

Decision No. 80998

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 VICTORVILLE-BARSTOW TRUCK LINE, a)
 California corporation, for an in)
 lieu Certificate of Public Conve-)
 nience and Necessity to operate as)
 a highway common carrier for the)
 transportation of property in)
 intrastate and interstate and)
 foreign commerce.)

Application No. 53336
 (Filed May 17, 1972)

Murchison & Davis, by Donald Murchison,
 Attorney at Law, for applicant.
Alvin H. Weissman, Attorney at Law, for
 Los Angeles City Express, Inc., protestant.

O P I N I O N

This application was heard August 8 and 9, 1972, at Los Angeles before Examiner Thompson and was continued for hearing to a date to be set. Applicant and protestant have notified the Commission that further hearing is not required and that the application may be taken under submission on the record made. The matter stands submitted and ready for decision.

Applicant is a highway common carrier operating in Los Angeles Basin Territory and in the Mojave Desert area. It holds authority to transport general commodities in intrastate commerce pursuant to Decision No. 59930 dated April 12, 1960, as amended by Decision No. 62931 dated December 12, 1961. It transports general commodities in interstate and foreign commerce pursuant to authority issued by the Interstate Commerce Commission in Docket No. MC-97863 (Sub. No. 4). Its present intrastate and interstate authorities include transportation between points in the Los Angeles Basin Territory and Palmdale via U. S. Highway No. 6 with the restriction that service not be provided

to any intermediate points. Applicant here seeks the removal of that restriction so as to be authorized to transport property in interstate and foreign commerce as well as intrastate commerce to all intermediate points and to all off-route points located laterally within nine miles of U. S. Highway No. 6 between the Los Angeles Basin Territory and Palmdale. It also seeks a restatement of its operating authorities and the issuance of an in-lieu certificate so that the routes therein will conform to new designations of highways.^{1/}

Los Angeles City Express holds a certificate authorizing highway common carrier operations in intrastate commerce along State Highway 14 (U. S. Highway 6) between the Los Angeles Basin Territory and Solemint. It protests this application to the extent that the sought authority coincides with its certificated authority.

Applicant served a copy of its application upon some ninety carriers, the California Trucking Association, and the Interstate Commerce Commission. It also published notice in the Federal Register of June 7, 1972 and provided the Interstate Commerce Commission with a copy of that notice on June 12, 1972.

Evidence was offered showing the financial condition of applicant and describing its equipment and facilities. From such evidence we find that applicant is fit, willing, and able to provide the service.

Testimony in support of the application was given by one shipper wholly concerned with transportation of shipments in interstate and foreign commerce, one shipper that desires to ship via applicant in both interstate and intrastate commerce, a motor carrier in interstate commerce that desires to interline freight

^{1/} For example, the road formerly known as U. S. Highway No. 6 has been redesignated California State Highway No. 14; and former U. S. Highway No. 466 has been redesignated California State Highway No. 58.

with applicant, a freight forwarder in interstate commerce that desires applicant to deliver shipments into the Saugus-Newhall area, and four shippers located in Los Angeles Basin Territory that would use applicant's proposed service wholly in connection with intrastate shipments. All of the aforesaid witnesses testified that they use applicant's services at present between points in Los Angeles Basin Territory and points in the Mojave desert such as Lancaster and Palmdale. They are satisfied with service provided by applicant to those points. Those concerned with transportation in interstate or foreign commerce stated that they have not been accorded the overnight service they require between Los Angeles and points in the Saugus, Newhall, Solemint area by existing carriers and that the necessities of their businesses require prompt and reliable overnight service of the type they have received from applicant on shipments transported between Los Angeles and Palmdale. The shippers concerned with transportation in intrastate commerce testified that they have not been accorded reliable service by existing highway common carriers between Los Angeles and points along U. S. Highway No. 6 intermediate to Palmdale. They also desire to be able to utilize applicant's services with respect to split-delivery shipments with component parts destined to points intermediate between Los Angeles and Palmdale as well as destined to Palmdale and beyond.

