

Decision No. 74285**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
 LEMORE TRANSPORTATION, INC., for a )  
 certificate of public convenience )  
 and necessity authorizing highway )  
 common carrier service. )

Application No. 50024  
 (Filed February 16, 1968;  
 Amended April 26, 1968)

Handler, Baker and Greene, by  
Daniel W. Baker, for applicant.

O P I N I O N

This application originally sought authorization to transport general commodities with standard exceptions in the counties of Solano, Contra Costa and Alameda. This was protested by a group of carriers represented by one law firm. After negotiations, the application was amended and the protest was withdrawn. At the public hearing held April 29, 1968 before Examiner Power, no protestants appeared.

The application, as amended, seeks authority to transport dry general commodities in bulk, <sup>1/</sup> in dump, hopper or similar types of equipment between all points and places in the three counties, on the one hand, and Pittsburg, Benicia, Selby, Richmond, Oakland and Alameda, on the other hand.

Authority is also sought to perform the same transportation in interstate and foreign commerce that is to be rendered in intra-state commerce; accordingly, notice has been given as required for

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<sup>1/</sup> Except the transportation of earth, sand, loam, gravel, stone, cement, asphalt and cement and/or asphaltic mixes.

A. 50024 ds

registration under Section 206(a)(6) of the Interstate Commerce Act. The notice was published in the Federal Register of February 28, 1968.

Applicant presented four shippers and its own president as witnesses. One of the public witnesses represented a major oil company now building a refinery at Benicia. He was interested in the transport of petroleum, coke, additives, catalysts and sulphur. A second witness, representing a chemical company with a plant in Antioch, was interested in moving water-treating chemicals and bauxite. A third represented the firm developing the old Benicia Arsenal, where there are now 83 tenants. He was interested in the movement of iron ore, coke, caustic soda, phosphates and other commodities. He estimated that the industrial park would generate about 200,000 tons in the first year and would rise to 2-1/2 million tons. The fourth witness represented a company operating a marine terminal at Pittsburg, California. It has a belt conveyor and can handle 1,800 tons per hour of any bulk commodities.

From the testimony of these witnesses and of the operating witness the type of transportation here proposed was developed. The commodities in question require hopper or dump truck equipment. Ordinary sand, gravel and aggregates use similar equipment, but the sand and gravel equipment cannot be used because of insufficient capacity. The commodities that Lemore proposes to haul are much lighter than the aggregates and require equipment of a cubic capacity about twice as great. With standard dump and hopper equipment the minimum weights needed for truckload rates cannot be obtained.

The Lemore equipment is also equipped with rubber gaskets to prevent leakage of commodities having the physical form of light

dust. As a practical matter the equipment could not be used for sand and gravel because such commodities would rupture these gaskets.

It is clear that applicant proposes a highly specialized service in special types of equipment which is needed in the area it wants to serve. The application will be granted.

The Commission finds that:

1. Applicant has the necessary financial resources, facilities, equipment, experience and personnel to institute and maintain the service proposed in its application.
2. The institution of highly specialized service as proposed by applicant will not injuriously withdraw traffic from the existing common carrier structure.
3. Public convenience and necessity require the proposed service in intrastate commerce.
4. Applicant has complied with the provisions of the Interstate Commerce Act relating to the registration of intrastate certificates for authority to perform transportation service in interstate and foreign commerce, including publication of notice in the Federal Register.
5. Public convenience and necessity will require the proposed service in interstate and foreign commerce.

The Commission concludes that the application should be granted.

Lemore Transportation, 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.

O R D E R

IT IS ORDERED that:

1. A certificate of public convenience and necessity is granted to Lemore Transportation, Inc., 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 particularly set forth in Appendix A attached hereto and made a part hereof.
2. In providing service pursuant to the certificate herein granted, applicant shall comply with and observe the following service regulations. Failure so to do may result in a cancellation of the operating authority granted by this decision.
  - (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.
  - (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.

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

Dated at San Francisco, California, this 25<sup>th</sup> day of JUNE, 1968.

[Signature]  
President

[Signature]

[Signature]

[Signature]

[Signature]  
Commissioners

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Appendix A

LEMORE TRANSPORTATION, INC.  
(a corporation)

Original Page 1

Lemore Transportation, Inc., a corporation, by the certificate of public convenience and necessity granted by the decision noted in the margin, is authorized to transport dry general commodities in bulk in dump, hopper or similar types of equipment:

Between all points and places in Solano, Contra Costa and Alameda Counties, on the one hand, and, on the other hand, Pittsburg, Benicia, Selby, Richmond, Oakland and Alameda.

Applicant shall not transport any shipments of earth, sand, loam, gravel, stone, cement, asphalt and cement and/or asphaltic mixes.

End of Appendix A

Issued by California Public Utilities Commission.

Decision No. 74285, Application No. 50024.