

Decision No. 87409 JUN 1 1977

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application
of BOB'S DELIVERY SERVICE, INC.,
a California corporation, for an
In Lieu Certificate of Public
Convenience and Necessity to
operate as a highway common
carrier for the transportation
of property in intrastate and
interstate and foreign commerce.

Application No. 55110
(Filed August 13, 1974;
amended September 13, 1974)

Donald Murchison, Attorney at Law, for applicant.
R. Y. Schureman and Carl H. Fritze, Attorneys at
Law, for California Cartage Company, Inc.,
City Freight Lines, Inc., Los Angeles City
Express, Inc., Qwikway Trucking Co. Inc.,
and S & M Freight Lines, protestants.

O P I N I O N

Bob's Delivery Service, Inc., presently providing service as a highway common carrier for the transportation of limited commodities between points within an area from the Los Angeles Basin Territory, on the north, and the San Diego Territory, on the south, requests authority to extend service for the transportation of general commodities between points within its presently certificated area. Applicant also requests corresponding interstate authority. Copies of the application were served upon 42 existing carriers with which its proposed service might compete, and an appropriate notice was published in the Federal Register on October 17, 1974.

Public hearing was held before Examiner Daly at Los Angeles and was submitted on September 1, 1976, upon the receipt of concurrent briefs since filed and considered.^{1/}

^{1/} After several extensions of time the briefs were filed on March 31, 1977.

Applicant's Case

Applicant's present certificated authority was granted by Decision No. 80521 dated September 19, 1972, in Application No. 53479. The certificate has approximately 140 specified items falling within the following general classifications: (1) advertising matter; (2) cloth, dry goods, and fabrics; (3) curtain poles or rods; (4) floor coverings or related articles; (5) shades, with or without fixtures; (6) tile or tiling; and (7) miscellaneous commodities. In addition to its certificated service it also conducts operations as a permitted carrier pursuant to radial highway common carrier and highway contract carrier permits. At the present time 73 percent of applicant's traffic is handled under its permits, 25 percent under its certificate, and 2 percent pursuant to registered interstate authority.

The proposed on-call, overnight service would be provided daily, Monday through Friday.

Applicant maintains a terminal in the city of Industry. It owns and operates 27 vehicles, equipped with two-way radios, and as of December 31, 1975 indicated a net worth in the amount of \$27,575.

Applicant's president and sole stockholder testified that applicant's present certificate, while enumerating a variety of specific commodities, does not fall into any specialized carrier category and the variety of commodities authorized is so broad that it more properly fits into the category of a general commodity carrier; that a determination as to whether commodities offered for transportation fall within applicant's certificated authority require the technical knowledge of rates, which most of the drivers do not have; that the result is confusion on the part of the drivers, dissatisfaction on the part of shippers, whose commodities fall within and without applicant's present certificate, and difficulty on the part of applicant in providing a satisfactory and complete common carrier service; and that applicant seeks no additional territory.

Public Witness Testimony

Applicant introduced the testimony of 11 public witnesses whose testimony is summarized as follows:

1. Graham B. Arlitz, Sparks, Nevada, operations manager, Shulton Incorporated. Distributor of cosmetics such as toilet preparations, toilet waters, shaving creams, shaving mugs, hand lotions, and soap. Distributes to 11 western states including California, ships to points in the Los Angeles Basin Territory, San Diego Territory, and intermediate points. Shipments are consolidated and transported in trailers to Los Angeles.

Has used the services of applicant and its predecessors for the past 30 years.

Delta brings the shipments into Los Angeles. Uses applicant from Los Angeles to Los Angeles Basin Territory and San Diego Territory.

Had used Delta from Los Angeles at one time, but could not get the customized and tailored service that a small carrier provides.

Shipments move from Los Angeles to points in southern California daily between September and November. The shipments are transported by applicant pursuant to an Augmentation Agreement with Law Express.

Applicant can presently handle soap only.

Usually has one or more 20,000-pound trailer a day from Sparks to Los Angeles. Delta delivers the larger shipments directly to distributors. During the Christmas season the volume is heavier - three million pounds a year, 1/2 of which is presently being delivered by applicant and the rest is being delivered by Delta. Shipments are destined to drug stores, chain markets, department stores, and drug wholesalers.

