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ORIGINAL

Decision No. 79327

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of JOSEPH N. LEBOW, an individual, doing business as Desert Empire Express, for an extension of its certificate of public convenience and necessity to operate as a highway common carrier for the transportation of property in interstate and intrastate and foreign commerce, and for an in-lieu certificate of public convenience and necessity therefor.

Application No. 52808  
(Filed August 11, 1971;  
Amended September 27, 1971)

O P I N I O N

By his application, as amended, Joseph N. LeBow, an individual doing business as Desert Empire Express, presently providing service as a highway common carrier for the transportation of general commodities, with certain exceptions, requiring protection from heat by use of ice (either water or solidified carbon dioxide) or by mechanical refrigeration between various points in Southern California, requests authority to extend service on such shipments moving in intrastate, interstate and foreign commerce to additional points and places south of the Los Angeles Basin Territory to and including the San Diego Territory. Copies of the application were served upon all carriers with which the proposed service might compete. Appropriate notice was filed in the Federal Register. Protests were filed by Milne Truck Lines, Desert Express and Cal-Canadian Motor Express. Upon amendment to the original application said protests were subsequently withdrawn.

Applicant proposes an "on-call" service Monday through Saturday. Applicant owns and operates 27 units of equipment,

including 17 refrigerated vans. As of June 30, 1971, applicant indicated a net worth in the amount of \$72,926.

It is alleged that applicant has provided service to the proposed extended area for many years; that applicant has received many requests from his customers to serve the proposed extended area as a highway common carrier particularly because of the rate advantage that would be afforded to said customers on split delivery shipments; that applicant is in doubt as to whether or not his permitted operation may be approaching a questionable legal status; and applicant is presently unable to serve existing interstate customers who wish to use applicant's service to the proposed extended area.

After consideration the Commission finds that public convenience and necessity require applicant's service on shipments in intrastate, interstate and foreign commerce to the extent set forth in the ensuing order.

Applicant's authority will be restated in a new certificate in loose-leaf form. A public hearing is not necessary.

Joseph N. LeBow 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

IT IS ORDERED that:

1. A certificate of public convenience and necessity is granted to Joseph N. LeBow, an individual doing business as Desert

Empire Express, authorizing him to operate as a highway common carrier, as defined in Section 213 of the Public Utilities Code, between the points and over the routes particularly set forth in Appendices A, B and C attached hereto and made a part hereof.

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

- a. Within thirty days after the effective date hereof, applicant shall file a written acceptance of the certificate herein granted. Applicant is placed on notice that, if he accepts the certificate of public convenience and necessity herein granted, he will be required, among other things, to comply with and observe the safety rules of the California Highway Patrol and the insurance requirements of the Commission's General Order No. 100-F.
- b. Within one hundred twenty days after the effective date hereof, applicant shall establish the service herein authorized and amend his tariffs on file with the Commission to reflect the authority herein granted.
- c. The tariff filings shall be made effective not earlier than thirty days after the effective date of this order on not less than thirty 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. 80-A.
- e. Applicant shall maintain his accounting records on a calendar year basis in conformance with the applicable Uniform System of Accounts or Chart of Accounts as prescribed or adopted by this Commission and shall file with the Commission, on or before March 31 of each year, an annual report of his operations in such form, content, and number of copies as the Commission, from time to time, shall prescribe.

f. Applicant shall comply with the requirements of the Commission's General Order No. 84-Series for the transportation of collect on delivery shipments. If applicant elects not to transport collect on delivery shipments, he shall make the appropriate tariff filings as required by the General Order.

3. The certificate of public convenience and necessity granted in paragraph 1 of this order shall supersede the certificate of public convenience and necessity granted by Decision No. 65511, dated June 4, 1963, in Application No. 44397 and Decision No. 74394, dated July 16, 1968, in Application No. 49630, which certificates are revoked 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 16th day of NOVEMBER, 1971.

[Signature]  
 Chairman

William Johnson Jr.

[Signature]

[Signature]

[Signature]  
 Commissioners

Joseph N. LeBow, an individual, doing business as Desert Empire Express, by the certificate of public convenience and necessity granted by the decision noted in the margin, is authorized to conduct operations as a highway common carrier as defined in Section 213 of the Public Utilities Code for the transportation of commodities requiring the use of special refrigeration or temperature control in specially designed and constructed equipment between: ✓

1. All points and places in the Los Angeles Basin Territory as described in Appendix B attached hereto.
2. All points and places in the Los Angeles Basin Territory on the one hand, and all points and places on and within ten miles laterally of the following highways, on the other hand:
  - (a) State Highway 14 between San Fernando and Mojave, inclusive.
  - (b) State Highway 50 between Keene and Kramer Junction, inclusive.
3. All points and places in the Los Angeles Basin Territory, on the one hand, and the following points and places in the Counties of Los Angeles, Kern, or San Bernardino: Castaic, Pearblossom, Inyokern, China Lake, Ridgecrest, Westend, Argus, Trona, Johannesburg, Randsburg and Red Mountain, on the other hand.
4. Points and places in the Los Angeles Basin Territory, on the one hand, and Coachella, on the other hand, serving all intermediate points on or within five miles laterally of the following highways, on the other hand:
  - (a) U. S. Highway 99 from the eastern boundary of the Los Angeles Basin Territory to Coachella.
  - (b) State Highway 111 from its intersection with U. S. Highway 99 near Whitewater to Coachella.

Issued by California Public Utilities Commission.

Decision No. 79327, Application No. 52000.

5. All points and places in the Los Angeles Basin Territory, on the one hand, and the San Diego Territory as described in Appendix C attached hereto, on the other hand, via Highway 101 (Interstate 5), State Highway 395, and State Highway 70, serving all intermediate points on, and all off-route points within ten miles laterally of said highways.

Joseph N. LeBow, an individual, doing business as Desert Empire Express, is authorized to use all available public highways between points to be served as hereinabove mentioned, and within the cities hereinabove to be served, and to use such streets and highways as may be necessary to serve consignors and consignees located within said cities.

(END OF APPENDIX A)

Issued by California Public Utilities Commission.

Decision No. 79327, Application No. 52803.

LOS ANGELES BASIN TERRITORY includes that 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 No. 110, approximately two miles west of Chatsworth; easterly along State Highway No. 110 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 2.0 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 No. 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; southwestly along La Cadena Drive to Iowa Avenue; southerly along Iowa Avenue to U. S. Highway No. 60; southwestly along U. S. Highways Nos. 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 No. 74; westerly along State Highway No. 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; southwestly 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 No. 395, 2.1 miles north of the unincorporated community of Temecula; southerly along said county road to U. S. Highway No. 395; southeasterly along U. S. Highway No. 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; northwesterly along the shoreline of the Pacific Ocean to point of beginning.

(END OF APPENDIX B)

Issued by California Public Utilities Commission.

Decision No. 79327, Application No. 52003.

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.

(END OF APPENDIX C)

Issued by California Public Utilities Commission.

Decision No. 79327, Application No. 52808.