

Decision No. 89350 SEP 6 1978

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
BAY AREA-LOS ANGELES EXPRESS, INC.,
a California corporation, for a
Certificate of Public Convenience and
Necessity authorizing the transportation
of general commodities, with certain
exceptions, between certain points within
the State of California.

Application No. 57341
(Filed May 25, 1977;
amended May 5, 1978
and May 23, 1978)

Murchison & Davis, by Donald Murchison,
Attorney at Law; and Michael C. Leiden
and Edgar A. Hills, Jr.; for applicant.
Marshall G. Berol and James O. Abrahms,
Attorneys at Law, for Delta Lines, Inc.;
Handler, Baker & Greene, by William D.
Taylor, Attorney at Law, for Lodi Truck
Service, Inc., Ditto Freight Lines Inc.,
System 99, Ted Peters Trucking Co., Inc.,
(Gustine), and Doudell Trucking Company;
protestants.

O P I N I O N

By this application, Bay Area-Los Angeles Express, Inc., a California corporation, seeks to extend its highway common carrier certificate. Applicant's present authority is set forth in Appendix A to Decision No. 84010 and authorizes service between the Los Angeles Basin Territory on the one hand, and the San Francisco Territory, on the other, without service to intermediate points. Service is also authorized within the San Francisco Territory.

Applicant seeks to extend its authority to serve the entire bay and river area around San Francisco, to and including Stockton and Sacramento and points intermediate thereto, points intermediate between that territory and the Mexican Border over several routes as well as service north of Sacramento to Redding, limited to the

transportation of magazines and related items. The authority sought includes property to be transported moving in both intrastate and interstate and foreign commerce.

Applicant proposes to register the requested authority with the Interstate Commerce Commission as the existing authority is registered. Notice of the application for concurrent interstate and foreign commerce authority was duly published in the Federal Register under the provisions of the Interstate Commerce Act.

Applicant's request was opposed by Delta Lines, Inc., Lodi Truck Service, Inc., Ted Peters Trucking Co., Inc., and Doudell Trucking Company. Four days of public hearings were held, three at San Francisco, California, and one at Los Angeles, California, before Administrative Law Judge William S. Pilling between April 10, 1978 and May 23, 1978. The matter was taken under submission May 23, 1978 after applicant amended its requested and proposed in lieu certificate (Exhibit 2A). Protestants withdrew their opposition to applicant's requested in lieu certificate as amended.

Applicant proposes to provide the requested service on a daily on-call basis in both intrastate and interstate and foreign commerce. Applicant states that its present fleet of 39 units of equipment will be available for use in connection with the proposed service and that the company will add to its fleet as the demands of the shipping public may require. Applicant's balance sheet as of December 31, 1977 shows assets of \$938,953, total liabilities of \$775,322, and stockholders' equity of \$163,631.

Applicant is presently a party to Western Motor Tariff Bureau, Inc., Agent, Local Joint, and Proportional Freight and Express Tariff No. 111, Cal PUC No. 15, for application of rates and rules to its present certificated intrastate operations. The company would adopt the rates and rules contained in that tariff for the additional territory it proposes to serve.

Applicant alleges that the granting of the application will have no significant effect upon the quality of the human environment.

In addition to the service provided by applicant under its present highway common carrier certificate, it also conducts operations as a permit carrier under both a radial highway common carrier permit and a highway contract carrier permit within the territory to which it proposes to extend. Applicant states that the application was instituted by reason of the increasing requests for service in the territory outside of the scope of its present certificate and also requests for service on traffic moving in interstate or foreign commerce which applicant is now unable to provide.

Before the withdrawal of the last protestant, the application had been supported by 15 shippers who shipped a broad variety of commodities to and from various points in the involved territory. By stipulation, an additional 10 witnesses would have testified. All expressed a need for the proposed service. Some of the shippers have interstate shipments moving to and from the sought area. Shipments range in weight from 100 to several thousand pounds and some truckload shipments. The majority have been experiencing a continual increase in the volume of their business.