2. Robert Paul Quintana, Los Angeles, plant superintendent, Los Angeles Consolidated Industries. Manufactures and distributes do-it-yourself garden products. Ships to

proposed points daily. Shipments range from 8,000 pounds to 20,000 pounds.

Uses applicant's service which is excellent. Business is growing.

3. Dennis Vener, Los Angeles, vice president, Vertex Industries, Incorporated. Furniture manufacturer. (Book cases, desks, and tables.)

Ships to Los Angeles Basin Territory and San Diego Territory also to intermediate points. Has about ten shipments a week. Shipments range from 7,000 to 10,000 pounds. They are consolidated for truckload movements. Presently uses applicant; service is excellent. Service is personalized. Has used K. K. W., PMT, and others. Had difficulty because of damages.

4. Ronald A. McCorkindale, Glendale, warehouse manager, Western Hoegge. Sells and distributes sporting goods, i.e., hunting, athletic, camping, and fishing, which encompass approximately 10,000 different items. Ships to the proposed area daily and shipments range from 100 to 1,000 pounds. Uses applicant's service; products are susceptible to damage. Service is prompt. Requires a Saturday service. Business has decreased in past four years. Has used G & H Trucking, G. I. Trucking, Sterling Transportation, Auto Fast Freight, Delta, and System 99. Had pickup and damage problems with other carriers. Has interstate shipments, destined to Washington, Oregon, and North Carolina. Uses Milne, ONC, Transcon, and Delta on interstate shipments. Would use applicant for interstate shipments on an interline basis provided shipments were turned over to the line-haul carrier and transported the same day. It would be convenient to have the same carrier pickup both intrastate and interstate shipments.

5. Sherrill D. Hedges, Hawthorne, west coast warehouse manager, Winegard Company. Manufactures and distributes TV antennas, amplifiers, boosters, couplers, hardware, wire, and connectors, which would cover approximately 1,000 different items. Ships to proposed points daily. Shipments range from 50 to 500 pounds. Has used applicant and predecessors for past three years. The service

has been excellent, with no damage claims. Has used G. I. Trucking, Griley, System 99, S & M, 20th Century, Los Angeles City Express, and Milne. Services were unsatisfactory because these carriers either refused to pick up shipments when called or they did not pick up until late. Has intrastate shipments ranging from 100 to 200 pounds and more to points in Washington, Nevada, and Texas. Has used Thunderbird, PMT, ETMF, and Milne on these shipments. The services of these carriers are satisfactory except for service of ETMF to Texas. Would use applicant for the Texas shipments on an interline basis.

6. Donald M. Hypes, Norwalk, president, Meredith Manufacturing Co. Manufactures and distributes bedroom furniture. Ships daily to one or more of the proposed points. Uses applicant exclusively to proposed area. Service is excellent. Ships two or three times a week to points in Oregon, Washington, and Nevada via PMT and Coast Carloading. PMT has been a little slow picking up shipments. It would be an advantage to pick up the interstate shipments and interline them. Has limited dock space.
7. Larry D. Box, Santa Fe Springs, warehouse supervisor, Chemetron Corporation. Manufactures and distributes welding products. Ships daily to proposed points. Shipments range from 500 to 1,500 pounds. Presently using applicant. Service is very good. Has used City Transfer, Golden West, Sterling Transportation, and Security Transportation, but they were unsatisfactory because of missed and late pickups.
8. Shannon Joe Beglin, City of Industry, shipping manager, Plastiline, Incorporated. Manufactures and distributes shipments of plastic pipe and fittings to points in the proposed area on a daily basis. Shipments range from 100 to 5,000 pounds. Presently using applicant and the service is very good. Has used G. I. Trucking and Alco Transportation, but they were not satisfactory because of the uncooperative attitude of the pickup driver for G. I. Trucking and because of delayed deliveries on the part of Alco Transportation. Ships interstate to Arizona, Nevada,

Washington, and Texas. Would use applicant on an interline basis on shipments moving to Arizona and Nevada because pickup has to be made by 2:30 p.m.

