

90639

JUL 31 1979

ORIGINAL

Decision No. _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 DESERT EXPRESS, a corporation, to)
 merge into and with WESTERN)
 GILLETTE, INC., a corporation and)
 for the transfer to WESTERN)
 GILLETTE, INC. of a certificate of)
 public convenience and necessity)
 of several commodities with)
 specified exceptions between)
 various points and places in the)
 State of California, pursuant to)
 Sections 851-853 of the California)
 Public Utilities Code and Section 5)
 of the Interstate Commerce Act.)

Application No. 52637
 (Filed May 25, 1971)

SUPPLEMENTAL OPINION AND ORDER

Roadway Express Inc., (purchaser), a Delaware corporation, qualified to do business in California, seeks to acquire the highway common carrier and petroleum irregular route carrier certificates of Western Gillette, Inc. (seller), a California corporation pursuant to a merger of the seller into the purchaser.

The certificates were granted by Decision 79972 dated April 25, 1972 in Application 52637 and amended by Decision 80109 dated May 31, 1972. The highway common carrier certificate authorizes the transportation of general commodities with certain exclusions as specified, over a large area of California located south of Lake Tahoe. It also authorizes the transportation of petroleum products in bulk, in tank vehicles, except liquefied petroleum gases and any other petroleum products requiring pressurized tanks, and except liquid asphalt and hot road oils and any other petroleum products requiring insulated tanks. Service is authorized over a number of routes and all points within fifty statute miles of such routes, in an area extending from the California-Oregon Border to the California-Mexican Border. The petroleum irregular route certificate authorizes the transportation of liquefied petroleum gases and liquid asphalt

and hot road oils and any other petroleum products requiring insulated tanks, between all points and places in the State of California, and all other petroleum products in tank trucks and tank trailers between all points in the State of California other than points and places authorized in the highway common carrier certificate. Seller also holds a certificate of public convenience and necessity issued by the Interstate Commerce Commission in Docket No. MC-8948 and highway carrier permits issued by this Commission. Transfer of the permits is the subject of a separate application. Purchaser does not hold any operating authority from this Commission.

By an agreement entered into on November 30, 1976, purchaser and seller and its stockholders agreed, subject to the authorization and approval of the Interstate Commerce Commission, that the purchaser would purchase all of the outstanding shares of seller's common voting stock for \$17 million cash subject to adjustments. Pursuant to its order in MC-F-13067, the Interstate Commerce Commission approved the merger of seller into purchaser within eighteen months of the effective date of that order. A supplemental order finally approving said merger was served on December 18, 1978. The specific amount assigned as the value of the California operating rights was not set forth in said final order.

The proposed transfer is subject to the exclusive and plenary jurisdiction of the Interstate Commerce Commission under Section 11341 of the Interstate Commerce Act (formerly Section 5⁽¹²⁾). The federal commission has granted its approval in MC-F-13067 as noted above. *rd*

After consideration, the Commission finds that:

1. The proposed transfer of the certificates granted by Decision 52637, as amended, would not be adverse to the public interest of California and should be authorized.
2. We further find with certainty that there is no possibility that the activity in question may have a significant effect upon the environment.

The Commission concludes that the transfer should be granted. A public hearing is not necessary. The order which follows will provide for, in the event the merger is completed, the revocation of the highway common carrier and petroleum irregular route carrier certificates presently held by Western Gillette, Inc. and the issuance of certificates in appendix form to Roadway Express, Inc., a Delaware corporation, authorized to do business in California.

Roadway Express, Inc. is placed on notice that operating results 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 paid to the State for the grant of such rights. Such rights extend to the holder a full or partial monopoly of a class of business. This monopoly feature may be modified or cancelled at any time by the State which is not in any respect limited as to the number of rights which may be given. The authorization granted shall not be construed as a finding of value of the rights to be transferred.

