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Decision No. 90991 NOV 6 1979

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the application  
of TY-ROE ENTERPRISE, INC. a  
California Corporation to extend its  
Certificate of Public Convenience  
and Necessity to operate as a  
Highway Common Carrier in intra-  
state commerce, pursuant to the  
provisions of sections 1063 and  
1064 of the Public Utilities Code  
of the State of California, and  
for a coextensive Certificate of  
Registration for interstate and  
foreign commerce, pursuant to the  
provisions of section 206(a)(6)  
of the Interstate Commerce Act.

Application No. 58828  
(Filed April 27, 1979)

O P I N I O N

Ty-Roe Enterprise, Inc. of San Jose seeks an in lieu certificate of public convenience and necessity to operate as a highway common carrier authorizing transportation of general commodities, with specified exceptions, between all points and places in San Francisco Territory and points within 25 miles of the territory as more fully described in Exhibit B to the application.

Exhibit B contains the details of the requested authority as required by this Commission and the Interstate Commerce Commission (ICC). The 25-mile extension generally includes Marin County, the lower part of Napa and Sonoma Counties, the western part of Solano and Contra Costa Counties, all of Alameda County, all but the southern tip of Santa Clara County, Santa Cruz County, and the eastern part of San Mateo County.

Applicant presently operates under the name of "Air Cargo Delivery Service" as a highway common carrier pursuant to a

certificate granted by Decision No. 86328 (Application No. 56144) dated August 31, 1976. Transportation of general commodities, with specified exceptions, is authorized. The exceptions are listed in the appendix to this present application. The certificate granted in Decision No. 86328 is registered with the ICC. Applicant also holds permitted authority from the Commission under File No. T-96,138. Applicant additionally holds a certificate to operate as a freight forwarder under the name "Air Cargo X-pediters" (Decision No. 83363, Application No. 54715).

Applicant presently conducts its highway common carrier operations under tariffs issued by the Pacific Coast Tariff Bureau. Regarding the proposed service, applicant proposes to establish rates substantially in conformity with the rates and charges contemporaneously published by competing common carriers. Service will be performed on a daily basis on weekdays, with on-call service on Saturdays, Sundays, and holidays.

Attached to the application is an equipment list containing a total of 33 vehicles of various sizes from trailer equipment to pickup truck. Also attached is a balance sheet for December 31, 1978. Assets totaling (in round figures) \$673,000 include \$377,000 of current assets, \$241,000 of fixed assets, and \$55,000 of other investments, at cost. Liabilities include current liabilities of \$91,000, long-term liabilities (equipment contracts) of \$195,000. The stockholders' equity is listed as totaling \$388,000. The income statement for the year ended December 31, 1978 lists earnings for the current period at \$240,621.33.

Applicant states that since commencing its certificated operations as a highway common carrier in early 1977, its trucking business, both intrastate and interstate, has continuously grown and that its present shippers have constantly requested that service be provided beyond the limit of the San Francisco territory. The application states that the enlargement of the territory, as proposed, will allow applicant to offer a service to the shipping public that

is competitive to other existing trucking firms because its certificated service area will reasonably conform to the actual contiguous commercial area that shippers expect a local carrier in this general area to serve.

With respect to notice of this application to the presently certificated carriers, applicant requests a deviation from Rule 21 so that service may be made on the California Trucking Association only for publication in its weekly newsletter, CalTrux. Applicant points out that in addition to that notice, most competitors will have available to them the notice of this application as a result of its publication in the Federal Register in connection with the certificate of registration sought under the Interstate Commerce Act.

#### Findings of Fact

1. The Notice of Filing of an application for publication in the Federal Register was forwarded to the ICC in Washington, D.C. on April 30, 1979, and publication in CalTrux occurred on May 7, 1979. No protests to the application have been received. Upon review of this application, we find this notice to be reasonable and that service required by Rule 21 is not necessary. Under these circumstances, a hearing is not necessary.

2. 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 within limits which do not exceed the scope of the intrastate operations authorized by this decision.

3. 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 of Law

The Commission concludes 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.

Applicant 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 TY-ROE ENTERPRISE, INC., a corporation, authorizing it to operate as a highway common carrier, as defined in Section 213 of the Public Utilities Code, between 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 to do so 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.

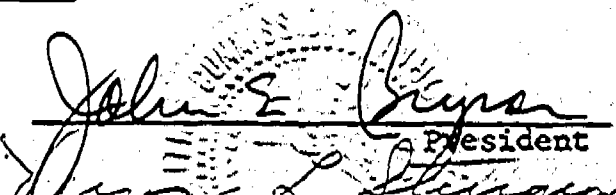
- (c) The tariff filings shall be made effective not earlier than thirty days after the effective date of this order on not less than thirty days' notice to the Commission and the public, and the effective date of the tariff filings shall be concurrent with the establishment of the authorized service.
- (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 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.
- (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. 86328

which certificate is revoked effective concurrently with the effective date of the tariff filings required by paragraph 2(b).

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

Dated NOV 6 1979, at San Francisco, California.

  
John E. Bryan  
President  
James L. Stanger  
Robert D. Howell  
Paul J. Salvi  
Lawrence J. Quinn  
Commissioners

Ty-Roe Enterprise, 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 between all points and places in San Francisco Territory, as described in Note A hereof, and all points within twenty-five (25) statute miles thereof.

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. 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.

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Decision   S0991  , Application 58628.

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. Portland or similar cements, in bulk or packages, when loaded substantially to capacity of motor vehicle.
8. Logs.
9. Articles of extraordinary value.
10. Fresh fruits and vegetables.

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

## 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 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

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Decision 90991, Application 58828.



Street to the Southern Pacific Company right-of-way; southerly along the Southern Pacific Company 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.

(END OF APPENDIX A)

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Decision S0991, Application 58828.