

Decision No. 92195 SEP-3-1980

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of BAY-SAC EXPRESS, INC.,
a California corporation, for
certificate of public convenience and
necessity as a highway common carrier
in intrastate and interstate service.

Application No. 59714
(Filed June 9, 1980;
amended August 14, 1980) ✓

O P I N I O N

Bay-Sac Express, Inc., a California corporation, is a highway contract carrier of general commodities pursuant to a permit issued under Commission File No. T-122,967. Applicant seeks a certificate of public convenience and necessity, pursuant to Sections 1063 and 1064 of the Public Utilities Code and Section 206(a)(6) of the Interstate Commerce Act, to operate as a highway common carrier for the transportation of general commodities, with certain exceptions, between various points and places wholly within California as set forth in Appendix A attached to the application.

Applicant proposes to perform highway common carrier service in both intrastate and interstate or foreign commerce within the following general areas:

All of the counties of Santa Clara, San Mateo, San Francisco, and Marin; from San Rafael north to Santa Rosa; from Santa Rosa to Auburn; from Yuba City to Fresno and return to the Bay Area, including all of Alameda and Contra Costa Counties; south of the Bay Area to the Paso Robles area; and all intermediate points.

The proposed service will be on a daily on-call basis, seven days a week. Applicant intends to publish tariff rates, rules, and regulations on the same basis as those set forth in the Commission's minimum rate tariffs.

Applicant has been performing for-hire transportation within the area encompassed by the application under its existing permitted authority. In doing so, it has assertedly received extensive experience in performing operations which are conducted and supervised by knowledgeable and experienced personnel. Since commencing its initial operations, applicant has substantially increased its fleet of operating equipment and scope of operations to the extent that it now serves a large number of shippers on a virtually day-to-day basis between points within the proposed certificated territory. In the geographical area of its permitted operations, the service and regularity thereof has gradually increased by reason of ever-continuing demands by the shipping public. Consequently, applicant now questions whether the character of its present service continues to be within the scope of its permitted authority. Applicant is also of the opinion that recent changes in the operating authority for highway contract carriers, pursuant to the Commission's reregulation program, will have an adverse affect upon applicant's ability to serve the public under its current permitted authority. Therefore, the proposed certificated operations represent an effort to perpetuate applicant's present scope of operations in full and strict compliance with the current statutory and administrative rules and regulations administered by the Commission.

Applicant contends that the service it now provides as a permitted carrier and seeks to perform in the future as a certificated carrier is responsive to the needs of the shipping public. The certificated authority is sought so as to serve both intrastate as well as interstate commerce in a manner consistent with the demands of the public. Accordingly, it is requested that the Commission specifically find that public convenience and necessity require the proposed service in interstate or foreign commerce as well as in intrastate commerce.

The financial statements and the equipment list attached to the application indicate that applicant possesses the necessary equipment and is financially able to conduct the proposed service. Its unaudited balance sheet as of March 31, 1980 shows total stockholders' equity of \$31,500 plus retained earnings of \$16,500. A statement of Bay-Sac Express, Inc.'s results of operations for the 12-month period ending March 31, 1980 indicates an operating profit of \$12,293.

Applicant submits that since the purpose of this application is to perpetuate an existing service, approval thereof and the corresponding issuance of the requested authority will not have any adverse effect upon existing carriers. It also contends that there is no possibility that this project will have any significant effect upon the environment. Accordingly, appropriate relief is requested from the Commission's Rules of Practice and Procedure which require wide dissemination of the application. A copy of the application was mailed to the California Trucking Association and the California State Department of Transportation. Notice of the filing appeared in the Commission's Daily Calendar of June 10, 1980. A notice of filing has also been published in the Federal Register of July 8, 1980 by the Interstate Commerce Commission. A protest to the sought certificated authority was filed by Delta Lines, Inc. without the required facts to make the necessary determination as to the merits of such protest as required by the Commission's Rules of Practice and Procedure.

Findings of Fact

1. Applicant is presently providing service as a highway contract carrier within the proposed certificated area.
2. Applicant possesses the necessary equipment and financial ability to provide the proposed service.
3. Appropriate notice of filing Application No. 59714 was published in the Federal Register on July 8, 1980.

4. 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.

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

6. The requested deviation from the Commission's Rules of Practice and Procedure should be authorized.

The Commission concludes that Application No. 59714 should be granted as set forth in the ensuing order. A public hearing is not necessary. The effective date of the ensuing order should be the date of signature because of the demonstrated need for the service.

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 Bay-Sac 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 and over 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. Applicant is granted authority to deviate from the Commission's Rules of Practice and Procedure to the extent requested in the application.

4. The protest of Delta Lines, Inc. does not justify public hearing.

The effective date of this order is the date hereof.

Dated SEP 3 - 1980, at San Francisco, California.

John E. Byron
President
James P. [unclear]
Michael W. [unclear]
Clare J. [unclear]
Samuel [unclear]
Commissioners

Bay-Sac 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:

Between the following points, serving all intermediate points on or within twenty (20) statute miles of the highway:

1. All points in San Francisco Territory as described in Note A hereof.
2. San Francisco Territory as described in Note A hereof and Santa Rosa via U.S. Highway 101.
3. Santa Rosa and Napa via State Highway 12.
4. Santa Rosa and Calistoga via various unnumbered county roads.
5. Calistoga and Vallejo via State Highway 29.
6. San Francisco and Auburn via Interstate Highway 80.
7. Yuba City and Fresno via State Highway 99.
8. San Francisco Territory as described in Note A hereof, and Stockton via Interstate Highways 580, 205 and 5.
9. San Francisco Territory as described in Note A hereof and Paso Robles via U.S. Highway 101.
10. Monterey and Salinas via State Highway 68.

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11. San Francisco Territory as described in Note A hereof, and Santa Cruz via State Highway 17.
12. Richmond and Stockton via State Highway 4.
13. Sunol and Martinez via Interstate Highway 680.
14. Sacramento and Placerville via U.S. Highway 50.
15. Nevada City and Jackson via State Highway 49.
16. Gilroy and the junction with State Highway 99 near Califa, via State Highway 152.

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 services.

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-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. Trailer coaches and campers, including integral parts and contents when the contents are within the trailer coach or camper.
11. Commodities requiring the use of special refrigeration or temperature control in specially designed and constructed refrigerator equipment.
12. Fresh fruits, nuts, vegetables and unprocessed agricultural commodities.
13. Transportation of any commodity, the transportation or handling of which because of width, length, height, weight, shape, or size requires special authority from a governmental agency regulating the use of highways, roads, streets, in any motor vehicle or combination of vehicles.
14. Commodities when transported in ocean or sea-van containers.

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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.

(END OF APPENDIX A)

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