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Decision No. \_\_\_\_\_

78246

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of WARN BROS., INC.,  
a California corporation, doing  
business as CRESCENT TRUCK LINES,  
for a certificate of public  
convenience and necessity to  
extend highway common carrier  
service.

Application No. 52143  
(Filed August 19, 1970;  
Amended August 26, 1970  
and November 16, 1970)

Silver, Rosen & Johnson, by John Paul Fischer,  
Attorney at Law, for applicant.  
Murchison & Davis, by Donald Murchison,  
Attorney at Law, for Joseph Le Bow, dba  
Desert Empire Express; Mellin Express, Inc.;  
Auto Fast Freight, Inc.; L.A. City Express,  
Inc. and Swift Transportation Company; and  
Arthur H. Glanz, Attorney at Law, for  
Victorville-Barstow Truck Line; interested  
parties.

O P I N I O N

Warn Bros., Inc., doing business as Crescent Truck Lines,  
and presently conducting operations as a highway common carrier  
for the transportation of general commodities, with certain  
exceptions, between various points within the State, requests  
authority to extend service on shipments moving in both intrastate  
and interstate commerce as follows:

- (a) To, from and between all points and places  
in the Counties of Marin, Contra Costa and  
Alameda; the Cities of Benicia and Vallejo;  
and all points in the San Francisco territory  
and points within ten miles thereof.
- (b) The proposed extension is restricted against  
the transportation of commodities that  
because of their size and weight require  
special equipment and also restricted  
against the transportation of commodities  
requiring refrigeration.

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Public hearing, notice of which was duly published in the Federal Register, was held before Examiner Daly on November 16, 1970, at Los Angeles and was submitted upon the receipt of late-filed Exhibit 3, since filed and considered. As the result of an amendment filed at the hearing all protestants to the application in its original and more extensive form withdrew their protests and changed their appearances to that of interested parties.

Applicant has been conducting operations as a certificated and permitted carrier on shipments moving in intrastate and interstate commerce between various points within the State from Sacramento and San Francisco territory, in the north, and, San Diego and the Los Angeles area, in the south, since 1967. It owns and operates 124 units of equipment and has terminals at Hayward and Santa Fe Springs. As of September 30, 1970, applicant indicated a net worth in the amount of \$754,821.

Applicant proposes to serve the extended area on a daily, overnight basis. According to applicant's president, applicant has been serving the proposed area pursuant to its permits. He testified that applicant originally attempted to limit its operations to certificated points, but many of its customers had shipments to the proposed points and it was necessary for applicant to provide a complete service or lose the accounts. The witness further testified that applicant is caught on the horns of a dilemma-- if it restricts service to stay within its certificate it cannot provide its customers with a full service and if it operates too frequently it may become subject to a cease and desist order of the Commission. In addition to clarifying the legal status of the operation the proposed extension would assertedly permit applicant to provide its customers with a split pickup and delivery service at more favorable rates.

In the absence of protest and in an attempt to accommodate those individuals whom applicant intended to call as public witnesses in support of the application a list was prepared setting forth the names of the individuals and the companies they represent along with a brief summarization of their transportation needs and requirements. The list was received as late-filed Exhibit 3 and indicates that if called as witnesses these individuals would have testified that their respective companies presently use applicant's service on shipments moving in intrastate and interstate commerce to presently certificated points; that they have occasion to make shipments moving in intrastate and interstate commerce to the proposed points; and that if authorized their respective companies would make use of applicant's extended service.

After consideration the Commission finds that:

1. Applicant is presently rendering an extensive service as a highway common carrier.
2. As a result of an ever-increasing demand for applicant's service it has received many requests for service to, from and between points within the extended Bay Area.
3. In an attempt to accommodate its customers applicant has been serving the proposed area pursuant to its permit and because of an ever-increasing demand for such service and because of the doubt as to its legal status applicant requests an extension of its certificated authority.
4. Applicant possesses the necessary facilities, equipment, experience and financial ability to provide the proposed service.
5. There is no protest to the application.

6. Public convenience and necessity require applicant's service for the transportation of shipments moving in intrastate and interstate commerce to the extent set forth in the ensuing order.

