

ORIGINAL

Decision No. 87199

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Peninsula Air Delivery, 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 interstate and foreign commerce.

Application No. 55846
(Filed August 1, 1975)

Dennis D. Kendall, for applicant.
William F. Adams and W. A. Gregory, Attorneys at Law, for Pacific-Motor Trucking Company; Eldon M. Johnson, Attorney at Law, for Hatfield Trucking Service and Campos Delivery; and Dunne, Phelps & Mills, by James O. Abrams and Marshall G. Berol, Attorneys at Law, for Delta Lines, Inc.; protestants.

O P I N I O N

Peninsula Air Delivery (PAD), a corporation, operates pursuant to a highway common carrier certificate which authorizes the transportation of general commodities, with the usual exceptions, between points and places within the San Francisco Territory and within five miles thereof. The authority is set forth in Appendix A of Decision No. 82196 dated December 4, 1973 in Application No. 54205. It also has concurrent authority from the Interstate Commerce Commission to operate in interstate and foreign commerce within this area. Additionally, PAD operates in intrastate commerce within 350 miles of its terminal in Mountain View pursuant to radial highway common and highway contract carrier permits issued by the Commission.

By this application, PAD seeks an extension of its highway common carrier certificate to include service along various routes with 20-mile laterals in intrastate and interstate and foreign commerce generally to Healdsburg and Napa, on the north, Sacramento and Stockton, on the east, and Carmel, Salinas, the intersection of Interstate Highway 5 and State Highway 152, and Fresno, on the south. A copy of the application has been filed with the Interstate Commerce Commission pursuant to Section 206(a)(6) of the Interstate Commerce Act, and notice thereof appeared in the Federal Register. The application was protested by Associated Freight Lines (Associated), Pacific Motor Trucking Company (PMT), Hatfield Trucking Service, Inc. (Hatfield), Hermanehilldo Campos III, doing business as Campos Delivery Service (Campos), and Delta Lines, Inc. (Delta). A prehearing conference was held on November 14, 1975 and public hearing was held on February 9, 10, and 11, and March 1 and 2, 1976 in San Francisco before Examiner Arthur M. Mooney. All protestants, except Associated, appeared at the hearings. The matter was submitted upon the filing of concurrent briefs on April 27, 1976.

Applicant

The president of applicant testified as follows regarding the background and present operations of PAD: PAD commenced operations in 1968. It is owned by Kent Herkenrath and himself. Both owners had considerable prior experience with airlines in the airfreight field, and it became apparent to them at that time that there was a need for an expedited service for air shipments between the airlines and shippers and consignees. This was the motivating factor that prompted them to go into the transportation business. They started with a used station wagon and serviced only several customers on the San Francisco peninsula who required a dependable carrier for critical small shipments from and to the San Francisco International Airport (SFO). The number of customers grew rapidly,

and PAD obtained additional equipment and expanded its facilities to meet their needs. Today PAD is operating from a modern, custom-built, 20,000 square-foot terminal in Mountain View; it has 20 van trucks, 2 Ford Econoline vans, 7 tractors, 9 van trailers, and 1 forklift; and it employs in excess of 50 people. As the need has arisen, PAD has invested in specialized equipment such as roller-bed trucks for airfreight containers and air-ride vans for the transportation of high value, fragile electronic equipment, and it is now adding 6,000 square feet of floor space to its terminal. All of its fleet is radio equipped. Except for repairs to diesel equipment, it has facilities for maintaining and repairing all of its equipment. It operates routinely 24 hours a day, 7 days a week, and can accommodate late-night and weekend shipments for its customers when necessary. Its personnel receive training in the handling of electronic and other specialized equipment. The present certificated area is divided into small sectors, each served by a particular driver with the type of equipment and schedule necessary to meet the needs of the customers on his route. In this regard, many of its shippers require several pickups a day, others require expedited service which can meet certain airline flight schedules, and some have little dock space, and because of this, require prompt pickup service.

The president testified that in the last three years, PAD has doubled its business; that during this period, it has become apparent that its operations under its permitted authority in the sought areas have increased to the point where certificated authority is appropriate; that it is receiving numerous requests for additional service here; and that the granting of the requested authority will allow PAD to offer a more complete service to its customers and to better fulfill their interstate and foreign, as well as intrastate, transportation needs. He stated that PAD must

now interline interstate and foreign shipments to or from the sought areas with carriers holding authority to transport such shipments there, including Hatfield to Sacramento and north thereof and Campos to the Monterey Peninsula and Watsonville, and that if the application is granted, PAD could handle this transportation direct for its customers without the inconvenience and delay of interlining. The witness explained that the proposed service would be on a daily basis, seven days a week; that delivery would be the same or next day depending on the distance involved; and that emergency service would be available at anytime on request. He stated that if additional terminal facilities were needed in the sought area, they would be obtained.

