

Decision No. 74425

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of KERNER TRUCKING SERVICE, INC., a California corporation, for a Certificate of Public Convenience and Necessity to operate as a high-way common carrier for the transportation of property in intrastate and interstate and foreign commerce, to, from and between points and places in the Los Angeles Basin Region.

Application No. 49548
(Filed July 13, 1967)

Murchison & Stebbins, by Donald Murchison, for applicant.
Arthur H. Glanz, for California Cartage Company, California Motor Transport Co., Delta Lines, Inc., Alco Transportation Company, Pacific Intermountain Express Co., Pacific Motor Trucking Company, Ringsby-Pacific, Ltd., Shippers Express Company, Sterling Transit Co., Inc., T.I.M.E. Freight, Inc., Walkup's Merchants Express; and Russell & Schureman, by Carl H. Fritze, for Brake Delivery Service, Burton Truck & Transfer Co., City Transfer, Inc., G & H Transportation, Inc., Griley Security Freight Lines, Quickway Trucking Co., S & M Freight Lines, Swift Transportation Company, and Peerless Trucking Co., protestants.

O P I N I O N

The application was heard before Examiner Rogers at Los Angeles on January 9 and 10, April 3, and May 27 and 28, 1968. On the latter date the matter was submitted. Copies

of the application and the notice of hearing were served in accordance with the Commission's procedural rules.

Applicant is a highway permit carrier engaged in the transportation of general commodities pursuant to radial highway common carrier, contract carrier and city carrier permits. The radial and contract carrier permits are statewide, but applicant claims to be operating within what it calls the Los Angeles Basin Region, described below, pursuant to its contract carrier's permit. Applicant requests authorization to conduct operations as a highway common carrier for the transportation of general commodities, with exceptions, to, from and between all points and places located in the Los Angeles Basin Region described as follows:

Beginning at the intersection of the westerly boundary of the City of Los Angeles and the Pacific Ocean, thence northerly and easterly along the boundary of the City of Los Angeles to its point of first intersection with the boundary of the Angeles National Forest; thence along the southerly boundary of the Angeles National Forest, and southerly boundary of the San Bernardino National Forest to the point of first intersection of the southerly boundary of the San Bernardino National Forest and the San Bernardino-Riverside County Line, thence westerly along the San Bernardino-Riverside County Line to a point on said line distant five miles east from the junction of said County Line and U.S. Highway No. 91, thence southwesterly along a line parallel to and distant five miles from U.S. Highway No. 91, State Highway No. 55, and the prolongation of State Highway No. 55 to its junction with the Pacific Ocean. Thence westerly and northerly along the Coast Line of the Pacific Ocean to the point of beginning;

with service to Laguna Beach and Irvine, which are outside of said Los Angeles Basin Region.

Applicant also requests authority to transport general commodities, with the same exceptions, to, from and between all points in said Los Angeles Basin Region (omitting the off-route points) in interstate and foreign commerce, pursuant to Public Law 87-805 (49 U.S. Code, Sec. 306(a)). Applicant has published notice of intent to transport property in interstate and foreign commerce in the Federal Register (Exhibit No. 1).

Arthur H. Kerner, the applicant's president, commenced subhauling for Southern California Freight Lines in 1946. He continued to do this for four to six months. He then acquired radial highway common carrier, contract carrier and city carrier permits, and between 1946 and 1965 operated as an individual or partnership under authority thereof. In 1965 the permits and assets were transferred to the applicant corporation, the sole stockholders of which are Arthur H. Kerner and his wife, Mae, who are the joint owners of the 25 shares of issued stock. Arthur Kerner is president, Mae Kerner is the vice president, Alan Kerner (son) is treasurer, and Bonnie Kerner Ades (daughter) is secretary of the applicant corporation.

Applicant presently operates pursuant to its contract carrier permit in the Los Angeles Basin Region. Beyond this area it operates pursuant to its radial highway common carrier permit. When the operation first commenced in 1946, Arthur Kerner had only one or two customers. By 1963 he had approximately 50 customers. At the time of the hearings the corporation had between 75 and 100 customers.

Applicant has written contracts with some interstate carriers whereby it picks up interstate shipments and delivers such shipments to the interstate carriers' docks.

Applicant proposes to provide the service Mondays through Fridays with Saturday deliveries on request. Service will be overnight for intrastate shipments with same day service for 2,000-pound and up shipments on request. Interstate shipments will be delivered to the interstate carrier's dock the same day the pickup is made.

Applicant proposes to establish rates for the intrastate service at the same level as those contained in Minimum Rate Tariff No. 2 and other applicable minimum rate tariffs of the Commission.