The Commission concludes that the application should be granted. The order which follows will provide for the revocation of the certificate presently held by applicant and the issuance of a new certificate in appendix form.

Applicant 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 Warn Bros., Inc., a corporation, doing business as Crescent Truck Lines, 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 Appendices, A, B and C 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.

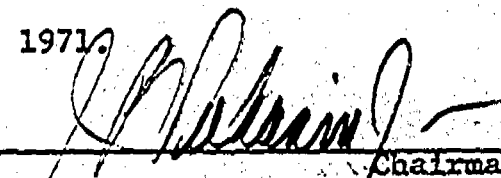
- (a) Within thirty days after the effective date hereof, applicant shall file a written acceptance of the certificate herein granted. Applicant is placed on notice that, if it accepts the certificate of public convenience and necessity herein granted, it will be required, among other things, to comply with and observe the safety rules of the California Highway Patrol and the insurance requirements of the Commission's General Order No. 100-F.
- (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.
- (f) Applicant shall comply with the requirements of the Commission's General Order No. 84-Series for the transportation of collect on delivery shipments. If applicant elects not to transport collect on delivery shipments, it shall make the appropriate tariff filings as required by the General Order.

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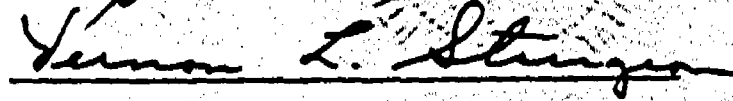
3. The certificate of public convenience and necessity granted in paragraph 1 of this order shall supersede the certificate of public convenience and necessity granted by Decision No. 58026 in Application No. 39732, as amended by Decision No. 60611 in Application No. 41901, which certificate is revoked 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 2nd day of FEBRUARY, 1971.

  
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Chairman

  
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Commissioners

Commissioner William Symons, Jr., being necessarily absent, did not participate in the disposition of this proceeding.

WARN BROS., INC.  
(a California corporation)  
doing business as  
CRESCENT TRUCK LINES

Warn Bros., Inc., a California corporation, doing business as Crescent Truck Lines, by the certificate of public convenience and necessity granted in the decision noted in the margin, is authorized to conduct operations as a highway common carrier as defined in Section 213 of the Public Utilities Code for the transportation of:

A. General commodities, subject to restrictions in paragraph B hereof, as follows:

1. Between points in the Los Angeles Area, as described in appendix B, attached hereto;
2. Between points in the San Francisco Territory, as described in appendix C, attached hereto, and points within ten miles thereof;
3. Between points in Tulare, Contra Costa, Alameda and Marin Counties;
4. Between San Diego, Bakersfield, Sanger, Fresno, Turlock, Patterson, Ceres, Modesto, Stockton, Vallejo and Benicia;
5. Between all points and places in paragraphs 1 through 4 above.

B. Applicant shall not transport any shipments of:

1. Uncrated used household goods, personal effects and office, store and institution furniture, fixtures and equipment.
2. Automobiles, trucks and buses, viz.: new and used, finished or unfinished passenger 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.

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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 in hopper-type trucks.
6. Commodities when transported in motor vehicles equipped for mechanical mixing in transit.
7. Commodities which, because of their size and weight, require the use of special equipment.
8. Commodities requiring temperature control except as specified in paragraph C.

C. Transportation as a highway common carrier of specific commodities as follows:

1. FOODSTUFFS, BEVERAGES or BEVERAGE PREPARATIONS, NOT NAMED IN OTHER MORE SPECIFIC GROUPS, as listed under that heading in Items Nos. 39410 through 41150 of Western Classification No. 76, J. P. Hackler, Alternate Agent, on the issue date thereof, except sugar, liquid.

MEATS, COOKED, CURED, FRESH or PRESERVED, LARD; LARD SUBSTITUTES; RENDERED PORK FATS; or DRESSED POULTRY, as listed under that heading in Items Nos. 67780 through 68030 of Western Classification No. 76, J. P. Hackler, Alternate Agent, on the issue date thereof.

STARCH, as listed under that heading in Items Nos. 37755 through 37780 of Western Classification No. 76, J. P. Hackler, Alternate Agent, on the issue date thereof.

