

Decision No. 84545**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
SAMJO, INC., a California corporation
doing business as SMISER FREIGHT
SERVICE, for a modification and
restatement of its certificated oper-
ating authority, the removal of an
operating restriction, and the
extension of its highway common carrier
certificate of public convenience and
necessity in intrastate service, and
for a co-extensive certificate of
registration for interstate and
foreign service.

Application No. 54679
(Filed February 22, 1974)

Eldon M. Johnson, Attorney at Law, for Samjo, Inc.,
d/b/a Smiser Freight Service, applicant.
Robert L. La Vine, Attorney at Law, for Willig
Freight Lines; and Marshall G. Berol and
James O. Abrams, Attorneys at Law, for Delta
Lines, Inc., Pacific Motor Trucking Co., and
Ted Peters Trucking Company; protestants.

O P I N I O N

Applicant, Samjo, Inc., doing business as Smiser Freight Service (Smiser), operates as a highway common carrier of general commodities between the San Francisco Territory, the Los Angeles Basin Territory, and the San Diego Territory. Additionally, it operates as a highway common carrier of general commodities from Marysville/Yuba City and other points and places in northern California to the California-Mexican border in southern California. Operations as a general commodity carrier are also conducted under statewide permitted authority.

Smiser seeks to modify and restate its existing certificate by the removal of an operating restriction,^{1/} a nominal extension of a specified route, addition of two specific routes between certain northern California points, and the inclusion of the commodity classification, explosives or dangerous articles, inadvertently left out of its certificate. Smiser's operating authority is registered with the Interstate Commerce Commission under Docket No. MC-120168 (Sub. No. 2). Copies of the application were served upon carriers with which Smiser competes, or would be likely to compete, and an appropriate notice was published in the Federal Register on March 13, 1974.

Protests to the application were filed by Associated Freight Lines, Delta Lines, Inc. (Delta), Willig Freight Lines (Willig), Pacific Motor Trucking Co. (PMT), and Ted Peters Trucking Company (Peters). Prior to the hearing, Associated Freight Lines withdrew its protest.

Six days of public hearings were held before Examiner Bernard A. Peeters in San Francisco on August 19, through 22, September 27 and October 2, 1974. The matter was submitted on January 31, 1975 with the filing of concurrent closing briefs.^{2/}

Smiser presented its case through its vice-president, traffic manager, and fourteen public witnesses. The protestants produced their evidence through four witnesses: the general traffic manager for Willig, the general traffic manager for Delta, the central district sales manager for PMT, and the sales marketing and public relations representative for Peters.

1/ "RESTRICTION: No local service may be performed between any of the points described in paragraphs 4.a. through 4.h."

Paragraph 4 authorizes transportation between all points and places described in paragraphs 1, 2, and 3 (Los Angeles Basin Territory, San Diego Territory, specified points and places in southern California, and certain off-route points in the San Joaquin Valley), on the one hand, and on the other hand, points and places in northern California described in subparagraphs a-h.

2/ Delta, PMT, and Peters did not file any briefs.

The Evidence

The parties presented their evidence in the form of prepared, written testimony with exhibits attached.

Exhibit 1 (Smiser's vice-president) shows that Smiser's predecessor commenced transportation operations in 1948 under permitted authority from this Commission. In 1958 the certificated operations of Arrow Pacific Drayage were purchased and transferred to Smiser pursuant to Decision No. 57129 in Application No. 40127. Headquarters were located in Bakersfield and operations were carried on with two tractors, four trailers and three employees (family members). The operating rights extended from Bakersfield to San Diego. The operations were primarily truckload (TL) shipments. A facility was opened in Los Angeles shortly after the acquisition and another truck and driver were added.

Through internal growth and grants of intrastate and interstate authority extending the operations, Smiser's operational characteristics changed from that of a TL carrier to where it is now primarily a less-than-truckload (LTL) carrier. It now operates terminals in Southgate, Bakersfield, Fresno, Sacramento, San Diego, San Francisco, and San Jose. Its present fleet consists of 105 power units, 240 trailer units, and 57 pieces of miscellaneous equipment. One hundred thirty-nine people are employed.

Exhibit 20 contains Smiser's financial statements which show that as of July 31, 1974, total assets amounted to \$1,128,147, total liabilities were \$610,813, leaving a shareholders' equity of \$517,334. For the seven-month period ending July 31, 1974, net profits amounted to \$189,413.

Exhibit 1 also shows that at the time of the initial expansion into northern California one terminal was opened at San Leandro. With the development of traffic, terminals were subsequently opened at Sacramento, San Jose, and Fresno. The trend in the type of shipments handled moved from TL to LTL, which is now the primary type of shipment handled. With the change in the type of traffic, complexities arose as to the application of the restriction in the present certificate.

