

By this application, Inland requests a certificate of public convenience and necessity authorizing it to operate as a highway common carrier in the transport of general commodities, with the usual exceptions, in intrastate and interstate or foreign commerce between the Los Angeles Basin Territory, on the one hand, and, on the other hand, points and places on and within 15 miles laterally of Interstate Highways 5 and 15 in Riverside and San Diego Counties, San Diego Territory, as described in Exhibit A hereof, and points and places on and within 15 miles laterally of U.S. Highway 101 and California Highway 1 between Los Angeles and Goleta.

Inland proposes to establish through routes and through rates between any and all points presently authorized to be served by it, and the additional points sought to be served through its application. In addition Inland also proposes to establish through routes and joint rates with its connecting carriers at its various terminal points. Inland also requests corresponding interstate and foreign commerce authority. An appropriate notice was published in the Federal Register on August 10, 1978.

Inland participates in tariffs published by Western Motor Tariff Bureau, Inc., Agent, as are necessary within the territory covered by Inland's present certificates, both as to intrastate and interstate and foreign commerce and it proposes to participate in the same tariffs for rates and charges in the extended territory proposed to be served by it. It proposes to participate in various other bureau tariffs publishing joint rates between the points to be served in California, on the one hand, and points in other states, on the other hand, on interchange with carriers participating therein at the most convenient point of interchange to provide expeditious service.

Four days of public hearing were held before Administrative Law Judge William A. Turkish between October 23 and November 21, 1978. There were three sessions in Santa Ana and one in Los Angeles. Prior to the first day of hearing, copies of the application were served on some 74 common carriers now operating between the points proposed to be served with whom Inland is likely to compete as well as other possible interested carriers. The matter was submitted on November 21, 1978.

Applicant's Presentation

Inland presented evidence of its present and proposed operations through its president, Walter W. McFarlane. He testified as to his background of more than 20 years experience in the trucking business and he introduced and explained Exhibits 1 through 13. The main office and terminal of Inland is located in Orange. Inland's terminal building contains 18,640 square feet and is situated on a surfaced parcel of four and one-half acres which is leased by Inland. The witness stated that if the application is approved, Inland would establish a terminal in National City and Oxnard if there was a tremendous increase in traffic and the occasion demanded such terminals. In addition, he stated that he can obtain any additional equipment within 30 minutes from rental pools if needed. At the time it incorporated in 1971, Inland began operations with seven employees, four tractors and trailers, and seven customers. It has increased its operations since 1971 to the point where it now operates with 32 tractors and 36 trailers serving over 100 customers and it now employs 72 people. Inland maintains cargo, public liability/property damage, and collision insurance under a \$1 million umbrella coverage. Currently Inland maintains a daily pickup and delivery service throughout the Los Angeles Basin out of

its Orange terminal on regular routes. It is able to handle customer calls for pickup shipments after the regular daily pickup has passed that shipper's doors by contacting the driver through a radio/beeper service and by requiring all drivers to call in every two hours. The witness testified that he is able to provide customers with one-day delivery service if the shipper has a trailer loaded and calls in before 9:00 a.m. on truckload shipments. This is accomplished by Inland spotting a trailer at the shipper's door the day before. Usually, normal shipments would consist of overnight service. In addition, Inland provides Saturday pickup and delivery on request as well as late pickups during the week.

According to the witness, there has been an increased demand for Inland's service since the last authority granted it by this Commission. Some of the advantages to be gained by receiving the authority sought would be the elimination of segregation of freight and freight bills as between contract and common carrier operations and the elimination of segregating special office labor and billing. In addition, Inland could perform split pickups and deliveries desired and offer better service to the public according to the witness. He further testified as to his concern that he might be approaching common carriage and that it is difficult at present to explain the difference between a common carrier and a contract carrier to his shippers and that this would be eliminated if the extension is granted.

Upon cross-examination, the witness testified that of the equipment shown in Exhibit 13, Inland owns 10 power units and employs 10 drivers, and that 17 power units are owned and operated by owner/operators, each subhauling on their own

permits under a lease with Inland. The witness further stated that Inland interlines a great deal of freight, both inbound and outbound, with various carriers within the Los Angeles Basin and that if the authority is granted, it would be able to provide interstate traffic from the Los Angeles Basin north to Goleta and south to the San Diego area in accordance with requests for such service without interlining, and that such service would provide direct service and round out Inland's operations. Of Inland's total traffic, 50 percent is interstate and 50 percent is intrastate. Of its interstate traffic, 87 percent is interlined with other carriers according to Inland's president. Incoming rail traffic handled by Inland constitutes 3 percent of its total traffic revenues while water movements constitute 10 percent of its total traffic revenues. Of its total traffic revenues, approximately 17½ percent is from inbound traffic while 32½ percent is from outbound traffic.

