

Decision No. 46829

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
EMERY AIR FREIGHT CORPORATION, a )  
Delaware Corporation, for a certificate) Application No. 32454,  
of public convenience and necessity as ) as amended  
a highway common carrier. )

Edward M. Berol for applicant.  
J. Thomason Phelps for the Transportation Department of the  
Public Utilities Commission.

O P I N I O N

Emery Air Freight Corporation requests that a certificate of public convenience and necessity be issued to it for the transportation of general commodities with named exceptions as follows:

A. As a highway common carrier (pursuant to Sections 1063 and 1064 of the Public Utilities Code) between the points and places on and along the following routes:

(a) San Francisco vicinity:

- (1) From Richmond, on the north, to Hayward on the south, both inclusive, and points intermediate thereto, via U. S. Highways 40 and 50, State Highways 17 and 9, on the one hand, and the Oakland Municipal Airport, on the other hand.
- (2) From Richmond, on the north, to Hayward on the south, both inclusive, and points intermediate thereto, via the San Francisco-Oakland Bay Toll Bridge and the San Mateo Toll Bridge, and via U. S. Highways 101 and 101-By Pass, on the one

hand and the San Francisco Municipal Airport, on the other hand.

- (3) From San Francisco, on the north, to Burlingame, on the south, both points inclusive, and points intermediate thereto, via U. S. Highways 101 and 101 By-Pass, on the one hand, and San Francisco Municipal Airport, on the other hand.
- (4) From San Francisco, on the north, to Burlingame, on the south, both points inclusive, and points intermediate thereto, via U. S. Highways 101 and 101 By-Pass, the San Francisco-Oakland Bay Toll Bridge, the San Mateo Toll Bridge, and via U. S. Highways 40 and 50, and State Highways 17 and 9, on the one hand, and the Oakland Municipal Airport, on the other hand.

(b) Los Angeles vicinity:

- (1) From the Pacific Ocean (San Pedro) north along Pacific Avenue to 9th Street, thence west on 9th Street to Western Avenue, thence north on Western Avenue to Century Boulevard to Los Angeles Airport.
- (2) From the Pacific Ocean (Long Beach) north on Atlantic Boulevard to Firestone Boulevard, thence west on Firestone Boulevard to Central Avenue, thence west on Manchester Avenue to Airport Boulevard, thence southwest to Los Angeles Airport.
- (3) From the intersection of Sepulveda Boulevard

- and San Fernando Road south on Sepulveda to Century Boulevard, thence east on Century Boulevard to Los Angeles Airport.
- (4) From the intersection of Valley Boulevard and Rosemead Avenue (El Monte) west on Valley Boulevard to Fremont Street, and thence west on Alhambra Avenue to Mission Road; west on Mission Road to Macy Street; north on Macy Street to Sunset Boulevard; West on Sunset Boulevard to Figueroa Street; south on Figueroa Street to Century Boulevard, thence west on Century Boulevard to Los Angeles Airport.
- (5) From the intersection of San Fernando Road and Sepulveda Boulevard southeastward on San Fernando Road to Figueroa Street, thence south on Figueroa Street to Century Boulevard, thence north on Century Boulevard to Los Angeles Airport.
- (6) From the intersection of Colorado Street and North Figueroa Street (Pasadena) southwest on Figueroa Street to Century Boulevard thence west on Century Boulevard to Los Angeles Airport.
- (7) From the Pacific Ocean (San Pedro) north on Pacific Avenue to 9th Street; thence west to Sepulveda Boulevard, thence north on Sepulveda Boulevard to Sherman Way, thence east on Sherman Way to Lockheed Air Terminal.
- (8) From the Pacific Ocean (San Pedro) north on Pacific Avenue to 9th Street, thence west on 9th Street to Western Avenue, thence north on Western Avenue to Sunset Boulevard, thence west

on Sunset Boulevard to Cahuenga Avenue, thence north on Cahuenga Avenue to Lankershim Boulevard, thence north on Lankershim Boulevard to Sherman Way, thence east on Sherman Way to Lockheed Air Terminal.

