

Decision No. 83506

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
BIG PINE TRUCKING COMPANY, INC., a)
corporation, for a certificate of)
public convenience and necessity to)
extend highway common carrier)
service.)

Application No. 54033
(Filed May 15, 1973)

Silver, Rosen, Fischer and Stecher,
by Michael J. Stecher, Attorney at Law,
for applicant.
Russell and Schureman, by Carl H. Fritze,
Attorney at Law, for Reliable Delivery
Service, Inc. and Western Gillette,
Inc., protestants.

O P I N I O N

This application was heard before Examiner Fraser on December 11 and 12, 1973 in Lancaster; on February 25, 1974 in Los Angeles; and February 26, 1974 in Lancaster. The matter was submitted on the filing of concurrent briefs, with proposed findings of fact and conclusions of law, on March 18, 1974. Copies of the application and the notice of hearing were served in accordance with the Commission's procedural rules. The protestants are Reliable Delivery Service, Inc. and Western Gillette, Inc. Victorville Barstow Truck Line filed a protest and then withdrew after applicant agreed that it would not serve points within four miles of the California-Nevada border. It was stipulated that any operating authority granted to applicant should include this restriction.

Applicant is a California corporation operating out of an office in Bishop and terminals in Bishop, Lancaster, Ridgecrest, and Los Angeles. It now operates under a certificate of public convenience and necessity issued by Decision No. 75248, which authorizes the transportation of general commodities (with exceptions) between Los Angeles and ten miles thereof including Long Beach, on the one hand, and all points and places on U. S. Highway 395 from its junction with State Highway 178, to and including, Bridgeport, California, on the other hand, serving all points and places on and within fifteen miles laterally of U. S. Highway 395 between its junction with State Highway 178 and Bridgeport, California. It also hauls general commodities under the authority of radial highway common carrier and highway contract carrier permits.

Applicant has applied herein to transport general commodities, with certain exceptions, between Los Angeles and a ten-mile radius therefrom, and Orange County, on the one hand, and, on the other hand:

- (1) All points and places on State Highway 14 from Los Angeles to its junction with U. S. Highway 395.
- (2) All points and places on State Highway 138 from Palmdale to Pearblossom.
- (3) All points and places on State Highway 58 from Mojave to its intersection with U. S. Highway 395.
- (4) All points and places on U. S. Highway 395 from its intersection with State Highway 58 to its intersection with the California-Nevada State Line.
- (5) All points and places on State Highway 178 from Inyokern to Trona, California.

Applicant also seeks to serve all points and places on and within 15 miles laterally of the aforementioned routes.

Applicant is not authorized to provide coextensive interstate service under the certificate issued by Decision No. 75248, but by publication in the Federal Register of May 31, 1973, it gave notice that it is seeking authority to engage in transportation in interstate and foreign commerce within the limits of the in-lieu certificate sought herein.

Applicant will provide a daily service, excepting Sundays and holidays. Rates to be charged will be based on Minimum Rate Tariff 2 and other applicable tariffs, rules, and regulations. Applicant operates 19 tractors, 20 bobtails, and 32 trailers out of four terminals, and employs 48 people, including 6 line drivers, 22 bobtail drivers, 7 dock workers, 7 clerical, 3 mechanics, and 5 in management. Applicant's balance sheet for the calendar year 1972 indicates total revenues of \$969,880 and current liabilities of \$101,062. Operating expense was \$897,341 and operating income \$72,539. Retained earnings totaled \$60,655 on the last day of 1972.

The president of applicant testified that he owned a truck company in San Diego County for 20 years and purchased Big Pine Trucking Company, Inc. five years ago. Applicant's gross revenue has increased 300 percent since his purchase. He said that the application was filed to obtain authority to serve areas where applicant's shippers have new customers and to enable applicant to provide the same service for all of its shippers. Service is not the same for all now because applicant cannot provide interstate

service in the areas it serves as a permitted carrier and cannot provide master billing on all shipments when some are in an area served as a permitted carrier while others are in an area served as a certificated carrier. He testified applicant now provides daily service between Los Angeles and Bridgeport, serving intermediate and off-route points including Bartlett, Big Pine, Bishop, Bridgeport, Cartago, China Lake, Crestview, Independence, Inyokern, June Lake, Laws, Lee Vining, Little Lake, Lone Pine, Mammoth, Mono Lake, Olancha, and Ridgecrest. Applicant provides three to six schedules a day between Los Angeles and Bridgeport. Service is on a same-day or overnight basis.

