

**ORIGINAL**Decision No. 81660

## BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of SILVER FLEET MOTOR EXPRESS, INC., a corporation, for authority to issue shares of its common capital stock and issue promissory notes, pursuant to Sections 816, et seq., of the California Public Utilities Code, and to acquire certificate of public convenience and necessity and property, and CULY TRANSPORTATION CO., INC., doing business as CAL-CANADIAN MOTOR EXPRESS, to transfer, pursuant to Sections 851, et seq., of the Public Utilities Code.

Application No. 53849  
(Filed February 15, 1973;  
amended May 7 and June 6, 1973)

O P I N I O N

By Application No. 53849, as amended, applicant Culy Transportation Co., Inc., doing business as Cal-Canadian Motor Express (Cal-Canadian), requests authority to transfer, and applicant Silver Fleet Motor Express, Inc. (Motor Express) requests authority to acquire, the operating authority granted to Cal-Canadian by Decision No. 62224 dated June 30, 1961 in Application No. 42743 and the motor vehicle equipment described in Exhibit D to the application. Motor Express also seeks authority to issue stock to Silver Fleet, Inc., and authority for Ronald L. Denkler and David C. Huddleston, the owners of Silver Fleet, Inc., to acquire such Motor Express stock upon the liquidation of Silver Fleet, Inc.

Motor Express was incorporated as a California corporation on January 22, 1973, and is authorized by its Articles of Incorporation to issue 7,500 shares of common stock without nominal or par value. By this application Motor Express requests authority (a) to issue 1,600 shares to Cal-Canadian for the sum of \$10,000 cash to be used

as working capital and for certain motor vehicle equipment to be used to conduct operations under the certificate to be transferred to Motor Express; and (b) to issue an additional 3,200 shares for cash and tangible assets, totaling \$320,000, upon the exercise of stock options to be granted to Silver Fleet, Inc., a corporation whose stock is held by Ronald L. Denkler and David C. Huddleston. The stock of Motor Express issued to Silver Fleet, Inc. pursuant to the exercise of stock options is then to be distributed to Ronald L. Denkler and David C. Huddleston in the amount of 1,600 shares each, upon the liquidation of Silver Fleet, Inc. Such transactions are to be in accordance with the provisions in an agreement entered into among the parties, dated October 31, 1972, attached to the application as Exhibit C, as amended by letter agreement dated April 26, 1973, a copy of which has been received in evidence as Exhibit No. 1, and letter agreement dated June 2, 1973, a copy of which has been received in evidence as Exhibit No. 2.

In addition to shares of capital stock, Motor Express proposes to issue a promissory note to Cal-Canadian for the total sum of: (a) the difference between the book value of the motor vehicle equipment on the books of Cal-Canadian at the time of transfer and the retail value as determined by an appraisal to be made by an appraiser acceptable to the parties, (b) the sum of \$125,000, and (c) the sum of \$10,000. Exhibit No. 3, which is the revised consolidated pro forma balance sheet of Motor Express on October 31, 1972, shows the amount of the promissory note to be \$222,000. The note is to be payable at the rate of \$100,000 per year without interest. Upon the exercise of the option and the issuance of the stock to Silver Fleet, Inc., \$50,000 is to be paid by Motor Express to Cal-Canadian on the promissory note.

The consideration to be paid by Silver Fleet, Inc. for the 3,200 shares of stock in Motor Express is to include not less than \$80,000 in cash. The remaining balance of \$240,000 is to be paid in

A. 53849 ek

tangible property which has a value in excess of \$240,000. The excess of the total value of tangible property is to be covered by a promissory note to be issued by Motor Express to Silver Fleet, Inc. Exhibit E attached to the application shows the amount of such promissory note to be \$114,523.

The operating rights which Cal-Canadian proposes to transfer and Motor Express proposes to acquire are set forth in Exhibit B attached to the application. The motor vehicle equipment which Motor Express proposes to acquire from Cal-Canadian is described in Exhibit D attached to the application. Exhibit F attached to the application is the balance sheet of Cal-Canadian as of September 30, 1972. A revised pro forma balance sheet of Motor Express setting forth the proposed capital structure of Motor Express upon approval of this application, (a) at the time of the transfer of the rights and equipment of Cal-Canadian to Motor Express, and (b) at the time of the exercise of the options and the issuance of the additional shares of stock has been received in evidence as Exhibit No. 3.

Motor Express proposes to continue the operation as presently conducted by Cal-Canadian, using the property concurrently acquired with the rights, and to utilize the additional properties to be acquired upon issuance of the stock at the time of the exercise of the options provided for herein. Motor Express further proposes to add to the equipment and facilities as the demands of the shipping public require.

