

ORIGINAL

Decision No. S4066

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
SPEAR ENTERPRISES, INC., a California)
corporation, doing business as)
UNITED TRUCK LINE, for a certificate)
of public convenience and necessity)
to extend highway common carrier)
service. }

Application No. 53065
(Filed December 20, 1971)

Silver and Rosen, by Martin J. Rosen and Michael J. Stecher, Attorneys at Law, for United Truck Line, applicant.

Loughran, Berol & Hegarty, by Marshall G. Berol, Attorney at Law, for Delta Lines, Pacific Motor Trucking, Peters Truck Lines, and System 99, protestants.

O P I N I O N

Applicant operates as a certificated highway common carrier in the general area of San Francisco Bay Area-Sebastopol-Sacramento-Turlock pursuant to Decision No. 60494 dated August 2, 1960 in Application No. 41857, as transferred to applicant by Decision No. 62264 dated July 18, 1961 in Application No. 43476, and Decision No. 70944 dated July 12, 1966 in Application No. 48333. Applicant also operates as a permitted carrier pursuant to authority issued by this Commission under File T-70-467.

Applicant is applying for an extension of its certificate of public convenience and necessity for the transportation of general commodities with certain exceptions between points and places in the State of California as set forth in Exhibit A attached to the application.

The requested authority would be an in-lieu certificate encompassing applicant's present authority and authorizing applicant generally to extend its highway common carrier operations southward from San Jose to Monterey and to Salinas, southward from Turlock to Bakersfield via State Highway 99 and Interstate Highway 5, and northward from Sacramento via State Highway 99 and Interstate Highway 5 to Redding. Attached to the application as Exhibit B are maps showing the present authority of applicant and the additional authority requested in this application.

The proposed service would be daily, with the exception of Sundays and holidays. Such service would be rendered with equipment which applicant presently owns and operates, a summary of which is attached to the application as Exhibit C.

As applicant's proposed service would be rendered in both intrastate, interstate, and foreign commerce wholly in the State of California, applicant requests that this Commission find that public convenience and necessity also require the proposed service in interstate and foreign commerce.

In performing the proposed service applicant proposes to apply the same scales of rates as contained in Minimum Rate Tariff 2 and other applicable minimum rate tariffs of the Commission. Also applicant proposes to apply the same rules and regulations which are now effective under its tariff.

Applicant's latest available balance sheet is attached to the application as Exhibit D, and applicant's latest available profit and loss statement is attached to the application as Exhibit E.

In its application applicant alleges that for the past several years it has been operating as a radial highway common carrier between the proposed certificated points of service and over the proposed certificated routes. Applicant further alleges that the volume of its business, the number of shippers, and the frequency of service between various points has increased over the past years.

Applicant seeks to broaden its authority for general commodity service which it alleges will result in economies of operation and all-around better service to the shipping public. Applicant alleges that public convenience and necessity require the proposed service.

A public hearing on the application was held before Examiner Cline in San Francisco on March 14, 15, and 16, and May 17, 18, 19, and 22, 1972. The matter was taken under submission subject to the concurrent filing of proposed findings of fact and conclusions of law by the applicant and the protestants on or before June 22, 1972. Applicant's proposed findings of fact and conclusions of law were filed June 20, 1972. Protestants' proposed findings and conclusions were mailed June 22, 1972, but were not received by the Commission until June 26, 1972. They were filed with the Commission on June 27, 1972.

The matter was taken under submission on June 27, 1972, and is now ready for decision.

At the hearing Exhibit No. 1 was introduced in support of the application. The proposed authority set forth as Exhibit J to Exhibit No. 1 amends the initial application to reflect various highway number changes. For example the route number of the highway between San Francisco and Sacramento has been changed from U. S. Highway 40 to Interstate Highway 80.

The president of applicant presented operating testimony in support of the application. Twenty-three shipper witnesses presented shipper testimony in support of the application.

The application was protested by Delta Lines, Pacific Motor Trucking Co., Peters Truck Lines, and System 99. Protestants assert that the service they are providing in the sought territory is adequate, and that any new service will dilute traffic to the detriment of protestants and the public.