- (9) From the Pacific Ocean (Long Beach) north on Atlantic Avenue to Huntington Drive, thence west on Huntington Drive to Mission Road, thence southwest on Mission Road to Alameda Street, thence north on Alameda Street to San Fernando Road, thence northwest on San Fernando Road to Lockheed Air Terminal

Applicant proposes to provide service laterally within five miles of the highways traversed on said routes.

All of the above requested rights are to be subject to the following restriction:

No property shall be transported between the points or over the routes specified herein unless such property is part of a through shipment having prior or subsequent haul by an air carrier.

B. Applicant also seeks a certificate of public convenience and necessity authorizing it to operate as a freight forwarder (pursuant to Section 1010 of the Public Utilities Code) between all points within the State of California subject to the following restrictions:

- (1) Applicant shall not ship, or arrange to ship any property unless the shipment is transported in part via the line of an air carrier; and
- (2) Applicant shall not ship, or arrange to ship, any property unless such property shall have its transportation by air originate or terminate or pass

through one of the following airports:

Oakland Municipal Airport

San Francisco Municipal Airport

Los Angeles Airport

Lockheed Air Terminal (Burbank)

As justification for its request the application as amended alleges that applicant conducts a nation-wide air freight forwarder business, subject to the jurisdiction of the Civil Aeronautics Board pursuant to the authority of a Letter of Registration issued by that Board. In said business applicant assumes complete responsibility and issues its own bill of lading for the shipment of goods from the consignor's door to the consignee's door. In performing this service applicant utilizes the services of underlying air carriers for the major part of the transportation. This operation is primarily (in volume) interstate in character. The service by truck is alleged to be only an incident to its operation as a freight forwarder by air.

Public hearing was held before Commissioner Mitchell and Examiner Rowe in San Francisco on January 23, 1952, at which time oral and documentary evidence was adduced and a stipulation executed between counsel for applicant and for the Commission staff, which had been filed with the Commission, was accepted. At the conclusion of said hearing the matter was orally argued and thereafter duly submitted for decision.

By the stipulation above referred to it was stipulated that the following statements are facts and may be considered established for all purposes of this proceeding as fully as if proved by testimony or documentary evidence:

"I. The applicant is a corporation duly organized and existing under and by virtue of the laws of the State of Delaware.

"II. The applicant is qualified to do business in California as a foreign corporation.

"III. The applicant conducts a nation-wide air freight forwarder business subject to the jurisdiction of the Civil Aeronautics Board, pursuant to the authority of a Letter of Registration issued by that Board, a copy of which is annexed to the application, as amended, designated Exhibit 'G'.

"The applicant is engaged and holds itself out to engage in the business of accepting and receiving property from the public for transportation by air, of consolidating and delivering such property to various air carriers, of receiving such property from said air carriers upon the termination of the air movement, and of delivering such property to various consignees.

"IV. Property transported in the manner described in the preceding paragraph is transported both in interstate commerce between the various states of the United States and in intrastate commerce wholly within the State of California. The instant application pertains solely to intrastate commerce within the State of California.

"V. The applicant has been authorized to conduct an air freight forwarding business by a Letter of Registration issued by the Civil Aeronautics Board (9 C.A.B. 473 1948), and has filed its tariffs with said Board pursuant to Section 403 of the Civil Aeronautics Act (49 U.S.C.A., Section 403). Copies of said tariffs are annexed to the Application herein, marked Exhibit "C" thereto.

"VI. The applicant maintains offices in various cities of the United States, including San Francisco and Los Angeles.

"VII. The applicant operates five units of motor vehicle equipment described in Exhibit 'F' of the application herein. The two units described on page 1 of said Exhibit 'F' (hereinafter called the San Francisco equipment) are maintained and operated in San Francisco and vicinity, and the three units described on page 2 of said Exhibit 'F' (hereinafter called the Los Angeles equipment) are maintained and operated in Los Angeles and vicinity.

