

ORIGINAL

Decision No. 85150

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Applica-)
 tion of JOSEPH N. LeBOW, an)
 individual, doing business as)
 DESERT EMPIRE EXPRESS, for an)
 extension of its Certificate of)
 Public Convenience and Necessity)
 to Operate as a Highway Common)
 Carrier for the transportation)
 of property in intrastate and)
 interstate and foreign commerce)
 and for an In Lieu Certificate)
 of Public Convenience and Nec-)
 sity therefor.)

Application No. 55942
 (Filed September 17, 1975)

O P I N I O N

Pursuant to Decision No. 79327, dated November 16, 1971, in Application No. 52808, Joseph N. LeBow, an individual, doing business as Desert Empire Express, is providing highway common carrier service for transportation of commodities requiring refrigeration or temperature control in specially designed and constructed equipment within the Los Angeles Basin Territory and between such territory and the San Diego Territory, and between the Los Angeles Basin Territory and various desert points in the southern California area. His certificate of public convenience and necessity was registered with the Interstate Commerce Commission in Docket No. MC-134037 (Sub-No. 3). The applicant also holds permitted highway carrier authority issued by this Commission.

By this application, Joseph N. LeBow, requests authority to extend his service to points on routes generally north and northeast of the Los Angeles Basin Territory and to other points as more specifically described in Appendix A attached hereto. Applicant also proposes to provide a corresponding service in interstate and foreign commerce and therefore requests a

finding by this Commission that public convenience and necessity require such service. An appropriate notice was published in the Federal Register on October 8, 1975.

Applicant alleges that he has served the public under his existing State and Federal operating authorities for many years and that during the past few years, there has been a substantial increase in population and industry in the proposed extended area. The applicant has allegedly received numerous requests from various shippers for service to the proposed extended areas. He has served such areas under his permitted authority but is unable to provide a complete service which would be possible under certificated authority, in particular, split delivery service.

Applicant alleges that there is a lack of the type of service he proposes to provide in the extended areas. He indicates the service will be daily "on call" Monday through Friday, excluding holidays. Time-in-transit would be overnight with Saturday delivery service on request.

Applicant is presently a party to Western Motor Tariff Bureau, Inc., Agent, and he proposes to participate in the same tariffs for rates and charges in the proposed extended territory.

Applicant's financial statement as of December 31, 1974, shows assets of \$189,044.73, liabilities of \$87,234.22, for a net worth of over \$100,000.

He presently operates eleven (11) refrigerated trucks, seven (7) refrigerated trailers, five (5) tractors, and other vehicles incidental to his service, and alleges that he will provide additional equipment as needed.

Copies of the application were allegedly served on various highway common carriers with which the proposed service may compete and on the California Trucking Association. Notice of the filing of the application was made in the Commission's Daily

Calendar of September 22, 1975. No protests to the application have been received.

After consideration the Commission finds that:

1. Applicant is presently providing service as a permitted carrier within the proposed certificated area.
2. Applicant's permitted operations within the proposed service areas do not meet the existing demand for service by the public.
3. The proposed service would be a logical and desirable extension of the specialized service applicant now provides his customers.
4. Applicant possesses the necessary equipment and financial ability to provide the proposed service.
5. Notice of this application appeared in the Federal Register on October 8, 1975.
6. Public convenience and necessity require that applicant be authorized to engage in operations in intrastate commerce as proposed in the application, and also require that applicant be authorized to engage in operations in interstate and foreign commerce within limits which do not exceed the scope of the intrastate operations authorized by the order herein.
7. With reasonable certainty 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 authority granted will be set forth in an in lieu certificate which shall supersede the carrier's existing certificate. The territorial descriptions 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. A public hearing is not necessary.

Applicant is placed on notice that operative rights, as such, do not constitute a class of property which may be capitalized or used as an element of value in rate fixing for any amount of money in excess of that originally paid to the State as the consideration for the grant of such rights. Aside from their purely permissive aspect, such rights extend to the holder a full or partial monopoly of a class of business. This monopoly feature may be modified or canceled at any time by the State, which is not in any respect limited as to the number of rights which may be given.

O R D E R

IT IS ORDERED that:


1. A certificate of public convenience and necessity is granted to Joseph N. LeBow, an individual, authorizing him to operate as a highway common carrier, as defined in Section 213 of the Public Utilities Code, between the points 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 he accepts the certificate he 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.

