

Decision No. 87230

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the Application of )  
Nancy S. Lyons, dba LYONS' ROARING )  
EXPRESS, for a certificate of public )  
convenience and necessity authorizing )  
the transportation of general commodi- )  
ties between points within San )  
Francisco Territory. )

Application No. 56394  
(Filed April 8, 1976)

Philip J. Bovero, Attorney at Law,  
for applicant.  
Dennis D. Kendall, for Peninsula  
Air Delivery; and Jack R. Fitzwater,  
for Econoline Express, Inc.;  
protestants.

O P I N I O N

This is an application for authority to engage in the transportation of property by motor vehicle as a highway common carrier in intrastate and in interstate commerce between all points and places in and within five miles of points in San Francisco Territory.<sup>1/</sup> The application is protested by Peninsula Air Delivery (PAD) and Econoline Express, Inc. (Econoline), which are highway common carriers currently authorized to provide transportation in the area proposed to be served by applicant.

---

<sup>1/</sup> San Francisco Territory is described in the application by metes and bounds and embraces an area extending generally from San Francisco and Richmond, on the north, to San Jose and Los Gatos, on the south, and the plain and foothills on both sides of San Francisco Bay.

Notice of the filing of this application appeared in the Commission's Daily Calendar and was published in the Federal Register of April 29, 1976. Duly noticed public hearing was held before Examiner Thompson at Santa Clara on September 2 and 3, 1976. The matter was submitted on briefs which were received October 22, 1976.

Applicant holds a permit authorizing operations as a radial highway common carrier. Until approximately a year prior to the filing of the application, applicant's husband drove and maintained their one van truck and applicant received telephone calls from shippers requesting transportation service and kept the books and records of their trucking business. In April 1975 applicant obtained a small flatbed truck and for a while her husband alternately drove the van or the flatbed as the nature of the shipments tendered required. Applicant then employed a driver who worked part time to assist her husband. Business increased very rapidly such that at the time of hearing applicant owned five trucks and one tractor and employed three drivers full time. Her husband continues to drive a truck but spends more time on other phases of the business. Applicant has continued dispatching the trucks from her home by telephone; however, radios have been purchased and it is contemplated that they will be used for dispatching. During the six months ended June 30, 1976 applicant had \$61,180 gross revenue from the transportation of property.

Representatives of ten shippers testified in support of the application. All of them have utilized applicant for transportation service and desire to continue to have that service available to them. Their testimony is summarized below.

Tri-Data Corporation at Mountain View manufactures peripheral equipment for computers. It uses applicant mainly to transport shipments between it and its subcontractors and suppliers located in the Bay Area from South San Francisco to San Jose. It ships in interstate commerce via Air Freight Shippers Association (AFSAC) through San Francisco Airport with whom applicant has an agreement to perform pickup and delivery service.

Teledyne at Santa Clara manufactures semi-conductors. It uses applicant to transport shipments between its plant and export agents and air freight forwarders for transportation via San Francisco Airport to foreign countries. From time to time it also uses applicant to transport shipments to its plant from vendors in the Bay Area at points such as South San Francisco and San Jose. It had used PAD for transportation but was dissatisfied with the service. It uses the services of Econoline for one special problem that occurs once a year. It prefers applicant's service.

Schlage Electronics at Sunnyvale uses applicant for local shipments to and from the plant. It regularly ships in interstate commerce by AFSAC which utilizes air carriers serving San Francisco Airport. Applicant performs the pickup for those shipments. The shipping manager had unsatisfactory experience with PAD when working for another firm. He had no knowledge of the service offered by Econoline. He desires to be able to use applicant to transport air freight shipments directly to carrier terminals in addition to the services presently being provided by applicant.

Zentec Corporation at Santa Clara is a manufacturer of office equipment and intelligence terminal systems. It uses applicant for transportation of local shipments between the plant and vendors and distributors in the Bay Area. It also uses air freight forwarders for interstate shipments for whom applicant has performed pickup and delivery service.

Applied Thermal Systems at Sunnyvale manufactures and services temperature sensing devices. It uses applicant's service to transport shipments between the plant and terminals of air carriers and air freight forwarders serving San Francisco Airport.

Shugart Associates at Sunnyvale is a manufacturer of computer peripheral equipment. It uses applicant for local shipments from vendors and also uses air freight forwarders for whom applicant performs pickup and delivery.

IPT Corporation at Santa Clara manufactures integrated circuit test handlers. It uses applicant for transportation of material from suppliers in the Bay Area extending from Richmond and San Francisco on the north, and on both sides of the bay, to as far south as south San Jose. It also uses applicant to pick up shipments from air carriers at San Jose Municipal Airport that originate in southern California. It has not used applicant for transportation of finished goods outbound from the plant.

