

Decision No. 59859**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
 SHIPPERS EXPRESS COMPANY, a cor-
 poration, for the extension of its
 certificates of public convenience
 and necessity as a highway common
 carrier of property.

Application No. 41665

Ray E. Untereiner, for applicant.
F. S. Kohles, for Valley Express Co. and Valley
 Motor Lines, Inc.; Robert C. Ellis, for
 California Motor Express, Ltd., Circle
 Freight Lines, California Motor Transport
 Co., Ltd., and Stockton Motor Express;
Ray L. Harris, for Delta Lines, Inc.;
Robert W. Walker and Richard K. Knowlton,
 for Santa Fe Transportation Company and
 The Atchison, Topeka and Santa Fe Rail-
 way Company; Charles S. Cobb, Jr., for
 Delta Lines, Inc.; and C. N. Bailey, for
 California Cartage Company, Inc.; pro-
 testants.

O P I N I O N

Public hearings were held in this matter before Examiner Grant E. Syphers on December 21, 1959, and January 11, 1960, in San Francisco, and on December 22, 1959, in Los Angeles. On these dates evidence was adduced and on the latest date the matter was submitted subject to the receipt of late-filed exhibits. These now have been filed and the matter is ready for decision.

The applicant conducts a highway common carrier trucking business between the San Francisco and Los Angeles Territories, with no intermediate points, and between the Santa Clara Valley Territory

and the Los Angeles Territory. Likewise, applicant hauls between Santa Ana and the San Diego Territory. All of the foregoing rights cover the transportation of general commodities. Additionally, this applicant transports fresh and frozen fruits and vegetables and empty containers between the San Francisco Territory and the Los Angeles Basin and San Diego Territories, with certain additional rights in the producing areas.

In the instant application it is proposed to extend the general commodity rights between the Los Angeles area and the San Diego area over existing routes and also over U. S. Highway 395 and intermediate and off-route points between Los Angeles and San Francisco, and, additionally, applicant requests authority to haul between its other areas and Sacramento.

At the hearing the evidence disclosed that the applicant has facilities and equipment to conduct the proposed service. Likewise, it is in satisfactory financial condition. The evidence further discloses that there are other common carriers operating in the area, which other carriers have satisfactory facilities and equipment to provide service. In fact, it was the position of applicant that it did not intend to show any defects in existing service. This application was based upon two premises, (1) the desire of certain shippers to use applicant's service into the extended areas, and (2) the desire of the applicant to round out its existing service.

Based upon the evidence adduced in this proceeding, we now find that the applicant is willing and able to provide the proposed service. We also find that the protestant carriers are willing and able to provide the proposed service.

The evidence further shows that numerous shippers testified in favor of the proposal and, in general, these shippers stated that they were familiar with applicant's service and favored the extensions applied for herein. These shipper witnesses favored the extensions because of their experience with applicant in the past, and because they desire to have applicant provide split-delivery and split-pickup service in various areas.

The issue in this case then resolves itself to whether or not this applicant should be granted an extension of its operating authority on the basis indicated and without any showing of defects in the existing service.

In the light of the shipper testimony presented herein, we now find that public convenience and necessity do require the requested extension of the present service of applicant, including the sought authority to serve off-route points within ten miles laterally of all named highways in the application.

It should be noted that there is no proposed change in applicant's authority to transport fresh fruit, vegetables and related commodities.

Upon consideration of all of the evidence adduced herein, we find that public convenience and necessity require that the

application be granted in the manner set forth in the ensuing order. This will provide for an in lieu certificate combining all of applicant's operating authority.

Shippers Express Company 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 cancelled 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 as above entitled having been filed, public hearings having been held thereon, the Commission being fully advised in the premises and having made the foregoing findings,

IT IS ORDERED:

(1) That a certificate of public convenience and necessity is granted to Shippers Express Company, a California corporation, authorizing operations as a highway common carrier, as defined by Section 213 of the Public Utilities Code, for the transportation of property between the points and over the routes as more particularly set forth in Appendix A attached hereto and made a part hereof.

