

ORIGINAL

Decision No. 85032

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of AMERICAN TRANSPORT SYSTEM, INC., a corporation, and FROZEN OVERLAND EXPRESS, a California corporation, to transfer the certificate of public convenience and necessity and permits of American Transport to Frozen Overland Express, and for interim relief for Frozen Overland Express to lease and temporarily operate the American Transport authority.

Application No. 55868

O P I N I O N

American Transport System, Inc., a California corporation, requests authority to sell and transfer, and Frozen Overland Express, a California corporation, requests authority to purchase and acquire a certificate of public convenience and necessity.

The certificate was granted by Decision No. 81819 dated August 28, 1973 in Application No. 53538 and authorizes the transportation of general commodities requiring refrigeration between points within an area from Santa Rosa and Redding, in the north, to San Diego, in the south. The sale also includes the transfer of corresponding interstate authority. Pursuant to Section 5 of the Interstate Commerce Act, the entire transaction is subject to the exclusive jurisdiction of the Interstate Commerce Commission. On January 28, 1975, the ICC granted the parties authority to enter into a temporary lease arrangement whereby applicant purchaser will conduct operations pending a final order of the ICC on the transfer portion of the application. The ICC authorized a monthly rental consideration not to exceed \$10,000.

Applicants request interim authority of this Commission to execute the lease agreement pending final order of the ICC.

After consideration the Commission finds that the proposed transfer and lease agreement would not be adverse to the public interest. A public hearing is not necessary.

Frozen Overland Express 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. Upon approval of the Interstate Commerce Commission and effective therewith American Transfer System, Inc. may transfer the operative rights referred to in the application to Frozen Overland Express.
2. Within thirty days after the transfer the purchaser shall file with the Commission written acceptance of the certificate and a true copy of the bill of sale or other instrument of transfer.

3. Purchaser shall amend or reissue the tariffs on file with the Commission, naming rates and rules governing the common carrier operations transferred to show that it has adopted or established, as its own, the rates and rules. The tariff filings shall be made effective not earlier than five days after the effective date of this order on not less than five days' notice to the Commission and the public, and the effective date of the tariff filings shall be concurrent with the transfer. The tariff filings made pursuant to this order shall comply in all respects with the regulations governing the construction and filing of tariffs set forth in the Commission's General Order No. 80-Series. Failure to comply with the provisions of General Order No. 80-Series may result in a cancellation of the operating authority granted by this decision.

4. On or before the end of the third month after the transfer, the purchaser shall cause to be filed with the Commission, in such form as the Commission may prescribe, an annual report, or reports, related to the operations of the seller for the period commencing with the first day of the current year to and including the effective date of the transfer.

5. In the event the transfer authorized in paragraph 1 is completed, effective concurrently with the effective date of the tariff filings required by paragraph 3, a certificate of public convenience and necessity is granted to Frozen Overland Express, 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 route set forth in Appendix A, attached hereto and made a part hereof.

6. The certificate of public convenience and necessity granted by Decision No. 81819 is revoked effective concurrently with the effective date of the tariff filings required by paragraph 3.

7. Purchaser shall comply with the safety rules of the California Highway Patrol and the insurance requirements of the Commission's General Order No. 100-Series.

8. Purchaser 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.

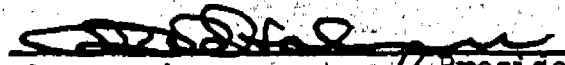
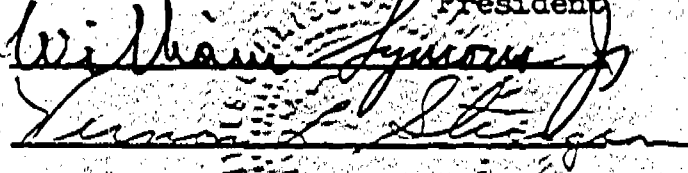

9. Purchaser shall comply with the requirements of the Commission's General Order No. 84-Series for the transportation of collect on delivery shipments. If purchaser elects not to transport collect on delivery shipments, it shall make the appropriate tariff filings as required by the General Order.

10. Pending final order of the Interstate Commerce Commission in this application to transfer, Frozen Overland Express may lease from American Transport System, Inc. the operating authority granted by Decision No. 81819 according to the terms and conditions as set forth in Exhibit B attached to the application.

11. Within sixty days after the effective date hereof and on not less than ten days' notice to the Commission and to the public, applicant shall amend the tariffs presently on file with this Commission in the name of applicant seller to reflect the lease authority granted by Ordering Paragraph 10 hereof.

The effective date of this order is the date hereof.

Dated at San Francisco, California, this 21st  
day of OCTOBER, 1975.

  
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President  
  
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Commissioners  
  
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Commissioners

Commissioner Leonard Ross, being necessarily absent, did not participate in the disposition of this proceeding.

