

ORIGINALDecision No. 64137

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of COLMA DRAYAGE, INC., a California corporation, for a certificate of public convenience and necessity to extend its operations as a Highway Common Carrier between the presently certificated points and Bakersfield, Oakdale, Lafayette and various intermediate points.

Application No. 43472

Marouam C. George, for applicant.
Graham, James and Rolph, by Boris H. Lakusta,
E. Myron Bull, Jr. and Raymond A. Greene, Jr.,
 for protestants.

O P I N I O N

Public hearings were held before Examiner Power on November 21 and 22, 1961, January 17, February 6, 19, 20 and 23 and March 12, 1962. It was submitted on March 12. The protestants are Associated Freight Lines, Blankenship Motors, Inc., California Motor Express, Ltd., et al., Constructors Transport Company, Delta Lines, Inc., Di Salvo Trucking Co., Garden City Transportation Co., Interlines Motor Express, Merchants Express of California, Oregon-Nevada-California Fast Freight, et al., Pacific Motor Trucking Company, Shippers Express, Sterling Transit Co., Inc., Valley Express Co. et al. and Willig Freight Lines.

Applicant is a highway carrier with city carrier, highway contract carrier and radial highway common carrier permits. It also possesses a certificate of public convenience and necessity in the San Francisco Territory and extending to Sacramento along U. S. Highway 40; to Modesto down U. S. Highway 99; between Oakland and Stockton along U. S. Highway 50; and from Crockett to Isleton via an unnumbered County Road and State Highways Nos. 24 and 12.

Applicant seeks to extend its certificate to Bakersfield via U. S. Highway 99; to Taft via State Highway 33; to Woodland and Nimbus from Sacramento; from Modesto to Waterford and Hughson; to Gilroy via U. S. Highway 101 and thence via State Highway No. 152 to Califa and to Los Gatos and Permanente from San Jose. It also seeks to fill out its authority in Contra Costa County. It proposes rates generally following those set forth in Minimum Rate Tariff No. 2.

Applicant presented two operating, and nine public witnesses. Two of these witnesses were employed by warehouses. One of these shipped for ten accounts, the other for nine. Thus, twenty-six accounts in all were covered.

The commodity range was wide. In the field of food and such products the witnesses shipped candy, bakery goods, flour, baker's supplies and equipment, bakery raw materials such as pie mix, fruits, canned and otherwise, flour, food starches, dextrans, canned fish and shellfish, chocolate, cocoa, hams, coated popcorn, marshmallows, dehydrated potatoes and cranberries.

In the field of paint and related items there was also considerable variety. Paint, paint bases, dyes and pigments, shellacs and linseed oil were shipped. Other commodities mentioned included glues and adhesives, rubber and cellulose cement, cork, asbestos and polyethylene and their products, chemicals, glass insulation, clothes pins, home pot cleaners (a wood and metal product), concrete specialties, lithographed items, such as labels, checks, brochures, postcards and forms and envelopes.

The public witnesses had been patrons of applicant's service for periods ranging from a few months to several years. They testified that the granting of the application would be

beneficial to them. Some cited specific points of benefit such as, personalized or expedited service, convenient pickup, reliability, and coordination with services Colma is performing for them now under its existing authorities. Applicant supplemented its shipper witness testimony with two exhibits (Nos. 1 and 2) which indicated the breadth of its current service and the shipments it had had to turn over to other carriers in July, 1961.

It is clear that one section of the public would find the service of applicant well suited to their transportation needs. The evidence relating to points in Kern County was not as extensive as that relating to points further north in the San Joaquin Valley. It appears that any rights granted to operate into that county could well be restricted to components of split pickup or split delivery shipments combined with other components consigned to points further north.

Protestants countered with eight witnesses and offered a ninth whose testimony was noted under a stipulation. Of those who testified two were presidents of their respective companies, three were general traffic managers, one was traffic manager, one was a sales manager and one was district sales manager.

These witnesses testified that the granting of an additional certificate would result in dilution of freight now available to existing common carriers. This testimony was based on an assumption which all of these witnesses appeared to make, that any traffic developed by Colma would have to be taken away from existing common carriers. If this assumption is incorrect, then the testimony in question loses most of its weight.

The Commission without some specific evidence cannot accept the assumption that the witnesses were making. It fails to account for the impact of the proprietary and permitted carriers on the market which Colma seeks to serve. The Commission's annual report for fiscal year 1960 reveals that in the seven major San Joaquin counties involved in this application, there were 2,610 carriers operating 14,068 vehicles. While it is of course true that many of these vehicles belong to presently certificated common carriers, there are a great many of them which do not. These figures by themselves do not disprove the assumption the witnesses have made but they do raise a doubt concerning it. None of the witnesses had any specific testimony to offer about lost accounts, nor were any studies made of the pattern of service in the area requested by Colma.