Applicant presented testimony from 17 shipper witnesses. They ship tools, liquors, wire, plumbing and electrical supplies, tires, stereos and television sets, hardware supplies, candy, drugs and pharmaceutical supplies, automotive parts and supplies, lumber, nuts, canned meats, and variety and department store items of all types. They vary in size from a small pharmacy to large department stores, with shipments ranging in weight from less than 40 pounds to more than 40,000 pounds. Most have shipments either going out of state or coming from other states or foreign countries. All have used and prefer applicant's service. Several require Saturday service, which applicant provides, and an early delivery, which is provided upon request. One witness testified that applicant's drivers unload his merchandise and pile it carefully wherever requested, rather than leaving it in front of his store as other carriers have done. Applicant's personal service and satisfaction of claims was commended. The witnesses all had prompt pickups and overnight deliveries from applicant. Several had experienced

unsatisfactory service from protestants and other carriers, which usually involved delays of three or more days before goods were delivered from Los Angeles, or failure to pick up goods without prior warning. In one instance a carrier refused to deliver a shipment until other goods were received consigned to the same area. Protestants did not protest the entire application, and 43 prepared statements were placed in evidence from shippers who will use applicant's proposed service in areas not included in the protests.

Protestant Victorville Barstow Truck Line provided testimony from its vice president. It operates as a certificated highway common carrier of general commodities from the Los Angeles area north into the desert, an area bounded on the west by State Highway 14, via Rosamond from Palmdale north to Mojave, on the north by State Highway 58 from Mojave east to Barstow and the U. S. Marine Corps Depot at Yermo, and on the east by Interstate Highway 15 from Barstow south to Victorville and to Cajon Junction.^{1/} Protestant also operates under radial and highway contract carrier permits. Protestant operates out of a main terminal in Los Angeles and smaller terminals in Bloomington, Victorville, Barstow, and Palmdale. Operating equipment includes 16 trucks, 26 tractors, and 50 van or stake semitrailers. Exhibit 7 indicates that protestant serves more than 200 points on a regular basis. The witness advised that not all desert points are served daily because there are few pickups or deliveries, but most are covered at least three days a week. He testified that protestant operates on five days of the week at about 75 percent capacity. All revenue hauling is outbound from the Los Angeles area. Trucks usually return empty to Los Angeles. He further testified that protestant used to operate six days a week but it was unprofitable and had to be discontinued because no one wanted the Saturday service. Exhibit 11 was introduced to illustrate the frequent rate increases authorized by the Commission in recent years, a raise of 1-1/2 percent in December 1969, 8 percent in May 1970,

^{1/} Redesignated highways.

2 percent in August 1970, 12 percent in January 1971, 7 percent in January 1972, 4-1/2 percent in August 1972, and 2-1/2 percent in May 1973, for a total of 42-1/2 percent during the period from 1969 to 1973. The witness testified that in recent years there have been at least six new carriers in the general area served by the protestant. He noted that each newcomer receives a portion of the available business and the gross revenue of the other carriers is thereby reduced, forcing all to combine on frequent requests to raise the existing rates. He further testified that protestant has transported goods for most of the shippers who testified for the applicant and no complaints were made regarding the service.

Protestant Reliable Delivery Service provided exhibits and testimony. Reliable operates in the same area as the prior protestant six days a week with 52 tractors, 91 van and stake trailers, and 46 pickup and delivery units. Terminals are located in Paramount, San Bernardino, Lancaster, and San Diego. The president of the corporation testified that Reliable lost money in 1973 and that it now prepares 700 freight bills a day, compared to 1,000 a day in 1971. He stated Reliable now has 150 employees, which is 50 fewer than were employed in 1972. He indicated that Reliable is not operating at full capacity and has space available on all of its equipment. He advised it is protesting because there are already too many carriers in the area for the available business. Protestants produced testimony from a group of shippers in support of the premise that protestants are providing sufficient service to satisfy the public need.

Discussion

Applicant transports general commodities between the Los Angeles area, on the one hand, and north of the Highway 395 junction with Highway 178 to Bridgeport, on the other hand. It is applying to extend service between Los Angeles and the 178/395 Junction. This area has been classified as "desert" and it has been serviced by protestants for many years. The 17 shippers who testified and the 43 who provided testimonials prefer applicant's service and will use it whenever possible. They will utilize other carriers only where required in areas not served by the applicant. These shippers represent many active business organizations and have the right to select a preferred carrier, even when their transportation need exceeds the carrier's authority. When a shipper extends his service area, the carrier he employs risks losing the business if it too does not expand.

