

Decision No. 46075

**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application )  
of DELTA LINES, INC., a corporation, )  
for a certificate of Public Convenience) Application No. 31476  
and Necessity to extend its highway )  
common carrier service to Concord, )  
Walnut Creek, Lafayette and Orinda. )

In the Matter of the Application )  
of DELTA LINES, INC., for a Certificate) )  
of Public Convenience and Necessity ) Application No. 31497  
to extend its services. )

Frederick W. Mielke and Ray L. Harris for Applicant  
Douglas Brookman, Andrew Stoikovich and N. R. Moon  
for Merchants Express Corporation, William Meinhold,  
Frederick E. Fuhrman and W. A. Gregory, Jr., for  
Southern Pacific Company and Pacific Motor Trucking  
Company, protestants in both Applications; Frank  
Loughran for Johnson Truck Lines, Clair W. MacLeod  
for G. & H. Motor Express and Interlines Motor Express,  
Thomas O'Hara for El Dorado Motor Transportation  
Company and Sacramento Auto Truck Company, W. L. Warner  
for Sacramento Auto Truck Company, E. L. Van Dellen  
for Western Pacific Railroad Company, protestants in  
Application No. 31497.

O P I N I O N

In Application No. 31476 Delta Lines, Inc., a corporation, seeks authority to transport general commodities as a highway common carrier between Stockton and Sacramento on the one hand, and Concord, Walnut Creek, Lafayette and Orinda and intermediate points on the other hand, as an extension of its present certificated operation. In Application No. 31497 the same corporation seeks authority to extend its highway common carrier services to Woodland, Winters, Yuba City, Marysville, Placerville, Jackson, and intermediate points, and to increase its service on its presently authorized routes by including points between Stockton and Sacramento, between Lodi and Walnut Grove, and between Dublin and Stockton, including Lyoth and Lathrop as off-line points, and all points within five miles of the highways connecting these places.

The applications were consolidated for hearing and decision, and public hearings were held before Examiner Gillard in San Francisco, Woodland, Marysville, Sacramento, Stockton, Placerville and Jackson. The matters were submitted on briefs on July 25, 1951.

Applicant now operates as a highway common carrier between South San Francisco, San Francisco, Oakland, Berkeley, Richmond, Stockton and Sacramento, serving intermediate points along State Highways 4 and 24 from Martinez to Stockton, and along U. S. Highway 40 from Vallejo to Sacramento, except between Davis and Sacramento. Applicant also has authority to operate between Sacramento and Sidd's Landing, including such intermediate points as Knight's Landing, Grimes, Meridian, Colusa, Princeton and Butte City. The service is rendered with 216 pieces of equipment. Terminals are maintained in San Francisco, Oakland, Pittsburg, Rio Vista, Sacramento and Stockton.

To most of the points sought to be served in these applications, Delta maintains joint rates with other carriers out of Sacramento and Stockton. It has joint rates with Sacramento Auto Truck Company to Woodland, Davis and Winters; with EL Dorado Motor Transportation Company to Roseville, Lincoln, Placerville, Jackson and intermediate points; with Valley Lines to Lodi, Roseville, Wheatland, Yuba City and Marysville. No joint rates are maintained to the Dublin-Stockton or Orinda-Concord areas.

According to applicant's president, service to these points from the Bay area via connecting carrier at Sacramento and Stockton generally takes two days, a delay of one day taking place at the transfer point. Delta proposes to render a one-day service from the Bay area by routing all less-carload freight on line haul equipment to its Sacramento and Stockton terminals on the evening of the pick-up day. On the following morning seven schedules will be maintained

to the various areas involved, with departure time ranging from 6:30 A. M. (Placerville run from Sacramento) to 9 A.M. (Dublin run from Stockton). Service to Orinda-Concord will be by overnight line haul trucks from Sacramento and Stockton to the Pittsburg terminal, and from there a delivery truck will depart at 9 A.M. the following morning. Applicant has only proposed to serve Orinda, Lafayette, Walnut Creek and Concord from Sacramento and Stockton, and Delta's president and counsel specifically waived, at the commencement of these proceedings, any statutory right Delta may or would possess under Section 50-3/4(c) of the Public Utilities Act to serve these points from the San Francisco Bay area.

