

ORIGINAL

Decision No. 75248

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
BIG PINE TRUCKING COMPANY, INC., a
corporation, for a certificate of
public convenience and necessity to
extend highway common carrier service.)

Application No. 49867
Filed December 8, 1967

WESTERN GILLETTE, INC., a California
corporation,)

Complainant,

vs.

Case No. 8824
Filed July 26, 1968

BIG PINE TRUCKING COMPANY, INC., a
California corporation,)

Defendant.)

Martin J. Rosen, for applicant in
Application No. 49867, and
defendant in Case No. 8824.

Russell & Schureman, by R. Y.
Schureman, for Western Gillette,
Inc., protestant in Application
No. 49867, and complainant in
Case No. 8824.

Steven A. Wawra, for Pacific Motor
Trucking Company, protestant in
Application No. 49867.

Timothy E. Treacy, Counsel, for the
Commission staff.

O P I N I O N

The application and complaint herein were consolidated
and heard before Examiner DeWolf at Bishop, California, on
August 20, 21 and 22, 1968, and at Los Angeles, California,

on September 30, 1968, and submitted on the consolidated record on the latter date subject to the filing of concurrent briefs which have been received or waived. Copies of the application and complaint proceedings and the notice of hearing were served in accordance with the Commission's procedural rules. The protestant and complainant is Western Gillette, Inc.; Pacific Motor Trucking Company also appeared as protestant but withdrew the protest before the matter was submitted. The Commission staff appeared and filed a motion to dismiss the complaint.

Applicant and defendant is a California corporation, a highway common carrier, and is generally authorized to transport certain specific commodities between Los Angeles and points and places within ten miles thereof including Long Beach, on the one hand, and Bishop, Lone Pine, Independence, Big Pine and points within five miles thereof, on the other hand, as more particularly set forth in Decision No. 72495.

Applicant has also operated as a permitted carrier for several years past between points in this same general area of California. Applicant alleges that the volume of its business, the number of shippers, and frequency of service between various points has increased. Applicant further alleges that problems have arisen in that certain of applicant's business is now conducted as a certificated carrier and the balance as a permitted carrier.

Applicant requests a certificate of public convenience and necessity to transport general commodities between Los Angeles and ten miles thereof including Long Beach, on the one hand, and all points and places on U. S. Highway 395 from its junction with State Highway 178 to and including Bridgeport, California, on the other hand, serving all points and places on and within fifteen miles laterally of U. S. Highway 395 between its junction with State Highway 178 and Bridgeport, California.

Applicant proposes to apply the same scale of rates as those contained in Minimum Rate Tariff No. 2 and other applicable minimum rate tariffs of the Commission and the same rules and regulations which are now effective under its existing tariffs.

Applicant alleges that the proposed service will result in economies of operation benefiting the shipping public and in all around better service to the shippers.

The complaint filed by protestant outlines operating authority of both parties, alleges that applicant is providing highway common carrier service without first having obtained a certificate of public convenience and necessity authorizing such service, in violation of Section 1063 of the Public Utilities Code, and requests an order directing defendant to cease and desist from further violations of Section 1063.

Defendant filed an answer to the complaint which denies the alleged violations and sets out affirmative defenses to the complaint.

The Commission staff filed a motion to dismiss the complaint at the close of the evidence stating that the complainant did not establish violations of Section 1063 of the Public Utilities Code.

Applicant introduced in evidence a financial statement and balance sheet to June 30, 1968, showing total assets of \$435,299.00, and Exhibit No. 8, an equipment list dated January 1968. Exhibits Nos. 2 through 7 in evidence show applicant's permits and certificate.

Applicant's Exhibits Nos. 10 through 14 are copies of letters and memorandums and daily receiving reports concerning complaints by Sears Roebuck about the transportation service of the protestant.

Exhibit No. 15 is a Resolution of the Board of Supervisors of Mono County stating the desire of the supervisors of Mono County to obtain better delivery service to their communities and alleges numerous complaints concerning local deliveries to the communities of Bridgeport, Walker, Coleville, and Mammoth. The resolution endorses the application and states that the proposals

of Big Pine Trucking Company would apparently assist and provide such local and perhaps daily service from Bishop and thereby further fulfill the needs of local businessmen of the County of Mono.