Santana Company at San Jose is an automotive parts distributor. It uses applicant for shipments within the Bay Area from San Francisco and Oakland on the north. It has shipments of air freight via San Francisco Airport and San Jose Airport but does not presently use applicant for that traffic.

Data Flux Corporation at Sunnyvale manufactures a fixed head disc drive for computers. Virtually all of its shipments are air freight. It uses AFSAC for which applicant performs pickup and delivery. It also uses applicant to pick up air freight at San Jose Airport which originates in southern California.

Electronic Memories and Magnetics Corporation at San Jose uses applicant to transport materials and supplies from vendors in the Bay Area from San Francisco and Oakland on the north. Approximately 25 percent of its outbound shipments are intrastate and 75 percent outside of the state. Of the latter about 10 percent are shipped via air carrier. Applicant has been used in connection with some of that traffic that moved by air freight forwarder.

The testimony of those witnesses disclosed, inter alia, the reasons for the rapid growth of applicant. Virtually all of them at one or more times encountered emergency circumstances in connection with shipments and applicant served them well. Because of that circumstance the shippers tendered a larger share of their traffic to applicant and appreciated the reliability and dependability of applicant's service. Surprisingly, however, very little traffic

was "stolen" from protestants. In the case of seven of the ten shippers, protestants had not solicited the traffic between the filing of this application and at least one and a half years prior thereto. In most instances the witnesses were unaware of protestants other than they had seen their trucks. In one case the shipper witness was knowledgeable of the service of one of the protestants but not the other. It will not use the one carrier's service because of a prior bad experience. One witness had knowledge of only one protestant and continues to utilize the service of that carrier. One witness was familiar with the services of both protestants; that shipper continues to utilize the services of one but had discontinued utilizing the service of the other because of a prior bad experience.

The story unfolded by the testimony herein is one of a small business growing successfully by reason of adjusting its operations to conform to the needs of its customers. Protestants contend that because of its smallness, applicant does not have the financial ability to provide motor common carrier service. That is nonsense. A large capital investment is no shield to bankruptcy. What is important is the carrier's ability to maintain the operations it holds itself out to perform and to be able to expand its facilities to accommodate reasonable growth of traffic without endangering its capital structure with excessive debt. Here applicant has increased its equipment from one van valued at \$2,310 in March 1975 to two vans and two flatbeds valued at \$25,800 in June 1976 with a borrowing of only \$9,000. Subsequent to June 30, 1976 two additional units were purchased for \$9,000 with borrowings of \$5,500. On June 30, 1976 applicant's ratio of long-term debt to total capital was 13.5 percent; the ratio of current assets to current liabilities was 5.83 to 1.

Protestants point to the transportation in interstate commerce applicant has performed as good cause to deny this application. We do not agree. The evidence shows that the majority of interstate shipments transported by applicant were from shippers who are members of AFSAC from their respective places of business in the Santa Clara-Sunnyvale area to the association's consolidation terminal at Redwood City. Most of the rest of the interstate or foreign traffic was transported to or from terminals of air freight forwarders located near San Francisco Airport. Applicant has appointments from several freight forwarders as pickup and delivery agent for freight consigned to or originated by a number of its regular customers. There were relatively few instances where applicant transported freight directly to or from an interstate airline carrier terminal. We also take note that within three weeks after applicant was notified that some of the transportation operations required authorization from the Interstate Commerce Commission, and was advised by a representative from that agency that an application for such authority should be filed, that applicant filed the instant application. We do not consider the aforementioned circumstances as indicative of a propensity to disregard the law or of unfitness to hold authority to operate as a common carrier.

Protestants also contend that applicant has made no showing regarding a need for the service to or from all points within the described San Francisco Territory. Applicant did show that its customers regularly receive freight from vendors and ship freight to persons located at points around San Francisco Bay from Richmond and San Francisco, on the north, to San Jose, on the south. The shipments did not have origin or destination at all cities within the described territory. None of the shipper witnesses described any shipments to or from Daly City, Millbrae, Belmont, Atherton, Milpitas, Piedmont, Albany, or El Cerrito, for example, however, the territory is a single megalopolis composed of many incorporated cities whose

boundaries abut one upon the other. It is possible to drive from San Francisco to Richmond via San Jose by traversing only city streets. California recognizes the region about San Francisco Bay as one cohesive unit with respect to transportation planning and for mass transit. (Metropolitan Transportation Commission Act, Statutes 1970, Chapter 891, Government Code Sections 66500 et seq.) The area described by applicant as San Francisco Territory is also one cohesive unit where transportation of property ordinarily is provided by motor vehicle utilizing no fixed or regular routes. While the freeways are utilized because they permit high speed travel within the area, the trucks use any and all off ramps, secondary highways, and streets that lead to the premises of the consignors and consignees. A single pickup and delivery area is a descriptive term for the territory. The argument that applicant has not made a showing because no witnesses testified that there was traffic to Albany and to certain other cities within the territory is as valid as a contention that applicant should not be authorized to serve all of San Jose because it made no showing of any traffic to or from the Evergreen District or Alum Rock District.