To facilitate its pick-up and delivery service, Delta proposes to have a telephone listing and drop-off spot for will-call or C.O.D. shipments at Woodland, Davis, Jackson, Lincoln and Marysville, and a terminal agent with a pick-up and delivery truck at Placerville.

The various points which Delta seeks to serve will be discussed in several groups in conformance with the areas served by the active protestants herein.

Woodland, Davis and Winters.

Sacramento Auto Truck Company, hereinafter referred to as SAT, serves these points from Sacramento, and from San Francisco by joint rates with Delta. Pacific Motor Trucking Company, hereinafter referred to as PMT, serves these points from Sacramento, Stockton, and the San Francisco Bay area. Merchants Express Corporation, hereinafter referred to as Merchants, serves Woodland and Davis from Stockton and the San Francisco Bay area. Interlines Motor Express, hereinafter referred to as Interlines, serves Woodland and Davis from the San Francisco Bay area on automotive parts only.

Consignee witnesses for applicant stated that the services of SAT on shipments originating in Sacramento were satisfactory, but that Bay area shipments were not overnight. Most of them blamed the delay to the interchange at Sacramento between Delta and SAT, although a few also claimed PMT was not rendering overnight service on these shipments. Sacramento shipper witnesses complained that the SAT pick-up was either too early in the morning (before orders received in the morning mail could be put up) or was not soon enough after the pick-up call was placed. Of the seven witnesses so testifying, two did not state they would use Delta's proposed service, one stated PMT was satisfactory, and one admitted he knew SAT would pick up later in the day. Two other shippers, called to testify concerning service to other areas, stated SAT was satisfactory to Woodland, Davis and Winters. Some of the Bay area shipper witnesses stated they did not receive overnight service by either PMT or Delta-SAT. Others had no specific complaint, but were using Delta in its existing operation and wanted the same carrier to the additional points.

SAT dispatches four trucks daily, Monday through Friday, to Woodland, Davis and Winters. The first leaves at 10:00 A.M. and the last around noon. Delta starts delivering to the SAT dock at 8:00 A.M. freight picked up the preceding day in the Bay area. The bulk of their freight is delivered at that time, although deliveries may be made throughout the day. In August, 1950, a check made by SAT disclosed that of 834 shipments delivered by Delta, 55 were short. The record does not disclose whether the shortages were delivered the same day or later. The consignee usually does not want a short shipment, so SAT holds up the entire shipment until all parcels are received.

No other satisfactory reason appears in the record for the lack of overnight service to these points from the Bay area by Delta-SAT. In view of this circumstance, Delta is not in a position to

claim inadequacy of service by SAT. The great majority of Delta's consignee witnesses were from Woodland. Most of them testified that any single line carrier rendering an overnight service from the Bay area would meet their need. Merchants commenced service to Woodland and Davis in August, 1950, and a traffic check made by it for the week of February 5 - 9, 1951, discloses 117 shipments to Woodland from all points served by Merchants, of which 106 were overnight, and 15 shipments to Davis, of which 13 were overnight. A check of PMT records on deliveries to Woodland from San Francisco and Oakland showed, for four days in May, 1950, 37 out of 40 delivered overnight, and for five days in March, 1951, all of 49 shipments delivered overnight. Time was computed by PMT from the date on the waybill, which is not necessarily, but is usually, the same date as the consignor's bill of lading. The record does not establish that there is a public need for another carrier into this area.

Placerville, Jackson and Lincoln.

El Dorado Motor Transportation Company, hereinafter referred to as El Dorado, serves these and all intermediate points from Sacramento, except Folsom and other points on U. S. Highway 50 between Sacramento and Shingle Springs. PMT renders service to all points except Plymouth from Sacramento, Stockton and the Bay area. Merchants and Interlines serve Lincoln and Roseville only, the former from Sacramento, Stockton and the Bay area, and the latter from Sacramento, and from the Bay area on auto parts only.

Numerous consignee witnesses for applicant from Martell, Jackson, Sutter Creek, Plymouth, Ione, Placerville, Folsom and Roseville testified to unsatisfactory service from Stockton, Lodi, Sacramento and the Bay area. The main complaint was time in transit which was alleged to be from two to six days per shipment. Most consignees measured elapsed time from the date of their order, but 2

considerable number testified from the date on their freight bills. There was also some complaint on claims and tracing shipments when two carriers were involved. Almost all shipments to these points moved by PMT, or El Dorado and connecting carrier - either Delta or Valley Lines. Only one consignee witness from Lincoln was called, and he testified he did not select the carrier.

