

Decision No. 56112

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
DESERT EXPRESS for a certificate of)
public convenience and necessity as a)
highway common carrier:)

(a) For the removal of a restriction)
against through service by applicant)
between points applicant presently)
serves in the Los Angeles Area and)
points applicant serves north of)
Bakersfield;)

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(b) For a revised certificate of)
public convenience and necessity)
clarifying, modifying and consolidating)
the authorities applicant presently)
holds to conduct operations as a highway)
common carrier (including removal of)
certain restrictions and re-routings to)
permit statement of authorities in a)
unified certificate).)

Glanz and Russell by Theodore W. Russell, for appli-
cant.

Gordon, Knapp, Gill & Hilbert, by Joseph C. Gill, for
Valley Motor Lines, Inc., Valley Express Co.,
Delta Lines, Inc., Southern California Freight
Lines, Southern California Freight Forwarders,
California Motor Transport, Ltd., and California
Motor Express, protestants.

O P I N I O N

Desert Express, presently rendering service as a highway
common carrier between the Los Angeles Territory, the Mojave Desert,
Bakersfield, points north thereof and the San Francisco Territory,
requests a restatement of its operative authority and the removal
of a restriction against through service between the Los Angeles

Territory and points north of Bakersfield to and including the San Francisco Territory.

A public hearing was held before Examiner Thomas E. Daly and the matter was submitted on November 22, 1957, at San Francisco. Prior to the time of submission, the attorney for the protesting carriers filed a petition for a proposed report pursuant to Rule 69 of the Commission's Rules of Procedure.

By Decision No. 41149 dated January 19, 1948, in Application No. 28951, Desert Express acquired by purchase the certificates of public convenience and necessity granted to its predecessor. Since that time applicant has extended its operations by subsequent decisions of this Commission. In general, the operations of applicant are conducted:

- (a) Between points in the Los Angeles Territory, as described, and (1) Bakersfield, (2) points in the Bakersfield Territory, as described, and (3) points in the Mojave Desert Area, as described;
- (b) Between Bakersfield and points in the Bakersfield Territory and points in the Mojave Desert Area;
- (c) Between points in the Mojave Desert Area;
- (d) Between points in the Mojave Desert Area and points in the San Francisco Territory, as described, and intermediate points north of Bakersfield.

The various decisions which make up applicant's operating authority contain different language to describe the same or substantially the same points or areas, and differences in language have resulted in confusion as to the commodities which it can transport. Applicant, therefore, requests a single certificate re-describing its operating authority. To this portion of the application there is no protest.

By Decision No. 52109 dated October 18, 1955, applicant was authorized to operate as a highway common carrier between the Mojave Desert region, on the one hand, and points in the San Francisco Bay Territory, on the other hand, serving intermediate points and certain off-route points on authorized routes north of Bakersfield. The authority was restricted as follows:

"(a) No through service shall be performed between the Los Angeles Area as described in applicant's existing certificates and any point north of Bakersfield."

The protest of the existing carriers appearing herein is directed towards applicant's requested removal of said restriction.

As justification for the authority herein sought, applicant asserts that it has received frequent requests from regular customers to provide a through service between the Los Angeles and San Francisco Territories and by the removal of the restriction it would be in a position to provide its regular customers with a more complete and integrated service. It further asserts that it has, as a matter of policy, limited its permitted operations to an occasional and sporadic basis.

Several permitted carriers, as the result of the recent policy decision, have been certificated in the areas where applicant serves, and, according to applicant, enjoy a competitive advantage in that they are not restricted between the Los Angeles and San Francisco Territories.

By virtue of an arrangement with Southern California Freight Lines, shipments consigned to applicant for transportation between the San Francisco Territory and the Mojave Desert Area are actually

transported by Southern California Freight Lines between the Bay Area and applicant's terminal in Bakersfield and by applicant between Bakersfield and the Mojave Desert. As a result, Southern California Freight Lines, through its San Francisco and Oakland terminals and its fleet of equipment, performs applicant's pickup and delivery service in the San Francisco Territory, and applicant in exchange performs the pickup and delivery service of Southern California Freight Lines in the Bakersfield Area. During the course of hearing, a question arose as to whether this arrangement would continue if the restriction were removed as prayed for.