O R D E R

IT IS ORDERED that:

1. In accordance with the approval of the Interstate Commerce Commission and effective therewith, Western Gillette, Inc. may transfer the operating rights referred to in the application to Roadway Express, Inc. This authorization will expire if not exercised by December 31, 1979, or within such additional time as may be granted by the Commission.
2. Within thirty days after the transfer the purchaser shall file with the Commission written acceptance of the certificate and a true copy of the bill of sale or other instrument of transfer.
3. Purchaser shall amend or reissue the tariffs on file with the Commission, naming rates and rules governing the common carrier operations transferred to show that it has adopted or established, as its own, the rates and rules. The tariff filings shall be made effective not earlier than five days after the effective date of

this order on not less than five days' notice to the Commission and the public, and the effective date of the tariff filings shall be concurrent with the transfer. The tariff filings made pursuant to this order shall comply in all respects with the regulations governing the construction and filing of tariffs set forth in the Commission's General Order No. 80-Series. Failure to comply with the provisions of General Order No. 80-Series may result in a cancellation of the operating authority granted by this decision.

4. In the event the transfer authorized in paragraph 1 is completed, effective concurrently with the effective date of the tariff filings required by paragraph 3, a certificate of public convenience and necessity is granted to Roadway Express, Inc., a Delaware corporation, qualified to do business in California, authorizing it to operate as a highway common carrier, as defined in Section 213 and a petroleum irregular route carrier, as defined in Section 214 of the Public Utilities Code, between the points and over the routes set forth in Appendices A, B and C of this decision.

5. The certificates of public convenience and necessity granted by Decision 79972, as amended, are revoked effective concurrently with the effective date of the tariff filings required by paragraph 3.

6. Purchaser shall comply with the safety rules administered by the California Highway Patrol and the insurance requirements of the Commission's General Order No. 100-Series.

7. Purchaser 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 be filed with the Commission on or before March 31 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.

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8. Purchaser shall comply with the requirements of the Commission's General Order No. 84-Series for the transportation of collect on delivery shipments. If purchaser 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 JUL 31 1979, at San Francisco, California.

John C. Guyon
President

Thomas L. Sturgeon

Charles D. Howell

Clare J. Delaney

Samuel J. Smith
Commissioners

Roadway 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 general commodities as follows:

- A. BETWEEN all points and places in each of the following described areas, on the one hand, and all points and places in each of the other following described areas, on the other hand:
1. The San Francisco Bay Area, as described in Note A hereof.
 2. The Los Angeles Basin Area, as described in Note B hereof.
 3. The San Diego Territory Area, as described in Note C hereof.
 4. The Sacramento-Delta Area, as described in Note D hereof.
 5. The Bakersfield-Stockton Area, as described in Note E hereof.
 6. The Lake Tahoe-High Sierra Area, as described in Note F hereof.
 7. The Mojave-Bishop-Topaz Lake Area, as described in Note G hereof.
 8. The Indio-Blythe Area, as described in Note H hereof.
 9. The Imperial Valley Area, as described in Note I hereof.

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- B. BETWEEN points and places locally within the following described areas:
1. The Sacramento-Delta Area as described in Note D hereof.
 2. The Bakersfield-Stockton Area as described in Note E hereof.
 3. The Lake Tahoe-High Sierra Area as described in Note F hereof.
 4. The Mojave-Bishop-Topaz Lake Area as described in Note G hereof.
 5. The Indio-Blythe Area as described in Note H hereof.
 6. The Tehachapi-Mojave Desert Territory as described in Note J hereof.
- C. 1. BETWEEN all points and places in the Los Angeles Basin Area as described in Note B hereof, on the one hand, and on the other hand:
- a. All points and places in the Bakersfield Territory as described in Note K hereof.
 - b. All points and places in the Tehachapi-Mojave Desert Territory as described in Note J hereof.
 - c. All points and places in the San Francisco Bay Area as described in Note A hereof and all intermediate points and off-route points within five statute miles of either side of the highways set out in paragraph C7 hereof north of Bakersfield.
 - d. Bakersfield.

