

Decision No. 92819

MAR 17 1981

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 THREE-B FREIGHT SERVICE, INC., a)
 corporation, to transfer to, and of)
 SUN EXPRESS, INC., a corporation,)
 to acquire a certificate of public)
 convenience and necessity as a)
 highway common carrier, for SUN)
 EXPRESS, INC., a corporation for)
 interim authority to lease and)
 operate the operating authority of)
 THREE-B FREIGHT SERVICE, INC., a)
 corporation, and for SUN EXPRESS,)
 INC. to issue a promissory note.)

Application No. 59640
 (Filed May 7, 1980)

O P I N I O N

Sun Express, Inc. (Sun), a California corporation, and Three-B Freight Service, Inc. (Three-B), a California corporation, request that the Commission issue an ex parte order authorizing Sun to lease and operate, on an interim basis, the intrastate common carrier operating authority of Three-B, authorizing the permanent transfer of that authority to Sun and authorizing Sun to issue its promissory note to Three-B in the sum of \$49,870.

Three-B is a highway common carrier as defined in Section 213 of the California Public Utilities Code. It was issued a certificate of public convenience and necessity in Decision No. 85635 on March 30, 1976 in Application No. 56189; the certificate was modified in Decision No. 86423 on September 21, 1976. This certificate authorizes operation as a general commodity carrier between various points in the Los Angeles Basin Territory,

San Diego Area, San Diego Territory, and between the city of San Diego and points and places within Borrego Valley. The certificate was registered with the Interstate Commerce Commission (ICC) under Dockets Nos. MC-126944 and MC-126944 (Sub 2). Three-B also holds a certificate of public convenience and necessity issued by the ICC in Docket No. MC-126944 (Sub 1) and permits issued by the ICC in Dockets Nos. MC-129944 (Sub 1) and MC-129944 (Sub 4).

Three-B also holds a contract carrier permit issued by this Commission in File No. T-80,016. Three-B received a certificate of public convenience and necessity to conduct intrastate operations pursuant to Section 1063.5 of the Public Utilities Code in Application No. EC 4172.

Sun holds a contract carrier permit issued by this Commission in File No. T-123,260. It also holds a certificate of public convenience and necessity to conduct intrastate operations acquired under Section 1063.5 of the Public Utilities Code received in Application No. EC 2404.

On April 25, 1980 the applicants entered into an agreement whereby Sun will purchase the highway common carrier operating authority of Three-B as set forth in Decisions Nos. 85635 and 86423, and the certificate of registration in Dockets Nos. MC-126944 and MC-126944 (Sub 2) and the certificate of public convenience and necessity in Docket No. MC-126944 (Sub 1), issued to it by the ICC, for a total purchase price of \$49,870. An application for approval of this transaction under Section 10926 and 10932 of the Interstate Commerce Act (49 U.S.C.A. 10926 and 10932) and for temporary approval under Section 11349 of the Interstate Commerce Act (49 U.S.C.A. Section 11349) has been filed with the ICC and is now pending before that agency.

Pursuant to the purchase agreement, payment of the purchase price in the sum of \$49,870 is to be accomplished by a note issued by Sun in the sum of \$49,870. Sun, therefore, requests authority pursuant to Sections 816-818 of the California Public Utilities Code to issue a promissory note in the sum of \$49,870, payable in monthly installments of \$500, together with interest thereon at the rate of 10 percent per annum, until principal and interest have been paid in full.

Sun allegedly has the financial ability to render the proposed service. The latest available balance sheets and profit and loss statements of both applicants were furnished.

Upon consummation of this transfer pursuant to authority from this Commission, Sun will adopt the tariffs under which Three-B presently provides service.

It is alleged that Three-B cannot long continue to provide service under its operating authority because of the serious health condition of Henry Bachar, Three-B's president and sole shareholder. It is alleged that Sun is able, financially and operationally, to continue these operations and that approval of this transaction will therefore be in the public interest.

Applicants requested that the Commission dispense with all notice requirements, except for publication in the Commission's Daily Calendar, and grant this application on an ex parte basis. Applicants claimed to have no way to ascertain the identity of all competing carriers inasmuch as there is no current listing identifying carriers which hold certificates of public convenience and necessity from this Commission. In addition, in view of SB 860, pursuant to which the Commission has issued over 10,000 certificates of

public convenience and necessity to carriers which previously operated under radial highway common carrier permits, the time and expense involved in serving all potential competitors would allegedly be oppressive to applicants. Notice of this proposed transaction was disseminated throughout the industry by publication in the Commission's Daily Calendar on May 9, 1980, in CalTrux (the official publication of California Trucking Association), and in the Federal Register on August 21, 1980.

