

**ORIGINAL**

Decision No. 62518

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of DON D'ONOFRIO, an individual, doing business as D'ONOFRIO DRAYAGE RECORD EXPRESS, for a certificate of public convenience and necessity to operate as a highway common carrier.

Application No. 42980  
(Filed December 20, 1960)

Bertram S. Silver, for Don D'Onofrio, applicant.  
Boris H. Lakusta, Graham, James & Rolph, for  
Di Salvo Trucking Company; Delta Lines, Inc.,  
Fortier Transportation Company; Interlines  
Motor Express, Shippers Express; Pacific Motor  
Trucking; Valley Motor Lines and Valley Express;  
Associated Transportation Co.; Oregon-Nevada-  
California Fast Freight, Inc.; Southern  
California Freight Lines; Sterling Transit Co.,  
Inc.; Merchants Express of California; Willig  
Freight Lines; and California Motor Express  
and California Motor Transport, Inc.,  
protestants.

O P I N I O N

This application was heard before Examiner Martin J. Porter at San Francisco on February 20, March 22 and 23, May 3, 4 and 5, 1961, on which latter date it was submitted. Copies of the application and the notice of hearing were served in accordance with the Commission's procedural rules.

Applicant is a highway common carrier presently transporting general commodities between points in the San Francisco - East Bay Cartage Zone and between San Francisco and San Jose. Applicant requests authorization to extend his highway common carrier operations so as to transport general commodities in the area of Marin County, Stockton, Sacramento and to Los Gatos and Saratoga. Applicant proposes daily service except Sundays and holidays applying the same scale of rates as those contained in Minimum Rate Tariff No. 2

and other applicable minimum rate tariffs of the Commission and his presently effective rules and regulations.

Exhibit No. 4 is a list of applicant's equipment. Applicant testified that there would be no difficulty in obtaining additional equipment if required.

Exhibit No. 6 is a Profit and Loss Statement for a 9-month period ending September 30, 1960, which shows a net operating profit of \$9,712.37 before providing for Federal Income Tax.

The applicant testified that the only areas or points sought in this application, to which he goes on a regular basis, are Los Gatos and Saratoga.

A summary of the testimony of the shipper witnesses presented by the applicant shows that while all did not use his service in the area which he served on a regular basis, when they did use his service it was excellent. Should this application be granted they would use applicant's service into any area the applicant served for which they had freight. The service into the areas of Los Gatos and Saratoga is being used by some of the shippers where the applicant is operating under his radial highway common carrier permit.

The protestants presented evidence through shipper witnesses and witnesses representing California Motor Transport Company, Ltd.; Pacific Motor Trucking Company; Merchants Express of California; Valley Express and Valley Motor Lines; Associated Freight Lines and Delta Lines.

A summary of such shipper witnesses' testimony is that they are now adequately served by existing highway common carriers in the area sought by the applicant. They had limited dock space and time to devote to traffic solicitors. Additional certificated authority

of the applicant will increase their dock problem and the number of traffic solicitors calling upon them soliciting their freight. These witnesses also expressed the fear that additional certification of highway carriers would tend to dilute the amount of existing freight available to present certificated carriers and the result would be an increase in transportation rates.

The witnesses representing the above-mentioned protestants presented evidence showing they now, as highway common carriers, serve the area sought by this applicant. They have sufficient equipment, facilities, personnel and resources to continue this service. They advertise and maintain modern equipment in an effort to provide the shipping public with the best possible service. They felt there is an overabundance of certificated carriers in the area now and any additional certification will only increase competition for the existing freight. They contended that dilution of the existing freight available to them will reduce the load factor of their trucks and make it difficult to get efficient use of the wage dollar which could be a factor in a request for increased rates.

The protestants at the conclusion of their presentation made a motion that this application be argued before the Commission en banc. Said motion is denied.

Upon consideration of the evidence the Commission finds and concludes as follows:

1. Applicant possesses the experience, equipment, personnel and financial resources to institute and maintain the proposed service.
2. Public convenience and necessity require that the application be granted in part as set forth in the ensuing order.

Don D'Onofrio 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 therein adduced,

IT IS ORDERED that:

1. A certificate of public convenience and necessity is hereby granted to Don D'Onofrio, 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 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:

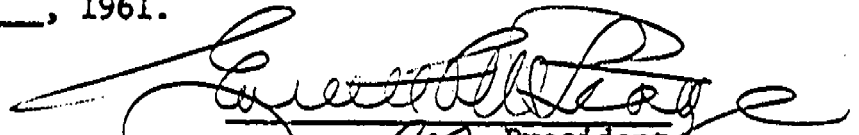
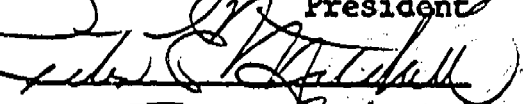

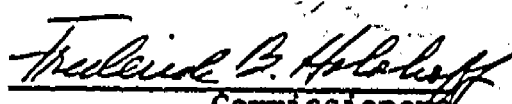
- (a) Within thirty days after the effective date hereof, applicant shall file a written acceptance of the certificate herein granted. By accepting the certificate of public convenience and necessity herein granted, applicant is placed on notice that he will be required, among other things, to file annual reports of his 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-B. 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-B may result in a cancellation of the operating authority granted by this decision.

(b) Within one hundred and 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 supersedes the certificates of public convenience and necessity granted by Decisions Nos. 50866 and 53634, which certificates are hereby 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 5<sup>th</sup> day of SEPTEMBER, 1961.

  
\_\_\_\_\_  
President  
  
\_\_\_\_\_  
  
\_\_\_\_\_  
  
\_\_\_\_\_  
Commissioners

Don D'Onofrio, by the certificate of public convenience and necessity granted in the decision noted in the margin, is authorized to transport general commodities as follows:

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 U.S. Highways 101 and 101 By-Pass between San Mateo and San Jose, inclusive.
3. Between all points and places on and within ten miles laterally of the following named highways:
  - a. State Highway 9 between Sunnyvale and Saratoga, inclusive.
  - b. State Highway 17 between San Jose and Los Gatos, inclusive.
4. Through routes and rates may be established between any and all points described in subparagraphs 1, 2 and 3 above.

Issued by California Public Utilities Commission.

Decision No. 62518, Application No. 42980.

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 protection from heat by the use of ice (either water or solidified carbon dioxide) or by mechanical refrigeration.
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.
9. Commodities requiring special equipment and handling because of unusual size, weight or shape.
10. Articles of extraordinary value as set forth in Rule No. 3 of Western Classification No. 77, J. P. Hackler, Tariff Publishing Officer, on the issue date thereof.

Issued by California Public Utilities Commission.

Decision No. 62518, Application No. 42980.

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



APPENDIX B TO DECISION NO. 62518

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.