

Decision No. 84148

**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of ATLAS MARINE FREIGHT  
LINES, a corporation, for an in lieu  
Certificate of Public Convenience  
and Necessity to operate as a  
highway common carrier in the trans-  
portation of property in intrastate  
and interstate and foreign commerce.

Application No. 54320  
(Filed September 12, 1973)

Karl K. Roos, Attorney at Law, for Atlas Marine  
Freight Lines, Inc., applicant.

Loughran, Berol & Hegarty, by Ann M. Pougiales,

Attorney at Law, for Delta Lines, Inc.;

Walt A. Steiger, and Juan E. Arrach, Jr.,

Attorneys at Law, and Anthony J. Konicki,

for Pacific Motor Trucking Company;

Russell & Schureman, by R. Y. Schureman and

Robert W. Hancock, Attorneys at Law, for

Alco Transportation Company, Alco Fast Freight

Company, Inc. (formerly Campora Fast Freight,

Inc.), City Freight Lines (formerly City

Transfer Inc.), Griley Freightlines, Kern Valley

Trucking, Los Angeles City Express, Reliable

Delivery Service, Inc., Smith Transportation

Co., and Victorville Barstow Truckline;

protestants.

### O P I N I O N

This is an application by Atlas Marine Freight Lines, a California corporation, for an extension of its certificate of public convenience and necessity to operate as a highway common carrier for transportation of general commodities in the State of California. Applicant also operates as a permitted carrier, and holds radial highway common carrier and highway contract carrier permits.

The requested certificate is set forth in detail in Appendix A attached to the application. Appendix A is also in evidence as Exhibit No. 1 in these proceedings. Appendix B attached to the application is a map of the routes and points to be served under the proposed certificate. The requested certificated area would extend from the San Diego area on the south to Fresno and Paso Robles on the north and to Indio, Palm Springs, and Palm Desert on the east. The area would include all of Los Angeles Basin territory, the highways connecting the extremities of the area, and all points and places within 20 miles laterally of the network of highways described in Exhibit No. 1.

Applicant proposes to register the requested authority with the Interstate Commerce Commission. Notice that the applicant was seeking concurrent interstate and foreign commerce authority under the provisions of the Interstate Commerce Act appeared in the Federal Register of October 11, 1973.

The applicant, in compliance with our rules, mailed copies of the application to affected common carriers. Protestants appeared and participated at nine days of public hearings held at Los Angeles, California, from March 13, 1974 to May 23, 1974. Concurrent briefs were filed June 28, 1974.

#### Applicant's Request

Applicant's present certificated authority to operate as a highway common carrier in the transportation of general commodities is derived from Commission Decisions Nos. 53732, 54450, 55374, 73541, and 79943. Certificated operations are presently authorized as follows:

- A. Between all points within the Los Angeles Basin Territory;
- B. Between Los Angeles and Vernon, on the one hand, and Oceanside and San Diego, on the other hand; and
- C. Between Los Angeles, on the one hand, and Oxnard, Ventura and Santa Barbara, on the other hand.

The authorities set forth in paragraphs B and C do not include the right to render service to, from, or between intermediate points.

Applicant is not authorized to establish through routes and joint rates, charges, and classifications as to the separate authorities set forth in paragraphs A, B, and C.

Applicant proposes to establish a daily "on-call" pick up service Monday through Friday under the requested authority. Overnight delivery service is contemplated between all points served except where the pick up and subsequent delivery are north and south of the Los Angeles Basin Territory. The requested certificate would remove existing restrictions and authorize extended highway common carrier operations as set forth in Exhibits 1 and 2.

Applicant's Evidence

Applicant's president and chief executive officer, Don Frank Trexler, entered the transportation business in 1947. At the present time he and his wife, Sally Patricia Trexler, own Atlas Marine Freight Lines and Atlas Freight Lines. The latter corporation remains in business solely to lease equipment to the applicant for highway carrier operations. Sally Patricia Trexler is the executive vice president of applicant, and Donald Michael Trexler, the Trexlers' son, is operations manager.

Don Frank Trexler commenced in 1947 as a truck driver. Two years later he became an equipment owner. His operations have progressed to the point where Atlas Marine Freight Lines has 31 employees located at its principal place of business at Santa Fe Springs, California, and 13 additional employees operating at locations in Bakersfield, San Diego, and the Santa Barbara - Santa Maria area. The applicant has 80 pieces of equipment available for its operations, including 40 trailers and 21 tractors. Gross revenues for the applicant corporation for 1973 were \$887,841.

