

ORIGINAL

Decision No. 77942

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application)
of J. D. DRAYAGE CO., a corpora-)
tion, for a certificate of public)
convenience and necessity to)
operate as a Highway Common Car-)
rier for the transportation of)
general commodities between San)
Francisco, Los Gatos, San Jose,)
Livermore and Vallejo and inter-)
mediate points.)

Application No. 51541
(Filed December 9, 1969)

Marquam C. George, for J. D. Drayage Company,
applicant.
Graham & James by Boris H. Lakusta and David J. Marchant, for Delta Lines, Inc.; Garden City Transportation; Pacific Motor Trucking Co.; Ringsby Truck Lines and Ringsby-Pacific, Ltd.; Transbay Motor Express; and Walkup's Merchants Express, protestants.

O P I N I O N

This is an application by J. D. Drayage Co. (hereinafter referred to as JD) seeking a certificate of public convenience and necessity to operate as a highway common carrier between San Francisco, Los Gatos, San Jose, Livermore and Vallejo, including intermediate points.

A duly noticed public hearing was held in this matter before Examiner Jarvis in San Francisco on March 2, 3, 4, 31 and April 1, 1970. The matter was submitted on the date last mentioned.

JD presently operates as a radial highway common carrier and contract carrier under permits issued by this Commission. It commenced business as a sole proprietorship in 1963. In 1968 its president and sole shareholder, who has been in the transportation

field since 1953, transferred the assets of the business to the applicant corporation. JD has a terminal in San Francisco, and has approximately 19 units of operating equipment. It employs 8 drivers on a regular basis, 2 full-time office workers and a part-time rate clerk. Other personnel are added when necessary. JD had operating revenues of \$193,288 and a net profit of \$20,580 for the period from January 1, 1969 to September 30, 1969.

JD also seeks herein corresponding authority to the intrastate authority herein requested leading to a certificate of registration to conduct operations in interstate or foreign commerce under Section 206(a)(6) of the Interstate Commerce Act. Notice that the application seeks interstate rights was published in the Federal Register on February 28, 1970.

The material issues presented herein for determination are: (1) Do public convenience and necessity require that JD be granted the requested intrastate operating authority? (2) Do public convenience and necessity require that JD be granted the requested interstate operating authority?

If the requested operating authority is granted, JD proposes to furnish same-day delivery between San Francisco and San Jose and all intermediate points and between San Francisco, Richmond and Hayward and all intermediate points. Overnight delivery will be made between all other points. No service will be provided on Saturdays, Sundays or holidays.

Eleven shipper witnesses testified in behalf of JD. Their testimony may be summarized, in general, as indicating that they presently use JD under its contract or radial permit authority; that JD gives good service; that they often have a need for same-day delivery; that JD has met their needs within the limits of its

present authority and that if the requested certificate were granted they would use JD within the certificated area. Six of the witnesses indicated that they shipped or received shipments in interstate commerce and that, if the requested interstate authority were granted, they would use JD for interstate shipments for substantially the same reasons given for their support of the request for intrastate authority. Several of the witnesses indicated that they had limited loading and unloading facilities and that, if the requested authority were granted, they could use JD for additional transportation and reduce the congestion in their freight areas. It was also stipulated among the parties that if 13 additional witnesses were called they would give similar testimony with respect to JD's request for intrastate and interstate operating authority.

Witnesses representing six of the protestants testified in opposition to the application. This testimony may be summarized, generally, as indicating that the protestants were not operating at full capacity and that they feared, if the application were granted, there would be a further dilution of their traffic.

The record indicates that JD, as a permitted carrier, has provided good service for various shippers and has usually provided same-day service on request and, otherwise, overnight delivery. On the other hand, some of the protestants will provide same-day service, on occasion, in certain areas; whereas others provide in their tariffs for an additional charge for such service. Furthermore, while the protestants indicate apprehension of additional certificated competition, they concede that their competition includes permitted carriers whose competition would not be affected by this application.

Some of the shippers who testified in support of the application indicated that they had limited loading and unloading

facilities, that JD gave them good service and that if the application were granted they would make greater use of JD, thereby helping to alleviate the congestion in their loading and unloading areas. Other shippers testified about poor service from some of the highway common carriers serving in the area requested by JD. These shippers also testified that JD gave good service and that if the application were granted they would use JD in the requested area.

