

Decision No. 91702

APR 15 1980

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
S. ROSS TRUCKING COMPANY, INC., a)
California corporation, for an in-lieu)
certificate of public convenience and)
necessity authorizing highway common)
carrier service.)

Application No. 59319
(Filed December 4, 1979)

O P I N I O N

Applicant, S. Ross Trucking Company, Inc., a California corporation, now operates as a highway common carrier pursuant to a certificate of public convenience and necessity (certificate) granted it by the Commission in D.84377 dated April 29, 1975 in A.55406. This certificate, a copy of which is attached to the application as Exhibit A, authorizes it to transport general commodities, with the usual exceptions, between all points and places in the San Francisco Territory. Control of the applicant by its present owners was approved by the Commission in D.88020 dated October 18, 1977. By order of the Interstate Commerce Commission (ICC), in MC-121766 dated May 16 and served May 22, 1975, the authority granted by this Commission was registered with the ICC, thereby enabling Ross to perform the same service in interstate as well as intrastate commerce. A copy of the ICC order is attached to the application as Exhibit B.

Applicant also holds and operates under a radial highway common carrier permit issued in File T-109,384, a copy of which is attached to the application as Exhibit C. Under the terms of SB 860, applicant has filed an application to

convert the permit into a statewide general commodity common carrier certificate and has also filed an appropriate tariff covering that service.

Applicant requests that an in lieu certificate be issued by the Commission pursuant to Sections 1063 and 1064 of the Public Utilities Code, finding that the public convenience and necessity require, and will require, applicant to operate as a highway common carrier transporting the commodities over the routes and between the points set forth in Exhibit D attached to the application. A map graphically illustrating applicant's requested territorial authority is attached to the application as Exhibit E.

Applicant seeks the in lieu certificate to conduct operations as a highway common carrier generally between all points and places in the San Francisco Territory, the Los Angeles Basin Territory, the San Diego Territory; and on and within 25 statute miles laterally of U. S. Highway 101 between Santa Rosa and Los Angeles, Interstate 80 between San Francisco and Roseville, State Highway 4 between its junction with Interstate 80 near Pinole, and Stockton, Interstate 5 between Sacramento and the California-Mexico border, State Highway 1 between San Francisco and its junction with U. S. Highway 101 at San Luis Obispo, State Highway 99 and Temporary Interstate Highway 5 between Sacramento and Wheeler Ridge, Interstate Highway 10 between the eastern boundary of the Los Angeles Basin Territory and Indio, Temporary Interstate Highway 15-E between its junction with Interstate 10 (near Colton) and its junction with Interstate 15, thence via Interstate 15 to San Diego, and Interstate 580 between its junction with Interstate 80 and its junction with Interstate 5, inclusive.

Applicant proposes to perform service in both intrastate and interstate and foreign commerce, wholly within the State of California, and requests that this Commission notify the ICC so that notice of this application may be made in the Federal Register, and also that the Commission specifically find that public convenience and necessity require the service in interstate and foreign commerce as well as in intrastate commerce.

Applicant proposes to establish rates and charges comparable to the rates and charges of competing carriers and proposes to establish through rates and routes between any and all points as set forth in the application.

Exhibit F attached to the application shows applicant's balance sheet for the year ended July 31, 1977 which indicates an equity of \$77,015, consisting of common stock issued of \$38,620 and retained earnings of \$38,395; and its profit and loss statement for the year ending July 31, 1979 which shows a net profit of \$33,422.

Applicant possesses a suitable fleet of equipment for the operation as proposed herein, as indicated by Exhibit G attached to the application. Its fleet includes both owned and leased equipment, and it states that all of this equipment will be available for use in operations under the proposed authority, and if more is required, the applicant will acquire such necessary additional equipment.

The applicant presently operates a large terminal facility at 2280 Commerce Place in Hayward, California. This facility encompasses 32,000 square feet of warehouse and general office space and also includes ten doors and freight handling space. The facility also includes an equal amount of outdoor parking space. Applicant maintains a shop about one block away at 2680 Dunn Road. It states in the application that it intends to acquire an additional terminal facility in the Los Angeles area if this extension of its certificate authority is granted.