A copy of the application was served on California Trucking Association. In addition, applicants will provide a copy of this application upon request to any person as directed by the Commission.

We have interpreted the contract as not contemplating the transfer of Three-B's Section 1063.5 authority since the application contains no statement of the scope of actual operations under that authority (Section 1064.5 of the Public Utilities Code). Therefore, execution of the contract, pursuant to this decision, will leave Three-B in possession of its Section 1063.5 certificate.

The two certificates issued by this Commission held by Three-B were acquired under different provisions of the Public Utilities Code. They are considered as one authority inasmuch as the certificate acquired under Section 1063.5 totally overlaps the certificate requested to be transferred by the application herein. We have held on numerous occasions that to the extent that one certificate duplicates, in whole or in part, any other certificated authority held by a carrier, such operative rights may not be separated to allow the sale or transfer of one or more of such duplicating rights or portion thereof and the retention of another certificated right to perform the same service. This requirement is specifically set forth in paragraph (2) of the Section 1063.5 certificate. Accordingly, the

certificated authority which is retained by Three-B will be amended to reflect the transfer of the operating rights which are the subject of this application.^{1/}

The staff of the Commission's Transportation and Revenue Requirements Divisions has reviewed this matter and concluded that the authority requested is reasonable and not adverse to the public interest. No protests have been received.

The order which follows will provide for, in the event the transfer is completed, the revocation of the certificate, presently held by Three-B which was acquired pursuant to Decision No. 85635 dated March 30, 1976 in Application No. 56189, as amended, and the issuance of an in-lieu certificate in appendix form to Sun. The new certificate issued to Sun will not broaden or change the interstate or foreign commerce rights held by Three-B.

Findings of Fact

1. The proposed transfer and note issuance would not be adverse to the public interest.
2. The certificate held by Three-B acquired pursuant to Section 1063.5 of the Public Utilities Code will be amended to delete the authority transferred pursuant to the order herein.
3. The proposed note would be for a proper purpose.
4. There is no known opposition and a public hearing is not necessary.
5. The proposed security issue is for a proper purpose and the money, property, or labor to be procured or paid for by the issuance of the note herein authorized is reasonably required for the purpose specified. ✓

^{1/} See Decision No. 92381 dated November 4, 1980 in Application No. 59815 wherein transferor in a similar transaction retains a highway common carrier certificate issued pursuant to Section 1063.5 of the Public Utilities Code.

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. The following order complies with the Commission's Energy Efficiency Plan.

Conclusions of Law

1. The Commission concludes that the transfer is not adverse to the public interest and should be granted to the extent set forth in the order which follows.

2. The authorization to issue a note is for the purpose of this proceeding only and is not to be construed as indicative of amounts to be included in proceedings for the determination of just and reasonable rates.

3. This order should become effective on date of signing in order that the tariff and other required filing be made concurrently with filings made with the Interstate Commerce Commission.

Sun 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. On or after the effective date hereof and on or before December 31, 1981, for the purpose specified in the application, Sun Express, Inc. may issue and deliver a promissory note in the principal amount of \$49,870 as described in the application. Sun Express, Inc. shall thereafter comply with General Order No. 24-B.

2. On or before January 1, 1982, Three-B Freight Service, Inc. may transfer the operative rights referred to in the application to Sun Express, Inc.

3. Within thirty days after the transfer, Sun Express, Inc. shall file with the Commission written acceptance of the certificate and a true copy of the bill of sale or other instrument of transfer.

4. Sun Express, Inc. shall amend or reissue the tariffs on file with the Commission, naming rates and rules governing the common carrier operations transferred to show that it has adopted or established, as its own, the rates and rules. The tariff filings shall be made effective not earlier than five days after the effective date of this order on not less than five days' notice to the Commission and the public, and the effective date of the tariff filings shall be concurrent with the transfer. The tariff filings made pursuant to this order shall comply in all respects with the regulations governing the construction and filing of tariffs set forth in the Commission's General Order No. 80-Series. Failure to comply with the provisions of General Order No. 80-Series may result in a cancellation of the operating authority granted by this decision.

5. On or before the end of the third month after the transfer, Sun Express, Inc. shall cause to be filed with the Commission, in such form as the Commission may prescribe, an annual report, or reports, related to the operations of the seller for the period commencing with the first day of the current year to and including the effective date of the transfer.