Findings

1. Applicant has the experience, equipment, and financial ability to provide the proposed additional service.
2. Amendments to the application are restrictive in nature only and do not broaden the sought authority as set forth in the application and as published in the Federal Register.
3. Public convenience and necessity require that applicant be authorized to engage in operations in intrastate commerce as proposed in the application, as amended. Minor changes have been made in the route descriptions to conform to current highway designations, but in no way broaden the scope of the authority sought. Public convenience and necessity 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.

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

Conclusion

The application, as amended, and as modified herein should be granted as set forth in the ensuing order.

Bay Area-Los Angeles Express, 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 Bay Area-Los Angeles Express, Inc., a California 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. 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. 84010, which certificate is revoked effective concurrently with the effective date of the tariff filings required by paragraph 3(b).

3. 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 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. 117-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 thirty days after the date hereof.

Dated at San Francisco, California, this 6th day of SEPTEMBER, 1978.

Robert B. Berman
President
William J. Brown
Vernon L. Sturgeon
Robert D. Howell

Commissioners

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

Bay Area-Los Angeles Express, 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:

I. General commodities except as provided in Section V below, from, to, and between all points and places located on or laterally within 25 miles of the following described routes:

1. State Highway 1 between San Francisco and Carmel;
2. U.S. 101 between Healdsburg and the Los Angeles Basin Territory as described in Note A;
3. Interstate Highway 5 between Sacramento and San Diego;
4. State Highway 99 between Sacramento and Wheeler Ridge;
5. Interstate Highway 80 between the San Francisco Territory, as described in Note B, and Sacramento;
6. State Highway 65 between Roseville and Marysville;
7. Interstate Highways 580, 205, and 5 between Oakland and Stockton;
8. Interstate Highway 15 between San Bernardino and San Diego;
9. Interstate Highway 10 between Los Angeles and Indio;
10. State Highway 111 between Indio and El Centro;
11. State Highway 9 between Los Gatos and Santa Cruz;
12. State Highway 152 between Gilroy and Watsonville;
13. State Highway 129 between U.S. 101 and Watsonville;

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14. State Highway 68 between Salinas and Monterey;
 15. State Highway 4 between Pinole and Stockton;
 16. State Highway 160 between Antioch and Sacramento;
 17. State Highway 24 between Oakland and Concord;
 18. Interstate Highway 680 and State Highway 237 between Vallejo and Milpitas.
- II. General commodities, except as provided in Section V below, between all points and places in the San Francisco Territory as described in Note B, including points within 5 miles laterally of State Highways 238 and 17 between Hayward and San Jose.
- III. Magazines, periodicals, catalogues, newspapers, newspaper supplements, inserts, books, and bookcovers from, to, and between all points and places located on or laterally within 25 miles of Interstate Highway 5 between Redding and Sacramento.
- IV. 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 service between any two points authorized to be served.
- V. 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 accordance with the crated property requirements set forth in Item 5 of Minimum Rate Tariff 4-B;
 2. Liquids, compressed gases, commodities in semi-plastic form and commodities in suspension in liquids in bulk, in tank trucks, tank trailers, tank semi-trailers, or a combination of such highway vehicles;
 3. Automobiles, trucks, and buses, viz: new and used, finished or unfinished passenger automobiles (inclusive of 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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4. 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;
5. Commodities when transported in bulk in dump trucks or in hopper-type trucks;
6. Commodities when transported in motor vehicles equipped for mechanical mixing in transit;
7. Logs;
8. Articles of extraordinary value;
9. Trailer coaches and campers, including integral parts and contents when the contents are within the trailer coach or camper;
10. Fresh fruits and vegetables;
11. Commodities requiring the use of special refrigeration or temperature control in specially designed and constructed refrigerator equipment;
12. Shipments moving in containers having a prior or subsequent movement by air or water, and shipments moving in trailer on flat car (TOFC) service, on movements other than within the San Francisco Territory and between the San Francisco Territory and the Los Angeles Basin Territory;