

ORIGINAL

Decision No. 76236

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of MPA Courier Corporation, a corporation, for a certificate of public convenience and necessity to institute a freight forwarding service.

) Application No. 50884
) (Filed February 14, 1969)

Application of American Courier Corporation, a corporation, for a certificate of public convenience and necessity to operate as a freight forwarder of special commodities between points in the State of California.

) Application No. 50963
) (Filed March 20, 1969)

In the Matter of the Investigation into the rates, rules and regulations, charges, allowances and practices of all common carriers, relating to the transportation of any and all commodities between and within all points and places in the State of California (including, but not limited to, transportation for which rates are provided in Minimum Rate Tariff No. 2).

) Case No. 5432
) Petition for Modification
) No. 533
) (Filed February 14, 1969)
) Petition for Modification
) No. 534
) (Filed February 20, 1969)

) Case No. 5435
) Petition for Modification
) No. 117
) (Filed February 14, 1969)
) Petition for Modification
) No. 118
) (Filed February 20, 1969)

And Related Matters.

) Case No. 5439
) Petition for Modification
) No. 86
) (Filed February 14, 1969)
) Petition for Modification
) No. 87
) (Filed February 20, 1969)

) Case No. 5441
) Petition for Modification
) No. 158
) (Filed February 14, 1969)
) Petition for Modification
) No. 159
) (Filed February 20, 1969)

Bertren S. Silver and John Fischer, for MPA Courier Corporation; Warren N. Crossman of Knapp, Gill, Hibbert & Stevens, for American Courier Corporation; applicants and petitioners.

Richard W. Smith, H. F. Kollmeyer and A. D. Poe, for California Trucking Association, interested party.

Russell & Schureman by R. Y. Schureman, for Loomis Courier Service, Inc., Armored Transport Inc., California Intercity Armored Car Service, and Valley Armored Transport, Inc.; Graham & James by Boris H. Lakusta and David J. Marchant, for Pacific Motor Trucking Company; E. H. Griffiths, for Carl K. Sparks, doing business as Aero Special Delivery and Messenger Service and Mail Delivery Service Co., Inc., protestants and respondents.

C. W. Maderious and B. I. Shoda, for the Commission staff.

O P I N I O N

By the within applications MPA Courier Corporation (MPA) seeks a certificate of public convenience and necessity as a freight forwarder authorizing the transportation of checks, drafts, money orders, securities, transit items, sales audit items, business records, audit media, tabulation cards, data processing materials, legal documents and printed or reproduced documents on data; and American Courier Corporation (American) seeks similar authority for the transportation of business records, audit media, tabulation cards, data processing materials, checks, drafts, securities, transit items, radioactive pharmaceuticals and film subject to a restriction that no shipment should exceed 50 pounds from one consignor to one consignee except work in process, in which case the limitation would be 100 pounds.

By the within petitions MPA seeks exemption from the rates, rules and regulations set forth in Minimum Rate Tariffs Nos. 1-B, 2, 5, 9-B and 19 for the transportation of checks, drafts, money orders,

securities, transit items, sales audit items, business records, audit media, tabulation cards, data processing materials, legal documents and printed or reproduced documents on data; and American seeks exemption from the rates, rules and regulations of Minimum Rate Tariffs Nos. 1-B, 2, 5 and 9-B for the transportation of checks, drafts and/or money orders (moving in process of clearance between banks and/or clearing houses), legal documents, business records, audit media and tabulation cards, when transported in a vehicle not exceeding a licensed weight of 4,000 pounds.

The applications and petitions were consolidated for hearing on a common record, which was held at San Francisco before Examiner O'Leary on May 5, 6, 7, 8 and 9, 1969. The matters were submitted upon the filing of concurrent briefs on July 14, 1969.

The operations for which MPA and American seek authority as freight forwarders are transportation over extended distances wherein a portion of the transportation is accomplished by utilizing commercial air carriers. The property is picked up by ground transportation from various locations and transported to the airport. At the airport the individual pickups are consolidated and transported by aircraft in one of two ways:

1. As baggage accompanying an employee of either American or MPA traveling as a passenger (baggage operation), or
2. As air freight at the airline's tariff rate for air freight (air freight operation). Ground transportation is utilized from the destination airport to final destination.

Five public witnesses testified in support of the MPA application. Four of the witnesses testified that they are presently utilizing the services of MPA between the San Francisco area and the Los Angeles area. The other witness testified that he is

presently utilizing MPA's service for surface transportation between Berkeley and Millbrae only, but that he may utilize MPA's service to Los Angeles in the future.

