

ORIGINALDecision No. 66332

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
 WILLIAM B. WALTON, an individual
 doing business as WALTON DRAYAGE &
 WAREHOUSE CO., for an expansion and
 restatement of its certificate of
 public convenience and necessity
 authorizing highway common carrier
 service.

Application No. 44182

Handler, Baker and Mastoris, by Daniel W.
 Baker, for applicant.
 Graham, James & Rolph, by Boris H. Lakusta
 and Raymond A. Greene, Jr., for protestants.
John R. Laurie, for the Commission staff.

OPINION ON REHEARING

The original decision in this matter (No. 63852) was issued on June 26, 1962. Both parties filed petitions for rehearing or modification of that decision. Rehearing was granted by the Commission on October 30, 1962. Rehearing was held in San Francisco on May 21 and 28, 1963, and the matter was submitted subject to the receipt of proposed findings to be filed by protestant. These have been received and the matter is ready for decision.

At the time this application was filed, applicant, in addition to the usual permits, possessed a certificate of public convenience and necessity authorizing the transportation of general commodities, with exceptions, in the San Francisco-East Bay Cartage Zone. By this application he seeks to extend his certificated service south to San Jose and Los Gatos, north to Novato and Vallejo and east to Livermore and Antioch. Decision No. 63852 authorized service between Alameda, on the one hand, and points in the requested outside area, on the other hand. Later, applicant requested an interim limitation from Alameda City to his own warehouse. This

request was made because protestants' petition for rehearing stayed the certificate order but raised no issue concerning service to and from the warehouse. The request was granted on December 18, 1962. Applicant, by suffering this further restriction, was able to commence service.

The protestants on rehearing were the same as those in the original hearings except that the protest of Oregon-Nevada-California Fast Freight and Southern California Freight Lines was withdrawn. Interlines Motor Express and Blankenship Motors have merged under temporary authority. The merged firm withdrew its protest after the rehearing, namely, on June 5, 1963. Fortier Transportation Company has been acquired by an interstate carrier. It appears that the Fortier protest is still in effect.

The protestants, other than those named above, are: California Motor Transport Co.; Delta Lines, Inc.; Di Salvo Trucking Co.; Garden City Transportation Co.; Merchants Express of California; Valley Motor Lines, Inc.; and Willig Freight Lines. All except Garden City have extensive rights in the State.

The fundamental issues presented by this record are three in number. They are:

1. Do public convenience and necessity require the proposed service?
2. Are the present services adequate?
3. If the sought certificate is granted, will service presently available in the requested area be impaired or withdrawn to the injury of the shipping public in that area?

In the original certificate grant public convenience and necessity were determined to exist between Alameda and the sought points. Under the circumstances present here revision of this holding is a necessity. Alameda, though politically an independent

city, is industrially and commercially part of a larger community. The present limitation to applicant's warehouse is objectionable because it involves the publication of rates available to some shippers but not to others although they may ship the same commodity from the same city. A restriction of this kind (i.e., to the warehouse) is contrary to the fundamental duty of a common carrier and can be tolerated only on a temporary basis to meet an emergency situation.

The restriction to Alameda City received considerable attention in applicant's petition for modification or rehearing. His principal contentions were that the limitation of service to this city was contrary to many other Commission decisions and to Commission policy and that it is inconsistent with the evidence herein.

These points are well taken.

As early as 1936 the Commission set up a so-called East Bay Drayage area. This area included Alameda and minimum rates were established for that area. About ten years later these rates were incorporated in a separate minimum rate order. In December 1954 the Commission issued its Cartage Zone Decision (53 Cal.P.U.C. 696). In it we said (p. 701) "...So far as transport operations are concerned, city boundaries appear to have become completely meaningless in the Bay Area". Clearly our Decision No. 63852 conflicts with this holding. The limitation to Alameda also conflicts with our holdings in many individual applications.

It appears also that the territorial limitation conflicts with the evidence given by Walton's general manager and by some of the shipper witnesses. Six of these witnesses do not ship from Alameda nor do they store at applicant's warehouse. These six wanted the same kind of service as the other nine. One of the nine,

as a matter of fact, ships from two of its own warehouses in Oakland as well as from applicant's warehouse in Alameda.

What was this desired service? Applicant affords same-day delivery on about 75 percent of the shipments it picks up. Direct service (i.e., the carrying of property from point of origin to point of destination without handling through a terminal) was another and the ready availability of power tailgate equipment was a third.

Protestants concededly do not provide service of this kind although a few protestant witnesses expressed the willingness of their companies to do so, particularly in the case of truckload shipments.

These protestant witnesses testified that they receive little call for same-day service. However, this may be due to the fact that they either do not render, or do not solicit, traffic requiring such service. It may be that shippers do not associate protestants with services of this kind, and, when they desire such services, request them from a local carrier of the Walton type. The testimony offered herein is to the effect that shippers do desire such services and have been getting them from Walton.

On the question of adequacy of service the record reveals some serious deficiencies. For one thing there is a question concerning the weight to be accorded to the protestant witnesses. All of them are connected with the protesting companies and thus are most familiar with long line carrier operations. As such, they cannot speak from the shipper standpoint. The examinations of these witnesses do not show whether any of them had been connected with shippers in the past.

