

ORIGINAL

Decision No. 89944 JAN 30 1979

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application)
of)

LOUIS A. YARBROUGH doing business)
as YARBROUGH TRUCKING for a cer-)
tificate of public convenience)
and necessity authorizing opera-)
tions as a highway common carrier.)

Application No. 58467
(Filed November 15, 1978)

O P I N I O N

Louis A. Yarbrough, an individual doing business as YARBROUGH TRUCKING and the applicant herein, hereby seeks a certificate of public convenience and necessity authorizing operations as a highway common carrier for the transportation of business, office and data machinery, equipment, materials and supplies. The proposed transportation service would apply between all points in San Francisco Territory; between said territory and Salinas via U.S. Highway 101; and between that territory and Monterey, including intermediate points located on certain specified highways as well as all off-route points located in San Mateo, Santa Clara, Monterey or San Benito Counties.

At the time this application was filed, applicant was operating pursuant to a radial highway common carrier permit issued to him in File T-99,413. Applicant has been providing such transportation services under his permit between the same points generally that he now proposes to serve as a certificated carrier.

Applicant intends to perform the proposed transportation service in both intrastate and interstate or foreign commerce and requests that this Commission also make a finding that public convenience and necessity require the proposed service in interstate and foreign commerce operations as well as in intrastate commerce in California. A copy of the subject application has been filed

by applicant with the Interstate Commerce Commission, pursuant to Section 206(a) (6) of the Interstate Commerce Act, and the required notice of such filing was published in the Federal Register on December 21, 1978.

The Commission is in receipt of two letters of protest from potential competing carriers. Both of these protests have been withdrawn as a result of the applicant's agreement to exclude from the requested certificate certain air, rail and water-related traffic which was the basis for such protests.

In justification of the certificate authority sought herein, applicant alleges that: (a) he has been operating as a licensed for-hire motor carrier within the area involved herein since December of 1971; (b) the volume of business handled has been continually increasing; (c) the service that he performs involves the specialized, efficient and expedited transportation of expensive business, office and data machinery, together with related equipment, materials and supplies, which are used in business offices; (d) the specialized nature of such expensive machines and equipment requires both careful handling and efficient transportation thereof which applicant, as a specialized carrier of such commodities, is experienced and equipped to perform; and (e) granting of such authority will enable applicant's business to continue its orderly pattern of growth and allow him to serve additional shippers of such commodities.

Applicant asserts that there is an apparent need for the proposed transportation service in interstate and foreign commerce as well as intrastate; that, unless he is authorized to transport both intrastate and interstate shipments, there is a real possibility that he will lose a substantial portion of such intrastate business due to his inability to offer the shippers a complete service; and that granting of this application will permit the integration of both intrastate and interstate operations under the certificated authority sought herein from this Commission, and the subsequent implementation thereof by the Interstate Commerce Commission.

According to applicant, daily transportation service will be provided Monday through Friday and, upon special request, on Saturday and Sunday. Delivery service will be provided either the same day or overnight, depending upon the time of day that requests for service are received. The application indicates that applicant will operate three units of relatively new equipment which consists of 10, 5 and 2½-ton capacity, van-type trucks, all equipped with power-driven tailgates, which trucks are specifically designed and operated to transport the specific types of machinery and equipment involved herein.

Applicant intends to publish and assess rates for the proposed transportation service which will be on the same level as those published in the Commission's Minimum Rate Tariff 2 or other minimum rate tariffs when applicable.

Financial statements attached to the application show that applicant had a net worth of \$50,299 as of December 31, 1977 and realized a net profit of \$30,340 (before taxes) from his trucking operations for the calendar year 1977. Such evidence indicates that applicant has the financial ability to render the proposed service.

A printed notice concerning the filing of the application was served by applicant on November 20, 1978, via first-class mail, upon known competing carriers, as well as upon the California Trucking Association. Notice of the filing of the subject application also appeared in the Commission's Daily Calendar of November 28, 1978. As each of the two protests have been satisfactorily resolved by appropriate amendments to applicant's proposed certificated authority, a public hearing is not necessary.

After consideration, the Commission finds that:

1. At the time of filing this application, applicant was conducting for-hire trucking operations under a statewide radial highway common carrier permit issued by this Commission.

2. Applicant currently operates three van-type units of equipment of varying sizes, all equipped with tailgates and specially designed to transport the specific commodities named herein.

3. Based on the evidence presented herein, applicant has demonstrated his financial and operational ability to perform the proposed transportation service.

4. Public convenience and necessity require that applicant be authorized to engage in operations in intrastate commerce, as proposed in the application and subsequently modified by applicant, and also require that applicant be authorized to engage in coextensive operations in interstate and foreign commerce within limits which do not exceed the scope of the intrastate operations authorized by this decision.

On the basis of the foregoing findings, the Commission concludes that the application should be granted as set forth in the ensuing order. The territorial description of the certificated authority granted herein reflects the current names of redesignated highways and roads and does not in any way exceed the geographical scope of the proposed operation.

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, these 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 Louis A. Yarbrough, an individual doing business as Yarbrough Trucking, authorizing him to operate as a highway common carrier, as defined in Section 213 of the Public Utilities Code, for the transportation of specified commodities between the points particularly set forth in Appendix A of this decision.

2. In providing service pursuant to the certificate herein granted, applicant shall comply with and observe the following service regulations. Failure to do so may result in a cancellation of the operating authority granted by this decision.

- (a) Within thirty days after the effective date hereof, applicant shall file a written acceptance of the certificate herein granted. Applicant is placed on notice that, if he accepts the certificate of public convenience and necessity herein granted, he will be required, among other things, to comply with and observe the safety rules of 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 hereof, applicant shall establish the service herein authorized and 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 service herein authorized.

- (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 his 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 his 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, he 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 30 day of JANUARY, 1979.

Richard D. Howell
President
Vernon L. Sturgeon
Clair T. DeWitt

Commissioners

Commissioner John E. Bryson
present but not participating.

Commissioner Leonard M. Grimes ⁶Jr.
Present but not participating.

Louis A. Yarbrough, an individual doing business as Yarbrough Trucking, 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 business, office and data machinery, equipment, materials and supplies, between the following points and subject to the restrictions shown below:

1. Between all points and places in San Francisco Territory as described in Note A.
2. Between all points in San Francisco Territory and Salinas via U.S. Highway No. 101, including all intermediate points.
3. Between all points in San Francisco Territory and Monterey via any or all of the following highways: U.S. Highway 101 and State Highways 17, 1, 156, 183 and 68, including all intermediate points, and all off-route points not situated on said highways but located within the Counties of San Mateo, Santa Clara, Monterey or San Benito.

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.

RESTRICTIONS:

- #1. No services shall be performed pursuant to this certificate in the transportation of freight having a prior or subsequent movement by air between points in Monterey County and Watsonville, on the one hand, and, on the other hand the San Jose Municipal Airport and the San Francisco International Airport.
- #2. This authority shall exclude shipments in containers or trailers having a prior or subsequent movement by water or rail.

Issued by California Public Utilities Commission.

Decision 89944, Application 58467.

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 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)

Issued by California Public Utilities Commission.

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