Five different public witnesses testified in support of the American application. One of the witnesses testified that he is presently utilizing American's service and is satisfied with it. The other four witnesses testified that the existing services have not grown rapidly enough to meet the increase in demand for expedited transportation which is so necessary to enable them to take full advantage of the services provided by available computer and data processing centers and that more carriers are needed to adequately meet their needs.

MPA and American also furnish a so-called courier type transportation service solely by motor vehicle pursuant to radial highway common carrier and highway contract carrier permits. The exemptions from minimum rates sought by MPA and American are for the operations conducted pursuant to their radial highway common carrier and highway contract carrier permits.

By Decision No. 65794 dated July 30, 1963, 61 Cal. P.U.C. 260, various carriers including some of the respondents and protestants herein were granted exemption from observance of the rates, rules, and regulations in City Carriers' Tariff No. 1-A;^{1/} City Carriers' Tariff No. 2-A - Highway Carriers' Tariff No. 1-A,^{2/} Minimum Rate Tariff No. 2, Minimum Rate Tariff No. 5 and Minimum Rate Tariff

^{1/} By Decision No. 74760 dated October 1, 1969 City Carriers' Tariff No. 1-A was changed to Minimum Rate Tariff 19.

^{2/} By Decision No. 65834 dated August 6, 1963 Minimum Rate Tariff No. 1-B superseded City Carriers' Tariff No. 2-A - Highway Carriers' Tariff No. 1-A.

No. 9-A^{3/} in connection with the transportation of checks, drafts and/or money orders (moving in process of clearance between banks and/or clearing houses), legal documents, business records, audit media and tabulation cards when transported in vehicles not exceeding a licensed weight of 4,000 pounds.

The application and/or petitions are opposed by the protestants and respondents who appeared at the hearing. The California Trucking Association appeared as an interested party.

In its brief American questions whether or not this Commission has jurisdiction over freight forwarders utilizing the services of an air carrier. The brief contends that air carriers are not included in the definition of a common carrier set forth in Section 211 and therefore questions whether, in the light of Section 203 of the Public Utilities Code, a consolidation and break-bulk service utilizing air carriage can be considered a freight forwarder operation requiring certification. Section 211 of the Public Utilities Code begins with the following:

" 'Common Carrier' includes:"
(Emphasis supplied.)

The word "includes" does not mean that the common carriers listed are the only common carriers. Section 220 of the Public Utilities Code defines a Freight Forwarder as follows:

" 'Freight Forwarder' means any corporation or person who for compensation undertakes the collection and shipment of property of others, and as consignor or otherwise ships or arranges to ship the property via the line of any common carrier at the tariff rates of such carrier or who receives such property as consignee thereof." (Emphasis supplied.)

^{3/} By Decision No. 67766 dated August 25, 1964 Minimum Rate Tariff No. 9-B superseded Minimum Rate Tariff No. 9-A.

The word "any" means not only those common carriers listed in Section 211 but also any common carrier included in Cal. Const. Article XII Sec. 17. A commercial airline is a common carrier within the purview of this Section.

During the course of the hearing the question arose as to whether or not the baggage operation conducted by MPA and American is a freight forwarder operation as defined in Section 220 of the Public Utilities Code. The baggage operation contemplates payment not of any freight tariff rate for the property being shipped but rather the payment of a passenger fare, the baggage being transported as an incident thereof and without specific charge. It appears therefore that the baggage operation is not an operation meeting all the criteria of the definition contained in Section 220 of the Public Utilities Code. Although the baggage operation is not that of a freight forwarder this does not mean that such operation is not within the jurisdiction of this Commission. Section 219 of the Public Utilities Code defines an Express Corporation as follows:

"'Express corporation' includes every corporation or person engaged in or transacting the business of transporting any freight, merchandise, or other property for compensation on the line of any common carrier or stage or auto stage line within this State."

The baggage operation meets all the criteria of said definition.

The parties protesting the applications contend that MPA and American have not demonstrated that public convenience and necessity require the issuance of the sought certificates of public convenience and necessity. Additionally one of the protestants contends that applicants cannot perform pickup and delivery service for extended distances unless the said transportation is performed by a common carrier. We have previously limited pickup and delivery service to a 25-mile radius of airports.

