

ORIGINAL

Decision No. 89009 JUN 27 1978

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
BILL RACKLEY TRUCKING, INCORPORATED, )  
a California corporation, for an in )  
lieu certificate of public convenience )  
and necessity authorizing the trans- )  
portation of general commodities )  
between designated points in the )  
State of California. )

Application No. 57166  
(Filed March 23, 1977;  
amended November 15, 1977)

O P I N I O N

Applicant operates pursuant to a highway common carrier certificate which authorizes the transportation of machinery, lumber and forest products, insulators, iron and steel commodities, and electrical equipment in shipments weighing 5,000 pounds or more between all points and places in the San Francisco Territory and along various routes serving Novato, Vallejo, Sacramento, Stockton, Livermore, Fresno, Kettleman City, and numerous intermediate points. The authority is set forth in Appendix A of Decision No. 82060 dated November 7, 1973 in Application No. 54068. It also operates in intrastate commerce pursuant to radial highway common carrier and highway contract carrier permits and in interstate and foreign commerce pursuant to authority issued by the Interstate Commerce Commission.

By this application, applicant seeks an in lieu certificate of public convenience and necessity authorizing the transportation of general commodities between all points and places it is now authorized to serve under its present highway common carrier authority.

It also requests a finding that public convenience and necessity require corresponding authority to that sought herein to transport shipments moving in interstate and foreign commerce. Copies of the application were served upon various existing carriers with whom the proposed service might compete and on the California Trucking Association. It was also listed on the Commission's Daily Calendar. An appropriate notice was published in the Federal Register on May 5, 1977. Protests to the application were received from nine highway common carriers.<sup>1/</sup> The application was amended on November 15, 1977 by including restrictions in the sought authority prohibiting the following transportation: shipments having an immediately prior or subsequent movement by air; shipments in oceangoing containers, and empty oceangoing containers, having a prior or subsequent movement by water; shipments of commodities requiring the use of special refrigeration or temperature control in specifically designed and constructed refrigerator equipment; and shipments weighing less than 15,000 pounds or billed less than 15,000 pounds. With the filing of the amendment, all protestants have notified the Commission in writing that they have no further interest in the matter, the last such letter having been received on April 3, 1978. Applicant's attorney has informed the Commission that it is his client's intent that the 15,000 pounds-per-shipment restriction is to apply to the sought additional authority and not to the present specialized authority it now holds which has a restriction of 5,000-pounds-per shipment.

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<sup>1/</sup> Protests were filed by the following common carriers: Bayview Trucking, Inc.; Containerfreight Transportation Company; Pacific Motor Trucking Company; Lodi Truck Service; Ted Peters Trucking Company, Inc.; Ditto Freight Lines, Inc.; Hatfield Trucking Service, Inc.; Doudell Trucking; and Delta Lines, Inc.

Applicant proposes to render a daily service, Monday through Friday, in both intrastate and interstate or foreign commerce. Time in transit will be the same day and overnight, depending upon the time of day the request for service is received. The rates to be charged for the proposed service and the rules and regulations applicable thereto will be the same as those set forth in Minimum Rate Tariff 2 and other applicable minimum rate tariffs of the Commission. Attached to the application as Exhibit D is a list of the various power and trailing equipment and other vehicles operated by applicant. Applicant asserts that if additional units of equipment are required to conduct the proposed service, they will be obtained and the company is financially able to do so. Applicant's balance sheet dated December 31, 1976 shows assets of \$483,022.57, liabilities of \$186,506.74, and a net worth of \$296,515.83. Its net profit, after state and federal income taxes, for the year 1976 was \$22,305.14.

Applicant alleges that it has been providing service under its limited certificated authority into the sought area for a substantial period of time; that it has received repeated requests from its customers in this area for a general commodity type service; that it has been transporting general commodities shipments under its permitted authority in this area; that this service has expanded to a point where it is approaching a common carrier type service; and that public convenience and necessity require the proposed service in both intrastate and interstate commerce.

We are of the opinion that the application, as amended, should be granted. As pointed out by applicant's attorney, the 15,000 pounds-per-shipment restriction in the amendment will be

made applicable to the additional authority granted herein only. An in lieu certificate setting forth both applicant's present certificated authority and that granted herein will be issued, and the certificate granted to it by Decision No. 82080 will be canceled.

Findings

1. Applicant has the experience, equipment, and financial ability to provide 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, and also require that the 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. It can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.
4. There are no protests to the application, as amended.
5. A public hearing is not necessary.

