck Lines, Inc. testified that this company has both inter and intrastate authority between Los Angeles and the Imperial Valley via U. S. Highway 99 (now State Highway 86) through Indio and via U. S. Highways 101 and 395



through San Diego and U. S. Highway 80 between San Diego and the Imperial Valley (Exhibit 14). The witness further testified that this company has terminals in Los Angeles, San Diego, El Centro and Calexico; it has 50 line-haul trailers and 22 line-haul tractors; that some of the trailers are 27 feet and some are 40 feet; that it has 65 pieces of pickup and delivery equipment throughout its system; that it runs from 8 to 12 schedules per night between Los Angeles and the Imperial Valley via Indio, and one to three schedules per night between San Diego and the Imperial Valley; that on occasions, a portion of the Imperial Valley traffic from Los Angeles is carried through San Diego; that this type of operation is performed when the traffic in the particular truck to the Imperial Valley from Los Angeles is not sufficient for a full load; and that an operation between Los Angeles and the Imperial Valley through San Diego is not compensatory because of the mileage and the time involved.

The witness also presented Exhibit 15, which contains statistics purportedly relating to the cost of transportation per mile. According to said exhibit, the cost of line-haul transportation exclusive of drivers' wages is 19.34 cents per mile; one driver's wages between Los Angeles and El Centro via Indio average \$38.58 per round trip; the wages per round trip for two drivers, one between Los Angeles and San Diego and one between San Diego and El Centro, average a total of \$55.36 per round trip; the distance between Los Angeles and El Centro via Indio is 211 miles; and the distance between Los Angeles and El Centro via San Diego is 256 miles (Exhibit 15). The witness further testified that between San Diego and El Centro via U. S. Highway 80 the highway goes from

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sea level, to an elevation of approximately 4,000 feet in 50 miles; that the route between Los Angeles and the Imperial Valley through Indio is fast and flat; and that the applicant is not competitive with Imperial Truck Lines, Inc. between Los Angeles and the Imperial Valley due to the extra transit time through San Diego, but applicant is competitive in the sense that it is in the field and does take a portion of the traffic between the two points. The witness further testified that if Imperial Truck Lines, Inc. were restricted to operating from Los Angeles to the Imperial Valley via San Diego, it would not attempt to maintain such service inasmuch as no money can be made between those points through San Diego.

On cross-examination by applicant's attorney, the witness stated that trucks from Los Angeles via San Diego arrive in the El Centro terminal at between 4 or 5 o'clock in the morning and that the trucks that go from Los Angeles to El Centro by way of Indio arrive at El Centro between 2:30 and 3 o'clock in the morning. The witness admitted that it was possible timewise to operate from Los Angeles to El Centro by way of San Diego and still render a morning delivery service in El Centro. The witness further testified that the San Diego terminal of Imperial Truck Lines, Inc. is located in Chula Vista, which is approximately 10 miles south of San Diego, the location of applicant's terminal; that there is additional mileage from the said terminal in Chula Vista back to Interstate Highway 80; and that these additional distances could account for the difference between applicant's estimated mileage from Los Angeles to El Centro via San Diego and the mileage shown on Exhibit 15.

Lom Thompson

It was stipulated that if Lom Thompson were present at the hearing he would testify that he has intrastate operating rights authorizing him to carry general commodities between the Los Angeles Drayage Area, on the one hand, and all points in Imperial County west of the main American Canal, on the other hand, via Indio; that he has interstate rights coextensive with the intrastate rights between Los Angeles and the Imperial Valley; that he has terminals in Los Angeles, El Centro and Calexico, among other places; that he owns and operates 23 tractors and 80 semi-trailers; that at all terminals he has pickup and delivery equipment; that during the past year he has operated his business at a loss in excess of \$50,000; that approximately 35 percent of all his traffic is interstate freight forwarder traffic; that in the past year he has encountered severe competition from applicant in the solicitation of interstate freight forwarder traffic from Los Angeles to the Imperial Valley; and that the loss of any such traffic in addition to other traffic which would be lost to a new competitor would materially affect his operation financially.

It is a fundamental principle that a transportation company should be permitted to operate in an economical and efficient manner. If the company, by operating over a shorter route, with no new services involved, can effect economies and save time without changing its competitive aspect with relation to competing carriers, no good reason appears why the company should not be authorized to do so.