Findings

1. Applicant herein has provided a general commodity transportation service as a permitted and certificated carrier in this state for more than 25 years. Applicant began its operation in 1947 as a partnership. In 1961, applicant was incorporated as Spear Enterprises, Inc., dba United Truck Line.

2. Applicant maintains two terminals: one is located in San Francisco and occupies approximately 40,000 square feet; the other is located in Sacramento, California, and occupies approximately 25,000 square feet. Applicant has approximately 130 pieces of equipment and employs 64 people on a regular basis.

3. Prior to this application, applicant provided a certificated service between San Francisco and San Jose, Los Gatos, Santa Rosa, Shellville, and Sebastopol; between all points within a radius of 25 miles of Sacramento; between San Francisco and Sacramento; between Oakland and Sacramento; between Sacramento and Turlock; and between Manteca and Oakdale.

4. Applicant seeks to have its authority extended to Monterey-Salinas; Fresno, Visalia, and Bakersfield; Chico-Redding; Grass Valley-Auburn and Placerville with intermediate and lateral authority of 25 miles.

5. There is a need by the shipping public for daily pickup and delivery of shipments in intrastate commerce and interstate and foreign commerce within the area for which authority is sought. Applicant proposes to furnish daily pickup and delivery service at all points and places within its existing present authority and the authority requested herein. Such service would assist in meeting the needs of the shipping public. Applicant has the ability to provide the proposed service.

6. Many of applicant's customers have used applicant's services for many years and need this service expanded.

7. Of the twenty-three customers of applicant who presented evidence in support of the application eight were located in San Francisco, eight in South San Francisco, one in San Bruno, one in Burlingame, two in Redwood City, one in Emeryville, one in Sacramento, and one in Modesto.

8. The commodities transported by applicant for the shippers of freight whose witnesses testified in support of the application include the following: refrigerators, washing machines, dishwashers, room air-conditioners, portable air-conditioners, bicycles, stoves, electrical conduit, electrical metal tubing, building wire, flexible steel, drugs, health and beauty aids, food, glassware, steel conduit, plastic conduit, wiring cables, transformers, fluorescent lighting ballast, wire fittings, wiring devices, weather-proof devices, junction boxes, ground rod lightening fixtures, electrical switch boxes, electrical fittings, electrical switches, electrical receptacles, wall plates, portable cable, power cable, panel boards, switchboards, coffee, television sets, radios, replacement parts for major appliances and televisions, electrical controls, motors, outdoor lighting, commercial transformers, electrical and mechanical supplies and equipment, and electrical wire and cable in both copper and aluminum.

9. Shippers and receivers of freight, now served by the applicant under its present authority, have limited facilities for loading and unloading freight which is shipped or received in intrastate, interstate, and foreign commerce. If the authority requested herein is granted, these customers will make greater use of applicant, thereby helping to reduce congestion at their loading and unloading areas.

10. In the area for which authority is herein sought, shippers and receivers of freight have experienced inadequate service in intrastate, interstate, and foreign commerce shipments from some of the highway common carriers presently authorized to serve the area.

11. Applicant has the competence and financial ability to provide the intrastate, interstate, and foreign commerce service for which authority is herein requested.

12. Shippers and receivers, who testified for the applicant, prefer its service to that of the protestant carriers.

13. The application is protested by four existing certificated carriers, namely, Delta Lines, Pacific Motor Trucking Co., Peters Truck Lines, and System 99.

14. Collectively, the protestants are presently authorized to serve all of the points applicant seeks authority to serve. Generally, each protestant is authorized to, and provides service to all of the areas applicant seeks, except Peters which is not certificated for points on State 99 south of Modesto.

15. Many of the supporting shippers are receiving service from one or more of the protestants, as evidenced by traffic studies submitted by the protestants.

16. Protestants have enjoyed a healthy economic growth and development during the past 11 years. The certification of a number of carriers during the years 1960 to 1964 occasioned no apparent adverse effect upon their growth during that period.

17. Applicant is not a new carrier. There is no reason to assume that upon certification applicant will be more competitive than it has been under present authority.

18. Protestants, who are large carriers, are unable flexibly to cater to the personal requirements of individual shippers as conveniently as applicant.

