

Decision No. 80640

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
THOMAS J. STEWART and JOHN F. GARDEN,
Partners, doing business under the
fictitious name of NIMITZ AIR CARGO,
for a certificate of public convenience
and necessity for the transportation of
General Commodities between points
within San Francisco Territory in
intrastate and interstate and foreign
commerce.

Application No. 53482
(Filed July 25, 1972)

O P I N I O N

Applicants operate pursuant to a radial highway common carrier permit. Said permit authorizes the transportation of general commodities, with the usual exceptions, between all points in California.

By the application herein, applicants seek a certificate of public convenience and necessity to transport general commodities with certain exceptions in intrastate, interstate and foreign commerce between all points and places in the San Francisco Territory. Said territory covers generally the area surrounding San Francisco Bay. A copy of the application has been filed with the Interstate Commerce Commission under Section 206(a)(6) of the Interstate Commerce Act, and notice thereof appeared in the Federal Register on August 23, 1972. No protests to the granting of the sought authority have been received.

Applicants will provide a daily on-call service, seven days a week, between all points in the requested area. The rates to be assessed will be the same scale as those contained in the Commission's Minimum Rate Tariff 2 and other applicable minimum rate tariffs. A tariff containing such rates and related rules and regulations will be filed by applicants upon receipt of the sought authority. Applicants' Statement of Financial Position as of March 31, 1972, shows total assets of \$24,466.81, total liabilities

of \$15,451.88 and partnership equity of \$9,014.93. Their net income before federal income tax and their gross operating revenue for the eleven months ending December 31, 1971, were \$14,837.68 and \$57,106.03, respectively, and for the three months ending March 31, 1972, were \$7,185.11 and \$27,195.00, respectively. Applicants' operating equipment includes two tractors, two trucks, one van semi-trailer, two Ford Econolines and a station wagon.

The application alleges that applicants commenced operations in March 1971, offering same-day pickup and delivery service to shippers on the San Francisco Peninsula; that the demands of applicant's customers have been constantly increasing and service is now provided throughout the entire San Francisco Territory; that as a result thereof, applicants have increased the frequency of their service to such an extent that a certificate is a more appropriate authority to continue this operation; and that the sought authority will enable applicants to afford the character of service that will meet the requirements of their shippers.

Upon consideration, the Commission finds as follows:

1. Applicants possess the experience, equipment, personnel and financial resources to institute and maintain the proposed service.

2. Public convenience and necessity require that applicants be authorized to engage in operations in intrastate commerce as proposed in the application and also require that applicants be authorized to engage in operations in interstate and foreign commerce within limits which do not exceed the scope of the intrastate operations authorized by the order herein.

3. Public hearing is not necessary.

The Commission concludes that the application should be granted as set forth in the ensuing order.

Applicants 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 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 Thomas J. Stewart and John F. Garden, a partnership, doing business as Nimitz Air Cargo, authorizing them to operate as a highway common carrier, as defined in Section 213 of the Public Utilities Code, between the points particularly set forth in Appendix A attached hereto and made a part hereof.

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

- (a) Within thirty days after the effective date hereof, applicants shall file a written acceptance of the certificate herein granted. Applicants are placed on notice that, if they accept the certificate of public convenience and necessity herein granted, they 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-Series.
- (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 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-Series.

- (e) Applicants shall maintain their 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 their operations in such form, content, and number of copies as the Commission, from time to time, shall prescribe.
- (f) 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 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.

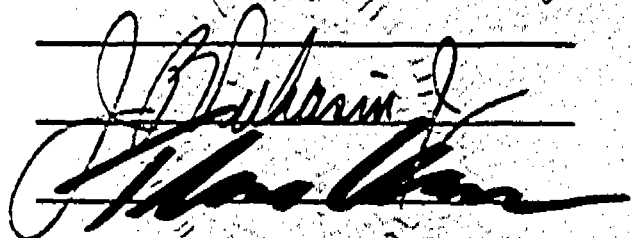
Dated at San Francisco, California, this 25th day of OCTOBER, 1972.

I dissent:



Commissioner


President



Commissioners

Commissioner William Symons, Jr., being necessarily absent, did not participate in the disposition of this proceeding.

Thomas J. Stewart and John F. Garden, doing business as Nimitz Air Cargo, by the certificate of public convenience and necessity granted in the decision noted in the margin, are authorized to conduct operations as a highway common carrier as defined in Section 213 of the Public Utilities Code for the transportation of general commodities between all points and places in the San Francisco Territory as described in Note A.

Except that carrier shall not transport any shipments of:

1. Used household goods, personal effects and office, store and institution furniture, fixtures and equipment not packed in accordance with the crated property requirements set forth in Item 5 of Minimum Rate Tariff 4-B.
2. 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.
3. Livestock, viz.: barrows, boars, bulls, butcher hogs, calves, cattle, cows, dairy cattle, ewes, feeder pigs, gilts, goats, heifers, hogs, kids, lambs, oxen, pigs, rams (bucks), sheep, sheep camp outfits, sows, steers, stags, swine or wethers.
4. Liquids, compressed gases, commodities in semiplastic form and commodities in suspension in liquids in bulk, in tank trucks, tank trailers, tank semitrailers or a combination of such highway vehicles.
5. Commodities when transported in bulk in dump trucks or in hopper-type trucks.
6. Commodities when transported in motor vehicles equipped for mechanical mixing in transit.
7. Portland or similar cements, in bulk or packages, when loaded substantially to capacity of motor vehicle.
8. Logs.
9. Articles of extraordinary value as set forth in Item 780 of National Motor Freight Classification A-12, William Herbold, Issuing Officer, on the issue date hereof.
10. Fruits or vegetables, fresh or green.

Issued by California Public Utilities Commission.

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Note A.

SAN FRANCISCO TERRITORY

San Francisco Territory includes all the City of San Jose and that area embraced by the following boundary: Beginning at the point the San Francisco-San Mateo County Line meets the Pacific Ocean; thence easterly along said County Line to a point one mile west of State Highway 82; southerly along an imaginary line one mile west of and paralleling State Highway 82 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 Division Street; easterly along Division Street to the Southern Pacific Company right-of-way; southerly along the Southern Pacific right-of-way to the Campbell-Los Gatos City Limits; easterly along said limits and the prolongation thereof to South Bascom Avenue (formerly San Jose-Los Gatos Road); northeasterly along South Bascom Avenue to Foxworthy Avenue; easterly along Foxworthy Avenue to Almaden Road; southerly along Almaden Road to Hillsdale Avenue; easterly along Hillsdale Avenue to State Highway 82; northwesterly along State Highway 82 to Tully Road; northeasterly along Tully Road and the prolongation thereof to White Road; northwesterly along White Road to McKee Road; southwesterly along McKee Road to Capitol Avenue; northwesterly along Capitol Avenue to State Highway 238 (Oakland Road); northerly along State Highway 238 to Warm Springs; northerly along State Highway 238 (Mission Blvd.) via Mission San Jose and Niles to Hayward; northerly along Foothill Boulevard and MacArthur Boulevard to Seminary Avenue; easterly along Seminary Avenue to Mountain Boulevard; northerly along Mountain Boulevard to Warren Boulevard (State Highway 13); northerly along Warren Boulevard to Broadway Terrace; westerly along 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; westerly, northerly and easterly along the campus boundary to Euclid Avenue; northerly along Euclid Avenue to Marin Avenue; westerly along Marin Avenue to Arlington Avenue; northerly along Arlington Avenue to San Pablo Avenue (State Highway 123); northerly along San Pablo Avenue to and including 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.

(END OF APPENDIX A)

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