

63219

ORIGINAL

Decision No. _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
 ASBURY TRANSPORTATION CO., a corpo-
 ration, for a certificate of public
 convenience and necessity to extend
 highway common carrier services and
 to consolidate its operating
 authorities.

Application No. 42677

OPINION AFTER RECONSIDERATION
ON STIPULATION OF PARTIES

By Decision No. 61588, dated the 28th day of February 1961, in Application No. 42677, this Commission granted the applicant, Asbury Transportation Co., a corporation, an enlarged certificate of public convenience and necessity which included the right to serve the zone commonly referred to as the "Tehachapi-Mojave Desert Territory". This authority was included in subparagraphs e, i, k, l, and m of paragraph 4 of Appendix A to Decision No. 61588, and are quoted as follows:

"4. Between all points and places on and within 25 miles laterally of the following named highways:

- "e. U.S. Highway 99 between Sacramento and San Fernando, inclusive.
- "i. U.S. Highway 99 between Redlands and Calexico, inclusive.
- "k. U.S. Highway 66 between San Bernardino and Needles, inclusive.
- "l. U.S. Highway 6 between San Fernando and Independence, inclusive. (See Exception 2.)

EXCEPTION 2 - Service on and within 25 miles laterally of U.S. Highway 6 between Mojave and Independence, inclusive, is restricted to shipments weighing 20,000 pounds or more (truck-load lots).

- "m. U.S. Highway 466 between Bakersfield and Barstow, inclusive."

The Petition for Rehearing

Desert Express and Victorville-Barstow Truck Line filed a petition on June 19, 1961 to set aside the decision and to reopen the case for further hearings. They alleged they had never received a copy of Application No. 42677, nor the amendment thereto; that they were not informed of the dates of hearing on the application and never received copies of Decision No. 61588; and that they first learned of Asbury Transportation Co.'s new authority on June 2, 1961 by accident, while attending a Commission hearing involving another carrier. Their petition then requested that the matter be reopened to enable the petitioners to present evidence in opposition to the extension of the applicant's service into the Desert Area east of Highway 99 between Bakersfield and Los Angeles, and generally north of the southern boundaries of the Angeles and San Bernardino National Forests.

An Order Reopening Proceeding for Further Hearing was issued August 1, 1961. The Order limited the issue on reopening to a consideration of the operating rights granted to the applicant in the Tehachapi-Mojave Desert Territory and the Mojave Desert Area.

The Stipulation

A stipulation was executed by all parties and filed with this Commission on December 1, 1961. It provides that Appendix A of Decision No. 61588 may be amended as set out in the following paragraphs:

"A. That Appendix A of said certificate of public convenience and necessity be amended substantially as follows:

"1. That subparagraph e of paragraph 4 be amended to read as follows:

"e. U.S. Highway 99 between Sacramento and San Fernando, inclusive, except that service laterally to the east of that portion of U.S. Highway 99 between Bakersfield and

San Fernando, inclusive, is restricted to points and places within five (5) miles laterally to the east of said portion of said U.S. Highway 99.

"2. That subparagraph i of paragraph 4 be amended to read as follows:

"i. U.S. Highway 99 between Redlands and Calexico, inclusive, except points and places north of the northerly boundary of the Los Angeles Basin Territory.

"3. That subparagraph k of paragraph 4 be amended to read as follows:

"k. U.S. Highway 66 between Newberry and Needles, inclusive.

"4. That subparagraph l of paragraph 4 be amended to read as follows:

"l. U.S. Highway 6 between Independence and the junction of said U.S. Highway 6 with U.S. Highway 395 near Brown. (See Exception 2).

EXCEPTION 2 - Service is restricted to shipments weighing 20,000 pounds or more (truck-load lots).

"5. That subparagraph m of paragraph 4 be deleted in its entirety."

The stipulation further provides as follows:

"B. That the certificate of public convenience and necessity granted or acquired by Decisions Nos. 32107 and 32290 remain in full force and effect insofar as and to the extent that it does not duplicate the operating authority described in the certificate of public convenience and necessity granted by Decision No. 61588. That insofar as and to the extent that it duplicates the authority described in the certificate of public convenience and necessity granted in Decision No. 61588, said certificate of public convenience and necessity granted or acquired by Decisions Nos. 32107 and 32290 be cancelled and revoked, said revocation to become effective concurrently with the effective date of tariff filings required by paragraph 2(b) of Decision No. 61588."

