

ORIGINAL

Decision No. 58378

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;

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

Application No. 39011

Glanz & Russell, by Theodore W. Russell, for applicant.
Gordon, Knapp, Gill & Hilbert, by Joseph C. Gill, for
Valley Motor Lines, Inc., et al.; Robert W. Walker
and Matthew H. Witteman, for The Atchison, Topeka and
Santa Fe Railway Company and Santa Fe Transportation
Co., protestants.

OPINION ON REHEARING

The Commission by Decision No. 56143, issued in the above-
entitled matter, denied the request of Desert Express to remove the
restriction in its operative rights which prohibits through service
between points in the Los Angeles Area and points north of Bakersfield.
Applicant petitioned for rehearing of such decision and it was
granted March 11, 1958. Further hearings were held before Examiner
John Power at Los Angeles on September 4 and 12, 1958, and the matter
was resubmitted on the latter date. It is now ready for decision.

The Commission in Decision No. 56143 had two chief objec-
tions to applicant's proposal. First, the balance sheets of applicant

were not in good condition. Second, the pickup and deliveries for Desert Express in the San Francisco area were handled by another firm and the Commission doubted applicant's ability to provide such service itself if the need arose. The protestants in both sets of hearings made a very strong point of their belief that applicant would be forced to sell its rights.

At the time of rehearing the financial position of applicant had improved. This improvement was not yet reflected by its balance sheet. Applicant's principal stockholder, both directly and through affiliated companies made a substantial investment in Desert in the summer of 1958. Applicant's president testified that he was in a position to, and would, put more money into the business, if, and as needed.

Certain other evidence bearing on the financial abilities of applicant is available. Exhibit 4 gives a list of Desert's fleet as of September 1, 1957. Forty-five out of eighty-two units dated from 1953 or later. The specific years were: 1953, eight; 1954, two; 1955, seventeen; 1956, sixteen; 1957 (to September 1), five. Twenty-six out of 54 motive power units dated from 1955 or later. In short, the fleet has been kept up. This is not the usual situation with companies in financial trouble. Another factor is that depreciation has been rigorous. A third factor is that many obligations are being prepaid.

As noted in Decision No. 56143 Desert had an arrangement with another trucking firm under which the firm in question performed Desert's pickup and delivery service in the San Francisco territory and its (Desert's) line-haul to Bakersfield. This arrangement has been discontinued. Beginning on March 1, 1958, applicant opened its own

terminal at Oakland in a building shared with another trucking concern. By September of the same year Desert was operating from three to five schedules from Oakland to Bakersfield each week. Applicant has more equipment available if needed. It owns some equipment that is not even registered. This can be put into service by paying the registration fees.

As a further consideration the Commission calls attention to the fact that it is the public's convenience and necessity that is the test. No one has shown that the restriction in Desert's certificate benefits the public involved, the shipping public in this case. There is doubt that Desert's certificate is viable with the restriction in it.

In conclusion, the Commission is of the opinion that the two major objections to granting the applicant's request have been met. Public convenience and necessity require that the restriction complained of be eliminated. The following order will so provide. No evidence exists in this record that would support a cancellation or forfeiture of any operative right, or part thereof, hitherto possessed by applicant.

Applicant is hereby 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, such rights extend to the holder a full or partial monopoly of a class of business over a particular route. 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

Application having been filed, decision rendered, rehearing granted and further public hearings held and the Commission basing its decision upon the findings and conclusions set forth in the foregoing opinion,

IT IS ORDERED that:

1. Decision No. 56143, dated January 21, 1958, in this proceeding, be, and it is, amended by striking therefrom Appendix A as attached to and made a part of said Decision, and substituting in place and stead thereof Appendix A attached hereto and made a part hereof.

2. Said Decision No. 56143 be, and it is, further amended by adding thereto Appendices B. C, D and E attached hereto and made a part hereof.

3. As amended, said Decision No. 56143 be, and it is continued in full force and effect.

4. Desert Express shall comply with the following service regulations:

- (a) Within thirty days after the effective date hereof, applicant shall file a written acceptance of its certificate herein granted.
- (b) Within sixty days after the effective date hereof, and on not less than ten days' notice to the Commission and the public, applicant shall establish the service herein authorized and file in triplicate, and concurrently make effective, tariffs and timetables satisfactory to the Commission.

5. Nothing in this order shall be construed to revoke, cancel or annul any operating authority hitherto possessed by applicant.

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

Dated at San Francisco, California, this
7th day of May, 1959.

C. L. Fox
President
Theodore H. Jenner
Ernest W. Rogers
Commissioners

1. Desert Express, by the certificate of public convenience and necessity granted 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 in Appendix B, attached hereto, on the one hand, and, on the other hand,

(1) Bakersfield.

(2) All points and places in the Bakersfield Territory as described in Appendix C attached hereto.

(3) All points and places in the Tehachapi-Mojave Desert Territory as described in Appendix D attached hereto.

- (b) Between all points and places in the Tehachapi-Mojave Desert Territory as described in Appendix D attached hereto.

- (c) Between Bakersfield and all points and places in the Bakersfield Territory as defined in Appendix C attached hereto.

- (d) Between Bakersfield and all points and places in the Tehachapi-Mojave Desert Territory, as described in Appendix D attached hereto.

- (e) Between all points and places in the Bakersfield Territory as defined in Appendix C attached hereto, and all points and places in the Tehachapi-Mojave Desert Territory, as described in Appendix D attached hereto.

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

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the crated property requirements set forth in paragraph (d) of Item No. 10-C of Minimum Rate Tariff No. 4-A;

- (a) Between all points and places in the Los Angeles Territory, as described in Appendix B attached hereto, on the one hand, and on the other hand, all points and places in the San Francisco Territory, as described in Appendix E attached hereto and all intermediate points and off-route points within five miles of either side of the Highways set out in paragraph 2(c) hereof north of Bakersfield.
- (b) 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 in Appendix E attached hereto, and all intermediate points and off-route points within five miles on either side of the Highways set out in paragraph 2(c) hereof north of Bakersfield.
- (c) The highways upon which the intermediate and off-route points referred to in paragraphs 2(a) and 2(b) hereof are based, are the following:
 - i. U.S. Highway 99 between Los Angeles Territory and Manteca;
 - ii. State Highway 120 and U.S. Highway 50 between Manteca and the San Francisco Territory;
 - iii. State Highway 198 between its junction with U.S. Highway 99 and its junction with State Highway 41 near Lemoore;
 - iv. State Highway 41 between its junction with State Highway No. 198 and Fresno.

End of Appendix A

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LOS ANGELES TERRITORY includes that area embraced by the following boundary: 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 point of beginning.

APPENDIX C TO DECISION NO. 58378

BAKERSFIELD TERRITORY includes that area embraced by the following and within a radius of five miles of the outer boundaries thereof:

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 point of beginning.

TEHACHAPI-MOJAVE DESERT TERRITORY includes all points and places in the areas as follows:

(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 466;

(2) Between junction U.S. Highway 6 and junction U.S. Highway 6 with unnumbered highway approximately four miles west of Inyokern, via U.S. Highway 6;

(3) Between junction 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 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 junction of unnumbered county highway with route described in (7) above, 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;

(10) Between Lancaster and junction of unnumbered highway and U.S. Highway 466, via unnumbered county highway via Roosevelt, Redman, Casa Desierta, Antelope and Muroc;

(11) Between Daggett and Yermo, via unnumbered county highway;

(12) Between junction 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 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 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.

APPENDIX E TO DECISION NO. 58328

SAN FRANCISCO TERRITORY includes that area embraced by the following boundary: 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.