

62119

**ORIGINAL**

Decision No. \_\_\_\_\_

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
 CHARLES DE BOER, d/b/a DE BOER TRUCK )  
 LINES, for enlargement and extension )  
 of existing operative rights and for )  
 authority to operate all of applicant's )  
 existing and proposed highway common )  
 carrier service as a consolidated and )  
 unified system for the transportation of )  
 property, under and pursuant to Sections )  
 Nos. 1063, 1064 and 1065 of the Public )  
 Utilities Code. )

Application No. 42977

William H. Kessler, for the applicant.

Robert L. Harmon, Boris H. Lakusta, and  
La Forest E. Phillips, Jr., of Graham,  
 James, and Rolph, appearing for:  
 Di Salvo Trucking Company, Delta Lines,  
 Inc., Fortier Transportation Co.,  
 Interlines Motor Express, Shippers Express,  
 Pacific Motor Trucking Co., Valley Motor  
 Lines and Valley Express Co., Associated  
 Transportation Co., Oregon-Nevada-  
 California Fast Freight, and Southern  
 California Freight Lines, Sterling  
 Transit Co., Inc., Merchants Express of  
 California, Willig Freight Lines,  
 California Motor Express and California  
 Motor Transport, Ltd., Sophie W. Jakobsen,  
 doing business as Trans-Bay Motor Express  
 Co., protestants.

O P I N I O N

This application was heard before Examiner Edward G. Fraser on February 28, March 1, April 17 and 18, July 10 and 11, 1961. It was submitted on September 29, 1961, after the presentation of oral argument. Copies of the application and the notice of hearing were served in accordance with the Commission's procedural rules.

Applicant is now operating under permitted authority as a radial highway common carrier, a highway contract carrier and a city carrier. Applicant is also a certificated highway common carrier presently transporting general commodities between the points and along the routes as follows:

1. San Francisco and Sacramento along Highway 40.
2. San Francisco and Tracy, Manteca and Stockton along Highway 50.
3. Sacramento and Fresno along Highway 99.
4. Certain Peninsula and East Bay points, on the one hand, and points on the above routes, on the other hand, provided that no local service shall be rendered between points within the San Francisco-East Bay Cartage Zone.

Applicant received this authority by Decision No. 60334, dated June 28, 1960, in Application No. 42023.

Applicant requests authorization to extend such highway common carrier operations to transport general commodities (with the usual exceptions) between the points and along the routes as follows:

1. Between points in San Francisco-East Bay Cartage Zone.
2. San Francisco and San Jose along Highway 101.
3. Oakland and San Jose along State Highway No. 17.
4. Sacramento and Roseville and Auburn along Highway 40.
5. Sacramento and Yuba City, Marysville, and Beale Air Force Base along alternate Highway 40.
6. Vernalis and Mendota along State Highway No. 33 and between Vernalis and Fresno along Highway No. 180.

The applicant also requests that he be allowed to operate within a 10-mile lateral radius of all routes and points he may be authorized to serve. Applicant proposes to charge rates which are, and will be, published in Pacific Coast Tariff Bureau Tariff No. 16 of C. R. Nickerson, Agent, Cal. P.U.C. No. 19, and to provide overnight service to, from, and between all points proposed to be served daily, except Saturdays, Sundays, and holidays. Special service is proposed to be provided on Saturday, if requested by the shipper.

The applicant testified he started operations as a permitted carrier on April 10, 1952. He obtained a certificate in 1956 which was amended and expanded in 1960. The applicant stated

that many of his customers have requested a daily service into the areas applied for in this application, and that applicant issue a single bill of lading for all goods carried on their accounts. Under the operating authorities the applicant now holds, he must list goods a customer has destined to an area he serves as a permitted carrier on one bill of lading and merchandise to be delivered in his certificated area on a second bill of lading. If his certificate is expanded this problem will be eliminated and he will be able to provide a competitive service with other recently certificated carriers.

The applicant operates out of a terminal and shop located at Ripon, California. He operates 5 van trucks, 6 van trailers, 4 tractors, a pickup truck and a service car. (Exhibit No. 2.) Applicant testified that 10 additional units of equipment have been purchased in addition to the 17 listed in his exhibit. He employs nine regular drivers and a mechanic who also drives part of the time; additional temporary drivers are hired when needed. The applicant presented his Statement of Financial Condition and a recent Statement of Income and Expenses. These documents indicate a sound financial structure and that past operations have been profitable.

Nine shipper witnesses testified for the applicant. They ship oil, hardware, waxed paper, canned foods, drug supplies, labels, tags, printed matter, canned milk, insulated copper wire, copper conduits and connectors. All use the applicant's present service and stated that they will use the new service if he is certificated. Several testified they prefer to ship with split delivery benefits,

which they will utilize if the application is granted. One witness testified that applicant is the only carrier who will give him Saturday deliveries. He wants this Saturday service in the areas the applicant hopes to serve.

Eight of the protestants presented evidence. Sophie W. Jakobsen, doing business as Trans-Bay Motor Express, Valley Motor Lines and Valley Express Co., Merchants Express of California, Pacific Motor Trucking Co., Delta Lines, Inc., California Motor Express and California Motor Transport, Ltd., Willig Freight Lines and Interlines Motor Express each submitted oral and documentary evidence. Five shipper witnesses testified that the area the applicant is seeking to serve is adequately covered now and does not need another certificated carrier.

