

Decision No. 82343**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of THERMAL FRESH EXPRESS, INCORPORATED, a corporation, for a certificate of public convenience and necessity to operate as a highway common carrier for the transportation of candies between San Francisco, Salinas, Santa Cruz, Monterey, Oakland, Sacramento, Fresno, Manteca, Contra Costa County and intermediate points.

Application No. 53920
(Filed March 26, 1973)

O P I N I O N

This is an application in which Thermal Fresh Express, Incorporated, a California corporation, seeks intrastate and interstate authority to operate as a highway common carrier in the transportation of candies and related items between the following points and places:

1. Between and including San Francisco and Salinas and all points and places on and within 10 miles laterally of U. S. Highway 101;
2. Between and including Salinas and Monterey and all points and places on and within 10 miles laterally of State Highway 68;
3. Between and including Oakland and Santa Cruz and all points and places within 10 miles laterally of Interstate 680 and State Highway 17;
4. Between and including Santa Cruz and Monterey and all points and places on and within 10 miles laterally of State Highway 1;
5. Between and including San Francisco and Sacramento and all points and places on and within 15 miles laterally of Interstate 80, and including a radius of 30 miles from Sacramento;
6. Between and including Sacramento and Fresno and all points and places on and within 30 miles laterally of U. S. Highway 99;

7. Between and including San Francisco and Manteca and all points and places on and within 30 miles laterally of Interstate Highway 580, State Highway 120, and Interstate Highway 205;
8. Between all points and places within the County of Contra Costa.
9. Between any and all routes and points set forth in paragraphs 1 through 8, inclusive; and
10. For operating convenience only, all roads, streets and highways connecting the above points and routes.

Applicant and applicant's predecessor have been engaged in the transportation of candies and related articles as permitted carriers under authority of permits issued by this Commission.

The rates proposed to be assessed by applicant, together with the rules and regulations governing their operations, will be the same as those established by this Commission and published in Minimum Rate Tariff 2.

Applicant proposes service on the basis of overnight delivery between all points and places herein applied for, excepting, however, service will not be performed on Saturdays, Sundays, or holidays.

Applicant alleges that with the growth of the towns and communities within the area herein applied for there has been an ever-increasing demand from suppliers and consumers for service to supply the needs of the communities; that the shippers presently served by it continuously request its services to the points applied for; that it is an experienced operator in the operations of the service herein proposed, and it has presently available the equipment and financial ability to immediately institute the service for the transportation of candies and related items; and that because of the frequency of the movements, and for proper regulation, it believes that a certificate should be issued.

Twenty-eight carriers of whom applicant has knowledge as possible competing carriers were served with a copy of this application. No protests have been received. The Commission makes the following findings and conclusions:

Findings

1. A public hearing is not necessary.
2. Applicant presently holds permits authorizing the transportation of general commodities, including candies and related items within the area sought in this application.
3. Applicant presently operates approximately seven units of power equipment and two units of trailer equipment.
4. During the period February 1, 1972 and September 30, 1972, applicant had a net profit of \$54,210.45
5. Applicant has the ability, including financial ability, to conduct the proposed operations.
6. Notice that this application was filed and that it seeks interstate rights was published in the Federal Register on May 31, 1973.
7. Public convenience and necessity require that applicant be authorized to engage in operations in intrastate commerce as proposed in the application and also require that applicant 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.
8. We find with reasonable certainty that the project involved in this proceeding will not have a significant effect on the environment.

Conclusions of Law

1. The application should be granted as set forth in the ensuing order.
2. The territorial description of the authority herein granted reflects the names of redesignated highways and roads, and

does not in any way exceed the geographical scope of the proposed operations as published in the Federal Register.

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 ORDERED that:

1. A certificate of public convenience and necessity is granted to Thermal Fresh Express, Incorporated, 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.

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.

3. Whenever Thermal Fresh Express, Incorporated engages other carriers for the transportation of property of Thermal Fresh Express, Incorporated and/or J & R Warehouses & Service Co., Inc or customers or suppliers of said corporations, Thermal Fresh Express, Incorporated shall not pay such other carriers rates and charges less than the rates and charges published in Thermal Fresh Express, Incorporated's tariffs on file with this Commission.

4. Any duplications and overlaps which occur in describing the operating authority granted herein shall not be construed as conferring more than one operating right to transport the same commodities between the same points.

The effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco, California, this 15th day of JANUARY, 1974.

I dissent:

~~William L. Sturgeon~~, Commissioner

William L. Sturgeon
President
William L. Sturgeon, Jr.
William L. Sturgeon
William L. Sturgeon
William L. Sturgeon
Commissioners

Appendix A THERMAL FRESH EXPRESS, INCORPORATED Original Page 1
(a corporation)

Thermal Fresh Express, Incorporated, 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 the following commodities:

Candy, confectionery, chewing gum and related items, cough drops, fruit peels and nut meats.

1. Between and including San Francisco and Salinas and all points and places on and within 10 miles laterally of U.S. Highway 101.
2. Between and including Salinas and Monterey and all points and places on and within 10 miles laterally of State Highway 68.
3. Between and including Oakland and Santa Cruz and all points and places on and within 10 miles laterally of State Highway 17.
4. Between and including Walnut Creek and Milpitas and all points and places on and within 10 miles laterally of Interstate Highway 680.
5. Between and including Santa Cruz and Monterey and all points and places on and within 10 miles laterally of State Highway 1.
6. Between and including San Francisco and Sacramento and all points and places on and within 15 miles laterally of Interstate Highway 80, and including a radius of 30 miles from Sacramento.
7. Between and including Sacramento and Fresno and all points and places on and within 30 miles laterally of State Highway 99.
8. Between and including San Francisco and Manteca and all points and places on and within 30 miles laterally of Interstate Highways 580 and 205, and State Highway 120.

Issued by California Public Utilities Commission.

Decision No. 82343, Application No. 53920.

9. Between all points and places within the County of Contra Costa.
10. Between any and all points set forth in paragraphs 1 through 9, inclusive.
11. In performing the service herein authorized, carrier may make use of any and all streets, roads, highways and bridges necessary or convenient for the performance of said service.

(END OF APPENDIX A)