

ORIGINALDecision No. 83347

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the application of Frank's Trucking, a corporation, for a certificate of public convenience and necessity authorizing the transportation of general commodities between points and places within the San Francisco Territory and designated points.

Application No. 54219
(Filed August 2, 1973; amended
September 11, 1973 and
February 4, 1974)

O P I N I O N

By this application Frank's Trucking (Frank's), a California corporation, seeks to enlarge its operating rights, to expand the commodities it is authorized to transport, and an in-lieu certificate of public convenience and necessity. It also seeks a finding that public convenience and necessity require that transportation of interstate and foreign commerce be authorized.

Notice of the application was published in the Commission's Daily Calendar on August 6, 1973 and in the Federal Register on August 22, 1973. United Van Lines, Inc. filed its protest on September 14, 1973 and withdrew its protest on December 7, 1973. Delta Lines, Inc. filed its protest on October 18, 1973 and withdrew its protest on February 9, 1974. No other protests have been received. A public hearing is not necessary.

Frank's is presently conducting highway common carrier operations pursuant to authority granted by Decisions Nos. 53648 dated August 28, 1956; 53999 dated October 30, 1956; 54203 dated December 4, 1956; 55268 dated July 15, 1957 in Application No. 36244; 62955 dated December 19, 1961; and 63513 dated April 3, 1962 in Application No. 43858. This certificated authority generally provides

for operations as a for-hire motor carrier for the transportation of general commodities in the San Francisco East Bay Cartage Zone, and for the transportation of certain specified commodities between Oakland on the one hand, and on the other hand, Pittsburg, Sacramento, Stockton, and San Jose. The ICC has issued to Frank's its certificate of registration of the above authority in Docket No. MC-99871 (Sub. No. 1) authorizing commensurate operations in interstate and foreign commerce.

In addition to the foregoing, Frank's is also presently conducting operations in intrastate commerce as a permitted carrier pursuant to a radial highway common carrier permit and a contract carrier permit, both authorizing the transportation of general commodities on a statewide basis.

As a result of ever-increasing demands of the public in its permitted operations, Frank's service has gradually increased to the point where there now exists a question as to whether the character of the service presently being provided actually exceeds the scope of its permitted authority. Consequently, in order to perpetuate those operations which it is now conducting under its permitted authority, and still comply with the law and the Commission's rules and regulations, it seeks to broaden its certificate to include said operations.

Specifically, applicant seeks to add to its general commodity authority by removing the restriction against the transportation of commodities requiring the use of special refrigeration or temperature control in specially designed and constructed refrigerated equipment. It seeks to reduce its general commodity authority by removing cement and logs therefrom. It also seeks to expand the geographical area for the transportation of general

commodities to include San Francisco Territory and to all points on and within ten miles of the points on the following routes:

- (a) Interstate Highway 680, between Mission San Jose and Martinez, inclusive.
- (b) Interstate Highway 80, between San Francisco and Vallejo, inclusive.
- (c) State Highway 4, between Pinole and Antioch, inclusive.
- (d) State Highway 24, between Oakland and Antioch, inclusive.
- (e) U.S. Highway 50, between Oakland and Tracy, inclusive.

In addition, Frank's seeks to simplify the commodity descriptions of specified commodities it is authorized to transport between specified points by removing the outdated reference to Western Classification No. 75, as well as to expand this authority to include intermediate points, as follows:

- B. Insecticides or fungicides, agricultural; iron or steel; iron or steel articles; machinery or machines or machinery or machine parts; bags; can tops, bottoms or ends, when transported in mixed shipments with other authorized commodities; drums, empty, shipping, iron or steel; fibreboard; pallets; and pulpboard.

Between all points on and within ten miles of the points on the following routes:

- (a) Interstate Highway 80, between San Francisco and Sacramento.
- (b) U.S. Highway 50, between Oakland and Stockton, inclusive.
- (c) State Highway 24, between Oakland and Antioch, inclusive.

Frank's also seeks to remove the restriction which prohibits the establishment of through routes and joint rates, charges, or classifications as to the separate authorities it holds.

Discussion

Applicant filed a verified statement of its president, Frank M. Teixeira, with updated financial statements covering the first two months of 1974, among other items, and the certified statements of nine shippers in support of the application. These will be received as Exhibit 1.

Mr. Teixeira stated that he started the business as a sole proprietorship in 1946 with one piece of equipment. He incorporated, with himself and his wife as shareholders, in 1956. The company now operates 21 tractors, 3 trucks, 23 flatbed, 11 van semitrailers, and 2 service cars. This equipment is owned by East Bay Leasing Corporation (EBLC), which company is owned by Mr. & Mrs. Teixeira and their daughter, Mrs. Linda Bingham. The equipment is leased to Frank's on a long-term lease. [The sale and lease back of the equipment was authorized by Decision No. 61248 dated December 28, 1960 in Application No. 42915.] EBLC also owns the terminal building located in San Leandro. The balance sheet, as of February 28, 1974, shows a 2.2 ratio of current assets to current liabilities, no long-term debt, and retained earnings of \$99,365. The income statement for the first two months of 1974 shows net income of \$3,271.

It is alleged that the growth of the company is principally due to the length of time it has been operating, the character of service it has provided, and the expansions of the businesses of its principal customers. Frank's provides a regular on-call service. Pickups are made at the times requested and, if immediate service is requested, a unit will be dispatched and will make a pickup within one or two hours. Pickups are made throughout each day and there is no specified time that pickups are "cut off" during any day. Ninety-five percent of all shipments are delivered on the same day.