The controlling interest of Southern California Freight Lines is in the process of being sold and transferred. A representative of the old management testified that the arrangement between his company and applicant would be terminated if the restriction were removed. In rebuttal, applicant's president and general manager testified that he has been assured by the new management of Southern California Freight Lines that the arrangement would continue regardless of whether the restriction is removed or not. He further testified that applicant utilizes its own equipment to the San Francisco Bay Area on the average of at least once a week. If necessary, he stated, applicant would provide a whole and complete service.

Approximately nine public witnesses testified on behalf of applicant. They represented large business concerns which use applicant's presently certificated service from the Los Angeles Territory. They also have shipments to points north of Bakersfield to and including the San Francisco Territory. Although they were not dissatisfied

with the existing service, they stated that they would use applicant's through service because of the opportunity to consolidate shipments and the advantage that is afforded through the use of a carrier having a wide territorial coverage.

Protestants introduced evidence both oral and documentary reflecting the nature of their existing operations. They contend that there has been no showing that the existing services are inadequate and, in the absence of such a showing, the restriction should remain. They are of the opinion that, as existing common carriers subject to strict regulation and dedicated to the public use, they are entitled to protection by this Commission. They take the position that applicant is in a weak financial condition, as evidenced by Exhibit No. 6, which indicates that applicant suffered a net loss of \$27,666 for the first six months of 1957. If the authority sought is granted, it is their belief that applicant will sell his operations to a larger and more aggressive carrier. In answer, applicant's president admitted that financial difficulties did exist, but stated that he has recently obtained the necessary financial means to stabilize the business until anticipated rate increases are granted. He further testified that, if the restriction were removed, applicant would improve its financial ability by being able to make better use of its existing equipment and facilities and by being in a better competitive position. It is not his intention, he stated, to sell his interest in applicant should the restriction be removed.

After consideration, it is apparent that applicant has failed to establish its ability to conduct the proposed through

service if the restriction is removed. If the arrangement with Southern California Freight Lines is terminated, it is not clear how applicant proposes to finance the cost of additional terminal facilities and equipment in the San Francisco Bay Area. If the arrangement is not terminated, then applicant's proposal, if authorized, would result in a combined service between two major areas in this State wherein the greater portion of the actual transportation would be performed by a carrier directly competitive with applicant, a situation which this Commission does not feel is desirable.

Based upon the evidence of record, we find that public convenience and necessity require the granting of the authority sought to the extent set forth in the ensuing order. Applicant's request for the removal of the restriction, as well as protestants' petition for a proposed report, will be denied.

O R D E R

Application having been filed and the Commission being informed in the premises,

IT IS ORDERED:

(1) That a certificate of public convenience and necessity is hereby granted to Desert Express, a corporation, authorizing it to operate as a highway common carrier as defined in Section 213 of the Public Utilities Code, for the transportation of property between the points as set forth in Appendix A attached hereto and by reference made a part hereof.

(2) That in all other respects the application is denied, and the petition filed on November 22, 1957, requesting a proposed report in this proceeding, is also denied.

(3) That all present operating authority of Desert Express to operate as a highway common carrier of property, as defined in Section 213 of the Public Utilities Code, is hereby revoked and cancelled and, simultaneously with said revocation and cancellation, this certificate of public convenience and necessity herein granted shall stand in lieu thereof as applicant's sole authority to operate as a highway common carrier of property.

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

- (a) Applicant shall file a written acceptance of the certificate herein granted within a period of not to exceed thirty days after the effective date hereof.
- (b) Within sixty days after the effective date hereof, and on not less than five days' notice to the Commission and to the public, applicant shall establish the service herein authorized and comply with the provisions of General Order No. 80 and Part IV of General Order No. 93-A by filing in triplicate, and concurrently making effective, appropriate tariffs.