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2. BETWEEN Bakersfield and all points and places in:
 - a. The Bakersfield Territory as described in Note M hereof.
 - b. The Tehachapi-Mojave Desert Territory as described in Note K hereof.
3. BETWEEN all points and places in the Tehachapi-Mojave Desert Territory as described in Note K hereof, and:
 - a. All points and places in the Bakersfield Territory as described in Note M hereof.
 - b. All points and places in the San Francisco Bay Area, as described in Note A hereof and all intermediate points and off-route points within five statute miles on either side of the highways set out in paragraph C7 hereof north of Bakersfield.
4. BETWEEN all intermediate points and off-route points within five statute miles on either side of the highways set out in paragraph C7 hereof north of, and including Bakersfield, on the one hand, and on the other, the San Francisco Bay Area, as described in Note A hereof.
5. BETWEEN all intermediate points and off-route points within five statute miles on either side of the highways set out in paragraph C7 hereof north of Bakersfield.
6. BETWEEN Los Angeles, Vernon, Maywood, Bell, Huntington Park, South Gate and intermediates and Glendale.
7. The highways upon which the intermediate and off-route points referred to in C1(c), C3(b), C4 and C5 hereof are based are the following:
 - a. State Highway 99 between Bakersfield and Manteca;
 - b. State Highway 120 and Interstate Highways 5, 205 and 580 between Manteca and the San Francisco Bay Area as described in Note A hereof.

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- c. State Highway 198 between its junction with State Highway 99 and its junction with State Highway 41 near Lemoore;
- d. State Highway 41 between its junction with State Highway 198 and Fresno.

Lateral and radial miles referred to in the appendices are statute miles of 5,280 feet each, measured in a straight line without regard to terrain features.

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 salesmen's hand sample cases, suitcases, overnight or boston bags, briefcases, 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. 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.
3. 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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4. Commodities when transported in bulk in dump-type trucks or trailers or in hopper-type trucks or trailers.
5. Commodities when transported in motor vehicles equipped for mechanical mixing in transit.

NOTE A

SAN FRANCISCO BAY AREA includes all points and places within the following areas:

1. The area embraced by the following boundary:

Beginning at the points where the San Francisco-San Mateo County boundary line meets the Pacific Ocean; thence easterly along said boundary line to a point one mile west of the junction of said boundary line and State Highway 82; thence southerly along an imaginary line one statute mile west of State Highway 82 to its intersection with the corporate boundary of the City of San Jose; thence southerly, easterly, northerly, and westerly to the intersection of said city boundary and Interstate Highway 680; thence north on Interstate Highway 680 to its junction with Mission Boulevard near Warm Springs; thence northerly along Mission Boulevard via Mission San Jose, Niles and Hayward to its junction with Foothill Boulevard; thence north along Foothill Boulevard to its junction with Interstate Highway 580; thence north along Interstate Highway 580 to its junction with State Highway 13; thence north along State Highway 13 to its point of first junction with the city limits of the City of Berkeley; thence northerly along the line of the easterly city limits of Berkeley to its junction with the Alameda County-Contra Costa County boundary line north of the University of California; thence northerly and westerly upon the Alameda County-Contra Costa County boundary line to its point of first junction with the city limits of the City of El Cerrito; thence generally northerly and easterly

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along the southeasterly boundary of the City of El Cerrito to its point of first junction with the boundary line of the City of Richmond; thence along the easterly, northerly and westerly boundaries of the City of Richmond to Point Richmond; thence generally southerly along an imaginary line from Point Richmond to the San Francisco Waterfront at the foot of Market Street; thence westerly along said Waterfront and shoreline to the Pacific Ocean; thence southerly along the shoreline of the Pacific Ocean to the point of beginning, and including all points on both sides of all streets and highways designated as boundaries, and all points in all cities named.