Los Angeles City Express was granted a certificate of public convenience and necessity to transport shipments in intrastate commerce to the Newhall, Saugus, Solemint area by Decision No. 78463 dated March 23, 1971 in Application No. 52064. It does not hold authority to transport shipments in interstate commerce between the points, although at the time of hearing herein it had before the Commission a petition seeking modification of the decision to include a finding that public convenience and necessity require that it perform like transportation as a motor common carrier in interstate and foreign commerce. Only one of the witnesses had knowledge of the operations of protestant to the area here involved. That witness stated that he would not engage the services of protestant because

he had experienced a bad result some six years ago. Protestant did not offer evidence in this proceeding.

There has been demonstrated a need for the overnight service offered by applicant. The proposed service to the intermediate points will convenience the public now utilizing applicant's overnight service to the beyond points such as Palmdale and Lancaster in that it will lower their costs of transportation. The authorization to applicant to serve the points along and laterally from U. S. Highway No. 6 (California State Highway No. 14) will not add to the number of vehicles operated on the public highways of this State.

Since the issuance of Decisions Nos. 59930 and 62931 which set forth the operative rights of applicant there have been a number of changes in the designations of highways and roads describing the routes set forth in the certificate of applicant. Portions of the highways described in the routings are now part of the interstate system of highways and other highways have been renumbered.

We find that:

1. Applicant possesses the experience, equipment, personnel, and financial resources to institute and maintain the proposed service.
2. Public convenience and necessity require the extension of the operations by applicant as a highway common carrier of general commodities to service between Los Angeles Basin Territory, on the one hand, and points on and along, and within nine miles laterally of, Interstate 5 and California State Highway 14 extending from San Fernando to Palmdale, on the other hand, as more particularly described in the ensuing order.
3. Public convenience and necessity also require that applicant be authorized to engage in operations in interstate and foreign commerce within limits which do not exceed the scope of the intrastate operations authorized by the order herein.

We conclude that the application should be granted and that applicant's operating authority should be restated in the form of a new certificate.

Victorville-Barstow Truck Line 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 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 Victorville-Barstow Truck Line, a corporation, authorizing it to operate as a highway common carrier, as defined in Section 213 of the Public Utilities Code, for the transportation of property between the points and over the routes as more 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-Series.

- (b) Within one hundred twenty days after the effective date hereof, applicant shall establish the service herein authorized and amend its tariffs on file to reflect the authority granted herein.
- (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.

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. 59930 dated April 12, 1960 in Application No. 41895, as amended by Decision No. 62931 dated December 12, 1961 in Application No. 43203, 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 30th day of JANUARY, 1973.

William J. ... President
...
...
... Commissioners

Commissioner Vernon L. Sturgeon, being necessarily absent, did not participate in the disposition of this proceeding.

VICTORVILLE-BARSTOW TRUCK LINE, 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 general commodities as follows:

- I. Between points within the Los Angeles Basin Territory as described in Note A.
- II. Between the Los Angeles Basin Territory, on the one hand, serving all intermediate points, and on the other hand:
 - A. Palmdale, via Interstate Highway 5 and State Highway 14.
 - B. Points on Interstate Highway 15, to its junction with State Highway 58 near Barstow.
- III. Between points and places in the Mojave Desert Area as follows:
 - A. Between Palmdale and Mojave via State Highway 14.
 - B. Between Mojave and Harvard Siding (approximately 10 miles east of Yermo), via State Highway 58 and Interstate Highway 15.
 - C. Between Palmdale, via State Highway 138 to its junction with Interstate Highway 15.
 - D. Between Barstow and the Marine Corps Field Artillery and Anti-Aircraft Training Center (approximately 6 miles north of Twentynine Palms), via U.S. Highway 56 (Interstate Highway 40), and AMBOY ROAD, near Amboy.
 - E. Between Yermo and Daggett over unnumbered road.

Issued by California Public Utilities Commission.

Decision No. 80998, Application No. 53336.