Smiser states that it believed the restriction to local traffic was meant in the sense used in the Interstate Commerce Commission's Bureau of Motor Carrier Safety Regulation. There, if a driver operates only within a fifty-mile radius of his terminal, he is considered local and is not required to keep the detailed logs required of long-haul drivers. Smiser also contends that the term local service could not be reasonably applied to all of the territory between Fresno and Williams (a distance of more than two hundred miles involving movement through two terminals).

With operations being conducted under both permitted and certificated authority, it is stated that the restriction creates an impossible situation in trying to explain to the salesmen, truck drivers, and shippers exactly what services can be offered. The fact that the certificated authority is registered with the Interstate Commerce Commission compounds the difficulty. In the exempt terminal areas and commercial zones, interstate traffic can be handled without regard to the restriction. The interlining of interstate freight with other carriers is another area of difficulty. Logically, interstate shipments in northern California would be handled through the Sacramento terminal, but under the restriction the only way they can be handled is to interline at the Los Angeles terminal which is

detrimental to the quality of service. Masterbilling of shipments (split pickup or split delivery) presents another problem under the restriction. If a masterbilled shipment originates in northern California, and among the destinations is a northern California point, the shipment cannot be masterbilled. Smiser states that these concepts require a sophistication and awareness totally beyond the indoctrination capabilities of the drivers.

With respect to the restatement of its certificate, Smiser states that insofar as its southern operations are concerned, it is clear that they are authorized to handle and can perform all the kinds of freight transportation service requested. It believes that it is vital to have a clear and concisely stated operating authority to avoid confusion and difficulty at the critical operating level of the driver making a pickup. A proposed restatement without enlarging the geographical scope of the present authority was submitted as Exhibit 10. The minor enlargement as to a specific route authority involves Interstate Highways 5 and 80 and State Highway 4. Interstate Highway 5 is presently authorized; however, there is a gap in the route due to the fact that at the time this route was authorized the highway had not been completed. With its completion Smiser desires that its certificate now show the full length of the route authorized, as well as the minor extensions involving Interstate Highway 80 and State Highway 4.

Smiser also seeks the restoration of the commodity classification Explosives and Dangerous Articles in its certificate. It is claimed that this classification was inadvertently left out in its last certificate proceeding. No evidence was adduced as to the necessity for authority to transport these commodities.

Fourteen public witnesses, representing shippers from ten different northern California cities (Exhibits 3-9, 12-14, and 16-19), testified in support of Smiser's application. Between them they testified as follows:

1. All use Smiser and most of the shippers consider Smiser as their prime carrier.

2. Smiser's service has been excellent; pickups and deliveries have been dependable and on a daily basis, with late and Saturday pickups being made when requested.

3. Most shippers would prefer to limit the number of regular carriers being used because of space limitations, time consumed in dealing with numerous carriers, and general convenience.

4. Other carriers are used, but generally only when a customer requests such other carriers or service to points beyond Smiser's scope of authority.

5. All state that it would be disadvantageous to their business if the restriction is not removed from Smiser's certificate.

6. Many expressed dissatisfaction with the service provided by some of the protestants.

7. Smiser provides the highest quality of service available.

8. Several shippers' businesses experienced considerable growth in the past few years.

9. All ship in LTL quantities with some also shipping in TL quantities.

10. Most shippers testified that they masterbill some of their shipments and that the restriction in Smiser's certificate unfairly denies them this opportunity to save money. One shipper stated that in spite of this he uses Smiser anyway.

11. Smiser rendered service to a shipper involved in a labor dispute, where other carriers would not.

12. Most shippers use Smiser for interstate shipments on an interlining basis, or to and from the steamship docks, or freight forwarders.

13. The shippers supporting Smiser are fairly representative of the shipping public in northern California.

Protestants' evidence was presented through PMT's central district sales manager (Exhibit 26), Willig's general traffic manager (Exhibit 21), Delta's general traffic manager (Exhibit 30), and Peters' sales representative (Exhibit 28). All testified to the fact that they have terminals in the area involved in this application; that they provide both interstate and intrastate service on a daily basis; that they have an excess of capacity and can handle additional traffic; that the granting of this application will dilute the traffic to their detriment; and that Smiser has not shown public convenience and necessity for the authority sought.

Issues

1. Whether the removal of the restriction constitutes the granting of new authority?
2. If the answer is yes, has Smiser proved that public convenience and necessity require the granting of such authority?
3. Whether the exception from Smiser's certificate of the commodity classification of explosives and dangerous articles was an inadvertence?
4. Whether the minor expansion of certain specific route authority is necessary?

