

ORIGINAL

Decision No. 89986 FEB 14 1979

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of KERNER TRUCKING SERVICE, INC., a California corporation, for an extension of its 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, and for an in lieu Certificate of Public Convenience and Necessity therefor.

Application No. 57796  
(Filed January 10, 1978)

Murchison & Davis, by Donald Murchison, Attorney at Law, for applicant.  
Russell, Schureman & Hancock, by R. Y. Schureman, Attorney at Law, for City Freight Lines, Container Freight Transportation Company, and Ted Peters Trucking Company, Inc., protestants.

O P I N I O N

Public hearing in this application was held before Administrative Law Judge O'Leary at Los Angeles on June 21 and 22 and August 2, 1978. The matter was submitted on the latter date.

Applicant is a highway common carrier transporting general commodities with the usual exceptions between points within the Los Angeles Basin Territory with service to and from Laguna Beach and Irvine pursuant to authority granted by Decision No. 74425 in Application No. 49548. Applicant holds authority from the Interstate Commerce Commission to perform transportation in interstate and foreign commerce within the Los Angeles Basin Territory. Applicant also has permits authorizing service as a radial highway common carrier throughout the State of California and as a highway contract carrier within a radius of 150 miles from Los Angeles.

Applicant here seeks additional highway common carrier authority in intrastate, interstate, and foreign commerce in the form of an in lieu certificate of public convenience and necessity as follows:

- a. Between all points and places within the Los Angeles Basin Territory and within the San Diego Territory and between said territories, serving all points and places on and within ten (10) miles laterally of Interstate Highways 5 or 15 or U.S. Highway 395.
- b. Between all points and places within the territory described in paragraph a above and Goleta, serving all points and places on and within ten (10) miles laterally of U.S. Highway 101.

The application is protested by City Freight Lines, Container Freight Transportation Company, and Ted Peters Trucking Company, Inc.

Applicant proposes to provide the service on an "on call" basis Monday through Friday. The service would be overnight. Saturday service will be provided when requested.

Applicant proposes to establish through routes and through rates between all points presently authorized and the proposed additional points. Applicant also proposes to establish through routes and joint rates with connecting carriers at its various terminals.

Applicant is a party to Western Motor Tariff Bureau, Inc. for operations under its existing common carrier certificate. In connection with the proposed service, applicant proposes to establish the same rates and charges published in the above described tariffs or participate in various other bureau tariffs publishing joint rates.

Applicant has one terminal which is located at Los Angeles.

Applicant has the following equipment (Exhibit 9): 8 bobtail trucks, 20 tractors, 27 trailers, 1 dolly converter gear, 1 pickup truck, and 3 automobiles.

Applicant is presently performing intrastate service as a highway contract carrier between points in the Los Angeles Basin Territory,

on the one hand, and north to Goleta and south to San Diego, on the other hand. In most instances applicant does not physically transport such shipments but accomplishes the transportation through interline arrangements with other carriers.

As of December 31, 1977 applicant had assets totaling \$376,433 offset by liabilities totaling \$306,276 resulting in stockholder's equity of \$70,157. For the year ended December 31, 1977 applicant had a net income from trucking operations of \$11,930.

Representatives of eight shippers testified in support of the application concerning a need for the proposed intrastate service. The witnesses testified they presently utilize applicant's highway contract carrier service. It was stipulated that five additional witnesses, if called to testify, would present testimony substantially similar to that of the eight witnesses who testified to the need for the proposed intrastate service. Five witnesses testified in support of applicant's proposed service in interstate and foreign commerce. The five witnesses represented a customhouse broker, a freight forwarder, two motor carriers, and one shipper. The witness representing the customhouse broker testified that she selects the carriers for shipments on inbound shipments from foreign countries. For shipments destined to points within the Los Angeles Basin Territory and shipments destined to points outside of California, she utilizes the service of applicant. Applicant delivers the shipments destined to points in the Los Angeles Basin Territory to the consignees and delivers the shipments destined to points outside of California to other carriers under an interline arrangement. She also testified that she has approximately four shipments per month destined to points in the Santa Barbara area and 20 to 30 shipments per month destined to the San Diego area. Because applicant does not have authority to these points, she must use other carriers. She would prefer to use applicant because it would be more convenient to contact one carrier, and she also believes that applicant's service is better than the service provided by the carrier presently handling the traffic to the Santa Barbara and San Diego areas.

