

ORIGINAL

Decision No. 81913

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of:  
WESTERN MILK TRANSPORT, INC., a  
corporation, to sell, and of BAYVIEW  
TRUCKING INC., a corporation, to  
purchase, a certificate of public  
convenience and necessity for the  
transportation of frozen food stuffs  
and other special commodities,  
between various points and places  
in California, pursuant to Sections  
851-853 of the California Public  
Utilities Code.

Application No. 54003  
(Filed May 2, 1973)

Russell & Schureman, by R. Y. Schureman,  
Attorney at Law, for Western Milk  
Transport, Inc., and Bruce R. Geernaert,  
Attorney at Law, and Harold F. Culy, for  
Bayview Trucking, Inc., applicants.

O P I N I O N

Western Milk Transport, Inc. (Western), a California corporation, proposes to transfer, and Bayview Trucking, Inc. (Bayview), a California corporation, proposes to acquire, the certificate of public convenience and necessity to operate as a highway common carrier in intrastate commerce issued to Kings County Truck Lines pursuant to Decision No. 73891, as amended by Decision No. 74454 and transferred to Western by Decision No. 75663. Western is also the owner and holder of a coextensive certificate of registration issued by the Interstate Commerce Commission in Docket No. MC-121626.

Applicants have mailed copies of the application to the Burlingame and Los Angeles offices of the California Trucking Association which publishes weekly in its magazine known as Cal Trux a summary of all applications currently filed with this Commission which involve highway common carrier matters. Cal Trux is mailed to the members of the California Trucking Association throughout the State of California. Its membership includes virtually all the highway common carriers within the State. Applicants allege that the publication in Cal Trux will give adequate notice to all highway common carriers engaged in highway common carrier service in competition with Western and request waiver of Rule 37(a) of the Commission's Rules of Practice and Procedure. Such request is hereby granted.

American Transport System, Inc., by letter from its attorneys Handler, Baker & Greene dated May 8, 1973, protested the granting of the application herein.

Public hearing on the application was held in Los Angeles before Examiner Cline on July 11, 1973. The protest of American Transport System, Inc. was withdrawn by letter from its attorneys Handler, Baker & Greene dated July 9, 1973, which letter was received in evidence as Exhibit No. 1. No party opposed the granting of the application.

Evidence was received in support of the application. The matter was taken under submission upon the receipt in evidence of Exhibit No. 2 on July 17, 1973. Exhibit No. 2 is a statement of income and retained earnings for the years ended July 31, 1971 and July 31, 1972 and a statement of financial condition as of July 31, 1971 and July 31, 1972 of Bayview. Exhibit C attached to the application is Bayview's statement of income for the period July 31 to December 31, 1972 and Bayview's statement of financial condition as of December 31, 1972.

Bayview is engaged in the transportation of property between points in California pursuant to highway carrier permits issued to it by this Commission in File No. T-91,220. It presently holds no certificate of public convenience and necessity.

A list of motor vehicle equipment operated by Bayview is set forth in Exhibit D attached to the application. Said motor vehicle equipment will be utilized by Bayview to perform service under the operating authority to be acquired from Western.

Diesel Truck Repairs is a corporation affiliated with Bayview by way of common ownership and control. A profit and loss statement of Diesel Truck Repairs for the period April 30, 1972 to December 31, 1972, and a balance sheet of Diesel Truck Repairs as of December 31, 1972, are attached to the application as Exhibit E.

A profit and loss statement of Western for the calendar year 1972 and a balance sheet of Western as of December 31, 1972 are attached to the application as Exhibit B.

A copy of the agreement between Western and Bayview, dated April 12, 1973, is attached to the application as Exhibit A. This agreement provides for the purchase and sale of the Western certificate of public convenience and necessity and coextensive certificate of registration for a purchase price of \$50,000. No other asset is involved in this sale. The sum of \$12,500 was paid upon execution of the agreement and the balance of \$37,500 is to be paid upon consummation.

The evidence shows that the transaction proposed will be in the public interest for the following reasons:

1. Bayview presently is engaged in the transportation of property, including those commodities authorized by the Western certificate, pursuant to highway carrier permits. It is thoroughly experienced in the provision of refrigerated services, and operates a large fleet of equipment suitable for the movement of the commodities involved. Bayview desires to purchase the Western

certificate in order that it may expand its operations and dedicate its service to the public as a highway common carrier on a permanent basis. Bayview anticipates that the traffic which will be handled under the certificate will include that traffic which it presently handles as a permitted carrier and a substantial portion of the traffic previously handled by Western under its certificate. As a result of service involving transportation of, at least in part, the combined traffic of both of said carriers, the resulting service will be more efficient, economical, and responsive to the public need than either of the separate services now provided by either of said carriers.

2. In order to finance the proposed acquisition of the Western certificate, the president of Bayview proposes to lend Bayview the sum of \$25,000 on a demand note. The president of Bayview also controls Diesel Truck Repairs and proposes to have said corporation lend Bayview an additional \$35,000 on a demand note. It is the intention of Bayview and its management that such loans will be repaid as future profits permit.