"VIII. In performing the service described in paragraph III above, the applicant operates said San Francisco equipment and uses it for the purpose of making pickups of property consigned to various destinations in the United States, including Los Angeles, said pickups being made at the places of business of various consignors in San Francisco and vicinity, of transporting such property to various airports, and of transporting property originating in various places in the United States, including Los Angeles, from various airports to the places of business of various consignees in San Francisco and vicinity. In like manner, the applicant operates said Los Angeles equipment and uses it for the purpose of making pickups of property consigned to various destinations in the United States, including San Francisco, said pickups being made at the places of business of various consignors in Los Angeles and vicinity, of transporting such property to various airports, and of transporting property originating in various places in the United States, including San Francisco, from

various airports to the places of business of various consignees in Los Angeles and vicinity.

"IX. Said service is available on call, and the applicant does not publish nor observe any fixed schedule in the operation of the San Francisco and Los Angeles equipment.

"X. In performing the service and in operating the San Francisco and Los Angeles equipment in the manner described in paragraph VIII above, the applicant traverses the routes and serves the points described on pages 2-4 of the application herein and on maps annexed to said application as Exhibit "B" thereto."

In addition one operating witness described the service rendered by applicant in greater detail, especially the various added services such as the telegraphic advice to the office of applicant located at the end of the air flight of the expected time of arrival of the freight and the immediate taking possession of the freight at that point and its hurried delivery to destination even during the night, if required.

Five public witnesses appeared and testified in favor of the application. They stated there was a public need for the service proposed. One represented an investment banking concern which required unusually rapid delivery of certain freight such as prospectuses which can only be released and delivered upon telegraphic approval from the Securities and Exchange Commission. Another such witness represented an electrotype corporation which required a transportation service which is very rapid and dependable. A third witness representing an advertising agency stated that his firm required applicant's service because of its speed, efficiency and quick verification of delivery of freight to its customers. The fourth public witness described the needs of his firm of financial and law printers for same day deliveries of prospectuses and similar documents. The fifth



such witness represented an ordnance manufacturer requiring applicant's rapid delivery service for the transportation of valuable dies requiring governmental approval.

At the conclusion of the hearing counsel for the applicant suggested that an impediment might lie in the way of the issuance of a freight forwarder certificate by this Commission, inasmuch as the definition of "freight forwarder" in Section 220 of the Public Utilities Code might be construed not to apply to operations of the type here in issue where the shipments are via the lines of an air carrier. While it is true that air carrier is not specifically included in the definition of "common carrier" in Section 211 of the Public Utilities Code, we are of the opinion that Section 220, in using the phrase "via the line of any common carrier" may properly be construed to apply to operations in which the services of air common carriers are used.

The showing made amply supports the allegation that public convenience and necessity require the continuance of applicant's service both as a highway common carrier and as a freight forwarder, and the Commission finds that public convenience and necessity require the proposed service which involve and require both operations and such authority therefore will be granted. The service as a highway common carrier is incidental to the service of a freight forwarder by air; nevertheless it is an operation over regular highway routes between cities and other termini and is rendered for compensation. Because of the showing that a combined service is proposed for which but one charge may feasibly be made, applicant will be permitted to file a tariff substantially in the form now used by it.

Emery Air Freight Corporation is hereby placed upon 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, they extend to the holder a full or partial monopoly of a class of business over a particular route. This monopoly feature may be changed or destroyed by the State, which is not in any respect limited to the number of rights which may be given.

O R D E R

Public hearing having been held in the above-entitled proceeding, the matter being duly submitted, and the Commission finding that public convenience and necessity so require,

IT IS ORDERED:

(1) That a certificate of public convenience and necessity be, and it hereby is granted to Emery Air Freight Corporation, authorizing the establishment and operation of service as a highway common carrier as that term is defined in Section 213 of the Public Utilities Code for the transportation of property, as follows:

General Commodities, except:

(a) Explosives, including fireworks, explosive devices and ammunition.

