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Decision No. 87904 SEP 27 1977

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Air Cargo Transportation,)
Inc., a California Corporation, for a)
Certificate of Public Convenience and)
Necessity to Operate as a Highway Common)
Carrier for the Transportation of)
Property within the San Francisco)
Territory, in Intrastate, and Inter-)
state and Foreign Commerce.)

Application No. 56847
(Filed November 4, 1976)

Arthur J. Shartsis, Attorney at Law, for applicant.
C. D. Gilbert, J. C. Kaspar, and H. W. Hughes, for
California Trucking Association; and Dennis D.
Kendall, for Peninsula Air Delivery; interested
parties.
Stanley E. Garrett, for the Commission staff.

O P I N I O N

Applicant operates pursuant to a radial highway common carrier permit which authorizes the transportation of general commodities, with the usual exceptions, between points within a 350-mile radius from Burlingame. By this application, it seeks a certificate of public convenience and necessity to transport general commodities, 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. A copy of the application has been filed with the Interstate Commerce Commission under Section 206(a)(6) of the Interstate Commerce Act, and notice thereof appeared in the Federal Register on July 28, 1977.

At the request of several parties, a prehearing conference was held before Administrative Law Judge Arthur M. Mooney in San Francisco on February 28, 1977. In answer to various questions by the other appearances, applicant's attorney pointed out that his client transports a substantial amount of interstate and foreign air shipments for a large air freight forwarder within the area surrounding the San Francisco International Airport which is exempt from regulation by the Interstate Commerce Commission; that although it has in the past handled only an incidental amount of intrastate traffic, it has been requested by customers and will, if the sought authority is granted, perform a substantial amount of common carrier intrastate transportation within the sought area; and that the rates it will publish for the proposed service will be on the level of those set forth in Minimum Rate Tariff 2. With this additional information, the other appearances stated that they had no objection to the granting of the sought authority.

The application asserts that over the past several years, the population and the shipping needs of the public in the sought area have increased substantially; that applicant has received a substantial number of requests from its customers and other shippers to provide a regular common carrier service for their intrastate, interstate, and foreign shipments within this area; that many customers for whom applicant is now providing terminal services also require such common carrier service and delays and additional handling expenses these customers are now experiencing by using multiple carriers will be eliminated if the sought authority is granted; and that public convenience and necessity require the proposed service. In this connection, numerous supporting letters from shippers were attached to the application and applicant's letter of March 26, 1977. The application also states that the proposed service will be on a daily basis, Monday through Sunday,

and will be primarily over-night except in those instances where same-day service is logistically possible; that applicant has sufficient equipment to provide the proposed transportation and is financially able to expand its fleet should it be necessary; and that it will become a party to the applicable Western Motor Tariff Bureau tariffs.

Applicant's balance sheet dated October 15, 1976 shows assets of \$24,487.44, liabilities of \$2,307, capital stock of \$1,000, and retained earnings of \$21,180.44. For the period December 1, 1975 to October 15, 1976 applicant had a gross income of \$102,085.52, operating expenses of \$93,581.63, and a gross profit of \$8,503.94. During this period, it repaid a business loan of \$4,375 which was not included in its operating expenses. At the prehearing conference, applicant's attorney stated that the two individuals who own all of its stock also own Traffic International Corporation which ships from and to foreign destinations.

Notice of the filing of the application was served on competing carriers, and the application was listed on the Commission's daily calendar. As indicated above, none of the parties at the prehearing conference objected to the granting of the application, and no other protests have been received.

Findings

1. Applicant has the experience, equipment, and ability to provide the proposed service.

2. 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 the 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 application.

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

4. A prehearing conference in this matter was held on February 28, 1977. There are no protests to the sought authority. A public hearing is not necessary.

Conclusion

The Commission concludes that the application should be granted as set forth in the ensuing order.

Applicant 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 Air Cargo Transportation, Inc., a corporation, authorizing it 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 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 to the public, and the effective date of the tariff filings shall be concurrent with the establishment of the authorized service.
- (d) The tariff filings made pursuant to this order shall comply with the regulations governing the construction and filing of tariffs set forth in the Commission's General Order No. 80-Series.
- (e) Applicant shall maintain its accounting records on a calendar year basis in conformance with the applicable Uniform System of Accounts or Chart of Accounts as prescribed or adopted by this Commission and shall file with the Commission, on or before April 30 of each year, an annual report of its operations in such form, content, and number of copies as the Commission, from time to time, shall prescribe.

- (f) Applicant shall comply with the requirements of the Commission's General Order No. 84-Series for the transportation of collect on delivery shipments. If applicant elects not to transport collect on delivery shipments, it shall make the appropriate tariff filings as required by the General Order.

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

Dated at San Francisco, California, this 27th day of SEPTEMBER, 1977.

Perlit Bakunich
President

James L. Sturgeon
Richard D. Swartz
Clair D. DeWick
Commissioners

Commissioner William Symons, Jr., being necessarily absent, did not participate in the disposition of this proceeding.

Air Cargo Transportation, Inc., 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:

Between all points and places in and within five (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.
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.

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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.

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.

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

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Road; northeasterly along Tully Road and the prolongation thereof to White Road; northwesterly along White Road to McKee Road; southwesterly along McKee Road to Capitol Avenue; northwesterly along Capitol Avenue to State Highway 238 (Oakland Road); northerly along State Highway 238 to Warm Springs; northerly along State Highway 238 (Mission Blvd.) via Mission San Jose and Niles to Hayward; northerly along Foothill Blvd. and MacArthur Blvd. to Seminary Avenue; easterly along Seminary Avenue to Mountain Blvd.; northerly along Mountain Blvd. to Warren Blvd. (State Highway 13); northerly along Warren Blvd. to Broadway Terrace; westerly along Broadway Terrace to College Avenue; northerly along College Avenue to Dwight Way; easterly along Dwight Way to the Berkeley-Oakland Boundary Line; northerly along said boundary line to the Campus Boundary of the University of California; westerly, northerly and easterly along the campus boundary to Euclid Avenue; northerly along Euclid Avenue to Marin Avenue; westerly along Marin Avenue to Arlington Avenue; northerly along Arlington Avenue to San Pablo Avenue (State Highway 123); northerly along San Pablo Avenue to and including the City of Richmond to Point Richmond; southerly along an imaginary line from Point Richmond to the San Francisco waterfront at the foot of Market Street; westerly along said waterfront and shoreline to the Pacific Ocean; southerly along the shoreline of the Pacific Ocean to point of beginning.

(END OF APPENDIX A)

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