

**ORIGINAL**

Decision No. 59794

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
EL DORADO MOTOR TRANSPORTATION COM- )  
PANY, a corporation, for authority )  
to transfer and assign all of its )  
certificates of public convenience )  
and necessity to operate as a high- )  
way common carrier of property to )  
its parent company, HOWARD TERMINAL, )

and

Application No. 41569

HOWARD TERMINAL for a certificate )  
of public convenience and necessity )  
to extend its highway common car- )  
rier service, and for an in lieu )  
certificate covering and consolidat- )  
ing its present operating authority, )  
the operating authority to be )  
acquired from EL DORADO and said )  
extended operating authority. )

William W. Schwarzer and Loyd W. McCormick  
of McCutchen, Doyle, Brown & Eversen,  
for Howard Terminal and El Dorado Motor  
Transportation Company, applicant.  
Ray L. Harris, for Delta Lines, Inc.,  
protestant.

O P I N I O N

In this joint application, filed on October 13, 1959,  
El Dorado Motor Transportation Company, a corporation, requests  
authority to transfer all of its highway common carrier operating  
rights to Howard Terminal, a corporation, and said Howard Terminal  
seeks to acquire said certificates and in addition to extend its  
operating authority in northern California. Permission is also  
sought by Howard Terminal to establish an in lieu certificate con-  
solidating its present operating authority, the certificates to be  
acquired from El Dorado and the extended operating rights. Public

hearings on these applications were held before Examiner James F. Mastoris in Sacramento on January 12, 1960, and in San Francisco on January 26, 1960.

The applicants allege that the transfer of the operating rights of El Dorado to Howard Terminal constitutes the first step in the eventual unification and merger of El Dorado and Howard Terminal by dissolving and liquidating El Dorado and assigning all of its assets to said Howard Terminal. It is not contemplated that payment or other consideration will be given by Howard to El Dorado for the proposed transfer. Although at present El Dorado is a separate corporation, Howard Terminal holds all of the issued and outstanding capital stock and controls the operations of said subsidiary. Under its present certificates, Howard Terminal, among other things, conducts trucking operations within the San Francisco Bay area, while El Dorado provides service from Oakland to Stockton, Sacramento and various points surrounding Sacramento. By virtue of interline agreements between the two applicants, through transportation is being performed between the San Francisco Bay area and various cities in the Sacramento region. The proposed extensions of Howard Terminal will encompass routes and points north of Sacramento to Yuba City and Marysville, east to Auburn, Placerville and Jackson and south to Manteca and Modesto. In addition to 10-mile laterals on all routes, intermediate-point service is sought between the San Francisco Bay area and Sacramento.

Evidence in support of these applications indicated that the proposed transfer will result in benefits to shippers using these carriers' services as well as advantages to the applicants themselves in that the consolidated corporate structure will provide, among other things, for a single-line operation, simplified accounting and billing procedures with resultant economies, efficient

utilization of equipment and driver personnel and a single certificate and tariff which will be more readily understood by the public. It also appears that the merger will improve the over-all financial picture of applicant Howard and will provide certain federal income tax advantages. Applicants claim that the expanded authority is necessary in order to meet the increasing demands of shippers to provide transportation into the proposed areas, to enable Howard Terminal to acquire new business, to prevent loss and diversion of current traffic to competitors, and to eliminate the problems incident to the performance of mixed certificated and permitted operations. In view of the fact that the requested extensions include that part of north central California where there has been a constant growth of industry and population, it is anticipated that present shippers will increase their business presently given to Howard Terminal and that new shipper accounts will be acquired having shipments destined to these areas.

Shipper witnesses testified that they expected to supply additional tonnage to Howard Terminal in the event the extensions applied for are granted. The majority of said witnesses declared they preferred the applicant's services because of its dependable pickup and over-night delivery operations. Many business firms with shipments moving to intermediate points between San Francisco and Sacramento desired the split-delivery rate benefits that would become available if the requested territory is added to Howard's authority. Others stated that they have a need to ship to off-route points located in the present and proposed territories of applicant Howard Terminal.

In opposition to this application, the protestant declared that the grant of the additional area would have an adverse effect upon its operations. Diversion of traffic to applicant Howard, it

is claimed, would be harmful and could result in curtailment of some service on its present schedules. Many witnesses testifying in support of the applicants confirmed that they would discontinue the services of the protestant and switch to applicant Howard if the proposed territory is authorized. The protesting carrier further alleged it can handle the available business as well as any increased traffic that may be offered to it.

