

Decision No. 83203

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of EDWARD J. PALMER
doing business as E.F.L. TRANSPORTATION, A Sole Proprietorship, for a Highway Common Carrier Certificate of Public Convenience and Necessity in intrastate service and in interstate service.

Application No. 54475
(Filed November 30, 1973;
amended May 30, 1974)

George M. Carr, Attorney at Law, for Edward J. Palmer,
applicant.

Loughran, Berol & Hegarty, by Marshall G. Berol,
Attorney at Law, for Delta Lines, Inc., and Ted Peters
Trucking Company, Inc., interested parties.

O P I N I O N

Applicant Edward J. Palmer, an individual doing business as E.F.L. Transportation, requests a certificate of public convenience and necessity to operate as a highway common carrier in the transportation of general commodities with certain exceptions between all of the following points, serving all intermediate points on the routes and off-route points within the radius miles specified:

(1) points located in the San Francisco Territory and points located within 20 miles of the boundaries of said territory, excepting points located in Sonoma and Napa Counties and points located north of an east-west line drawn through the intersection of U.S. Highway 101 and Lucas Valley Road in Marin County; (2) points between and including San Francisco and Salinas on U.S. Highway 101 and within a radius of 25 miles to the west of said highway and 5 miles to the east of said highway; and (3) points between and including San Francisco and Fairfield on Interstate Highway 80 and within a 5-mile radius thereof but excluding the U.S. Travis Air Force Base. Applicant also requests that we find that public convenience and necessity require

that applicant be authorized to engage in operations in interstate and foreign commerce within the limits which do not exceed the scope of the intrastate operations which may be authorized by this decision. The application was duly noticed in the Federal Register.

The application was protested by Ted Peters Trucking Company, Inc. and Delta Lines, Inc., both of which withdrew as protestants but remained in the proceeding as interested parties when applicant amended its application as set out above. A hearing on the application was held in San Francisco before Examiner Pilling on May 28 and 29, 1974.

Applicant's testimony showed that he presently operates as a radial highway common carrier and a highway contract carrier under permits issued by this Commission and utilizes 4 van trailers and 5 flatbed trailers of varying lengths, 3 tractors, and 5 van trucks in his operation. He has a modern terminal and office located in South San Francisco equipped with a forklift with lifting capacity of 8,000 pounds and he employs 11 persons including himself. His unaudited financial statements introduced at the hearing showed that for the 4 months ending April 30, 1974 his trucking business had a gross revenue of \$106,521 for a net profit of \$35,967 and on that date had a net worth of \$41,970. His yearly gross revenue increased from \$143,864 in 1970 to \$305,926 in 1973. As a sample of his operation he showed that he handled 816 separate shipments in January 1974. He testified that he had been in the trucking business in various capacities for 25 years, the last 6 years as an owner.

The application was supported by 10 shippers or receivers of freight located in the area sought to be served by applicant. They testified variously that they ship and receive freight which moves in interstate and intrastate commerce within the involved area; that the commodities they ship or receive are sheet and plate steel, transformer oil, magnetic wire, foodstuffs, seeds, machinery, electronic components, leather goods, metal fasteners, nuts, bolts, screws, spray paints, paint thinners, laminated insulating paper, home

appliances, chemicals, and maintenance equipment; that many of their shipments originate outside of the State of California, in other states, and in foreign countries; that each variously ships and/or receives up to 1,000,000 pounds per month and ships or receives on a daily basis; that many of the shipments they receive move inbound from a foreign country and are picked up from the piers in the San Francisco Bay area and transported to a warehouse and later distributed from the warehouse as they receive orders for the goods; that they have used applicant's truck service extensively in the past and find it highly satisfactory and that if the application is granted they will use it with increasing frequency; and that they like applicant's service in particular because he is the quickest to respond to their requests for service.

After consideration the Commission finds that applicant possesses the necessary equipment, experience, and financial ability to conduct the proposed service, and that public convenience and necessity require that applicant be authorized to engage in operations in intrastate commerce as proposed in the application, as amended, 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 this decision but further restricted to shipments having a prior or subsequent movement by water or rail carrier. The Commission further finds with reasonable certainty that the project involved in this proceeding will not have a significant effect on the environment.

The Commission concludes that the application should be granted as set forth in the ensuing order.

Edward J. Palmer 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.

O R D E R

IT IS ORDERED that:

1. A certificate of public convenience and necessity is granted to Edward J. Palmer authorizing him to operate as a highway common carrier, as defined in Section 213 of the Public Utilities Code, between the points set forth in Appendix A, attached hereto and made a part hereof.

2. In providing service pursuant to the authority granted by this order, applicant shall comply with the following service regulations. Failure so to do may result in cancellation of the authority.

- (a) Within thirty days after the effective date of this order, applicant shall file a written acceptance of the certificate granted. Applicant is placed on notice that if he accepts the certificate he will be required, among other things, to comply with 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 of this order, applicant shall establish the authorized service 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 authorized service.
- (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 his 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 his 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, he 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 30th day of JULY, 1974.

I dissent.

William L. Synn, Commissioner

William L. Synn
President
William Synn

[Signature]
Commissioners

Commissioner J. P. Vukasin, Jr., being necessarily absent, did not participate in the disposition of this proceeding.

Edward J. Palmer, 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 between all points and places as follows:

1. To, from and between all points and places located in the San Francisco Territory, as described in Note A, and all points and places located within 20 miles of the boundary of said territory.

Restriction: No service is authorized in Sonoma or Napa Counties nor at any point in Marin County north of the junction of U.S. Highway 101 and Lucas Valley Road.

2. San Francisco and Salinas via U.S. Highway 101, serving all intermediate points, and all off-route points; (1) west of said highway within a radius of 25 miles; and (2) east of said highway within a radius of 5 miles.
3. San Francisco and Fairfield via Interstate Highway 80, serving all intermediate points and all off-route points within a 5 mile radius of said highway.

Restriction: No service is authorized at the U.S. Air Force Base, Travis. ✓

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

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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. 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. Portland or similar cements, in bulk or packages, when loaded substantially to capacity of motor vehicle.
3. Logs.

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

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 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; southwesterly along McKee Road to Capitol Avenue; northwesterly

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along Capitol Avenue to State Highway 238 (Oakland Road); northerly along State Highway 233 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.

(END OF APPENDIX A)