6. In the event the transfer authorized in paragraph 1 is completed, effective concurrently with the effective date of the tariff filings required by paragraph 4, a certificate of public convenience and necessity is granted to Sun 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 and over the routes set forth in Appendix A of this decision.

7. The certificate of public convenience and necessity granted by Decisions Nos. 85635 and 86423 is revoked effective concurrently with the effective date of the tariff filings required by paragraph 4.

8. The certificate of public convenience and necessity issued to Three-B Freight Service, Inc. by Section 1063.5 of the Public Utilities Code, effective April 30, 1980 in Application No. EC 4172, is hereby amended as set forth in Appendix B hereof.

9. Sun Express, Inc. shall comply with the safety rules of the California Highway Patrol and the insurance requirements of the Commission's General Order No. 100-Series.

10. Sun Express, Inc. 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.

11. Sun Express, Inc. shall comply with the requirements of the Commission's General Order No. 84-Series for the transportation of

collect on delivery shipments. If Sun Express, Inc. 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 is the date hereof.

Dated MAR 17 1981, at San Francisco, California.

John E. Byrne
President
Michael D. Farrell
James W. [unclear]
Victor [unclear]

Commissioners

Appendix A

SUN EXPRESS, INC.
(a California corporation)

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Sun 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 all points and places in Los Angeles Basin Territory as described in Note A hereof.
- II. Between the City of San Diego, on the one hand, and all points and places within Borrego Valley, on the other hand.
- III. Between all points and places in the San Diego Area as described in Note B hereof.
- IV. Between
 1. All points and places within the San Diego Territory as described in Note C hereof, on the one hand, and all points and places on or within ten (10) statute miles of the following highways between Borrego Springs and Calexico, on the other hand.
 - a. County Road S-3 between Borrego and its junction with State Highway 78.
 - b. State highway 78 between its intersection with County Road S-3 and its junction with State Highway 86, at Kane Spring.
 - c. State Highway 86 between its junction with State Highway 78 at Kane Spring, and Brawley.
 - d. State Highway 111 between Brawley and Calexico.

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Appendix A

SUN EXPRESS, INC. Original Page 2
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- e. Alternate Route: State Highway 79 between Santa Ysabel and its intersection with County Road S-22, and County Road S-22 between its junction with State Highway 79 and Borrego Springs.
2. Calexico and Tecate along State Highway 98 to the junction of Interstate Highway 8, near Ocotillo, thence via Interstate Highway 8 to its junction with State Highway 94 at Boulevard; and via State Highway 94 to its junction with Tecate Road, and all points within ten (10) statute miles of said highways.
- V. Duplications which occur in describing the operating rights herein, are not to be construed as granting more than one certificated authority to transport the same commodities between the same points.

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).

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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.
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. Logs.
8. Articles of extraordinary value.
9. Trailer coaches and campers, including integral parts and contents when the contents are within the trailer coach or camper.

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10. Commodities requiring the use of special refrigeration or temperature control in specially designed and constructed refrigerator equipment.
11. Commodities likely to damage or contaminate other freight.
12. Explosives subject to U.S. Department of Transportation Regulations governing the Transportation of Hazardous Materials.
13. Transportation of fresh fruits, nuts, vegetables and unprocessed agricultural commodities.
14. 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, road, streets, in any motor vehicle or combination of vehicles.

NOTE A

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;

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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.

NOTE B

SAN DIEGO AREA

The San Diego Area includes the area embraced by the following boundary:

Beginning at a point where the boundary line between San Diego and Orange Counties intersects the shoreline of the Pacific Ocean, thence in a general easterly direction along said county boundary line to its intersection with State Highway 79, thence southerly

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along State Highway 79 to its intersection with Interstate Highway 8, thence due south along an imaginary line to the International Border between the United States and Mexico, thence westerly along said International Border to the shoreline of the Pacific Ocean, thence northerly along said shoreline to the point of beginning.

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 south-easterly 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-Mexican Boundary Line; thence westerly along the boundary line to the Pacific Ocean and north along the shoreline to the point of beginning.

(END OF APPENDIX A)

Appendix B
Amendment to
Section 1063.5
Certificate

THREE-B FREIGHT SERVICE, INC.
(a California Corporation)

Original Page 1

Three-B Freight Service, Inc., by the certificate of public convenience and necessity issued pursuant to Section 1063.5 of the Public Utilities Code under Application No. GC 4172, is authorized to conduct operations to the extent set forth in such certificate as a highway common carrier as defined in Section 213 of the Public Utilities Code, except within the territories and over the routes outlined in Appendix A of the Decision noted in the margin.

(END OF APPENDIX B)

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