Inland's president introduced and explained the company's financial statement in Exhibits 8 and 9. He testified that he is financially able to handle any service it proposes here. As of June 30, 1978, stockholders' equity totaled \$166,958. Total assets were \$544,138.

Appearing on behalf of Inland were 15 public witnesses testifying in support of its proposed extended service. It was stipulated by counsel that, if called, one additional witness, who was scheduled to testify, would testify substantially the same as those who did testify and would support Inland's application herein.

In brief, the witnesses testified that they are presently using applicant's services; that they have occasion to make regular shipments to all of Inland's proposed extended areas; and that they are satisfied with the services of applicant

and would like to make use of its services as a certificated carrier on intrastate and interstate shipments. They praised Inland's prompt pickup and delivery record, including its willingness to make multiple pickups the same day, and also praised Inland's courteous drivers and prompt handling of claims. Some witnesses related the unsatisfactory service received from certain other carriers. Their complaints consisted generally of delayed deliveries, failure to make timely pickups and refused shipments. Some witnesses, who now use Inland on their intrastate traffic only, testified that they would use Inland on their interstate traffic if the authority were granted.

Protestants' Presentations

Mr. Charles W. Owen, president of City Freight Lines (City), one of two protestants in this matter, testified in opposition to the granting of Inland's application for extension of its service on two grounds: namely, Inland's fitness to operate and because Inland was able to negotiate a union contract which is 60 percent less than City's contract with the same union causing an unfair competitive situation. The witness testified that there is now litigation pending between City and Inland in which the union has been joined as a party defendant due to an alleged loss of \$3 million of business revenue due to the alleged pirating of some of City's best accounts by a former employee of City who resigned to accept employment with Inland.

The witness testified with respect to City's operations and described the decline of its operations within the past two years from an annual revenue of \$3 million to approximately \$600,000 or \$700,000. This decline is attributed by Owen to the action of his former sales manager, who left the employ of City for employment with Inland and who, Owen believes, "pirated" some of City's best accounts representing approximately \$30,000 in revenues per month as well as the unfair position City has been placed in as a result of its union contract. In addition, Owen testified that as a result of the economic situation in which it was placed, City had to give up part of its own San Diego and Ventura/Santa Barbara traffic to agents in those areas who could operate under lease or augmentation arrangements more economically to those areas with agent-owned equipment and employees than City could, although the equipment bears the name 'City Freight Lines'.

Another witness, Mr. Richard Elms, president of Container Freight Transportation Company (Container Freight), testified in opposition to the granting of the extended authority sought by Inland. He introduced and offered Exhibit 15 which is the operating authority of Container Freight issued by this Commission and registered with the Interstate Commerce Commission to operate a trucking business and container freight stations for steamship companies. Most of its traffic is transported in containers. The witness testified that if a restriction were placed in any operating authority granted to Inland which restricted against the transportation of shipments moving in full containers having a prior or subsequent movement by water, except between point(s) of origin and point(s) of destination,

both of which are wholly within the Los Angeles Basin Territory as described in the present certificate of the applicant, it would eliminate Container Freight's interest in the authority sought by Inland. He went on to state that the traffic, which would so be restricted in the area being sought by Inland, represents 20 to 25 percent of Container Freight's trucking business which is virtually all full-containerized freight movements having prior or subsequent movement by water.

In addition to trucking operations, Container Freight performs loading and unloading of freight into and from containers in the Los Angeles harbor area on behalf of the steamship companies as well as for individual shippers and consignees which enables it to provide more expeditious service in the pickup and delivery of container-bound freight. The witness testified that Container Freight has experienced a growth in the past two or three years with a corresponding increase in traffic, revenues, equipment, facilities, and personnel. He also testified that in the past year or so Inland has been transporting full-containerized freight in the Los Angeles Basin and he has neither experienced any competition from it nor lost any traffic to it. It was the opinion of the witness that the important elements which might cause his company to lose any business would be service, rates, personal relationships, and reciprocity.

