

Decision No. 86341

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
MARROB ENTERPRISES, INC., dba MAIL
DELIVERY SERVICE OF SAN FRANCISCO,
for a Certificate of Public
Convenience and Necessity as an
Air Freight Forwarder of General
Commodities between Certain Points
in the State of California.

Application No. 56387
(Filed April 7, 1976)

William G. Fleckles, Attorney at Law, for Marrob
Enterprises, Inc., doing business as Mail Delivery
Service of San Francisco, applicant.
Russell, Schureman, Fritze & Hancock, by R. Y. Schureman,
Attorney at Law, for United Couriers, Inc., protestant.
Nola Pino, for the Commission staff.

O P I N I O N

Marrob Enterprises, Inc., dba Mail Delivery Service of San Francisco (Mail Delivery), operates as a highway contract carrier and a radial highway common carrier. Such permits authorize statewide operations.

In this application, Mail Delivery seeks authority to operate as an air freight forwarder as defined in Section 220 of the Public Utilities Code for the transportation of checks, drafts, money orders, securities, transit items, sales audit items, business records, audit media, tabulation cards, data processing materials, legal documents, and printed or reproduced documents or matter (commonly referred to as courier items). Mail Delivery proposes to ship or arrange to ship courier items by air common carriers to or from the

airports shown in the margin as points of origin or destination,^{1/} to or from all other airports in California served by air common carriers, as more specifically set forth in the application. The application states that Mail Delivery proposes to provide the proposed service between points of origin and destination once each business day, and on an on-call basis.

Public hearing was held and the application submitted before Examiner Mallory at San Francisco on July 7, 1976. Evidence in support of the application was presented by applicant. Protestant's evidence was received through stipulation. A witness appearing for the Commission's Transportation Division staff presented data concerning the current regulation of air freight forwarders by this Commission and recommended changes in our approach to such regulation.

Applicant's Evidence

The testimony of applicant's vice president is summarized in the following statements: Applicant serves approximately 700 business firms in San Francisco and Brisbane with postal delivery service, which includes daily pickup of mail from the United States Post Office and delivery of material to the Post Office for mailing. Mail Delivery operates 29 vehicles in connection with its mail service. It employs a total of 52 persons, 44 of which are drivers and the remainder are office personnel, dispatchers, and managers.

It proposes to provide air freight forwarder service in the following manner: Between San Francisco International Airport (SFO) and Los Angeles International Airport (LAX) daily pickup and delivery service will be provided with motor vehicle equipment owned and operated by Mail Delivery. Common carrier airlines will be used for

^{1/} The proposed primary origin or destination airports are: Lockheed Air Terminal (Burbank), Los Angeles International Airport, San Francisco International Airport, Oakland Airport, Sacramento Airport, and San Diego Airport.

the air portion of the transportation service. For service between San Francisco and other points, Mail Delivery will pick up the shipment, and arrangements will be made with existing surface carriers to deliver the shipments. Shipments will be consolidated prior to tender to an air carrier, and the consolidated shipment will be transported at the air carrier's published rates. Surface transportation service with applicant's own equipment will be expanded to points other than San Francisco and Los Angeles as the need for such service occurs.

Mail Delivery formerly was affiliated with MDS Courier Services, Inc., which was issued a statewide air freight forwarder certificate to transport courier items by Decision No. 77801 in Applications Nos. 51769 and 51770. Applicant seeks a certificate corresponding to that granted to MDS Courier Services, Inc.

A witness appearing on behalf of Blue Shield of California testified that Blue Shield of California now uses Mail Delivery's mail pickup and delivery service within San Francisco and would use its proposed freight forwarder service to transport claims documents, data cards, and computer tapes between its offices in San Francisco and its offices in Los Angeles, Santa Barbara, and San Diego. Blue Shield of California has need for transportation of such materials on a same-day basis to meet the demands of its business. The witness testified that applicant now provides prompt, rapid, and reliable local mail service, and that the proposed service is a natural extension of the service now provided locally.