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

Dated at San Francisco, California, this 21st day of January, 1958.

[Signature]
 President
[Signature]
[Signature]
[Signature]
 Commissioners

1. Desert Express, a corporation, by the certificate of public convenience and necessity in the Decision noted in the margin, is authorized to transport general commodities, except petroleum and petroleum products in bulk and in tank vehicles, and livestock;

(a) Between all points and places in the Los Angeles Territory, as described herein, on the one hand, and, on the other hand:

(1) Bakersfield.

(2) All points and places in the Bakersfield Territory as described herein.

(3) All points and places in the Tehachapi-Mojave Desert Territory as described herein.

(b) Between all points and places in the Tehachapi-Mojave Desert Territory as described herein.

(c) Between Bakersfield and all points and places in the Bakersfield Territory as described herein.

(d) Between Bakersfield and all points and places in the Tehachapi-Mojave Desert Territory as described herein.

(e) Between all points and places in the Bakersfield Territory as described herein and all points and places in the Tehachapi-Mojave Desert Territory as described herein.

2. Desert Express, a corporation, by the certificate of public convenience and necessity in the Decision noted in the margin, is

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authorized to transport general commodities, except petroleum and petroleum products in bulk and in tank vehicles, livestock, and used household goods and personal effects not packed in accordance with the crated property requirements set forth in paragraph (d) of Item No. 10-C of Minimum Rate Tariff No. 4-A between all points and places in the Tehachapi-Mojave Desert Territory, on the one hand, and all points and places in the San Francisco Territory, as described herein, and all intermediate points and off-route points within five miles on either side of the routes hereinafter set out in paragraph 3(a)-, (b)- and (c) hereof, north of Bakersfield.

3. Desert Express, a corporation, shall conduct operations authorized in paragraphs 1 and 2 hereof, via the following routes, either singly or in combination one with another:

- (a) Between Los Angeles Territory and Manteca via U. S. Highway 99.
- (b) Between Manteca and the San Francisco Territory via State Highway 120 and U. S. Highway 50.
- (c) Between junction of State Highway 198 with U. S. Highway 99 and Fresno via State Highways 198 and 41.
- (d) Between Los Angeles Territory and junction of U. S. Highway 6 with unnumbered county highway approximately four miles west of Inyokern, via U. S. Highway 6.

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- (e) Between Bakersfield and Yermo, via U. S. Highway 466.
- (f) Between Beechers Corners and Inyokern, via U. S. Highway 395.
- (g) Between Daggett and Victorville, via U. S. Highway 66.
- (h) Between junction of U. S. Highway 66 and 466 with U. S. Highway 91, via U. S. Highway 91.
- (i) Between Palmdale and Victorville, via State Highway 138 and unnumbered county highway via Wilsona and Adelanto.
- (j) Between Valyermo and Palmdale via unnumbered county highway via Pearblossom and State Highway 138.
- (k) Between junction of U. S. Highway 6 with unnumbered highway near Newhall and Solamint, via unnumbered county highway via Newhall and Saugus.
- (l) Between Lancaster and Lake Hughes via State Highway 138 and unnumbered county highway via Quartz Hill and Elizabeth Lake.
- (m) Between Lancaster and junction of unnumbered highway with U. S. Highway 466 north of Edwards, via unnumbered county highway via Roosevelt, Redman, Casa Desierta, Antelope and Edwards.
- (n) Between Daggett and Yermo, via unnumbered county highway.
- (o) Between junction of U. S. Highway 6 with unnumbered county highway near Cantil and Johannesburg via unnumbered county highway via Gypsite, Saltdale, Garlock and Randsburg.