(b) Inflammable liquids, including all liquids with a flash point of 80°F or less (American Society for Testing Materials Method D-56-36), including

Carbon Bisulphide  
Ethyl Chloride  
Ethylene Oxide

Nickel Carbonyl  
Zinc Ethyl  
Spirits of nitro-  
glycerine in excess  
of one per cent  
by weight.

(c) Inflammable solids, including all solid substances which are liable to cause fires, through friction, through absorption of moisture, or through spontaneous chemical changes.

(d) Oxidizing materials, such as chlorates, permanganates, peroxides, or nitrates, which yield oxygen readily to stimulate combustion.

(e) Corrosive substances, including strong acids or alkalis, or wet storage batteries or other devices containing such substances.

(f) Compressed gases with gauge pressure exceeding 25 pounds per square inch at 70°F, or any inflammable liquid material having a vapor pressure (American Society for Testing Material Method D-323-43) exceeding 40 pounds per square inch absolute at 100°F.

(g) Vaporizing substances which give off dangerous or irritating vapors, including substances which give off such vapors when exposed to heat or moisture.

(h) "IN BOND" SHIPMENTS.

(i) CORPSES, CREMATED OR DISINTERRED REMAINS.

(j) LIVE ANIMALS, BIRDS, FISH, REPTILES OR INSECTS.

(k) GOLD OR OTHER PRECIOUS ARTICLES, such as

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| Art Works  | Platinum  |
| Coins, copper, gold or silver                                  | Precious stones, cut or uncut                         |
| Currency, Paper  | Securities, negotiable                                |
| Dore Bullion   | Silver Bullion, Concentrates, Cyanides, Precipitates, |
| Gold Bullion, Cyanides, Dust, Sulphides or other uncoined gold | Sulphides, or other uncoined silver.                  |
| Jewelry (other than costume Jewelry)                           |   |

(l) FURNITURE OR HOUSEHOLD GOODS, uncrated or unwrapped.

(m) WEARING APPAREL OR GARMENTS ON RACKS OR HANGERS, and not otherwise packaged.

(n) SHIPMENTS CONSIGNED "To order of" or "To Order - Notify".

(o) SHIPMENTS requiring special care or attention enroute.

(p) SHIPMENTS which would be likely to cause damage to other shipments, equipment, crew, or passengers, or the carriage of which is prohibited by law or by the tariffs of any air carrier whose service must be used for transport of the shipment.

BETWEEN POINTS AND PLACES ON AND ALONG THE FOLLOWING ROUTES:

A. SAN FRANCISCO VICINITY:

(a) From Richmond, on the north, to Hayward on the south, both inclusive, and points intermediate thereto, via U. S. Highways 40 and 50, State Highways 17 and 9, on the one hand, and the Oakland Municipal Airport, on the other hand.

(b) From Richmond, on the north, to Hayward on the south, both inclusive, and points intermediate thereto, via the San Francisco-Oakland Bay Toll Bridge and the San Mateo Toll Bridge, and via U. S. Highways 101 and 101 By-Pass, on the one hand, and San Francisco Municipal Airport, on the other hand.

(c) From San Francisco, on the north, to Burlingame, on the south, both points inclusive, and points intermediate thereto, via U. S. Highways 101 and 101 By-Pass, on the one hand, and San Francisco Municipal Airport, on the other hand.

(d) From San Francisco, on the north, to Burlingame, on the south, both points inclusive, and points intermediate thereto, via U. S. Highways 101 and 101 By-Pass, the San Francisco-Oakland Bay Toll Bridge, the San Mateo Toll Bridge, and via U. S. Highways 40 and 50, and State Highways 17 and 9, on the one hand, and the Oakland Municipal Airport, on the other hand.

B. LOS ANGELES VICINITY:

(a) From the Pacific Ocean (San Pedro) north along Pacific Avenue to 9th Street, thence west on 9th Street to Western Avenue, thence north on Western Avenue to Century Boulevard, thence west on Century Boulevard to Los Angeles Airport.

(b) From the Pacific Ocean (Long Beach) north on Atlantic Boulevard to Firestone Boulevard, thence west on Firestone Boulevard to Central Avenue, thence west on Manchester Avenue to Airport Boulevard, thence southwest to Los Angeles Airport.