A witness appearing for Blake, Moffit and Towne, engaged in wholesale sales of paper products, testified in support of the application. The witness stated that his employer uses applicant's service within San Francisco and that such service is satisfactory. Blake, Moffit and Towne requires a daily expedited service for the interchange of data processing materials and business records between

its San Francisco and Los Angeles offices, on the one hand, and offices in Fresno, San Diego, San Bernardino, Sacramento, and Oakland, on the other hand. According to the witness another carrier now performs such transportation service. That carrier assertedly provides adequate service on its regular scheduled daily run, but it does not offer an expedited service at other times. The witness stated that he would expect Mail Delivery to provide both the service now offered by its competitor and also an expedited on-call service.

Protestant's Evidence

The testimony of the Northern California District Manager of United Couriers, Inc. (UCI), received through stipulation, is summarized as follows: UCI operates as a surface courier, as an air freight forwarder, and as an express corporation throughout the State.^{2/} In San Francisco, UCI operates 16 vans and 24 automobiles in providing courier, air forwarder, and express service. Two-thirds of UCI's traffic is to or from banks and savings and loan companies.

It is UCI's position that the service desired by shipper witnesses appearing for Mail Delivery does not involve transportation for banks or savings and loan companies; UCI also contends that applicant does not intend, initially at least, to provide statewide service between all points, as proposed in the application. Therefore, UCI requests that the authority granted herein be limited to shipments having points of origin or destination in San Francisco and San Mateo Counties, and that applicant's authority be restricted so as not to apply to service for banks or savings and loan companies.

^{2/} UCI's freight forwarder and air express corporation certificates were granted in Decisions Nos. 70161 and 73116 in Application No. 47692 et al.

Staff Evidence

Informal discussions have been held between Commissioner Batinovich, air freight forwarders, and staff members concerning possible changes in the Commission's approach to the regulation of air freight forwarders and air express corporations. This application appeared to be an appropriate proceeding in which to receive evidence from our Transportation Division staff as to whether, or to what extent, changes in policy should be made with respect to regulation of air freight forwarders.

Section 220 of the Public Utilities Code reads as follows:

"220. 'Freight forwarder' means any corporation or person who for compensation undertakes the collection and shipment of property of others, and as consignor or otherwise ships or arranges to ship the property via the line of any common carrier at the tariff rates of such carrier, or who receives such property as consignee thereof.

"This section shall not apply to any agricultural or horticultural cooperative organization operating under and by virtue of the laws of this or any other state or the District of Columbia or under federal statute in the performance of its duties for its members, or the agents, individual or corporate, of such organization in the performance of their duties as agents.

"This section shall not apply to the operation of a shipper, or a group or association of shippers, in consolidating or distributing freight for themselves or for the members thereof, on a nonprofit basis, for the purpose of securing the benefits of carload, truckload, or other volume rates, to the operations of a warehouseman or other shippers' agent, in consolidating or distributing pool cars, whose services and responsibilities to shippers in connection with such operations are confined to the terminal area in which such operations are performed."

The definition of "common carrier" in Section 211 of the Public Utilities Code includes every freight forwarder. The definition of "public utility" in Section 216 of the Public Utilities Code includes every common carrier. Among other things, every common carrier must file its rates and charges (Section 486) and make its schedules of rates available to the public (Section 488). Before commencing operations every freight forwarder must obtain a certificate indicating that public convenience and necessity require such operation (Section 1010).

At the time of hearing 32 freight forwarder certificates were in force. All such certificates were issued as air freight forwarders. Of these, 22 certificate holders are also authorized by the Civil Aeronautics Board (CAB) to provide interstate air freight forwarder services. The CAB carriers generally attempt to maintain their California intrastate rates on levels similar to their interstate rates and desire to raise their intrastate rates concurrently with raises in their interstate rates. The CAB carriers generally engage in transportation of general commodities. The CAB carriers require no certification from the Interstate Commerce Commission for surface pickup and delivery operations within 25 miles of an airport.

The balance of the air freight forwarder certificates issued by this Commission appear to be granted to carriers engaged in courier services. Most of such operations are limited to intrastate service.

