

ORIGINAL

Decision No. 81819

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
AMERICAN TRANSPORT SYSTEM, INC., for)
a certificate of public convenience)
and necessity authorizing trans-)
portation, as a highway common)
carrier, of specified commodities)
between points in California.)

Application No. 53538
(Filed August 22, 1972)

Handler, Baker & Greene, by Daniel Baker, Attorney
at Law, for applicant.

Russell & Schureman, by Carl H. Fritze, Attorney
at Law, for Western Milk Transport, Inc.; and
Murchison & Davis, by Donald Murchison, Attorney
at Law, and Fred H. Mackensen, for Milton's
Express, Inc., Desert Empire Express, Citizens
Warehouse Trucking Co., Inc., and Basin Truck
Line, Inc.; interested parties.

O P I N I O N

Applicant operates pursuant to radial highway common carrier and highway contract carrier permits which authorize the transportation of general commodities, including commodities requiring refrigeration or temperature control, between all points in California. It commenced operations in 1968. It also possesses a petroleum irregular route carrier certificate issued to it by this Commission and motor common carrier certificates authorizing the transportation in interstate and foreign commerce of commodities requiring refrigeration between specified points in California and from points in California to points in the western states granted by the Interstate Commerce Commission.

By this application, applicant seeks authority to operate as a highway common carrier for the transportation of general commodities requiring refrigeration or temperature control between points and places in California as set forth in Exhibit A to the

application, as amended by Exhibit 4. Generally, the area sought to be served extends from Redding and Santa Rosa, on the north, to San Ysidro, on the south, and includes the San Francisco and Los Angeles Basin Territories. Exhibit 4 specifically excludes transportation, except shipments of bananas, between certain points in southern California, including transportation between points within the Los Angeles Basin Territory and between points within the San Diego Territory. No interstate authority is sought.

Public hearing was held before Examiner Mooney in San Francisco on March 20, 21, and 22, 1973 and in Los Angeles on March 27 and 28, 1973. Applicant completed its direct presentation on the latter date. Further hearing dates were set for the presentation of evidence by Western Milk Transport System, Inc. (WMT), a protestant. Upon being informed by WMT on April 3, 1973 that its protest was withdrawn, the matter was taken off the calendar and submitted. A subsequent informal request by WMT to reinstate its protest and set the matter for further hearing was denied. A Petition to Set Aside Submission and for Further Hearing was filed by WMT and Bayview Trucking, Inc. on July 9, 1973. By letter dated July 10, 1973 from the attorney for the two petitioners, the petition and their protest were withdrawn. With the amendment of the sought authority set forth in Exhibit 4, four other carriers who were protestants withdrew their protests. There are no other protestants.

The following evidence was presented by the president and general manager and the vice president and controller of applicant: Applicant's principal office and terminal are located at Redwood City. It also has terminal facilities in Wilmington, and should additional facilities be required elsewhere, it will acquire them. In addition to management, office, and terminal personnel, it employs 56 regular drivers and six driver-helpers. It operates 42 linehaul and 14 local short-haul tractors, approximately 100 semitrailers equipped with mechanical refrigeration, and other equipment. All equipment is modern and late model. Its balance sheet as of December 31, 1972

shows total assets of \$1,912,113, and its income and expense statement shows a net operating profit of \$36,577 for the year 1972. Its net operating profit for the prior four years equaled or exceeded that for 1972. Applicant has had substantial experience in performing refrigeration and temperature control service. The demand for its service has increased to a point where a certificate is a more appropriate type of operating authority. The proposed service will be daily and time in transit will be same-day and overnight depending on time of pickup and distance involved. The rates will be on the same level as Minimum Rate Tariff 2 and other applicable minimum rate tariffs. Tariffs containing such rates and related regulations will be filed with the Commission upon receipt of the sought authority.