Applicant has a terminal and office in the southeastern part of the City of Los Angeles. This terminal is leased for five years with one year remaining on the original period and an option to renew for an additional five years. The terminal contains office space 25' x 25' and a loading dock which will accommodate 12 trucks on each side. The terminal area contains approximately one and one-half acres and is paved and fenced. No additional terminal is proposed.

Applicant has ten pickup trucks, including three 16-foot, six 18-foot, and two 20-foot vans; six tractors; five trailers, including one 22-foot, one 26-foot, one 27-foot, one 30-foot, and one 40-foot van; and three passenger cars. All of the power equipment is 1962 or later, except for one 1950 tractor.

All power equipment, except one used on the San Bernardino run (Kellogg Hill prevents two-way radio operation) is equipped with two-way radios.

Applicant has 25 employees (excluding the family), including 18 drivers and two dispatchers. Two dispatchers are needed as applicant makes pickups until 2:00 a.m. Applicant has a night operation and makes night deliveries. One hundred percent of interline (interstate) freight is delivered to the long-line carrier the night it is picked up.

As of March 31, 1967, applicant had current assets in the amount of \$35,907, fixed assets valued at \$48,867, less depreciation, and has other assets valued at \$12,955. As of said date its current liabilities were \$32,889, its long-term liabilities were \$14,048 and its stockholders' equity amounted to \$50,792 (Exhibit No. 3). For the fiscal year ending March 31, 1967, applicant had a net income of \$12,771 (Exhibit No. 4).

Twenty-six of applicant's customers testified in support of its request. These customers have places of business in Covina, El Segundo, Garden Grove, Gardena, Glendale, Huntington Park, Inglewood (2), Los Angeles (9), Long Beach, North Hollywood (3), Pacoima, Santa Ana, Venice, Vernon or Van Nuys. Most of them ship to the major points throughout the area applicant requests authority to serve, including Laguna Beach and Irvine. Some have merchandise returned from points in the proposed area to their places of business. The merchandise they ship varies from plastic toys to steel boxes requiring oversize vans. Services required vary from daily with two or three pickups to once or

twice a week. Many require Saturday delivery during the Christmas holidays (November and December), and applicant gives this service. The witnesses have been using the applicant for intrastate service for periods varying from one month to 18 years, the majority having used applicant for over five years.

Many of the customers use applicant exclusively for the local service. They use applicant for the local service for the reasons that it will deliver on Saturday; that it will pick up at the desired time; that it always delivers the day after pickup at the latest; that it will give the same day delivery service on large shipments; that its personnel is courteous; and that it will give multiple pickups when needed. Most of the witnesses have tried various local carriers and could not secure from them the type of service they need in their businesses.

The majority of the witnesses need interstate service. They either ship interstate or receive interstate shipments, or both. The majority of the witnesses use the pickup services of the interstate carriers, but on the occasions when the pickups are not effected, or they need extra pickups after the interstate carrier has made its pickup, they use the services of applicant to deliver the shipments to the interstate carriers' docks. Applicant performs pickup service for interstate shipments pursuant to a contract with an interstate carrier. Many of the witnesses are dissatisfied with the pickup services of the interstate carriers and desire that applicant receive interstate authority in order that it may handle pickup or delivery service for interstate shipments on its own billing.

Ten of the protestants presented documentary and/or oral evidence, and factual matters relative to two others was presented by stipulation between the parties. The protesting carriers have from 20 to 700 pieces of equipment each. Each of the protestants has authority to serve the Los Angeles Basin Region applicant proposes to serve, or a large portion thereof, both in intrastate and interstate and foreign commerce.

All of the protestants claim to provide overnight service between all points in the region, with same day service in some instances for both intrastate and interstate and foreign shipments. Some of the protestants provide Saturday service without extra charge. Others charge extra for Saturday service. Some, but not all, will make more than one pickup. All of the protestants actively solicit both intrastate and interstate traffic with salesmen and advertising brochures.

All of the protestants presented evidence to show that they have adequate equipment to handle more traffic than they receive and several stated they could secure more equipment if needed. The protestants contended that there are a sufficient number of highway common carriers operating in the proposed area to handle all available intrastate and interstate traffic; that they are operating at less than capacity; and if another highway common carrier is added it would create more competition and dilute the available traffic.

Upon consideration of the evidence, the Commission finds that:

1. Applicant is a California corporation and has radial

highway common carrier, highway contract carrier and city carrier permits issued by this Commission for the transportation of general commodities.