Some of the forwarder certificates issued by this Commission limit surface transportation to points within 25 miles of an airport; other certificates have either no mileage restrictions or authorize operations in a larger circumference around an airport.

The principal intrastate competition of air freight forwarders is with air express corporations and with air freight carriers. Air express corporations are regulated as common carriers and as public utilities under the Public Utilities Act (Part 1 of the Public Utilities Code). Air freight carriers are regulated as "other transportation companies" under the provisions of Article XII, Section 4 of the Constitution of the State of California (People v Western Airlines (1954) 42 C 2d 621). Article XII, Section 4 of the Constitution provides that the Commission may fix rates and establish rules for the transportation of property by transportation companies, prohibit discrimination, and award reparation for the exaction of unreasonable excessive or discriminatory charges.^{3/} Air freight carriers, as distinguished from air freight forwarders, may begin operations merely by filing a tariff with the Commission.

Air freight forwarders engaged in courier-type operations compete with surface couriers whose operations are exempt from minimum rates. Many carriers engaged in both surface operations and air freight forwarder operations have been accorded exemptions from minimum rates for their surface and air courier operations.^{4/}

^{3/} Both air freight carriers and common carriers as defined in the Public Utilities Code also are subject to the constitutional provision that a transportation company may not raise any rate or incidental charge except after a showing to and a decision by the Commission that the increase is justified. (See Section 454 of the Public Utilities Code.)

^{4/} Carriers operating both as surface carriers and as air freight forwarders which are exempted from minimum rates for courier services are the following: Loomis Courier Service, Inc., D.78585; MDS Courier Services, Inc., D.77801; Purolator Courier Corporation, D.76236; and United Couriers, Inc., D.65794.

The staff witness stated that an informal meeting had been held at which staff members and Commissioner Batinovich met with 24 representatives of air freight forwarders. The witness stated that the main complaint received from interstate air freight forwarders is that such carriers do not have the flexibility to initiate changes in rates similar to that permitted under CAB regulations. The carrier representatives expressed the view that they no longer should be bound by minimum rate orders so that they may meet the rates of air freight carriers. In the opinion of the staff witness, it is incongruous to require air freight forwarders to observe minimum rates when competing air carriers are not required to do so. It is the recommendation of the witness that air freight forwarders and air express corporations be exempted from minimum rates applicable to highway permit carriers and other surface carriers.

The witness also recommended that General Order No. 109 (Regulations Governing the Filing and Handling of Requests for Tariff Changes Under the Special Tariff Docket) be amended to permit all tariff changes of air freight forwarders and air express corporations to be handled under the simplified procedures provided in that General Order, and that the requirements for the filing of a formal application under Rule 23 of the Commission's Rules of Practice and Procedure not apply to air freight forwarders and/or express corporations. ✓

No recommendations were made concerning changes in methods for the issuance of air freight forwarder operating authorities.

Discussion of Matters Covered in the Application

Based on the evidence of record, applicant has shown that public convenience and necessity require the issuance of a certificate as an air freight forwarder for the transportation of so-called courier items between San Francisco and San Mateo Counties, on the one hand, and points within a limited radius of airports in the cities of Los Angeles, Santa Barbara, San Diego, Sacramento,

Ontario, and Fresno.^{5/} The record establishes that applicant does not intend to immediately initiate service at the remainder of the points set forth in the application. The evidence does not indicate that public convenience and necessity require applicant's service from or to banks and savings and loan associations. The authority granted herein should be limited as indicated above.

Discussion of Staff Recommendations

By order issued today in Case No. 5432, et al., air freight forwarders and air express corporations are exempted from the minimum rate orders of the Commission applicable to highway carriers. The Commission has also considered whether to recommend to the Legislature amendment of the Public Utilities Code to exclude the requirements that air freight forwarders and air express corporations obtain certificates before commencing operations. The actions taken by the Commission are similar to those recommended by our Transportation Division in this proceeding.