The parties further stipulate that the petition of Desert Express and Victorville-Barstow Truck Line, dated June 16, 1961, entitled PETITION OF DESERT EXPRESS AND VICTORVILLE-BARSTOW TRUCK LINE TO SET ASIDE DECISION NO. 61588 OF FEBRUARY 28, 1961, AND TO REOPEN THE PROCEEDINGS HEREIN FOR FURTHER HEARING be dismissed with prejudice upon the amendment of the certificate.

The Commission finds that giving effect to the stipulation of the parties to this proceeding would not be adverse to the public interest and that the order which follows is justified by public convenience and necessity.

Asbury Transportation Co. 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

Good cause appearing, and a stipulation having been filed,
IT IS ORDERED that:

1. Appendix A of Decision No. 61588 is amended by incorporating therein First Revised Pages 1 and 2 and Second Revised Page 3, attached hereto, in revision of Original Pages 1 and 2 and First Revised Page 3; and by adding thereto Original Pages 4 and 5 also attached hereto.

2. Within one hundred twenty days after the effective date hereof, and on not less than ten days' notice to the Commission and to the public, applicant shall amend its tariffs to conform to the restrictions imposed herein in its certificates.

3. Asbury Transportation Co., a corporation, shall cease and desist from serving the following points and places for the transportation of general commodities other than those commodities described in Paragraph B on Original Page 4 of Appendix A attached hereto:

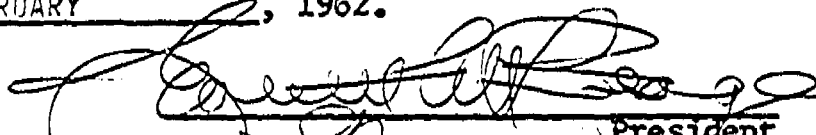
- (a) All points and places more than five miles laterally to the east of U.S. Highway 99 between Bakersfield and San Fernando.
- (b) All points and places within 25 miles laterally to the north of U.S. Highway 99 between Redlands and Calexico which are also north of the northerly boundary of the Los Angeles Basin Territory.
- (c) All points and places on and within 25 miles laterally of the following highways:
 - (1) U.S. Highway 66 between San Bernardino and Newberry.
 - (2) U.S. Highway 6 between San Fernando and its junction with U.S. Highway 395 near Brown.
 - (3) U.S. Highway 466 between Bakersfield and Barstow;

and that all rates, rules and regulations currently published in applicant's tariffs applicable to, from or between the above-mentioned points and areas are hereby suspended on the effective date of this order. A copy of this order shall be filed with said tariffs in the office of the Commission.

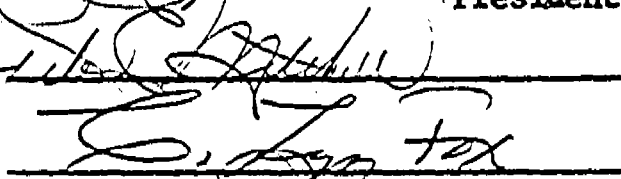
4. The Petition filed on June 19, 1961 by Desert Express and Victorville-Barstow Truck Line to Set Aside Decision 61588, dated February 20, 1961, in Application No. 42677, and to Reopen the Proceedings Herein for Further Hearing is hereby dismissed with prejudice.

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

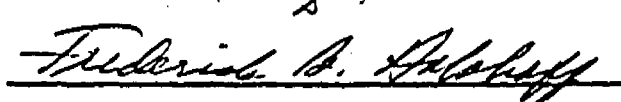
Dated at San Francisco, California, this 6th day of FEBRUARY, 1962.