Econoline argues that the application should be denied because no environmental study or report has been made. It is obvious on its face that the certification of applicant will have a de minimis effect upon the environment or on fuel conservation. First of all, applicant is already authorized to perform, and does perform, transportation by motor vehicle within the area involved and denial of this application will not cause motor vehicle operation by applicant to cease. The only real effect of certification upon operations in intrastate commerce will be to permit applicant to hold services out to the public at large to secure a greater amount of traffic and thereby increase the number of shipments laden upon the trucks. The only real effect of certification for interstate commerce

will be to permit applicant to load more parcels on trucks going to or from the airports. We also point out that even if applicant ceased operations, the traffic would continue to move between the points in San Francisco Territory by motor vehicle, either by some other highway carrier or in proprietary vehicles.

Other arguments made by protestants have even less merit and require no discussion.

We find that:

1. Applicant is a highway carrier engaged in the transportation of property by motor vehicle within San Francisco Territory under permits issued by the Commission.

2. By this application it seeks authority to transport property in intrastate as well as interstate and foreign commerce between points within San Francisco Territory as a highway common carrier.

3. Notice of the filing of this application appeared in the Commission's Daily Calendar and in the Federal Register. Duly noticed public hearing was held at which all persons interested had opportunity to appear and be heard.

4. Need has been shown for the service applicant proposes.

5. Applicant has the business experience, the facilities, and the ability, including financial ability, to initiate and maintain the proposed service.

6. Public convenience and necessity require that applicant be authorized to engage in operations in intrastate commerce as proposed in the application and also require that applicant be authorized to engage in operations in interstate and foreign commerce within limits which do not exceed the scope of the intrastate operations authorized by this decision.

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



We conclude that the application should be granted as set forth in the ensuing order. The territorial description or routes of the authority granted reflect the names of redesignated highways and roads and do not in any way exceed the geographical scope of the proposed operation as published in the Federal Register.

Nancy S. Lyons, dba Lyons' Roaring Express, 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 Nancy S. Lyons, an individual, doing business as Lyons' Roaring Express, authorizing her to operate as a highway common carrier, as defined in Section 213 of the Public Utilities Code, between the points set forth in Appendix A of this decision.

2. In providing service pursuant to the authority granted by this order, applicant shall comply with the following service regulations. Failure so to do may result in cancellation of the authority.

- (a) Within thirty days after the effective date of this order, applicant shall file a written acceptance of the certificate granted. Applicant is placed on notice that if she accepts the certificate she 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 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 her 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 her 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, she shall make the appropriate tariff filings as required by the General Order.

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

Dated at San Francisco, California, this 19<sup>th</sup> day of APRIL, 1977.

\_\_\_\_\_  
President  
*William Aguirre Jr.*  
\_\_\_\_\_  
*Thomas L. Sturgeon*  
\_\_\_\_\_  
*Richard W. Crook*  
\_\_\_\_\_  
Commissioners

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

NANCY S. LYONS  
(an individual)  
doing business as  
LYONS' ROARING EXPRESS

Nancy S. Lyons, an individual, doing business as LYONS' ROARING EXPRESS, 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 between all points and places in and within 5 statute miles of points in San Francisco Territory as described in Note A hereof:

Except that pursuant to the authority herein granted carrier shall not transport any shipments of:

1. Used household goods, personal effects and office, store and institution furniture, fixtures and equipment not packed in salesmen's hand sample cases, suitcases, 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.

Issued by California Public Utilities Commission.

Decision 87230, Application 56394.

NANCY S. LYONS  
(an individual)  
doing business as  
LYONS' ROARING EXPRESS

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. Trailer coaches and campers, including integral parts and contents when the 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. Commodities requiring the use of special refrigeration or temperature control in specially designed and constructed refrigerator equipment.
12. Articles of extraordinary value.

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.

Issued by California Public Utilities Commission.

Decision 87230, Application 56394.

## 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 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

Issued by California Public Utilities Commission.

Decision 87230, Application 56394.

Appendix A

NANCY S. LYONS  
(an individual)  
doing business as  
LYONS' ROARING EXPRESS

Original Page 4

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)

Issued by California Public Utilities Commission.

Decision 87230, Application 56394.