Almost all shipper witnesses from Sacramento complained about the services of El Dorado from Sacramento. Most of them were concerned with delays in pick-ups, while some complained of delays in delivery to particular points.

Shipper witnesses in the Bay area testified almost unanimously that they did not receive overnight service to points beyond Sacramento from PMT or Delta with interchange at Sacramento. Lincoln was not sufficiently involved in this testimony to demonstrate a public need for additional service.

El Dorado operates three schedules daily from Sacramento. The Roseville-Lincoln truck is dispatched at 8:00 P.M., the Placerville truck at 2:00 A.M. and the Jackson truck at 6:00 A.M. Delta delivers Bay area freight to the El Dorado dock commencing at 8:15 A.M. of the day following the pickup. Second day delivery at destination is therefore the earliest possible under El Dorado's schedules. During the pendency of the hearings El Dorado added another truck to the Placerville run only, departing at 10:30 A.M. from Sacramento, in an attempt to get faster service to that area. The results of this operation were not shown, nor was it disclosed how deliveries were effected in view of Placerville's police regulation prohibiting trucks on the city streets after 9:00 A.M.

A check of PMT records on shipments originating in San Francisco and Oakland, destined to Placerville, for four days in

May, 1950, disclose 55 out of 65 were overnight. This showing of delay in approximately one out of every six shipments is not inconsistent with the testimony of applicant's witnesses. A similar check of PMT records for five days in March, 1951, which was after the public witness testimony was received, disclosed that 68 out of 70 shipments were overnight. PMT inferentially attributes this improvement to the fact that it commenced its own pick-up and delivery service in San Francisco on January 1, 1951. A similar check for Jackson disclosed 20 of 25 shipments were overnight in May, 1950 (the other five ranged from three to six days for delivery) and 12 out of 14 were overnight in March, 1951.

El Dorado's gross revenue in 1950 was \$81,832, of which \$11,998, or 14.66 per cent was received from freight interchanged with Delta. That El Dorado receives less for handling this freight than it does for transporting its own freight originating in Sacramento is demonstrated by the figures for August, 1950, which show that the tonnage received from Delta was 20.39 per cent of the total carried, while the revenue received from Delta was 17.44 per cent of the total. On the other hand, since El Dorado during 1950 was operating under its certificate one truck from Sacramento on each of its three runs, the Delta freight could be added and transported for probably less expense than the Sacramento freight - although no cost study on this subject was introduced. The contention was made that elimination of this traffic, at the most, would reduce El Dorado's operating expenses, but not its fixed expenses, with the necessary result that its 1950 operating profit of \$2,537 would have been reduced to a net loss.

The determination of the extent of the financial impact upon El Dorado, should the Delta tonnage be lost, upon this record, has been left to conjecture. We assume that such loss could be

serious, but find that such factor is not sufficient to change the conclusion reached herein. El Dorado never made any attempt to furnish an overnight service on this traffic until after Delta's witnesses testified herein (and even then only to Placerville).

The public interest is paramount in these matters, and the carrier who will not meet its demands cannot expect economic protection from this Commission when another carrier offers a more efficient service in the same territory.

The record also shows a net loss of \$84.68 for 1950 sustained by the Amador Central Railroad Company as the result of the allocation of revenue and expense between it and PMT on less carload freight moving between Ione and Martell. The division of revenue and expense was authorized by Decision No. 25289, dated October 24, 1932, but the amount of the division was left to the discretion of the corporations involved. The record further shows that Amador Central for 1950 made a net profit after taxes of over \$10,000 for its whole operation. We do not believe that the foregoing indicates that Delta's proposed service will affect the financial stability of Amador Central.

In this area, except for Lincoln, an adequate need has been shown for an additional single line carrier.

Marysville and Yuba City

Johnson Truck Lines, hereinafter referred to as Johnson, serves these points from the Bay area. PMT and Merchants serve them and the intermediate point of Wheatland from Sacramento, Stockton and the Bay area. Interlines serves the same points from Sacramento, and from the Bay area on auto parts.