- F. U.S. Highway 395 between its junctions with Interstate Highway 15 and State Highway 58.
 - G. State Highway 18 between its junction with Interstate Highway 15, near Victorville, and Lucerne Valley.
 - H. Between Victorville and Barstow via National Trails Highway and Lenwood, Hodge, Helendale and Oro Grande.
 - I. Between Barstow and Bicycle Lake (including Camp Irwin) over unnumbered road.
 - J. Air Base Road, between Adelanto and its junction with National Trails Highway.
 - K. Between Little Rock and State Highway 58 via Redman and Edwards over unnumbered road.
 - L. State Highway 18 between its junction with State Highway 138, east of Pearblossom and Victorville.
 - M. Between Lancaster and Adelanto over unnumbered road.
 - N. Rosamond Boulevard between Rosamond and its junction with unnumbered road near Edwards.
 - O. Between Palmdale and Adelanto over unnumbered road.
- IV. Between Intermediate and off-route points as follows:
- 1. Serving all intermediate points and all off-route points located laterally within nine miles of all the routes described in Parts II and III, except intermediate and off-route points east of Newberry on U.S. Highway 66 (Interstate Highway 40) and on AMBOY ROAD between Amboy and Marine Corps Field Artillery and Anti-Aircraft Training Center near Twentynine Palms.

Issued by California Public Utilities Commission.

Decision No. 80998, Application No. 53336.

2. Operating over all accessible public highways between all of said termini, intermediate and off-route points in combination one with the other.

Except that pursuant to the authority herein granted, carrier shall not transport any shipments of:

1. Used household goods, personal effects and office, store and institution furniture, fixtures and equipment not packed in accordance with the crated property requirements set forth in Item 5 of Minimum Rate Tariff 4-B.
2. Livestock, viz.: barrows, boars, bulls, butcher hogs, calves, cattle, cows, dairy cattle, ewes, feeder pigs, gilts, goats, heifers, hogs, kids, lambs, oxen, pigs, rams (bucks), sheep, sheep camp outfits, sows, steers, stags, swine or wethers.
3. 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.
4. Commodities when transported in bulk in dump trucks or in hopper-type trucks.
5. Commodities when transported in motor vehicles equipped for mechanical mixing in transit.
6. Logs.
7. Commodities requiring the use of special refrigeration or temperature control in specially designed and constructed refrigerator equipment.

Issued by California Public Utilities Commission.

Decision No. 80998, Application No. 53336.

Note A

LOS ANGELES BASIN TERRITORY

Los Angeles Basin Territory includes that area embraced by the following boundary: Beginning at the point the Ventura County-Los Angeles County Boundary Line intersects the Pacific Ocean; thence northeasterly along said county line to the point it intersects State Highway 118, approximately two miles west of Chatsworth; easterly along State Highway 118 to Sepulveda Boulevard; northerly along Sepulveda Boulevard to Chatsworth Drive; northeasterly along Chatsworth Drive to the corporate boundary of the City of San Fernando; westerly and northerly along said corporate boundary of the City of San Fernando to MacLay Avenue; northeasterly along MacLay and its prolongation to the Los Angeles National Forest Boundary; southeasterly and easterly along the Angeles National Forest and San Bernardino National Forest Boundary to Mill Creek Road (State Highway 38); westerly along Mill Creek Road to Bryant Street; southerly along Bryant Street to and including the unincorporated community of Yucaipa; westerly along Yucaipa Boulevard to Interstate Highway 10; northwesterly along Interstate Highway 10 to Redlands Boulevard; northwesterly along Redlands Boulevard to Barton Road; westerly along Barton Road to La Cadena Drive; southerly along La Cadena Drive to Iowa Avenue; southerly along Iowa Avenue to State Highway 60; southeasterly along State Highway 60 and U.S. Highway 395 to Nuevo Road; easterly along Nuevo Road via Nuevo and Lakeview to State Highway 79; southerly along State Highway 79 to State Highway 74; thence westerly to the corporate boundary of the City of Hemet; southerly, westerly and northerly along said corporate boundary to The Atchison, Topeka & Santa Fe right-of-way; southerly along said right-of-way to Washington Road; southerly along Washington Road through and including the unincorporated community of Winchester to Benton Road; westerly along Benton Road to Winchester Road (State Highway 79) to Jefferson Avenue; southerly along Jefferson Avenue to U.S. Highway 395; southerly along U.S. Highway 395 to the Riverside County-San Diego County Boundary Line; westerly along said boundary line to the Orange County-San Diego County Boundary Line; southerly along said boundary line to the Pacific Ocean; northwesterly along the shoreline of the Pacific Ocean to point of beginning, including the point of March Air Force Base.

(END OF APPENDIX A)

Issued by California Public Utilities Commission.

Decision No. 80998, Application No. 53336.