In determining whether public convenience and necessity require the service proposed by applicant, the Commission considers such factors as experience, financial ability, and equipment, whether the proposed service is responsive to the needs of shippers and the public, and whether the granting of the application would adversely affect the protestants or the public interest.

The evidence shows that applicant has established and operated a permitted and certificated highway common carrier service which shippers have come to rely and depend upon for superior service, courteous personnel, and expeditious handling of their shipping needs. Applicant's traffic and revenues have shown a steady annual increase since 1971 which indicates satisfaction by shippers with applicant's operations. The public witnesses have requested expanded service from applicant and they have testified as to preference for applicant's service over those of some competing carriers. Thus if the supporting witnesses are representative of the remaining shippers using applicant's services, the shipping public will benefit by the granting of the proposed service. In addition, the granting of authority requested by the applicant will eliminate the necessity of segregating freight and billing between contract and common carrier shippers and help eliminate the confusion as to each type of transportation by applicant's employees and shippers.

One protestant alleges the unfitness of applicant, which has as its underlying basis allegations of unfair competitive practices by way of union contracts and allegations of the "pirating" of its best shipping accounts by a former employee now employed by applicant. These charges are now the subject of litigation between the parties and before the courts and we do not deem it proper to comment on this other than to say that we primarily look ahead to determine what, if any, future adverse economic consequences would result from the granting of authority requested and not what past adverse economic consequences have resulted from the authority previously granted to a permitted or certificated carrier. The other protestant alleges adverse economic consequences resulting from the granting of the

application, but readily admits it has not experienced any competition from applicant in the past year and one-half during which applicant has been handling containerized freight and it has not suffered the loss of any shippers to the applicant. As a matter of fact it has shown a steady growth in the volume of traffic, revenues, equipment, and personnel over the years. The general allegations of both protestants that competition from applicant will affect them adversely must be considered but it must be weighed against the public interest in having the requested service.

Findings

After consideration, the Commission finds that:

1. Applicant is presently providing service as a permitted carrier within the proposed extended area.
2. Applicant's permitted and certificated operations within the proposed area have grown and developed over the years because of an increasing demand for such service by applicant's customers.
3. Applicant possesses the necessary equipment and financial ability to provide the proposed service.
4. Notice of the filing of this application appeared in the Federal Register of August 10, 1978.
5. Public convenience and necessity require that applicant be authorized to engage in operations in intrastate commerce as proposed in the application 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 the order herein.
6. It can be seen with reasonable certainty that the activity involved in this proceeding will not have a significant effect on the environment.

7. The evidence does not show that the requested additional authority would impair the ability of protestants to continue to provide service to their customers.

The Commission concludes that the application should be granted as set forth in the ensuing order. The order which follows will provide for the revocation of the certificate granted by Decision No. 86567 dated October 26, 1976 in Application No. 56423, as amended by Decision No. 86628 dated November 9, 1976 and the issuance of an in lieu certificate in appendix form to Inland Freight Lines.

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 Inland Freight Lines, 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 to do so 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. 86567 in Application No. 56423 as amended by Decision No. 86628, 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 thirty days after the date hereof.

Dated at San Francisco, California,
this 10th day of FEBRUARY, 1979.

Commissioner JOHN E. BRYSON

~~Present but not participating.~~

Commissioner Leonard M. Grimes, Jr.,
being necessarily absent, did not
participate.

[Signature] *Chief*
[Signature]
[Signature] *President*
[Signature]
[Signature]
[Signature]
Commissioners

Inland Freight Lines, 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. Between all points and places in the Los Angeles Basin Territory as described in Note A hereof.
- B. Between all points and places in the San Diego Territory as described in Note B hereof.
- C. Between the said Los Angeles Basin Territory and San Diego Territory and all intermediate points on and within fifteen (15) statute miles laterally of Interstate Highways 5 and 15.
- D. Between Los Angeles and Goleta serving all points and places on and within fifteen (15) statute miles of U.S. Highway 101 and California Highway 1.

Through routes and rates may be established between any and all points described above.

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).

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Decision 89985 , Application 58104.

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.
9. Articles of extraordinary value.
10. Trailer coaches and campers, including integral parts and contents when the contents are within the trailer coach or camper.
11. Commodities requiring the use of special refrigeration or temperature control in specially designed and constructed refrigerator equipment.

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12. Explosives subject to U. S. Department of Transportation Regulations governing the Transportation of Hazardous Materials.

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.

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

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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.

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)

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