3. There will be no change in the rates charged the shipping public as Bayview proposes to adopt the tariffs of Western.

4. Approval of the transfer will permit Bayview to convert its permitted carrier operations to highway common carrier status without increasing the total number of highway common carriers authorized to transport the commodities included in the Western certificate.

5. There will be no change in the competitive relationship between carriers because the ultimate withdrawal of Western from highway common carrier operations will balance the entry of Bayview into such operations.

The Commission finds that:

1. The application shows with reasonable certainty that the proposed transfer involved in this proceeding will not have a significant effect on the environment.
2. The proposed transfer will not be adverse to the public interest.

The Commission concludes that the proposed transfer by Western to Bayview of the operating authority described in the application should be authorized.

Bayview is 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. 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.

The authorization granted shall not be construed as a finding of the value of the rights authorized to be transferred.

The order which follows will provide for, in the event the transfer is completed, the revocation of the certificate presently held by Western and the issuance of a certificate in appendix form to Bayview. The certificate will be restated but such restatement will not change or broaden the authority transferred.

O R D E R

IT IS ORDERED that:

1. On or before May 31, 1974, Western Milk Transport, Inc. may sell and transfer the operative rights referred to in the application to Bayview Trucking, Inc.

2. Within thirty days after the transfer the purchaser shall file with the Commission written acceptance of the certificate and a true copy of the bill of sale or other instrument of transfer.

3. Purchaser shall amend or reissue the tariffs on file with the Commission, naming rates and rules governing the common carrier operations transferred to show that it has adopted or established, as its own, the rates and rules. The tariff filings shall be made effective not earlier than five days after the effective date of this order on not less than five days' notice to the Commission and the public, and the effective date of the tariff filings shall be concurrent with the transfer. The tariff filings made pursuant to this order shall comply in all respects with the regulations governing the construction and filing of tariffs set forth in the Commission's General Order No. 80-Series. Failure to comply with the provisions of General Order No. 80-Series may result in a cancellation of the operating authority granted by this decision.

4. On or before the end of the third month after the transfer the purchaser shall cause to be filed with the Commission, in such form as the Commission may prescribe, an annual report, or reports, related to the operations of the seller for the period commencing with the first day of the current year to and including the effective date of the transfer.

5. In the event the transfer authorized in paragraph 1 is completed, effective concurrently with the effective date of the tariff filings required by paragraph 3, a certificate of public convenience and necessity is granted to Bayview Trucking, 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 set forth in Appendix A, attached hereto and made a part hereof.

6. The certificate of public convenience and necessity granted in paragraph 5 shall supersede the certificate of public convenience and necessity granted to Kings County Truck Lines by Decision No. 73891 dated March 26, 1968 in Application No. 49327, as amended by Decision No. 74454 dated July 23, 1968 in Application No. 49327, and transferred to Western Milk Transport, Inc. by Decision No. 75663 dated May 13, 1969 in Application No. 51028, which certificate, as amended, is revoked effective concurrently with the effective date of the tariff filings required by paragraph 3 hereof.

7. Purchaser shall comply with the safety rules of the California Highway Patrol and the insurance requirements of the Commission's General Order No. 100-Series.

8. Purchaser shall maintain its accounting records on a calendar year basis in conformance with the applicable Uniform System of Accounts or Charts 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.

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9. Purchaser shall comply with the requirements of the Commission's General Order No. 84-Series for the transportation of collect on delivery shipments. If purchaser 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 25<sup>th</sup> day of SEPTEMBER, 1973.

Vernon L. Spurgeon  
President  
William J. Spurgeon  
William J. Spurgeon  
William J. Spurgeon  
William J. Spurgeon  
Commissioners



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Appendix A

Bayview Trucking, Inc.  
(a corporation)

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Bayview Trucking, 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:

1. Frozen foodstuff and beverages;
  2. Commodities requiring refrigeration and/or temperature or atmospheric control all or any part of the year;
  3. Food and foodstuffs not otherwise requiring refrigeration and/or temperature or atmospheric control when tendered with a shipment of those commodities described in 1 and 2 above.
- I. Over and along the following routes, including to and between the named points, serving all intermediate points and all off-route points within 20 miles laterally thereof;
1. All streets and highways between points within the San Francisco Territory as described in Note A;
  2. Interstate Highway 80 between Oakland and Roseville;
  3. State Highway 70 between Marysville and its junction with State Highway 65 and State Highway 65 from said junction to its junction with Interstate 80.
  4. State Highway 20 between Marysville and Yuba City;