Cal-Canadian is presently a party to all Western Motor Tariff Bureau, Inc. agent tariff publications as are necessary for publication of rates to cover its present services under its operating rights. Motor Express proposes to adopt those tariffs and continue the same rates.

Applicants allege that the proposed transfer and issuance of stock and notes will be in the public interest for the reason, among others, that the pooling of interests in one corporation by the three ultimate stockholders will consolidate the varied talents of each of the principals to make for a more efficient operation in serving the shipping public.

A copy of the application and of the amendments was forwarded to California Trucking Association which publishes information with respect to applications of this nature in "Cal Trux" which is distributed to the entire membership of the California Trucking Association. Applicants request relief from the provisions of Rule 37 of the Commission's Rules of Practice and Procedure. Such request for relief is hereby granted.

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. The application shows with reasonable certainty that the proposed transfer involved in this proceeding will not have a significant effect on the environment.
3. The proposed transfer will not be adverse to the public interest.
4. The proposed security issues are for proper purposes.
5. The money, property, or labor to be procured or paid for by the issue of the securities authorized by this decision is reasonably required for the purposes specified, which purposes are not, in whole or in part, reasonably chargeable to operating expenses or to income.
6. The acquisition upon the liquidation of Silver Fleet, Inc. of 1,600 shares of Motor Express by Ronald L. Denkler and 1,600 shares of Motor Express by David C. Huddleston will not be adverse to the public interest.

The Commission concludes that:

1. The proposed transfer by Cal-Canadian to Motor Express of the operating authority and property described in the application should be authorized.

2. The proposed issue by Motor Express of (a) 1,600 shares of no par common stock to Cal-Canadian for a consideration not to exceed \$160,000, (b) 3,200 shares of no par common stock to Silver Fleet, Inc. for a consideration not to exceed \$320,000, (c) a promissory note to Cal-Canadian in an amount not to exceed \$222,000, and (d) a promissory note to Silver Fleet, Inc. in an amount not to exceed \$114,523, all in accordance with the provisions of an agreement dated October 31, 1972, attached to the application as Exhibit C and subsequently amended by Exhibits Nos. 1 and 2, should be authorized.

3. The proposed acquisition upon the liquidation of Silver Fleet, Inc. of 1,600 shares of Motor Express capital stock by Ronald L. Denkler and 1,600 shares of Motor Express capital stock by David C. Huddleston should be authorized.

Silver Fleet Motor Express, 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.

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

The order which follows will provide for, in the event the transfer is completed, the revocation of the certificate presently held by Cal-Canadian and the issuance of a certificate in appendix form to Motor Express. The certificate will be restated but such restatement will not change or broaden the authority transferred.

O R D E R

IT IS ORDERED that:

1. On or before January 31, 1974, Culy Transportation Co., Inc., doing business as Cal-Canadian Motor Express, may sell and transfer the operative rights and property referred to in the application to Silver Fleet Motor Express, Inc.

2. Within thirty days after the transfer the purchaser shall file with the Commission written acceptance of the certificate and a true copy of the bill of sale or other instrument of transfer.

3. Purchaser shall amend or reissue the tariffs on file with the Commission, naming rates and rules governing the common carrier operations transferred to show that it has adopted or established, as its own, the 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 transfer. 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 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 transfer the 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 is completed, effective concurrently with the effective date of the tariff filings required by paragraph 3, a certificate of public convenience and necessity is granted to Silver Fleet Motor Express, 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 set forth in Appendix A, attached hereto and made a part hereof.

6. The certificate of public convenience and necessity granted by Decision No. 62224 is revoked effective concurrently with the effective date of the tariff filings required by paragraph 3.

7. Purchaser shall comply with 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.

10. On or before January 31, 1974, Silver Fleet Motor Express, Inc. may issue (a) 1,600 shares of its no par capital stock to Guly Transportation Co., Inc., doing business as Cal-Canadian Motor Express, for a consideration of cash and motor vehicle equipment in an amount not to exceed \$160,000, and (b) 3,200 shares of its no par capital stock to Silver Fleet, Inc. for a consideration of cash and

tangible assets in an amount not to exceed \$320,000, all in accordance with the provisions of an agreement dated October 31, 1972, attached to the application as Exhibit C, and as amended by letter agreements received in evidence as Exhibits Nos. 1 and 2. Upon the liquidation of Silver Fleet, Inc., Ronald L. Denkler and David C. Huddleston, the stockholders of Silver Fleet, Inc., each are authorized to receive 1,600 shares of no par capital stock of Silver Fleet Motor Express, Inc.

