

ORIGINAL

Decision: 93387 AUG 4 1981

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application)
of ASSOCIATED COURIERS, INC., a)
Washington corporation, for a)
certificate of public convenience)
and necessity as an Air Freight)
Forwarder.)

Application 60629
(Filed June 4, 1981)

ORDER OF DISMISSAL

Associated Couriers, Inc. (applicant), a Washington corporation qualified to do business in California, operates as an air courier and freight forwarder and as a motor carrier between all points in the United States (including Alaska and Hawaii), Puerto Rico, and Canada. It conducts its motor carrier operations under a certificate of public convenience and necessity issued by the Interstate Commerce Commission. The certificate authorizes it to transport shipments weighing 100 pounds or less, when transported in a motor vehicle in which no one package exceeds 100 pounds, between points in the United States.

Applicant's air operations are authorized by § 101 of the Federal Aviation Act and are conducted under a registration, filed May 2, 1979, with the Civil Aeronautics Board. Applicant alleges that under this registration it is authorized to operate as an indirect air carrier responsible for the transportation of property from the point of receipt to the point of destination, using the services of a direct air carrier for the whole or any part of such transportation.

Applicant requests that it be issued a certificate to operate as a freight forwarder under Public Utilities Code §§ 220 and 1010 between all points in the State.

With the filing of its application, applicant concurrently filed a motion to dismiss the application for lack of jurisdiction. Applicant admits that it filed its application only "out of an abundance of caution" and cites Sierra Flite Service, Inc. et al. v CPUC et al., Civil No. 079-0840 SW, June 1, 1979, wherein the U.S. District Court permanently enjoined the Commission from regulating rates, routes, or services of any air carrier having authority or holding an exemption under Title IV of the Federal Aviation Act of 1958, as amended. Applicant contends that it is such a carrier and that the Commission lacks jurisdiction to impose its certification requirements upon it. Applicant notes that the Commission has dismissed similar proceedings, based upon the Sierra Flite case and the pendency of an appeal to the U.S. Court of Appeals, and requests the same disposition.

On May 11, 1981, well before the filing of this application, the U.S. Court of Appeals, Ninth Circuit, held that the district court properly determined that the Commission may not regulate exempted carriers or the intrastate services of certificated carriers and affirmed the district court's judgment. (Sierra Flite Service, Inc. et al. v CPUC et al. (9th Cir. 1981) _____ F 3rd _____.)

Since it is well-settled that "indirect air carriers" are "air carriers" for the purposes of the Federal Aviation Act of 1958, as amended, it follows that the injunctions arising out of Sierra Flite apply equally to indirect air carriers such as applicant. (Milken Expediting, Inc., D.92337, October 22, 1980, in A.59342.)


Conclusion of Law


The application should be dismissed for lack of jurisdiction.


IT IS ORDERED that Application 60629 is dismissed.

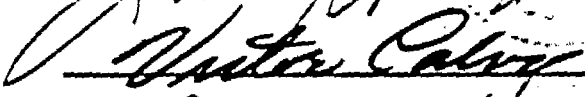
This order becomes effective 30 days from today.


Dated AUG 4 1981, at San Francisco, California.



President








Commissioners