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Appendix A

Bayview Trucking, Inc.  
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5. State Highway 99, thence State Highway 113 between Yuba City and Woodland;
6. Interstate Highway 5, thence State Highway 99 between Woodland and the junction of State Highway 99 with Interstate Highway 80;
7. Interstate Highways 580, 205 and 5 used consecutively between Oakland and Stockton;
8. State Highway 120 between its junction with Interstate Highway 5 and Manteca;
9. State Highway 33 between Tracy and its junction with State Highway 152 near Los Banos;
10. State Highway 132 between Vernalis and Modesto;
11. State Highway 152 between Watsonville and Gilroy;
12. State Highway 129 between Watsonville and its junction with U. S. Highway 101;
13. State Highway 99 between Sacramento and its junction with Interstate Highway 5, near Wheeler Ridge, thence Interstate Highway 5 between Wheeler Ridge and San Diego;
14. State Highway 17 between Oakland and San Jose;
15. State Highway 82 between San Francisco and San Jose;
16. U. S. Highway 101 between San Francisco and the Los Angeles Territory as described in Note B;
17. All streets and highways and points and places within the Los Angeles Territory;

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Appendix A

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(a corporation)

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18. Any direct route or routes between the Los Angeles Territory, on the one hand, and, Brea, La Habra, Pomona and Santa Ana, on the other hand;
19. State Highway 152 between Los Banos and its junction with State Highway 99, and
20. Interstate Highway 10 between the Los Angeles Territory and Redlands.

Restrictions:

No transportation is authorized of liquid, dairy products or whole fresh eggs.

Whenever Bayview Trucking, Inc., engages other carriers for the transportation of property of Bayview Trucking, Inc. and/or Diesel Truck Repairs and/or Frank Hayashida or customers or suppliers of said corporations or person, Bayview Trucking, Inc., shall not pay such other carriers rates and charges less than the rates and charges published in Bayview Trucking, Inc.'s tariffs on file with this Commission.

Note A

SAN FRANCISCO TERRITORY

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 Line meets the Pacific Ocean; thence easterly along said County Line to a point one mile west of State Highway 82; southerly along an imaginary line one mile west of and paralleling State Highway 82 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 two 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 Division Street; easterly along Division

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Street to the Southern Pacific Company right-of-way; southerly along the Southern Pacific right-of-way to the Campbell-Los Gatos City Limits; easterly along said limits and the prolongation thereof to South Bascom Avenue (formerly San Jose-Los Gatos Road); northeasterly along South Bascom Avenue to Foxworthy Avenue; easterly along Foxworthy Avenue to Almaden Road; southerly along Almaden Road to Hillsdale Avenue; easterly along Hillsdale Avenue to State Highway 82; northwesterly along State Highway 82 to Tully Road; northeasterly along Tully Road and the prolongation thereof to White Road; northwesterly along White Road to McKee Road; southwestly along McKee Road to Capitol Avenue; northwesterly along Capitol Avenue to State Highway 238 (Oakland Road); northerly along State Highway 238 to Warm Springs; northerly along State Highway 238 (Mission Blvd.) via Mission San Jose and Niles to Hayward; northerly along Foothill Blvd. and MacArthur Blvd. to Seminary Avenue; easterly along Seminary Avenue to Mountain Blvd.; northerly along Mountain Blvd. to Warren Blvd. (State Highway 13); northerly along Warren Blvd. to Broadway Terrace; westerly along 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; westerly, northerly and easterly along the campus boundary to Euclid Avenue; northerly along Euclid Avenue to Marin Avenue; westerly along Marin Avenue to Arlington Avenue; northerly along Arlington Avenue to San Pablo Avenue (State Highway 123); northerly along San Pablo Avenue to and including 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.

## Note B

## LOS ANGELES TERRITORY

The Los Angeles Territory includes that area embraced by the following boundary: Beginning at the intersection of Sunset Boulevard and State Highway 1; thence northeasterly on Sunset Boulevard to Interstate Highway 405; thence northerly along Interstate Highway 405 to State Highway 118 at San Fernando (including the City of San Fernando); thence southeasterly along State Highway 118 to and including the City of Pasadena; thence easterly along Foothill

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Boulevard from the intersection of Foothill Boulevard and Michilinda Avenue to Valencia Way; northerly on Valencia Way to Hillcrest Boulevard; easterly and northerly along Hillcrest Boulevard to Grand Avenue; easterly and southerly along Grand Avenue to Greystone Avenue; easterly on Greystone Avenue and the prolongation thereof to the west side of Sawpit Wash; southerly on Sawpit Wash to the intersection of Mountain Avenue and Royal Oaks Drive; easterly along Royal Oaks Drive to Buena Vista Street, south on Buena Vista Street and due south on a prolongation thereof to the west bank of the San Gabriel River; southerly along the west bank of the San Gabriel River to Beverly Boulevard; southeasterly on Beverly Boulevard to Painter Avenue in the City of Whittier; southerly on Painter Avenue to Telegraph Road; westerly on Telegraph Road to the west bank of the San Gabriel River; southerly along the west bank of the San Gabriel River to Imperial Highway (State Highway 90); westerly on Imperial Highway to Lakewood Boulevard (State Highway 19); southerly along Lakewood Boulevard to its intersection with State Highway 1 at Ximeno Street; southerly along Ximeno Street and its prolongation to the Pacific Ocean; westerly and northerly along the shoreline of the Pacific Ocean to a point directly south of the intersection of Sunset Boulevard and State Highway 1; thence northerly along an imaginary line to point of beginning.

(END OF APPENDIX A)

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