 President



 Commissioner



 Commissioner

A. Asbury Transportation Co., by the certificate of public convenience and necessity granted in the decision noted in the margin, is authorized to transport general commodities, as follows:

1. Between all points and places in the San Francisco Territory as described in Appendix B attached hereto.
2. Between all points and places in the Los Angeles Basin Territory as described in Appendix C attached hereto.
3. Between all points and places in the San Diego Territory as described in Appendix D attached hereto.
4. Between all points and places on and within 25 miles laterally of the following named highways:
 - a. U. S. Highway 40 between Oakland and Sacramento, inclusive.
 - b. State Highway 4 between its intersection with U. S. Highway 40 near Pinole and Stockton, inclusive.
 - c. U. S. Highways 101 and 101 Alternate between San Jose and San Diego, inclusive.
 - d. State Highway 118 between its intersection with U. S. Highway 101 near Ventura and Chatsworth, inclusive.
 - e. U. S. Highway 99 between Sacramento and San Fernando, inclusive, except that applicant shall not serve any point more than five miles easterly of U. S. Highway 99 between Bakersfield and San Fernando.

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- f. State Highway 33 between its junction with U. S. Highway 50 near Tracy and its junction with U. S. Highway 99 near Wheeler Ridge, inclusive.
- g. U. S. Highway 395 between Temecula and San Diego, inclusive.
- h. U. S. Highways 60 and 70 between the eastern boundary of the Los Angeles Basin Territory and Blythe, inclusive. (See Exception 1.)

EXCEPTION 1 - Service on and within 25 miles laterally of U. S. Highways 60 and 70 between Indio and Blythe, inclusive, is restricted to shipments weighing 20,000 pounds or more (truck-load lots).

- i. U. S. Highway 99 between Redlands and Calexico, inclusive, except that applicant shall not serve any point north of the northerly boundary of the Los Angeles Basin Territory.
- j. U. S. Highway 80 between Bostonia and Winterhaven, inclusive.
- k. U. S. Highway 66 between Newberry and Needles, inclusive. (See Exception 3.)
- l. U. S. Highway 6 between Independence and its junction with U. S. Highway 395 near Brown, inclusive. (See Exceptions 2 and 3.)

EXCEPTION 2 - Service is restricted to shipments weighing 20,000 pounds or more (truck-load lots).

EXCEPTION 3 - No service is authorized to, from or between intermediate points on U. S. Highway 66 between San Bernardino and Newberry, nor on U. S. Highway 6 between San Fernando and its junction with U. S. Highway 395 near Brown, nor on any other highways not named herein, for the transportation of general commodities other than those described in Paragraph B of this Appendix.

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- m. U. S. Highway 399 between Ventura and Greenfield, inclusive, including the off-route points of Santa Paula and Fillmore.
- 5. Through routes and rates may be established between any and all points described in subparagraphs 1 through 4m above.
- 6. Applicant may use any and all highways and roads between the areas described for operating convenience only.
- 7. Applicant shall not transport any shipments of the following commodities:
 - 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 protection from heat by the use of ice (either water or solidified carbon dioxide) or by mechanical refrigeration.
 - e. 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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- 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. Logs.

B. Applicant is authorized to transport property necessary or incidental to the establishment, maintenance, or dismantling of oil, gas, or water wells, pipe lines, refineries, and cracking or casing head plants, equipment and material used in construction, and equipment used in farming, with the exceptions hereinafter specified, and including liquefied petroleum gases and any other petroleum products requiring pressurized tanks and liquid asphalt and hot road oils and any other petroleum products requiring insulated tanks, as follows:

- 1. Between all points and places described in Paragraph A of this Appendix.
- 2. Between all points and places on and within 25 miles laterally of the following named highways:
 - a. U.S. Highway 99 between Bakersfield and San Fernando, inclusive.

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- b. U.S. Highway 66 between Newberry and San Bernardino, inclusive.
- c. U.S. Highway 6 between its junction with U.S. Highway 395 near Brown and San Fernando, inclusive. (See Exception 1.)

EXCEPTION 1 - Service on and within 25 miles laterally of U.S. Highway 6 between its junction with U.S. Highway 395 near Brown and Mojave, inclusive, is restricted to shipments weighing 20,000 pounds or more (truck-load lots).

- d. U.S. Highway 466 between Bakersfield and Barstow, inclusive.
- 3. Through routes and rates may be established between any and all points described in subparagraphs 1 through 2d above.
 - 4. Applicant may use any and all highways and roads between the areas described for operating convenience only.

End of Appendix A

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