

Decision No. 86155

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of  
AIRWAY TRUCKING CO., a California  
corporation, 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 inter-  
state and foreign commerce, and for  
an in lieu Certificate of Public  
Convenience and Necessity therefor.

Application No. 55602  
(Filed April 3, 1975)

Murchison & Davis, by Donald Murchison  
and Fred H. Mackensen, Attorneys at  
Law, for applicant.  
Russell & Schureman, by R. Y. Schureman  
and Carl H. Fritze, Attorneys at Law,  
for Brake Delivery Service-Meier  
Transfer Service, City Freight Lines,  
Griley Freightlines, Los Angeles City  
Express, Inc., and Smith Transportation  
Co.; and Michael R. Eggleton,  
for Osterkamp Trucking Co., Inc.;  
protestants.

O P I N I O N

By this application Airway Trucking Co. (Airway), a California corporation, requests an in lieu certificate of public convenience and necessity authorizing applicant to transport property moving both in intrastate and interstate and foreign commerce.

Applicant proposes to register the requested authority with the Interstate Commerce Commission as the existing authority is registered. Notice of the application for concurrent interstate and foreign commerce authority appeared in the Federal Register of April 30, 1975 under the provisions of the Interstate Commerce Act.

Applicant's request was opposed by Brake Delivery Service-Meier Transfer Service, City Freight Lines, Griley Freightlines, Los Angeles City Express, Inc., Smith Transportation Co., and Osterkamp Trucking Co., Inc. Six days of public hearings were held at Los Angeles, California, before Examiner Charles E. Mattson between November 18, 1975 and March 25, 1976. The matter was taken under submission March 25, 1976 after applicant amended its requested in lieu certificate (Exhibit 27). Protestants withdrew their opposition to applicant's requested in lieu certificate as amended.

Applicant asserts that its present certificate is ambiguous uncertain, and difficult of application. First, the certificate's grant of oil well farm authority is restricted to commodities originating at or destined to an oil well site, construction site, farm, or storage yard. This restriction requires applicant to determine the particular type of origin or destination a shipment may have, is difficult of application, and should be deleted. Second, the certificate's grant includes authority to transport a variety of commodities which are difficult to ascertain. This provision is ambiguous and uncertain and should be deleted. In its place authority will be granted to transport general commodities with the usual exceptions.

Finally, the grant includes a territorial restriction prohibiting transportation service within (but not between) certain described territories and is applicable to nine listed commodities. This restriction unreasonably limits the service available to customers of applicant and should be deleted. Other minor changes should also be made.

#### Findings

1. Applicant Airway Trucking Company, a California corporation, operates as a highway common carrier for the transportation of property in intrastate and interstate and foreign commerce.
2. Applicant holds a highway common carrier certificate of public convenience and necessity granted by Decision No. 65700 dated July 9, 1963 in Application No. 43067.
3. Applicant's present certificate of public convenience and necessity is ambiguous, uncertain, and difficult of interpretation

and application. Certain restrictions and limitations in the present certificate are unreasonable and burdensome and reduce the efficient operation and conduct of business by applicant.

4. The proposed in lieu certificate of applicant, as amended, will enable applicant to render to its customers more economical and convenient service both in intrastate and interstate commerce.

5. Applicant has sufficient experience, equipment, and capability to properly serve the proposed area in the proposed manner.

6. Public convenience and necessity require that applicant be authorized to engage in operations in intrastate commerce as proposed in the amended in lieu certificate (Exhibit 27). It also requires that applicant be authorized to engage in operations in interstate and foreign commerce within limits, as noted in Paragraph I, Original Page 1, Appendix A hereof, which do not exceed the scope of the intrastate operations authorized by this decision.

7. It can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.

#### Conclusion

The Commission concludes that the application, as amended, should be granted as set forth in the ensuing order. The territorial description and 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.