Conclusion

The application, as amended, should be granted as set forth in the ensuing order.

Bill Rackley Trucking, Incorporated 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 Bill Rackley Trucking, Incorporated, 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. 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. 82080, 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 thirty days after the date hereof.

Dated at San Francisco, California, this 27<sup>th</sup> day of JUNE, 1978.

William J. Quinn President  
Veron L. Sturges  
Robert D. Gwale  
Clair J. Dubois Commissioners

Commissioner Robert Batinovich, being necessarily absent, did not participate in the disposition of this proceeding.

Bill Rackley Trucking, Incorporated, 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:

- A. Shipments weighing 15,000 pounds or more, or shipments upon which freight charges have been computed at a weight of 15,000 pounds or more, subject to EXCEPTION shown below.
- B. Between all points and places in San Francisco Territory, as described in Note A hereof.
- C. Between all points and places on or within twenty (20) statute miles laterally of the following routes.
  1. Interstate Highway 80 between Sacramento and its junction with State Highway 17 near Albany.
  2. State Highway 17 between its junction with Interstate Highway 80, via the Richmond-San Rafael Bridge, and its junction with U.S. Highway 101.
  3. U.S. Highway 101 from Novato to San Francisco.
  4. State Highway 37 between its junctions with U.S. Highway 101, near Ignacio, and with Interstate Highway 80.
  5. State Highway 21 between its junction with Interstate Highway 80, near Cordelia, and with Interstate Highway 680, near Benicia.
  6. State Highway 12 between its junctions with Interstate Highway 80, near Fairfield, and with State Highway 99, near Lodi.

Issued by California Public Utilities Commission.

Decision 89009, Application 57166.



7. Interstate Highway 680 between its junctions with Interstate Highway 80, near Vallejo, and with Calaveras Road, near Milpitas.
8. State Highway 24 between its junctions with Interstate Highway 680, near Walnut Creek, and Interstate Highway 80.
9. State Highway 4 between its junctions with Interstate Highway 680, near Concord, and with State Highway 99, near Stockton.
10. Interstate Highway 580 between its junctions with State Highway 17, near Emeryville, and with Interstate Highway 5, near the San Joaquin-Stanislaus County Line.
11. Interstate Highway 205 between its junctions with Interstate Highway 580, near Mountain House, and with Interstate Highway 5, near Banta.
12. State Highway 84 between its junctions with Interstate Highway 580, near Springtown, and with Interstate Highway 680 at Scotts Corner.
13. State Highway 99 between Sacramento and Fresno.
14. State Highway 33 between its junctions with Interstate Highway 5, at Lehman Road near the Defense Depot, Tracy, and Interstate Highway 5, near the San Luis Reservoir, and between its junctions with State Highway 152, near Los Banos, and with State Highway 198, at Oil Fields.
15. State Highway 132 between its junctions with Interstate Highway 580, and with State Highway 99, near Modesto.
16. Interstate Highway 5 between Stockton and its junction with State Highway 41, near Kettleman City.

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Decision 83009, Application 57166.

17. State Highway 140 between its junctions with State Highway 99, near Merced, and State Highway 33, at Gustine.
18. State Highway 152 between its junctions with State Highway 99, near Califa, and Interstate Highway 5, near the San Luis Reservoir.
19. State Highway 145 between its junctions with State Highway 99, near Madera, and State Highway 180, near Kerman.
20. State Highway 180 between its junctions with State Highway 33, near Mendota, and State Highway 99, near Fresno.
21. State Highway 41 between its junctions with State Highway 99, at Fresno, and Interstate Highway 5, near Kettleman City.

EXCEPTION:

Shipments of the following commodities are subject to a minimum weight of 5,000 pounds and are not subject to Exclusions 10, 11 and 12 listed under Sub-paragraph D hereof:

1. Machinery
  2. Lumber and lumber products
  3. Insulators
  4. Iron and steel products
  5. Electrical equipment
- D. 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,

Issued by California Public Utilities Commission.

Decision 89009, Application 57166.

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.
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.

Issued by California Public Utilities Commission.

Decision 89009, Application 57166.

9. Trailer coaches and campers, including integral parts and contents when the contents are within the trailer coach or camper.
10. Shipments having a prior or subsequent move by air.
11. Shipments in ocean-going containers, and empty ocean-going containers; having a prior or subsequent movement by water.
12. 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 Company 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

Issued by California Public Utilities Commission.

Decision 89009, Application 57166.

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 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)

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Decision 89009, Application 57166.