The Commission is of the opinion that the application should be granted for the reasons which follow. JD has been a successful permitted carrier for a number of years and the change in the character and scope of its authority herein requested will not injure any presently certificated highway common carrier in any significant degree. Granting the requested authority would permit shippers presently using the services of JD to utilize it in a greater area, thereby helping to eliminate congestion in limited loading and unloading areas of some of these shippers. JD proposes to provide same-day pickup and delivery to certain portions of the area for which authority is herein requested. The record indicates that JD can put this proposal into effect because it presently is furnishing this type of service as a permitted carrier. There is a need for this type of service by a significant portion of the shipping public and granting the authority herein requested will help meet that need. The overwhelming number of shipper witnesses who gave testimony in the support of the application indicated that they shipped or received shipments in interstate commerce as well as intrastate commerce. Therefore, interstate as well as intrastate authority will be granted.

The Commission makes the following findings and conclusions:

Findings of Fact

1. JD presently operates as a radial highway common carrier and highway contract carrier under permits issued by this Commission. JD commenced business in 1963 as a sole proprietorship. In 1968 its president and sole shareholder transferred the assets of the business to the applicant corporation.

2. JD has a terminal in San Francisco. It has approximately 19 units of operating equipment. It employs 8 drivers on a regular basis, 2 full-time office workers and a part-time rate clerk. Other personnel are added when necessary.

3. During the period from January 1, 1969 to September 30, 1969 JD had operating revenues of \$193,288 and a net profit of \$20,580.

4. There is a need by a significant portion of the shipping public for same-day pickup and delivery of shipments in intrastate commerce and interstate commerce within the area for which authority is sought. JD proposes to furnish same-day pickup and delivery service between San Francisco and San Jose and all intermediate points and between San Francisco, Richmond and Hayward and all intermediate points. Such service would help meet the need of the afore-said members of the shipping public. JD has the ability to provide the proposed same-day pickup and delivery service.

5. Some shippers and receivers of freight presently served by JD under its radial highway common carrier and contract carrier permits have limited facilities for the loading and unloading of freight which is shipped or received in intrastate and interstate commerce. If the authority requested herein were granted these

customers would make greater use of JD thereby helping to reduce the congestion at their loading and unloading areas.

6. Some shippers and receivers of freight in the area for which authority is herein sought have had poor service, on occasion, in intrastate and interstate shipments from some of the highway common carriers presently authorized to serve the area.

7. JD has the ability, including financial ability, to provide the intrastate and interstate service for which authority is herein requested.

8. Granting of the intrastate and interstate authority herein requested will have no significant impact on any highway common carrier having authority to serve the area here under consideration.

9. Notice that this application was filed and that it seeks interstate rights was published in the Federal Register on February 28, 1970.

10. Public convenience and necessity require that JD be awarded a certificate of public convenience and necessity to operate as a highway common carrier between the points and over the routes more particularly set forth in Appendix A attached hereto and by this reference made a part hereof.

11. Public convenience and necessity require that JD be granted interstate authority corresponding to the intrastate authority herein granted leading to a certificate of registration to conduct operations in interstate or foreign commerce under Section 206(a)(6) of the Interstate Commerce Act.

Conclusions of Law

1. JD should be granted a certificate of public convenience and necessity to operate as a highway common carrier between the points and over the routes more particularly set forth in Appendix A attached hereto and by this reference made a part hereof.

2. JD should be granted interstate authority corresponding to the intrastate authority herein granted leading to a certificate of registration to conduct operations in interstate or foreign commerce under Section 206(a)(6) of the Interstate Commerce Act.

3. J. D. Drayage 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.

O R D E R

IT IS ORDERED that:

1. A certificate of public convenience and necessity is granted to J. D. Drayage 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 particularly set forth in Appendix A attached hereto and made a part hereof.

2. J. D. Drayage Co., a corporation, is granted interstate authority corresponding to the intrastate authority granted in ordering paragraph 1 of this order permitting it to receive a certificate of registration to conduct operations in interstate or foreign commerce under Section 206(a)(6) of the Interstate Commerce Act.

3. In providing service pursuant to the certificate herein granted, applicant shall comply with and observe the following service regulations. Failure so to do may result in a cancellation of the operating authority granted by this decision.