Applicant's president testified that the present restrictions against tacking in its certificate prevent the through service that the public demands. Shipments tendered for off-route and intermediate points can only be handled through permitted operations. Five years ago a survey was made which indicated that industry was migrating from the Los Angeles and Vernon area at a rate of approximately one mile per year. Seven accounts of applicant moved from Los Angeles into surrounding Basin territory in the last 14 months. Without the requested certificated authority, applicant alleges that it fears it may break through the fixed-termini, regular route barrier against permitted highway operations.

The applicant presented direct evidence from 30 public shippers in support of the application. A number of the shippers dealt in electrical equipment and lighting fixtures. They also shipped such items as glass, plastic and pottery products, liquid and chemical compounds, cleaning compounds and industrial strippers, automotive parts and supplies, steel tubing and pipe, plastic and paper straws, ladders and scaffolding, and tobacco.

Twenty-three of the shippers have used applicant's services for two years or more, 14 of those have used applicant's services for five years or more. Many shippers have experienced substantial growth while using applicant's services, and have required increased service from applicant. Applicant has provided service characterized by prompt pick up and timely delivery, without problems of loss or breakage. A number of shippers require deliveries to jobsites within the area of the requested authority. Shippers expressed their desire to continue to use applicant's excellent service, and requested approval of the application. Witnesses complained generally of difficulties with other carriers regarding driver conduct, lack of solicitation, lack of proper equipment, delayed deliveries, failure to make timely pickups, and other matters.

Protestant's Evidence

Ten protestants, all of whom were represented by counsel, presented evidence in opposition to the application. All requested areas are served among all the protestants, each of whom is a certificated carrier with interstate authority. Protestants alleged that they are ready, willing, and able to provide both intrastate and interstate service in the areas sought to be served, and that certification of applicant would divert traffic from them causing their operations to be less economical. They alleged that their equipment was not operating to full capacity and no additional operations should be authorized. However, only one of them submitted any financial data.

The protestants alleged that no showing was made that the public convenience and necessity require that applicant operate in interstate and foreign commerce. In addition, protestants alleged that applicant was conducting regular route common carrier service between fixed termini in the requested service areas. According to protestants, since such operations are not authorized under applicant's permits, the Commission should find applicant to be unfit to receive the requested authority.

Discussion

We have recently discussed the applicable factors in evaluating the question of public convenience and necessity in an application proceeding of this nature. (See Presto Delivery Service, Inc. Decision No. 83726 dated November 19, 1974 in Application No. 53360, pp. 7-11). In determining whether public convenience and necessity require the service proposed, the Commission considers the questions of experience, financial ability, equipment, and facilities necessary to conduct the service; whether the proposed service is adequately responsive to the needs of shippers; whether the public, in addition to the present carriers, requires the proposed service, and whether the granting of the application would adversely affect the protestants or the public interest.

Applicant's president presents the classic case of a man who has successfully devoted his efforts to the transportation business. Commencing in 1947 as a truck driver, he progressed through permitted operations to the present substantial certificated and permitted operations of Atlas Marine Freight Lines. The evidence establishes that applicant has the experience, financial ability, equipment, and facilities to conduct the proposed service. Applicant now requests expanded authority in order to continue to meet his customers' requirements, for his customers' transportation needs have increased and he fears that his operations may break through the fixed-termini, regular-route barrier against permitted operations.

The testimony of applicant's shipper witnesses confirms the applicant's allegations. Shippers have used applicant's service for many years because of superior pick up and delivery service. Their business has increased, and they have requested expanded service from applicant. The testimony of the shippers supports the conclusion that the shipping public has benefited from applicant's service over a period of years, and there is a public need for such service in the requested areas.

Protestants argue that the evidence does not show the service they presently offer in the requested areas is inadequate. The shippers supporting applicant did not seek out and try protestants' service and find it inadequate. To require such evidence would appear to preclude the entry of any additional carrier into the sought area. (See M & M Transfer Company (1967) 67 CPUC 228, 243.) Moreover, such requirements ignore the interests of the shipping public. We conclude from the evidence that applicant has established a service that a number of public shippers have used for a period of years and such service has been valuable to them in meeting their transportation requirements. It would be unrealistic to require applicant to advise his customers that they must seek out and use other carriers before applicant can request expanded authority necessary to meet the needs of his customers.