Applicant proposes to provide daily service Monday through Friday for the pickup and delivery of both truckload and less-than-truckload shipments. It will provide overnight service between all points within the scope of its certificated operations and weekend and holiday service will be available upon request.

In its application it alleges that it transports a wide range of commodities within the territory encompassed by this application under its radial highway common carrier permit. Since 1977, the volume, regularity, and number of shippers served pursuant to this permit have increased to the point where its operations appear to be approaching those encompassed within the definition of a highway common carrier as set forth in Section 213 of the Public Utilities Code, and requiring certificated authority pursuant to Sections 1063 and 1064 of the Public Utilities Code. It states that the shippers using its service need the continued availability of that service to meet their complete transportation requirements.

The certificate of service shows that the applicant has given notice of the filing of this application to the California Trucking Association, and by letter to the Executive Director of the Commission dated December 20, 1979, it set forth that it has given notice to ten carriers as suggested by the Commission. The filing of the application appeared in the Commission's Daily Calendar of December 7, 1979 and in Caltrux, under new filings, on December 17, 1979. Notice of the filing of the application was duly published in the Federal Register pursuant to special rules of the ICC on February 21, 1980. No protests to the application have been received.

Findings of Fact

1. Applicant has the experience, equipment, personnel, and financial resources to institute and maintain the proposed service.

2. Public convenience and necessity require that the 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 the order herein.

3. Notice of the application appeared in the Federal Register on February 21, 1980.

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.

5. A public hearing is not necessary.

Conclusion of Law

The Commission concludes that the application should be granted as set forth in the ensuing order.

S. Ross Trucking Company, 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 S. Ross Trucking Company, 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 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 D.84377, 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 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 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 APR 15 1980, at San Francisco, California.

President
James L. Stinson

Robert D. Stone

Clare T. Wilkins

Ernest W. Smith
Commissioners

Commissioner John E. Bryson,
being necessarily absent, did
not participate.

S. Ross Trucking Company, 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:

1. Between all points and places in the San Francisco Territory as described in Note A.
2. Between all points and places in the Los Angeles Basin Territory as described in Note B.
3. Between all points and places in the San Diego Territory as described in Note C.
4. Between all points and places on and within 25 statute miles laterally of the following named highways:
 - (a) U.S. Highway 101 between Santa Rosa and Los Angeles, inclusive;
 - (b) Interstate Highway 80 between San Francisco and Roseville, inclusive;
 - (c) State Highway 4 between its intersection with Interstate Highway 80 (near Pinole) and Stockton, inclusive;
 - (d) Interstate Highway 5 between Sacramento and the California-Mexico border, inclusive;
 - (e) State Highway 1 between San Francisco and its intersection with U.S. Highway 101 at San Luis Obispo, inclusive;
 - (f) State Highway 99 (including Temporary Interstate Highway 5) between Sacramento and Wheeler Ridge, inclusive;

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- (g) Interstate Highway 10 between the eastern boundary of the Los Angeles Basin Territory and Indio, inclusive;
- (h) Temporary Interstate Highway 15E between its junction with Interstate Highway 10 (near Colton) and its junction with Interstate Highway 15 (near Murrieta) thence via Interstate Highway 15 to San Diego, inclusive;
- (i) Interstate Highway 580 between its junction with Interstate Highway 80 and its junction with Interstate Highway 5, inclusive.

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. 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 trucks or in hopper-type trucks.
6. Commodities when transported in motor vehicles equipped for mechanical mixing in transit.
7. Cement.
8. Logs.
9. Articles of extraordinary value.
10. Fresh fruits and vegetables.
11. Trailer coaches and campers, including integral parts and contents when the contents are within the trailer coach or camper.
12. Commodities requiring the use of special refrigeration or temperature control in specially designed and constructed refrigerator equipment.

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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 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.

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NOTE B

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 C

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.

(END OF APPENDIX A)

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