FRUITS and VEGETABLES, FRESH, as listed under that heading in Items Nos. 41815 through 42220 of Western Classification No. 76, J. P. Hackler, Alternate Agent, on the issue date thereof.

BAKERY GOODS INCLUDING WAFFLES, FROZEN and PIES O/T FROZEN, as listed under that heading in Items Nos. 9745 through 9820 of Western Classification No. 76, J. P. Hackler, Alternate Agent, on the issue date thereof.

CANDY or CONFECTIONERY, as listed under that heading in Items Nos. 20050 through 20200 of Western Classification No. 76, J. P. Hackler, Alternate Agent, on the issue date thereof.

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CASINGS (SAUSAGE or MEAT PRODUCTS), as listed under that heading in Items Nos. 21360 through 21400 of Western Classification No. 76, J. P. Hackler, Alternate Agent, on the issue date thereof.

COCOANUTS (also COCOANUT MILK), as listed under that heading in Item No. 22780 of Western Classification No. 76, J. P. Hackler, Alternate Agent, on the issue date thereof.

DAIRY PRODUCTS, INCLUDING BUTTER, MARGARINE, EGGS, MILK and ICE CREAM, as listed under that heading in Items Nos. 31770 through 31930 of Western Classification No. 76, J. P. Hackler, Alternate Agent, on the issue date thereof.

FEED, ANIMAL or POULTRY (INCLUDING FISH FOOD, FROZEN) as listed under that heading in Items Nos. 37030 through 37691 of Western Classification No. 76, J. P. Hackler, Alternate Agent, on the issue date thereof.

FISH, FRESH or FROZEN, as listed under that heading in Items Nos. 38505 through 38575 of Western Classification No. 76, J. P. Hackler, Alternate Agent, on the issue date thereof.

FISH LIVERS, FROZEN, as listed under that heading in Item No. 38600 of Western Classification No. 76, J. P. Hackler, Alternate Agent, on the issue date thereof.

FRUIT or BERRIES (in solution) as listed under that heading in Item No. 41550 of Western Classification No. 76, J. P. Hackler, Alternate Agent, on the issue date thereof.

FRUIT PEEL, or PULP - DRIED, as listed under that heading in Item No. 41555 of Western Classification No. 76, J. P. Hackler, Alternate Agent, on the issue date thereof.

NUTS, EDIBLE, as listed under that heading in Items Nos. 70970 through 71090 of Western Classification No. 76, J. P. Hackler, Alternate Agent, on the issue date thereof.

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OILS, not named in other more specific groups as listed under that heading in Items Nos. 72305 through 72695 of Western Classification No. 76, J. P. Hackler, Alternate Agent, on the issue date thereof.

MISCELLANEOUS COMMODITIES, VIZ.: Lime, chlorinated; Sodium Chloride (common salt); Ice.

COMMODITIES, other than specified in paragraph D, requiring temperature control.

Between all points specified in paragraph A, except as restricted in Paragraph D herein, and

- (i) Sacramento and intermediate points on Interstate 80 and California State Highway 50 between Sacramento and the San Francisco territory,
  - (ii) All points on U. S. Highway 101 between Santa Barbara and the San Francisco territory,
  - (iii) All points on U. S. Highway 99 between Stockton and Sacramento,
  - (iv) The points of Hood, Courtland, Watsonville, Castroville and Santa Cruz.
2. FRUITS and VEGETABLES, FRESH or GREEN, COLD PACK or FROZEN; and JUICE, CITRUS FRUIT: and JUICE, CITRUS FRUIT, FROZEN, and also

PERISHABLE COMMODITIES REQUIRING REFRIGERATION,

Between all points specified in paragraph A herein, except as restricted in paragraph D, and Coleta .

3. SUGAR, except LIQUID SUGAR: between Carlton, Betteravia, Spreckels, on the one hand, and the points and places described in appendix C, on the other hand.

D. Applicant shall not transport any shipments of commodities requiring refrigeration to, from or between the following points:

1. Points within ten (10) miles of the San Francisco Territory as described in appendix C attached hereto.

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2. The cities of Benicia and Vallejo.
  3. The counties of Marin, Contra Costa and Alameda not included within the San Francisco Territory as described in appendix C attached hereto.
- E. Applicant shall operate over and along the most direct, appropriate and convenient highways, roads and streets in the performance of the transportation services hereinabove authorized.