Protestants allege that applicant's shippers are limited to the electric materials and supplies field, and do not ship general commodities. The evidence establishes a diverse group of commodities. Shippers of electrical equipment also shipped such items as steel shelving, toothpicks to Q tips, tools, and bath cabinets. The contention that the estimates of shippers regarding tonnage and frequency of shipments is enormously exaggerated is also unsupported by the record. The shipper witnesses estimated wide ranges of shipment weights and also estimated frequencies of shipments to particular areas. Extrapolations from bits and pieces of testimony and the "best guess" of counsel were used to derive a total tonnage figure. This derived total was compared with the tonnage for a two-week period from applicant's records. Protestants claim that the disparity in the result establishes error in the testimony of the shippers. It is more reasonable to conclude such disparity establishes error in the extrapolations and "best guess" of counsel.

A major claim raised by all protestants is that the evidence establishes that applicant presently conducts illegal highway common carrier operations in the requested areas. Protestants would have us conclude that applicant is unfit. The evidence from applicant's shippers supports the proposition that in meeting the transportation requirements of its customers applicant exceeded permitted operations. Moreover, the application on its face alleges that it was applicant's concern regarding lack of authority that caused it to file the application now before us. Protestants allege that applicant crossed the line from permitted operations to highway common carriage and evidence of such illegal operations cannot support the requested authority. This is much too narrow a view of the evidence regarding this matter.

Applicant's owners have been involved in the transportation business for many years. Nothing in their prior operations or past conduct reflects unfitness. Their recognition that their operations may have exceeded their permitted authorities caused them to file this application. The evidence establishes that their conduct has been in response to the demands of the shipping public they have served for many years and not a willful disregard of regulations. To declare applicant unfit on this record would not only be unfair to applicant, it would ignore the needs of the shipping public.

We recognize that protestants will be faced with one more competitor in the future. Protestants generally allege adverse economic consequences. Protestants' general allegations that competition will affect them adversely must be weighed against the public interest in needed transportation service. If significant diversion results, it would indicate that applicant's ability and willingness to make early deliveries is an important service not presently available to the shipping public.

There is no factual evidence that present traffic patterns or transportation operations of protestants will be significantly changed as a result of granting applicant's request for additional certificated authority. The evidence establishes that protestants' operations dwarf the total present operations of applicant. The grant of the application will have no significant impact on the environment in view of the fact that applicant's present certificated and permitted operations will be unaffected by this decision.

Protestants advance the argument that a staff "study" in Case No. 9641 established criteria which is applicable to this certification proceeding. The study is in the form of prepared testimony of a staff member. In the absence of a staff analysis applying such criteria to the evidence in this proceeding, the "study" can be afforded no weight. For example, the absence of substantial amounts of back-haul traffic in the requested areas appears to be an existing situation which will not be significantly affected in any way by a grant or denial of applicant's request.



All protestants claim that no evidence supports the requested authorization to engage in interstate and foreign commerce. We do not agree. Applicant's president testified that the matters set forth in the application are correct. The application sets forth that applicant has operated in intrastate and interstate and foreign commerce in California for many years. The point is that based on this uncontroverted evidence, the new certificated authority granted herein must recognize the present interstate authority. Moreover, the applicant's shippers receive goods from interstate sources. At least one shipper testified that packaged goods are received from Connecticut and then reshipped from a warehouse to California jobsites. Based upon the number of shippers receiving goods from outside California for ultimate delivery within this state, we conclude that the evidence shows a need for interstate authority in order for applicant to continue its present operations in the additional certificated area.

Findings

1. Applicant, Atlas Marine Freight Lines, a California corporation, is presently engaged in the transportation of general commodities both as a certificated and as a permitted carrier. Applicant's present operations include highway common carriage in interstate and foreign commerce between points in California.
2. Applicant proposes to render highway common carrier service on a five-day a week basis with delivery service on Saturday on request. Applicant proposes to serve the areas described in detail in Exhibits 1 and 2.
3. Applicant has the ability, experience, equipment, and financial resources to perform the proposed service in the requested areas.
4. Numerous public shippers appeared as witnesses for applicant; these witnesses desire that applicant be authorized the requested certificated authority. These public shippers have used applicant's

services to a great extent over a period of years and have benefitted from applicant's prompt, efficient, and timely service which has assisted them in their business operations.