The following evidence was presented by the controller and vice president of finance of PAD: PAD's operations have grown each year from \$144,000 in revenue when it commenced operations in 1968 to over \$2 million in revenue in 1975. It owns all of its land and terminal facilities and also all of its equipment with the exception of two Ford Econoline vans which are leased. For the year 1974, it had assets of \$769,098, liabilities of \$464,005, and a stockholder's equity of \$305,093, and its net income, after taxes, and gross operating ratio were \$101,795 and 91.1 percent, respectively. According to its 1975 quarterly reports filed with the Interstate Commerce Commission (Exhibit 10), its 1975 total operating revenue was \$2,289,000, which included \$1,760,000 in freight revenue and \$529,000 in other revenue, and its ordinary income, before taxes, and operating ratio for the year were \$214,000 and 91.8 percent, respectively. Of the \$529,000 in other revenue, approximately 80 percent was from Adelphic Cargo Enterprises, its air division, which operates a freight service by air between Hayward, California, and Utah, and the balance was from its auto body shop, Modern Classic. The air division operates at approximately

a 12 percent profit, and the body shop is a break-even situation. PAD has an agency arrangement with Burlington Northern Air Freight Incorporated (BNAFI). A separate legal entity, Security Air Cargo (SAC), a corporation, which is wholly owned by the two shareholders of PAD, was formed for accounting purposes to separate the terminal services performed for BNAFI at PAD's terminal from the transportation and other services performed by PAD for BNAFI. SAC has approximately 50 employees of its own. It consolidates and breaks and sorts freight for BNAFI, its only customer, and performs all other necessary terminal services for it. The employees are paid by SAC. It was determined through a study that 12-1/2 percent of the BNAFI revenue generated on outbound shipments through this terminal would cover the cost of the service provided by SAC for both inbound and outbound freight, and SAC is compensated accordingly. SAC operates without a profit or loss. PAD is compensated by BNAFI for the transportation service it provides, and it also receives 1/3 of the profit, after all expenses, earned by BNAFI at this agency station. Some of PAD's transportation equipment have BNAFI's logo on them, and the balance have its own on them. PAD has the financial ability to expand its operations into the sought areas. Should the application be granted, PAD has no present plans for opening any additional terminals.

The executive vice president of BNAFI, an air freight forwarder, testified as follows: BNAFI commenced operations in mid-1972, and since then PAD has been its cartage agent in the San Francisco area. BNAFI is owned by Burlington Northern Transport which in turn is owned by Burlington Northern, Inc. Burlington Northern Railroad is also a part of the organization. Several months after it inaugurated service, BNAFI expanded its agency relationship with PAD to include additional terminal operations and outbound freight service. BNAFI has 38 such stations throughout the United States, which it calls outbound profit centers. Of these, 29 are manned by BNAFI personnel, and the other 9 are agency stations with arrangements similar to the one it has with PAD. The largest of the outbound profit centers is the one operated by PAD, and the gross annual outbound revenue through this station is 6 to 7 million dollars. BNAFI also has 200 inbound agents that deliver freight for it only. It uses great care in selecting agents for the 9 agency outbound profit centers. It sought out PAD to be its agent in the San Francisco area, and PAD's president is its terminal manager here. Its location at PAD's Mountain View terminal is convenient for serving both the SFO and the San Jose Municipal Airport (SJC). It trains the personnel in the agency outbound profit centers the same as its own and makes all company information available to them. BNAFI has both intrastate and interstate and foreign operating authority. Its gross revenue for 1975 was \$42 million from domestic service and \$3 million from foreign service. It anticipates increases of 33 and 100 percent in its domestic and foreign operations, respectively, in 1976.

All shipments handled by BNAFI are time sensitive. The product it is selling is speed. BNAFI needs an expedited pickup and delivery service which PAD is providing for it in its present certificated area. BNAFI is now using Campos to the Monterey area and Hatfield to the Sacramento area. It has had some recent problems with these two carriers. Campos has missed some pickups, and there has been a problem in working out a system with it for immediate proof of delivery which is required by many of BNAFI's customers, especially for critical shipments. Because of the additional mileage it would add to the distance between the SFO and Sacramento, Hatfield does not want to go to the Mountain View station to pickup and deliver BNAFI shipments, and PAD must meet its truck somewhere near SFO to transfer this freight. If the application is granted, BNAFI could extend the expedited service it now has in its terminal area into the sought areas, it could sell one-day service between most of the extended areas and many cities in the United States, and PAD could provide pickup and delivery service to much, if not all, of its new certificated areas on a daily round-trip basis which is the type of service BNAFI needs. The average weight of BNAFI shipments into and out of its Mountain View station is a little over 150 pounds. There are approximately 200 inbound shipments a day into this station, and on the average, the number destined for major locations in the sought extended areas are 20 to Sacramento, 10 to Fresno, 8 to Santa Rosa, and 5 to Monterey. There are approximately 20 percent more outbound shipments. The intrastate transportation service now provided by PAD for BNAFI is within the 25-mile radius of the airport which is exempt from interstate regulations, and BNAFI pays the rates named in PAD's tariff for this service. BNAFI supports the application.

