

ORIGINALDecision No. 81573

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application
 BAY CITIES EXPRESS CO., a California
 corporation (CHARLES E. KINGMAN,
 District Director, Internal Revenue
 Service, Assignee) and YELLOW FREIGHT
 SYSTEM, INC., for authority to sell
 and transfer a Certificate of Public
 Convenience and Necessity.

Application No. 53774
 (Filed January 2, 1973)

O P I N I O N

By this application applicant Bay Cities Express Co. (Bay Cities) by Charles E. Kingman, District Director, Internal Revenue Service, Assignee, requests authority to transfer and applicant Yellow Freight System, Inc., (Yellow) requests authority to acquire the intrastate highway common carrier operating authority granted to Bay Cities by Decision No. 60503 issued August 2, 1960 in Application No. 41819, as supplemented by Decision No. 63047 issued January 9, 1962 in Application No. 41819 and Application No. 43705.

Yellow is a common carrier in interstate and intrastate commerce, holding certificates of public convenience and necessity issued by this Commission in Decision No. 64364 issued October 9, 1962 in Application No. 44698; Decision No. 75875 issued July 1, 1969 in Application No. 49889; and Decision No. 77427 issued June 30, 1970 in Application No. 51894, as amended by Decision No. 77508 issued July 14, 1970. Attached to the application is a map showing a portion of the intrastate authority currently held by Yellow, and the intrastate operating authority sought to be acquired by Yellow from Bay Cities by this application.

Yellow is an Indiana corporation which has also been incorporated under the laws of the State of California on December 9, 1968, as evidenced by the certificate of the Secretary of State dated June 5, 1973, which has been received in evidence as Exhibit No. 1.

Applicants allege that Bay Cities has been in business since 1960, first as a partnership and later as the present corporation. In recent years the financial condition of Bay Cities has deteriorated to the extent that its certificates of operating authority, including the intrastate authority sought to be transferred, were seized by the Internal Revenue Service for nonpayment of withholding and social security taxes. Hertz Rental Corporation, from whom Bay Cities was leasing all of its motor vehicle equipment, cancelled its leases and repossessed all of Bay Cities' motor vehicle equipment compelling Bay Cities to cease operations on May 1, 1972. On July 12, 1972, the Internal Revenue Service placed Bay Cities' operating authorities up for sale, and Yellow was the successful bidder for the purchase of the operating authorities. Attached to the application as Exhibit C is a copy of the Certificate of Sale of Seized Property executed by Mr. Robert C. Schirle of the Internal Revenue Service, evidencing Yellow's successful bid. This bid provides for the payment of the sum of \$30,000 for Bay Cities' intrastate certificate of public convenience and necessity, evidenced by Decision No. 60503, and Bay Cities' Interstate Commerce Commission certificate of public convenience and necessity under I.C.C. Docket No. MC-121228. The transfer of both the intrastate operating rights and the interstate operating rights is conditioned upon the approval of transfer of both of the Commissions.

The balance sheet of Yellow, dated June 30, 1972, is attached to the application as Exhibit D, and the income statement of Yellow for the six months ended June 30, 1972, and for the calendar years 1970 and 1971 is attached to the application as Exhibit E.

The balance sheet of Bay Cities is attached to the application as Exhibit F. That balance sheet shows that Bay Cities suffered losses from operations in 1971 which amounted to approximately \$29,000.

The reasons and justifications for the proposed transfer which are set forth in the application are as follows:

1. Due to financial reverses and the repossession of its motor vehicle equipment, Bay Cities has been forced to cease operations and the public is being deprived of services under Bay Cities authority.

2. The proposed sale price is fair, just, and reasonable, and the sale would be in the best interest of both applicants and the public.

3. Yellow has the financial ability as well as the equipment and experience necessary to provide the service authorized under Bay Cities operating authority.

No protests to the granting of the application have been filed with this Commission.

The Commission finds that:

1. A public hearing is not required.

2. Yellow is an Indiana corporation which has also been incorporated under the laws of the State of California.

3. The application shows with reasonable certainty that the proposed transfer involved in this proceeding will not have a significant effect on the environment.

4. The proposed transfer will not be adverse to the public interest.

The Commission concludes that the proposed transfer by Bay Cities to Yellow of Bay Cities' intrastate operating authority described in the application should be authorized.

The authorization granted shall not be construed as a finding of the value of the rights authorized to be transferred.

The order which follows will provide for, in the event the transfer is consummated, the revocation of the certificates presently held by the applicants and the issuance of a certificate in appendix form to Yellow. This certificate will be restated, but such restatement will not change or broaden the authority.

