

ORIGINALDecision No. 61193

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 F. J. BURNS DRAYING, a California)
 corporation, for a Certificate of)
 Public Convenience and Necessity)
 to extend Highway Common Carrier)
 Service.)

Application No. 41547
 (Amended)

Marvin Handler, for applicant.

O P I N I O N

Applicant is a highway common carrier. Applicant transports property pursuant to highway common carrier certificates granted by this Commission in Decision No. 50870, dated December 14, 1954 in Application No. 34866, and in Decision No. 51813, dated August 9, 1955, in Application No. 35900. These decisions authorize the transportation of general commodities, with the usual exceptions, between San Francisco, San Jose, Richmond, Hayward, San Mateo, and intermediate points.

By application filed October 8, 1959, and amendment thereto filed September 14, 1960, applicant seeks to expand its highway common carrier authority as follows:

Between all points on and laterally within fifteen miles of the routes hereinafter described, including those points located within ten miles of the city limits of Sacramento.

1. Between Sacramento and San Francisco Territory via U.S. Highways 40, 50 and 99.
2. Between U.S. Highway 40 and U.S. Highway 99 via State Highway 4.
3. Between San Jose, Martinez, Pinole and U.S. Highway 40 via State Highways 4 and 21.

4. Between Fairfield and Lodi via State Highway 12.
5. Between Sacramento and Antioch, Concord, and Pleasant Hill via State Highway 24.
6. Between Sacramento, Stockton, and Modesto via U.S. Highway 99.
7. Between Sacramento and Stockton via unnumbered highway.
8. Between Modesto and Vernalis via State Highway 132.
9. Between Vernalis and junction U.S. Highway 50 via State Highway 33.
10. Unnumbered highways connecting the routes above described.

A public hearing was held on October 20, 1960 in San Francisco before Examiner Martin J. Porter and the matter was submitted.

There was no protest to the application, although the application, amendment thereto, and notices of hearing were sent to all known common carriers with which the service proposed herein might be competitive.

Applicant has permits as a contract carrier, city carrier and radial highway common carrier. The permitted authority is now being used for service in the territory requested in the amended application, mostly for truckload movements.

Many of applicant's shippers allow applicant to do the routing of the freight and applicant has been engaging other carriers for less-than-truckload lots.

Six shipper witnesses testified. These shippers all have used applicant's service and were highly satisfied. The commodities shipped included, in part, paper boxes, food containers,

paint, roof and floor coverings, electric regulators, transformers, drugs, toilet preparations, wine, olive oil and stationery supplies.

All witnesses testified that in the area sought to be served by applicant their markets were expanding and the need for applicant's service would increase. The off-route lateral is needed to provide service to construction job sites, schools, Government installations and firms which are located off the main routes.

The names, addresses and types of commodities shipped of six additional witnesses who had need of applicant's service were read into the record.

The majority of the shippers indicated that they had need for applicant's service daily.

Applicant bills between eighty to one hundred shippers monthly.

Exhibit 1 is a substantial list of applicant's equipment. It was testified that this equipment was not used to capacity under present operations and, further, that should the need arise, applicant was prepared to augment its facilities and equipment.

Exhibit 2 shows total assets of \$190,408.32 and a net profit for the six months ended June 30, 1960 of \$20,635.99.

The Commission finds that public convenience and necessity require that the application be granted to the extent hereinafter set forth.

In order to avoid confusion among the shipping public and assist the Commission in its regulatory functions, the additional operating authority herein granted and applicant's existing certificates of public convenience and necessity will be consolidated.

Applicant 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. 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 modified or canceled 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

Public hearing having been held, and based upon the evidence adduced therein and the amended application filed herein,

IT IS ORDERED:

1. That a certificate of public convenience and necessity is granted to F. J. Burns Draying, a corporation, authorizing it to operate as a highway common carrier as defined by Section 213 of the Public Utilities Code for the transportation of property between the points and places and over and along the routes and subject to the restrictions, as more particularly set forth in Appendices A and B attached hereto.

2. That in providing service pursuant to the certificate herein granted, applicant shall comply with and observe 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 and insurance requirements of the Commission's General Order No. 100-A. 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 Orders Nos. 99 and 100-A, may result in a cancellation of the operating authority granted by this decision.

- (b) Within one hundred twenty 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.

3. That the certificate of public convenience and necessity granted in paragraph 1 of this order is in lieu of and supersedes all existing certificates of public convenience and necessity heretofore granted to or acquired by F. J. Burns Draying, a corporation, and presently possessed by it, which certificates are hereby canceled and revoked, said revocation to become effective concurrently with the effective date of the tariff filings required by paragraph 2(b) hereof.

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

Dated at San Francisco, California, this 13th day of DECEMBER 1960.

[Signature]
President
[Signature]
[Signature]
[Signature]
Commissioners

F. J. Burns Draying, a corporation, by the certificate of public convenience and necessity granted in the decision noted in the margin, is authorized to transport general commodities between all points and places in the following territory and on and along the following routes:

1. Between all points and places in the San Francisco-East Bay Cartage Zone as described in Appendix B attached hereto.
2. Between all points and places on the following highways (See Note):
 - a. U.S. Highways 101 and 101 Alternate between San Mateo and San Jose, inclusive.
 - b. State Highway 17 between Hayward and San Jose, inclusive.
 - c. State Highway 9 between Hayward and Sunnyvale, inclusive.
 - d. San Mateo Bridge and Dumbarton Bridge between State Highway 17 and U.S. Highway 101 Alternate.

NOTE: Applicant shall not serve any point not located on the above highways except as herein authorized.

3. Between all points and places on and within 15 miles laterally of the following named highways, including points located within 10 miles of Sacramento:
 - a. U.S. Highway 40 between Richmond and Sacramento, inclusive.

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- b. U.S. Highway 50 between Hayward and Stockton, inclusive.
- c. State Highway 4 between its junction with U.S. Highway 40 near Pinole and Stockton, inclusive.
- d. State Highway 21 between Fremont and Martinez, inclusive.
- e. Unnumbered highway between Martinez and Crockett, inclusive, via Port Costa.
- f. State Highway 12 between its junction with U.S. Highway 40 near Fairfield and Lodi, inclusive.
- g. State Highway 24 between Pleasant Hill and Sacramento, inclusive.
- h. U.S. Highway 99 between Sacramento and Modesto, inclusive.
- i. Unnumbered highway between Sacramento and Stockton, inclusive, via Thornton.
- j. State Highway 132 between Vernalis and Modesto, inclusive.
- k. State Highway 33 between its junction with U.S. Highway 50 near Tracy and Vernalis, inclusive.

Applicant may use any and all highways and roads between the areas described for operating convenience only.

Through routes and rates may be established between any and all points described in subparagraphs 1 through 3 above.

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Applicant 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 No. 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 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.
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.

End of Appendix A

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The San Francisco-East Bay Cartage Zone includes the 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 So. 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

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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.