Following is a summary of the evidence presented on behalf of PAD by representatives of six other shippers who now use its service in its present certificated area: They ship industrial tape recorders, magnetic tapes, computer peripheral equipment, chemicals, plastics, payrolls, semiconductor devices, electronic watches, motorcycle parts and accessories, documents, printed matter, clothing, and related commodities. Most have and are continuing to experience a substantial growth in their businesses. All have facilities in PAD's present certificated area. One also has plants in Healdsburg and San Rafael. Another has an office in Forestville, which is ten miles west of Santa Rosa. A third has a store in Concord, which is beyond the San Francisco Territory, and is planning to open additional stores in Stockton and other locations in the sought areas. One has intrastate shipments only, and the others have both intrastate and interstate or foreign shipments, many of which are airfreight shipments from or to SFO. Most have shipments ranging in weight from under 50 pounds to several hundred pounds. One, who ships documents for foreign freight, has shipments that average under one pound, and another has some shipments that weigh several thousand pounds. Several have limited dock space and, because of this, require prompt pickup of

their shipments. All have found PAD's present service, including it handling of critical shipments, some of which are at night and on weekends, to be an excellent, personalized, and reliable service. PAD has specialized equipment for transporting costly electronic and other fragile equipment. They have had very little or no claims against PAD. All have shipments between the San Francisco Territory and one or more locations in the sought extended areas, including Healdsburg, San Rafael, Sacramento, Stockton, Fresno, Monterey, and other towns in the proposed areas. Some of these shipments are on a regular basis and others are on an irregular basis. Most have used PAD on an infrequent basis to or from the sought areas. Some are aware of or have used the services of other common carriers to or from the sought areas, and a few complained about the service they received from other carriers. Several also use their own equipment for some of their transportation needs. All would like the same dependable service for their regular and emergency shipments into the sought areas that PAD now gives them in its present certificated area and will use its service in those areas if the application is granted.

Two shippers who have not as yet used PAD's service testified in support of the application. One is located in Porterville and ships helicopter parts, and the other is located in Clovis and ships broadcasting equipment and parts for radio stations. Both have a substantial number of airfreight shipments, many of which are emergency and require expedited handling to the airport. Because of the limited number of flights from the Fresno airport and the heavy fog at this airport during parts of the year, many of these shipments must be taken by truck to SFO. Both shippers require a fast, dependable truck service for these shipments in order to compete with their competitors in the large metropolitan areas. The helicopter parts shipper also has several customers in the San Francisco Bay area and has emergency shipments

to them at times. Both shippers have used other common carriers but have experienced serious delays with them on some of their airfreight shipments. They would like a dependable, scheduled service to SFO and their customers in the San Francisco area and would ship more airfreight through SFO if they had this. PAD is equipped to provide such service, and they will use its service for these shipments if the application is granted. The helicopter parts shipper would bring its shipments in its own equipment to PAD's truck at the Fresno airport.

The vice president of the Forestville Chamber of Commerce testified that the town has a population of 5,000 people; that although it has a small industrial community, it has set aside 15 areas for a new industrial park; that it will require adequate truck transportation for this development; and that his organization supports the application.

In its brief, PAD urged that the application be granted in its entirety with no restrictions or limitations. It argued that the shipper witnesses and the numerous other shippers of various commodities who wrote letters to the Commission supporting the application are in need of a consistent, dependable, scheduled service for their intrastate, interstate, and foreign shipments to and from the extended areas, including pickup and delivery of their airfreight and after hours and weekend emergency shipments, and that PAD is capable of providing these services. It pointed out that PAD has been experiencing a substantial growth; that it has expanded its terminal facilities and has added to its equipment fleet and will continue to do so as the need arises; and that the granting of the application will provide it with the opportunity for continued growth which is presently substantially limited by its geographically and service restricted operating authority.

Protestants

Following is a summary of the substantially similar evidence presented by the general freight manager of Delta and the traffic manager of the Central District of PMT: Both Delta and PMT have intrastate and interstate and foreign authority to serve most of California, including all of applicant's present certificated areas and the additional areas it seeks authority to serve. Each also has interstate authority to serve certain locations beyond California. Both operate various daily schedules, Monday through Friday, between applicant's present and sought areas, with the normal service overnight. This service requires both local pickup and delivery and line-haul equipment, and the cost of providing it regularly on a same-day delivery basis would be prohibitive. For weekend or emergency service and generally for same-day service, an additional charge is assessed. Such expedited or emergency service is seldom requested. Each has a substantial number of employees, including solicitors, a substantial amount of motor equipment, much of which is radio equipped, and numerous terminals within the sought areas and throughout its system. They handle mostly less-than-truckload freight within the scope of the sought authority. Both transport airfreight from and to all airports within applicant's present and proposed areas. PMT has several roller-bed trailers for handling airfreight containers. Delta does not have this type of equipment but does at times transport airfreight containers. They do not have air-ride equipment or hold themselves out to transport uncrated electronic equipment. However, PMT does handle uncrated freight on skids, such as machinery. Delta does serve several of the shippers who support the application, and some of this service is to points beyond the sought extensions. Both are operating with a large amount of unused capacity and could use additional freight for the sought areas. The average cost of

operating a unit of equipment over the highway is approximately 70 cents per mile, irrespective of whether it is loaded, partially loaded, or empty. There is now adequate service for the public within the sought areas by Delta, PMT, and the numerous other common carriers authorized to serve here. The granting of the application would dilute the traffic available to the existing carriers, adversely affect them economically and their ability to provide a viable service for the public, and have a detrimental impact on the environment and energy resources.