Exhibit No. 30 shows the Sales Tax Reports from the Board of Equalization for Inyo and Mono Counties for the ten years from June 30, 1958 to June 30, 1967, and describes the total increase since June 30, 1958 to be 63.8 percent for Inyo County and 117.9 percent for Mono County.

The area is served by Highway 395 running north and south through the valley and there are no east-west highways north of Mojave, as indicated on the map of the route of applicant in Exhibit 7.

Witnesses testified that prior to 1939 the Owens Valley was an agricultural community with some recreation, hunting and fishing, and that due to the appropriation of most of the water from the Owens River, agriculture has diminished to the point where it is of relatively minor importance to the transportation industry and now the major activity consists of recreation, summer and winter resorts, skiing, hunting and fishing.

All of the evidence indicates that the area is undergoing a steady and increasing growth in the recreation and resort activities, both summer and winter.

Applicant called 17 public witnesses, fifteen of whom are important and substantial businessmen in the area who are applicant's shippers already served under its permits, and present certificate. The other two witnesses

are a bank executive and the chairman of the Board of Supervisors of Mono County. The supervisor has been engaged in holding meetings and conferences to obtain better freight service for shippers in the area.

All of the applicant's witnesses testified that they need improved freight service in the area including lift gates on trucks, door-to-door service, Saturday deliveries early morning delivery at 9:00 a.m. and five-day service in Bridgeport. The witnesses testified that they were unable to get the service they desire from other carriers including the protestant.

The shipper witnesses who testified are drug, department, grocery store owners and operators, summer and winter resort lodge owners and operators, plumbing and building contractors, service station, auto parts and oil dealers; all testified that they have need for the additional service proposed by the applicant.

The shipper witnesses testified generally that they require consistent one-day delivery service from Los Angeles with a Saturday delivery and service five days a week to Bridgeport, with off highway pickup and delivery service with lift-gate equipment and that they have not been able to get this service from other carriers, and further that the existing service of the other carriers in this area is inadequate for their requirements.

The applicant's manager testified that granting of the application will enable applicant's shippers to enjoy the

economies of split delivery billing, reduce lost or damaged shipments, improve processing of claims, permit single line operation, reduce dock congestion and provide a more personalized service to the shippers with more convenient delivery hours and better familiarity with the shippers' freight.

The evidence reflecting on the applicant's financial condition and experience shows it to be well qualified to provide the service, and no evidence to the contrary was offered.

Applicant's manager testified that it is serving shippers under its permits and its present certificate and does not solicit or advertise for any business which is outside of its present authority and has not dedicated its property for any regular service for which it is not authorized and that applicant has no intent to violate any regulations required under its certificate and permits and that much of its operations are conducted on call and under its radial and contract permits.

Protestant opposes the application on the ground that public convenience and necessity do not require the proposed service, that the area is sparsely populated, is inactive in the winter time with some roads closed for several months and with most of the traffic inbound. Three employees of protestant testified that there is ample other service available in the area. Protestant's witnesses testified that business has been declining, that the request for Saturday deliveries is unwarranted,

that protestant serves Bridgeport two days a week from Reno and two days a week from Bishop and that this is adequate. Protestant's witnesses testified that its operations from Bishop between Lone Pine and Bridgeport have not been profitable and have been running at 5 percent to 50 percent of capacity, that protestant now has fewer drivers and equipment at Bishop than it had twelve years ago, and that its tonnage and revenue in Owens Valley in 1967 is about the same as in 1958.

Protestant did not call any witnesses other than its employees and did not produce any other evidence from the area in question to prove its contention that applicant's proposed service is not needed and that protestant is providing adequate service. Protestant did not offer any other witnesses to prove its claim that applicant is now rendering the proposed service without authority, and relied on the cross-examination of applicant's witnesses on this point.

Protestant's witness admitted that freight being handled by applicant had not reduced protestant's ability to render service in the area or substantially affect its earnings ratio and that certification of applicant would not affect the over-all position of protestant who is a large carrier.

The shipper witnesses, with the exception of Sears Roebuck, testified that they have not been solicited by protestant for their freight and the manager of protestant testified that it is the practice of his company not to solicit or make efforts to get freight traffic that is least profitable for them to handle.

It is evident from all the testimony of the witnesses for both sides that protestant is now and has been serving many shippers who are most profitable to it, and that the shippers who testified for applicant are not considered in this category by protestant.