Yellow Freight System, Inc. is 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. 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. On or before October 1, 1973, Bay Cities Express Co., a California corporation (Charles E. Kingman, District Director, Internal Revenue Service, Assignee), may sell and transfer, and Yellow Freight System, Inc., an Indiana corporation authorized to do business in the State of California, may purchase and acquire, the operative rights referred to in the application.
2. Within thirty days after the consummation of the transfer herein authorized, purchaser shall notify the Commission, in writing of that fact and within said period shall file with the Commission a true copy of any bill of sale or other instrument of transfer which may be executed to effect said transfer.
3. Purchaser shall amend or reissue the tariffs on file with the Commission, naming rates and rules governing the common carrier operations herein to show that it has adopted or established, as its own, said rates and rules. The tariff filings shall be made effective not earlier than five days after the effective date of this order on not less than five days' notice to the Commission and the public, and the effective date of the tariff filings shall be concurrent with the consummation of the transfer herein

authorized. The tariff filings made pursuant to this order shall comply in all respects with the regulations governing the construction and filing of tariffs set forth in the Commission's General Order No. 80-Series. Failure to comply with and observe the provisions of General Order No. 80-Series may result in a cancellation of the operating authority granted by this decision.

4. On or before the end of the third month after the consummation of the transfer as herein authorized, purchaser shall cause to be filed with the Commission, in such form as the Commission may prescribe, an annual report, or reports, related to the operations of the seller for the period commencing with the first day of the current year to and including the effective date of the transfer.

5. In the event the transfer authorized in paragraph 1 hereof is consummated, a certificate of public convenience and necessity is granted to Yellow Freight System, Inc., a corporation, authorizing it 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 Appendix A attached hereto and made a part hereof.

6. The certificate of public convenience and necessity granted in paragraph 5 shall supersede the certificates of public convenience and necessity granted by:

<u>Decision No.</u>	<u>Dated</u>	<u>Application No.</u>
60503	8/2/60	41819
63047	1/9/62	41819 and 43705
64364	10/9/62	44698
75875	7/1/69	49889
77427	6/30/70	51894
77508	7/14/70	51894

which certificates are revoked effective concurrently with the effective date of the tariff filings required by paragraph 3 hereof.

7. Within thirty days after the transfer herein authorized is consummated, purchaser shall file a written acceptance of the certificate herein granted. Purchaser is placed on notice that, if

it accepts the certificate of public convenience and necessity herein granted, it 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.

8. Purchaser shall maintain its 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 its operations in such form, content, and number of copies as the Commission, from time to time, shall prescribe.

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

The effective date of this order is the date hereof.

Dated at San Francisco, California, this 3rd
day of May, 1973.

Vernon L. Sturgeon
President
1st Vice President
J. P. [Signature]
[Signature]
[Signature]
Commissioners

Yellow Freight System, Inc., a corporation, by the certificate of public convenience and necessity granted in 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 as follows:

- I. For the transportation of general commodities, subject to the restrictions and exceptions specifically noted:

1. BETWEEN the San Francisco Territory, as defined in Note A, and Los Angeles Territory, as defined in Note B, over any and all routes:

Subject to exceptions 1, 3, 7, 9, 12, 13, 14 and 15.

RESTRICTION: Carrier shall not, without the approval of this Commission, operate as an underlying carrier for an express corporation or transport property for a freight forwarder, nor shall said carrier publish joint rates with an express corporation or freight forwarder.

Consolidation of this operating right with other operating rights is prohibited unless and until the Commission orders otherwise.

2. BETWEEN San Francisco Territory, as defined in Note A, on the one hand, and, on the other hand:
- (a) Points and places on U.S. Highway 66 between Los Angeles and San Bernardino, including San Bernardino;
 - (b) Points and places on State Highway 60 and Interstate Highway 10, between Los Angeles and Redlands, including Redlands;
 - (c) Points and places on State Highway 60, between Los Angeles and Riverside, including Riverside;

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- (d) Points and places on State Highway 1 and Interstate Highway 5, between Los Angeles and Santa Ana, including Santa Ana;
- (e) Points and places on State Highway 91 and Interstate Highway 15 (U.S. Highway 395), between Los Angeles and Colton, including Colton;

Including service to and from points laterally within three miles of routes (a) through (e), inclusive; and

Subject to exceptions 1, 3, 7, 9, 12, 13, 14 and 15.

- 3. BETWEEN Los Angeles on the one hand, and San Diego on the other hand. Such authority does not include the right to render service to, from or between intermediate points;

Subject to exceptions 1, 2, 3, 4, 5, 6 and 12.

- 4. BETWEEN Los Angeles, San Bernardino, Redlands, Colton, Highland, Rialto and Fontana, on the one hand, and Victorville, George Air Force Base, Apple Valley, Lucerne Valley, Adelanto, Hesperia, Barstow, Camp Irwin, Daggett, Yermo and Hinkley, on the other hand.