The following evidence was presented by the president and the vice president in charge of operations of Hatfield: The company is owned by the president and his wife, and their son is the vice president. It has been in business since 1943 and has specialized in airfreight transportation since 1959. Its protest is limited to the requested authority only insofar as it relates to the prior or subsequent movement by truck of airfreight shipments within the areas Hatfield provides such service. Hatfield holds authority from the Interstate Commerce Commission to transport interstate and foreign airfreight between SFO, on the one hand, and Sacramento and nearby points, on the other hand, and between the Sacramento Metropolitan Airport (SMF), and Sacramento, on the one hand, and points in 27 northern California counties, including the counties of San Mateo, Santa Clara, and Stanislaus on the south, on the other hand. Additionally, it holds both intrastate and interstate certificated authority to transport general commodities within the area generally bounded by Williams on the north, Placerville on the east, Stockton on the south, and the San Francisco Territory on the west. By tacking these authorities together, Hatfield is authorized to serve a major portion of northern California from SFO and SMF. It employs 11 regular and two casual drivers and operates 20 tractors and trucks,

of which 11 are radio equipped and 1 is an air-ride tractor, and 46 trailers, including 5 with roller beds for airfreight containers. It has a terminal in Sacramento and also a building in Stockton which has a telephone and is used by its drivers for transferring freight between trucks. The two witnesses are the salesmen for the company, and the drivers also solicit business. Hatfield operates three schedules daily, Monday through Friday, between Sacramento and SFO. The schedules are designed to meet the schedules of the airlines and freight forwarders and to give same-day delivery service between SFO and customers in the Sacramento-Stockton area and overnight service to those beyond. It operates another daily schedule which originates at SJC, stops at BNAFI's Mountain View terminal, meets a Stockton truck and transfers Stockton freight to it, and continues on to Sacramento. Hatfield provides only local service for its Sacramento customers on Saturdays, and on Sunday evenings it sends a truck to SFO to pick up all available freight for delivery on Monday mornings. It has standby equipment for any excess freight that may be available and for emergency service. The major airlines have formed a corporation, Air Cargo, Inc., to provide ground transportation for airfreight shipments. Hatfield is a member of this corporation and is the designated truck carrier in the directory of Air Cargo, Inc. for pickup and delivery service between SFO and its certificated service areas. The directory includes the Oakland airport with SFO, and Hatfield serves the Oakland airport on an on-call basis. Hatfield provides delivery service for one of applicant's supporting shipper witnesses for airfreight shipments into SMF and destined to points beyond the 25-mile zone exempt from regulation by the Interstate Commerce Commission. It has had no complaints from its customers regarding its service. While its financial

condition is good, it does have unused capacity and could handle additional freight if it were available. This has been accentuated by a reduction in the volume of airfreight shipments for military installations near Sacramento. There is not enough airfreight in Hatfield's service areas for another carrier. Several other carriers that have attempted to provide this service in the past have given it up. If PAD is granted authority to provide this specialized airfreight service here, the amount of available airfreight traffic would be substantially diluted, and this would have a serious adverse effect on Hatfield.

Following is a summary of the evidence presented by the wife of the owner of Campos: The company holds authority from the Interstate Commerce Commission to transport interstate airfreight shipments between SFO and Oakland airport and points within 25 miles thereof and SJC, on the one hand, and points in Monterey County and Watsonville, on the other hand. Campos protests only the part of the application that seeks authority to perform such interstate airfreight transportation. Campos is a family company operated by her husband, two sons, daughter, two cousins, and herself. She runs the office. The company has a terminal in Monterey and operates two trucks, three Ford Econoline vans, one tractor, and two trailers, one of which is equipped with heavy-duty rollers for airfreight containers. Campos has contracts with approximately 90 percent of the airfreight forwarders, including BNAFI, and also with the airlines' Air Cargo, Inc. to provide airfreight pickup and delivery within the company's service areas. Campos operates a morning and afternoon schedule with same-day delivery between SFO and the Monterey County - Watsonville areas. There are enough authorized carriers now to handle all airfreight shipments in these areas. The addition of another specialized airfreight carrier here would cause severe harm to Campos.

