

Decision No. 87942 OCT 4 1977

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the Application of BLUE RIBBON EXPRESS AND MESSENGER SERVICE, a California Corporation, for a Certificate of Public Convenience and Necessity authorizing the transportation of general commodities between points within San Francisco Territory.

Application No. 56320
(Filed March 9, 1976)

E. H. Griffiths and M. C. Leiden, 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 San Francisco Territory.^{1/} 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.

1/ 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. The description also includes points and places located on Bear Gulch Road between its intersection with State Highway 35 (Skyline Boulevard) and its termination at State Highway 17.

Notice of the filing of this application appeared in the Commission's Daily Calendar and was published in the Federal Register of November 24, 1976. Duly noticed public hearing was held before Administrative Law Judge Thompson at Santa Clara on March 7 and 8, 1977. The matter was submitted on briefs which were received April 27, 1977.

Applicant holds a permit authorizing operations as a radial highway common carrier and presently conducts motor carrier operations in the area proposed to be served. The president of applicant commenced operations in 1970 as an individual proprietorship and incorporated the business in 1975.

The corporation has four employees, all of whom are stockholders. Each of them has a function for which he is responsible, but all participate in all phases of the business, including driving the vehicles. Applicant owns three vans (one 20-foot, one 12-foot, and one 10-foot), two pickup trucks, and three station wagons. Its administrative office is located at 576 Palo Alto Avenue in Mountain View. It shares with a painting business a fenced area of approximately one acre at 1400 Sterling Road in Mountain View, at which it has a garage facility and storage shed and on which it parks its trucks. Applicant has two-way radio communications with a base station at the administrative office and fixed radios in the vans. It also has two portable units, one of which is used whenever a station wagon or pickup is utilized.

During the twelve months ended June 30, 1976 applicant had gross revenues of \$95,000 on which it earned \$21,500 after income taxes. This high yield was due in part from the fact that the stockholders drew very little from the corporation in the form of salaries or wages. As of June 30, 1976 the stockholder's equity amounted to \$29,900. Current liabilities amounted to \$9,000 as contrasted to \$13,900 current assets, and long-term debt amounted to \$4,900 as contrasted to \$26,000 in fixed assets. The business has grown since June 30, 1976. As a result thereof the operations have

been approaching those of between fixed termini or over regular routes. Applicant has been informed by the staff of the Commission that in order to operate over regular routes it would have to obtain a certificate authorizing operations as a highway common carrier.

The principal customers for applicant's services are in the electronics industry in northern Santa Clara County. That area is the center of the industry in the United States, particularly with respect to offshore manufacturing of components and peripheral equipment. Over one half of applicant's revenues have been earned from the transportation of semiconductor and integrated circuit components and supplies in foreign commerce related to the offshore manufacture of components, its part being the movement between its customers in Santa Clara County and the terminals of customhouse brokers, international freight forwarders, airlines, or vessels. While it would appear that perhaps as much as 90 percent of the electronic component industry is in the Santa Clara area, much of the microscopic work and ceramic work related thereto is performed in Asia in such places as Singapore, Manila, Taiwan, Hong Kong, and Tokyo. A small piece of silicon wafer in an electronic device, for example, may have crossed the Pacific Ocean six times in the process of the manufacture of the completed device. Hence the large amount of foreign commerce involved in that industry.

Of the eleven shipper witnesses called by applicant, eight were involved in the manufacture of electronic components and assemblies, one was a customhouse broker who has a number of customers involved in the electronic industry, one is in the optical business, and one is an agency of the Republic of Korea. One of the reasons why applicant has a large amount of business in foreign commerce is that it has made an arrangement with the customhouse broker to provide expedited service to the latter's customers. That service has led to additional business from those customers.

Protestant PAD opposes the granting of this application on the following grounds: (1) applicant has failed to provide evidence of public need, (2) applicant is not equipped or staffed to adequately and equally service the general public in an area as broad as San Francisco Territory, (3) the evidence relating to financial history and stability was not audited or prepared by a CPA, and (4) the public witnesses called by applicant were wholly unconvincing as to their alleged requirements for the proposed service. We find those assertions either not to be the case, or where true not to be good cause for denying the authority sought.

PAD and Econoline were protestants and made the same argument in the application of Lyons Roaring Express (A.56394) in which a certificate was sought for substantially the same type of operations conducted by applicant herein. We take official notice of Decision No. 87230, dated April 19, 1977 in that application. There, as here, the applicant is a small carrier whose business has grown substantially by reasons of the very substantial growth in industry in northern Santa Clara County and the ability of the carrier to provide the transportation requirements of the many small industries located within that area. In each instance the owners have managed and operated the business and have taken only subsistence level salaries or wages so as to provide funds for the expansion of their respective businesses. In each case, although the capital investment in the business is not large, each is financially stable by any recognized measure. As we stated in Lyons Roaring Express, "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."

Applicant's witnesses have shown a need for applicant's proposed service. There are many small companies, particularly in the electronic component field, who must have the type of transportation service applicant proposes in order to exist. Those who testified stated that they had not received the service they required until they engaged applicant.

With respect to protestants' assertion that applicant is not equipped to adequately and equally serve the general public in an area as broad as San Francisco Territory, it is true that if all shipments to be moved within San Francisco Territory on any given day were to be tendered to applicant for transportation that it could not possibly accommodate them. That, however, holds true for any of the many common carriers by motor vehicle that provide service within the territory. As we stated in Lyons Roaring Express, San Francisco Territory is a single megalopolis composed of many incorporated cities whose boundaries abut one upon the other constituting a cohesive unit insofar as transportation of property is concerned. A single pickup and delivery area is a descriptive term for the territory. Applicant, like other common carriers serving the area, solicits certain shippers within that area who would be attracted to the type of service it is better able to perform. In the case of applicant it is the shipper located in the southern San Francisco peninsula that predominantly has need for an expedited transportation service for small shipments requiring the use of small trucks and station wagons. Where those regular customers occasionally call upon it to transport large shipments, or to transport a shipment between points in the territory where it ordinarily does not solicit for patronage - such as between Oakland and Albany - it will undertake to do so in order to provide its customer with a complete transportation service. That same circumstance regarding limitation of solicitation of shippers with particular transportation needs and within particular locations as customers holds true for almost every common carrier

engaged in transporting property within San Francisco Territory. The customers, however, have shipments both prepaid and collect to and from many places within the territory and the frequency of those shipments to or from the customers as a whole, together with the fact that the major freeways often provide the more convenient route between points in the territory, result in the carrier's providing transportation between fixed termini or over regular routes for which a certificate of public convenience and necessity is required under the Public Utilities Code.

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 engaged 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.

Blue Ribbon Express and Messenger Service 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 Blue Ribbon Express and Messenger Service, 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.

(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 1st day of OCTOBER, 1977.

Roluf Bekimund
President

Veron L. Stanger
Richard W. Moore

Commissioners

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

Commissioner Claire T. Dedrick, being necessarily absent, did not participate in the disposition of this proceeding.

Blue Ribbon Express and Messenger Service, 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 San Francisco Territory as described in Note A hereof.

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 salesman'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,

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- 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 high-way 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. Commodities requiring the use of special refrigeration or temperature control in specially designed and constructed refrigerator equipment.
 11. Fresh Fruits and Vegetables.

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

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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 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.

Also off route service to all points and places located on Bear Gulch Road between its intersection with State Highway 35 (Skyline Boulevard) and its termination.

(END OF APPENDIX A)

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