

ORIGINAL

Decision No. 62597

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the application of
 BAY CITIES TRANSPORTATION CO., a
 corporation, for removal of restrictions
 and extension of its highway common
 carrier certificate to include all
 points in the San Francisco-East Bay
 Cartage Zone.

Application No. 43251

Norman Moon, for applicant.
Boris H. Lakusta and Raymond A. Green, for
 California Motor Express, Ltd., California
 Motor Transport, Ltd., Delta Lines, Inc.,
 Merchants Express of California, Oregon-
 Nevada-California Fast Freight, Southern
 California Freight Lines, Pacific Motor
 Trucking Co., Garden City Transportation
 Co., Ltd., Valley Motor Lines, and
 Shippers Express Company, protestants.

O P I N I O N

This application was heard before Examiner Rowe on May 25, 1961, June 2, 1961, and on July 5 and 6, 1961, at San Francisco, on which latter date the matter was submitted with the right to file briefs not later than July 19, 1961. On said date protestants filed a motion to dismiss which was accompanied by their Memorandum of Points and Authorities.

Applicant, a corporation with assets of over 1½ million dollars, many years ago commenced operations as a common carrier by vessel between various points on San Francisco, San Pablo and Suisun Bays, San Joaquin, Sacramento and Napa Rivers, Petaluma Creek and their tributaries. By Decision No. 40481, dated June 28, 1947, in Application No. 27646 rights as a highway common carrier were granted to this company authorizing service between San Francisco, on the one

hand, and Oakland and Alameda, on the other hand, and between San Francisco, Oakland and Alameda on the one hand, and Mare Island, on the other hand, as an alternative or supplementary service to its operations as a common carrier by vessel. Consequently, applicant is presently transporting shipments between such points by vessel as to large shipments and is handling smaller, or L.C.L. shipments under its highway rights. According to the Company's operative witness applicant in transporting sea vans is not serving in excess of the authority conferred by its City Carrier Permit. The two primary reasons for this limitation are that its certificated rights are between definite points only in the area requested, and also because shipments are offered on a collect as well as a prepaid basis. The present request is limited to the movement of general commodities in sea vans or commodities to be included in further movements by sea vans, except live animals, commodities in bulk, uncrated household goods, office fixtures and commodities requiring insulated equipment under mechanical refrigeration, between all points and places in the San Francisco-East Bay Cartage Zone, limited, however, to that portion of said zone which is now exempt from Interstate Commerce Commission jurisdiction over rates and certificates.

Applicant's Evidence

A sea van as used by applicant is described as an aluminum box, 3 feet x 3 feet x 24 feet. Others use such boxes of different sizes and made of different materials. The essential characteristic is that they be appropriate for loading at the shipper's place of business or at some other location and after being loaded they may be themselves loaded by crane or other mechanical method directly into the hold of a ship for movement by water to another area.

The chief motivating factor for the application is the fact that applicant has entered into a contract with Puget-Alaska Van Lines, Inc., which is a steamship company presently operating between Oakland and Seward, Alaska. This contract requires applicant to furnish a container station in Oakland where freight can be consolidated into these sea van containers, sealed and transported by Bay Cities Transportation Company to the docks for loading upon the steamship. This freight will arrive at the container station after prior movements by rail or truck. Rates for the container station service are to be agreed upon by these parties. However, the only provision in the contract as to rates and charges for the highway common carrier service for which authority is sought by the application is that such rates and charges are not to be less than the prescribed minimums. In addition to this contract applicant has made a large investment in these sea vans which it leases to the steamship company under agreements similar to the arrangements whereby different railroads permit use by others of their freight cars. This contract also states that applicant will acquire tractors and skeleton double-axle semis for handling sea vans as requested. Much of this equipment has been acquired.

The application contemplates that Bay Cities Transportation Company will file its tariff in the usual manner and will collect its charges itself for the portion of the movement over the State highways. The witness for the steamship company testified that especially as to shippers from the Alaska area it would cooperate by assisting in collecting such charges and in some cases even advancing such amounts itself. The volume of freight moving by steamship in these sea vans is rapidly increasing and at present is very substantial.