The Commission accordingly finds that public convenience and necessity require the granting of this application as provided by the following order.

Colma Drayage, Inc., a California corporation, 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.

Protestants filed a motion with the Commission requesting oral argument or the filing of briefs. In the Commission's opinion there is no issue of law and no novel issue of fact in this

application which would require special oral argument or briefs. The motion of protestants is denied.

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 that:

1. A certificate of public convenience and necessity be and it is granted to Colma Drayage, Inc., 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 more particularly set forth in Appendix A attached hereto and hereby 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-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, applicant shall establish the service herein authorized and file in the Commission's office in triplicate tariffs satisfactory to the Commission.

- (c) The tariff filings shall be made effective not earlier than thirty days after the effective date of this order on not less than thirty days' notice to the Commission and the public, and the effective date of the tariff filings shall be concurrent with the establishment of the service herein authorized.
- (d) The tariff filings made pursuant to this order shall comply with the regulations governing the construction and filing of tariffs set forth in the Commission's General Order No. 80-A.

3. Appendix A of Decision No. 60663 is amended by incorporating therein First Revised Pages 1 and 2, attached hereto, in revision of Original Pages 1 and 2, and by adding thereto Original Page 3, also attached hereto.

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

Dated at San Francisco, California, this 9th day of AUGUST, 1962.

[Signature] President
[Signature]
[Signature]
[Signature] Commissioners

Colma Drayage, Inc., 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 Cartago Zone as described in Appendix B attached hereto.
2. Between all points and places in Contra Costa County.
3. Between all points and places on and within three miles laterally of the following highways:
 - a. U.S. Highways 101 and 101 By-Pass between San Mateo and Gilroy, inclusive.
 - b. State Highway 17 between Hayward and San Jose, inclusive.
 - c. State Highway 9 between Hayward and Saratoga, inclusive, including the off-route point of Permanente.
 - d. Unnumbered highway between Saratoga and Los Gatos, inclusive.
 - e. U.S. Highway 40 between its junction with unnumbered highway near Crockett and Sacramento, inclusive.
 - f. U.S. Highway 50 between Sacramento and Nimbus, inclusive.
 - g. State Highway 16 between Sacramento and Woodland, inclusive.
 - h. State Highway 24 between Antioch and Sacramento, inclusive, including the off-route point of Thornton.
 - i. State Highway 12 between Rio Vista and Lodi, inclusive.
 - j. U.S. Highway 50 between Hayward and Stockton, inclusive.
 - k. State Highway 68 between Stockton and Lockeford, inclusive.

Issued by California Public Utilities Commission.

Decision No. 64137, Application No. 43472.

- l. State Highway 8 between Stockton and Bellota, inclusive.
- m. Unnumbered highway known as Escalon-Bellota Road and McHenry Road between Bellota and Modesto, inclusive.
- n. Unnumbered highway between Oakdale and junction with McHenry Road via Riverbank.
- o. State Highway 120 between its junction with U.S. Highway 50 near Lathrop and Oakdale, inclusive.
- p. State Highway 132 between Modesto and Waterford, inclusive.
- q. Unnumbered highway known as Santa Fe Road between Empire and Hughson, inclusive.
- r. U.S. Highway 99 between Sacramento and Greenfield, inclusive, including the off-route points of Sanger, Reedley, Dinuba, Visalia, Exeter, Lindsay, Porterville and Hanford (Subject to Note 1).
- s. State Highway 33 between its junction with U. S. Highway 50 near Tracy and Taft, inclusive (Subject to Note 1).
- t. U.S. Highway 399 between Taft and Greenfield, inclusive (Subject to Note 1).
- u. State Highway 152 between Gilroy and Califa, inclusive.

Applicant may use any and all roads, streets and highways between the areas described for operating convenience only.

Through routes and rates may be established between any and all points described in subparagraphs 1 through 3u above.

NOTE 1: Service to points and places in Kern County is restricted to split pickup shipments of which one or more component parts are picked up and split delivery shipments of which one or more component parts are delivered north of the northerly boundary line of Kern County.

Issued by California Public Utilities Commission.

Decision No. 64137, Application No. 43472.

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 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.

End of Appendix A

Issued by California Public Utilities Commission.

Decision No. 64137, Application No. 43472.