All eight of these protestants maintain they have adequate equipment to handle any foreseeable increase in the public need for service throughout the area applied for by the applicant. All of them state they have equipment operating in this region at much less than full capacity, and several have trucks which are inoperative due to a lack of business. They claim they are losing business as a consequence of too many carriers being certificated in the areas where they operate. Two exhibits (Nos. 26 and 38) were introduced in evidence to inform this Commission that 70 carriers are now certificated in all or some part of the areas the applicant has applied to serve. The eight protestants state they are opposing this application because another certificated carrier is not needed in any part of the area for which authority is sought herein and because the applicant can serve all of his customers adequately under the operating authorities he now holds.

Findings and Conclusions

Upon consideration the Commission finds and concludes as follows:

1. The record does not show a need for the applicant's service within the San Francisco-East Bay Cartage Zone; along Highway 101 from San Francisco to San Jose; or along State Highway No. 17 between Oakland and San Jose.

2. The record does show that a substantial segment of the public requires the proposed service in all other respects. Accordingly, public convenience and necessity require that the application be granted in part and denied in part, all as more particularly set forth in the ensuing order.

3. The 17 items of equipment the applicant is now utilizing are sufficient for the institution of the extension of service granted herein and that this equipment is adequately serviced and dispatched with 9 regular drivers and a mechanic who drives part time.

4. The applicant is an experienced and responsible operator with 9 years as a permitted operator and 5 years as a certificated carrier.

5. The applicant has sufficient resources to provide financial stability for the extension of service authorized and appears likely to conduct his business efficiently and at a profit. ✓

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

An application having been filed, a public hearing having been held and based on the evidence therein adduced,

IT IS ORDERED:

1. That a certificate of public convenience and necessity be and it is granted to Charles De Boer, authorizing him to operate as a highway common carrier, as defined in Section 213 of the Public Utilities Code, between the points and over the routes more particularly 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, 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.

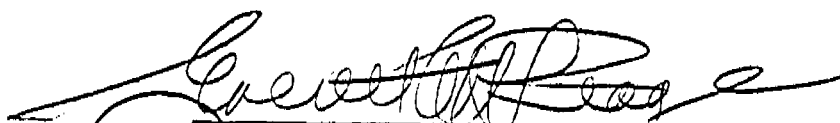
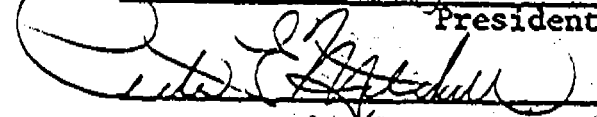
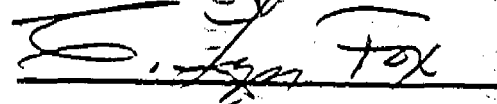

(b) Within one hundred twenty days after the effective date hereof, and on not less than ten days' notice to the Commission and to the public, applicant shall establish the service herein authorized and file in triplicate, and concurrently make effective, tariffs satisfactory to the Commission.

3. That the certificate of public convenience and necessity granted in paragraph 1 of this order supersedes the certificate of public convenience and necessity granted by Decision No. 60334, 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.

4. Except as herein authorized, the application is denied.

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

Dated at San Francisco, California, this 16<sup>th</sup> day of JANUARY, 1962.

  
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President  
  
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Commissioners

A. Charles De Boer, 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 on and within ten miles laterally of the following routes:
  - a. U.S. Highway 40 between San Francisco and Auburn, inclusive. (See Restriction.)
  - b. State Highway 24 between Oakland and Marysville, inclusive. (See Restriction.)
  - c. U.S. Highway 40 Alternate between its junction with U.S. Highway 40 near Davis and Marysville, inclusive.
  - d. U.S. Highway 99E between Sacramento and Marysville, including the off-route point of Beale Air Force Base.
  - e. U.S. Highway 50 between San Francisco and Stockton, inclusive. (See Restriction.)
  - f. State Highway 120 between its junction with U.S. Highway 50 and Manteca, inclusive.
  - g. U.S. Highway 99 between Sacramento and Fresno, inclusive.

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- h. State Highway 33 between its junction with U. S. Highway 50 near Tracy and Mendota, inclusive.
- i. State Highway 132 between Vernalis and Modesto, inclusive.
- j. Stanislaus County Road J16 between Westley and Keyes, inclusive, via Grayson and Gilman.
- k. Stanislaus County Road J17 between Patterson and Turlock, inclusive, via Hatch.
- l. State Highway 140 between Gustine and Merced, inclusive.
- m. State Highway 152 between Los Banos and Califa, inclusive.
- n. State Highway 180 between Mendota and Fresno, inclusive.

Through routes and rates may be established between any and all points described in subparagraphs a through n, above.

- 2. Between Oakland, Emeryville, Berkeley, Alameda, San Leandro, Albany, El Cerrito, San Pablo, Richmond, South San Francisco, San Bruno and Millbrae, on the one hand, and all points referred to in subparagraphs 1a through n above, on the other hand. (See Restriction.)

RESTRICTION: No local service shall be rendered between points within San Francisco-East Bay Cartage Zone as described in Appendix B attached hereto.

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B. Charles De Boer 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 refrigerator 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.

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9. Commodities which by reason of their abnormal size, weight or bulk require special equipment and handling.
10. Articles of extraordinary value as set forth in Rule 3 of Western Classification No. 77, J. P. Hackler, Tariff Publishing Officer, on the issue date thereof.
11. Commodities likely to contaminate or damage other freight.
12. Explosives as described in and subject to the regulations of Agent H. A. Campbell's Tariff No. 10.

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.