Similar briefs were filed by both Delta and PMT. The briefs argued that the evidence, including the limited evidence presented by the few shipper witnesses who appeared on behalf of applicant, does not support the granting of the application. In addition, they asserted that the record establishes that BNAFI is in effect PAD's partner and as such exerts control over PAD's operations, terminal, and economics; that BNAFI performs motor carrier services in other states and is owned by Burlington Northern Transport which is an interstate common carrier by motor vehicle; that pursuant to Section 206(a)(6) of the Interstate Commerce Act, a motor carrier operating within a single state cannot register its state certificate with the Interstate Commerce Commission when it is controlled by any other motor carrier engaged in operations outside such state; that in the circumstances, any certificate or extension thereof granted to PAD by the state cannot be registered with the Interstate Commerce Commission; and that the real purpose of the application appears to be an attempt by BNAFI to extend its pickup and delivery service. Both alleged that existing carriers are adequately serving the needs of shippers in the sought areas and that an additional carrier would severely hurt those now providing the service, is not needed, and would be adverse to the public interest. They urged that the application be denied in its entirety.

A joint brief was filed on behalf of Hatfield and Campos. The brief argued that the proposed authority insofar as it relates to the pickup and delivery of interstate and foreign airfreight shipments would directly conflict with such service now provided by Hatfield and Campos in their respective areas; that the two carriers are small and would be severely harmed by the competition of another specialized airfreight carrier; that they are providing a good and sufficient service for the public; that the evidence does

not show a public need for additional service of this type in their areas; and that the portion of the application they protest should be denied.

Discussion

The basic issue for our consideration is whether public convenience and necessity require any or all of the additional highway common carrier service in intrastate and also in interstate and foreign commerce proposed by applicant.

The following questions are relevant in determining the issue of public convenience and necessity: (1) Does applicant possess the experience, financial ability, equipment, and facilities to conduct the proposed service? (2) Is the proposed service adequately responsive to the needs of the shippers sought to be served? (3) Does the public or a portion thereof, in addition to applicant's present shippers, require the proposed service? (4) Will the granting of the application adversely affect the protestants or the public interest? (Encinal Terminals (1963) 61 CPUC 721.)

As to the first question, the answer is in the affirmative. Applicant has had considerable experience in the transportation field. While most of this has been in providing highway common carrier service within its present certificated area, the San Francisco Territory, it has been conducting some operations under its permitted authority into the sought areas. It has a modern terminal facility in Mountain View and a reasonable amount of operating equipment. According to the financial data furnished by it, its operations have been profitable. In this connection, it did have some losses during the earlier part of 1975, but its overall operations for the year were profitable. It is noted that its income statement for the year 1974, which is attached to the application as Exhibit E, shows

total freight revenue for the year of \$1,461,032 of which \$1,341,511 is allocated to the handling of interstate or foreign freight and \$119,521 is allocated to the handling of intrastate freight. From this it is apparent that PAD's operations are predominantly interstate in nature. However, it does have a significant intrastate operation. According to applicant, it has the necessary resources to finance any expansion of its operations to provide the proposed service and has a line of credit with a local bank should the need for additional capital arise.

With respect to the second question concerning the responsiveness of the proposed service to the needs of the shippers sought to be served, the answer again is in the affirmative. PAD is essentially a small shipment carrier although it does at times handle larger shipments. The service it performs for its customers is primarily the transportation of airfreight and other shipments which require prompt and sometimes expedited handling. The routes and schedules in its present certificated area and its terminal facilities are designed to provide this type of service. It operates around the clock, seven days a week and has the capability of accommodating requests for emergency service at any time. All of its equipment is radio equipped. PAD proposes to offer a similar quality of service in the extended areas if the application is granted. According to most of the public witnesses who appeared on its behalf, this type of reliable certificated service is critical to their business and they require it in the proposed areas. Furthermore, PAD has trained its personnel in the care and handling of fragile electronic and other technical equipment and supplies, has obtained special highway equipment for transporting these items, and has had requests to provide such transportation in the sought areas. Although the public witnesses who appeared in support of the

sought extensions were not numerous and the evidence they presented was limited, nonetheless, a representative showing has been made to establish the need for some additional service in the sought areas. (See "Call Mac" Transportation Co. (1966) 66 CPUC 111.) In this connection, PAD asserted that numerous customers who did not attend the hearing support the application and pointed out that supporting letters from many of them were either attached to the application or sent to the Commission. It is apparent that the proposed service is desired by many and is designed to meet their transportation needs.

In considering the third question which is concerned with whether the public or a portion thereof, in addition to applicant's present customers, require any or all of the proposed service, we have, on the one hand, the assertion by applicant that there is a public need for its service in the sought areas, and, on the other hand, the assertions by protestants that they and other certificated carriers now operating in these areas are adequately meeting all of the needs of the public. As stated above, PAD proposes to offer basically the same type of service in the extended areas that it now provides in its present area, which it asserts differs from that provided by most other common carriers. The particular portion of the public it seeks to serve are those shippers whose businesses are dependent upon a reliable, prompt pickup and delivery service with expedited service when necessary. The sought areas are not static. They are viable, growing areas both in population and economy. There are numerous businesses, industries, and other shippers and receivers of freight in these areas. With the exception of interstate and foreign airfreight shipments within the service areas of Hatfield and Campos, the record sufficiently demonstrates a public need for the proposed service.