A fair reading of the shipper witnesses' testimony would lead to the conclusion that the service in the affected area is not

adequate without Walton. To be sure, the evidence on behalf of protestants contradicts this to some extent. However, as we noted above, the protestants' testimony on this point is not too compelling.

The last of the major issues is the one dealing with the possibility of damage to existing service. None of those local carriers who serve only in the requested area protested. Therefore, the record is devoid of evidence that would show the effect of granting this application on the carriers most affected. The protestants are, without exception, long line carriers whose operations would be affected only in small part by such a grant.

The protestants did put in some testimony on the effect of competition on their finances. However, this testimony was speculative. So far as the record shows, no studies or checks were made of lost accounts. As a result, their unanimous conclusion that the certification of new carriers would cause them to lose accounts cannot be accepted.

The staff opposed two proposals in the petition for rehearing or modification. First, applicant asks deletion of the word "lateral" from the phrase "lateral miles". He asserts that the use of the word "lateral" will create deadends. The staff points out that omission of "lateral" will cause confusion. The staff was of the opinion that the problem could be solved by use of "lateral miles" from highways named and "radial miles" from territories and terminal cities. In the Commission's considered opinion the staff proposal meets the objectives of applicant and it will be adopted.

Applicant seeks permission to file tariffs on ten rather than the usual thirty days' notice. The reason, as given by applicant, is that he is now a participant in a tariff already on file.

This tariff includes rates to the sought points. Therefore, applicant argues, it will not be necessary to check the rates. Only points need to be verified. The Commission does not agree. The thirty-day period is set forth in Section 491 of the Public Utilities Code. True, the Commission may shorten the time for "good cause shown". However, in our opinion the matters and things alleged by applicant do not constitute good cause in the circumstances present here.

Upon consideration of the evidence, the Commission finds that:

1. Applicant possesses the experience, equipment, personnel and financial resources to institute and maintain the service hereinafter authorized.
2. The shippers who have made use of applicant's service do not now have, and have not had, adequate transportation service available from protestants, or otherwise, to satisfy said shippers' requirements in an efficient and speedy manner.
3. The shippers who make use of applicant's services will be afforded advantages such as same-day delivery, direct service and the ready availability of power tailgate equipment.
4. A grant of the application will not adversely affect protestants.
5. The City of Alameda forms a part of the San Francisco Bay industrial-commercial community to such an extent that to authorize transportation from Alameda and not from adjoining cities would be preferential and discriminatory in practice.
6. To authorize intercity transportation from one structure within an incorporated city and not from other structures or sections of the same city is preferential, discriminatory and in derogation of a common carrier's duty to serve all members of the shipping public equally.

7. The area in which operating rights are requested by this application forms a single economic community united by its proximity to San Francisco Bay and within which businesses can move freely without cutting themselves off from established markets or essential transportation.

8. Public convenience and necessity require that applicant be authorized to transport general commodities with certain specified exceptions within the areas and between the points set forth in the application.

9. No good cause has been shown for shortening the time of notice of tariff filings provided by Section 491 of the Public Utilities Code.

The Commission concludes that the application should be granted as hereinafter provided and that a period of thirty days for notice of tariff filings hereunder should be required. ✓

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.

ORDER ON REHEARING

IT IS ORDERED that:

1. Appendix A to Decision No. 63852 dated June 26, 1962, as amended by Decision No. 64680 dated December 18, 1962, is hereby further amended as follows:

(a) By incorporating in said Appendix A Second Revised Page 1 attached hereto, in revision of First Revised Page 1.

(b) By striking from said Decision No. 63852 Appendices B and C thereto.

(c) By incorporating therein Appendix B attached hereto.

2. Said Decision No. 63852, as further amended herein, is continued in full force and effect.

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

Dated at San Francisco, California, this 19th day of NOVEMBER, 1963.

William L. Bennett
President

Frederick B. Holtzoff

Commissioners

Commissioner George G. Grover
present but not voting.

William B. Walton is authorized to transport general commodities as follows:

1. Between all points and places within or within five miles radially of the San Francisco Territory, as described in Appendix B attached hereto.
2. Between all points and places on and within five miles laterally of the following highways and within five miles radially of all terminal points named:
 - (a) U.S. Highway 101 between San Francisco and Novato, inclusive.
 - (b) State Highway 17 between San Rafael and Richmond, inclusive.
 - (c) U.S. Highway 40 between Richmond and Vallejo, inclusive.
 - (d) State Highway 4 between Pinole and Antioch, inclusive.
 - (e) State Highway 24 between Oakland and Antioch, inclusive.
 - (f) U.S. Highway 50 between Hayward and Livermore, inclusive.
 - (g) State Highway 21 between Fremont and Martinez, inclusive.
3. Between all points and places set forth in paragraph 1, above, and all points and places set forth in paragraph 2, above.

Lateral and radial miles referred to in this Appendix are statute miles of 5,280 feet each, measured in a straight line regardless of terrain features.

Applicant, in performing the service herein authorized, may make use of any and all streets, roads, highways, toll bridges and ferries necessary or convenient for the performance of said service.

Issued by California Public Utilities Commission

Decision No. 66332, Application No. 44182.

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 Hillisdale Avenue; easterly along Hillisdale 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.