Findings

1. Applicant has provided a general commodity transportation service as a permitted and certificated carrier for seven years.
2. Prior to this application, applicant provided a certificated service in intrastate commerce from the Los Angeles area, on the one hand, and from north of the junction of U. S. Highway 395 and State Highway 178 to Bridgeport, on the other hand.
3. This application was filed to request that applicant's certificated area be extended north on State Highway 14 from Los Angeles to its junction with U. S. Highway 395, from Palmdale to Pearblossom on State Highway 138, from Mojave along State Highway 58 to its intersection with U. S. Highway 395, and along 395 to the California-Nevada State Line, and from Inyokern to Trona on State Highway 178.

4. Applicant will provide an overnight service on Monday through Saturday and will adopt and publish rates equivalent to those listed in Minimum Rate Tariff 2.

5. Applicant has stipulated that it will provide no service within four miles of the California-Nevada State Line.

6. Many shippers have used applicant's service for many years and would like to see its operations expanded.

7. The 17 shippers who testified for applicant prefer its service to that of other carriers.

8. The possibility that a new carrier in the process of expansion may in time take some of the business from prior operators is not by itself sufficient reason to deny a certificate.

9. Protestants have not satisfied those shippers who testified for the applicant.

10. Applicant's expanded service will be used primarily by shippers who have used its service in other areas.

11. Protestants will not be immediately affected by applicant's expansion which is designed primarily to serve its old customers in a new area.

12. Granting this application will not harm the shipping public.

13. The Commission finds with reasonable certainty that the project involved in this proceeding will not have a significant effect on the environment.

14. Applicant has the experience, equipment, personnel, and financial resources to institute and maintain the proposed service.

15. 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 this decision. The order which follows will provide for the granting of an in-lieu certificate of public convenience and necessity and the revocation of all existing authority.

Conclusions

1. A shipper is entitled to prefer the service of a particular carrier over that provided by all the others who are available and the favored carrier is entitled to rely on this preference as a basis for extending its service. (Tesi Drayage Co. (1970) 71 CPUC 24, 28.)

2. The application should be granted as set forth in the ensuing order. The territorial description or routes of the authority granted reflect the names of redesignated highways and roads and do not in any way exceed the geographical scope of the proposed operation as published in the Federal Register.

Big Pine Trucking Company, Inc. 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 Big Pine Trucking Company, 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 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 it accepts the certificate it will be required, among other things, to comply with the safety rules administered by 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 amend or 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 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. 75248, which certificate is revoked effective concurrently with the effective date of the tariff filings required by paragraph 2(b).

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

Dated at San Francisco, California, this 2nd day of SEPTEMBER, 1974.

Vernon L. Stinson
President
William J. Symons, Jr.
John J. Moran
Thomas Moran
Commissioners

Commissioner Thomas Moran, being necessarily absent, did not participate in the disposition of this proceeding.

Big Pine Trucking Company, 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 between the City of Los Angeles and within 10 miles thereof, and Orange County, on the one hand, and, on the other hand, all points and places on:

1. State Highway 14 between the City of Los Angeles and its junction with U.S. Highway 395 near Inyokern.
2. State Highway 138 between Palmdale and Pearblossom.
3. State Highway 58 between Mojave and Beecher's Corner.
4. U.S. Highway 395 between the California-Nevada State Line, near Topaz Lake, and Beecher's Corner.
5. State Highway 170 between Inyokern and Trona.

Serving all points and places within 15 miles laterally of the named highways, except that no service shall be performed at any points within 4 miles of the California-Nevada State Line.

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 salesmen's hand sample cases, suitcases, overnight or boston bags, brief cases, hat boxes, valises, traveling bags, trunks, lift vans, barrels, boxes, cartons, crates, cases, baskets, pails, kits, tubs, drums, bags (jute cotton, burlap or gunny) or bundles (completely wrapped in jute, cotton burlap, gunny, fibre-board, or straw matting).
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.

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7. Portland or similar cements, in bulk or packages, when loaded substantially to capacity of motor vehicle.
8. Logs.
9. Trailer coaches and campers, including integral parts and contents when the contents are within the trailer coach or camper.
10. Explosives subject to U.S. Department of Transportation Regulations governing the Transportation of Hazardous Materials.

(END OF APPENDIX A)

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