

ORIGINALDecision No. 80350

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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

Application No. 53319
 (Filed May 10, 1972)

O P I N I O N

Applicant is a corporation organized and existing under and by virtue of the laws of the State of California. A copy of its Articles of Incorporation has been heretofore filed with this Commission in Application No. 50024. The principal place of business of applicant is in Walnut Creek, California.

Applicant is a highway common carrier as defined in Section 213 of the Public Utilities Code for the transportation of dry general commodities, in bulk, with certain exceptions, 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. Such authority was granted to the applicant by Decision No. 74285, dated June 25, 1968, in Application No. 50024. Applicant is also a cement carrier, as defined in Section 214.1 of the Public Utilities Code, for the transportation of cement from any and all points within the State to any and all points in the following counties: Alameda, Colusa, Contra Costa, El Dorado, Fresno, Glenn, Marin, Mendocino, Nevada, Placer, Plumas, Sacramento, San Francisco, San Joaquin, San Luis Obispo, San Mateo, Santa Clara, Sonoma, Stanislaus, Tehama and Yolo. It also holds and operates under highway carrier permits issued to it by the Commission.

The Interstate Commerce Commission, in No. MC-121630, issued to applicant a Certificate of Registration, whereby applicant is authorized to conduct operations in interstate commerce commensurate with the authority granted by the California Public Utilities Commission in Decision No. 74285.

Applicant applies, pursuant to Sections 1063 and 1064 of the Public Utilities Code, for a certificate of public convenience and necessity for the transportation of general commodities, with usual exceptions, over the routes and between the points as set forth in the margin.^{1/}

Applicant is presently operating a substantial fleet of motor vehicle equipment which will be utilized in the service proposed herein. Attached to the application and by reference made a part thereof, was a schedule of such equipment. The applicant is prepared to acquire such additional units as may be required to conduct the proposed operation.

Applicant proposes to operate each working day between all points involved herein. Pickups will be on call or on a regular daily basis, depending upon the shippers' requirements. Upon request, special service will be afforded on Saturdays, Sundays and holidays. Time in transit will generally be the same day, although occasional deliveries will be made overnight.

Applicant proposes to perform service both in intrastate, interstate and foreign commerce wholly within the State of California, and, therefore, requests that this Commission specifically find that public convenience and necessity require the proposed service in interstate and foreign commerce as well as intrastate commerce.

^{1/} Between all points on and within ten miles of the points and places on the following routes:

- (a) State Highway 17 between Fremont and Richmond, inclusive;
- (b) Interstate Highway 80 between San Francisco and Crockett, inclusive;
- (c) State Highway 4 between Pinole and Oakley, inclusive and
- (d) State Highway 24 between Oakland and junction with State Highway 4, inclusive.

In performing the service herein authorized, applicant may use any and all streets, roads, highways and bridges necessary or convenient for the performance of said service.

In performing the proposed service, applicant intends to apply the same level of rates as are contained in Minimum Rate Tariff 2 and other applicable minimum rate tariffs of the Commission. Upon receipt of the authority sought, applicant would become a participant in Pacific Motor Tariff Bureau's Local Freight and Express Tariff No. 8-A.

Applicant allegedly has the financial ability to render the considered service. Attached to the application and by reference made a part thereof was a balance sheet as of December 31, 1971, and a profit and loss statement of applicant for the twelve months ending December 31, 1971.

Applicant alleges that public convenience and necessity require the proposed service for the following reasons: The applicant corporation and its predecessor, a sole proprietorship, have been engaged in business as a for-hire motor carrier in the area involved in the application for approximately six and one-half years. During this period, operations have been conducted under permits and, since 1968, a portion of the service has been rendered under limited intra-state and interstate certificates. The principal operative personnel of the applicant have been employed in managerial capacities for, or as owners of, for-hire motor carriers in central California in excess of twenty years.

Applicant's operations were solely under permits issued to it by the Commission until the frequency and character of its movements necessitated applying for the limited certificate granted to it in 1968. Since receipt of that authority, the volume of applicant's business and requirements of the portion of the public it has been serving have allegedly grown. The further extension of its certificated authority is sought herein to permit the continued, orderly development of the expansion of the business. By grant of the proposed certificate, applicant will assertedly be able to afford the character of service that will fulfill the transportation needs of the public it is serving.