The parties protesting the petitions for exemption from the minimum rates urge that the petitions be denied because: (1) MPA is not now complying with the minimum rate tariffs and (2) the grant of an exemption to American would allegedly place it in a position to divert traffic from present carriers in California, not necessarily upon legitimate service factors, but rather on the basis of cutting existing rate levels. In its brief the California Trucking Association states that a need for minimum rate regulation has been demonstrated and that the Commission should upon its own initiative prescribe minimum rates for the involved transportation. However, it concedes that there is no evidence available upon which the Commission may prescribe meaningful rates and proposes a temporary grant of the requested exemptions and an immediate order to the Commission staff to study the involved transportation and propose minimum rates therefor.

While it is true that the record herein discloses that MPA is not now complying with all of the provisions of the minimum rate tariffs there is not sufficient evidence to determine whether the rates assessed by MPA are below the prescribed minimum rates. When exemption from the minimum rates was sought by the carriers opposing the instant petitions the Commission stated:

"In view of these and other dissimilarities between petitioners' services and those which are subject to the minimum rate provisions in issue herein, we find that said minimum rate provisions are not appropriate minimum rates, rules and regulations for the armored car and courier services which petitioners provide." (Decision No. 65794, 61 Cal. P.U.C. 260.)

With respect to the contention that the grant of an exemption to American would place it in a position to divert traffic from existing carriers by cutting rates, the carriers presently

exempt from such rate regulation can do the exact same thing. If those opposing the grant of the exemption believe there is a certain level below which rates should not go as their brief indicates, they should come forward with such information in a proper petition for the establishment of minimum rates as advocated by the California Trucking Association. In view of such indication in said brief we will not at this time direct the staff to make the study requested by the California Trucking Association.

Based on the evidence adduced the Commission finds that:

1. That portion of MPA's and American's operation wherein property is tendered to air common carriers as air freight meets all of the requisites of the definition of a freight forwarder as defined in Section 220 of the Public Utilities Code.
2. That portion of MPA's and American's operation wherein property is transported as baggage accompanying an employee traveling as a passenger does not meet all of the requisites of the definition of a freight forwarder as defined in Section 220 of the Public Utilities Code.
3. The growth of computerization has resulted in a greater demand for the "courier type" transportation service provided by MPA and American, than can be provided by existing services.
4. Public convenience and necessity require that certificates of public convenience and necessity to operate as a freight forwarder be issued to MPA and American. ✓
5. Freight Forwarders and Express Companies may perform, within 25 miles of the origin and destination air terminals, incidental pickup and delivery service.
6. Pickup and delivery service over longer distances should be performed by common carriers at the tariff rates of such carriers.

7. The transportation for which MPA and American seek exemption from the minimum rates is similar to the transportation which was previously exempted by Decision No. 65794.

8. The minimum rate provisions in issue herein are not appropriate minimum rates, rules and regulations for the courier type services which MPA and American provide.

Based on the above findings the Commission concludes that:

1. The operations of MPA and American are those of a freight forwarder as defined in Section 220 of the Public Utilities Code when they tender property to air common carriers as air freight.

2. The applications should be granted.

3. The petitions requesting exemption from the minimum rates should be granted.

MPA Courier Corporation and American Courier Corporation are 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, these rights extend to the holder a full or partial monopoly of a class of business. 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.

MPA Courier Corporation and American Courier Corporation are also placed on notice that they should apply for certificates of public convenience and necessity authorizing operations as an express corporation for that portion of their operation described as the baggage operation.

O R D E R

IT IS ORDERED that:

1. A certificate of public convenience and necessity is hereby granted to MPA Courier Corporation authorizing it to operate as a freight forwarder as defined in Section 220 of the Public Utilities Code by air and land common carrier as set forth in Appendix A attached hereto and made a part hereof.

2. A certificate of public convenience and necessity is hereby granted to American Courier Corporation authorizing it to operate as a freight forwarder as defined in Section 220 of the Public Utilities Code by air and land common carrier as set forth in Appendix B attached hereto and made a part hereof.

3. MPA Courier Corporation is exempted from observance of the rates, rules and regulations in

Minimum Rate Tariff No. 2,
Minimum Rate Tariff 19,
Minimum Rate Tariff No. 1-B,
Minimum Rate Tariff No. 5, and
Minimum Rate Tariff No. 9-B

in connection with the transportation of checks, drafts, money orders, securities, transit items, sales audit items, business records, audit media, tabulation cards, data processing materials, legal documents and printed or reproduced documents on data when transported in a vehicle not exceeding a licensed weight of 4,000 pounds.

