

ORIGINAL

Decision No. 88197 DEC 6 1977

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of AUTO FAST FREIGHT, INC., 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, and for an in lieu Certificate of Public Convenience and Necessity therefor.

Application No. 55953
(Filed September 23, 1975)

Murchison & Davis, by Donald Murchison,
Attorney at Law, for applicant.
Russell, Schureman, Fritze & Hancock, by
Carl H. Fritze, Attorney at Law, for
Los Angeles City Express, Inc., and
Victorville-Barstow Truck Line,
protestants.

O P I N I O N

Eight days of public hearings in the above application were held before Administrative Law Judge O'Leary in Los Angeles, San Bernardino, Victorville, and Barstow during June, August, and October 1976. The matter was submitted on April 11, 1977 with the filing of concurrent briefs. On August 25, 1977 ALJ O'Leary issued a ruling setting aside submission of the application and reopening the matter for the taking of further evidence with respect to alleged deterioration of service of protestant Los Angeles City Express, Inc.

Applicant is a highway common carrier transporting general commodities with the usual exceptions as follows:

1. Within the Los Angeles Basin Territory;
2. Within the San Diego Territory;

3. Between the Los Angeles Basin Territory and the San Diego Territory and all intermediate points on or within ten miles laterally of U.S. Highways 101 and 395;
4. Between the Los Angeles Basin Territory, on the one hand, and Crestline, Lake Arrowhead, and Big Bear Lake, on the other hand, and certain intermediate and off-route points within three miles of certain specified routes; and
5. Between the Los Angeles Basin Territory and San Bernardino, on the one hand, and all points on State Highway 111 between Palm Springs and Indio and all points in the Coachella Valley Territory, on the other hand.

Applicant holds authority from the Interstate Commerce Commission to perform transportation between the points enumerated above in interstate and foreign commerce. Applicant also has permits authorizing service as a radial highway common carrier and as a highway contract carrier.

Applicant here seeks additional highway common carrier authority in intrastate, interstate, and foreign commerce as follows:

1. Between the Los Angeles Basin Territory and Newberry and all points on and within ten miles laterally of Interstate Highways 15 and 40;
2. Between the Los Angeles Basin Territory and Boron serving all points within ten miles laterally of U.S. Highway 395 and California State Highway 58;
3. Between the Los Angeles Basin Territory and Lucerne Valley serving all points within ten miles laterally of California State Highway 18; and

4. Between the Los Angeles Basin Territory and the Coachella Valley Territory serving all points within ten miles laterally of Interstate Highway 10.

The sought authority would be restricted against the transportation of shipments in interstate or foreign commerce from or to points located on or within ten miles of Interstate Highway 15 or U.S. Highway 395 north of the Los Angeles Basin Territory or on or within ten miles of Interstate Highway 40 or California Highway 58.

The sought authority set forth in 3 and 4 above are expansions of authority presently held by applicant and include existing authority previously enumerated as 4 and 5. Sought authority 1, 2, and 3 will be referred to hereafter as the high desert area and sought authority 4 will be referred to as the Beaumont-Banning area.

Victorville-Barstow Truck Line protested that portion of the application requesting authority to the high desert area which protest was withdrawn after applicant amended the application with the filing of Exhibit 62 wherein it set forth the restriction against the transportation of shipments in interstate and foreign commerce.

Los Angeles City Express, Inc. protested that portion of the application seeking authority between the Los Angeles Basin Territory and the Beaumont-Banning area. By letter dated September 30, 1977, Los Angeles City Express, Inc. advised that it no longer desires to participate in the proceeding and its protest may be withdrawn.

Applicant proposes to provide the service requested on a daily basis, Monday through Friday. The service would be overnight. Saturday delivery service will be provided upon request.

Applicant is a party to Western Motor Tariff Bureau, Inc. for operations under its existing common carrier certificate. Applicant proposes to participate in the same tariffs for operations in the extended territory proposed to be served by this application.

Applicant has terminals at Montebello, San Bernardino, and San Diego.

Applicant has the following equipment (Exhibit 9): 31 tractors, 27 bobtail trucks, 45 van trailers, 10 open trailers, 9 dolly converter gears, and 4 pickup trucks.

Representatives of 26 shippers testified in support of the application. Twenty-four of the shipper representatives testified in support of the proposed service to the high desert area.

Eleven of the 24 representatives supporting the service to the high desert area, and representatives of 2 additional shippers testified in support of the service to the Beaumont-Banning area.

Findings

1. Applicant operates as a highway common carrier in intra-state, interstate, and foreign commerce pursuant to Decision No. 79093, as amended by Decision No. 84919 in Application No. 52718 of this Commission and by Docket No. MC-121526 (Sub.No. 3) of the Interstate Commerce Commission.

2. Applicant also operates as a radial highway common carrier and as a highway contract carrier pursuant to permits issued by this Commission.

3. Notice that this application was filed and that it seeks interstate rights was published in the Federal Register on October 16, 1975.

4. Applicant's service to and from the high desert area and the Beaumont-Banning area now conducted pursuant to its permitted authority may be approaching that of a highway common carrier. ✓

5. 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 to the Beaumont-Banning area within limits which do not exceed the scope of the intrastate operations to the Beaumont-Banning area authorized by this decision.

6. Further hearing in this matter is not necessary.

Conclusions

1. ALJ O'Leary's ruling dated August 25, 1977 should be rescinded.

2. The application should be granted to the extent set forth in the ensuing order.

Auto Fast Freight, Inc. 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 Auto Fast Freight, 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 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.

