

ORIGINALDecision No. 61448

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
EAST BAY DRAYAGE & WAREHOUSE CO.,
a corporation, for expansion and
restatement of its certificates of
public convenience and necessity
authorizing highway common carrier
service.

Application No. 42734

Daniel W. Baker, for applicant.O P I N I O N

East Bay Drayage & Warehouse Co., a corporation, possesses prescriptive intrastate highway common carrier rights, recognized and delineated by the Commission in Decision No. 24935, dated January 27, 1932, in Case No. 3267. This decision found that these rights were between San Francisco, on the one hand, and Oakland, Berkeley, Alameda, Piedmont, Emeryville, Fruitvale, Melrose and Albany, on the other hand. Such territory was expanded by Decision No. 42008, dated December 2, 1952, in Application No. 32508, to include East Bay cities extending from Richmond to Mt. Eden on the east and cities adjacent to San Francisco on the west side of the Bay, via U.S. Highways 101, 101 By-Pass, 101 Alternate, 50 and 40 and State Highways 9 and 17 and unnumbered highways. Additional authority was also granted to this company by Decision No. 51202, dated March 15, 1955, in Application No. 36664, authorizing transportation between all points and places in the San Francisco-East Bay Cartage Zone. These decisions authorize the transportation of general commodities with limited exceptions.

By this application filed October 7, 1960, East Bay Drayage & Warehouse Co., requests extensions of its highway common carrier rights to include service to Vallejo along U.S. Highway 40, along U.S. Highway 50 to Tracy and along State Highways 4 and 24 to Antioch and along State Highway 21, serving such points as Pacheco, Walnut Creek, Danville, Dublin, Pleasanton and Sunol. It is asked that this be accomplished by the revocation of applicant's present rights and the issuance of a new certificate embodying the present and requested authority.

Public hearing was held in Oakland on December 1, 1960, before Examiner Rowe, at which time evidence both oral and documentary was adduced and the matter duly submitted for decision.

As justification for the requested relief applicant alleges that public convenience and necessity require the proposed service for the following reasons:

East Bay Drayage & Warehouse Co. has for many years conducted operations throughout the involved territory under both its permitted authority, consisting of permits as a radial, contract, and city carrier,^{1/} and its prescriptive or certificated operative rights. During the long period of its existence the company has experienced growing and continued demands from the shipping public and has adjusted and expanded its service to meet these needs. This increased demand has changed the character of service rendered and the requested expansion is sought to assure the permanency thereof.

1/ Permits Nos. 1-2990, 1-8992 and 1-3992.

Certain problems have arisen in operating under dual types of authorities. On occasions, shippers require the transportation of split shipments moving via both certificated and permitted authorities between points in the area sought to be served herein. Under applicant's present operative rights, such commodities cannot be combined into single shipments. If such movements are to be transported, applicant must assess its charges as though two separate and distinct shipments were transported. Consequently, if shippers use the service, they are required to pay a penalty charge in the form of higher rates. Most of the common carriers and all permitted carriers with whom applicant competes appear to be able to handle and consolidate these shipments. Therefore, the grant of the instant authority will place applicant on a competitive parity with such carriers and also permit it to give a more complete service to its customers.

Applicant proposes to charge rates on a parity with the Commission's Minimum Rate Tariff No. 2 and other applicable minimum rate tariffs. The proposed service is to be daily and time in transit will be same day or overnight, depending upon the character and size of the shipments. Applicant claims to have adequate equipment for the present service and can acquire any additional equipment needed in the future. Its financial statement indicates a sound position. Public witnesses and others testified as to the needs of twelve substantial shippers.

From the evidence of record the Commission finds that public convenience and necessity require that applicant be granted the extended highway common carrier rights requested. Applicant is

further found to be adequately financed and experienced so that the proposed operation should meet the reasonable demands of the shipping public. As requested, the existing certificates will be canceled, and restated hereinafter.

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

A public hearing having been held and based upon the evidence therein adduced,

IT IS ORDERED that:

1. A certificate of public convenience and necessity is hereby granted to East Bay Drayage & Warehouse Co., a corporation, authorizing the transportation of property as a highway common carrier as defined by Section 213 of the Public Utilities Code between the points and over the routes as set forth in Appendices A and B attached hereto and made a part hereof.

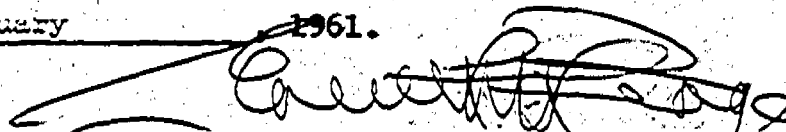
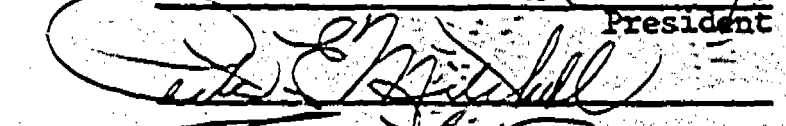
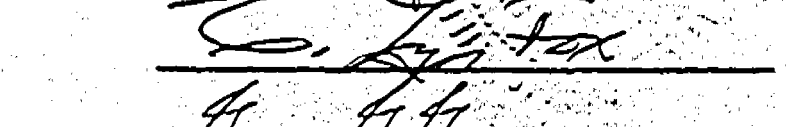
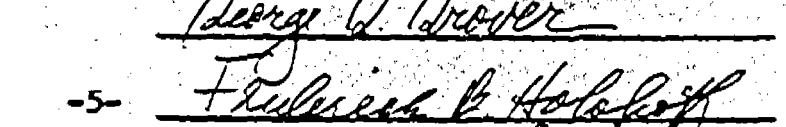
2. In providing service pursuant to the certificate herein granted, applicant shall comply with and observe the following service regulations:

- (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. The certificate of public convenience and necessity granted in paragraph 1 of this order is in lieu of and supersedes the certificates of public convenience and necessity granted by Decisions Nos. 29196, 51202, 48008, 48161, and 52150 and the operative rights delineated by Decision No. 24935, 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 7th day of February, 1961.


President



Commissioners

East Bay Drayage & Warehouse Co., by the certificate of public convenience and necessity granted in the decision noted in the margin, is authorized to transport general commodities, as follows:

- A. Between all points in the San Francisco Territory (as described in Appendix B hereto) and places within ten miles of any point therein.
- B. Between all points located on or within ten miles laterally of the following routes:
 - 1. U.S. Highway 40 between San Francisco and Vallejo, inclusive.
 - 2. U.S. Highway 50 between San Francisco and Tracy, inclusive.
 - 3. State Highway 24 between Oakland and Antioch, inclusive.
 - 4. State Highway 4 between its intersection with U.S. Highway 40, near Pinole, and Antioch, inclusive.
 - 5. State Highway 21 between Walnut Creek and Warm Springs, inclusive.
- C. Through routes and rates may be established between any and all points specified in subparagraphs A and B 1 through 5 above.

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. 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.

Issued by California Public Utilities Commission.

Decision No. 61448, Application No. 42734.

Appendix A EAST BAY DRAYAGE & WAREHOUSE CO. Original Page 2
(a corporation)

3. Commodities requiring the use of special refrigeration or temperature control in specially designed and constructed refrigerator equipment.
4. Petroleum products, in bulk, in tank vehicles.
5. Fresh fruits and vegetables.

End of Appendix A

Issued by California Public Utilities Commission.

Decision No. 61448, Application No. 42734.

SAN FRANCISCO TERRITORY includes all the City of San Jose and that area embraced by the following boundary: Beginning at the point the San Francisco-San Mateo County boundary line meets the Pacific Ocean; thence easterly along said boundary line to a point 1 mile west of U. S. Highway 101; southerly along an imaginary line 1 mile west of and paralleling U. S. Highway 101 to its intersection with Southern Pacific Company right of way at Arastradero Road; southeasterly along the Southern Pacific Company right of way to Pollard Road, including industries served by the Southern Pacific Company spur line extending approximately 2 miles southwest from Simla to Permanente; easterly along Pollard Road to W. Parr Avenue; easterly along W. Parr Avenue to Capri Drive; southerly along Capri Drive to E. Parr Avenue; easterly along E. Parr Avenue to the Southern Pacific Company right of way; southerly along the Southern Pacific Company right of way to the Campbell-Los Gatos city limits; easterly along said limits and the prolongation thereof to the San Jose-Los Gatos Road; northeasterly along San Jose-Los Gatos Road to Foxworthy Avenue; easterly along Foxworthy Avenue to Almaden Road; southerly along Almaden Road to Hillsdale Avenue; easterly along Hillsdale Avenue to U. S. Highway 101; northwesterly along U. S. Highway 101 to Tully Road; northeasterly along Tully Road to White Road; northwesterly along White Road to McKee Road; southwestly along McKee Road to Capitol Avenue; northwesterly along Capitol Avenue to State Highway 17 (Oakland Road); northerly along State Highway 17 to Warm Springs; northerly along the unnumbered highway via Mission San Jose and Niles to Hayward; northerly along Foothill Boulevard to Seminary Avenue; easterly along Seminary Avenue to Mountain Boulevard; northerly along Mountain Boulevard and Moraga Avenue to Estates Drive; westerly along Estates Drive, Harbord Drive and Broadway Terrace to College Avenue; northerly along College Avenue to Dwight Way; easterly along Dwight Way to the Berkeley-Oakland boundary line; northerly along said boundary line to the campus boundary of the University of California; northerly and westerly along the campus boundary of the University of California to Euclid Avenue; northerly along Euclid Avenue to Marin Avenue; westerly along Marin Avenue to Arlington Avenue; northerly along Arlington Avenue to U. S. Highway 40 (San Pablo Avenue); northerly along U. S. Highway 40 to and including the City of Richmond; southwestly along the highway extending from the City of Richmond to Point Richmond; southerly along an imaginary line from Point Richmond to the San Francisco Waterfront at the foot of Market Street; westerly along said waterfront and shore line to the Pacific Ocean; southerly along the shore line of the Pacific Ocean to point of beginning.