2. All points and places on and within five statute miles laterally of U.S. Highway 101 between San Francisco and San Rafael, including San Rafael.
3. All points and places on and within five statute miles laterally of State Highway 17 between San Rafael and its junction with Interstate Highway 80.

NOTE B

LOS ANGELES BASIN AREA includes all points and places within the following boundary:

Beginning at the intersection of westerly boundary of the City of Los Angeles and the Pacific Ocean; thence along the northerly and easterly boundaries of said city to its point of first intersection with the southerly boundary of the Angeles National Forest; thence along the southerly boundary of the Angeles and San Bernardino National Forest to the point of intersection of said southerly boundary of the San Bernardino National Forest and the San Bernardino-Riverside County Line; thence in a southerly and westerly direction along said county boundary to a point thereon distant ten statute miles east of the intersection of said county boundary and Interstate Highway 15; thence generally southerly and southwesterly along a line paralleling and distant ten statute miles from Interstate Highway 15 and State Highway 91 to the intersection of said line and a line paralleling and easterly ten statute miles from State Highway 55;

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thence in a generally southerly direction to the shoreline of the Pacific Ocean along a line ten statute miles east of and parallel to State Highway 55 and its prolongation to said shoreline; thence along the shoreline of the Pacific Ocean to the point of beginning.

NOTE C

SAN DIEGO TERRITORY AREA includes:

1. All points and places within the City of San Diego.
2. All points and places in addition to points within the City of San Diego which lie within the following boundaries:

Beginning at the junction of the International Boundary between the United States and Mexico and the shoreline of the Pacific Ocean; thence northerly along the shoreline of the Pacific Ocean to a point due west of the intersection of Interstate Highway 5 and Santa Fe Railway Company south of Del Mar; thence along a straight line in a generally southeasterly direction to the junction of State Highway 67 and the San Diego River near Lakeside; thence due south to the International Boundary between the United States and Mexico; thence westerly along said International Boundary to the point of beginning.

NOTE D

SACRAMENTO-DELTA AREA includes all points and places within the following areas:

1. All points and places on and within five statute miles laterally of State Highway 99 between Sacramento and Stockton, including both Sacramento and points within five statute miles of each.
2. All points and places on and within five statute miles laterally of U.S. Highway 50 between Sacramento and Nimbus, including Nimbus.

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3. All points and places on and within five statute miles laterally of State Highway 4 between Stockton and its junction with Interstate Highway 80 near Pinole.
4. All points and places on and within five statute miles laterally of Interstate Highway 80 between its junction with State Highway 4 near Pinole and the San Francisco Bay Area as described in Note A.

Note E

BAKERSFIELD-STOCKTON AREA includes:

1. All points and places on and within five statute miles laterally of State Highway 99 between Fresno and Stockton, including all of both of said cities.
2. All points on and within twenty statute miles laterally of State Highway 99 between Bakersfield and Fresno, including all of both of said cities.
3. All points within five statute miles of Modesto and Fresno.

NOTE F

LAKE TAHOE-SIERRA AREA includes:

1. All points on U. S. Highway 50 between Pacific House and the junction of U. S. Highway 50, and the California-Nevada State Line at Stateline.
2. All points within five statute miles of the shoreline of Lake Tahoe.
3. Squaw Valley, and all points on State Highway 89 intermediate between Tahoe City and Squaw Valley.

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4. All points on and within five statute miles laterally of State Highway 89 between its junction with U. S. Highway 50 and its junction with U. S. Highway 395.

NOTE G

MOJAVE-BISHOP-TOPAZ LAKE AREA includes the following:

1. All points and places on and within one statute mile laterally of State Highway 14 and U. S. Highway 395 between Mojave and the southerly boundary of Inyo County.
2. All points in Inyo and Mono Counties within an area bounded on the west by the westerly boundary of said counties and on the east by an imaginary line five statute miles east of and parallel to U. S. Highway 395 extending from the southerly boundary of Inyo County to its junction with the California-Nevada State Line.
3. Inyokern, Ridgecrest, and Naval Ordnance Test Station, China Lake, and all points on unnumbered highway intermediate between State Highway 14 and Ridgecrest.
4. Keeler, Darwin, Bodie, and Masonic and all points on the highways intermediate between each of said points and U. S. Highway 395.
5. All points on State Highway 182 between Bridgeport and the junction of said highway and the California-Nevada State Line approximately five statute miles northwest of Masonic.

