

Decision No. 90461 JUN 19 1979

**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Lee Way Motor )  
Freight Inc., a Delaware corpo- )  
ration and Johansens Superior )  
Truck Company, a California )  
corporation, for authority to )  
purchase capital stock and for )  
interim relief for Lee Way to )  
temporarily control Johansen )  
through management. )

Application No. 54897  
(Filed May 21, 1974)

SUPPLEMENTAL OPINION AND ORDER

Pursuant to Decision 83382 dated September 4, 1974 in this proceeding, Lee Way Motor Freight, Inc. (Lee Way) a Delaware corporation qualified to do business in California, was authorized to acquire control of Johansen Superior Truck Co. (Johansen). This transaction was consummated by the parties on May 1, 1975.

On February 16, 1978 the applicants filed an application with the Interstate Commerce Commission seeking authority under Section 5 of the Interstate Commerce Act to merge Johansen's operating rights and property into Lee Way.

Johansen operates as a highway common carrier pursuant to a certificate of public convenience and necessity issued by this Commission in Decision 62285 dated July 18, 1961 in Application 43060. The certificate authorizes the transportation of general commodities between all points and places in Los Angeles Basin Territory and between said territory and all points on and within ten statute miles of Interstate Highways 5 and 15 to the Mexican border and all points on and within ten statute miles of Interstate Highway 10 from Riverside to Indio.

Pursuant to the order of the Interstate Commerce Commission, issued under its exclusive and plenary jurisdiction, which authorized the merger between the two applicants, a petition was filed to transfer the intrastate operating authority of Johansen to Lee Way. A copy of the petition was furnished to the California Trucking Association. No protests to the petition have been received.

After consideration the Commission finds that the proposed transfer would not be adverse to the public interest and that it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment. A public hearing is not necessary.

The description of the routes of the authority granted reflects the renumbering of certain highways and roads and does not in any way result in an expansion of the authority presently held by the applicants individually.

The order which follows will provide for, in the event the transfer is consummated, the revocation of the certificates granted by Decision 62285 dated July 18, 1961 in Application 43060, and Decision 61185 dated December 30, 1960 in Application 42351, which was amended by Decision 72668 dated June 27, 1967 in Application 45469, Decision 74082 dated May 7, 1968 in Application 45469, Decision 75875 dated July 1, 1969 in Application 49889, Decision 77897 dated November 4, 1970 in Application 45469 and Decision 78503 dated April 2, 1971 in Application 45469; and the issuance of an in-lieu certificate in appendix form to Lee Way Motor Freight, Inc.

Lee Way Motor Freight, Inc. is placed on notice that operating 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 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 cancelled at any time by the State, which is not in any respect limited as to the number of rights which may be given. The authorization granted shall not be construed as a finding of the value of the rights to be transferred.

O R D E R

IT IS ORDERED that:

1. Johansen Superior Truck Company, a California corporation, may transfer the operating rights referred to in the application to

Lee Way Motor Freight, Inc., a Delaware corporation. This authorization shall expire if not exercised by December 31, 1979.

2. Within thirty days after the transfer Lee Way shall file with the Commission written acceptance of the certificate and a true copy of the bill of sale or other instrument of transfer.

3. Lee Way shall amend or reissue the tariffs on file with the Commission, naming rates and rules governing the common carrier operations transferred to show that it has adopted or established, as its own, the rates and rules. The tariff filings shall be made effective not earlier than five days after the effective date of this order on not less than five days notice to the Commission and the public and the effective date of the tariff filings shall be concurrent with the transfer. The tariff filings made pursuant to this order shall comply in all respects with the regulations governing the construction and filing of tariffs set forth in the Commission's General Order 80-Series. Failure to comply with the provisions of General Order 80-Series may result in a cancellation of the operating authority granted by this decision.

4. In the event the transfer authorized in paragraph 1 is completed, effective concurrently with the effective date of the tariff filings required by paragraph 3, a certificate of public convenience and necessity is granted to Lee Way Motor Freight, Inc., a Delaware corporation, authorizing it to operate as a highway common carrier as defined in Section 213 of the Public Utilities Code, between the points set forth in Appendix A, attached hereto and made a part hereof.

5. The certificates of public convenience and necessity granted by Decision 62285 dated July 18, 1961 in Application 43060 and Decision 61185 dated December 30, 1960 in Application 42351 as amended by Decision 72668 dated June 27, 1967 in Application 45469; Decision 74082 dated May 7, 1968 in Application 45469; Decision 75875 dated July 1, 1969 in Application 49889; Decision 77897 dated November 4, 1970 in Application 45469; and Decision 78503 dated April 2, 1971, are hereby revoked effective concurrently with the tariff filings required by paragraph 3 hereof.

6. Lee Way shall comply with the safety rules administered by the California Highway Patrol and the insurance requirements of the Commission's General Order 100-Series.

7. Lee Way 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.

8. Lee Way shall comply with the requirements of the Commission's General Order 84-Series for the transportation of collect on delivery shipments. If Lee Way 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 14th day of JUNE, 1979.

John E. Byron  
President  
Henry L. Sturgeon  
Richard A. Howell  
Clair T. DeWitt  
James H. Genie  
Commissioners

Lee Way Motor Freight, 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:

1. Between points in San Francisco Territory, as described in Note A hereof, and Sacramento, including all points located within twenty (20) statute miles of Sacramento and all points located on or within twenty (20) statute miles laterally of the following highways.
  - a. Interstate Highway 80 between Richmond and Sacramento inclusive.
  - b. Interstate Highway 580 between Hayward and its junction with Interstate Highway 205 west of Tracy, thence via Interstate Highway 205 to its junction with Interstate Highway 5 east of Tracy, thence via Interstate Highway 5 to Stockton.
  - c. State Highway 24 between Oakland and its junction with State Highway 4 east of Pacheco, thence via State Highway 4 to its junction with State Highway 160 near Antioch, thence via State Highway 160 to Sacramento.
2. Between points in Los Angeles Basin Territory as described in Note B hereof and Sacramento including all points located within twenty (20) statute miles of Sacramento and all points on and within twenty (20) statute miles of State Highway 99 between Sacramento and its junction with Interstate Highway 5 of Wheeler Ridge thence via Interstate Highway 5 to San Fernando.
3. Between all points and places in Los Angeles Basin Territory as described in Note B hereof.
4. Between all points and places on and within ten (10) statute miles laterally of the following highways.

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- a. Interstate Highway 5 between the southerly limits of Los Angeles Basin Territory and San Ysidro, inclusive.
  - b. Interstate Highway 15 between the southern limits of Los Angeles Basin Territory and San Diego, inclusive.
  - c. State Highway 60 from Riverside to its junction with Interstate Highway 10 near Beaumont, thence via Interstate Highway 10 to Indio.
5. 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.
  6. No local service is authorized between points and places in San Francisco Territory as described in Note A hereof.

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.

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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. Trailer coaches and campers, including integral parts and contents when the contents are within the trailer coach or camper.
8. Explosives subject to U. S. Department of Transportation Regulations governing the Transportation of Hazardous Materials.

## 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

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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; 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 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.

## NOTE B

## 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

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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.

(END OF APPENDIX A)

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