

Decision No. 52695

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 I. W. BOLAND, doing business as)
 BOLAND TRUCKING CO., for a certifi-)
 cate of public convenience and)
 necessity to operate as a highway)
 common carrier.)

Application No. 37382

In the Matter of the Application of)
 I. W. BOLAND and R. G. CARLSON to)
 transfer and JOHN V. TYLER and)
 R. G. CARLSON, co-partners doing)
 business as TYLER BROS. DRAYAGE CO.,)
 to acquire a highway common carrier)
 certificate.)

Application No. 37385

Marvin Handler, for applicant in Application No. 37382,
 interested party in Application No. 37385.

Frank Loughran, for Tyler Bros. Drayage Co., applicant
 in Application No. 37385 and interested party in
 Application No. 37382.

Edward M. Berol, for Highway Transport, Inc., and
 Highway Transport Express, protestants in Application
 No. 37382 and interested parties in Application
 No. 37385.

Russell Bevans, for Draymen's Association of
 San Francisco, protestant.

O P I N I O N

Both of these applications were filed on October 7, 1955.
 Public hearing was held on December 12, 1955, before Examiner
 John Power at San Francisco. The record includes oral testimony
 and nine exhibits. At the conclusion there were statements by
 counsel and the matter was submitted.

In Application No. 37382 I. W. Boland seeks a certificate
 to render trucking service within the area formerly served by

City-Wide Drayage. By Application No. 37385 Boland and Carlson seek to transfer the old City-Wide certificate to a partnership composed of Carlson and John V. Tyler and called Tyler Bros. Drayage Co. The protestants object to these two applications because, protestants contend, to grant both of them would be an authorization for splitting a certificate. The principle contended for by protestants may be conceded. Nevertheless the sought authority will be granted if the applicants (Tyler Bros. and Boland Trucking, that is) can establish that public convenience and necessity exist for their separate operations as these are now conducted.

Prior to September 6, 1955, Tyler Bros. Drayage Co. was a permitted carrier. City-Wide Drayage Co. was a certificated carrier in the San Francisco-East Bay Cartage Zone and was operated by Boland and Carlson, as partners.¹ The parties will be referred to as Tyler, City-Wide, Boland and Carlson for brevity's sake. On September 6 Boland terminated the arrangement by a notice. All assets and books of account were impounded at that time. Almost immediately Carlson obtained an interest as a partner in Tyler. Boland set up his own service. It appears that both of these operations began to function immediately after City-Wide ceased to do so. Some customers chose one or the other of the successor services; some divided their patronage between both.

Each of the successor operations was able to show that it possesses the requisite financial resources, experience, equipment, facilities and personnel to carry on the type of operations proposed by it.

¹ City-Wide's operating rights were embodied in an in lieu certificate created by Decision No. 50941, dated January 4, 1955, in Application No. 35163.

Boland showed its intercity service within the cartage zone by Exhibit No. 8. The period covered was 19 days from November 14 to December 2, 1955, both dates inclusive. It covered 14 transportation days, two Saturdays, two Sundays and Thanksgiving Day. More than 250 shipments were included. 80 consignors and 143 consignees supplied and received these shipments. There was transbay movement on each transportation day. Boland testified that he had a substantial intracity business not shown on the exhibit. He further stated that one must carry both or lose both.

Tyler's similar exhibit (No. 3) covered the period November 21 to December 2, 1955. One Sunday, one Saturday and Thanksgiving were included. It included, therefore, nine transportation days. 199 shipments were carried for an average of 22 per transportation day. Transbay service was rendered on each such day. This exhibit revealed that 129 of the shipments were tendered by old City-Wide customers and 70 by old (previous to September 6) customers of the Tyler permitted operation.

The brief review of Exhibits Nos. 3 and 8 given above shows that unless certificates are granted for each operation the operators will be in grave danger under the rule of *Nolan v. Commission* 41 Cal. 2d., 392(1953). Both successors have acquired new customers. Tyler has added the old Tyler operation customers who provided more than a third of the shipments on the Tyler exhibit. Boland stated that he had acquired 7 or 8 new customers.

