

Decision No. 00234

APR 24 1979

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 L. J. CERKUEIRA, an individual)
 doing business as C-WAY EXPRESS, to)
 extend his Certificate of Public)
 Convenience and Necessity to)
 operate as a Highway Common Carrier)
 in intrastate commerce, pursuant to)
 the provisions of Sections 1063 and)
 1064 of the Public Utilities Code)
 of the State of California, and for)
 a coextensive Certificate of)
 Registration for interstate and)
 foreign commerce, pursuant to the)
 provisions of Section 206(a)(6))
 of the Interstate Commerce Act.)

Application No. 58659
(Filed February 7, 1979)

O P I N I O N

L. J. Cerkueira (applicant), an individual doing business as C-Way Express, seeks an inlieu certificate of public convenience and necessity to operate as a highway common carrier for the transportation of general commodities with specified exceptions between all points within the San Francisco Territory and points within 25 miles thereof.

Applicant now operates in intrastate commerce as a highway common carrier of general commodities with specified exceptions between points within the San Francisco-East Bay Cartage Zone pursuant to Decision No. 88570 dated March 7, 1978, in Application No. 57588. That certificate has been registered with the Interstate Commerce Commission (ICC), and a certificate of registration authorizing coextensive operations by applicant in interstate and foreign commerce has been granted in ICC Docket No. MC-99396. Applicant also holds authority to operate statewide as a highway contract carrier (file T-124,126).

Applicant intends to perform the proposed transportation service in both intrastate and interstate and 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 ICC, 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 March 8, 1979. No protests have been received.

In justification of the certificate authority requested herein, applicant alleges that since commencing common carrier operations in September 1978, applicant's trucking business, both interstate and intrastate, has continuously grown in gross revenues and customers served. Present shippers have consistently requested that applicant provide service beyond the present scope of his certificate. The additional area applicant seeks to serve is contiguous and economically a part of the area he now is authorized to serve. The service applicant intends to perform is entirely within the ICC exempt terminal area for the San Francisco Bay region.

Appendices attached to the application show that applicant has the financial resources and the equipment and other facilities necessary to perform the proposed service. Daily service will be performed on weekdays and on-call service on weekends and holidays.

Applicant now conducts his highway common carrier operations under Tariffs 7, 14, 15-A, 19, and 101 issued by the Pacific Coast Tariff Bureau. Applicant proposes to establish rates substantially in conformity with rates and charges contemporaneously published by competing carriers.

Applicant's financial statements, attached to the application as Exhibit E, show net worth as of December 31, 1978 of \$34,580.30 and profit for year 1978 in the amount of \$29,816.93.

The application was served on California Trucking Association (CTA) on February 7, 1979, and notice of the filing appeared in Caltrux, the trucking industry publication furnished to all members of CTA. Applicant requests that Rule 21 of the Commission's Rules of Practice and Procedure be waived with respect to individual service of a notice of the filing of the application on the several hundred potential competing carriers. Publication of the notice of filing in the Federal Register and in Caltrux provides adequate notice in the circumstances and Rule 21 is waived. No protests or requests for hearing have been received.

After consideration, the Commission finds that:

1. At the time of filing this application, applicant was conducting for-hire trucking operations under a certificate authorizing highway common carrier service within the San Francisco-East Bay Cartage Zone and under a statewide highway contract carrier permit issued by this Commission.

2. Applicant currently operates four tractor-trailer units of equipment suitable for the transportation services proposed 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 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.

5. It can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.

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 L. J. Cerkueira, an individual doing business as C-Way Express, authorizing him to operate as a highway common carrier, as defined in Section 213 of the Public Utilities Code, 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 March 31 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.

3. The certificate of public convenience and necessity granted in paragraph 1 of this order shall supersede the certificate granted by Decision No. 88570 in Application No. 58659, 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 24th day of APRIL, 1979.

John E. Bryan
President
Dwight L. Stegeman
Charles R. Howell
Clare J. Wright
Samuel Lewis
Commissioners

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Appendix A

L. J. CERKUEIRA
dba
C-Way Express

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L. J. Cerkueira, 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 between all points and places in the San Francisco Territory (as described in Note A hereto), and points within twenty-five statute miles thereof. 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 salesman's hand sample cases, suitcases, overnight or boston bags, briefcases, 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.
3. Livestock, viz.: barrows, boards, 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.

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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 high-way 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. Commodities requiring the use of special refrigeration or temperature control in specially designed and constructed refrigerator equipment.
10. Fresh fruits and vegetables.

In performing the within-requested service, use may be made of any and all streets, roads, highways, and bridges necessary or convenient for the performance of said service.

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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 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; southwestly 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

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Appendix A

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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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