

ORIGINAL

Decision No. 83620

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
 DI SALVO TRUCKING CO., a corporation,
 for a certificate of public convenience
 and necessity to extend highway common
 carrier service.

Application No. 54297
 (Filed September 4, 1973)

Loughran, Berol and Hegarty, by Marshall G. Berol,
 Attorney at Law, for applicant.
 Silver, Rosen, Fischer, and Stecher, by
Michael J. Stecher, Attorney at Law, for Nielsen
Freight Lines, Inc., and Raymond A. Greene Jr.,
 and Bill Taylor, Attorneys at Law, for Associated
 Freight Lines, protestants.

O P I N I O N

Applicant is now transporting general commodities, with certain exceptions, between San Francisco, Oakland, Alameda, Berkeley, Concord, Dublin, Stockton, Tracy, and Sacramento, on the one hand, and points in the southern part of this State, on the other hand, under the authority of a certificate of public convenience and necessity granted by Decision No. 80740, as amended, in Application No. 53570, and later registered with the Interstate Commerce Commission in MC 96788 (Sub No. 3). Applicant also operates under a radial highway common carrier permit and a highway contract carrier permit.

Applicant applied on September 4, 1973 for an extension of its northern California certificated authority to include: north on Highway 101 to Novato, Petaluma, Santa Rosa (west to Sebastopol), Healdsburg, and Cloverdale; also to Vallejo, Sonoma, Napa, and north on Highway 29 to Calistoga; and on Highway 128 from Calistoga to Geyserville. The application also requests authority to provide an interstate and foreign commerce service in the proposed area. Notice

of this application appeared in the Federal Register on January 24, 1974. Protests were filed by Pacific Motor Trucking Company, Nielsen Freight Lines, Inc., and Associated Freight Lines. A hearing was held in San Francisco on May 21, 22, and 23, 1974 before Examiner Fraser. Pacific Motor Trucking Company withdrew its protest prior to the first day of hearing after applicant promised to delete Highway 128 between Geyserville and Calistoga and Highway 29 between Calistoga and Interstate 80 from its proposed operating authority. Associated Freight Lines withdrew as a protestant on the last day of hearing and Nielsen Freight Lines, Inc. dropped its protest to become an interested party on June 14, 1974, after applicant eliminated Highway 101 between Asti and Cloverdale from its proposed authority.

Applicant will provide a daily on-call service from Monday through Friday, with the exception of holidays. Applicant proposes an intrastate, interstate, and foreign commerce service to be performed wholly within the State of California. Applicant will adopt the rates, rules, and regulations set forth in Minimum Rate Tariff 2 and other applicable Commission minimum rate tariffs. Applicant's operating equipment includes 75 line haul tractors, 420 line haul trailers, 108 local tractors, 140 pickup and delivery trucks, and 39 service units. Applicant employs 544 persons and its 1973 income statement shows revenue in excess of \$14 million, expenses in excess of \$14 million, and a net income after taxes of \$398,090. The balance sheet for 1973 lists total assets of \$4,623,751 and current liabilities of \$1,569,262.

The president of the applicant corporation testified as follows: Applicant now uses other carriers in the area it seeks to serve. Applicant hauls the load as far as authorized and transfers it to another carrier who provides daily service to the destination point. When two carriers are involved goods require extra days in transit, which is difficult to explain to consignees and prompts the filing of claims and complaints. Two carriers also complicate claims, since it

is difficult to determine who caused the damage or lost the goods. Finally, shipments handled by two carriers are more difficult to trace if delivery is delayed. Shippers have requested that applicant extend its authority to eliminate the need to employ additional carriers to deliver in areas not served by the applicant.

Fifteen shippers testified for the applicant. They receive and ship pet foods, belts, electric motors, gears, drums, car radiators, wheels, abrasives, wines, coffee, tea, rice products, ice cream, fountain mixes and toppings, power tools, foods, chemicals, scientific instruments, laundry supplies, cleaning compounds, acids, and drapery hardware. The testimony of 10 additional shippers was placed in the record by stipulation. They ship quantities from 50 to over 100,000 pounds. All who testified have used applicant's service for a number of years. All are substantial shippers and several use applicant's service to transport goods either shipped or received in interstate commerce. Most rely on applicant's overnight service and early morning delivery, which other carriers have not been able to provide. All who testified classified applicant's service as dependable and claim free. All will use the service throughout the expanded service area if the application is granted.

Findings

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

2. Public convenience and necessity require that applicant be authorized to engage in operations in intrastate commerce as proposed in the application, as amended by late-filed Exhibit No. 1, filed June 7, 1974 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.

