

ORIGINAL

Decision No. 88902 MAY 31 1978

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of MUELLER TRUCK CO.,)
 to sell and EAST TEXAS MOTOR)
 FREIGHT LINES, INC., to purchase,)
 Certificates of Public Conve-)
 nience and Necessity of MUELLER)
 TRUCK CO., pursuant to Section)
 851 of the Public Utilities Code;)
 and of MUELLER TRUCK CO. to lease)
 its Certificates of Public Conve-)
 nience and Necessity and of EAST)
 TEXAS MOTOR FREIGHT LINES, INC.)
 to temporarily acquire through)
 lease such Certificates of Public)
 Convenience and Necessity pur-)
 suant to Section 1063 of the)
 Public Utilities Code.)

Application No. 57365
(Filed June 6, 1977)

Application of S & M FREIGHT)
 LINES to sell; and EAST TEXAS)
 MOTOR FREIGHT LINES, INC., to)
 purchase, Certificates of Public)
 Convenience and Necessity of)
 S & M FREIGHT LINES, pursuant to)
 Section 851 of the Public Utili-)
 ties Code; and of S & M FREIGHT)
 LINES to lease its Certificates)
 of Public Convenience and Neces-)
 sity and of EAST TEXAS MOTOR)
 FREIGHT LINES, INC. to temporar-)
 ily acquire through lease such)
 Certificates of Public Conve-)
 nience and Necessity pursuant to)
 Section 1063 of the Public Util-)
 ities Code.)

Application No. 57392
(Filed June 15, 1977)

FINAL OPINION

By its interim Decision 87801 dated August 30, 1977 in Applications 57365 and 57392, respectively, this Commission authorized both Mueller Truck Company, a California corporation (MUELLER), and S & M Freight Lines, a California corporation (S & M), (1) to sell, and (2) to temporarily lease all or a portion of their respective California certificated operating rights to East Texas Motor Freight Lines, Inc., a Texas corporation qualified to do

business in California (ETMF).

East Texas Motor Freight Lines, Inc., the buyer-lessee of both intrastate certificated carrier operating authorities involved herein, operates as a multi-state motor carrier in interstate and foreign commerce under Interstate Commerce Commission (ICC) jurisdiction. ETMF now holds intrastate operating permits issued by this Commission in File T-97,441.

This Commission is in receipt of the following communication dated April 6, 1978 from counsel for the buyer-lessee (ETMF), which is self-explanatory:

"The above-referenced Applications have been concluded and the sales of the operating rights in question have been consummated. Along therewith, the Interstate Commerce Commission in its Dockets Nos. MC-F-13171 and MC-F-13193 has authorized East Texas Motor Freight Lines, Inc., under Section 5 of the Interstate Commerce Act, to acquire through purchase the involved intrastate rights under registration with the Interstate Commerce Commission, as the same have been converted in the latter Commission's Docket MC-41432, Subs. Nos. 149 and 150. East Texas Motor Freight Lines, Inc. has been authorized to acquire the operating rights as described by that Commission and set forth in Appendix "A" hereto; said Decision covering the Mueller Truck Co. operating rights as prescribed by the Interstate Commerce Commission. Also, by said Decision, the Interstate Commerce Commission defined the rights to be acquired by East Texas Motor Freight Lines, Inc. from S & M Freight Lines between the Los Angeles Basin area and Santa Barbara, California as set forth in Appendix "B" hereto.

"This information is submitted in compliance with Cal. PUC Decision No. 87801, Ordering Paragraph 11."

The action to be taken herein is for the specific purpose of implementing and finalizing this Commission's order in Decision 87801, supra. Inasmuch as the sale and transfer of the certificated operating rights of both MUELLER and S & M (portion only) involved in these proceedings have been approved by the ICC, and the transactions related thereto have now been consummated by the three motor carriers involved, all that remains is (a) to issue an intrastate highway common carrier certificate to East Texas Motor Freight Lines, Inc.; (b) to amend the existing certificate of S & M Freight Lines to show only that portion of its intrastate certificate which

is being retained; and (c) to revoke, concurrently, the present certificate of Mueller Truck Co.

The new California certificate, which is to be granted to East Texas Motor Freight Lines, Inc. by the ensuing order, conforms to the scope of operating authority resulting from the consolidation of the two individual authorities originally granted to the sellers thereof. The consolidation and restatement of the certificated operating authorities of the two selling carriers will neither broaden nor lessen the overall scope of the intrastate, interstate or foreign commerce rights formerly held by MUELLER and S & M, respectively, which rights have been transferred to ETMF, the buyer, as proposed in these proceedings.