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

- (a) Within thirty days after the effective date hereof, applicant shall file a written acceptance of the certificate herein granted. By accepting the certificate of public convenience and necessity herein granted, applicant is placed on notice that it will be required, among other things, to file annual reports of its operations and to comply with and observe the safety rules and other regulations of the Commission's General Order No. 99. Failure to file such reports, in such form and at such time as the Commission may direct, or to comply with and observe the provisions of General Order No. 99, may result in a cancellation of the operating authority granted by this decision.
- (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 satisfactory to the Commission.

(3) That the certificate of public convenience and necessity granted in paragraph (1) of this order is in lieu of and supercedes all existing certificates of public convenience and necessity heretofore granted to or acquired by Shippers Express Company, a corporation, which certificates are hereby cancelled and revoked,

said revocation to become effective concurrently with the effective date of the tariff filings required by paragraph 2(b) hereof.

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

Dated at San Francisco, California,
this 29th day of March, 1960.

Everell R. Foss
President
W. H. Feltwell
W. H. Feltwell
E. Linton
Theodore J. J. J.
Commissioners

Shippers Express Company, a corporation, by the certificate of public convenience and necessity granted in the decision noted in the margin, is authorized to transport general commodities:

1. Between the San Francisco Territory, as described herein, the Santa Clara Valley Territory, as described herein, all points and places on U.S. Highway 40 between Oakland and Sacramento including a twenty-mile radius of Sacramento, all points and places on State Highway 4 beginning with its intersection with U. S. Highway 40 and extending to and including Antioch, all points and places on State Highway 24 between Oakland and its intersection with State Highway 4, and all points and places within ten miles laterally of said highways, on the one hand, and, on the other hand,

- a. All points and places on U. S. Highways 101 and 101-A and State Highway 118, to and including the Los Angeles Territory, the Los Angeles Basin Territory, and the San Diego Territory, as described herein, including all intermediate points and the off-route point of Vandenberg Air Force Base and all points and places within ten miles laterally of said highways.
- b. All points and places on U. S. Highway 99, including Manteca, Modesto, Fresno, Bakersfield, and all intermediate points thereto, to and including the Los Angeles Territory, the Los Angeles Basin Territory, and the San Diego Territory, as described herein, and all points intermediate thereto, and all points and places within ten miles laterally of said highways.
- c. The foregoing service shall be subject to the restriction that points and places on U. S. Highways 101, 101-A, and State Highway 18 between Gilroy, but not including Gilroy, and the north and northeastern boundary of the Los Angeles Basin Territory, be subject to split-pickup and split-delivery service.

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- d. Service in the above-described territories may be performed over any and all highways.

2. Between the Los Angeles Territory and the Los Angeles Basin Territory, as described herein, on the one hand, and, on the other hand,

- a. All points and places in the San Diego Territory, as described herein, including all intermediate points on U. S. Highways 395, 101 and 101-A, and all points and places within ten miles laterally of said highways.
- b. Service in the above-described territories may be performed over any and all highways.

3. Between all points and places in the Los Angeles Territory, the Los Angeles Basin Territory, and the San Diego Territory, as described herein, and all intermediate points via U. S. Highways 395, 101 and 101-A, on the one hand, and, on the other hand,

- a. All points and places on U. S. Highway 99, including Bakersfield, Fresno, Modesto, Manteca, Stockton and Sacramento and all intermediate points including a twenty-mile radius of Sacramento, and all points and places within ten miles laterally of said highway.
- b. All points and places on State Highway 120 and U. S. Highway 50, beginning with the intersection of said highways and U. S. Highway 99 at Manteca and extending to and including the San Francisco Territory, as described herein, and all points and places within ten miles laterally of said highways.
- c. All points and places on State Highway 152 between Califa and Gilroy, all points and places on U. S. Highway 40 between Oakland and Sacramento, and all points within ten miles laterally of said highway.
- d. All points and places on State Highway 4 beginning with its intersection with U. S. Highway 40 and extending to and including Antioch and all points and places within ten miles laterally thereof.

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- e. All points and places on State Highway 24 between Oakland and its intersection with State Highway 4 and all points and places within ten miles laterally thereof.
- f. All points and places on U. S. Highways 101, 101-A, and State Highway 118, including the off-route point of Vandenberg Air Force Base, to and including the Santa Clara Valley Territory and the San Francisco Territory, as described herein, and all off-route points within ten miles laterally of said highways.
- g. The above service is subject to the restriction that points and places on U. S. Highways 101, 101-A, and State Highway 118, be subject to split-pickup and split-delivery service between Gilroy, but not including Gilroy, and the north and northeastern boundary of the Los Angeles Basin Territory.
- h. Service in the above-described territories may be performed over any and all highways.