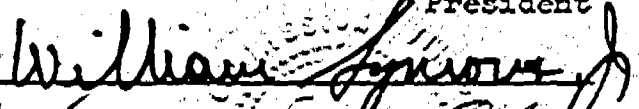
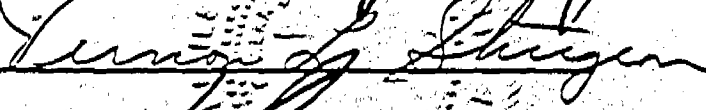
- (c) The tariff filings shall be made effective not earlier than thirty days after the effective date of this order on not less than thirty days' notice to the Commission and the public, and the effective date of the tariff filings shall be concurrent with the establishment of the authorized service.
- (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 his 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 his 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, he shall make the appropriate tariff filings as required by the General Order.

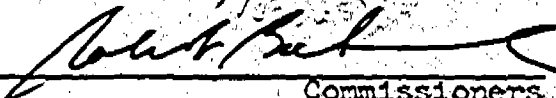
3. The certificate of public convenience and necessity granted in paragraph 1 of this order shall supersede the certificate of public convenience and necessity granted by Decision No. 79327, which certificate is revoked effective concurrently with the effective date of the tariff filings required by paragraph 2(b).

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

Dated at San Francisco, California, this 10th day of November, 1975.



President





Commissioners

JOSEPH N. LeBOW
(an individual)
doing business as
DESERT EMPIRE EXPRESS

Joseph N. LeBow, an individual, doing business as Desert Empire Express, by the certificate of public convenience and necessity granted by 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 commodities requiring the use of special refrigeration or temperature control in specially designed and constructed equipment between:

1. All points and places in the Los Angeles Basin Territory as described in Note A.
2. All points and places in the Los Angeles Basin Territory and all points and places on and within ten (10) miles laterally of the following highways:
 - a. State Highway 14 between San Fernando and Mojave, inclusive.
 - b. State Highway 58 between Keene and Barstow, inclusive.
3. The Los Angeles Basin Territory and the following points and places in the Counties of Los Angeles, Kern, or San Bernardino: Castaic, Pearblossom, Inyokern, China Lake, Ridgecrest, Westend, Argus, Trona, Johannesburg, Randsburg and Red Mountain.
4. The Los Angeles Basin Territory and Coachella serving all intermediate points on or within ten (10) miles laterally of the following highways:

Issued by California Public Utilities Commission.

Decision No. 85159, Application No. 55942.

- a. Interstate Highway 10 from the eastern boundary of the Los Angeles Basin Territory to Coachella.
- b. State Highway 111 from its intersection with Interstate Highway 10 near Whitewater to Coachella.
5. Between all points and places in the Los Angeles Basin Territory and the San Diego Territory, as described in Note B via U. S. Highway 101 (Interstate 5), U. S. Highway 395, and State Highway 78, serving all intermediate points on, and all off-route points within ten (10) miles laterally of said highways.
6. Between all points and places in the Los Angeles Basin Territory and Paso Robles and Cambria, serving all points and places on and within ten (10) miles laterally of U. S. Highway 101 and State Highway 1.
7. Between all points and places in the Los Angeles Basin Territory and Bakersfield, serving all points and places on and within ten (10) miles laterally of Interstate Highway 5 and State Highway 99, serving the off-route points of Maricopa, Taft and Ford City.
8. Between all points and places in the Los Angeles Basin Territory and Lucerne Valley, serving all points and places on and within ten (10) miles laterally of Interstate Highway 15 and State Highway 18.
9. Between all points and places in the Los Angeles Basin Territory and Newberry, serving all points and places on and within ten (10) miles laterally of Interstate Highways 15 and 40.

Issued by California Public Utilities Commission.

Decision No. 85150, Application No. 55942.

JOSEPH N. LeBOW
(an individual)
doing business as
DESERT EMPIRE EXPRESS

10. Between all points and places in the Los Angeles Basin Territory and Boron, serving all points and places on and within ten (10) miles laterally of Interstate Highway 15, U. S. Highway 395 and State Highway 58.

Joseph N. LeBow, an individual, doing business as Desert Empire Express, is authorized to use all available public highways between points to be served as hereinabove mentioned, and within the cities hereinabove to be served, and to use such streets and highways as may be necessary to serve consignors and consignees located within said cities.

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

Issued by California Public Utilities Commission.

Decision No. 85150, Application No. 55942.

JOSEPH N. LeBOW
(an individual)
doing business as
DESERT EMPIRE EXPRESS

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.

NOTE B

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)

Issued by California Public Utilities Commission.

Decision No. 85159, Application No. 55942.