Airway Trucking Company, a California 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 Airway Trucking Company, a California corporation, authorizing it to operate as a highway common carrier, as defined in Section 213 of the Public Utilities Code, for the commodities, and 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 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


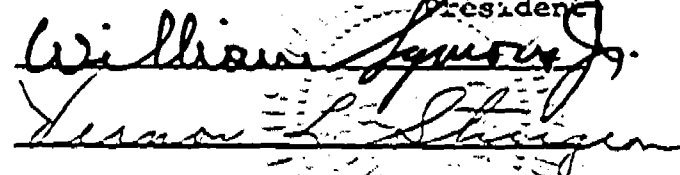
of Accounts as prescribed or adopted by this Commission and shall file with the Commission, on or before April 30 of each year, an annual report of its operations in such form, content, and number of copies as the Commission, from time to time, shall prescribe.

- (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. 65700 which certificate is revoked concurrently with the effective date of the tariff filings required by paragraph 2(b).

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

Dated at San Francisco, California,  
this 27th day of JULY, 1976.

  
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President  
  
\_\_\_\_\_  
Commissioners

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

Commissioner Robert Batinevich, being necessarily absent, did not participate in the disposition of this proceeding.

Airway Trucking Co., a California corporation, by the certificate of public convenience and necessity granted in the decision noted in the margin, is authorized to conduct operations as a highway common carrier as defined in Section 213 of the Public Utilities Code for the transportation of:

- I. General Commodities, except as provided in Subparagraphs 1 through 8, below:

Between all points and places within the Los Angeles Basin Territory described in Note A, the San Francisco Territory as described in Note B, and the San Diego Territory described in Note C and between said territories, serving all points and places on and within ten (10) miles laterally of Interstate Highway 5, between Stockton and San Diego, U.S. Highway 101, or California Highway 1, between Los Angeles and San Francisco, California Highway 99, between Stockton and Wheeler Ridge, and California Highway 4 between its junction with Interstate Highway 80 near Pinole and Stockton.

RESTRICTION ON INTERSTATE TRAFFIC:

Restricted against the transportation of shipments in interstate or foreign commerce weighing less than 5,000 lbs. between point(s) of origin and point(s) of destination, both of which lie wholly within the Los Angeles Basin Territory as described in Note A, or between point(s) of origin and point(s) of destination, both of which lie wholly within the San Diego Territory as described in Note C.

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,

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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.
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-type trucks or trailers or in hopper-type trucks or trailers.
6. Commodities when transported in motor vehicles equipped for mechanical mixing in transit.
7. Logs.
8. Trailer coaches and campers, including integral parts and contents when the contents are within the trailer coach or camper.

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II. Property necessary or incidental to the establishment, maintenance, or dismantling of oil, gas, or water wells, pipelines, refineries, and cracking or casinghead plants; equipment and materials used in or for construction or farming, or maintenance thereof, between all points and places on and along the following described routes, including all intermediate points, with the right to make lateral departures therefrom within a radius of 50 miles of such routes:

1. U.S. 101, U.S. 101 By-Pass or California Highway 1 between Oregon-California State Line and Los Angeles; Interstate Highway 5 and/or California Highway 99, Interstate Highway 10 and California Highway 111, between Oregon-California State Line and the Mexican Border;
2. California Highway 299 between Redding and Alturas, California;
3. U.S. 395 between the Oregon-California State Line and the California-Nevada State Line, via Alturas and Johnstonville;
4. California Highway 36 between Junction Interstate Highway 5 near Red Bluff, California, and Junction U.S. 395 at Johnstonville;
5. California Highway 20 between Marysville, California, and Junction Interstate Highway 80;
6. Interstate Highway 80 between San Francisco and California-Nevada State Line;
7. U.S. 50 between Sacramento, California, and California-Nevada State Line;
8. U.S. 395 between California-Nevada State Line at Topaz Lake and Junction Interstate Highway 15, near Hesperia;
9. Interstate Highway 15 between Junction with U.S. Highway 395 and San Diego;

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10. State Highway 11, and State Highway 210, Interstate Highways 15 and 40 between Los Angeles and Needles, California;
11. Interstate Highway 10 between Los Angeles, California, and California-Arizona State Line;
12. Interstate Highway 15 between Barstow and Nevada-California State Line;
13. Interstate Highway 8 between San Diego and California-Arizona State Line;
14. California Highway 127 between Baker and Nevada-California State Line.

## 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

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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 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 to Warm Springs; northerly along State

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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.

## 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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