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Decision No. 91129 DEC 18 1979

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the application of)
M & L TRUCKING COMPANY, INC., a)
California corporation, to extend its)
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 co-extensive Certificate of)
Registration for interstate and)
foreign commerce, pursuant to the)
provisions of Section 206(a)(6) of the)
Interstate Commerce Act.)

Application No. 58927
(Filed June 11, 1979)

In the matter of the application of)
M & L TRUCKING COMPANY, INC., a)
California corporation, for an order)
authorizing the removal of the)
commodity "sugar" from the Highway)
Common Carrier Certificate issued in)
Decision No. 81969 (A.54138); in the)
pending Extension sought in⁸³)
Application No. 58927; and the Section)
1063.5 Certificates issued in)
T-106172, Application No. GC 224.)

Application No. 59176
(Filed October 2, 1979)

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O P I N I O N

M & L Trucking Company, Inc. requests authority to operate as a highway common carrier for the transportation of general commodities, with certain exceptions including sugar, between points within the San Francisco Territory and points within 25 miles thereof. Applicant also requests corresponding authority to provide service in interstate and foreign commerce pursuant to Section 206 of the Interstate Commerce Act.

Notice of Application No. 58927 was published in the Commission's Daily Calendar on June 12, 1979, and was published in the Federal Register on July 24, 1979. Notice of Application No. 59176 was published in the Commission's Daily Calendar on October 3, 1979. No protest to Application No. 59176 was received. The only protest to Application No. 58927 was filed by Peninsula Air Delivery and was withdrawn when applicant indicated by letter willingness to accept a restriction against the transportation of shipments having a prior or subsequent movement by air.

By Decision No. 81969 dated October 2, 1973, as amended by Decision No. 83561 in Application No. 54183, applicant was authorized to transport general commodities between:

- "(a) Points in the San Francisco Territory as well as Castro Valley and San Pablo.
- "(b) Points in the San Francisco Territory, on the one hand, and Antioch, Concord, Clayton, Dublin, Martinez, Pittsburg, Walnut Creek, and all intermediate points via all streets and roads connecting said points and places, on the other hand."

The certificate granted by Decision No. 81969, as amended, was registered with the Interstate Commerce Commission and a Certificate of Registration authorizing coextensive operations in interstate and foreign commerce was granted to applicant by Docket No. MC-9975 (Sub-No.1).

According to applicant, since commencing its certificated operations in 1973, its trucking business in both intrastate and interstate commerce has continuously grown. Applicant alleges that present shippers have constantly requested service beyond the limits of its existing certificated area and that it is necessary to extend service to conform with its customers' needs and requirements.

Applicant owns and operates 34 units of equipment and as of December 31, 1978, indicated a net worth in the amount of \$57,973.

As justification for authority to exclude the transportation of sugar from its certificate, applicant alleges that it is presently transporting sugar for California & Hawaiian Sugar Company at less than minimum rates pursuant to authority granted by Decision No. 90851 in Application No. 59089; that to avoid any inadvertent undercharge situation, it would be advisable to exclude sugar from its certificate; and that California & Hawaiian Sugar Company is the only shipper of sugar that applicant serves.

Findings of Fact

1. 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 this decision.

2. The territorial description or routes of the authority granted reflect the names of the redesignated highways and roads and do not in any way exceed the geographical scope of the proposed operation as published in the Federal Register.

3. The new certificate issued to M & L Trucking Company, Inc. will not broaden or change the interstate or foreign commerce rights held by the carrier.

4. Public convenience and necessity no longer require applicant's service as a highway common carrier for the transportation of sugar.

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.

Conclusion of Law

The Commission concludes that the application should be granted.

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 if 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 M & L Trucking Company, 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 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 Decisions Nos. 81969 and 83561, 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 DEC 18 1979, at San Francisco, California.

John E. Byron
President
Vernon L. Starnes
Richard W. Kowale
Alan L. Edlund
Lawrence J. King
Commissioners

M & L Trucking Company, 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 between all points and places in the San Francisco Territory as described in Note A and points within twenty-five (25) statute miles thereof except that pursuant to the authority herein granted carrier shall not transport any shipments:

1. Used household goods and personal effects 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);
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 semiplastic 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 trucks or in hopper-type trucks;
6. Commodities when transported in motor vehicles equipped for mechanical mixing in transit;
7. Cement;
8. Logs;
9. Commodities of unusual or extraordinary value;
10. Fresh fruit and vegetables;
11. Sugar; and
12. Shipments having a prior or subsequent movement by air.

Issued by California Public Utilities Commission.

Decision No. 91129, Applications Nos. 58927, 59176.

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 southeast 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; 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.

(END OF APPENDIX A)

Issued by California Public Utilities Commission.

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