

Decision No. 92670 February 4, 1981

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application )  
of Foothills Express, Inc. for an )  
in lieu certificate of public )  
convenience and necessity to operate )  
as a highway common carrier. )

Application No. 59746  
(Filed June 18, 1980;  
amended November 24, 1980)

O P I N I O N

On June 18, 1980, Foothills Express, Inc. (Foothills), a California corporation, filed its application seeking authority to enlarge its present certificate of public convenience and necessity to include interstate and foreign commerce. No protests were received until October 24, 1980 when a motion to accept a late-filed protest pursuant to Rule 87 of the Commission's Rules of Practice and Procedure was filed on behalf of Ditte Freight Lines, Ted Peters Trucking Company, Inc., and Arthur R. Altnow doing business as Lodi Truck Service (protestants). Grounds for the motion were that notice was not regularly provided in that the required Federal Register publication was not made by Foothills until September 29, 1980. The motion was granted and the matter set for hearing.

On November 24, 1980 Foothills filed an amendment to its application requesting that any authority granted in this proceeding be restricted against the transportation of commodities when transported in trailers or containers having an immediate prior or subsequent movement by rail or water.

The amendment was served upon protestants who filed written withdrawal of their protests, allowing the matter to be processed without public hearings.

Foothills currently operates as an intrastate highway common carrier in the transportation of general commodities over the public highways in California pursuant to a certificate authorized in Decision No. 91758 dated May 6, 1980 in Application No. 59392.

In Application No. 59392, Foothills did not seek findings enabling it to operate in interstate and foreign commerce because it had expansion plans that would have required it to convert a Certificate of Registration to a full-fledged certificate of public convenience and necessity shortly after registration of its intrastate rights.

Foothills now wishes to seek Interstate Commerce Commission authority to be coextensive with that awarded by this Commission in Decision No. 91758. Accordingly, Foothills applies, pursuant to Sections 1063 and 1064 of the Public Utilities Code, for an in lieu certificate of public convenience and necessity, and for findings enabling it to engage in intrastate, interstate, and foreign commerce, transporting general commodities, with the usual exceptions, between 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.

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 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 demonstrate 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 moving in intrastate, interstate, and foreign commerce 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.

Foothills' application appeared on the Commission's Daily Calendar on June 20, 1980 and notice was sent to 14 trucking companies and to the California Trucking Association. Notice of the filing of the application appeared in the Federal Register on September 29, 1980. Filed protests have been withdrawn.

Findings of Fact

1. Foothills is a California corporation.
2. Interested parties were afforded an opportunity to be heard on the intrastate and interstate aspects of the questions in issue. Protests were filed and withdrawn.
3. Public convenience and necessity require the continuance of the intrastate operations granted by Decision No. 91758 in Application No. 59392 and the institution of interstate and foreign commerce operations within the limits of such operations.
4. Foothills' operating authority should be restricted against the transportation of commodities or containers having an immediate prior or subsequent movement by rail or water.

5. Exhibit 2 attached to the application shows that Foothills has a net worth of \$131,184 and had a net profit of \$79,184 for the year ended March 31, 1980.

6. Foothills' Exhibit 3 shows it possesses adequate equipment to provide the service.

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

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

9. A public hearing on this matter is not necessary.

Conclusion of Law

The application should be granted as set forth in the ensuing order. Foothills' operating authority should be restated in appendix form.

Foothills 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. An in lieu restricted 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.



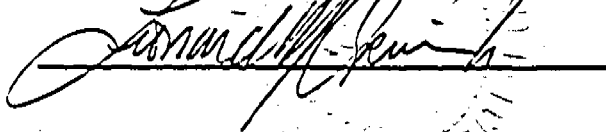
- (a) Within thirty days after the effective date of this order, applicant shall file a written acceptance of the certificate granted. Applicant is placed on notice that if it accepts the certificate it will be required, among other things, to comply with the safety rules administered by the California 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. 91758 is revoked 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 FEB 4 1981, at San Francisco, California.

  
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President  
  
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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:

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 auto-

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mobiles (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.
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. Commodities requiring the use of special refrigeration or temperature control in specially designed and constructed refrigerator equipment.
8. Trailer coaches and campers, including integral parts and contents when the contents are within the trailer coach or camper.
9. Portland or similar cements, in bulk or packages, when loaded substantially to capacity of motor vehicle.
10. Logs.

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Appendix A

FOOTHILLS EXPRESS, INC.  
(a California Corporation)

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11. Articles of extraordinary value.
12. Fresh Fruits, Nuts, Vegetables and unprocessed agricultural Commodities.

(END OF APPENDIX A)

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