

ORIGINALDecision No. 47905

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 I. W. BOLAND and R. G. CARLSON,)
 partners, doing business as CITY-WIDE) Application No. 32842
 DRAYAGE COMPANY, for a certificate of)
 public convenience and necessity.)

Frank Loughran, for applicants.
Norman R. Moon, for Merchants Express Corporation;
V. Fred Jakobsen, doing business as Transbay
 Express Company;
M. J. Kiep, for Railway Express Agency, Incorporated;
Daniel W. Baker, for J. M. Atthowe, doing business as
 East Bay Drayage and Warehouse Company, Haslett
 Warehouse Company, Inter-Urban Express Corporation,
 United Transfer Company, Mrs. E. O. Simmonds,
 doing business as West Berkeley Express and Draying
 Company, Canton Transbay Express, Inc.;
Jack W. Kueper, for Kellogg Express and Draying
 Company, protestants.

O P I N I O N

In this proceeding I. W. Boland and R. G. Carlson, partners, doing business as City-Wide Drayage Company, seek a highway common carrier certificate authorizing the transportation of general commodities (except uncrated used household goods, livestock, articles of unusual value, petroleum products in bulk in tank trucks) between San Francisco, on the one hand, and the eleven East Bay cities of Alameda, Oakland, Emeryville, Berkeley, Piedmont, Albany, El Cerrito, Richmond, San Pablo, San Leandro and Hayward. A public hearing thereon was had before Examiner Paul and the matter was submitted.

The evidence shows that I. W. Boland individually began trucking operations in the San Francisco Bay Area in 1926 which he continued until October, 1941 when the partnership of I. W. Boland and R. G. Carlson was formed and has continued to date. Applicants

are now conducting operations under permits as city carriers, highway contract carriers and radial highway common carriers. Local city operations are conducted only in the City of San Francisco where an office and terminal with 3,000 square feet of dock space is maintained. The rates proposed to be charged would be those prescribed in Highway Carriers' Tariff No. 2 as minima.

Applicants have ten units of automotive equipment which would be used in the proposed operation. Five of these units are line-haul equipment and the remainder consists of two tractors, two pick-up units, and one low-bed trailer. Five drivers are presently employed in their operations who would be continued in the proposed certificated operations. The balance sheet statement of the partnership indicates their net worth to be approximately \$23,000. A profit and loss statement indicates a net profit for the year 1951 of approximately \$17,000 before allowance for income taxes or withdrawals by the partners.

There is no proposal to perform local service between any of the East Bay cities. Two daily schedules would be operated between San Francisco, on the one hand, and the East Bay cities, on the other hand, leaving San Francisco at 8:30 a.m. and 1:00 p.m. The morning schedule would deliver shipments which had been accumulated at their terminal up to closing time the day before. The afternoon schedule would handle shipments accumulated at applicants' San Francisco terminal during the morning of the day of departure and delivered the same afternoon at East Bay points. The westbound movement would be on a comparable basis except that the first westbound schedule would leave Oakland at 1:30 p.m. with shipments accumulated the same day prior to departure destined to, and delivered the same day at San Francisco. The second schedule will leave Oakland at 4:00 p.m. with shipments accumulated subsequent to the

departure of the first schedule and destined to San Francisco which would be delivered the following day.

Testimony of one of the applicants indicated that the volume of their traffic and the characteristics of their transbay operations had created a doubt as to the adequacy of their operative authority. As a result of this situation they desire a certificate of public convenience and necessity in order to obviate any question as to the lawfulness of their operations which they desire to continue somewhat in the same manner and between the same points.