Service of the application was made in accordance with the Commission's rules of procedure. The staff of this Commission is of the opinion that its participation does not appear necessary. On May 24, 1972, notice of the pendency of this proceeding was published in the Federal Register.

The certificate of service attached to the application shows service by mail on several carriers including Delta Lines, Inc. on May 9, 1972. Delta Lines, Inc., by counsel's letter dated June 30, 1972, protested the application. The letter states no justification for the extraordinarily long delay between service and protest. Nor does it contain any allegations or arguments to apprise the Commission or applicant of any issues of law, policy or fact which would require hearing or argument.

The protest will therefore be disregarded.

We find that public convenience and necessity require the expansion of applicant's operating authority as sought for operations in intrastate, interstate and foreign commerce.

We conclude that the sought authority should be granted and that the applicant's operating authority granted by Decision No. 74285 should be restated herein.

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, these 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 anytime 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. 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. 74285, which certificate is revoked effective concurrently with the effective date of the tariff filings 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-Series.
- (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-Series.
- (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.

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

Dated at San Francisco, California, this 9th
day of AUGUST, 1972.

Vernon L. Stenger
 President
 William Symons, Jr.

[Signature]

Commissioners.

I Assent

J. B. Harrison, Comptroller

I will file a dissent.

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Commissioner

Lemore Transportation, Inc., a corporation, 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 as follows:

- I. For the transportation of 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;

Except that in performing this service carrier shall not transport any shipments of earth, sand, loam, gravel, stone, cement, asphalt or cement or asphaltic mixes.

- II. For the transportation of general commodities;

Between all points on and within ten miles of the points and places on the following routes, subject to exceptions noted:

- (a) State Highway 17 between Fremont and Richmond, inclusive;
- (b) Interstate Highway 80 between San Francisco and Crockett, inclusive; (See Restriction)
- (c) State Highway 4 between Pinole and Oakley, inclusive;
- (d) State Highway 24 between Oakland and junction with State Highway 4, inclusive.

Except that in performing this service carrier will not transport any shipments of:

- (a) Used household goods and personal effects not packed in accordance with the crated property requirements;
- (b) Livestock;
- (c) Commodities requiring the use of special refrigeration or temperature control in specially designed and constructed refrigerator equipment;

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- (d) Liquids, compressed gases, commodities in semiplastic form and commodities in suspension in liquids in bulk, in tank trucks, tank trailers, tank semitrailers or a combination of such highway vehicles;
- (e) Earth, sand, loam, gravel, stone, cement, asphalt or cement or asphaltic mixes when transported in bulk in dump trucks or in hopper-type trucks;
- (f) Commodities when transported in motor vehicles equipped for mechanical mixing in transit;
- (g) Logs;
- (h) Fresh fruits and vegetables;
- (i) Articles of extraordinary value.

In performing the service herein authorized, applicant may use any and all streets, roads, highways and bridges necessary or convenient for the performance of said service.

RESTRICTION:

Service to or from San Francisco shall be restricted to the transportation of shipments having a prior or subsequent movement by water.

(END OF APPENDIX A)

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H-v

D. W. HOLMES, COMMISSIONER, Dissenting:

The decision herein furnishes an interesting statement of the history, financial situation and operational activities of the applicant Lemore Transportation, Inc. A careful reading of the decision and investigation of the situation expose no facts regarding: (1) certificated carriers holding similar authority; (2) the volume of business transported by said carriers; (3) the gross revenues of said carriers; and (4) in what manner, if any, applicant is providing a unique service not provided by existing certificated carriers.

The historical policy of this Commission to protect the public interest, including shippers and carriers, by exercising restraint in the issuance of certificates of convenience and necessity is eroding at a more rapid pace than I had envisioned. (See my dissenting opinions in Decisions Nos. 79860 and 80127.) The people of the State of California will reap the disastrous effects.


Commissioner

Dated at San Francisco, California,
August 8, 1972.