Frozen Overland Express, by the certificate of public convenience and necessity granted in the decision noted in the margin, is authorized to conduct operations as a highway common carrier as defined in Section 213 of the Public Utilities Code for the transportation of general commodities requiring refrigeration or temperature control:

- A. Between all points and places in or within 25 miles of:
  - 1. The San Francisco Territory, as described in Note A.
  - 2. The Los Angeles Basin Territory as described in Note B.
- B. Between all points on, or within 25 miles laterally of the following routes:
  - 1. Interstate Highway 5 and State Highway 99, between Redding and San Ysidro, inclusive;
  - 2. U. S. Highway 101, between Santa Rosa and Los Angeles, inclusive;
  - 3. Interstate Highway 80, between San Francisco and Sacramento, inclusive;
  - 4. Interstate Highways 580, 205 and 5 between Oakland and Stockton, thence via State Highway 99 to Sacramento, inclusive;
  - 5. State Highway 33, between its junction with Interstate Highway 205, near Tracy, and Ventura, inclusive;
  - 6. State Highway 17, between San Jose and Santa Cruz, inclusive;
  - 7. State Highway 65, between Exeter and its junction with State Highway 99, near Bakersfield, inclusive;

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8. State Highway 4, between Pinole and Stockton, inclusive.

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

RESTRICTIONS:

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

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

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## NOTE A

## SAN FRANCISCO TERRITORY

San Francisco Territory includes all the City of San Jose and that area embraced by the following boundary: Beginning at the point the San Francisco-San Mateo County Line meets the Pacific Ocean; thence easterly along said County Line to a point one mile west of State Highway 82; southerly along an imaginary line one mile west of and paralleling State Highway 82 to its intersection with Southern Pacific Company right-of-way at Arastradero Road; southeasterly along the Southern Pacific Company right-of-way to Pollard Road, including industries served by the Southern Pacific Company spur line extending approximately two miles southwest from Simla to Permanente; easterly along Pollard Road to W. Parr Avenue; easterly along W. Parr Avenue to Capri Drive; southerly along Capri Drive to Division Street; easterly along Division Street to the Southern Pacific Company right-of-way; southerly along the Southern Pacific right-of-way to the Campbell-Los Gatos City Limits; easterly along said limits and the prolongation thereof to South Bascom Avenue (formerly San Jose-Los Gatos Road); northeasterly along South Bascom Avenue to Foxworthy Avenue; easterly along Foxworthy Avenue to Almaden Road; southerly along Almaden Road to 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; southwesterly along McKee Road to Capitol Avenue; northwesterly along Capitol Avenue to State Highway 238 (Oakland Road); northerly along State Highway 238 (Mission Blvd.) via Mission San Jose and Niles to Hayward; northerly along Foothill Blvd. and MacArthur Blvd. to Seminary Avenue; easterly along Seminary Avenue to Mountain Blvd.; northerly along Mountain Blvd. to Warren Blvd. (State Highway 13); northerly along Warren Blvd. to Broadway Terrace; westerly along Broadway Terrace to College Avenue; northerly along College Avenue to Dwight Way; easterly along Dwight Way to the Berkeley-Oakland Boundary Line; northerly along said boundary line to the Campus Boundary of the University of California; westerly, northerly and easterly along the campus boundary to Euclid Avenue; northerly along Euclid Avenue to Marin Avenue; westerly along Marin Avenue to Arlington Avenue; northerly along Arlington Avenue to San Pablo Avenue (State Highway 123); northerly along San Pablo Avenue to and including the City of Richmond to Point Richmond; southerly along an imaginary line from Point Richmond to the San Francisco waterfront at the foot of Market Street; westerly along said waterfront and shoreline to the Pacific Ocean; southerly along the shoreline of the Pacific Ocean to point of beginning.

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## NOTE B

## LOS ANGELES BASIN TERRITORY

Los Angeles Basin Territory includes that area embraced by the following boundary: Beginning at the point the Ventura County-Los Angeles County Boundary Line intersects the Pacific Ocean; thence northeasterly along said county line to the point it intersects State Highway 118, approximately two miles west of Chatsworth; easterly along State Highway 118 to Sepulveda Boulevard; northerly along Sepulveda Boulevard to Chatsworth Drive; northeasterly along Chatsworth Drive to the corporate boundary of the City of San Fernando; westerly and northerly along said corporate boundary of the City of San Fernando to Maclay Avenue; northeasterly along Maclay 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 DIEGO TERRITORY

The San Diego Territory includes that area embraced by following an imaginary line starting at a point approximately four miles north of La Jolla on the Pacific Coast shoreline running east to Miramar on U.S. Highway 395; thence following an imaginary line running southeasterly to Lakeside on State Highway 67; thence southerly on County Road S 17 (San Diego County) and its prolongation to State Highway 94; easterly on State Highway 94 to Jamul; thence due south following an imaginary line to the California-Mexico Boundary Line; thence westerly along the boundary line to the Pacific Ocean and north along the shoreline to point of beginning.

(END OF APPENDIX A)

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