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- (p) Between Johannesburg and Argus-Trona via unnumbered county highway via Westend.
- (q) Between junction of U. S. Highway 6 with unnumbered county highway approximately four miles west of Inyokern and junction unnumbered county highway with route described in (p) above, via unnumbered county highway via Inyokern and Ridgecrest.
- (r) Between junction of U. S. Highway 395 with unnumbered county highway near Rademacher and Ridgecrest, via unnumbered county highway.
- (s) Between Cummings Valley and Tehachapi, via unnumbered county highway.
- (t) Between Magunden and junction unnumbered county highway with U. S. Highway 466, via unnumbered county highway via Lamont, Weed Patch and Arvin.
- (u) Between Lamont and junction with unnumbered county highway described in (t) above, via unnumbered county highway via Di Giorgio.
- (v) Between Bakersfield and junction of State Highway 178 with U. S. Highway 6, via State Highway 178.
- (w) Between junction of U. S. Highway 466 with unnumbered county highway near Caliente and junction of State Highway 178 with County Highway near Bodfish, via unnumbered county highway via Caliente.
- (x) Between any and all points and places within the Los Angeles Territory, the Bakersfield Territory, the Tehachapi-Mojave Desert Territory and the San Francisco Territory as described herein, via any and all available streets and highways.

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Condition

The authority granted is subject to the restriction that applicant shall perform no through service between the Los Angeles Territory as described herein and any point north of Bakersfield.

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LOS ANGELES TERRITORY

Beginning at the intersection of Sunset Boulevard and U. S. Highway No. 101, Alternate; thence northeasterly on Sunset Boulevard to State Highway No. 7; northerly along State Highway No. 7 to State Highway No. 118; northeasterly along State Highway No. 118 through and including the City of San Fernando; continuing northeasterly and southeasterly along State Highway No. 118 to and including the City of Pasadena; easterly along Foothill Boulevard from the intersection of Foothill Boulevard and Michillinda Avenue to Valencia Way; northerly on Valencia Way to Hillcrest Boulevard; easterly and northeasterly along Hillcrest Boulevard to Grand Avenue; easterly and southerly along Grand Avenue to Greystone Avenue; easterly on Greystone Avenue to Oak Park Lane; easterly on Oak Park Lane and the prolongation thereof to the west side of the Sawpit Wash; southerly along the Sawpit Wash to the north side of the Pacific Electric Railway right-of-way; easterly along the north side of the Pacific Electric Railway right-of-way to Buena Vista Street; south and southerly on Buena Vista Street to its intersection with Meridian Street, due south along an imaginary line to the west bank of the San Gabriel River; southerly along the west bank of the San Gabriel River to Beverly Boulevard; southeasterly on Beverly Boulevard to Painter Avenue in the City of Whittier; southerly on Painter Avenue to Telegraph Road; westerly on Telegraph Road to the west bank of the San Gabriel River; southerly along the west bank of the San Gabriel River to Imperial Highway; westerly on Imperial Highway to State Highway No. 19; southerly along State Highway No. 19 to its intersection with U. S. Highway No. 101, Alternate, at Ximeno Street; southerly along Ximeno Street and its prolongation to the Pacific Ocean; westerly and northerly along the shore line of the Pacific Ocean to a point directly south of the intersection of Sunset Boulevard and U. S. Highway No. 101, Alternate; thence northerly along an imaginary line to the point of beginning.

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BAKERSFIELD TERRITORY

Beginning on U. S. Highway 99 at its junction with the northerly boundary of Kern County, thence south via U. S. Highway 99 to its junction with California State Highway 166, thence westerly along State Highway 166 to its junction with California State Highway 33, thence northerly along State Highway 33 to junction with unnumbered county highway extending in a generally northerly direction to junction with U. S. Highway 466 at Lost Hills, thence along said county highway to Lost Hills, thence easterly along U. S. Highway 466 to junction with an unnumbered county highway approximately seven miles east of Lost Hills which said highway extends in a generally northerly direction, thence along said unnumbered county highway to its junction with the northerly boundary of Kern County, thence east along the northerly boundary of Kern County to the point of beginning. Said territory also includes a radius of five miles of its outer boundaries.