4. American Courier Corporation is exempted from observance of the rates, rules, and regulations in

Minimum Rate Tariff No. 1-B,
Minimum Rate Tariff No. 2,
Minimum Rate Tariff No. 5, and
Minimum Rate Tariff No. 9-B

in connection with the transportation of checks, drafts and/or money orders (moving in process of clearance between banks and/or clearing

houses), legal documents, business records, audit media and tabulation cards when transported in a vehicle not exceeding a licensed weight of 4,000 pounds.

5. In providing service pursuant to the certificate herein granted, applicants shall comply with and observe the following service regulations. Failure so to do may result in a cancellation of the operating authorities granted by this decision.

- (a) Within thirty days after the effective date hereof, applicants shall file a written acceptance of the certificates herein granted. Applicants are placed on notice that, if they accept the certificates of public convenience and necessity herein granted, they will be required, among other things, to file annual reports of their operations.
- (b) Within one hundred twenty days after the effective date hereof, applicants shall establish the service herein authorized and file tariffs, in triplicate, in the Commission's office.
- (c) The tariff filings shall be made effective not earlier than ten days after the effective date of this order on not less than ten days' notice to the Commission and the public, and the effective date of the tariff filings shall be concurrent with the establishment of the service herein authorized.
- (d) The tariff filings made pursuant to this order shall comply with the regulations governing the construction and filing of tariffs set forth in the Commission's General Order No. 117.
- (e) Applicants shall comply with the requirements of the Commission's General Order No. 84-Series for the transportation of collect on delivery shipments. If applicants elect not to transport collect on

A. 50884, et al. ms

delivery shipments, they shall make the appropriate tariff filings as required by the General Order.

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

Dated at San Francisco, California, this 30th day of SEPTEMBER, 1969.

William Symons, Jr.
President

[Signature]

[Signature]
Commissioners

Commissioner A. W. Gatov, being necessarily absent, did not participate in the disposition of this proceeding.

MPA Courier Corporation, by the certificate of public convenience and necessity granted in the decision noted in the margin, is authorized to operate as a freight forwarder as defined in Section 220 of the Public Utilities Code via the lines of air common carriers between all points and places within the State of California subject to the following limitations:

1. The authority is limited to the following commodities: checks, drafts, money orders, securities, transit items, sales audit items, business records, audit media, tabulation cards, data processing materials, legal documents and printed or reproduced documents on data.
2. No collection or distribution service shall be provided by MPA Courier Corporation to or from any point more than 25 airline miles distant from any airport unless said service beyond said 25 airline miles is performed by a highway common carrier. As used herein "point" means any point within 25 airline miles of the city limits of any city in which is located an airport, or 25 airline miles of any airport located in an unincorporated area.
3. MPA Courier Corporation shall establish door-to-door rates for service between airports including points within 25 miles thereof as defined in paragraph 2 herein. On traffic moving to or from points beyond said 25 mile radius, MPA Courier Corporation shall in addition to said door-to-door rates, assess the lawful tariff rates of the highway common carrier engaged to perform said service.
4. In case of an emergency, such as an airport being closed because of weather conditions which would curtail the operations of air common carriers, highway common carriers or passenger stage corporations may be used to perform transportation between airports.

Issued by California Public Utilities Commission.

Decision No. 76236, Application No. 50884.

American Courier Corporation, by the certificate of public convenience and necessity granted in the decision noted in the margin, is authorized to operate as a freight forwarder as defined in Section 220 of the Public Utilities Code via the lines of air common carriers between all points and places within the State of California subject to the following limitations:

1. The authority is limited to the following commodities: business records, audit media, tabulation cards, data processing materials, checks, drafts, securities, transit items, radioactive pharmaceuticals and film.

2. Shipments shall not exceed 50 pounds from one consignor to one consignee except work in process in which the limitation is 100 pounds per shipment.

3. No collection or distribution service shall be provided by American Courier Corporation to or from any point more than 25 airline miles distant from any airport unless said service beyond said 25 airline miles is performed by a highway common carrier. As used herein "point" means any point within 25 airline miles of the city limits of any city in which is located an airport, or 25 airline miles of any airport located in an unincorporated area.

4. American Courier Corporation shall establish door-to-door rates for service between airports including points within 25 miles thereof as defined in paragraph 3 herein. On traffic moving to or from points beyond said 25 mile radius, American Courier Corporation shall in addition to said door-to-door rates assess the lawful tariff rates of the highway common carrier engaged to perform said service.

5. In case of an emergency, such as an airport being closed because of weather conditions which would curtail the operations of air common carriers, highway common carriers or passenger stage corporations may be used to perform transportation between airports.

Issued by California Public Utilities Commission.

Decision No. 76236, Application No. 50963.