Regarding the last question which is concerned with whether the granting of the application would adversely affect protestants or the public interest, the answer is that there could be some such effect. Delta and FMT provide intrastate and also interstate and foreign highway common carrier service in all of the sought areas. They protest the granting of any additional intrastate and/or interstate and foreign highway common carrier authority to applicant. Hatfield and Campos both hold authority from the Interstate Commerce Commission to transport interstate and foreign shipments having a prior or subsequent movement by air carrier. Hatfield's authority is between SFO and Sacramento and certain nearby points and between SMF and numerous northern California counties, including the counties of San Mateo, Santa Clara, and Stanislaus on the south, and Campos' authority is between SFO and points within 25 miles thereof and SJC, on the one hand, and Monterey County and the city of Watsonville, on the other hand. Their protests to the application are limited to the performance by PAD of such interstate and foreign airfreight transportation within their respective service areas. It is obvious that the added competition of an additional carrier with intrastate and interstate and foreign highway common carrier authority in the sought areas would have some effect on all of the protestants' businesses. As to Delta and FMT, they are two of the largest carriers in the state and, in addition to the sought areas, operate throughout most of the state. PAD is certainly not a serious competitive threat to either of these two carriers, and it is unlikely that it would have any noticeable effect on their financial condition or ability to serve the public. PAD's around-the-clock, seven-days-a-week operations do differ somewhat from those of the two carriers. Both Hatfield and Campos are specialized carriers of

interstate and foreign airfreight shipments. Their operations are geared to providing this type of service for their customers, and their income is dependent on this business. According to the evidence they presented, they have the capacity to fulfill all present and potential public demand for this service. A substantial part, if not almost all, of PAD's interstate and foreign operations involve the transportation of airfreight shipments for BNAFI and other customers, and it is apparent that this is the type of interstate and foreign traffic it would handle in the sought extension. If PAD were authorized to provide this service throughout the respective service areas of Hatfield and Campos, it would create a serious competitive threat to them and could have a severe detrimental effect on their earning capacity with a resulting effect on their ability to continue to provide satisfactory service for the public. Applicant did refer to several complaints regarding the service of Hatfield and Campos, however, they are not a basis for a finding that the two protestants are not adequately serving the public interest. With the exception of the proposed service between the San Francisco Territory, on the one hand, and Healdsburg, Forestville, Gilroy, Los Banos, and Fresno, on the other hand, all of which is along routes partly or entirely within Hatfield's service areas, the record in this proceeding does not establish that the granting of the sought interstate and foreign certificated authority within the service areas of Hatfield and Campos would be in the public interest. According to the detailed information presented by Hatfield regarding its routes, the major part of its operations are in the San Francisco, Sacramento, and Stockton metropolitan areas and the vicinities thereof. The aforementioned portions of applicant's proposed routes which are within Hatfield's service areas and which PAD should be authorized to serve in interstate

and foreign commerce are beyond Hatfield's main service areas, and the competitive threat of applicant along those routes should not substantially affect Hatfield. The portions of Campos' authorized territory PAD seeks interstate and foreign authority to serve are the main metropolitan areas therein.

Based on the foregoing, we are of the opinion that PAD should be authorized to provide intrastate highway common carrier service along the additional routes it proposes to serve and to all points and places within five miles thereof, including the off-route points of Forestville and Los Banos. Applicant has requested authority to serve all points and places within 20 miles of the proposed routes. However, the evidence presented by it was concerned with service for the major metropolitan centers which are located on the sought routes, and with the exception of Forestville, little or no evidence was presented in support of laterals of the magnitude requested. As to Los Banos, it is within the 20-mile lateral of Interstate Highway 5 sought by applicant but beyond the five-mile lateral which will be authorized, and since it is one of the larger cities in the vicinity of this route, it is appropriate that PAD should be authorized to serve it. Also, because we will limit lateral service to five miles and to avoid a gap in the authorized service, PAD should be authorized to operate over the route along Interstate Highways 205 and 5 and State Highway 120 between Interstate Highway 580 and State Highway 99, which route would have been within the requested 20-mile laterals.