To insure this personalized and flexible service, all power units are equipped with radios capable of transmitting and receiving messages to and from the dispatch office. In addition, a telephone answering system is utilized on a 24-hour, seven-day-a-week basis.

The statements of the shippers generally demonstrate that they have been using Frank's service on a regular and frequent basis between the points for which expansion of operating authority is requested. One shipper, Continental Can Company, has been using Frank's since the inception of the service, 28 years ago. Others indicate they have used Frank's between 10 and 15 years. All statements show that shipments are tendered to Frank's for interstate and foreign destinations as well as inbound shipments from the docks in San Francisco, Oakland, and Alameda. One shipper stated that he tenders shipments of frozen fruit and juices to Frank's. All shippers indicate having had a long association with Frank's and their desire to continue such association, and therefore request that the application be granted so as to insure the continued association and availability of its service.

It is apparent from the evidence submitted that Frank's operations have developed to the point where there is an overlap between his permitted and certificated authorities such as to cause confusion, uncertainty, and probable exceeding of its present authority. This is evidenced in that area where Frank's has been granted a certificate to transport specific commodities between specified points and Oakland without the right to serve intermediate points. Furthermore, the operations under permitted authority have grown to the extent that certificated authority to transport general commodities should be expanded so as to avoid unlawful operations.

To avoid duplication of routes, we have deleted Route B(c) above, as it is encompassed within Route (d) under general commodities above. We have restated Routes B(a) by deleting San Francisco and substituting Vallejo and B(b) by deleting Oakland and substituting Tracy. The Highway 50 designation has been changed to reflect current designations.

Since the protests to the application have been withdrawn and a sufficient showing of public convenience and necessity and financial ability has been made, we shall grant the application as set forth in the following order.

Findings

1. Public convenience and necessity require that Frank's Trucking be authorized to engage in operations in intrastate commerce as authorized herein 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 this decision. The order which follows will provide for the granting of a restated certificate of public convenience and necessity and the revocation of the certificates presently held by the carrier.

2. The Commission finds 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 should be granted as set forth in the ensuing order. The territorial description or routes of the authority granted reflect the names of redesignated highways and roads and do not in any way exceed the geographical scope of the proposed operation as published in the Federal Register.

Frank's Trucking 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 Frank's Trucking, a California corporation, authorizing it to operate as a highway common carrier, as defined in Section 213 of the Public Utilities Code, between points and places within the San Francisco Territory and between 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 administered by 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 amend or reissue in triplicate, the tariffs on file 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. The certificate of public convenience and necessity granted in paragraph 1 of this order shall supersede the certificates of public convenience and necessity granted by Decisions Nos. 53648, 53999, 54203, 55268, 62955, and 63513, which certificates are revoked effective concurrently with the effective date of the tariff filings required by paragraph 2(b).

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

Dated at San Francisco, California, this 27th day of AUGUST, 1974.

James L. Sturgeon
President
William Lyons Jr.
[Signature]
[Signature]
Commissioners

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

Frank's Trucking, 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:

I. General commodities:

- A. Between all points and places in the San Francisco Territory as described in Note A, and all points within ten miles of any point therein; and
- B. Between all points on and within ten miles of the points on the following routes:
 - 1. Interstate Highway 680 between its junction with unnumbered highway (Waterfront Road), near Martinez, and its junction with unnumbered highway (Washington Boulevard), near Mission San Jose, inclusive.
 - 2. Interstate Highway 80 between San Francisco and Vallejo, inclusive.
 - 3. State Highway 4 between its junction with Interstate Highway 80, near Pinole, with its junction with unnumbered highway (L Street), near Antioch, inclusive.
 - 4. State Highway 24 between Oakland and its junction with State Highway 4, near Buchanan Field, inclusive.
 - 5. Interstate Highway 580 between Oakland and its junction with Interstate Highway 205, near the Alameda-San Joaquin County Line; Interstate Highway 205 between its junction with Interstate Highway 580 and its junction with unnumbered highway (MacArthur Drive), near Tracy, inclusive.

Issued by California Public Utilities Commission.

Decision No. 83347, Application No. 54219.

- II. Insecticides or fungicides, agricultural; iron or steel; iron or steel articles; machinery or machines or parts thereof; bags, burlap, gunny, ixtle (istle), jute, sisal or paper; can tops, bottoms or ends, when moving in mixed shipments with commodities otherwise authorized to be transported under this authority; drums, empty shipping, iron or steel; fibreboard; pallets; and pulpboard;
- A. Between all points on and within ten miles of the points on the following routes:
1. Interstate Highway 80, between Vallejo and Sacramento, inclusive.
 2. Interstate Highway 205 between its junction with unnumbered highway (MacArthur Drive), near Tracy, and its junction with Interstate Highway 5 northeast of Tracy; Interstate Highway 5 between its junction with Interstate Highway 205 and Stockton, inclusive.
- III. Service is authorized between all points and places in Parts I and II, subject to commodity limitations therein.
- IV. 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.

Except that pursuant to the authority herein granted in Part I, carrier shall not transport any shipment 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.

Issued by California Public Utilities Commission.

Decision No. 83347, Application No. 54219.

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.
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. Cement.
8. Logs.
9. Articles of extraordinary value.
10. Metal cans.
11. Can tops, bottoms or ends, except when moving in mixed shipments with commodities otherwise authorized to be transported under this authority.

Issued by California Public Utilities Commission.

Decision No. 83347, Application No. 54219.

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 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.

(END OF APPENDIX A)

Issued by California Public Utilities Commission.

Decision No. 83347, Application No. 54219.