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TEHACHAPI-MOJAVE DESERT TERRITORY

- (a) All points and places on and along each of the following described highways and within three miles on either side of each of said highways between points named, including said points:
- (1) Between the easterly limits of the City of Bakersfield and Yermo, via U. S. Highway 465.
 - (2) Between junction U. S. Highway 6 and junction of U. S. Highway 6 with unnumbered highway approximately four miles west of Inyokern, via U. S. Highway 6.
 - (3) Between junction of U. S. Highway 6 and unnumbered highway near Newhall and Solamint, via unnumbered county highway via Newhall and Saugus.
 - (4) Between Beechers Corners and Inyokern, via U. S. Highway 395.
 - (5) Between Daggett and Victorville, via U. S. Highway 66.
 - (6) Between junction of U. S. Highways 66 and 466 and U. S. Highway 91, via U. S. Highway 91.
 - (7) Between Palmdale and Victorville, via State Highway 138 and unnumbered county highway via Wilsona and Adelanto.
 - (8) Between Valyermo and Palmdale, via unnumbered county highway via Pearblossom and State Highway 138.
 - (9) Between Lancaster and Lake Hughes via State Highway 138 and unnumbered county highway via Quartz Hill and Elizabeth Lake.

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- (10) Between Lancaster and junction of unnumbered highway and U. S. Highway 466, via unnumbered county highway via Roosevelt, Redman, Casa Desierta, Antelope and Edwards.
 - (11) Between Daggett and Yermo, via unnumbered county highway.
 - (12) Between junction of U. S. Highway 6 and unnumbered county highway near Cantil, and Johannesburg, via unnumbered county highway via Gypsite, Saltdale, Garlock and Randsburg.
 - (13) Between Johannesburg and Argus-Trona via unnumbered county highway via Westend.
 - (14) Between junction of U. S. Highway 6 and unnumbered county highway approximately four miles west of Inyokern and junction unnumbered county highway and route described in (13) above, via unnumbered county highway via Inyokern and Ridgecrest.
 - (15) Between junction of U. S. Highway 395 and unnumbered county highway near Rademacher and Ridgecrest, via unnumbered county highway.
 - (16) Between Cummings Valley and Tehachapi, via unnumbered county highway.
 - (17) Between Magunden and junction unnumbered county highway and U. S. Highway 466, via unnumbered county highway via Lamont, Weed Patch and Arvin.
 - (18) Between Lamont and junction with unnumbered county highway described in (17) above, via unnumbered county highway via Di Giorgio.
- (b) All points and places within ten miles west of U. S. Highway 6 between the southerly boundary of Rosamond and the northerly boundary of Mojave.

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SAN FRANCISCO TERRITORY

Beginning at the point the San Francisco-San Mateo County boundary line meets the Pacific Ocean; thence easterly along said boundary line to a point 1 mile west of U. S. Highway 101; southerly along an imaginary line 1 mile west of and paralleling U. S. Highway No. 101 to its intersection with the corporate boundary of the City of San Jose; southerly, easterly and northerly along said corporate boundary to its intersection with State Highway No. 17; northerly along State Highway No. 17 to Warm Springs; northerly along the unnumbered highway via Mission San Jose and Niles to Hayward; northerly along Foothill Boulevard to Seminary Avenue; easterly along Seminary Avenue to Mountain Boulevard; northerly along Mountain Boulevard and Moraga Avenue to Estates Drive; westerly along Estates Drive, Harbord Drive and 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; northerly and westerly along the campus boundary of the University of California to Euclid Avenue; northerly along Euclid Avenue to Marin Avenue; westerly along Marin Avenue to Arlington Avenue; northerly along Arlington Avenue to U. S. Highway No. 40 (San Pablo Avenue); northerly along U. S. Highway No. 40 to and including the City of Richmond; southwesterly along the highway extending from 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.

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