

ORIGINAL

Decision No. 92944 APR 21 1981

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 co-extensive Certificate of)
Registration for interstate and)
foreign commerce, pursuant to the)
provisions of section 10931 of the)
Interstate Commerce Act.)

Application No. 59534
(Filed March 21, 1980)

O P I N I O N

Applicant L. J. Cerkueira, doing business as C-Way Express, (C-Way) presently operates as a highway common carrier under a certificate of public convenience and necessity issued by the Commission in Decision No. 90234, dated February 7, 1979 in Application No. 58659. That certificate authorizes the transportation of general commodities with the usual exceptions between all points and places in the San Francisco Territory as described and all points and places within 25 statute miles of said territory. The certificate has been registered with the Interstate Commerce Commission. In March of 1980, there was pending before that Commission an uncontested application

seeking a certificate of registration authorizing coextensive operations in interstate commerce by C-Way equivalent to the service authorized in Decision No. 90234 (Docket No. MC-99396). Applicant also holds permitted authority from this Commission as a highway contract carrier (File No. T-124,126).

This application seeks additional authority to operate on routes within an area bounded roughly by Sacramento on the northeast, Fresno on the southeast, Soledad and Monterey on the southwest, and Santa Rosa on the northwest. Applicant proposes to operate on a daily basis on weekdays with on-call service Saturdays, Sundays, and holidays. Applicant will establish rates substantially in conformity with rates and charges contemporaneously published by competing common carriers. It is alleged that applicant has the financial ability to render the service proposed herein. A balance sheet and income statement for the calendar year ended December 31, 1979, was attached to the application.

Applicant contends that public convenience and necessity require the proposed service. It is alleged that his business has continually grown both in gross revenue and the number of customers served. Applicant's existing shippers have allegedly requested that he provide service over the proposed routes. It is also alleged that by reason of regulatory delay in approving the original purchase and transfer of his operating authority, applicant never became eligible to

acquire a companion radial highway common carrier permit to take advantage of the conversion provisions of Senate Bill 860. It is also alleged that:

1. Granting of the application will have no substantially significant impact on the environment.
2. Granting of the application will have no adverse environmental effects which cannot be avoided.
3. There are no viable alternatives to the transportation requested and all vehicles to be used will conform to environmental emission control rules.
4. The granting of the application will not affect any local, short-term use of man's environment, but will enhance man's long-term productivity.
5. The granting of the application will not involve any irreversible, or irretrievable, commitment of resources.

The application, as filed, also sought expanded interstate authority over these same routes pursuant to the provisions of Section 10931 of the Interstate Commerce Act (49 USC Section 10931). In order to meet protests from Lodi Truck Service and Ted Peters Trucking Company, Inc. applicant informally amended his application to eliminate an allegation that there is a need for such interstate authority. ✓

Notice of the filing of this application appeared in the Commission's Daily Calendar on March 25, 1980, and a copy was served on the California Trucking Association. Except as indicated above no protests have been received. A public hearing is not necessary. ✓

Findings of Fact

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 Territory and points within 25 miles thereof and under a statewide highway contract carrier permit issued by this Commission.

2. Applicant currently operates equipment suitable for the transportation services proposed herein.

3. 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, as amended.

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.

6. The following order complies with the guidelines in the Commission's Energy Efficiency Plan.

On the basis of the foregoing findings, the Commission concludes that public convenience and necessity have been demonstrated and the application should be granted. 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.

The certificate presently held by the applicant is registered with the Interstate Commerce Commission and will remain in effect. An additional certificate will be issued incorporating only the extension requested in this application applicable to intrastate commerce.

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 April 30 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 is in addition to the certificate granted by Decision No. 90234 dated April 24, 1979 in Application No. 58659 which certificate shall remain in full force and effect.

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

Dated APR 21 1981, at San Francisco, California.

John E. Cuppa
President
William H. ...
Donald ...
Victor ...
Presuma C. ...
Commissioners

Appendix A

L. J. CERKUEIRA
(an individual)
doing business as
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 as follows:

- I. Via the following routes, between the following points serving all intermediate points on or within 25 statute miles of the highways listed.
 1. Via U.S. Highway 101 between Santa Rosa and Soledad.
 2. Via State Highway 12 between Santa Rosa and its junction with Interstate Highway 80 near Cordelia.
 3. Via State Highway 99 between Sacramento and Fresno.
 4. Via Interstate Highway 5 between Sacramento and its junction with State Highway 180 west of Mendota.
 5. Via Interstate Highway 80 between San Francisco Territory as described in Note A hereof and Sacramento.

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6. Via Interstate Highways 580, 205 and 5 between San Francisco Territory as described in Note A hereof, and Stockton.
7. Via State Highway 1 between San Francisco Territory as described in Note A hereof, and Monterey.
8. Via State Highway 4 between Pinole and Stockton.
9. Via Interstate Highway 680 between Concord and its junction with State Highway 237 near Milpitas, thence via State Highway 237 to its junction with State Highway 17 at Milpitas, thence via State Highway 17 to Santa Cruz.
10. Via State Highway 152 between Gilroy and Chowchilla.
11. Via State Highway 152 between Gilroy and its junction with State Highway 156 southeast of San Felipe; thence via State Highway 156 to its junction with State Highway 25 at Hollister; thence via State Highway 25 to its junction with County Road JI at Paicines; thence via County Road JI to its junction with State Highway 180 at Mendota; thence via State Highway 180 to Fresno.

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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, 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, 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.

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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. Transportation of fresh fruit, nuts, vegetables, and unprocessed agricultural commodities.
11. Transportation of any commodity, the transportation or handling of which because of width, length, height, weight, shape or size requires special authority from a governmental agency regulating the use of the highways, roads or streets in any motor vehicle or combination of vehicles.
12. Transportation of any liquid or semi-solid waste material or other bulk liquid commodity in any vacuum type truck or trailer.

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.

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Appendix A

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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 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;

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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 the point of beginning.

(END OF APPENDIX A)

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