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NOTE H

INDIO-BLYTHE AREA includes the following:

1. All points and places on Interstate Highway 10 between Indio and its junction with the California-Arizona State Line near Blythe, California.
2. All points laterally within ten statute miles of Interstate Highway 10 between its junction with the California-Arizona State Line and a point fifteen miles westerly thereof on said Interstate Highway 10.
3. Eagle Mountain, Midland, Palo Verde, and all points intermediate on and along highways between Interstate Highway 10 and each of said named points.

NOTE I

IMPERIAL VALLEY AREA includes the following:

1. Westmorland and points within a radius of twenty statute miles of Westmorland.
2. Winterhaven and points within a radius of twenty statute miles of Winterhaven.
3. All points on and within twenty statute miles laterally of State Highway 86 intermediate between Westmorland and El Centro.
4. All points on and within twenty statute miles laterally of Interstate Highway 8 between El Centro and the California-Arizona State Line near Winterhaven.

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NOTE J

TEHACHEPI-MOJAVE DESERT TERRITORY includes all points and places in the areas as follows:

- A. All points and places on and along each of the following described highways and within three statute miles on either side of each of said highways between points named, including said points:
- (1) State Highway 58 between the easterly limits of Bakersfield and the Junction of State Highway 58 and Interstate Highway 15 near Barstow;
 - (2) State Highway 14 between its junction with Interstate Highway 5 and junction State Highways 14 and 178 approximately four statute miles west of Inyokern;
 - (3) Unnumbered highway via Newhall and Saugus between its junction with State Highway 14 approximately two statute miles south of Newhall and Solamint;
 - (4) U. S. Highway 395 between its junction with State Highway 58 near Boron and Inyokern;
 - (5) Interstate Highway 40 between its junction with Interstate Highway 15 at Barstow and Daggett;
 - (6) Interstate Highway 15 between Victorville and Yermo;
 - (7) Unnumbered highway between its junction with State Highway 58 approximately three statute miles north of Barstow and Barstow;
 - (8) Unnumbered highway between Daggett and Yermo;
 - (9) Unnumbered highway between its junction with State Highway 138 near Pearblossom and Valyermo;
 - (10) State Highway 138 between its junction with unnumbered highway described in (9) above and Palmdale;

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- (11) Unnumbered highways via George Air Force Base and U. S. Highway 395 between Victorville and Adelanto;
- (12) Unnumbered highway via Wilsona between Adelanto and junction of said unnumbered highway with State Highway 138 approximately three statute miles east of Palmdale;
- (13) Unnumbered highway via Quartz Hill and Elizabeth Lake between Lancaster and Lake Hughes;
- (14) Unnumbered highway via Redman, Casa Desierta, Antelope and Edwards between Lancaster and junction of said unnumbered highway with state Highway 58 north of Edwards;
- (15) Unnumbered highway via Gypsite, Saltdale, Garlock and Randsburg between its junction with State Highway 14 near Cantil and Johannesburg;
- (16) Unnumbered highway via Westend between Johannesburg and Argus-Trona;
- (17) State Highway 178 between its junction with State Highway 14 approximately four statute miles west of Inyokern and its junction with the unnumbered highway described in (16) above;
- (18) Unnumbered highway between its junction with U. S. Highway 395 near Rademacher and Ridgecrest;
- (19) State Highway 202 between Techachapi and Cummings Valley (Techachapi Correctional Institution);
- (20) State Highway 223, unnumbered highway via Lamont and Weed Patch and State Highway 184 between junction of State Highways 223 and 58 near Caliente and junction of State Highways 184 and 58 approximately two statute miles west of Edison;
- (21) Unnumbered highway via Di Georgio between Lamont and Arvin.