Applicants called shipping representatives of approximately eighteen firms doing business at San Francisco who testified as to their use of and need for applicants' service. The commodities shipped by these firms covered a rather extensive list. They consisted largely of stationery, printed matter, school books, office equipment, furniture and supplies, but also included general lines of cotton goods, drugs, leather goods, and a number of other items. Applicants produced exhibits showing consignors, consignees, commodities and the tonnages transported for the months of March, June, September and December of 1949, 1950 and 1951. These exhibits indicate that the preponderance of the traffic moved from San Francisco to East Bay points. The total weight of the shipments transported for the selected months of 1951 amounted to approximately 218 tons eastbound and about 85 tons westbound. By far the bulk of the traffic moved between San Francisco and Oakland. There was also a substantial movement between San Francisco, on the one hand, and Emeryville, Alameda and Berkeley, on the other hand. Traffic to and from the other East Bay points was either sporadic or non-existent. The evidence indicated that this traffic was characteristic of the volume handled throughout the years between the points involved. Applicants' witnesses uniformly testified as to their desire for the continuation

of applicants' service which has been satisfactory to them and filled a particular need. Most of the witnesses stated that they had used the services of other transbay carriers and many were still continuing such use. A few witnesses had received unsatisfactory service from some of protestant carriers and preferred that of applicants.

The application was opposed by nine highway common carriers and one express corporation, which are presently conducting operations between the points which applicants seek to serve by certificate.⁽¹⁾ Protestants introduced evidence by cross-examination of witnesses of the applicants and by oral and documentary evidence through officials of some of the protestants. None of the protestants produced any public witness testimony. Protestants outlined their terminal facilities, equipment, financial resources, experience and conduct of their common carrier services between the points involved. Protestants took the position that the territory involved is now adequately served by common carriers and any intrusion into the field by additional highway common carriers would further dilute the traffic and render it increasingly difficult for transbay carriers to continue their present operations successfully. They pointed out that studies are now being conducted to develop the costs of handling shipments in transbay operations as a basis for contemplated increases in their rates to overcome constantly increasing costs of operation.

(1) The protestants were as follows:

Merchants Express Corporation, Transbay Express Company, East Bay Drayage and Warehouse Company, Haslett Warehouse Company, Inter-Urban Express Corporation, United Transfer Company, West Berkeley Express and Draying Company, Canton Transbay Express, Inc., Kellogg Express and Draying Company and Railway Express Agency, Incorporated.

An analysis of the evidence herein shows that the principal traffic now handled by applicants moves between San Francisco, on the one hand, and Oakland, Emeryville, Alameda and Berkeley, on the other hand. It is our conclusion, based on the evidence of record, and we hereby find that public convenience and necessity require the establishment and operation by applicants of a highway common carrier service between those points. In making such finding we are not unmindful of the apprehension of protestants that the entry into the territory by another certificated carrier might tend to dilute the presently available traffic. The record does not show that applicants' operation under a certificate would be any more competitive than it now is under permits. Applicants are already in the field and have been for a good many years. It was not shown by protestants that the issuance of a certificate to applicants as sought would in any way have an adverse effect upon their operations.

A certificate of public convenience and necessity will be issued to applicants authorizing highway common carrier operations between San Francisco, on the one hand, and Oakland, Alameda, Emeryville and Berkeley, on the other hand. The application will be denied in all other respects.

I. W. Boland and R. G. Carlson are hereby placed upon 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, they extend to the holder a full or partial monopoly of a class of business over a particular route. This monopoly feature may be changed or destroyed at any time by the State, which is not in any respect limited to the number of rights which may be given.

O R D E R

An application therefor having been filed, a public hearing held thereon and it having been found that public convenience and necessity so require,

IT IS ORDERED:

(1) That a certificate of public convenience and necessity is hereby granted to I. W. Boland and R. G. Carlson authorizing service as a highway common carrier of general commodities (except uncrated used household goods, livestock, articles of unusual value and petroleum products in bulk in tank trucks) between San Francisco, on the one hand, and, on the other hand, Oakland, Alameda, Berkeley and Emeryville over and along the most appropriate routes.

(2) That the application in all other respects is denied.

(3) That I. W. Boland and R. G. Carlson in conducting service pursuant to the foregoing certificate shall comply with and observe the following service regulations:

- (a) Within thirty (30) days after the effective date hereof, applicants shall file a written acceptance of the certificate herein granted.
- (b) Within sixty (60) days after the effective date hereof, and upon not less than five (5) days' notice to the Commission and the public, applicants shall establish the service herein authorized and file in triplicate, and make effective, tariffs satisfactory to the Commission.

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

Dated at San Francisco, California, this 2nd day of February, 1952.

R. I. [Signature]
President

James J. [Signature]

Harold [Signature]

[Signature]

[Signature]
Commissioners