Such authority does not include the right to render service from, to or between intermediate points;

Subject to exceptions 1, 2, 3, 4, 5, 6, 10, 11 and 12.

- 5. BETWEEN all points and places within that portion of the Los Angeles Basin Territory as described in Note C;

Subject to exceptions 1, 2, 3, 4, 5, 6, 11 and 12.

- 6. BETWEEN all points and places in the territory composed of the following portions of counties:

- (a) Tulare County, west of the western boundaries of the Sierra National Forest, the Sequoia National Park and the Sequoia National Forest;

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- (b) Madera County, south and west of the southern and western boundaries of the Sierra National Forest;
- (c) Kings County, north and east of State Highway 33; and
- (d) Fresno County, north and east of State Highway 33 and south and west of the southern and western boundaries of the Sierra National Forest;

Subject to exceptions 1, 2, 3, 4, 5, 6, 8, 9, 11, 12, 13, 14 and 15.

7. BETWEEN all points on and within three miles of the following routes:
- (a) Between Richmond and San Jose and all points intermediate and between intermediate points via Interstate Highway 80 and State Highways 17 and 238, and including the off-route point of Newark.
 - (b) Between Richmond and San Jose and all points intermediate and between intermediate points via Interstate Highway 80, San Francisco-Oakland Bay Bridge, U.S. Highway 101 and State Highway 82, including Los Altos.
 - (c) Between San Jose and Salinas and all points intermediate and between intermediate points via U.S. Highway 101.
 - (d) Between Gilroy and Hollister and all points intermediate and between intermediate points via State Highway 25.
 - (e) Between Hollister and the junction of U.S. Highway 101 and State Highway 156 via State Highway 156.
 - (f) Between San Jose and Santa Cruz and all points intermediate and between intermediate points via State Highway 17.

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- (g) Between Santa Cruz and Carmel and all points intermediate and between intermediate points via State Highway 1 and including the off-route points of Soquel, Aptos, Freedom, Capitola, Moss Landing, Seaside and Pacific Grove.
- (h) Between Sunnyvale and Santa Cruz and all points intermediate thereto and between intermediate points via Mathilda Avenue, Saratoga-Sunnyvale Road, State Highways 85 and 9.
- (i) Between Saratoga and Los Gatos via State Highway 9.
- (j) Between Santa Clara and Campbell.
- (k) San Francisco and San Jose and intermediate points via U.S. Highway 101 and State Highway 82.
- (l) San Francisco, on the one hand, and Los Gatos, Los Altos, Campbell, Cupertino, Watsonville, Seaside, Monterey and Santa Cruz, on the other hand.

Subject to exceptions 1, 2, 3, 4, 5, 6, 8, 11 and 12.

II. For the transportation of Class A and B explosives over irregular routes and between the points described as follows:

- 1. BETWEEN points in the San Francisco Territory, as defined in Note A, and Sacramento, including points within 20 miles of Sacramento:
 - (a) Points on and within 20 miles of Interstate Highway 80 between Richmond and Sacramento;
 - (b) Points on and within 20 miles of Interstate Highways 580, 205 and 5 between Hayward and Stockton;
 - (c) Points on and within 20 miles of State Highway 24, Interstate Highway 680 and State Highways 4 and 160 between Oakland and Sacramento; and

2. BETWEEN the Los Angeles Basin Territory, as defined in Note D, and Sacramento, including points within 20 miles of Sacramento, via Interstate Highway 5 between San Fernando and Wheeler Ridge and State Highway 99 between Wheeler Ridge and Sacramento, including points within 20 miles laterally of said highways, except between points in the San Francisco Territory, as defined in Note A, and points in the Los Angeles Basin Territory.

III. To the extent that any of the authority herein, is duplicated, it shall not be construed as conferring more than one operating right.

EXCEPTIONS:

Where specifically noted, and pursuant to the authority herein granted, 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 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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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. Commodities in bulk.
8. Logs.
9. Articles of extraordinary value.
10. Fruits or vegetables, fresh or green.
11. Trailer coaches and campers, including integral parts and contents when the contents are within the trailer coach or camper.
12. Commodities requiring the use of special refrigeration or temperature control in specially designed and constructed refrigerator equipment.
13. Commodities which by reason of their abnormal size, weight or bulk require special equipment and handling.
14. Commodities injurious to, or contaminating to, other lading.
15. Explosives.

Territorial Descriptions

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

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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 two 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; southwestly 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 Blvd. and MacArthur Blvd. to Seminary Avenue; easterly along Seminary Avenue to Mountain Blvd.; northerly along Mountain Blvd. to Warren Blvd. (State Highway 13); northerly along Warren Blvd. 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.