3. An in lieu certificate should be granted and all previous operating authority should be revoked.

4. We find 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, as amended, should be granted as set forth in the ensuing order.

Applicant 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 Di Salvo Trucking Co., 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.

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. 80740, as amended, 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 22nd
day of OCTOBER, 1974.

Vernon L. Stinson
President
William Eugene J.
Miller
Thomas Moran
Commissioners

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

Di Salvo Trucking Co., 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 from, to, and between all points and places located:

- A. 1. On Interstate Highway 80 between San Francisco and Sacramento, and points within 5 miles of said highway, inclusive;
2. On Interstate Highways 580, 205 and 5 between Oakland and Stockton; State Highway 99 between Stockton and Sacramento; and points within 5 miles of said highways, inclusive;
3. On State Highway 4 between its intersection with Interstate Highway 80, near Pinole, and Stockton, and points within 10 miles of said highway, inclusive;
4. On County Road J-4 between its intersection with State Highway 4, north of Byron, and Interstate Highway 205, northwest of Tracy, and points within 10 miles of said highway;
5. On State Highway 24 between Oakland and its intersection with State Highway 4; State Highway 4 between its intersection with State Highway 24 and its intersection with State Highway 160, west of Oakley; State Highway 160 between its intersection with State Highway 4 and Sacramento; and points within 10 miles of said highways, inclusive;
6. On Interstate Highway 680 between its intersection with State Highway 4, near Pacheco, and its intersection with Interstate Highway 580, near Dublin;

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7. On State Highway 99 between Sacramento and Bakersfield, and points within 20 miles of said highway, inclusive;
8. On State Highway 99 between Bakersfield and Wheeler Ridge; Interstate Highway 5 between Wheeler Ridge and Los Angeles; and points within 5 miles of said highways;
9. On State Highway 1 between San Francisco and San Luis Obispo, and points within 10 miles of said highway;
10. On U.S. Highway 101 between San Francisco and Los Angeles; State Highway 1 between its intersection with U.S. Highway 101, near Oxnard, and Los Angeles; and points within 15 miles of said highways;
11. Within 20 miles of Sacramento, Fresno and Bakersfield;
12. Within the San Francisco Territory as described in Note A;
13. Within the Los Angeles Basin Territory as described in Note B;
14. On State Highway 152 between Gilroy and Califa;
15. On State Highway 33 between Tracy and Maricopa, and points within 3 miles of said highway;
16. On State Highway 166 between Maricopa and its intersection with State Highway 99;
17. On Interstate Highway 5 between its intersection with Interstate Highway 580, and Wheeler Ridge, and points within 20 miles of said highway;
18. On U.S. Highway 101 between San Francisco and Petaluma, and points within 10 miles of said highway;

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19. On U.S. Highway 101 between Petaluma and Asti, and points within 5 miles laterally of said highway, inclusive;
 20. On State Highway 29 between Napa and its intersection with Interstate Highway 80, and points within 5 miles of said highway, inclusive; except that no service is authorized at any point more than 5 miles northerly of Napa;
 21. On State Highway 116 between Graton and Cotati; unnumbered highways (Old Redwood Highway and Adobe Road) between Cotati and the intersection of State Highway 116; and points within 3 miles of said highways;
 22. On State Highway 12 between Sebastopol and its intersection with Interstate Highway 80, near Cordelia, and points within 5 miles of said highway, inclusive;
 23. On State Highway 37 between its intersection with U.S. Highway 101 and its intersection with State Highway 29;
 24. On State Highway 116 between Petaluma and its intersection with State Highway 121 and points within 10 miles of said highway;
 25. On State Highway 121 between its intersection with State Highway 12 and its intersection with State Highway 37, and points within 10 miles of said highway; and
 26. On State Highway 128 between Geyserville and Calistoga, except that no service is authorized at Calistoga or points south of Calistoga.
- B. Between all points and places enumerated in Paragraph A (subparagraphs 1 through 26), on the one hand, and all points located on or within 10 miles laterally of Interstate Highways 5 and 15 (U.S. Highway 395) and State Highway 1 between the Los Angeles Basin Territory and San Ysidro, on the other hand.

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- C. 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.
- D. Mechanical duplications and overlaps which occur in describing the operating authority granted herein shall not be construed as conferring more than one operating right to transport the same commodities between the same points.

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, fibreboard, 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.

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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. Fruits or vegetables, fresh or greens (not cold pack or frozen).

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 along Capitol Avenue to State Highway 238 (Oakland Road); northerly along State Highway 238 to Warm Springs; northerly along State

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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 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

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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)

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