With respect to the proposed interstate and foreign service, we are of the opinion that applicant should be authorized to provide such service between the territory it is presently authorized to serve by the Interstate Commerce Commission and Healdsburg, Forestville, Santa Cruz, Gilroy, Los Banos, and Fresno along the following routes with five-mile laterals: U.S. Highway 101

between Healdsburg and Gilroy, with off-route service on State Highway 116 or alternate routes to Forestville; State Highway 17 between Santa Cruz and its intersection with Interstate Highway 580; Santa Cruz and its intersection with Interstate Highway 580; Interstate Highway 580 between its intersection with State Highway 17 and its junction with Interstate Highway 5; Interstate Highway 5 between its junction with Interstate Highway 580 and its intersection with State Highway 152, with off-route service on State Highway 152 to Los Banos; Interstate Highway 205 between its junctions with Interstate Highways 580 and 5; Interstate Highway 5 between its junctions with Interstate Highway 205 and State Highway 120; State Highway 120 between its junction with Interstate Highway 5 and its intersection with State Highway 99; and State Highway 99 between its intersection with State Highway 120 and Fresno.

It is apparent that the additional highway common carrier service by PAD authorized herein would not have a significant effect on the environment. PAD is already operating in these areas under its permitted authority, and while there would be some increase in its activity under the new authority, its effect on the environment would be minimal.

Several final matters requiring comment are the assertions by Delta and PMT that PAD is controlled by BNAFI; that BNAFI is affiliated with a motor carrier that operates between states; that for this reason, as provided in Section 206(a)(6) of the Interstate Commerce Act, any intrastate authority that might be issued to PAD cannot be registered with the Interstate Commerce Commission; and that the real purpose of the application is to extend BNAFI's pickup and delivery limits. We do not agree with these arguments. The evidence does show that BNAFI has a contractual arrangement with PAD to use PAD's Mountain View

terminal and to have certain functions performed for it. It also uses PAD to perform pickup and delivery service for it within the San Francisco Territory. However, there is nothing in the record before us that would establish that PAD and BNAFI are not in fact separate entities; that any arrangements between the two companies are not arm's length transactions; or that either company directly or indirectly exerts any actual control over the other. While the executive vice president of BNAFI did state on cross-examination that PAD was like BNAFI's partner, it is obvious that he was referring to the fact that PAD and SAC, its affiliate, perform certain functions for BNAFI and not to any actual partnership or other such relationship. We recognize that BNAFI is PAD's major customer and that it might be more convenient for it to use PAD's service into the extended areas than the services of other carriers. Nonetheless, we are not persuaded that PAD is not the real party at interest in this proceeding. Furthermore, PAD does serve many other customers.

An in lieu certificate incorporating both PAD's current highway common carrier authority and that granted herein will be issued to it, and its present certificate will be canceled.

Findings

1. PAD holds a certificate of public convenience and necessity issued by this Commission and coextensive authority from the Interstate Commerce Commission authorizing it to operate as a highway common carrier, with the usual exceptions, in intrastate, interstate, and foreign commerce between all points and places in and within five miles of the San Francisco Territory. It also holds radial highway common and highway contract carrier permits from this Commission.

2. PAD has operated under the certificated authority described in Finding 1 since early 1974.

3. PAD has been operating under its permitted authorities between its present certificated territory and the sought extended areas, and some of this service is approaching, if not already, a highway common carrier type of service.

4. PAD now operates 24 hours a day, 7 days a week, in its present certificated territory with emergency service at any time and proposes to operate in the same manner in the sought areas.

5. The representatives of the nine shippers and the Forestville Chamber of Commerce who appeared for PAD support the sought extensions of its highway common carrier operations. Most now use PAD in its present certificated area, and some have used its permitted service to or from the sought areas. All who have used PAD indicated that it provides an excellent, personalized, expedited service with the type of equipment necessary to meet their needs. Most have been experiencing a growth in their businesses. Several perform some of their own transportation. Most are aware of or have used other highway common carriers, and a few had several complaints about the service they received from them. If the application is granted, all will use applicant's proposed intrastate service, and most will also use its proposed interstate and foreign service.

6. Hatfield and Campos both provide interstate and foreign highway common carrier transportation service for shipments having a prior or subsequent movement by air. Hatfield operates between SFO and Sacramento and nearby points and between SMF and 27 northern California counties. Campos operates between SFO and points within 25 miles thereof and SJC, on the one hand, and Monterey County and Watsonville, on the other hand. Part of Hatfield's service areas and all of Campos' service areas are in

the extensions sought by PAD. The service provided by the two protestants is a specialized service with schedules designed to meet the needs of their customers and air carriers and forwarders. The major part of Hatfield's operations is in the Sacramento, Stockton, and San Francisco Bay areas. Substantially all of the interstate and foreign traffic PAD would handle in these areas and the service areas of Campos, if it were authorized to provide such service, would be airfreight shipments. Such competition would severely affect the financial condition of the two protestants with a resulting adverse effect on their ability to serve the public.

7. It has not been shown on this record that it would be in the public interest to authorize PAD to operate in interstate and foreign commerce in those segments of the operating authority issued to Hatfield by the Interstate Commerce Commission which are within the Sacramento, Stockton, and San Francisco Bay areas or within the areas covered by the operating authority issued to Campos by the Interstate Commerce Commission.

8. The sought extended areas are also served by various other highway common carriers, some of which, including Delta and PMT, provide interstate and foreign as well as intrastate highway common carrier service within these areas. It has not been shown that any of those carriers will be seriously affected by an expansion of applicant's certificated service.