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NOTE B

LOS ANGELES TERRITORY

The Los Angeles Territory includes that area embraced by the following boundary: Beginning at the intersection of Sunset Boulevard and State Highway 1; thence northeasterly on Sunset Boulevard to Interstate Highway 405; thence northerly along Interstate Highway 405 to State Highway 118 at San Fernando (including the City of San Fernando); thence southeasterly along State Highway 118 to and including the City of Pasadena; thence easterly along Foothill Boulevard from the intersection of Foothill Boulevard and Michilinda Avenue to Valencia Way; northerly on Valencia Way to Hillcrest Boulevard; easterly and northerly along Hillcrest Boulevard to Grand Avenue; easterly and southerly along Grand Avenue to Greystone Avenue; easterly on Greystone Avenue and the prolongation thereof to the west side of Sawpit Wash; southerly on Sawpit Wash to the intersection of Mountain Avenue and Royal Oaks Drive; easterly along Royal Oaks Drive to Buena Vista Street, south on Buena Vista Street and due south on a prolongation thereof to the west bank of the San Gabriel River; southerly along the west bank of the San Gabriel River to Beverly Boulevard; southeasterly on Beverly Boulevard to Painter Avenue in the City of Whittier; southerly on Painter Avenue to Telegraph Road; westerly on Telegraph Road to the west bank of the San Gabriel River; southerly along the west bank of the San Gabriel River to Imperial Highway (State Highway 90); westerly on Imperial Highway to Lakewood Boulevard (State Highway 19); southerly along Lakewood Boulevard to its intersection with State Highway 1 at Ximeno Street; southerly along Ximeno Street and its prolongation to the Pacific Ocean; westerly and northerly along the shoreline of the Pacific Ocean to a point directly south of the intersection of Sunset Boulevard and State Highway 1; thence northerly along an imaginary line to point of beginning.

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NOTE C

PORTION OF LOS ANGELES BASIN TERRITORY

The portion of the Los Angeles Basin Territory referred to in Part I, paragraph 5, preceding, includes that area embraced by the following boundary: Beginning at the intersection of Sunset Boulevard and State Highway 1; thence northeasterly on Sunset Boulevard to Interstate Highway 405; thence northerly along Interstate Highway 405 to State Highway 118; 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 of the City of San Fernando to Maclay Avenue; northeasterly along Maclay and its prolongation to the Angeles National Forest Boundary; southeasterly and easterly along the Angeles National Forest and San Bernardino National Forest Boundary to Mill Creek Road (State Highway 38); westerly along Mill Creek Road to Bryant Street; southerly along Bryant Street to and including the unincorporated community of Yucaipa; westerly along Redlands Boulevard to Interstate Highway 10; northwesterly along Interstate Highway 10 to and including the City of Redlands; westerly along Interstate Highway 10 to Interstate Highway 15 (U.S. Highway 395); southerly along Interstate Highway 15 to State Highway 91; westerly along State Highway 91 to State Highway 55; southerly on State Highway 55 to the Pacific Ocean; westerly and northerly along the shoreline of the Pacific Ocean to a point directly south of the intersection of Sunset Boulevard and State Highway 1; thence northerly along an imaginary line to point of beginning.

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NOTE D

LOS ANGELES BASIN TERRITORY

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 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 of the City of San Fernando to Maclay Avenue; northeasterly along Maclay and its prolongation to the Los Angeles National Forest Boundary; southeasterly and easterly along the Angeles National Forest and San Bernardino National Forest Boundary to Mill Creek Road (State Highway 38); westerly along Mill Creek Road to Bryant Street; southerly along Bryant Street to and including the unincorporated community of Yucaipa; westerly along Yucaipa Boulevard to Interstate Highway 10; northwesterly along Interstate Highway 10 to Redlands Boulevard; northwesterly along Redlands Boulevard to Barton Road; westerly along Barton Road to La Cadena Drive; southerly along La Cadena Drive to Iowa Avenue; southerly along Iowa Avenue to State Highway 60; southeasterly along State Highway 60 and U.S. Highway 395 to Nuevo Road; easterly along Nuevo Road via Nuevo and Lakeview to State Highway 79; southerly along State Highway 79 to State Highway 74; thence westerly to the corporate boundary of the City of Hemet; southerly, westerly and northerly along said corporate boundary to The Atchison, Topeka & Santa Fe right-of-way; southerly along said right-of-way to Washington Road; southerly along Washington Road through and including the unincorporated community of Winchester to Benton Road; westerly along Benton Road to Winchester Road (State Highway 79) to Jefferson Avenue; southerly along Jefferson Avenue to U.S. Highway 395; southerly 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; northwesterly along the shoreline of the Pacific Ocean to point of beginning, including the point of March Air Force Base.

(END OF APPENDIX A)

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