The witness representing the freight forwarder testified he receives piggyback and volume shipments from points outside of California destined to points within California. He presently utilizes applicant for shipments distributed to points within the Los Angeles Basin Territory. He also ships approximately 35 to 40 shipments per day to the San Diego area and approximately 20 shipments per day to the Santa Barbara area. He is presently having problems with the carrier providing service to the San Diego area and would utilize applicant should the sought authority be granted. He may utilize applicant to the Santa Barbara area should the application be granted. The witnesses representing the two motor carriers both testified they have shipments destined to the Santa Barbara area daily. Both testified they would utilize applicant on an interline basis should the sought authority be granted. One of the witnesses testified his company would use applicant to the San Diego area when there was more volume than could be handled with his company's own equipment. The witness representing the shipper testified that his company manufactures classroom furniture, bus seats, stadium seats, and bleachers at Grand Rapids, Michigan, and Champagne, Illinois. A rail carload is shipped to Los Angeles approximately once every two weeks. The car is spotted at a team track and applicant performs the distribution service. Approximately 30 percent of each car contains material destined to the San Diego area and 20 percent of each car contains material to the Santa Barbara area. His company also ships piggyback shipments of bleachers to the southern California area including the Santa Barbara and San Diego areas. His company would use applicant to transport shipments to the San Diego and Santa Barbara areas if the application is granted.

Representatives of two of the protesting carriers testified that they presently serve the Santa Barbara and San Diego areas from the Los Angeles Basin Territory; however, one of the carriers has

curtailed its service with respect to less than truckload traffic. The third protesting carrier did not present any evidence.

On November 20, 1978, long after submission, Rozay's Transfer, Inc. (Rozay), a highway common carrier operating within the territory sought by applicant herein, filed a petition to intervene as a protestant and for reopening of the proceedings for receipt of further evidence. The petition alleges that Rozay's general policy is not to participate in applications and therefore did not file a protest. However, because certain testimony in support of the application adversely reflects on Rozay's service, it now desires to intervene in this matter to refute such evidence. One of the reasons for requiring notification of the filing of the application to all common carriers with whom the proposed service is likely to compete is so the competitors are aware of the application and may represent themselves to protect their interests. Rozay was notified as required and chose not to participate. The petition will be denied.

#### Findings

1. Applicant operates as a highway common carrier in intrastate, interstate, and foreign commerce pursuant to Decision No. 74425 in Application No. 49548 of this Commission and by Docket No. MC-121634 of the Interstate Commerce Commission.

2. Applicant also is authorized to operate as a radial highway common carrier throughout the State of California and as a highway contract carrier within a radius of 150 miles from Los Angeles.

3. Applicant here seeks to expand its present highway common carrier authority in intrastate, interstate, and foreign commerce in the form of an in lieu certificate of public convenience and necessity as follows:

- a. Between all points and places within the Los Angeles Basin Territory and within the San Diego Territory and between said territories serving all points and places on and within 10 miles laterally of Interstate Highways 5 or 15 and U.S. Highway 395.

- b. Between all points within the territory described in paragraph a above and Goleta serving all points and places on and within 10 miles laterally of U.S. Highway 101.
4. Applicant has a terminal which is located at Los Angeles.
5. Applicant has sufficient equipment to conduct the proposed operation.
6. As of December 31, 1977 applicant had assets totaling \$376,433 offset by liabilities of \$306,276 and an equity of \$70,157. During 1977 its net income from trucking operations was \$11,930.
7. Representatives of eight shippers testified in support of the proposed intrastate operations. It was stipulated that five additional witnesses, if called to testify, would present testimony substantially similar to that of the eight witnesses who testified in support of the sought intrastate authority.
8. Five witnesses representing a customhouse broker, a freight forwarder, two motor carriers, and one shipper testified in support of applicant's proposed operations in interstate and foreign commerce.
9. A number of applicant's customers desire to use applicant's proposed service because they are dissatisfied with the services of existing certificated carriers. Their dissatisfaction is based upon missed and late pickups and delays in transit.
10. Notice that this application was filed and that it seeks rights in interstate and foreign commerce was published in the Federal Register on March 16, 1978.
11. Public convenience and necessity require that applicant be authorized to engage in operations in intrastate commerce as proposed

in the application and also requires 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.

12. It can be seen with certainty that there is no possibility that a grant of the authority may have a significant effect on the environment.

13. Rozay was notified of the application and failed to file a timely protest.

The Commission concludes that the application should be granted. The petition of Rozay should be denied.

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 Kerner Trucking 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 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. 74425, which certificate is revoked effective concurrently with the effective date of the tariff filings required by paragraph 2(b).

4. The petition filed by Rozay's Transfer, Inc. on November 20, 1978 is denied.

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

Dated at San Francisco, California, this 14th day of FEBRUARY, 1979.

Commissioner JOHN E. BRYSON  
Present but not participating.

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

[Signature] <sup>H.J.</sup>  
[Signature]  
[Signature]  
[Signature]  
[Signature]

President

Commissioners

Kerner Trucking 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 as follows:

- A. Between all points and places in Los Angeles Basin Territory as described in Note A hereof.
- B. Between all points and places in San Diego Territory as described in Note B hereof.
- C. Between all points in said Los Angeles Basin Territory on the one hand and all points in said San Diego Territory on the other hand, serving all points and places on and within ten (10) statute miles laterally of Interstate Highways 5 and 15.
- D. Between all points and places in Paragraph C above and Goleta serving all points and places on and within ten (10) statute miles laterally of U.S. Highway 101.

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

In performing the service herein authorized, carrier may make use of any and all streets, roads, highways bridges necessary or convenient for the performance of said service.

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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.

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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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