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NOTE K

BAKERSFIELD TERRITORY includes that area embraced by the following and within a radius of five statute miles of the outer boundaries thereof:

Beginning on State Highway 99 at its junction with the northerly boundary of Kern County; thence south via State Highway 99 to its junction with California State Highway 166, thence westerly along State Highway 166 to junction with California State Highway 33, thence northerly along State Highway 33 to junction with unnumbered county highway extending in a generally northeasterly direction to junction with State Highway 46 at Lost Hills; thence along said county highway to Lost Hills; thence easterly along State Highway 46 to junction with an unnumbered county highway approximately seven statute miles east of Lost Hills which said highway extends in a generally northerly direction; thence along said unnumbered county highway to its junction with the northerly boundary of Kern County; thence east along the northerly boundary of Kern County to point of beginning.

(END OF APPENDIX A)

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Roadway Express, Inc., a corporation, by the certificate of public convenience and necessity granted by 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 petroleum and petroleum products, in bulk, except liquefied petroleum gases and any other petroleum products requiring pressurized tanks and except liquid asphalt and hot road oils and any other petroleum products requiring insulated tanks, along the following routes including all intermediate points, with the right to make lateral departures within a radius of fifty (50) statute miles of said routes:

1. U.S. Highway 101 and 101 By-Pass between California-Oregon State Line and Los Angeles; Interstate Highway 5 between Los Angeles and California-Mexico Border Line.
2. Interstate Highway 5 between California-Oregon State Line and Sacramento; State Highway 99 between Red Bluff and Wheeler Ridge; Interstate Highway 5 between Wheeler Ridge and Los Angeles; State Highway 60 between Los Angeles and Beaumont; Interstate Highway 10 between Beaumont and Indio; State Highway 86 between Indio and California-Mexico via Calexico.
3. State Highway 299 between Redding and Alturas.
4. U.S. Highway 395 between California-Oregon State Line and the California-Nevada State Line, via Alturas and Johnstonville; State Highway 36 between junction Interstate Highway 5 and junction U.S. Highway 395 near Johnstonville.
5. State Highway 20 between Marysville and junction Interstate Highway 80.
6. Interstate Highway 80 between San Francisco and California-Nevada State Line.
7. U.S. Highway 50 between Sacramento and California-Nevada State Line.

8. U.S. Highway 395 between California-Nevada State Line at Topaz Lake and Junction Interstate Highway 15.
9. Los Angeles to Needles via: Interstate Highways 10 - 15 and 40.
10. Los Angeles to California-Arizona State Line via: State Highway 60, Interstate Highway 10 and Blythe.
11. Interstate Highway 15 between Barstow and California-Nevada State Line.
12. California State Highway 127 between Baker and California-Nevada State Line.
13. Interstate Highway 8 between San Diego and California-Arizona State Line.

RESTRICTION:

Transportation of waste materials under this certificate is subject to obtaining and maintaining a valid registration certificate as a hauler of liquid waste from the State Water Resources Control Board.

(END OF APPENDIX B).

Roadway Express, Inc., a corporation, by the certificate of public convenience and necessity granted in the decision in the margin, is authorized to conduct operations as a petroleum irregular route carrier as defined in Section 214 of the Public Utilities Code for the transportation of (a) liquefied petroleum gases and any other petroleum products requiring pressurized tanks and liquid asphalt and hot road oils and any other petroleum products requiring insulated tanks, between all points and places within the State of California, and (b) all other petroleum and petroleum products in tank trucks and tank trailers between all points and places within the State of California except the points and places now authorized to be served by it as a highway common carrier, subject to the following restriction:

Transportation of waste materials under this certificate is subject to obtaining and maintaining a valid registration certificate as a hauler of liquid waste from the State Water Resources Control Board.

(END OF APPENDIX C)

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