

ORIGINAL

Decision No. 87623 JUL 19 1977

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application)
of DELLIPLAINE TRUCK COMPANY, INC.,)
a California corporation, for an)
extension of its certificate of)
public convenience and necessity)
to operate as a highway common car-)
rier for the transportation of)
property in intrastate commerce and)
for the issuance of an in lieu cer-)
tificate to operate as a highway)
common carrier for the transporta-)
tion of property in both intrastate)
and interstate and foreign commerce.)

Application No. 57013
(Filed January 14, 1977)

Murchison & Davis, by Donald Murchison,
Attorney at Law, for applicant.
Russell, Schureman, Fritze & Hancock,
by Carl H. Fritze, Attorney at Law,
for Brake Delivery-Meir Transfer,
City Freight Lines, Qwikway Truck-
ing Co., Inc., and Container Freight,
protestants.

O P I N I O N

Delliplaine Truck Company, Inc. (DTC), a California corporation, seeks an order of the Commission granting an extension of its certificate of public convenience and necessity authorizing it to transport in intrastate and interstate and foreign commerce, general commodities, with the usual exceptions, between all points within the Los Angeles Basin Territory (LABT) as described in Note A to Exhibit B attached to the application and Bakersfield and Oildale, serving all intermediate points on and within four miles laterally of Interstate Highway 5 or California Highway 99, including points within a 4-mile radius of Bakersfield.

After notice, public hearing was held before Examiner Johnson at Los Angeles on April 27, 1977 and the matter was submitted. Testimony was presented on behalf of DTC by its president, by its bookkeeper, by two existing customers, and one prospective customer.

DTC stipulated to having the requested certificate restricted against transportation of commodities between points within LABT and against transportation of containers with prior or subsequent movement by rail or water. With these stipulations protestants withdrew their opposition to the granting of the requested certificate.

DTC presently has a certificate of public convenience and necessity granted by Decision No. 76732 dated February 3, 1970 in Application No. 51590 authorizing it to transport certain listed commodities between Los Angeles Territory and Bakersfield and Oildale serving all intermediate points on and within four miles laterally of U.S. Highway 99, including points within a four-mile radius of Bakersfield. DTC also has permits to transport general commodities, with the usual exception, as a radial highway common carrier and as a highway contract carrier.

DTC participates in tariffs published by Western Motor Tariff Bureau, Inc., agent, and proposes to apply the rates and rules in those tariffs to operations under the proposed certificate of public convenience and necessity.

The authorization sought by the instant application is threefold: (1) expand the southern service area as set forth in Exhibit C to the application to include numerous cities and communities presently served by DTC under its permitted operations; (2) be certificated to transport general commodities, with the usual exceptions rather than certain specified commodities as of the present time; and (3) for authority to transport general commodities with the usual exceptions, in intrastate and interstate and foreign commerce.

According to the record the increase in population and commercial activity has resulted in an increase in the number of shipments for DTC's customers accompanied by a geographical spread of these customers' operations. To attempt to serve the expanded territory and increased number of shipments as a permitted carrier in competition with certificated carriers places DTC at a distinct disadvantage. Also, according to the testimony, DTC has customers who master bill out of its present certificated area shipping to points it seeks to serve. With the prohibition against a split delivery rate for the benefit of the customer mixing certificated traffic with permitted traffic, the shipper either has to reorient and readjust his shipment to obtain the lowest rate, pay a premium to ship with DTC, or utilize the services of a competitor who has unrestricted authority to the further competitive disadvantage of DTC.

DTC alleges that the segregation of commodities between certificated and permitted commodities is not only expensive, but troublesome, difficult, and time-consuming with the result that it causes freight delays, split revenues, and poor customer relationship.

According to the testimony of DTC's president, a large number of long-line ICC carriers have purchased local rights in order to extend their transcontinental authority, and then, having done so, have given up local California movements for which the rights were originally granted. The resultant change in character of operations from local to long-line have allegedly resulted in greater pressure on DTC to handle California traffic for its shippers but, lacking the authorization for which it now applies, it is unable to perform a complete service. Pursuant to Section 206(a)(6) of the Interstate Commerce Act, a copy of the application has been filed with the Interstate Commerce Commission and a notice thereof appeared in the Federal Register.