Since there is no known reason to delay the final disposition of these matters, the effective date of the order issued herein should be the date on which it is signed.

East Texas Motor Freight Lines, 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 cancelled at any time by the State, which is not in any respect limited as to the number of rights which may be given.

FINAL ORDER

IT IS ORDERED that:

1. A certificate of public convenience and necessity is granted to East Texas Motor Freight Lines, Inc., a Texas 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. Appendix B of Decision 86864, the existing certificate of S & M Freight Lines, is amended by incorporating therein First

Revised Page 1, attached hereto, in revision of Original Page 1.

3. In providing service pursuant to the authority granted by this order, East Texas Motor Freight Lines, Inc. shall comply with the following service regulations. Failure to do so may result in cancellation of the authority.

- (a) Within thirty days after the effective date of this order, East Texas Motor Freight Lines, Inc. shall file a written acceptance of the certificate granted. East Texas Motor Freight Lines, Inc. 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 100-Series.
- (b) Within one hundred twenty days after the effective date of this order, East Texas Motor Freight Lines, Inc. shall establish the authorized service and cancel, amend or refile tariffs, as necessary, in the Commission's office pursuant to the certificate granted by this decision.
- (c) The tariff filings shall be made effective not earlier than ten days after the effective date of this order on not less than ten 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 80-Series.
- (e) East Texas Motor Freight Lines, Inc. 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) East Texas Motor Freight Lines, Inc. shall comply with the requirements of the Commission's General Order 84-Series for the transportation of collect on delivery shipments. If it elects not to transport collect on delivery shipments, it shall make the appropriate tariff filings as required by the General Order.

4. The tariff filings required of S & M Freight Lines, due to the amendment of its intrastate certificated operating authority by paragraph 2, shall be made effective not earlier than ten days after the effective date of this order on not less than ten 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 service authorized under such amended authority.

5. The certificate of public convenience and necessity granted in paragraph 1 of this order shall supersede the certificate of public convenience and necessity granted to Mueller Truck Co. by Decision 83230, as amended by Decisions 85520 and 85803, which certificate is revoked effective concurrently with the effective date of the tariff filings required by paragraph 3(b).

The effective date of this order is the date hereof.

Dated at San Francisco, California, this 31st
day of MAY, 1978.

Robert B. Fournier
President

William Synovitz

Verizon L. Sturgeon

Richard P. Howell

Commissioners

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

East Texas Motor Freight Lines, Inc., 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, with exceptions hereinafter noted, as follows:

- I. Between all points in Los Angeles Territory as described in Note A, on the one hand, and all points in San Diego Territory as described in Note B, on the other hand.
- II. Between all points in Los Angeles Territory and San Diego Territory, on the one hand, and all points located on the following named highways, on the other hand:
 - (a) Interstate Highway 5 and State Highway 1 between the southern boundary of Los Angeles Territory and the northern boundary of San Diego Territory.
 - (b) Interstate Highway 15 (U.S. Highway 395) between the Riverside-San Diego County line, near Rainbow, and the northern boundary of San Diego Territory.
 - (c) State Highway 78 between its junction with Interstate Highway 5 (near Carlsbad) and Escondido.
 - (d) State Highway 76 between Oceanside and the junction of said highway with Interstate Highway 15 (U.S. Highway 395).
 - (e) San Diego County Road S-13 between Vista and Fallbrook.
- III. Between all points in Los Angeles Basin Territory as described in Note C, on the one hand, and all points and places located on the highways named in paragraph II, inclusive, on the other hand.

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RESTRICTIONS:

- (1) No service is authorized at the Naval Ammunition and Net Depot of Seal Beach, Fallbrook Annex.
 - (2) No local service is authorized:
 - (a) Between points in San Diego Territory.
 - (b) Between points in Los Angeles Basin Territory, except as otherwise provided.
 - (c) On the highways specified in subparagraphs II(a) through (c) above, except as otherwise provided.
- IV. Between all points in Los Angeles Basin Area as described in Note D, on the one hand, and, on the other hand, the City of Santa Barbara via: (a) Interstate Highway 5 to its junction with U.S. Highway 101 (at Los Angeles), thence via U.S. Highway 101; or (b) State Highway 1 to its junction with U.S. Highway 101 (near El Rio), thence via U.S. Highway 101, serving all intermediate points on said highways, including all points located within 5 statute miles laterally of said highways between the Los Angeles Basin Area and the City of Santa Barbara.
- V. 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.