5. Public shippers using applicant's service have required service outside of applicant's present certificated area as a result of business growth and relocation of facilities. These customers desire to retain applicant's service because the prompt and timely service of applicant has been superior to other service these customers have had. It would be unfair to deprive applicant of its established customers due to natural growth and customer relocation.

6. Applicant's present service outside its certificated area is approaching, and may already be, a certificated carrier type of service in some areas. This situation is the result of applicant's offer of service to its customers, and the request of established customers for such service.

7. Applicant's activities have not rendered it unfit to be granted the sought authority. ✓

8. The grant of additional authority to applicant will not impair the ability of protestants to continue to provide service to their customers.

9. The proposed extension of service by applicant to its customers will enable applicant to render broader, more economical, and more convenient service, both in intrastate and interstate commerce.

10. The number of commodities transported by applicant is broad enough to be classified as general commodities.

11. Notice of the application appeared in the Federal Register on October 11, 1973.

12. Applicant's present and proposed service to its customers involves transportation in interstate commerce within the proposed service area.

13. Applicant's proposed further service will not significantly change the present transportation operations of applicant or protestants, and we find that the project involved in this proceeding will not have a significant effect on the environment.

14. 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 this decision.

Conclusion

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.

The order which follows will provide for the revocation of the certificate presently held by the applicant and the issuance of a new certificate in appendix form.

Atlas Marine Freight Lines, a corporation, 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 Atlas Marine Freight Lines, 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 of this decision.

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 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 the 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 certificate of public convenience and necessity granted by Decision No. 53732, as amended or transferred by Decisions Nos. 54450, 55374, 73541, and 79943, which certificate is 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 4<sup>th</sup> day of MARCH, 1975.

Vernon L. Stevenson  
President  
William J. Lyons Jr.  
Donald  
Leonard Ross  
Commissioners

Atlas Marine Freight Lines, 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:

1. Between all points within the Los Angeles Basin Territory as described in Note A.
2. Between all points within the Los Angeles Basin Territory, on the one hand, and, on the other hand, San Diego. Service is authorized to, from and between all intermediate points on and within 20 miles laterally of Interstate Highway 5 and to, from and between all intermediate points on and within 20 miles laterally of Interstate Highway 15 between San Diego and its junction with U.S. Highway 395 and to, from and between all intermediate points on and within 20 miles laterally of U.S. Highway 395 between its junction with Interstate Highway 15 and the Los Angeles Basin Territory.
3. Between all points and places specified in paragraph 2 above, on the one hand, and, on the other hand, all points and places on and within 20 miles laterally of the following routes:
  - a. Interstate Highway 10 between the Los Angeles Basin Territory and Indio, inclusive;
  - b. State Highway 111 between its junction with Interstate Highway 10 at or near Whitewater and Indio, inclusive;
  - c. U.S. Highway 101 between Los Angeles Basin Territory and Paso Robles, inclusive;
  - d. State Highway 1 between Los Angeles Basin Territory and Pismo Beach, inclusive;
  - e. State Highway 118 between Los Angeles Basin Territory and its junction with U.S. Highway 101, inclusive;
  - f. State Highway 126 between its junctions with Interstate Highway 5 and U.S. Highway 101, inclusive;

Issued by California Public Utilities Commission.

Decision No. 84148, Application No. 54320.

- g. Interstate Highway 5 between the Los Angeles Basin Territory and its junction with State Highway 99, inclusive;
- h. State Highway 99 between its junction with Interstate Highway 5 and Fresno, inclusive;
- i. State Highway 14 between its junctions with Interstate Highway 5 and State Highway 58, inclusive;
- j. State Highway 58 between its junctions with State Highways 14 and 99, inclusive.

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 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 salesmen's hand sample cases, suitcases, overnight or boston bags, brief cases, hat boxes, valises, traveling bags, trunks, lift vans, barrels, boxes, cartons, crates, cases, baskets, pails, kits, tubs, drums, bags (jute, cotton, burlap or gunny) or bundles (completely wrapped in jute, cotton, burlap, gunny, fibreboard, or straw matting).
- 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.

Issued by California Public Utilities Commission.

Decision No. 84148, Application No. 54320.

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. Commodities requiring the use of special refrigeration or temperature control in specially designed and constructed refrigerator equipment.

## 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 Avenue 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 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

Issued by California Public Utilities Commission.

Decision No. 84148, Application No. 54320.



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)

Issued by California Public Utilities Commission.

Decision No. 84148, Application No. 54320.