Discussion

The answer to the first issue is yes. It is clear from Decision No. 81468, where further extension into northern California

was authorized, that Smiser failed to prove that public convenience and necessity required certification of the northern California service between points wholly within northern California (Finding 4, Decision No. 81468).^{3/} Thus, Smiser could confidently continue to serve between the northern California points under its permitted authority knowing that it was not infringing upon certificated status.

Although Smiser argues that it already has certificated authority in northern California, and therefore the removal of the restriction does not result in granting new or additional authority, we cannot agree with such a proposition. The question is not whether Smiser has certificated authority in northern California, which it has, but whether such authority permits certificated common carrier operation between the northern California points over the presently certificated routes. We hold that Smiser's present authority does not permit such operations between the northern California points and places.

^{3/} "4. The record does not demonstrate the same need for applicant's proposed local service between points in northern California. Although there were some witnesses who testified that they are presently using applicant as a permitted carrier between points in the San Francisco Territory and to points in the Sacramento area and to points and places intermediate thereto, the extent of such use is limited and sporadic. The existing certificated carriers are the primary sources of service for applicant's northern California witnesses. Except for certain isolated criticism, the public witness testimony fails to indicate that the existing service between the proposed northern California points is unsatisfactory." (Findings, page 15, mimeo Decision No. 81468, Application No. 53048.)

Since the removal of the restriction would constitute the granting of new and additional authority, we turn to the question of whether Smiser has proved that public convenience and necessity require the granting of such authority. In determining whether public convenience and necessity require the services proposed, the Commission considers the questions of experience, financial abilities, equipment, and facilities necessary to conduct the service; whether the proposed service is adequately responsive to the needs of the 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. (Application of Encinal Terminals (1963) 61 CPUC 721.)

The extent to which there shall be intrastate competition among motor carriers is a question committed to the judgment of this Commission exercising its sound discretion. It is, of course, a general principle of utility law that competition will not be permitted among the utilities to such an extent as would defeat the purposes of the grant of the franchise and injure the public interest. At the same time, however, there is a certain latitude granted the administrative agency as to the extent of competition among franchised motor carrier utilities which will best serve the public interest. (Application of Presto Delivery Service, Inc., Decision No. 83726 dated November 19, 1974 in Application No. 53360.)

The testimony in this case shows that definite advantages will accrue to the shipper witnesses testifying on behalf of Smiser. These witnesses were fairly representative of the shippers which Smiser is serving in the northern California area and it is not unreasonable to infer that the advantages referred to by the witnesses will apply to other shippers in the area in question. They also testified that in some respects the service supplied by existing carriers failed to meet their needs.

Here, Smiser already is serving the territory involved by way of permitted authority. By investing Smiser with greater authority, the shipping public is less inconvenienced in having to deal with a number of different carriers, and Smiser would be able to furnish more and better service. To promote these benefits is one of the duties of the Commission.

Since protestants in effect admit that Smiser is presently competing with them, we are persuaded that the cancellation of the restriction, which we have stated amounts to the grant of additional certificated authority, will not necessarily have the effect of taking traffic away from protestants. Contrariwise, it appears that there is a definite need, as well as desire, for the type and area of service proposed by applicant. We have held that a shipper is entitled to prefer the service of a particular carrier over that provided by all the others who are available and the favorite carrier is entitled to rely on this preference as a basis for expanding its service.

(Tesi Drayage Company (1970) 71 CPUC 24, 28.)

The granting of the certificate of public convenience and necessity and the restatement of its existing authority will have the salutary effect of improving the service to the public. The definite advantages which will accrue to the shipping public by granting this application more than outweigh any slight possible diversion of traffic from existing carriers, or increase in competition.

With respect to the request to include the commodity classification of explosives or dangerous articles in Smiser's certificate, no evidence was adduced showing the necessity for including this classification. Smiser merely stated that this classification was inadvertently left out. We doubt the inadvertence since in the

first amendment to Application No. 53048, which resulted in Decision No. 81468 wherein Smiser's present authority was set forth, it is clearly shown that explosives or dangerous commodities were to be specifically excluded.

There was no dispute over the expansion of the specific route authority involving Interstate Highways 5 and 80 and State Highway 4. Since the certificate will be restated and the extensions are minor, we will authorize them.