Findings

1. Mail Delivery operates as a highway carrier for the transportation of mail and mailable matter from and to United States Post Offices between points within San Francisco and San Mateo Counties.
2. Mail Delivery has the ability, experience, equipment, and financial resources to provide the service hereinafter authorized.
3. Public convenience and necessity require the operations of Mail Delivery as an air freight forwarder for the transportation of courier items between points located in San Francisco and San Mateo Counties (via SFO) and points located within 25 miles of the following

^{5/} Other air freight forwarder certificates that contain restrictions on ground service generally provide for operations within a radius of 25 miles of an airport.

airports; Los Angeles International Airport, Lockheed Air Terminal (Burbank), Sacramento, Fresno, Santa Barbara, Ontario, and San Diego, except that no transportation service shall be performed when the point of origin or destination is a bank or savings and loan association.

4. 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

Authority to operate as an air freight forwarder should be granted to Mail Delivery as set forth in the order which follows.

Marrob Enterprises, Inc., dba Mail Delivery Service of San Francisco, 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 Marrob Enterprises, Inc., dba Mail Delivery Service of San Francisco, authorizing it to operate as a freight forwarder as defined in Section 220 of the Public Utilities Code as more particularly set forth in Appendix A of this decision.

2. In providing service pursuant to the authority granted by this order, applicant shall comply with and observe the following service regulations. Failure so to do may result in a 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.
- (b) Within one hundred twenty days after the effective date of this order, applicant shall establish the authorized service and 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. 117-Series.
- (e) Applicant 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 required by the General Order.

- (g) Applicant shall comply with the requirements of the Commission's General Order No. 100-Series and the safety rules administered by the California Highway Patrol if applicant intends to operate a motor vehicle under this authority.

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

Dated at San Francisco, California, this 31st
day of AUGUST, 1976.

William J. Lyons President
James L. Stinson
F. Ross
Robert Bateman Commissioners

MARROB ENTERPRISES, INC.
DBA
MAIL DELIVERY SERVICE OF
SAN FRANCISCO

Marrob Enterprises, Inc., dba Mail Delivery Service of San Francisco, by the certificate of public convenience and necessity noted in the margin, is authorized to operate as a freight forwarder as defined in Section 220 of the Public Utilities Code by the lines of air common carriers, subject to the following conditions:

1. Applicant is authorized to transport property described below between points in San Francisco and San Mateo Counties (via San Francisco International Airport), on the one hand, and points within 25 statute miles of the following airports, on the other hand:
 - Lockheed Air Terminal (Burbank)
 - Los Angeles International Airport
 - Sacramento Airport
 - Fresno Airport
 - Ontario International Airport
 - San Diego Airport
 - Santa Barbara Airport
2. The underlying carrier used by Marrob Enterprises, Inc., dba Mail Delivery Service of San Francisco, between airports shall be an air common carrier, except that in emergencies only, such as an airport being closed because of inclement weather, highway common carriers or passenger stage corporations may be used as underlying carriers to provide the transportation.
3. No collection or distribution service shall be provided by Marrob Enterprises, Inc., dba Mail Delivery Service of San Francisco, to or from any point more than 25 statute miles distant from any airport served by it. As used herein "point" means any point within 25 statute miles of the city limits of any city in which is located an airport, or 25 statute miles of any airport located in an unincorporated area.
4. Marrob Enterprises, Inc., dba Mail Delivery Service of San Francisco, shall establish door-to-door rates for service between airports, including points within 25 statute miles thereof as defined in paragraph 3 herein.

Issued by California Public Utilities Commission.

Decision No. 86341, Application No. 56387.

MARROB ENTERPRISES, INC.
DBA
MAIL DELIVERY SERVICE OF
SAN FRANCISCO

5. Marrob Enterprises, Inc., dba Mail Delivery Service of San Francisco, is authorized to transport checks, drafts, money orders, securities, transit items, sales audit items, business records, audit media, tabulation cards, data processing materials, legal documents, and printed or reproduced documents or matter (except as provided in paragraph 6).
6. Marrob Enterprises Inc., dba Mail Delivery Service of San Francisco, shall not forward any shipments containing:
 - (a) Commodities prohibited by law from transportation by aircraft.
 - (b) Checks or money orders in the process of clearance and bank accounting data, or other materials for banks, or savings and loan associations.

(END OF APPENDIX A)