The testimony produced by the applicant discloses an almost complete unanimity of opinion that existing services from the Bay area to Marysville and Yuba City are adequate and satisfactory. The preponderance of applicant's evidence likewise shows that existing carriers are performing satisfactorily between Sacramento and these points. The situation at Wheatland cannot be said to be critical, since the two consignee witnesses from that point had not used Merchants. The service from Stockton does not appear to be adequate, but the volume moving from there is so slight that a certificate would not be warranted or justified from there to Marysville and Yuba City, unless the evidence likewise justified a certificate from the Bay area to those points, because of the statutory right of a carrier under Section 50-3/4(c) of the Public Utilities Act to establish through routes to all points served under all certificates possessed by it.

Upon the record made we cannot find a public need for the proposed service to these points.

Concord, Walnut Creek, Lafayette and Orinda

Service to these points is proposed by Delta from Sacramento and Stockton only. Merchants serves Lafayette and Orinda, but not the other two. PMT serves Concord and Walnut Creek, but not the other two.

Applicant produced numerous consignee witnesses from Concord, Walnut Creek and Lafayette, and consignor witnesses from Stockton and Sacramento who shipped to these points and Orinda, who complained about the existing carriers from Stockton and Sacramento, particularly with reference to the time in transit, which was stated to be usually two days, and sometimes longer.

The method of routing these shipments was not disclosed by any testimony produced by PMT or Merchants. Most of the public witnesses believed these shipments were routed through Oakland where

additional handling was required before transfer to destination.

The record shows clearly that an additional highway common carrier service is needed between these points and Sacramento and Stockton.

Intermediate Points On Delta's Present Routes

Of the points involved in this area, Merchants serves Dublin, Pleasanton, Livermore and Lodi, while PMT serves all but Thornton. Public witnesses were produced by applicant relative to service at Dublin, Pleasanton, Livermore, Tracy, Lyoth, Lathrop, Lodi, Woodbridge, Thornton, Galt, Elk Grove and Florin.

Most of the complaints of the consignees in these places were about time in transit, although a few stated that breakage or slowness in settling claims was a cause of dissatisfaction. Relative to time in transit, the witnesses were not uniform in their statements, except concerning Valley Lines, which were not represented in these proceedings. Some witnesses from Lodi said Merchants was satisfactory on deliveries from Stockton, while others from Livermore and Pleasanton stated it was too slow, or not less than two days, from the Bay area. Concerning PMT, the opinions of these witnesses ranged from "never overnight" to "satisfactory". Most of them characterized PMT as not dependable, or not always overnight. Three of these witnesses, one each from Lodi, Tracy and Pleasanton, admitted that since about November 1, 1950, PMT service from the Bay area had been overnight and satisfactory. This point was not touched upon in the operating testimony presented by PMT, but it appears from questions asked by its counsel that PMT changed from a rail-truck service to an all truck service from the Bay area to Tracy and intermediate points about September 18, 1950. Delta's application requesting authority to serve these points was filed June 15, 1950.

Shipper witnesses from the Bay area, Stockton and Sacramento had with very few exceptions no complaint against PMT relative to time in transit, but some claimed PMT missed or was slow on pickups, or caused too much damage. The Stockton witnesses in general stated that either the services of Valley Lines were inadequate, or that they had changed to contract carriers because of unsatisfactory services in the past by common carriers. Witnesses from the Bay area, in general, were using Delta to other points and liked its service, particularly on pickups. They desired Delta to serve these additional points either because such a situation would allow them to make all shipments within this area by Delta with its scheduled daily pickups, thus avoiding the necessity of calling for a pickup by another carrier and avoiding an interchange where two carriers were necessary, or because service to all these points by a single line carrier would give them the possibility of making split deliveries.

We believe it is clear that the shipping and receiving public, represented by these witnesses, has need for an additional single line carrier serving all points from Dublin through Stockton to Sacramento.