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Shippers Express Company, a corporation, shall not transport any shipments of:

- a. 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.
- b. 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.
- c. Livestock, viz.: bucks, bulls, calves, cattle, cows, dairy cattle, ewes, goats, hogs, horses, kids, lambs, oxen, pigs, sheep, sheep camp outfits, sows, steers, stags or swine.
- d. Commodities requiring the use of special refrigeration or temperature control in specially designed and constructed refrigerator equipment.
- e. Liquids, compressed gases, commodities in semi-plastic form and commodities in suspension in liquids in bulk, in tank trucks, tank trailers, tank semi-trailers or a combination of such highway vehicles.
- f. Commodities when transported in bulk in dump trucks or in hopper-type trucks.
- g. Commodities when transported in motor vehicles equipped for mechanical mixing in transit.
- h. Articles of extraordinary or unusual value.

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Shippers Express Company, a corporation, by the certificate of public convenience and necessity granted in the decision noted in the margin is also authorized to transport:

1. Fresh green and frozen fruits and fresh green and frozen vegetables, including mushrooms, and empty containers for said commodities, between the San Francisco Territory, as described herein, on the one hand, and
 - a. All points and places on, along and ten miles or less laterally of U. S. Highway 101 between and including Goleta and Oxnard;
 - b. All points and places within a five-mile radius of Ojai;
 - c. All points and places on, along and ten miles or less laterally of State Highway 126 between its junction with U. S. Highway 101 (near Ventura) and its junction with U. S. Highway 99 (Castaic Junction);
 - d. All points and places on, along and ten miles or less laterally of State Highway 118 between its junction with U. S. Highway 101 (near Montalvo) and San Fernando;
 - e. All points and places within Los Angeles Basin and San Diego Territories, as described herein; and
 - f. All points and places on, along and ten miles or less laterally of U. S. Highway 101 between Los Angeles Basin Territory and San Diego Territory, as described herein, on the other hand, and

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2. Citrus fruits, and empty containers, between the San Francisco Territory, as described herein, on the one hand, and
 - a. All points and places east of U. S. Highway 99, north of State Highway 178 (east of Bakersfield) and south of State Highway 180 (east of Fresno), described as the San Joaquin Valley Producing Area, on the other hand.
3. Fresh berries between all points and places in the Santa Clara Valley Territory, as described herein, and all points and places located within a radius of 15 miles by highway from the city limits of the City of Watsonville, on the one hand, and
 - a. The Los Angeles Territory, as described herein, on the other hand.
4. The service performed under the authority issued in this part of the certificate shall be via the same routes and highways as are designated in the first part of this certificate, and the service in the above-described territories may be performed over any and all highways.

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SAN FRANCISCO TERRITORY includes all of the City of San Jose and 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 101 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 2 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 E. Parr Avenue; easterly along E. Parr Avenue 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 the San Jose-Los Gatos Road; northeasterly along San Jose-Los Gatos Road to Foxworthy Avenue; easterly along Foxworthy Avenue to Almaden Road; southerly along Almaden Road to Hillsdale Avenue; easterly along Hillsdale Avenue to U. S. Highway 101; northwesterly along U. S. Highway 101 to Tully Road; northeasterly along Tully Road to White Road; northwesterly along White Road to McKee Road; southwesterly along McKee Road to Capitol Avenue; northwesterly along Capitol Avenue to State Highway 17 (Oakland Road); northerly along State Highway 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 Morago Avenue to Estates Drive; westerly along Estates Drive; Harbor 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 40 (San Pablo Avenue); northerly along U. S. Highway 40 to and including the City of Richmond; southwestly 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 shore line to the Pacific Ocean; southerly along the shore line of the Pacific Ocean to point of beginning.

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LOS ANGELES TERRITORY includes the area embraced by the following boundary:

Beginning at the intersection of Sunset Boulevard and U. S. Highway 101, Alternate; thence northeasterly along Sunset Boulevard to State Highway 7; northerly along State Highway 7 to State Highway 118; northeasterly along State Highway 118 through and including the City of San Fernando; continuing northeasterly and southeasterly along State Highway 118 to and including the City of Pasadena; easterly along U. S. Highway 66 to State Highway 19; southerly along State Highway 19 to its intersection with U. S. Highway 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 101, Alternate; thence northerly along an imaginary line to point of beginning.