Findings

1. Smiser is presently engaged in the transportation of general commodities both as a certificated and as a permitted carrier.
2. The cancellation of the restriction in Smiser's present certificate will enable it to render to its customers broader, more economical, and more convenient service, both in intrastate and interstate commerce.
3. Smiser proposes to render regular service on a five-day-a-week basis with late pickup and Saturday pickups by request. This will well serve the public convenience and necessity.
4. The grant of additional authority to Smiser will not impair the ability of protestants to continue to provide service to their customers.
5. Smiser has sufficient experience, equipment, and capability to properly serve the public as a fully certificated carrier in the area.
6. The shipper witnesses generally preferred Smiser's service over other carriers.
7. Public convenience and necessity require that Smiser be authorized to engage in operations in intrastate commerce as proposed in the application and also require that Smiser 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.

8. Public convenience and necessity do not require the authorization to transport explosives or dangerous articles.

9. Notice of the application appeared in the Federal Register on March 13, 1974.

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.

Smiser 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 Samjo, 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 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 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. 81468, which certificate is revoked effective concurrently with the effective date of the tariff filings required by paragraph 2(b).

4. In all other respects Application No. 54679 is denied.

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

Dated at San Francisco, California, this 17th
day of JUNE, 1975.

Vernon L. Stinson
President
William Lyons
Donald
Leonard Ross
Lowell
Commissioners

Samjo, Inc., doing business as Smiser Freight Service, 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 following transportation:

I. GENERAL COMMODITIES

Between all points and places on and within 10 miles laterally of the following highways, except that such ten miles shall not apply to the San Francisco, Los Angeles Basin, or San Diego Territories or to the off-route points stated in paragraph 15 below:

1. Williams and the San Diego Territory (as described in Note A) via Interstate Highway 5.
2. Marysville and the Los Angeles Basin Territory (as described in Note B) via State Highway 65 to its junction with Interstate Highway 80 near Roseville; thence via Interstate Highway 80 to its junction with State Highway 99 near Sacramento; thence via State Highway 99 to its junction with Interstate Highway 5 near Wheeler Ridge; thence via Interstate Highway 5 to the Los Angeles Basin Territory.
3. Marysville and Sacramento via State Highway 70 to its junction with Interstate Highway 5 near Sacramento; thence via Interstate Highway 5 to Sacramento.
4. Between Yuba City and the San Francisco Territory (as described in Note C) via State Highway 20 to its junction with Interstate Highway 5 near Williams; thence via Interstate Highway 5 to its junction with Interstate Highway 505 near Zamora; thence via Interstate Highway 505 to its junction with Interstate Highway 80 near Vacaville; thence via Interstate Highway 80 to the San Francisco Territory.

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dba
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5. Sacramento and the San Francisco Territory (as described in Note C) on Interstate Highway 80.
6. Vallejo and the San Francisco Territory (as described in Note C) on Interstate Highway 680.
7. Junction of Interstate Highway 80 and State Highway 4 near Pinole and Stockton on State Highway 4.
8. The San Francisco Territory (as described in Note C) and Salinas on U.S. Highway 101.
9. San Francisco Territory (as described in Note C) and Manteca via Interstate Highway 580 to its junction with Interstate Highway 205 near Tracy; thence via Interstate Highway 205 to its junction with State Highway 120 near Banta; thence via State Highway 120 to Manteca.
10. San Jose and Santa Cruz via State Highway 17.
11. Santa Cruz and Monterey via State Highway 1.
12. Fresno and Tulare via State Highway 180 to its junction with State Highway 63 near Squaw Valley; thence via State Highway 63 to Tulare.
13. Exeter and junction of State Highway 65 and State Highway 99 near Bakersfield via State Highway 65.
14. Los Angeles Basin Territory (as described in Note B) and the San Diego Territory (as described in Note A) via U.S. Highway 395 to its junction with Interstate Highway 15 near Temecula; thence via Interstate Highway 15 and U.S. Highway 395 to the San Diego Territory.

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15. Also serving the off-route points of Taft, Shafter, Wasco, Corcoran, Hanford, Lemoore, U.S. Naval Air Station at Lemoore and Dinuba.
16. All points in the following territories:
 - (a) San Diego Territory (as described in Note A).
 - (b) Los Angeles Basin Territory (as described in Note B).
 - (c) San Francisco Territory (as described in Note C).

In performing the service herein described, the routes and points listed above may be joined and combined, and use may be made 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, no shipments of the following shall be transported:

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.
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.

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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. Logs.
8. Articles of extraordinary value.
9. Trailer coaches and campers, including integral parts and contents when the contents are within the trailer coach or camper.
10. Commodities requiring the use of special refrigeration or temperature control in specially designed and constructed refrigerator equipment.
11. Explosives or dangerous articles.

NOTE A

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 S17 (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.

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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 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 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 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)

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Decision No. 84545, Application No. 54579.