19. Granting of the intrastate, interstate, and foreign commerce authority herein requested will have no significant impact on any highway common carrier presently authorized to serve the area here under consideration.

20. If the authority as requested herein is granted, applicant will be able to provide a cost savings to its customers on a master billing basis.

21. Granting of this application will benefit the shipping public.

22. The shippers and receivers have testified as to their need for lateral authority.

23. Notice of this application appeared in the Federal Register on January 19, 1972. Hearings on this matter were public and opportunity was afforded all interested parties to appear and be heard.

24. Public convenience and necessity require that applicant be authorized to engage in operations in intrastate commerce as proposed in the application and 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.

25. Applicant's operating authority should be restated in the form of a new certificate. Such restatement will not broaden or change the interstate or foreign commerce rights held by the carrier or exceed in any way the geographical scope of the proposed operation as published in the Federal Register.

Conclusions of Law

1. Applicant should be granted a certificate of public convenience and necessity to operate as a highway common carrier between the points and over the routes for which authority is requested in this application, as amended.

2. Applicant should be granted interstate and foreign commerce authority, corresponding to the intrastate authority herein granted, leading to a certificate of registration to conduct operations in interstate or foreign commerce under Section 206(a)(6) of the Interstate Commerce Act.

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 Spear Enterprises, Inc., a California corporation, doing business as United Truck Line, 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 hereby made a part hereof.

2. The certificate of public convenience and necessity granted in paragraph 1 of this order shall supersede the certificates of public convenience and necessity granted by Decisions Nos. 62264 and 70944, which certificates are 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 amend its tariffs on file with the Commission 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.

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

Dated at San Francisco, California, this 21st day of FEBRUARY, 1973.

Vernon L. Sturgeon
President
William J. Lyons
William J. Lyons
William J. Lyons
William J. Lyons
Commissioners

Spear Enterprises, Inc., 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:

- A. Between San Francisco and South San Francisco, on the one hand, and points and places located on or within five miles laterally of the following routes:
 - 1. U.S. Highway 101 between Santa Rosa and San Jose.
 - 2. State Highway 82 between San Francisco and San Jose.
 - 3. State Highway 238 between its northern and southern junctions with State Highway 17.
 - 4. State Highway 17 between Richmond and San Jose.
 - 5. State Highways 37 and 121 between Ignacio and Schellville.
 - 6. State Highway 12 between Schellville and Sebastopol.
- B. Between all points within a radius of 25 miles of Sacramento.
- C. Between all points on and within 15 miles laterally of the following highways:
 - 1. Interstate Highway 80 between San Francisco and Sacramento, inclusive.
 - 2. Interstate Highways 580, 205 and 5 between San Francisco and Stockton, inclusive; State Highways 4 and 99 between Stockton and Sacramento, inclusive.
 - 3. State Highways 24, 4 and 160 between Oakland and Sacramento, inclusive.
 - 4. State Highway 4 between Stockton and its junction with Interstate Highway 80, inclusive.

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5. State Highway 12 between Lodi and its junction with Interstate Highway 80, inclusive.
6. State Highway 99 between Sacramento and Turlock, inclusive.
7. State Highway 120 between Manteca and Oakdale, inclusive.
- D. Between all points on and within 25 miles laterally of the following highways:
 1. State Highway 99 and Interstate Highway 5 between Sacramento and Redding.
 2. State Highway 99 between Turlock and Bakersfield.
 3. State Highway 140 between its junctions with State Highway 99 and Interstate Highway 5.
 4. Interstate Highway 5 between its junction with State Highway 140 and Bakersfield.
 5. U.S. Highway 101 between San Jose and Salinas.
 6. State Highways 17 and 1 between San Jose and Carmel.
 7. Interstate Highway 80 between Sacramento and Auburn.
 8. State Highways 65 and 20 between Sacramento and Grass Valley.
 9. U.S. Highway 50 between Sacramento and Placerville.

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

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

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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. 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.: 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.
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. Logs.
8. Trailer coaches and campers, including integral parts and contents when the contents are within the trailer coach or camper.
9. Commodities requiring the use of special refrigeration or temperature control in specially designed and constructed refrigerator equipment.

(END OF APPENDIX A)

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