9. Jack R. Leedy, Jr., Bell Gardens, warehouse supervisor, Fibermetal Pacific Incorporated. Manufactures and distributes welding safety equipment to points in the proposed area on a daily basis. Shipments range from 200 to 500 pounds. Presently using applicant. Service has been very good. Has used Delta and PMT, G. I. Trucking, and DiSalvo, but was not satisfied because of missed pickups. Ships interstate to Washington, Oregon, Montana, Wyoming, Nevada, Alaska, and Hawaii. Would like to have applicant pick up all shipments and interline the interstate shipment. This would reduce the number of carriers picking up and would eliminate late afternoon pickups by the interstate carriers.
10. Roy P. Quintana, Los Angeles president, Quintana Manufacturing. Manufactures and distributes wrought iron products to points in proposed area. Ships about twice a week. Shipments average 300 pounds. Presently uses applicant. Has used Mercury and CME. They were unsatisfactory because of damage claims and missed pickups. Has interstate shipments to Maryland, Florida, Texas, Arizona, Oregon, Washington, Colorado, and Illinois daily. Uses Yellow Freight Lines, Milne, EFTM, ICX, and T.I.M.E.-DC, Inc. Because of limited dock space, would like to have applicant pick up both intrastate and interstate shipments and interline the hauls.
11. Michael Lee Bowling, Los Angeles, shipping and receiving manager, Compressor Service Company. Distributes air compressors, blowers, sandblasting equipment, air dryers, and chemicals. Ships daily to proposed area. Shipments range from 100 pounds to 5,000 pounds. Presently using applicant. Service is very good. Has also used Los Angeles City Express, Smiser Freight Services, and Stor-Dor. They were unsatisfactory because of missed pickups, damages, and lost freight. Ships interstate to Illinois, New Jersey, Texas, Oregon,

Washington, Montana, Florida, West Virginia, and South Carolina. Uses ICX, T.I.M.E.-DC Inc., and Consolidated. Has no loading platform. Shipments are power loaded in an alley alongside its building. It would be convenient to have applicant pick up both intrastate and interstate shipments.

Protestant's Case

1. California Cartage Company, Inc., Robert Mackey - vice president. Owns and operates 641 units of equipment. Maintains terminals at Richmond, Compton, and San Diego. Provides an overnight service five days a week, Monday through Friday, with an emergency weekend service upon request. Operates regular pickup routes, but larger shipments are picked up and delivered by the same piece of equipment. Service is provided on shipments moving in both interstate and intrastate commerce. Approximately 60 percent of its traffic is interstate and 40 percent intrastate; however, half of the interstate traffic moves within the Los Angeles Harbor Commercial Zone and is therefore exempt. Equipment is not now being used to capacity; could handle 15 to 20 percent more traffic. The heaviest movement is southbound. Fears possible diversion of traffic if application is granted. Has never served any of the public witnesses with the exception of one. Grossed \$13 million in 1975 and \$14 million in 1974, and had had a 93 percent operating ratio for the past six years.
2. Owikway Trucking Co., Inc., Manuel Nievze. Maintains a terminal in Los Angeles. Operates regular pickup and delivery routes, but most shipments are picked up and delivered by the same unit of equipment with a same day service. Interlines with interstate carriers. Approximately 65 percent of traffic moves intrastate and 35 percent interstate, half of which moves within the exempt Los Angeles Harbor Zone. The heavier movement is southbound to San Diego. Traffic moving north out of San Diego is very light. Could handle more traffic. Has 10 to 12 trailers idle. A recent influx of permitted carriers have proved highly competitive. Present operating ratio is 95 percent. Has never served any of the public witnesses.

3. City Freight Lines, Inc., Charles Owens - freight manager. Maintains terminals at Santa Maria, Oxnard, Anaheim, San Diego, Los Angeles, and Los Angeles International Airport. Although no regular pickup and delivery routes are operated, service is provided on an "on-call" basis and all motor units are radio-dispatched. Provides the pickup and delivery service for freight forwarders pursuant to contract rates. Approximately 60 percent of traffic is intrastate, 40 percent is interstate, half of which is provided for freight forwarders. Offers an overnight service. Not now operating to capacity. Business was down \$30,000 in July 1976. Much of best traffic is going to the permitted carriers. Too much competition in San Diego. The back haul from San Diego is about three percent. Has never served any of the shippers who appeared on behalf of applicant.
4. Los Angeles City Express, Inc., Thomas F. Hayes - operations manager. Operates regular pickup and delivery routes, but larger shipments are picked up and delivered from the same unit of equipment. Provides an overnight service. Approximately 80 percent of traffic is intrastate and 20 percent interstate. Employs two solicitors. Has never served any of the public witnesses except for one.

