

Decision No. 92219 SEP 3 - 1980

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the application)
of California Highway Express)
Inc., a Corporation, for removal)
of limitation on certificate of)
Public Convenience and Necessity)
of American Commercial Warehouse,)
Inc. for the transport of com-)
modities between points in the)
Los Angeles Territory, pursuant)
to Section 851-854 of the Cali-)
fornia Public Utilities Code.)

Application No. 59791
(Filed July 7, 1980)

O P I N I O N

By Decision 90993 dated November 6, 1979 in Application 58974, California Highway Express, Inc., a California corporation, also the applicant herein, was authorized to purchase and acquire a highway common carrier certificate, formerly granted to American Commercial Warehouse, Inc. by Decision 88240 dated December 13, 1977 in Application 57550, for a purchase price of \$1,500 in cash.

The certificate authorizes applicant to transport general commodities, with certain exceptions, between all points within a defined geographical area which includes the City of Los Angeles and other points in the vicinity thereof. The certificate contains the following service limitations:

"LIMITATIONS: Applicant shall perform no transportation services under this certificate except:

- "(a) Shipments having origin or destination at a warehouse operated by applicant, or
- "(b) Shipments which move for a shipper having an open warehouse storage account with applicant."

Applicant now declares that, through an oversight, it did not realize the existence of such limitations in its newly acquired operating authority. It was not until after Decision 90993 was issued, applicant states, that it discovered that fact. Accordingly, applicant filed the application herein which seeks Commission approval for the removal of said service limitations from the certificate involved.

Applicant contends that the certificate limitations greatly restrict the scope of its operating authority. Furthermore, it contends that the certificate, as it now reads, is moot inasmuch as applicant does not perform any warehouse operations nor does it plan to conduct any in the future. Applicant points out that most of the warehousing which is now performed in the Los Angeles Basin Area is being handled by private warehouses.

The present application restates many of the facts offered by applicant in support of its original transfer Application 58974, which was granted by Decision 90993, and consequently need not be recited herein. Certain facts alleged in the present application in support of the specific authority sought herein, however, require additional discussion as follows:

1. Applicant is operating as an interstate motor carrier in the exempt Los Angeles Commercial Zone. At present, applicant is not handling any California intrastate shipments. However, its primary concern is to render intrastate common carrier service to its shippers which it currently serves only in connection with their interstate shipments. Applicant asserts that its proposed intrastate service will eliminate many empty backhauls and thus help relieve the energy crisis by the saving of fuel and better utilization of its trucking equipment.

2. Applicant has submitted timely financial statements in support of the present application. Its latest balance sheet as of December 31, 1979 shows total assets of \$18,374 offset by total liabilities of \$16,864 resulting in a net worth in amount of \$1,510. Applicant's profit and loss statement for the calendar year 1979 indicates a net profit of \$629.

3. The Certificate of Service attached to the application herein shows that a copy thereof was served by mail on each of approximately 40 highway common carriers with whom applicant is most likely to compete. In addition, copies were served on the California Trucking Association, the Highway Carriers Association and the Western Motor Tariff Bureau, Inc., applicant's declared tariff publishing agent. Applicant asks for a waiver from the provisions of Rule 37(a) of the Commission's Rules of Practice and Procedure with respect to such service of the application upon other potential competing common carriers for the purpose of avoiding the expensive costs of such service.

4. Applicant asks that Decision 90993 be amended by the issuance of a supplemental decision removing the aforesaid restrictions from the original authority granted to American Commercial Warehouse, Inc., the seller thereof, by Decision 88240 dated December 13, 1977 in Application 57550. Due to the fact, however, that the certificate granted to applicant, the buyer, by Decision 90993 has never been accepted and that the time for such acceptance has expired, applicant should be granted a new certificate with the service limitations removed as requested, and the certificates previously granted by Decisions 88240 and 90993 should be revoked in their entirety by the order herein.

Applicant alleges that it has adequate equipment, facilities and experience to provide the proposed service as a highway common carrier in a satisfactory manner. It asserts that there will be no change in either the rates charged or service offered to the public. Applicant believes that no other highway common carrier will be adversely affected by the granting of the authority as sought herein. It states that this is a proper application to be decided by an ex parte order of the Commission without a formal hearing.

Notice of the filing of the application herein appeared in the Commission's Daily Calendar of July 9, 1980. No protest to the granting of the application has been received.

After consideration, the Commission finds that:

1. Applicant has the necessary experience, operating equipment and financial resources to establish and maintain the proposed service.
2. Public convenience and necessity require that applicant be authorized to engage in operations as a highway common carrier in intrastate commerce as specifically proposed in the application.
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.
4. A public hearing is not necessary.

The Commission concludes that the application should be granted as set forth in the ensuing order, and also that applicant should be granted the requested relief from the provisions of the Commission's Rules of Practice and Procedure. The operating authority granted herein will amend applicant's existing authority by removing therefrom the service limitations involved; and the authority, as modified, will be restated in an in-lieu certificate in appendix form. Applicant's existing certificate, as well as that of its predecessor, American Commercial Warehouse, Inc., will be revoked by the order herein.

In view of the fact that there is no known opposition to applicant's proposal and that the public will benefit from the prompt establishment of applicant's authorized service, the Commission also concludes that the order which follows should be made effective on the date it is signed.

Applicant is placed on notice that operating 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 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 California Highway 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 all points within the area described 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 100-Series.
- (b) Within one hundred twenty days after the effective date of this order, applicant shall establish the authorized service and 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 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 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 originally granted to American Commercial Warehouse, Inc. by Decision 88240, as well as the certificate subsequently transferred and reissued to California Highway Express, Inc. by Decision 90993, are hereby revoked effective concurrently with the effective date of the tariff filings required by paragraph 2(b).

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4. Applicant is granted a deviation from the Commission's Rules of Practice and Procedure to the extent requested in the application.

The effective date of this order is the date hereof.

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

John E. Byron
President
Thomas L. Sturgeon
Richard D. Howell
Clare J. Daniels
Donald W. Jensen
Commissioners

California Highway 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 between all points and places within the following described area:

Beginning at the intersection of the westerly boundary line of the City of Los Angeles and the Pacific Ocean; thence northerly and easterly along said city boundary line to its first point of intersection with the southerly boundary line of Angeles National Forest; thence in a general easterly direction following the said National Forest boundary line to its intersection with the easterly boundary line of Los Angeles County; thence southerly, westerly and southwesterly along said county boundary line to the shoreline of the Pacific Ocean; thence northerly and westerly along said shoreline to the place of beginning.

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. Trailer coaches and campers, including integral parts and contents when the contents are within the trailer coach or camper.
8. Commodities requiring the use of special refrigeration or temperature control in specially designed and constructed refrigerator equipment.

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.

(END OF APPENDIX A)

Issued by California Public Utilities Commission.

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