The Commission is of the opinion and finds that both Tyler and Boland have separately established public convenience and necessity for their respective operations. The Commission further finds that the transfer proposed by Application No. 37385 will not

be adverse to the public interest. It follows that the applications should be granted. The action taken herein shall not be construed to be a finding of the value of the properties herein authorized to be transferred.

I. W. Boland, doing business as Boland Trucking Co., and John V. Tyler and R. G. Carlson, co-partners, doing business as Tyler Bros. Drayage Co., are, and each of them is, 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, such rights 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 as to the number of rights which may be given.

O R D E R

Applications having been filed and public hearing held thereon, the matters having been submitted and now being ready for decision and the Commission basing its decision on the findings and conclusions set forth in the foregoing opinion, therefore,

IT IS ORDERED:

1. That a certificate of public convenience and necessity is hereby granted to I. W. Boland, doing business as Boland Trucking Co., authorizing the establishment and operation of a service as a highway common carrier, as defined in Section 213 of the Public Utilities Code, for the transportation of the commodities set forth

in Appendix "B" and between the points set forth in Appendix "A" attached hereto and by this reference made a part of this order.

2. In providing service pursuant to the authority herein granted, I. W. Boland shall comply with the following service regulations:

- a. Within thirty days after the effective date of this order, I. W. Boland shall file a written acceptance of the certificate herein granted.
- b. Within sixty days after the effective date hereof, and upon not less than five days' notice to the Commission and the public, I. W. Boland shall establish the service herein authorized and comply with the provisions of General Order No. 80 by filing in triplicate and concurrently making effective tariffs satisfactory to the Commission.

3. That I. W. Boland and R. G. Carlson, doing business as City-Wide Drayage Co., may transfer their operative right, represented by the certificate of public convenience and necessity referred to in the preceding opinion, to John V. Tyler and R. G. Carlson, doing business as Tyler Bros. Drayage Co.

4. That within thirty days after the consummation of the transfer herein authorized, applicants John V. Tyler and R. G. Carlson, doing business as Tyler Bros. Drayage Co., shall notify the Commission in writing of that fact and shall within said period file with the Commission a true copy of any bill of sale or other instrument of transfer which may have been executed to effect said transfer.

5. Within sixty days after the effective date of this order, upon not less than five days' notice to the Commission and the public, and concurrently with the establishment of service by John V. Tyler and R. G. Carlson, doing business as Tyler Bros. Drayage Co., in

place of that provided by I. W. Boland and R. G. Carlson, doing business as City-Wide Drayage Co., under the authority of this order, applicants shall supplement or reissue the tariffs now on file with the Commission covering the operations here involved to show that said Boland and Carlson have withdrawn or canceled their rates, rules, and regulations and that said Tyler and Carlson have adopted or established as their own said rates, rules, and regulations.

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

Dated at San Francisco, California, this 28th day of September, 1956.

[Signature]
President

[Signature]
[Signature]

[Signature]

Commissioners

Commissioner Matthew J. Dooley, being necessarily absent, did not participate in the disposition of this proceeding.

LIMITS OF SAN FRANCISCO-EAST BAY CARTAGE ZONE

San Francisco-East Bay Cartage Zone includes that area embraced by the following boundary:

Beginning at the point where the San Francisco-San Mateo County Boundary Line meets the Pacific Ocean; thence easterly along said boundary line to Lake Merced Boulevard; thence southerly along said Lake Merced Boulevard and Lynnewood Drive to So. Mayfair Avenue; thence westerly along said South Mayfair Avenue to Crestwood Drive; thence southerly along Crestwood Drive to Southgate Avenue; thence westerly along Southgate Avenue to Maddux Drive; thence southerly and easterly along Maddux Drive to a point one mile west of Highway U.S. 101; thence southeasterly along an imaginary line one mile west of and paralleling Highway U.S. 101 (El Camino Real) to its intersection with the southerly boundary line of the City of San Mateo; thence northeasterly, northwesterly, northerly and easterly along said southerly boundary to Bayshore Highway (U.S. 101 Bypass); thence leaving said boundary line and continuing easterly along the projection of last said course to its intersection with Belmont (or Angelo) Creek; thence northeasterly along Belmont (or Angelo) Creek to Seal Creek; thence westerly and northerly to a point one mile south of Toll Bridge Road; thence easterly along an imaginary line one mile southerly and paralleling Toll Bridge Road and San Mateo Bridge and Mt. Eden Road to its intersection with State Sign Route 17; thence continuing easterly and northeasterly along an imaginary line one mile south and southeasterly of and paralleling Mt. Eden Road and Jackson Road to its intersection with an imaginary line one mile easterly of and paralleling State Sign Route 9; thence northerly along said imaginary line one mile easterly of and paralleling State Sign Route 9 to its intersection with "B" Street, Hayward; thence easterly and northerly along "B" Street to Center Street; thence northerly along Center Street to Castro Valley Boulevard; thence westerly along Castro Valley Boulevard to Redwood Road; thence northerly along Redwood Road to William Street; thence westerly along William Street and 168th Avenue to Foothill Boulevard; northwesterly along Foothill Boulevard to the southerly boundary line of the City of Oakland; thence easterly and northerly along the Oakland Boundary Line to its intersection with the Alameda-Contra Costa County Boundary Line; thence northwesterly along last said line to its intersection with Arlington Avenue (Berkeley); thence northwesterly along Arlington Avenue to a point one mile northeasterly of San Pablo Avenue (Highway U.S. 40); thence northwesterly along an imaginary line one mile easterly of and paralleling San Pablo Avenue (Highway U.S. 40) to its intersection with County Road No. 20 (Contra Costa County); thence westerly along County Road No. 20 to Broadway Avenue (also known as Balboa Road); thence northerly along Broadway Avenue (also known as Balboa Road) to Highway U.S. 40; thence northerly along Highway U.S. 40 to Rivers Street; thence westerly along Rivers Street to 11th Street; thence northerly along 11th Street to Johns Avenue; thence westerly along Johns Avenue to Collins Avenue; thence northerly along Collins Avenue to Morton Avenue; thence westerly along Morton Avenue to the Southern Pacific Company right of way and continuing westerly along the prolongation of Morton Avenue to the shore line of San Pablo Bay; thence southerly and westerly along the shore line and waterfront of San Pablo Bay to Point San Pablo; thence southerly along an imaginary line from Point San Pablo to the San Francisco Waterfront at the foot of Market Street; thence westerly along said waterfront and shore line to the Pacific Ocean; thence southerly along the shore line of the Pacific Ocean to the point of beginning.