2. For many years applicant has been providing daily intrastate service to, from and between points in the Los Angeles Basin Region which it proposes to serve as a highway common carrier. It has also been providing frequent and regular intrastate service to and from Laguna Beach and Irvine.

3. Applicant's Los Angeles Basin Region service is performed over regular routes and between fixed termini and is a highway common carrier type of service.

4. The witnesses who appeared for applicant desire that applicant be authorized to render the service it seeks authority to perform. Many indicated that applicant performs a personalized, expedited service which they do not obtain from other carriers. Most desire applicant's services in interstate and foreign commerce as well as in intrastate commerce to, from and between points in the proposed region. Many of the witnesses use applicant's services exclusively for intrastate service, use applicant for interstate pickups where and when available under contract with an interstate carrier, and desire that applicant be authorized to handle interstate and foreign shipments on its own billing. Most use other carriers only at their customers' requests. Most were familiar with several of the many highway common carriers and interstate carriers serving the region, but prefer the services of applicant and desire that it be authorized to handle their intrastate and interstate shipments.

5. All of the appearing protesting carriers serve in intrastate and interstate and foreign commerce. All serve a large portion of the proposed region and most serve a larger area. It is not shown that any of the protesting carriers will be seriously adversely affected by the granting of the requested authority.

6. Notice of the filing of the application was published in the Federal Register and all interested parties and protestants were afforded the opportunity to be heard and to protest the request of applicant for authority to operate in interstate and foreign commerce. The Commission has duly considered the question of the proposed interstate and foreign operations. Protestants cross-examined applicant's witnesses; examined applicant's shipping documents as requested; and presented evidence on their own behalf.

7. Public convenience and necessity require that the proposed service be authorized in intrastate operations, and in interstate and foreign commerce coextensive with the intrastate operations with the exceptions of Laguna Beach and Irvine. ✓

8. Applicant has the experience, equipment, personnel and financial resources to institute and maintain the proposed service and the ability to add additional personnel and equipment as needed.

The Commission concludes that the application should be granted as requested.

Kerner Trucking Service, Inc., 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 these rights. Aside from their purely permissive aspect, such rights extend to the holder a full or partial monopoly of a class of business. 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 Kerner Trucking Service, 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 in the Los Angeles Basin Region, as described in Appendix A attached hereto and made a part hereof, with service to and from Laguna Beach and Irvine.
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 23rd day of 1 JULY, 1968.

William Lyons, Jr.
President

William L. Bennett

Shel P. Monnesser
Commissioner

Commissioner A. W. Gatov, being necessarily absent, did not participate in the disposition of this proceeding.

Kerner Trucking Service, Inc., a corporation, by the certificate of public convenience and necessity granted in the decision noted in the margin, is authorized to transport general commodities, with exceptions hereinafter noted, between all points and places in the Los Angeles Basin Region described as follows:

Beginning at the intersection of the westerly boundary of the City of Los Angeles and the Pacific Ocean, thence northerly and easterly along the boundary of the City of Los Angeles to its point of first intersection with the boundary of the Angeles National Forest; thence along the southerly boundary of the Angeles National Forest, and southerly boundary of the San Bernardino National Forest to the point of first intersection of the southerly boundary of the San Bernardino National Forest and the San Bernardino-Riverside County Line, thence westerly along the San Bernardino-Riverside County Line to a point on said line distant five miles east from the junction of said County Line and U.S. Highway No. 91, thence southwesterly along a line parallel to and distant five miles from U.S. Highway No. 91, State Highway No. 55, and the prolongation of State Highway No. 55 to its junction with the Pacific Ocean. Thence westerly and northerly along the Coast Line of the Pacific Ocean to the point of beginning,

with service to and from Laguna Beach and Irvine.

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 paragraph (d) of Item No. 10-C of Minimum Rate Tariff No. 4-A.

Issued by California Public Utilities Commission.

Decision No. 74425, Application No. 49548.

- (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) Liquids, compressed gases, commodities in semiplastic form and commodities in suspension in liquids in bulk, in tank trucks, tank trailers, tank semi-trailers or a combination of such highway vehicles.
- (5) Commodities when transported in bulk in dump trucks or in hopper-type trucks.
- (6) Commodities when transported in motor vehicles equipped for mechanical mixing in transit.
- (7) Logs.
- (8) Articles of extraordinary value as set forth in Rule 15, National Motor Freight Classification A-8, F. G. Freund, Issuing Officer.
- (9) Commodities likely to contaminate or damage other freight.
- (10) Explosives as described in and subject to the regulations of Motor Carriers Explosives and Dangerous Articles Tariff No. 12, F. G. Freund, Issuing Officer.

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Decision No. 74425, Application No. 49548.