

Decision No. 91204 JAN 8 - 1980

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 DELLIPLAINE TRUCK COMPANY, INC., a)
 California corporation, for an exten-)
 sion of its Certificate of Public)
 Convenience and Necessity to operate)
 as a Highway Common Carrier for the)
 transportation of property in intra-)
 state commerce, and for the issuance)
 of an In Lieu Certificate to operate)
 as a Highway Common Carrier for the)
 transportation of property in both)
 intrastate and interstate and foreign)
 commerce.)

Application No. 57013
(Filed January 14, 1977)

ORDER MODIFYING DECISION NO. 87623

By a petition filed on September 13, 1979, pursuant to Section 1708 of the Public Utilities Code (Code), Delliplaine Truck Company, Inc. (DTC) seeks modification of its certificate of public convenience and necessity granted by D.87623 dated July 19, 1977 in A.57013 to eliminate any authority, express or implied, to enter into written contracts for the leasing of equipment with driver for the exclusive use of a vehicle or combination of vehicles pursuant to applicable hourly, daily, weekly, monthly, or yearly vehicle unit rates.

DTC proposes the following restriction to its tariffs:

- 13. Leasing of equipment with driver to a shipper(s) under written contract(s) for the exclusive use of a vehicle or combination of vehicles at hourly, daily, weekly, monthly, or yearly vehicle unit rates.

DTC represents that the cost of operating the vehicles at unit rates varies substantially with the type, size, and age of the equipment required by the contracting party, making it impracticable and uneconomical to attempt to publish rates in a tariff to meet the great variety of circumstances to satisfy the needs of the contracting party. The exclusion from the highway common carrier certificate of public convenience and necessity of the right to enter into written contracts at unit rates will permit DTC to enter into such contracts under its highway contract carrier permit at rates at or above those established pursuant to Section 3662 of the Code, or, where reasonable, seek deviations from established minimum rates pursuant to Section 3666 of the Code. Thus, the public will benefit by being able to obtain specific shipments and by being able to obtain specific equipment at a cost commensurate with the specific requirements of a particular movement.

It should be noted that DTC misconstrues the nature of the operation it desires to have restricted from its operating authority. Rather than a lease, this service is for-hire transportation performed under a written agreement for an extended period of time, notwithstanding the fact that we have referred to it by other descriptions in prior decisions. However, this type of operation is peculiarly susceptible to the contract carrier service and we will, therefore, grant DTC's request.

The proposed modification to the certificate of public convenience and necessity set forth above is inappropriate in that the first twelve restrictive paragraphs relate

to precluding the transportation of specific types of shipments and do not involve operating restrictions. The order that follows will clarify this inconsistency.

Findings

1. Public convenience and necessity no longer require the service of DTC's transportation involving equipment with driver provided to a shipper(s) under written contract(s) for the exclusive use of a vehicle or combination of vehicles at hourly, daily, weekly, monthly, or yearly vehicle unit rates.

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

The Commission concludes that the application should be granted. However, such conclusion should not be construed as a policy determination with respect to future petitions to exempt certain transportation service from the provisions of a certificated operating authority. A public hearing is not necessary.

IT IS ORDERED that:

1. Appendix A of Decision No. 87623 dated July 19, 1977 in Application No. 57013 is hereby amended by substituting First Revised Page 2 attached hereto and by this reference made a part hereof, in place and stead of Original Page 2 of Appendix A thereof.

2. Within sixty days after the effective date hereof and on not less than five days' notice to the Commission and to the public, Delliplaine Truck Company, Inc. shall amend its tariff on file with the Commission to reflect the amended authority herein granted.

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

Dated JAN 8 - 1980, at San Francisco, California.

John E. Guyon
President
James L. Stinson
Robert W. Howell
Clair T. Redick
Samuel M. Jones
Commissioners

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. Trailer coaches and campers, including integral parts and contents when the contents are within the trailer coach or camper.
10. Commodities requiring the use of special refrigeration or temperature control in specially designed and constructed refrigerator equipment.
11. Explosives subject to U. S. Department of Transportation Regulations governing the Transportation of Hazardous Materials.
12. Containers or Sea Vans having a prior or subsequent movement by rail or water transportation.

*Carrier is restricted from performing transportation using equipment with driver for a shipper(s) under written agreement(s) for the exclusive use of a vehicle or combination of vehicles at hourly, daily, weekly, monthly, or yearly vehicle unit rates.

Issued by California Public Utilities Commission.

*Amended by Decision 91204, Application 57013.