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LOS ANGELES BASIN TERRITORY includes the area embraced by the following boundary:

Beginning at the point the Ventura County-Los Angeles County boundary line intersects the Pacific Ocean; thence northeasterly along said county line to the point it intersects State Highway 118, approximately two miles west of Chatsworth; easterly along State Highway 118 to Sepulveda Boulevard; northerly along Sepulveda Boulevard to Chatsworth Drive; northeasterly along Chatsworth Drive to the corporate boundary of the City of San Fernando; westerly and northerly along said corporate boundary to McClay Avenue; northeasterly along McClay Avenue and its prolongation to the Angeles National Forest boundary; southeasterly and easterly along the Angeles National Forest and San Bernardino National Forest boundary to the county road known as Mill Creek Road; westerly along Mill Creek Road to the county road 3.8 miles north of Yucaipa; southerly along said county road to and including the unincorporated community of Yucaipa; westerly along Redlands Boulevard to U. S. Highway No. 99; northwesterly along U. S. Highway 99 to the corporate boundary of the City of Redlands; westerly and northerly along said corporate boundary to Brookside Avenue; westerly along Brookside Avenue to Barton Avenue; westerly along Barton Avenue and its prolongation to Palm Avenue; westerly along Palm Avenue to La Cadena Drive; southwestwesterly along La Cadena Drive to Iowa Avenue; southerly along Iowa Avenue to U. S. Highway 60; southwestwesterly along U. S. Highways 60 and 395 to the county road approximately one mile north of Perris; easterly along said county road via Nuevo and Lakeview to the corporate boundary of the City of San Jacinto; easterly, southerly and westerly along said corporate boundary to San Jacinto Avenue; southerly along San Jacinto Avenue to State Highway 74; westerly along State Highway 74 to the corporate boundary of the City of Hemet; southerly, westerly and northerly along said corporate boundary to the right of way of The Atchison, Topeka & Santa Fe Railway Company; southwestwesterly along said right of way to Washington Avenue; southerly along Washington Avenue, through and including the unincorporated community of Winchester to Benton Road; westerly along Benton Road to the county road intersecting U. S. Highway 395, 2.1 miles north of the unincorporated community of Temecula; southerly along said county road to U. S. Highway 395; southeasterly along U. S. Highway 395 to the Riverside County-San Diego County boundary line; westerly along said boundary line to the Orange County-San Diego County boundary line; southerly along said boundary line to the Pacific Ocean; northwestwesterly along the shore line of the Pacific Ocean to point of beginning.

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SAN DIEGO TERRITORY includes that area embraced by the following imaginary line starting at the northerly junction of U. S. Highways 101-E and 101-W (4 miles north of La Jolla); thence easterly to Miramar on State Highway 395; thence southeasterly to Lakeside on the El Cajon-Ramona Highway; thence southerly to Bostonia on U. S. Highway 80; thence southeasterly to Jamul on State Highway 94; thence due south to the International Boundary Line, west to the Pacific Ocean and north along the coast to point of beginning.

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SANTA CLARA VALLEY TERRITORY - All of the territory within the limits of the following cities and towns: San Jose, Palo Alto, Mountain View, Los Altos, Sunnyvale, Cupertino, Monte Vista, Permanente, Saratoga, Los Gatos, Campbell, Santa Clara, Agnew, Alviso, Milpitas, Madrone, Morgan Hill, San Martin, Gilroy, Old Gilroy, and all territory in Santa Clara County within a distance of five miles on either side of the following roads and highways;

U. S. Highway 101 By-pass between East Palo Alto and San Jose,

U. S. Highway 101 between Palo Alto and Gilroy, Sunnyvale-Saratoga Road,

Stevens Creek Road and Permanente Road between Cupertino and Permanente,

Saratoga-Los Gatos Road and Santa Clara-Los Gatos Road between Los Gatos and Santa Clara,

Santa Clara-Alviso Road,

Alviso Road between Alviso and Milpitas,

State Highway 17 between Milpitas and San Jose,

Pacheco Pass Road between Gilroy and Old Gilroy.

End of Appendix A

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