- a. Within thirty days after the effective date hereof, applicant shall file a written acceptance of the certificate herein granted. Applicant is placed on notice that, if it accepts the certificate of public convenience and necessity herein granted, it will be required, among other things, to comply with and observe the safety rules of the California Highway Patrol and the insurance requirements of the Commission's General Order No. 100-F.
- b. Within one hundred twenty days after the effective date hereof, applicant shall establish the service herein authorized and file tariffs, in triplicate, in the Commission's office.
- 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.
- e. Applicant shall maintain its accounting records on a calendar year basis in conformance with the applicable Uniform System of Accounts or Chart of Accounts as prescribed or adopted by this Commission and shall file with the Commission, on or before March 31 of each year, an annual report of its operations in such form, content, and number of copies as the Commission, from time to time, shall prescribe.

- f. Applicant shall comply with the requirements of the Commission's General Order No. 84-Series for the transportation of collect on delivery shipments. If applicant elects not to transport collect on delivery shipments, it shall make the appropriate tariff filings as required by the General Order.

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

Dated at San Francisco, California, this 10th day of NOVEMBER, 1970.

Chairman

Alvin

William J. ...

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Commissioner

Commissioner J. P. Vukasin, Jr., being necessarily absent, did not participate in the disposition of this proceeding.

J. D. Drayage Co., a corporation, by the certificate of public convenience and necessity granted in the decision noted in the margin, is authorized to conduct operations as a highway common carrier as defined in Section 213 of the Public Utilities Code for the transportation of general commodities as follows:

1. Between San Francisco and San Jose and all points intermediate thereto, and between said intermediate points via U.S. Highway 101, State Highway 82 and Interstate Highway 280.
2. Between San Jose and Los Gatos and all points intermediate thereto, and between said intermediate points via State Highway 17.
3. Between Los Gatos and Sunnyvale and all points intermediate thereto, and between said intermediate points via State Highways 9 and 85.
4. Between San Jose and Oakland and all points intermediate thereto, and between said intermediate points via State Highway 17, State Highway 238, Interstate Highway 580 and U.S. Highway 50.
5. Between San Francisco and Vallejo and all points intermediate thereto, and between said intermediate points via Interstate Highway 50.
6. Between Vallejo and Fremont and all points intermediate thereto, and between said intermediate points via Interstate Highway 680.
7. Between San Leandro and Livermore and all points intermediate thereto, and between said intermediate points via Interstate Highway 580 and U.S. Highway 50.
8. Between Livermore and Pleasanton and all points intermediate thereto and between said intermediate points via State Highway 84 and Stanley Boulevard.
9. Between all points and places within the County of Contra Costa.

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10. Between any and all routes and points set forth in paragraphs 1 through 9, inclusive.
11. Between all points and places within five miles of the routes and points set forth in paragraphs 1 through 9.
12. For operating convenience only, all roads, streets and highways connecting the above points and routes.

Carrier shall not transport any shipments of:

1. Used household goods, personal effects and office, store and institutional furniture, fixtures and equipment not packed in salesmen's hand sample cases, suitcases, overnight or boston bags, brief cases, hat boxes, valises, traveling bags, trunks, lift vans, barrels, boxes, cartons, crates, cases, baskets, pails, kits, tubs, drums, bags (jute, cotton, burlap or gunny) or bundles (completely wrapped in jute, cotton, burlap, gunny, fibreboard, or straw matting).
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 semi-trailers 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. Portland or similar cements, in bulk or in packages, when loaded substantially to capacity either alone or in combination with powdered limestone.
10. Trailer coaches and campers, including integral parts and contents when the contents are within the trailer coach or camper.
11. Bank bills, coin or currency, deeds, drafts, jewelry, other than costume or novelty jewelry, notes or valuable papers of any kind; postage stamps or letters and packets of letters with or without postage stamps affixed; precious metals or articles manufactured therefrom; precious stones; revenue stamps, antiques; or other related or unrelated, old, rare, or precious articles of extraordinary value, nor any of such articles as premiums accompanying other articles.
12. Explosives, dangerous articles and other hazardous commodities as described in Motor Carriers' Explosive and Dangerous Articles Tariff 14, American Trucking Associations, Inc., Agent, MF-ICC 15.

END OF APPENDIX A

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