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ORIGINAL

Decision No. 91758 MAY 6 1980

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Foothills Express,
Inc., for a certificate of
public convenience and necessity
to operate as a highway common
carrier.

Application No. 59392
(Filed January 22, 1980;
amended February 14, 1980)

O P I N I O N

Foothills Express, Inc., a California corporation (Foothills) seeks authority to enlarge its present certificate of public convenience and necessity.

Foothills currently operates as a highway common carrier in the transportation of general commodities over the public highways in California pursuant to a certificate purchased from Basic Materials Transport. The transfer of this authority was authorized in D.90944, dated October 23, 1979 in A.58852. Said certificate authorizes transportation between Sacramento, Auburn, Coloma, Georgetown, and Placerville and points in between over specified highways.

Foothills requests authority to transport general commodities, with the usual exceptions, in every county of the State, except Siskiyou, Modoc, Lassen, Plumas, Alpine, Amador, Mono, and Inyo.

Service of the application was made in accordance with Commission rules. Peters Trucklines filed a protest but withdrew it after Foothills amended its application to delete the county of Shasta from its request. No other protests have been received.

Foothills asserts that public convenience and necessity require the proposed authority be granted because of the high quality service provided under its present authority. It states that its customers have repeatedly requested service on a regular basis to other points throughout the state. At the present time Foothills provides consistent service to more than 240 customers on a regular basis. The granting of the sought for authority will permit Foothills to serve its customers with daily operations throughout most of the state. It is alleged that the current level and continuous growth of the business demonstrates a clear public need for the service proposed.

Foothills proposes to provide expedited service, Monday through Friday, for the pickup and delivery of both truckload and less-than-truckload shipments to, from, and between all points in the proposed area. Foothills has and will provide overnight service between all points within the scope of its certificated operations.

The owner and president of Foothills has been in the transportation business in California since 1974, participating in virtually every capacity including sales, dispatching, driving, warehousing, rating, and managing the overall operations. The owner has been employed by various intrastate carriers in California for the past six years until his formation of Foothills on March 3, 1979.

Foothills states that the granting of the requested authority will not have a significant adverse effect on the environment and requests that the authority sought be granted by an ex parte order.

Findings of Fact

1. Foothills is a California corporation.
2. Public convenience and necessity require the expansion of Foothills' operating authority as to the counties requested.

3. Exhibit 5 attached to the application shows that Foothills has a net worth of \$172,826.00 and had a net profit of \$80,252.32 for the nine months ending December 31, 1979.

4. Foothills' Exhibit 6 shows it possesses 5 tractors, 11 vans, and 2 other vehicles.

5. Foothills is fit, willing, and able to provide the requested service.

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

7. Since the protestant has withdrawn its protest, and no other protests have been filed, a public hearing on this matter is not necessary.

Conclusion of Law

The application, as amended, should be granted as set forth in the ensuing order. Applicant's operating authority should be restated in appendix form.

Foothills 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 Foothills Express, 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. 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.

3. The certificate of public convenience and necessity granted by Decision No. 90944 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 MAY 6 1980 , at San Francisco, California.

John E. Byrne
President

William L. Stanger

Richard W. Howell

Clair J. D. ...

James J. ...
Commissioners

Foothills 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:

- I. Between the points and places located within the following counties:

Alameda, Butte, Calaveras, Colusa, Contra Costa, Del Norte, El Dorado, Fresno, Glenn, Humboldt, Imperial, Kern, Kings, Lake, Los Angeles, Madera, Marin, Mariposa, Mendocino, Merced, Monterey, Napa, Nevada, Orange, Placer, Riverside, Sacramento, San Benito, San Bernardino, San Diego, San Francisco, San Joaquin, San Luis Obispo, San Mateo, Santa Barbara, Santa Clara, Santa Cruz, Solano, Sierra, Sonoma, Stanislaus, Sutter, Tehama, Trinity, Tulare, Tuolumne, Ventura, Yolo, and Yuba in the State of California.

Except that pursuant to the authority herein granted, carrier shall not transport any shipments of:

- a. Used household goods, personal effects and office, store and institution furniture, fixtures and equipment not packed in salesman'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).
- b. 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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- c. 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.
- d. 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.
- e. Commodities when transported in bulk in dump-type trucks or trailers or in hopper-type trucks or trailers.
- f. Commodities when transported in motor vehicles equipped for mechanical mixing in transit.
- g. Commodities requiring the use of special refrigeration or temperature control in specially designed and constructed refrigerator equipment.
- h. Trailer coaches and campers, including integral parts and contents when the contents are within the trailer coach or camper.
- i. Portland or similar cements, in bulk or packages, when loaded substantially to capacity of motor vehicle.
- j. Logs.
- k. Articles of extraordinary value.
- l. Trailer coaches and campers, including integral parts and contents when the contents are within the trailer coach or camper.
- m. Commodities requiring the use of special refrigeration or temperature control in specially designed and constructed refrigerator equipment.
- n. Fresh fruits, nuts, vegetables and unprocessed, agricultural commodities.

(END OF APPENDIX A)

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