

Decision 84 08 053

AUG 1 1984

**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Seapool Express, Inc., a California corporation, to transfer to, and of F. W. Myers & Co., Inc., a New York corporation, doing business as Myers Express, to acquire a certificate of public convenience and necessity as a highway common carrier.

Application 84-04-067  
(Filed April 9, 1984)

O P I N I O N

This is an application in which Seapool Express, Inc. (Seapool), a California corporation, seeks authority to transfer its highway common carrier operating authority to F. W. Myers & Co., Inc. (Myers), a New York corporation doing business as Myers Express.

Notice of the filing of the application appeared in the Commission's Daily Transportation Calendar on April 18, 1984. There are no protests.

The assigned administrative law judge requested clarification of certain matters in the application which has been received. The matter is now ready for decision.

The Commission makes the following findings and conclusion.

Findings of Fact

1. A public hearing is not necessary in this matter.
2. Seapool is a highway common carrier as defined in Public Utilities Code § 213 and is subject to the jurisdiction of this Commission. It was issued a certificate of public convenience and necessity in Decision 82-08-028, dated August 4, 1982 (Application 82-03-47). The certificate authorizes operation as a general commodity carrier between specified points in California. Seapool also holds a contract carrier permit issued by this Commission in File T-129,383. In addition, Seapool operates as a carrier of general commodities with usual exclusions in interstate

commerce for traffic having a prior or subsequent movement by water under authority issued by the Interstate Commerce Commission (ICC) in Docket No. MC 150970.

3. Myers is a corporation duly organized and existing under the laws of the State of New York. It is qualified and authorized to transact business in California.

4. Both Seapool and Myers are subsidiary corporations of The Myers Group, a New York corporation, some of whose directors and officers are common to both corporations. All of Seapool's outstanding and issued stock, consisting of 1,000 shares of common stock, is held by The Myers Group. All of Myers' outstanding and issued stock, consisting of 1,850 shares of common stock, is held by The Myers Group.

5. On June 24, 1983, a plan of merger was executed between the respective boards of directors of Seapool and Myers. It was agreed that the two corporations would merge, with Myers being the surviving corporation. A copy of the plan of merger is attached to the application as Exhibit 5. Upon merger the officers and directors of Myers shall continue to be officers and directors of Myers, the surviving corporation. On the effective date of the merger all of the estate, property, rights, privileges, powers, franchises, interests and motor carrier operating authorities of Seapool, and all of its property, real, personal and mixed, and all debts due on whatever accounts of Seapool, shall be vested in Myers as the surviving corporation.

6. Myers had total current assets of \$11,390,211 and total assets of \$13,086,511 as of December 31, 1982. It had gross revenues of \$9,526,175 for the year ending December 31, 1982.

7. Since there is presently common control of both Myers and Seapool, and the officers and directors of both are essentially the same, there will be no change in the operations or management of the motor carrier operations presently being conducted by Seapool. It is

contemplated that these operations will be conducted under the trade name and style of Myers Express. On consummation of the transfer Myers will adopt the tariffs under which Seapool presently provides service.

8. The parties have applied to the ICC for authority to transfer Seapool's interstate operating authority to Myers.

9. Myers has the ability, including financial ability, to conduct the proposed operations.

10. The proposed transfer of operating rights from Seapool to Myers would not be adverse to the public interest.

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

12. The following order has no reasonably foreseeable impact on the energy efficiency of highway carriers.

13. The operating rights authorized to be transferred should be restated in a new certificate of public convenience and necessity.

14. Since there is a concurrent proceeding pending before the ICC, this order should be effective on the date of issuance to permit coordination of the two matters.

#### Conclusion of Law

Seapool should be authorized to transfer its highway common carrier operating authority to Myers.

Only the amount paid to the State for operative rights may be used in rate fixing. The State may grant any number of rights and may cancel or modify the monopoly feature of these rights at any time.

O R D E R

IT IS ORDERED that:

1. Seapool Express Inc., a California corporation, may transfer the operative rights and property specified in the application to F. W. Myers & Co., Inc., a New York corporation. This authority shall expire if not exercised by May 31, 1985, or within such additional time as the Commission may authorize.