With reference to all the cities and points hereinbefore discussed, it may be said in general that protestants produced witnesses who testified that the services of protestants were satisfactory and that they needed no additional highway common carrier in the conduct of their businesses. The testimony of these witnesses will not be discussed in detail because, even if it be assumed that it was unanimous in proclaiming the adequacy of the existing services, the most that could be said for it is that it only demonstrates that such services are adequate as to that portion of the public represented by such witnesses. Such testimony does not circumscribe the testimony of witnesses produced by the applicant, if the latter

evidence shows that those witnesses are not receiving adequate service and need a new carrier. Such witnesses also represent a portion of the public which is entitled to the consideration of this Commission, and if a sufficient number of them with substantial tonnages to be moved testify they need the proposed services and will use it, and if their complaints about the existing services withstand the test of cross-examination, then the fact that another portion of the public, represented by protestants' witnesses, is presently receiving an adequate service raises no material issue in the proceeding, unless from the total number of witnesses produced it appears that the portion of the public supporting the applicant is too small to warrant authorization of the new service.

Based upon the evidence of record we find that public convenience and necessity require the establishment and operation of services as a highway common carrier by Delta Lines, Inc., to Roseville, Placerville, Folsom, Jackson, Martell, Sutter Creek, Plymouth, Ione, Dublin, Pleasanton, Livermore, Tracy, Lyoth, Lathrop, Lodi, Galt, Elk Grove, Florin, Woodbridge, Thornton, and the Aron Canning Company between Stockton and Lodi, and to Orinda, Lafayette, Walnut Creek and Concord from Sacramento and Stockton. The request to serve all other points will be denied. The extent of the relief from the provisions of Section 24(a) of the Public Utilities Act or the justification therefor is not clearly shown and the request for such relief will be denied without prejudice.

#### O R D E R

Public hearings having been held in the above-entitled proceedings, and the Commission upon the evidence received having found that public convenience and necessity so require,

IT IS ORDERED:

9

(1) That a certificate of public convenience and necessity be and it is hereby granted to Delta Lines, Inc., a corporation, authorizing the establishment and operation of a service as a highway common carrier, (as defined in Section 2-3/4, of the Public Utilities Act), for the transportation of property (a) between Roseville, Placerville, Folsom, Jackson, Martell, Sutter Creek, Plymouth, Ione, Dublin, Pleasanton, Livermore, Tracy, Lyoth, Lathrop, Lodi, Galt, Elk Grove, Florin, Woodbridge, Thornton and the Aron Canning Company plant located between Stockton and Lodi, on the one hand, and points Delta Lines, Inc., is presently authorized to serve, on the other hand, as an extension and enlargement of and consolidation with the operative rights heretofore granted it by this Commission, and (b) between Orinda, Lafayette, Walnut Creek and Concord, on the one hand, and Stockton and Sacramento on the other hand, provided that the authority granted in this subsection is subject to the condition that Delta Lines, Inc., shall not in the future render any service from or to Orinda, Lafayette, Walnut Creek or Concord except with respect to shipments destined to or originating at Stockton or Sacramento.

(2) That in providing service pursuant to the certificate herein granted, applicant shall comply with and observe the following service regulations:

- (a) Applicant shall file a written acceptance of the certificate herein granted, within a period of not to exceed 30 days from the effective date hereof.
- (b) Within 60 days from the effective date hereof and on not less than 5 days' notice to the Commission and the public, applicant shall establish the service herein authorized and comply with the provisions of General Order No. 80 and Part IV of General Order No. 93-A, by filing, in triplicate, and concurrently making effective, appropriate tariffs and timetables.

- (c) Subject to the authority of this Commission to change or modify them by further order, applicant shall conduct operations pursuant to the certificate herein granted, over and along the following routes:

Between Sacramento and Roseville: U. S. Highway 40.

Between Sacramento and Placerville: U. S. Highway 50.

Between Sacramento and Plymouth, Sutter Creek, Jackson, Martell and Ione: California Highways 16, 49, 88 and 104.

Between Lodi and Walnut Grove: unnumbered county road.

Between Dublin and Sacramento: U. S. Highways 50 and 99, and any available routes to the off-line intermediate points granted herein.

(3) In all other respects the applications are hereby denied.

The effective date of this order shall be twenty (20) days after the date hereof.

Dated at San Francisco, California, this 14<sup>th</sup> day of August, 1951.

R. T. Ingram  
James Z. Casper  
Harold Kula  
Herbert Patten

Commissioners