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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. Commodities requiring the use of special refrigeration or temperature control in specially designed and constructed refrigerator equipment except shipments between San Diego Territory, on the one hand, and the City of Los Angeles, on the other hand.
8. Logs.

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 as restricted above.

NOTE A

LOS ANGELES TERRITORY

The Los Angeles Territory includes that area embraced by the following boundary: Beginning at the intersection of Sunset Boulevard and State Highway 1; thence northeasterly on Sunset Boulevard to Interstate Highway 405; thence northerly along Interstate Highway 405 to State Highway 118 at San Fernando (including the City of San Fernando); thence southeasterly along State Highway 118 to and including the City of Pasadena; thence easterly along Foothill

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Boulevard from the intersection of Foothill Boulevard and Michilinda Avenue to Valencia Way; northerly on Valencia Way to Hillcrest Boulevard; easterly and northerly along Hillcrest Boulevard to Grand Avenue; easterly and southerly along Grand Avenue to Greystone Avenue; easterly on Greystone Avenue and the prolongation thereof to the west side of Sawpit Wash; southerly on Sawpit Wash to the intersection of Mountain Avenue and Royal Oaks Drive; easterly along Royal Oaks Drive to Buena Vista Street; south on Buena Vista Street and due south on a prolongation thereof to the west bank of the San Gabriel River; southerly along the west bank of the San Gabriel River to Beverly Boulevard; southeasterly on Beverly Boulevard to Painter Avenue in the City of Whittier; southerly on Painter Avenue to Telegraph Road; westerly on Telegraph Road to the west bank of the San Gabriel River; southerly along the west bank of the San Gabriel River to Imperial Highway (State Highway 90); westerly on Imperial Highway to Lakewood Boulevard (State Highway 19); southerly along Lakewood Boulevard to its intersection with State Highway 1 at Ximeno Street; southerly along Ximeno Street and its prolongation to the Pacific Ocean; westerly and northerly along the shoreline of the Pacific Ocean to a point directly south of the intersection of Sunset Boulevard and State Highway 1; thence northerly along an imaginary line to point of beginning.

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.

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NOTE C

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 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.

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NOTE D

LOS ANGELES BASIN AREA

Los Angeles Basin Area includes the area embraced by the following boundary:

Beginning at the intersection of State Highway 27 and State Highway 1; northerly on State Highway 27 to U.S. Highway 101; westerly on U.S. Highway 101 to a point where the city limits of the City of Los Angeles are intersected thereby; northerly and easterly along said city limits of Los Angeles to a point from which an imaginary line drawn easterly intersects Interstate Highway 405; easterly from such point along such imaginary line to Interstate Highway 405; southerly along Interstate Highway 405 to Chatsworth Drive; northeasterly along Chatsworth Drive to the corporate boundary of the City of San Fernando; westerly and northerly along said corporate boundary to McClay Avenue; thence northeasterly along McClay 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 State Highway 38; westerly along State Highway 38 to Bryant Street north of Yucaipa; southerly along Bryant Street to and including the unincorporated community of Yucaipa; westerly along Redlands Boulevard to Interstate Highway 10; northwesterly along Interstate Highway 10 to and including the City of Redlands; westerly along Interstate Highway 10 to Interstate Highway 15; southerly along Interstate Highway 15 to Alessandro near March Air Force Base; westerly along Van Buren Boulevard to Arlington; southwesterly along Magnolia Avenue to State Highway 91; southwestwesterly and westerly along State Highway 91 to State Highway 55; southerly along State Highway 55 to the Pacific Ocean; westerly and northerly along the shoreline of the Pacific Ocean to a point directly south of the intersection of Sunset Boulevard and State Highway 1; thence northerly along an imaginary line to the point of beginning.

Included within the territory immediately above described are all places within the corporate limits of any city which is bisected by state and interstate highways and county roads constituting the boundary of such territory between Yucaipa and Newport Beach.

(END OF APPENDIX A)

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Decision 88902, Applications 57365 and 57392.

S & M Freight Lines, 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 the Los Angeles Basin Area as described in Note A hereof, on the one hand, and on the other hand, Indio via Interstate Highway 10 serving all intermediate points on said highway and all points laterally within five statute miles of said highway between the Los Angeles Basin Area and Indio.

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

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*Amended by Decision 88°02, Application 57392.