

**ORIGINAL**Decision No. 62555

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
 FRANK E. COSTA and GEORGE J. ROSSI, )  
 JR., copartners doing business as )  
 HUDDLESTON DRAYAGE COMPANY, for a )  
 certificate of public convenience )  
 and necessity to operate as a )  
highway common carrier.

Application No. 43029  
 (Filed January 3, 1961)

Bertram S. Silver and William L. Cole, for  
 applicants.

Graham, James & Rolph, by Boris H. Lakusta, for  
 Di Salvo Trucking Co., Delta Lines, Inc., Fortier  
 Transportation Co., Interlines Motor Express,  
 Shippers Express, Pacific Motor Trucking Co.,  
 Valley Lines and Valley Express, Associated  
 Transportation Co., Callison Truck Lines,  
 Oregon-Nevada-California Fast Freight and  
 Southern California Freight Lines, Sterling  
 Transit Co., Inc., Merchants Express, Willig  
 Freight Lines, California Motor Express and  
 California Motor Transport, Ltd., protestants.

O P I N I O N

This application was heard before Examiner Martin J. Porter at San Francisco on February 21, March 20, 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.

Applicants operate as a highway common carrier presently transporting general commodities between points in the San Francisco-East Bay Cartage Zone. Applicants request authorization to extend highway common carrier operations so as to transport general commodities in the areas of Marin County, Saratoga, Los Gatos and San Jose; Livermore, Vallejo and Antioch. Applicants propose 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 their presently effective rules and regulations.

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

Exhibit No. 6 is a profit and loss statement for a nine-month period ending September 30, 1960, which shows a net operating profit of \$18,720.62 before providing for Federal Income Tax.

The applicants testified that for the past several years the carrier has been going to San Jose daily.

A summary of the testimony of the shipper witnesses presented by the applicants shows that while all did not use their service in the area which they served on a regular basis, when they did use their service it was excellent. Several of the witnesses testified that they now use applicants' service to San Jose and would continue to use it. Should this application be granted they would use applicants' service into any area the applicants served for which they had freight.

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 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 applicants. They had limited dock space and time to devote to traffic solicitors. Additional certificated

authority of the applicants 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 a 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 these applicants. They have sufficient equipment, facilities, personnel and resources to continue this 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 record does not support these contentions of the protestants.

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. Applicants possess 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.

Applicants are 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:

1. That a certificate of public convenience and necessity is hereby granted to Frank E. Costa and George J. Rossi, Jr., 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 hereby made a part hereof.

2. That in providing service pursuant to the certificate herein granted, applicants shall comply with and observe the following service regulations:

- (a) Within thirty days after the effective date hereof, applicants shall file a written acceptance of the certificate herein granted. By accepting the certificate of public convenience and necessity herein granted, applicants are placed on notice that they will be required, among other things, to file annual reports of their operations and to comply with and observe the safety rules and other regulations of the Commission's

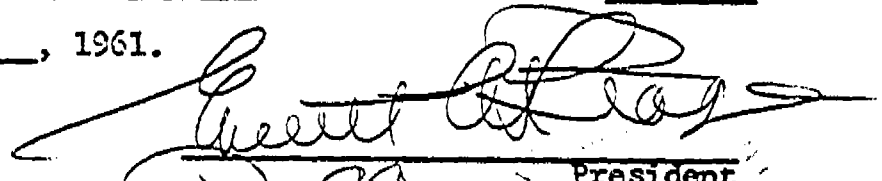
General Order No. 99 and insurance requirements of the Commission's General Order No. 100-B. Failure to file such reports in such form and at such time as the Commission may direct or to comply with and observe the provisions of General Orders Nos. 99 and 100-B, may result in a cancellation of the operating authority granted by this decision.

(b) Within one hundred twenty days after the effective date hereof, and on not less than ten days' notice to the Commission and to the public, applicants 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 supersedes the certificate of public convenience and necessity granted by Decision No. 51583, which certificate is hereby revoked, said revocation to become effective concurrently with the effective date of the tariff filings required by paragraph 2(b) hereof.

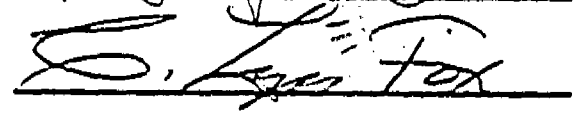
The effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco, California, this 15th day of SEPTEMBER, 1961.



President





  
Commissioner

Frank E. Costa and George J. Rossi, Jr., copartners, by the certificate of public convenience and necessity granted in the decision noted in the margin, are authorized to transport general commodities between all points and places in the San Francisco Territory, as described in Appendix B attached hereto. Applicants 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.

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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.

End of Appendix A

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APPENDIX B TO DECISION NO. 62555

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; southwestwardly 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; southwestwardly 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.