Protestants' Evidence

The protestants presented testimony to the effect that they were furnishing the public in this area with adequate highway common carrier service as to general commodities. Only two of these carriers at the present are in any position however to handle sea vans. Their investment in appropriate equipment such as skeleton double axle trailers and in sea vans, however, is at present very limited. From their testimony the most the Commission can conclude is that they will transport sea vans if offered to them but would prefer to wait until the demand upon them is more pressing before they would be willing to make further investment in this specialized equipment or in such facilities as container stations. As a rule they seemed to feel that the furnishing of sea vans and loading them is not a part of their highway common carrier service.

Findings and Conclusions

The Commission finds that public convenience and necessity require that applicant be authorized to transport general commodities with the exceptions stated in the application, as amended, in or for shipments in sea vans between all points and places in the San Francisco-East Bay Cartage Zone. Applicant is also found to possess the experience, equipment, personnel and financial resources to institute and maintain the proposed service. Based upon these findings the Commission concludes that intra-state operative rights should be granted Bay Cities Transportation Co. as requested. ✓

Bay Cities Transportation Co. 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.

The Motion to Dismiss

The motion states that from the nature of the operation in question the proposed operation lies outside the certificating power of the Commission. This motion will be denied because it is obvious that the applicant is only requesting the issuance of intrastate rights, the granting of which is within the jurisdiction of this Commission.

In protestants' Memorandum of Points and Authorities it is asserted that (1) Federal legislation and the Constitution proscribe State jurisdiction over certification of "purely interstate commerce", (2) the exception clauses in the Motor Carrier Act do not confer such power on this Commission, and (3) the proviso allowing for registration does not empower a State Commission to issue a certificate for purely interstate commerce. While the Commission does not here challenge such contentions, it should be noted that they are not applicable to the instant proceeding.

O R D E R

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

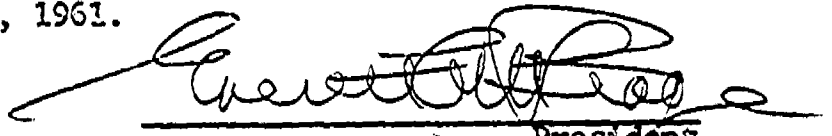
IT IS ORDERED:


1. That the Motion to Dismiss filed July 19, 1961, is denied.
2. That a certificate of public convenience and necessity be and it is granted to Bay Cities Transportation Co., a corporation, authorizing it to operate as a highway common carrier, as defined in Section 213 of the Public Utilities Code, between the points and over the routes as more particularly set forth in Appendices A and B attached hereto and made a part hereof.
3. 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-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, applicant shall establish the service herein authorized and file in triplicate, and concurrently make effective, tariffs satisfactory to the Commission.
4. That the certificate of public convenience and necessity granted in paragraph 2 of this order supersedes the highway common


carrier certificate granted by Decision No. 40431, as amended, which certificate is hereby revoked, said revocation to become effective concurrently with the effective date of the tariff filings required by paragraph 3(b) hereof.

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

Dated at San Francisco, California, this 25th
day of SEPTEMBER, 1961.



President




Commissioners

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

Bay Cities Transportation Co., a corporation, by the certificate of public convenience and necessity granted by the decision noted in the margin, is authorized to transport general commodities as follows:

1. Between San Francisco, on the one hand, and Oakland and Alameda, on the other hand, via San Francisco-Oakland Bay Bridge and streets and highways within said cities.
2. Between San Francisco, Oakland and Alameda, on the one hand, and Mare Island, on the other hand, via the following route:
 - (a) From San Francisco to Vallejo Junction via U.S. Highway 40, including connecting streets and highways within Oakland and Alameda;
 - (b) From Vallejo Junction to Vallejo via State Highway 29; and
 - (c) From Vallejo to Mare Island via Mare Island Causeway.
3. General commodities in sea vans or commodities, except as set forth in Paragraph 4 hereof, to be included in further movement by sea vans, between all points and places within the San Francisco-East Bay Cartage Zone as described in Appendix B attached hereto.

Issued by California Public Utilities Commission.

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4. In connection with transportation set forth in Paragraph 3 hereof, applicant shall not transport any shipments of:

- (a) Live animals.
- (b) Commodities in bulk.
- (c) Uncrated used household goods.
- (d) Office fixtures.
- (e) Commodities requiring protection from heat by the use of ice (either water or solidified carbon dioxide) or by mechanical refrigeration.

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.