After consideration the Commission finds that:

1. Applicant, as a certificated carrier, has been conducting extensive operations for the transportation of a wide variety of commodities between points within an area from the Los Angeles Basin, on the north, and the San Diego Territory, on the the south. It has also been conducting operations within the same area as a permitted carrier for the transportation of commodities not covered by its certificate.

2. Because of the continual growth of its operations applicant seeks to extend its certificated authority by transporting general commodities, with certain exceptions, between points within its presently certificated area.

3. A number of customers presently using applicant's certificated service would like to have applicant provide a complete certificated service by transporting all of their shipments within its certificated area.

4. Applicant's combined certificated and permitted operations within the same service area result not only in confusion for its customers and drivers, but deprive applicant's customers of the rate advantages that would be derived from split shipments.

5. Applicant is not a new carrier entering the field for the first time. It represents an established operation and there is no reason to assume that extending its authority to general commodities would make it any more competitive than its combined certificated and permitted operations have been in the past.

6. There is little reason to believe that the granting of the instant application would result in any material diversion of traffic from protestants. The public witness testimony clearly demonstrates that applicant's customers have made little, if any, use of the protestants' service.

7. The public witness testimony also demonstrates that applicant's personalized service adequately meets the needs and requirements of its customers for the transportation of intrastate and interstate shipments moving between points within its certificated area.

8. Applicant possesses the necessary equipment, facilities, experience, and financial ability to provide the proposed service.

9. Public convenience and necessity require that applicant be authorized to engage in operations in intrastate commerce as hereinafter authorized, 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.

10. It can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.

The Commission concludes that the application, as amended, should be granted. Applicant's operating authority will be restated in the form of a new certificate which does not in any way exceed the geographical scope of the proposed operation as published in the Federal Register. The certificate granted to the applicant by Decision No. 80521 dated September 19, 1972 in Application No. 53479 will be revoked.

Bob's Delivery Service, 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 Bob's Delivery Service, 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 of this decision.

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 April 30 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. 80521, 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 1st day of JUNE, 1977.

Robert B. Bingham
President
William J. Gannon Jr.
Vernon L. Sturgeon
Charles R. Howell
Commissioners

Bob's Delivery Service, 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:

1. All points and places in Los Angeles Basin Territory as described in Note A hereof.
2. All points and places within the San Diego Territory as described in Note B hereof.
3. All points and places intermediate between Los Angeles Basin Territory via State Highway 1 to Capistrano Beach, thence via Interstate Highway 5 and San Diego Territory including all points laterally within 5 air miles of this route with service to the off route point of Camp Pendleton.
4. All points and places described in paragraph (1) on the one hand, and all points and places described in paragraph (2) and (3) on the other hand.
5. All points and places in paragraph (2), on the one hand, and all points and places described in paragraph (3) on the other hand.
 - (a) Service to, from or between points located laterally from the above highways may be performed via any or all available roads, highways or streets.
 - (b) Service between points within Los Angeles Basin Territory may be performed via any and all available streets and highways.
 - (c) Service between points in the Los Angeles Basin Territory, on the one hand, and San Diego Territory, on the other hand may be performed via Interstate Highway 15 (U.S. Highway 395) as an alternate route for operating convenience only with no service authorized to points located on and along said highway.

Issued by California Public Utilities Commission.

Decision 87409, Application 55110.

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). ✓
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-type trucks or trailers or in hopper-type trucks or trailers.
6. Commodities when transported in motor vehicles equipped for mechanical mixing in transit.
7. Logs.

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Decision 87409, Application 55110.

8. Commodities requiring the use of special refrigeration or temperature control in specially designed and constructed refrigerator equipment.

NOTE A

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 Avenue and its prolongation to the 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 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.

Issued by California Public Utilities Commission.

Decision 87409, Application 55110.

NOTE B

SAN DIEGO TERRITORY

The San Diego Territory includes that area embraced by following an imaginary line starting at a point approximately four miles north of La Jolla on the Pacific Coast shoreline running east to Miramar on U.S. Highway 395; thence following an imaginary line running southeasterly to Lakeside on State Highway 67; thence southerly on County Road S 17 (San Diego County) and its prolongation to State Highway 94; easterly on State Highway 94 to Jamul; thence due south following an imaginary line to the California-Mexico Boundary Line; thence westerly along the boundary line to the Pacific Ocean and north along the shoreline to point of beginning.

(END OF APPENDIX A)

Issued by California Public Utilities Commission.

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