There is conflict in the testimony in regard to the Sears Roebuck account as to whether or not protestant did seek to recapture the account but there is no conflict in the record as to why Sears left protestant and still remains with applicant on account of the service they receive. Protestant appears willing to handle the Sears Roebuck account but is not concerned with seeking the business of the others who testified.

Protestant sets up its schedules and services to appeal to its most favored customers who prefer Monday delivery and other benefits and this leaves the fifteen shippers who testified here without the benefits they require unless they are provided by this applicant. A program of advertising and solicitation, which this applicant has not made, would provide some more such shippers who may not now be served by this protestant.

There are three main issues: 1) do public convenience and necessity require the proposed service; 2) will installation of the proposed service cause protestant to be unable to render service; 3) has applicant instituted service in violation of his present authority.

The overwhelming weight of the evidence dictates that the fifteen shippers who testified here are entitled to

consideration as most favored customers when such service is offered by a competent carrier and, therefore, public convenience and necessity require that the application be granted.

There is no evidence that institution of the service by applicant will impair the ability of protestant to continue rendering service under its certificate. There is no evidence that applicant has been engaged in any conduct contrary to its present authority.

Upon consideration of the evidence the Commission finds that:

1. Applicant possesses the experience, equipment, personnel, and financial resources to institute and maintain the transportation service hereinafter authorized.

2. The merchants and shippers who testified that they utilize applicant's transportation service do not now have and have not had adequate transportation service available from protestant's to satisfy their requirements in an efficient and speedy manner.

3. The merchants and shippers of those certain commodities described in the testimony and others will be afforded shipping advantages, reduced dock congestion, early morning and Saturday deliveries with lift-gates provided, and more efficient service if applicant is granted authority to transport said commodities over the routes authorized.

4. Granting the application will not adversely affect protestant or result in any substantial impairment of its existing service.

5. The protestant has failed to establish that the service it offers has adequately met the transportation needs of the Owens Valley.

6. The population, business and industrial growth in the Owens Valley recently has been increasing for recreation purposes and it is important for many shippers to have the personalized services proposed by applicant.

7. It is necessary to authorize applicant to provide the proposed transportation service in order to enable the shipper supporting the application to obtain the same quality of service which is offered to the other shippers in the Owens Valley and Los Angeles Basin.

8. Public convenience and necessity require that applicant be authorized to transport general commodities with certain exceptions in the Owens Valley and to Los Angeles and Long Beach as more particularly set forth in the ensuing order.

9. The evidence does not establish that applicant is conducting operations in excess of its operating authority.

The Commission concludes that the application should be granted as specified in the ensuing order and that the complaint should be dismissed.

O R D E R

IT IS ORDERED that:

1. A certificate of public convenience and necessity is granted to Big Pine Trucking Company, 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. 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. 52094, in Application No. 36426, which certificate is revoked effective concurrently with the effective date of the tariff filing required by paragraph 3(b) hereof.

3. 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-E.
- (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. The complaint of Western Gillette, Inc., in Case No. 8824 is hereby dismissed.

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

Dated at San Francisco, California, this 28th day of JANUARY, 1969.

William J. ...
President

...

Fred R. ...

...

...
Commissioners

Big Pine Trucking Company, 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 Los Angeles and ten (10) miles thereof including Long Beach, on the one hand, and all points and places on U. S. Highway 395 from its junction with State Highway 178 to and including Bridgeport, California, on the other hand, serving all points and places on and within fifteen (15) miles laterally of U. S. Highway 395 between its junction with State Highway 178 and Bridgeport, California.

Applicant may make use of any street, road highway ferry or toll bridge necessary or convenient for the purpose of performing the service herein authorized.

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.

Issued by California Public Utilities Commission.

Decision No. 75248, Application No. 49867.

- (4) 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.
- (5) Commodities when transported in bulk in dump trucks or dump trailers, dump semitrailers, including hopper type vehicles, or a combination of such highway vehicles.
- (6) Commodities when transported in motor vehicles equipped for mechanical mixing in transit.
- (7) Logs.
- (8) Explosives as described in and subject to the regulations of Motor Carriers Explosives and Dangerous Articles Tariff No. 13, H. S. Sonnenberg, Issuing Officer.
- (9) Trailer Coaches or campers.
- (10) Portland or similar cements, either alone or in combination with lime or powdered limestone by highway vehicle or vehicles loaded substantially to capacity.

Issued by California Public Utilities Commission.

Decision No. 75248, Application No. 49867.