(c) From the intersection of Sepulveda Boulevard and San Fernando Road south on Sepulveda Boulevard to Century Boulevard, thence east on Century Boulevard to Los Angeles Airport.

(d) From the intersection of Valley Boulevard and Rosemead Avenue (El Monte) west on Valley Boulevard to Fremont Street, and

thence west on Alhambra Avenue to Mission Road; west on Mission Road to Macy Street; north on Macy Street to Sunset Boulevard; west on Sunset Boulevard to Figueroa Street; south on Figueroa Street to Century Boulevard, thence west on Century Boulevard to Los Angeles Airport.

(e) From the intersection of San Fernando Road and Sepulveda Boulevard southeastward on San Fernando Road to Figueroa Street, thence south on Figueroa Street to Century Boulevard, thence north on Century Boulevard to Los Angeles Airport.

(f) From the intersection of Colorado Street and North Figueroa Street (Pasadena) southwest on Figueroa Street to Century Boulevard, thence west on Century Boulevard to Los Angeles Airport.

(g) From the Pacific Ocean (San Pedro) north on Pacific Avenue to 9th Street; thence west to Sepulveda Boulevard, thence north on Sepulveda Boulevard to Sherman Way, thence east on Sherman Way to Lockheed Air Terminal.

(h) From the Pacific Ocean (San Pedro) north on Pacific Avenue to 9th Street, thence west on 9th Street to Western Avenue, thence north on Western Avenue to Sunset Boulevard, thence west on Sunset Boulevard to Cahuenga Avenue, thence north on Cahuenga Avenue to Lankershim Boulevard, thence north on Lankershim Boulevard to Sherman Way, thence east on Sherman Way to Lockheed Air Terminal.

(i) From the Pacific Ocean (Long Beach) north on Atlantic Avenue to Huntington Drive, thence west on Huntington Drive to Mission Road, thence southwest on Mission Road to Alameda Street, thence north on Alameda Street to San Fernando Road, thence northwest on San Fernando Road to Lockheed Air Terminal.

Service will be provided to points laterally within five (5) miles of the highways traversed on said routes.

(2) The above certificate of public convenience and necessity is granted subject to the following restriction:

No property shall be transported between the points or over the routes specified herein unless such property is part of a through shipment having prior or subsequent haul by air.

(3) That a certificate of public convenience and necessity be, and it hereby is, granted to Emery Air Freight Corporation, authorizing the establishment and operation of a service as a freight forwarder as that term is defined in Section 220 of the Public Utilities Code for the transportation of freight as defined and limited in ordering paragraph No. 1 herein between all points within the State of California subject to the following restrictions:

- (a) Applicant shall not ship, or arrange to ship, any property unless the shipment is transported in part via the line of an air carrier; and
- (b) Applicant shall not ship, or arrange to ship, any property unless such property shall have its transportation by air originate or terminate or pass through one of the following airports:

Oakland Municipal Airport

San Francisco Municipal Airport

Los Angeles Airport

Lockheed Air Terminal (Burbank)

(4) That in providing service pursuant to the certificates herein granted applicant shall comply with and observe the following service regulations:

- (a) Within thirty (30) days after the effective date hereof, applicant shall file a written acceptance of the certificates herein granted.

(b) Within sixty (60) days after the effective date hereof, and on not less than five (5) days' notice to the Commission and the public, applicant shall establish the service herein authorized and file, in triplicate, and concurrently make effective, appropriate tariffs and timetables.

(c) Subject to the authority of this Commission to change or modify the service or routes by further order applicant shall conduct operations pursuant to the certificate granted by ordering paragraph (1) over and along the routes enumerated in said ordering paragraph.

The effective date of this order shall be twenty (20) days after the date hereof.

Dated at San Francisco, California, this 11<sup>th</sup> day of March, 1952.

R. F. Dunsford  
 President

Justus J. Garrow

Harold P. Kula

John E. Mitchell

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 Commissioners