Testimony by two present and one prospective customers was given in support of the requested certificate. According to this testimony, DTC performs fast, efficient, and reliable service. These witnesses particularly commended the reliability of the service and the willingness of DTC to accommodate its operations to the requests of the customers such as for Saturday deliveries. These customers also detailed the trouble and extra expense associated with the required segregation of certificated and permitted commodities. In addition to this testimony the names of 11 customers who would reportedly have testified in favor of granting the requested certificate had the matter been contested were read into the record. Such testimony, it is alleged, would have emphasized the advantages of the elimination of segregation of commodities, the reliability of the service provided by DTC, and the relatively individualized service provided by DTC. ✓

According to the record the gross revenues of DTC have increased from \$150,025 in 1966 to \$455,120 in 1976 indicating, in DTC's opinion, competence and public acceptance. The net profit, after payment of all expenses including the salaries of the owner-workers, was \$21,634 for the first quarter of 1977.

DTC's owned equipment consists of four diesel tractors, five gasoline tractors, one diesel and two gasoline bobtail vans, twelve semi-vans, three semi-flats, and miscellaneous dollies, pickups, and equipment. DTC rents a 2-acre 26-bay truck yard at Garden Grove and a 2-1/2-acre truck yard in Bakersfield.

Findings

1. DTC holds a certificate of public convenience and necessity granted by Decision No. 76732 dated February 3, 1970 in Application No. 51590 to transport specified commodities between the Los Angeles Territory as delineated in Appendix B to Decision No. 76732 and Bakersfield and Oildale serving all

intermediate points on and within four miles laterally of U.S. Highway 99, including points within a four-mile radius of Bakersfield. It also holds radial highway common and highway contract carrier permits from this Commission.

2. DTC has been transporting general commodities, with the usual exceptions, within the areas sought to be certificated under its permitted authorities.

3. DTC proposes to provide the requested service on an "on-call" basis Monday through Friday, with Saturday delivery upon request.

4. Public convenience and necessity require that DTC be authorized to transport general commodities, with the usual exceptions, in intrastate commerce as proposed in the application and stipulation and also require that DTC 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.

5. DTC has sufficient experience, equipment, and capability to properly serve the proposed area in the proposed manner.

6. The certificate of public convenience and necessity authorized herein should be restricted against transportation of commodities between points within the LABT as delineated in Note A to Appendix A to this decision and against transportation of containers with prior or subsequent movement by rail or water.

7. Notice of this application appeared in the Federal Register on February 10, 1977.

8. 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 should be granted as set forth in the ensuing order.

Delliplaine Truck 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 Delliplaine Truck 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 of this decision.

2. 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. 76732, which certificate is revoked effective concurrently with the effective date of the tariff filings required by paragraph 3(b).

3. 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.

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

Dated at San Francisco, California, this 19th day of JULY, 1977.

Robert Bateman
President
William J. Quinn
James L. Stinson
Richard D. Quade

Commissioners

Commissioner CLAIRE T. DEDRICK

.. Present but not participating.

Delliplaine Truck 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 as follows:

Between Los Angeles Basin Territory as described in Note A hereof, and Bakersfield and Oildale, with service to all intermediate points on or within four (4) statute miles laterally of Interstate Highway 5 or State Highway 99 including service to points within a four (4) statute mile radius of Bakersfield subject to the following restriction:

RESTRICTION

No service is authorized between points in Los Angeles Basin Territory, as described in Note A hereof.

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.

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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. 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. Commodities requiring the use of special refrigeration or temperature control in specially designed and constructed refrigerator equipment.
11. Explosives subject to U. S. Department of Transportation Regulations governing the Transportation of Hazardous Materials.
12. Containers or Sea Vans having a prior or subsequent movement by rail or water transportation.

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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.

(END OF APPENDIX A)

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