Upon consideration of all the allegations of the application and the evidence adduced at the hearings, the Commission finds that public convenience and necessity require that the application be granted. We find that the proposed transfer and assignment of El Dorado's certificates to Howard Terminal is not adverse to the public interest and that public convenience and necessity require that Howard extend its operations as requested. We find that there is a present and prospective need for this proposed extension, and that Howard possesses the experience and equipment to enlarge its certificate and maintain the operations to be authorized. We further find that the applicant possesses the financial ability to support the proposed extensions and that its terminal facilities and personnel are adequate and suitable for the purposes intended in these proposals.

The action taken herein shall not be construed to be a finding of the value of the property herein authorized to be transferred nor authorization to capitalize the operating rights in excess of the amount allowed by law. Howard Terminal is hereby 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.

We also find that a redescription of Howard Terminal's operating rights, including the rights to be acquired from El Dorado, is necessary and that an in lieu certificate should be granted as requested. This restatement of the operative rights, with all the additions, amendments, changes, and modifications thereto, will consist of a new certificate and an appendix in loose-leaf form and shall constitute the entire and exclusive evidence of Howard's operative authority. Based upon a finding and order of the Commission, amendments to the certificate can be accomplished by the issuance of substitute sheets to Appendix A.

In consonance with the foregoing, a certificate will be granted to applicant in the order of this decision, attached to which will be Appendix A, in loose-leaf form, categorically setting forth all the points and routes of operations together with all of the rights and limitations applicable thereto. All presently existing certificates of public convenience and necessity or other passenger stage operative rights held by the applicant will be revoked and annulled.

#### O R D E R

Public hearings having been held and based on the evidence adduced therein,

#### IT IS ORDERED:

1. That El Dorado Motor Transportation Company is hereby authorized to assign and transfer, and Howard Terminal is authorized to purchase, acquire and thereafter operate under, all of El Dorado Motor Transportation Company's certificates of public convenience and necessity heretofore issued to said company to operate as a highway common carrier for the transportation of property.

2. That a certificate of public convenience and necessity is hereby granted to Howard Terminal, authorizing the establishment and operation of service as a highway common carrier, as that term is defined in Section 213 of the Public Utilities Code, for the transportation of property between the points and over the routes set forth in Appendix A, attached hereto and made a part hereof, but subject to the conditions and restrictions of said Appendix A. Operating rights presently described in Howard Terminal's current Appendices A and B as established and set forth in the following decisions are hereby revoked and annulled, said revocation and annulment to become effective concurrently with the effective date of the tariff filings required by paragraph 6(b) hereof.

<u>Decision Number</u>	<u>Application Number</u>
46716	32139
47037	32139
52274	37423
53371	36062
58209	40666

Operating rights of El Dorado Motor Transportation Company, as established and set forth in the following decisions, are also hereby revoked and annulled, said revocation and annulment to become effective concurrently with the effective date of the tariff filings required by paragraph 6(b) hereof:

<u>Decision Number</u>	<u>Application Number</u>
58209	40666
30709	21809
31694	22505
36380	25502
41199	28969
52164	36047

3. That within thirty days after the consummation of the transfer herein authorized, Howard Terminal shall notify the Commission in writing of that fact. Further, said applicant shall file with the

Commission a true copy of any instrument of transfer which may have been executed to effect the transfer authorized.

4. That on not less than five days' notice to the Commission and to the public, effective concurrently with the consummation of such transfer, applicants shall amend or reissue the tariffs on file with the Commission, naming rates, rules and regulations governing the operations here involved to show that El Dorado Motor Transportation Company has withdrawn or canceled, and Howard Terminal has adopted or established as its own, said rates, rules and regulations. The tariff filings made pursuant to this order shall comply with the regulations governing the construction and filing of tariffs set forth in the Commission's General Order No. 80.

5. That the authority herein granted in paragraph 1 shall expire if not exercised within sixty days after the effective date hereof.

6. That in providing service pursuant to the certificate herein granted in paragraph 2, Howard Terminal shall comply with the following service regulations:

- a. Within thirty days after the effective date hereof, applicant shall file a written acceptance of the certificate herein granted. By accepting the certificate of public convenience and necessity herein granted, applicant is placed on notice that it will be required, among other things, to file annual reports of its operations and to comply with and observe the safety rules and other regulations of the Commission's General Order No. 99. Failure to file such reports, in such form and at such time as the Commission may direct, or to comply with and observe the provisions of General Order No. 99, may result in a cancellation of the operating authority granted by this decision.

- b. Within sixty days after the effective date hereof, and on not less than ten days' notice to the Commission and to the public, applicant shall establish the service herein authorized and file in triplicate and concurrently make effective, tariffs satisfactory to the Commission.