Findings

1. Applicant is now rendering service between Los Angeles and San Diego and between San Diego and the Imperial Valley. The shortest distance between Los Angeles and El Centro by its present route is 233.9 miles. It requests authority to operate between Los Angeles and El Centro through Indio. The distance by the proposed route is 215 miles. This is over 90% of the distance between said points via the existing authorized route through San Diego.

2. If applicant is authorized to use the proposed route it will realize substantial savings in the expenses of transportation.

3. The existing competitive carriers have authority to operate directly between Los Angeles and El Centro through Indio. The granting of the requested authority will not increase the competition now afforded by applicant.

4. The granting of the requested authority will not adversely affect the applicant's existing service through San Diego.

5. Prior to the hearings herein, notice thereof was given to all interested persons through publication in The Federal Register of a notice of the filing of the application and of the desire of the applicant to engage in transportation in interstate and foreign commerce within the limits of the intrastate authority granted.

6. A reasonable opportunity was afforded interested persons to be heard.

7. The question of the proposed interstate and foreign operations has been duly considered.

Conclusion

The Commission concludes that the application should be granted and that applicant should be authorized to provide service as a highway common carrier of general commodities, with exceptions, both pursuant to its existing authority and via a new and additional route between Los Angeles and El Centro through Indio as set forth in the order herein and that applicant should be authorized to provide service in interstate and foreign commerce coextensive with its intrastate authority. An in-lieu certificate should be granted.

Thomas H. Marrow Trucking Co., a corporation, 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) A certificate of public convenience and necessity is granted to Thomas H. Marrow 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 set forth in Appendix A attached hereto and made a part hereof.

(b) Thomas H. Marrow Trucking Co., a corporation, is authorized to register the intrastate authority herein described in paragraph 1.(a) hereof with the Interstate Commerce Commission for operations in interstate and foreign commerce.

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. 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.

3. The certificate of public convenience and necessity granted in paragraph 1(a) of this order is in lieu of and supersedes the certificate of public convenience and necessity granted or acquired by Thomas H. Marrow Trucking Co., a corporation, or its predecessors by Decision No. 61179, which certificate is hereby revoked, said revocation to be 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 MARCH, 1967.

[Signature]  
President

[Signature]

[Signature]

[Signature]

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Commissioners





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Appendix A

THOMAS H. MARROW TRUCKING CO. Original Page 2  
(a corporation)

U. S. Highway No. 395; northerly and easterly along U. S. Highway No. 395 to State Highway No. 18; southwesterly along State Highway No. 18 to U. S. Highway No. 91; westerly along U. S. Highway No. 91 to State Highway No. 55; southerly on State Highway No. 55 to the Pacific Ocean; westerly and northerly along the shore line of the Pacific Ocean to a point directly south of the intersection of Sunset Boulevard and U. S. Highway No. 101, alternate; thence northerly along an imaginary line to point of beginning.

2. Between all points in the San Diego-Escondido Territory as follows:

Beginning at Oceanside at the junction of U. S. Highway 101 and State Highway 76; thence easterly on State Highway 76 and county roads to Vista; thence southeasterly on State Highway 78 to Escondido; thence southerly on U. S. Highway 395 and county roads via Poway to Miramar on U. S. Highway 395; thence southeasterly to Lakeside on the El Cajon-Ramona Highway; thence southerly to Bostonia on U. S. Highway 80; thence southeasterly to Jamul on State Highway 94; thence due south to the International Boundary line; thence westerly to the Pacific Ocean; thence north along the Pacific Ocean including North Island and Coronado to the point of beginning at Oceanside.

3. Between all points in said Los Angeles Basin Area, on the one hand, and, on the other hand, all points in said San Diego-Escondido Territory over the routes as follows:

Issued by the California Public Utilities Commission.

Decision No. 72138, Application No. 48679.



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 refrigerator equipment.
5. Liquids, compressed gases, commodities in semi-plastic 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.
8. Logs.
9. Ammunition or explosives to or from the Naval Ammunition Depot at Fallbrook exceeding 10,000 pounds.

End of Appendix A

Issued by California Public Utilities Commission.

Decision No. 72138, Application No. 48679.