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. 79093, as amended by Decision No. 84919, which certificate is revoked effective concurrently with the effective date of the tariff filings required by paragraph 2(b).

4. The ruling of ALJ O'Leary dated August 25, 1977 is rescinded.

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

Dated at San Francisco, California, this 6th day of DECEMBER, 1977.

Roluf Rasmussen
President
William Amos, Jr.
James P. Stralgen
Robert W. Howell
Clair J. Schick
Commissioners

Auto Fast Freight, 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 Los Angeles Basin Territory as described in Note A hereof.
2. Between all points and places in San Diego Territory as described in Note B hereof.
3. Between the said Los Angeles Basin Territory and San Diego Territory and all intermediate points on and within ten (10) statute miles laterally of Interstate Highways 5 and 15.
4. Between the said Los Angeles Basin Territory and Lucerne Valley serving all points and places on and within ten (10) statute miles of State Highway 18.
5. Between the said Los Angeles Basin Territory and Newberry serving all points on and within ten (10) statute miles laterally of Interstate Highways 15 and 40.
6. Between the said Los Angeles Basin Territory and Boron serving all points on and within ten (10) statute miles of U.S. Highway 395 and State Highway 58.
7. Between the said Los Angeles Basin Territory and the Coachella Valley Territory as described in Note C hereof serving all points and places on and within ten (10) statute miles laterally of Interstate Highway 10.

RESTRICTION:

No transportation in interstate and foreign commerce is authorized from or to points located on or within ten (10) statute miles laterally of Interstate Highway 15 or U. S. Highway 395 north of Los Angeles Basin Territory as described in Note A hereof or on or within ten (10) statute miles laterally of Interstate Highway 40 or State Highway 58.

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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.
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. Logs.

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8. Trailer coaches and campers, including integral parts and contents when the contents are within the trailer coach or camper.
9. Commodities requiring the use of special refrigeration or temperature control in specially designed and constructed refrigerator equipment.

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

LOS ANGELES BASIN TERRITORY

Los Angeles Basin Territory includes that area embraced by the following boundary: Beginning at the point the Ventura County-Los Angeles County Boundary Line intersects the Pacific Ocean; thence northeasterly along said county line to the point it intersects State Highway 118, approximately two miles west of Chatsworth; easterly along State Highway 118 to Sepulveda Boulevard; northerly along Sepulveda Boulevard to Chatsworth Drive; northeasterly along Chatsworth Drive to the corporate boundary of the City of San Fernando; westerly and northerly along said corporate boundary of the City of San Fernando to Maclay Avenue; northeasterly along Maclay Avenue and its prolongation to the Angeles National Forest Boundary; southeasterly and easterly along the Angeles National Forest and San Bernardino National Forest Boundary to Mill Creek Road (State Highway 38); westerly along Mill Creek Road to Bryant Street; southerly along Bryant Street to and including the unincorporated community of Yucaipa; westerly along Yucaipa Boulevard to Interstate Highway 10; northwesterly along Interstate Highway 10 to Redlands Boulevard; northwesterly along Redlands Boulevard to Barton Road; westerly along Barton Road to La Cadena Drive; southerly along La Cadena Drive to Iowa Avenue; southerly along Iowa Avenue to State Highway 60; southeasterly along State Highway 60 and U.S. Highway 395 to Nuevo Road; easterly along Nuevo Road via Nuevo and Lakeview to State Highway 79; southerly along State Highway 79 to State Highway 74; thence westerly to the corporate boundary of the City of Hemet; southerly, westerly and northerly along said corporate boundary to The Atchison, Topeka & Santa Fe right-of-way; southerly along said right-of-way to Washington Road; southerly along Washington Road through and including the unincorporated community of Winchester to Benton Road; westerly along Benton Road to Winchester Road (State Highway 79) to Jefferson Avenue; southerly along Jefferson Avenue to U.S. Highway 395; southerly along U.S. Highway 395 to the Riverside County-San Diego

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County Boundary Line; westerly along said boundary line to the Orange County-San Diego County Boundary Line; southerly along said boundary line to the Pacific Ocean; northwesterly along the shoreline of the Pacific Ocean to point of beginning, including the point of March Air Force Base.

NOTE B

SAN DIEGO TERRITORY

The San Diego Territory includes that area embraced by following an imaginary line starting at a point approximately four miles north of La Jolla on the Pacific Coast shoreline running east to Miramar on U.S. Highway 395; thence following an imaginary line running southeasterly to Lakeside on State Highway 67; thence southerly on County Road S 17 (San Diego County) and its prolongation to State Highway 94; easterly on State Highway 94 to Jamul; thence due south following an imaginary line to the California-Mexico Boundary Line; thence westerly along the boundary line to the Pacific Ocean and north along the shoreline to point of beginning.

NOTE C

COACHELLA VALLEY TERRITORY

Coachella Valley Territory is defined as the area lying between the Little San Bernardino Mountains and Cottonwood Mountain on the one hand, and the San Jacinto and Santa Rosa Mountains, on the other hand; and bounded on the northwest by the intersection of Ramon Road and Interstate Highway 10, and Indian Wells on State Highway 111, and on the southeast by the Riverside-Imperial County Line on State Highway 86, and the Southern Pacific Company station of Mortmar on State Highway 111.

(END OF APPENDIX A)

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