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

Dated at San Francisco, California, this 15th day of March, 1960.

Robert R. Ruge  
President  
William D. Rife  
E. Lynn Fox  
Herbert J. Rife  
Commissioners

Commissioner Peter E. Mitchell, being necessarily absent, did not participate in the disposition of this proceeding.



Howard Terminal, a corporation, by the certificate of public convenience and necessity granted in the decision noted\* in the margin is authorized to transport general commodities, with exceptions hereafter provided, as follows:

1. Between all points in the San Francisco-East Bay Cartage Zone described as follows:

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 South 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 "E" Street, Hayward; thence easterly

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\*Decision No. 59794, Application No. 41569.

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.

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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
Baden	Ferry Point	Point Castro	San Pablo
Bay Farm Island	Fruitvale	Point Fleming	South San
Bayshore	Government Island	Point Isabel	Francisco
Berkeley	Hayward	Point Molate	Steger
Bernal	Lawndale	Point Orient	Tanforan
Brisbane	Lomita Park	Point Potrero	Treasure Island
Broadway	Melrose	Point Richmond	Union Park
Burlingame	Millbrae	Point San Pablo	Visitation
Camp Knight	Mills Field	Richmond	Westlake
Castro Valley	Mt. Eden	Russell City	Winehaven
Colma	Oakland	San Bruno	Yerba Buena
Daly City	Oakland Municipal	San Francisco	Island
East Oakland	Airport	San Francisco	
El Cerrito		International	
		Airport	

2. FROM, TO and BETWEEN all points on and within 10 miles on either side of the following routes:

- a. Between Oakland and Auburn via U. S. Highway 40.
- b. Between Oakland and Sacramento via State Route 24.
- c. Between Oakland and Pacific via U. S. Highway 50.
- d. Between Oakland and San Jose via State Routes 9 and 17 and U. S. Highways 101 and Alternate 101.
- e. Between Rodeo and Concord via State Route 4.
- f. Between Manteca and U. S. Highway 50 via the Manteca cutoff route (unnumbered).
- g. Between Stockton and Modesto via U. S. Highway 99.
- h. Between Sacramento and Woodland via State Routes 16-24.

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- i. Between the junction of U. S. Highway 40 and U. S. Highway Alternate 40 south of Davis and Marysville via U. S. Highway Alternate 40.
- j. Between Roseville and Yuba City via U. S. Highway 99E.
- k. Between Auburn and Jackson via State Route 49.
- l. Between North Sacramento and Elverta via unnumbered highway and between said unnumbered highway and U. S. Highway 40 via another unnumbered highway through Rio Linda.
- m. Between U. S. Highway 40 and U. S. Highway 50 via unnumbered highway through Folsom.
- n. Between U. S. Highway 50 at Clarksville and State Route 16 via unnumbered highway through Latrobe.
- o. Between Sacramento and Citrus via unnumbered highway through Fair Oaks.
- p. Between U. S. Highway 50 at Shingle Springs and Latrobe via unnumbered highway.
- q. Between Roseville and Folsom via unnumbered highway.
- r. Between State Route 16 and Ione via State Route 104.
- s. Between Ione and Pine Grove via State Route 88 through Martell and Jackson.
- t. Between Martell and Pine Grove via unnumbered highway.
- u. Between U. S. Highway 50 east of Shingle Springs and El Dorado via unnumbered highway.
- v. Between Sacramento and State Route 49 north of Drytown via State Route 16.

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3. BETWEEN all points set forth in paragraph 1 hereof, on the one hand, and all points covered in paragraph 2 hereof, on the other hand.

EXCEPTIONS: Howard Terminal shall not transport any shipments of:

1. Used household goods and personal effects not packed in accordance with the crated property requirements set forth in paragraph (d) of Item 10-C of Minimum Rate Tariff No. 4-A.
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.: bucks, bulls, calves, cattle, cows, dairy cattle, ewes, goats, hogs, horses, kids, lambs, oxen, pigs, sheep, sheep camp outfits, sows, steers, stags or swine.
4. Commodities requiring the use of special refrigeration or temperature control in specially designed and constructed refrigerated equipment.
5. Liquids, compressed gases, commodities in semiplastic form and commodities in suspension in liquids in bulk, in tank trucks, tank trailers, tank semitrailers or a combination of such highway vehicles.
6. Commodities when transported in bulk in dump trucks or in hopper-type trucks.
7. Commodities when transported in motor vehicles equipped for mechanical mixing in transit.
8. Logs.

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Decision No. 59294, Application No. 41569.