9. Public convenience and necessity require that applicant be authorized to engage in operations in intrastate commerce between all points and places located in or within five miles of the San Francisco Territory and on or within five miles of the proposed routes, including off-route service to Forestville and Los Banos and service along Interstate Highway 205 and 5 and State Highway 120 between Interstate Highway 580 and State Highway 99.

10. Public convenience and necessity require that applicant be authorized to engage in operations in interstate and foreign commerce between all points and places in or within five miles of the San Francisco Territory and on or within five lateral miles of the following routes:

- a. U.S. Highway 101 between Healdsburg and Gilroy, with off-route service on State Highway 116 or alternate routes to Forestville.
- b. State Highway 17 between Santa Cruz and its intersection with Interstate Highway 580.
- c. Interstate Highway 580 between its intersection with State Highway 17 and its junction with Interstate Highway 5.
- d. Interstate Highway 5 between its junction with Interstate Highway 580 and its intersection with State Highway 152, with off-route service on State Highway 152 to Los Banos.
- e. Interstate Highway 205 between its junctions with Interstate Highways 580 and 5.
- f. Interstate Highway 5 between its junctions with Interstate Highway 205 and State Highway 120.
- g. State Highway 120 between its junction with Interstate Highway 5 and its intersection with State Highway 99.
- h. State Highway 99 between its intersection with State Highway 120 and Fresno.

11. PAD operates primarily in interstate and foreign commerce but does have a substantial intrastate operation. Its intrastate gross operating revenue for the year 1974 was \$119,521.

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

13. PAD has the experience and ability to institute and maintain the service authorized herein.

Conclusion

The application should be granted to the extent set forth in the ensuing order and in all other respects it should be denied.

Peninsula Air Delivery, a 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 Peninsula Air Delivery, 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 routes 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.

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(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. 82198, which certificate is revoked effective concurrently with the effective date of the tariff filings required by paragraph 2(b).

4. Except to the extent granted herein, Application No. 55846 is denied.

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

Dated at San Francisco, California, this 12th day of APRIL, 1977.

Robert Bateman
President
William J. Lyons, Jr.
Leonard R. Ross
Richard D. Howell
Commissioners

I concur ~~but~~ only because of the extended delay involved. I would urge applicant to seek rehearing if it is dissatisfied with the scope of authority granted to allow fuller consideration of this issue.

Leonard Ross
Robert Bateman
Richard D. Howell
Commissioners

Peninsula Air Delivery, 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 general commodities as follows:

1. Between all points and places in San Francisco Territory as described in Note A hereof.
2. Between all points and places on and within 5 statute miles laterally of the following routes:
 - (a) U. S. Highway 101 between Healdsburg and Salinas with off-route service on State Highway 116 or alternate routes to Forestville.
 - (b) State Highway 1 between its intersection with State Highway 17 and Carmel.
 - (c) State Highway 17 between its intersection with State Highway 1 and its intersection with Interstate Highway 580.
 - (d) Interstate Highway 580 between its intersection with State Highway 17 and its intersection with Interstate Highway 205.
 - (e) Interstate Highway 5 between its intersection with State Highway 4 at Stockton and its intersection with State Highway 152 with off-route service on State Highway 152 to Los Banos.
 - (f) State Highway 4 between its junction with Interstate Highway 80 near Pinole, and Stockton.

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- (g) State Highway 120 between its intersection with Interstate Highway 5 and its intersection with State Highway 99.
- (h) Interstate Highway 205 between its intersection with Interstate Highway 580 and its intersection with Interstate Highway 5.
- (i) State Highway 99 between Sacramento and Fresno.
- (j) Interstate Highway 80 between its intersection with State Highway 37 at Vallejo, and Sacramento.
- (k) Interstate Highway 680 between its intersection with Interstate Highway 80 and Interstate Highway 580.
- (l) State Highway 116 between its intersection with U. S. Highway 101 and its intersection with State Highway 121; thence via State Highway 121 to its intersection with State Highway 29 near Napa.
- (m) State Highway 29 between its intersection with State Highway 37 and Napa; and
- (n) State Highway 37 between its intersection with State Highway 29 and Interstate Highway 80.

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

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

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salesmen's hand sample cases, suitcases, 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. Portland or similar cements, in bulk or packages, when loaded substantially to capacity of motor vehicle.
8. Logs.
9. Articles of extraordinary value.

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10. Trailer coaches and campers, including integral parts and contents when the contents are within the trailer coach or camper.
11. Commodities requiring the use of special refrigeration or temperature control in specially designed and constructed refrigerator equipment.
12. Explosives subject to U. S. Department of Transportation Regulations governing the Transportation of Hazardous Materials.

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; southwestly 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 Highway 238 (Mission Blvd.) via Mission San Jose and Niles to Hayward; northerly along Foothill Blvd. and MacArthur Blvd. to

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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.

(END OF APPENDIX A)

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