(END OF APPENDIX A)

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LOS ANGELES AREA: Beginning at (and including) the City of Santa Barbara; thence along U.S. Highway No. 101 to the intersection thereof with State Highway No. 126; thence along State Highway No. 126 to its intersection with U.S. Highway No. 99; thence along U.S. Highway No. 99 to its first intersection with the corporate limits of the City of San Fernando; thence northerly along said corporate boundary to McClay Avenue; northeasterly along McClay Avenue and its prolongation to the Angeles National Forest boundary; southeasterly and easterly along the Angeles National Forest and San Bernardino National Forest boundary to the county road known as Mill Creek Road; westerly along Mill Creek Road to the county road 3.8 miles north of Yucaipa; southerly along said county road to and including the unincorporated community of Yucaipa; westerly along Redlands Boulevard to U.S. Highway No. 99; northwesterly along U.S. Highway No. 99 to and including the City of Redlands; westerly along U.S. Highway No. 99 to U.S. Highway No. 395; southerly 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 City of Santa Ana; thence via U.S. Highway No. 101 to San Clemente (including the off-route point of El Toro Marine Base); thence southwesterly to the shoreline of the Pacific Ocean; thence northwesterly along the shoreline of the Pacific Ocean to the point of beginning.

(END OF APPENDIX B)

SAN FRANCISCO TERRITORY includes all the City of San Jose and that area embraced by the following boundary: Beginning at the point the San Francisco-San Mateo County Boundary Line meets the Pacific Ocean; thence easterly along said boundary line to a point 1 mile west of U.S. Highway 101; southerly along an imaginary line 1 mile west of and paralleling U.S. Highway 101 to its intersection with Southern Pacific Company right of way at Arastradero Road; southeasterly along the Southern Pacific Company right of way to Pollard Road, including industries served by the Southern Pacific Company spur line extending approximately 2 miles southwest from Simla to Permanente; easterly along Pollard Road to W. Parr Avenue; easterly along W. Parr Avenue to Capri Drive; southerly along Capri Drive to E. Parr Avenue; easterly along E. Parr Avenue to the Southern Pacific Company right of way; southerly along the Southern Pacific Company right of way to the Campbell-Los Gatos city limits; easterly along said limits and the prolongation thereof to the San Jose-Los Gatos Road; northeasterly along San Jose-Los Gatos Road to Foxworthy Avenue; easterly along Foxworthy Avenue to Almaden Road; southerly along Almaden Road to Hillsdale Avenue; easterly along Hillsdale Avenue to U.S. Highway 101; northwesterly along U.S. Highway 101 to Tully Road; northeasterly along Tully Road to White Road; northwesterly along White Road to McKee Road; southwestly along McKee Road to Capitol Avenue; northwesterly along Capitol Avenue to State Highway 17 (Oakland Road); northerly along State Highway 17 to Warm Springs; northerly along the unnumbered highway via Mission San Jose and Niles to Hayward; northerly along Foothill Boulevard to Seminary Avenue; easterly along Seminary Avenue to Mountain Boulevard; northerly along Mountain Boulevard and Moraga Avenue to Estates Drive; westerly along Estates Drive, Harbord Drive and Broadway Terrace to College Avenue; northerly along College Avenue to Dwight Way; easterly along Dwight Way to the Berkeley-Oakland boundary line; northerly along said boundary line to the campus boundary of the University of California; northerly and westerly along the campus boundary of the University of California to Euclid Avenue; northerly along Euclid Avenue to Marin Avenue; westerly along Marin Avenue to Arlington Avenue; northerly along Arlington Avenue to U.S. Highway 40 (San Pablo Avenue); northerly along U.S. Highway 40 to and including the City of Richmond; southwestly along the highway extending from the City of Richmond to Point Richmond; southerly along an imaginary line from Point Richmond to the San Francisco Waterfront at the foot of Market Street; westerly along said waterfront and shoreline to the Pacific Ocean; southerly along the shoreline of the Pacific Ocean to point of beginning.

(END OF APPENDIX C)