Twelve shipper witnesses testified in support of the application. Four were distributors of bananas and the other eight were manufacturers or distributors of food products. All testified that their products require refrigeration and/or temperature control; that they use applicant's service; that the service is very good; and that they will continue to use its service if the application is granted. Some use applicant for split delivery service which other carriers are reluctant to provide. Most have also used the services of other refrigeration carriers. Some also operate proprietary equipment.

Findings

1. Applicant possesses the experience, equipment, personnel, and financial resources to institute and maintain the proposed service.

2. Public convenience and necessity require that applicant be authorized to engage in operations as proposed in the application, as amended by Exhibit 4.

3. We find with reasonable certainty that the project involved in this proceeding will not have a significant effect on the environment.

The Commission concludes that the application, as amended by Exhibit 4, should be granted as set forth in the ensuing order.

Applicant 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 ORDER that:

1. A certificate of public convenience and necessity is granted to American Transport System, Inc. authorizing it to operate as a highway common carrier, as defined in Section 213 of the Public Utilities Code, for the transportation of general commodities requiring refrigeration or temperature control between the points and over the routes set forth in Appendix A, attached hereto and made a part hereof.

2. In providing service pursuant to the authority granted by this order, applicant shall comply with the following service regulations. Failure so to do may result in cancellation of the authority.

- (a) Within thirty days after the effective date of this order, applicant shall file a written acceptance of the certificate granted. Applicant is placed on notice that if it accepts the certificate it will be required, among other things, to comply with 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 of this order, applicant shall establish the authorized service 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 authorized service.
- (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) Applicant 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.
- (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, it 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 28th
day of AUGUST, 1973.

Vernon L. Stinson
President
William J. Quinn
William J. Quinn
Mr. Quinn
Commissioners

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

American Transport System, 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 requiring refrigeration or temperature control:

- A. Between all points and places in or within 25 miles of:
 - 1. The San Francisco Territory, as described in Note A.
 - 2. The Los Angeles Basin Territory as described in Note B.
- B. Between all points on, or within 25 miles laterally of the following routes:
 - 1. Interstate Highway 5 and State Highway 99, between Redding and San Ysidro, inclusive;
 - 2. U. S. Highway 101, between Santa Rosa and Los Angeles inclusive;
 - 3. Interstate Highway 80, between San Francisco and Sacramento, inclusive;
 - 4. Interstate Highways 580, 205 and 5 between Oakland and Stockton, thence via State Highway 99 to Sacramento, inclusive;
 - 5. State Highway 33, between its junction with Interstate Highway 205, near Tracy, and Ventura, inclusive;
 - 6. State Highway 17, between San Jose and Santa Cruz, inclusive;

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7. State Highway 65, between Exeter and its junction with State Highway 99, near Bakersfield, inclusive;
8. State Highway 4, between Pinole and Stockton, inclusive.

In performing the service herein authorized, applicant may make use of any and all streets, roads, highways and bridges necessary or convenient for the performance of said service.

RESTRICTIONS:

With the exception of shipments of bananas, the authority herein granted is restricted against transportation:

- (1) Between points in the Los Angeles Basin Territory.
- (2) Between points in the San Diego Territory, as described in Note C.
- (3) Between points in the Los Angeles Basin Territory on the one hand, and, on the other hand, intermediate and off-route points on Interstate Highway 5 between the Los Angeles Basin Territory and the San Diego Territory.
- (4) Between points in the Los Angeles Basin Territory and San Diego Territory, and all intermediate and off-route points on the one hand, and, on the other hand,
 - (a) points on State Highway 99 between the Los Angeles Basin Territory and Bakersfield, inclusive; and
 - (b) points on U. S. Highway 101 between the Los Angeles Basin Territory and Paso Robles, inclusive;
 - (c) except that this restriction will not apply to split delivery shipments, the origin or final destination of which is north of Paso Robles or Bakersfield.

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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 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 Hillisdale Avenue; easterly along Hillisdale 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 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.

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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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