11. On or before January 31, 1974, Silver Fleet Motor Express, Inc. may issue (a) its promissory note for a total sum not to exceed \$222,000 to Culy Transportation Co., Inc., doing business as Cal-Canadian Motor Express, and (b) its promissory note for a total sum not to exceed \$114,523 to Silver Fleet, Inc., all in accordance with the provisions of an agreement dated October 31, 1972, attached to the application as Exhibit C, as amended by letter agreements received in evidence as Exhibits Nos. 1 and 2, and as shown on Exhibit No. 3.

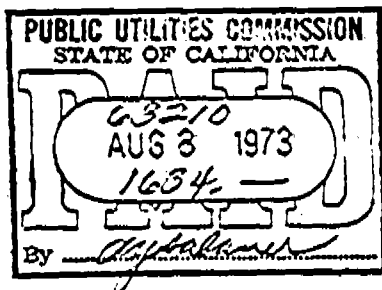
12. The issuer of the securities authorized by this order shall file with the Commission a report, or reports, as required by General Order No. 24-Series.



A. 53849 ek

The authority granted by this order (a) to issue stock will become effective when the issuer has paid the fee prescribed by Section 1904.1 of the Public Utilities Code, which fee is \$960, and (b) to issue promissory notes will become effective when the issuer has paid the fee prescribed by Section 1904(b) of the Public Utilities Code, which fee is \$674. In other respects the effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco, California, this 31<sup>st</sup> day of JULY, 1973.



William L. Sturgeon, Jr. President  
[Signature]  
[Signature] Commissioners

Commissioner Vernon L. Sturgeon, being necessarily absent, did not participate in the disposition of this proceeding.

Commissioner J. P. Vukasin, Jr., being necessarily absent, did not participate in the disposition of this proceeding.

Silver Fleet Motor Express, Inc., 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 for the transportation of general commodities as follows:

1. To, from and between all points and places located in the Los Angeles Basin Territory as described in Note A.
2. Between the San Francisco Territory, as described in Note B, on the one hand, and the Los Angeles Basin Territory, on the other hand.
3. Between the Los Angeles Basin Territory, on the one hand, and the San Diego Territory, as described in Note C, on the other hand, via Interstate Highways 5 and 15 (U.S. Highway 395) and State Highway 1, serving all intermediate points and places located within twenty miles laterally of the named highways;

PROVIDED, that pursuant to the authority herein granted, carrier shall not transport any explosives, ammunition and/or component parts thereof, to or from the Naval Ammunition Depot at Fallbrook, California.

4. Between the San Francisco Territory, on the one hand, and the San Diego Territory, on the other hand.
5. Between all points and places located on State Highway 99 between Sacramento and Bakersfield, inclusive, and all points located within twenty miles laterally of said highway.

Issued by California Public Utilities Commission.

Decision No. 81660, Application No. 53849.

6. Between all points and places located on State Highway 99 between Sacramento and Bakersfield, inclusive, and all points located within twenty miles laterally of said highway, on the one hand, and the Los Angeles Basin Territory and the San Diego Territory, on the other hand, via State Highway 99 and Interstate Highway 5 between Bakersfield and the Los Angeles Basin Territory and Interstate Highways 5 and 15 (U.S. Highway 395), and State Highway 1 between the Los Angeles Basin Territory and the San Diego Territory, with service to all intermediate points located on and along said highways and serving all points within twenty miles laterally of said highways mentioned.

Applicant shall not establish through routes and joint rates, charges and classifications for service between the San Francisco Territory, on the one hand, and, on the other hand, any points and places along State Highway 99 between Sacramento and Bakersfield, inclusive, and/or any points located within twenty miles laterally of said highway.

Except that 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.

Issued by California Public Utilities Commission.

Decision No. 81660, Application No. 53849.

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.
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.

## NOTE A

## 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

Issued by California Public Utilities Commission.

Decision No. 81660, Application No. 53849.

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.

## NOTE B

## 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 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);

Issued by California Public Utilities Commission.

Decision No. 81660, Application No. 53849.

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 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.

## NOTE C

## SAN DIEGO TERRITORY

The San Diego Territory includes that area embraced by following an imaginary line starting at a point approximately four miles north of La Jolla on the Pacific Coast shoreline running east to Miramar on U.S. Highway 395; thence following an imaginary line running southeasterly to Lakeside on State Highway 67; thence southerly on County Road S 17 (San Diego County) and its prolongation to State Highway 94; easterly on State Highway 94 to Jamul; thence due south following an imaginary line to the California-Mexico Boundary Line; thence westerly along the boundary line to the Pacific Ocean and north along the shoreline to point of beginning.

(END OF APPENDIX A)

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Decision No. 81660, Application No. 53849.