The foregoing description includes the following points or portions

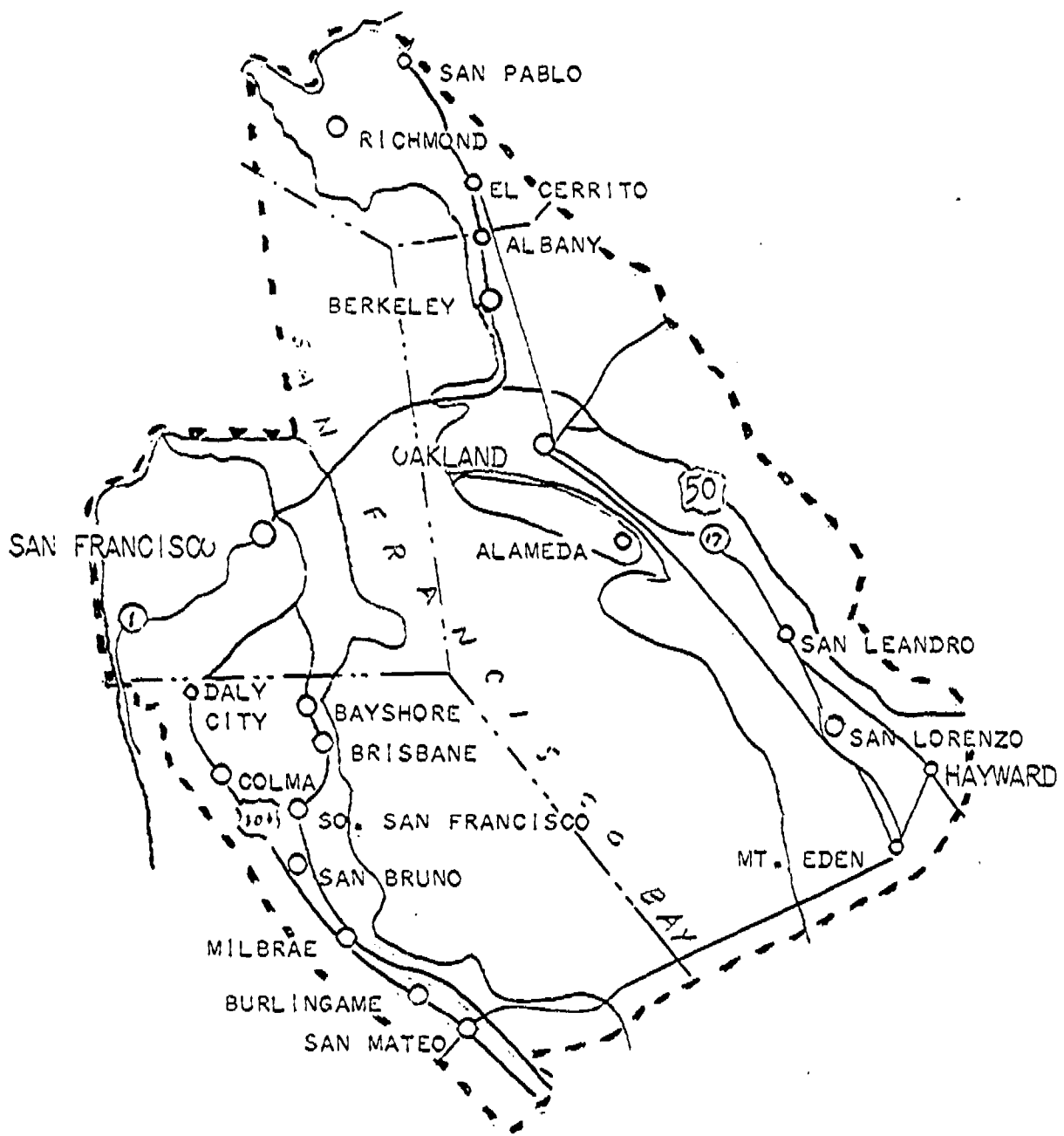
thereof:

Alameda	Elkton	Oakland Pier	San Leandro
Alameda Pier	Elmhurst	Ocean View	San Lorenzo
Albany	Emeryville	Piedmont	San Mateo
Bader	Ferry Point	Point Castro	San Pablo
Bay Farm Island	Fruitvale	Point Fleming	South San Francisco
Bayshore	Government Island	Point Isabel	Stege
Berkeley	Hayward	Point Molate	Tanforan
Bernal	Lawndale	Point Orient	Treasure Island
Brisbane	Lomita Park	Point Potrero	Union Park
Broadway	Melrose	Point Richmond	Visitacion
Burlingame	Millbrae	Point San Pablo	Westlake
Camp Knight	Mills Field	Richmond	Winehaven
Castro Valley	Mt. Eden	Russell City	Yerba Buena Island
Colma	Oakland	San Bruno	
Daly City	Oakland Municipal	San Francisco	
East Oakland	Airport	San Francisco International Airport	
El Cerrito			

APPENDIX "A" (Continued)

MAP SHOWING

LIMITS OF SAN FRANCISCO - EAST BAY CARTAGE ZONE



Decision No. 52695

Dated FEB 28 1956

Application No. 37382

APPENDIX "B"

The certificate of public convenience and necessity granted to I. W. Boland, doing business as Boland Trucking Co., by the above-numbered decision, authorizes him to transport general commodities except:

1. Used household goods and personal effects not packed in accordance with the crated property requirements set forth in paragraph (d) of Item No. 10-C of Minimum Rate Tariff No. 4-A.
2. Livestock, viz.: bucks, bulls, calves, cattle, cows, dairy cattle, ewes, goats, hogs, horses, kids, lambs, oxen, pigs, sheep, sheep camp outfits, sows, steers, stags or swine.
3. 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.
4. Commodities when transported in bulk in dump trucks or in hopper type trucks.
5. Commodities when transported in motor vehicles equipped for mechanical mixing in transit.

Applicant shall conduct operations over and along any and all streets, roads, highways and bridges.