2. Transferee shall:

- a. File with the Transportation Division written acceptance of the certificate and a copy of the bill of sale or other transfer document within 30 days after transfer.
- b. Amend or reissue transferor's tariffs. The tariffs shall not be effective before the date of transfer, nor before 5 days' notice is given to the Commission.
- c. Comply with General Orders Series 80, 100, 123, and 147, and the California Highway Patrol safety rules.
- d. File an annual report of transferors's operations for the period from the first day of the current year to the date of transfer.
- e. Maintain accounting records in conformity with the Uniform System of Accounts.
- f. Comply with General Order Series 102 and 130. If applicant elects to engage subhaulers, applicant shall have the required bond on file, and applicant shall engage only highway carriers who hold appropriate operating authority granted by this Commission.

3. If the transfer is completed, on the effective date of the tariffs a certificate of public convenience and necessity is granted to F. W. Myers & Co., Inc., a New York corporation, authorizing it to operate as a highway common carrier, as defined in PU Code § 213, between the points listed in Appendix A.

4. The certificate of public convenience and necessity granted by Decision 82-08-028 is revoked on the effective date of the tariffs. This order is effective today.

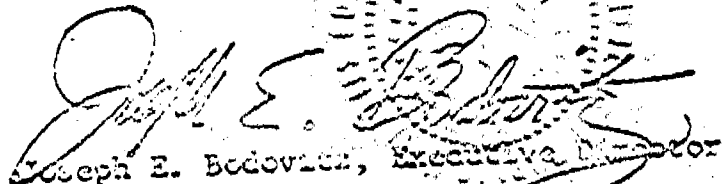
Dated     AUG 1 1984    , at San Francisco, California.

Commissioner Priscilla C. Grov,  
being necessarily absent, did  
not participate .

Commissioner William T. Bagley  
being necessarily absent, did  
not participate.

LEONARD M. GRIMES, JR.  
President  
VICTOR CALVO  
DONALD VIAL  
Commissioners

I CERTIFY THAT THIS DECISION  
WAS APPROVED BY THE ABOVE  
COMMISSIONERS TODAY.

  
Joseph E. Bedovian, Executive Director

F. W. Myers & Co., Inc., by the certificate of public convenience and necessity granted by the decision noted in the margin, is authorized to conduct operations as defined in Public Utilities Code Section 213 for the transportation of general commodities as follows:

- A. Between all points and places in Los Angeles Basin Territory as described in Note A.
- B. Between all points on or within 25 statute miles of the following described routes:
  1. Interstate Highway 5 between Redding and San Ysidro.
  2. State Highway 99 between Red Bluff and Wheeler Ridge.
  3. U.S. Highway 101 between Crescent City and Los Angeles.
  4. Interstate Highway 10 between Los Angeles and Indio.
  5. Interstate highway 80 between San Francisco and Truckee.
  6. Interstate Highway 580 between Oakland and its junction with Interstate highway 5 near Westley.

Except that under the authority granted, carrier shall not transport any shipments of:

1. Used household goods and personal effects, office, store, and institution furniture and fixtures.

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2. Automobiles, trucks, and buses, new and used.
3. Ordinary livestock.
4. Liquids, compressed gases, commodities in semiplastic form, and commodities in suspension in liquids in bulk in any tank truck or tank trailer.
5. Mining, building, paving, and construction materials, except cement or liquids, in bulk in dump truck equipment.
6. Commodities when transported in motor vehicles equipped for mechanical mixing in transit.
7. Portland or similar cements, either alone or in combination with lime or powdered limestone, in bulk or in packages, when loaded substantially to capacity.
8. Articles of extraordinary value.
9. Trailer coaches and campers, including integral parts and contents when contents are within the trailer coach or camper.
10. Explosives subject to U.S. Department of Transportation regulations governing the transportation of hazardous materials.
11. Fresh fruits, nuts, vegetables, logs, and unprocessed agricultural commodities.
12. Any commodity, the transportation or handling of which, because of width, length, height, weight, shape, or size, requires special authority from a governmental agency regulating the use of highways, roads, or streets.

13. Transportation of liquid or semisolid waste, or any other bulk liquid commodity in any vacuum-type tank truck or trailer.

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



## 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; northeasterly along the 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 the 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 Interstate Highway 15 to Nuevo Road; easterly along Nuevo Road via Nuevo and Lakeview to State Highway 79; southerly along State Highway 79 to State Highway 74; westerly to the corporate boundary of the City of Hemet; southerly, westerly, and northerly along the corporate boundary to The Atchison, Topeka & Santa Fe right-of-way; southerly along the 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 Interstate Highway 15; southerly along Interstate Highway 15 to the Riverside County-San Diego County boundary line; westerly along the boundary line to the Orange County-San Diego County boundary line; southerly along the 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.

(END OF APPENDIX A)

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