

ORIGINAL

Decision No. 79793

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of DURKEE DRAYAGE COMPANY, a corporation, to sell certificate of public convenience and necessity to operate as a highway common carrier together with assets used and useful in the public service; of STANLEY FENTON, an individual who will do business as DURKEE DRAYAGE COMPANY, to purchase said certificate of public convenience and necessity and assets.

Application No. 53112
(Filed January 26, 1972)

O P I N I O N

Durkee Drayage Company, a corporation, requests authority to sell and transfer, and Stanley Fenton requests authority to purchase and acquire, a certificate of public convenience and necessity authorizing operations as a highway common carrier as well as certain other property.

The certificate was transferred to Durkee Drayage Company, a corporation, by Decision No. 68736, dated March 17, 1965, in Application No. 47327 and authorizes the transportation of general commodities between various points and places in the San Francisco-East Bay Cartage Zone. The transfer also includes 16 van type motor vehicles and office equipment. The cash consideration is \$55,000. In addition thereto the sales agreement provides for a payment of \$30,000 to Vincent Durkee, sole stockholder of applicant seller, as consideration for a covenant not to compete, payable over a period of three years.

As of January 15, 1972, applicant purchaser indicated a net worth in the amount of \$120,000.

After consideration the Commission finds that the proposed transfer would not be adverse to the public interest. Nothing in this decision shall be construed as authorizing Stanley Fenton to issue or to assume any evidence of indebtedness or to encumber any public utility property, or indicating that the Commission would grant any of such authority if requested.

The order which follows will provide for, in the event the transfer is consummated, the revocation of the certificate held by Durkee Drayage Company and the issuance of a certificate in appendix form to Stanley Fenton. A public hearing is not necessary.

The authorization herein granted shall not be construed as a finding of the value of the rights and properties herein authorized to be transferred.

Stanley Fenton 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. 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. On or before December 1, 1972, Durkee Drayage Company may sell and transfer, and Stanley Fenton may purchase and acquire, the operative rights and property referred to in the application.

2. Within thirty days after the consummation of the transfer herein authorized, purchaser shall notify the Commission, in writing, of that fact and within said period shall file with the Commission a true copy of any bill of sale or other instrument of transfer which may be executed to effect said transfer.

3. Purchaser shall amend or reissue the tariffs on file with the Commission, naming rates and rules governing the common carrier operations herein to show that he has adopted or established, as his own, said rates and rules. The tariff filings shall be made effective not earlier than five days after the effective date of this order on not less than five days' notice to the Commission and the public, and the effective date of the tariff filings shall be concurrent with the consummation of the transfer herein authorized. The tariff filings made pursuant to this order shall comply in all respects with the regulations governing the construction and filing of tariffs set forth in the Commission's General Order No. 80-A. Failure to comply with and observe the provisions of General Order No. 80-A may result in a cancellation of the operating authority granted by this decision.

4. On or before the end of the third month after the consummation of the transfer as herein authorized, purchaser shall cause to be filed with the Commission, in such form as the Commission may prescribe, an annual report, or reports, related to the operations of the seller for the period commencing with the first day of the current year to and including the effective date of the transfer.

5. In the event the transfer authorized in paragraph 1 hereof is consummated, a certificate of public convenience and necessity is granted to Stanley Fenton, 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 particularly set forth in Appendix A attached hereto and made a part hereof.

6. The certificate of public convenience and necessity granted in paragraph 5 of this order shall supersede the certificate of public convenience and necessity granted by Decision No. 68736, dated March 17, 1965, in Application No. 47327, which certificate is revoked effective concurrently with the effective date of the tariff filings required by paragraph 3 hereof.

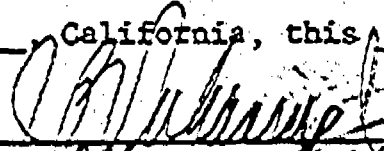
7. Within thirty days after the transfer herein authorized is consummated, purchaser shall file a written acceptance of the certificate herein granted. Purchaser is placed on notice that, if he accepts the certificate of public convenience and necessity herein granted, he will be required, among other 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-Series.

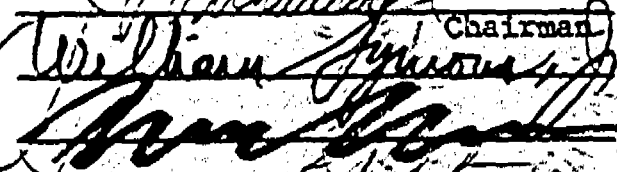
8. Purchaser shall maintain his accounting records on a calendar year basis in conformance with the applicable Uniform System of Accounts or Chart of Accounts as prescribed or adopted by this Commission and shall file with the Commission, on or before March 31 of each year, an annual report of his operations in such form, content, and number of copies as the Commission, from time to time, shall prescribe.

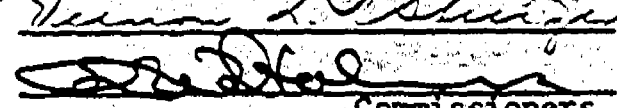
9. Purchaser shall comply with the requirements of the Commission's General Order No. 84-Series for the transportation of collect on delivery shipments. If purchaser elects not to transport collect on delivery shipments, he shall make the appropriate tariff filings as required by the General Order.

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

Dated at San Francisco California, this 14th
day of MARCH, 1972.



Chairman




Commissioners

Stanley Fenton, an individual, doing business as, Durkee Drayage Company, by the certificate of public convenience and necessity granted by 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 except as follows:

1. Used household goods and personal effects not packed in accordance with the crated property requirements set forth in Item 5 of Minimum Rate Tariff 4-B.
2. Livestock, viz.: barrows, boars, bulls, butcher hogs, calves, cattle, cows, dairy cattle, ewes, feeder pigs, gilts, goats, heifers, hogs, kids, lambs, oxen, pigs, rams (bucks), sheep, sheep camp outfits, sows, steers, stags, swine, or wethers.
3. 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, bus chassis.
4. Commodities requiring the use of special refrigeration or temperature control in specially designed and constructed refrigerated equipment.
5. Liquids, compressed gases, commodities in semiplastic 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. Explosives.
9. Furniture, uncrated, new.
10. Trailer coaches and campers, including integral parts and contents when the contents are within the trailer coach or camper.

Issued by California Public Utilities Commission.

Decision No. 79793, Application No. 53112.

Applicant shall conduct operations over and along any and all streets, roads, highways and bridges between all points and places within the limits of the San Francisco-East Bay Cartage Zone 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 South 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

Issued by California Public Utilities Commission.

Decision No. 79793, Application No. 53112.

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 20 (Contra Costa County); thence westerly along County Road 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 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 shoreline of San Pablo Bay; thence southerly and westerly along the shoreline 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 shoreline to the Pacific Ocean; thence southerly along the shoreline of the Pacific Ocean to the point of beginning.

The foregoing description includes the following points or portions thereof:

Alameda	El Cerrito	Oakland Pier	San Leandro
Alameda Pier	Elkton	Ocean View	San Lorenzo
Albany	Elmhurst	Piedmont	San Mateo
Baden	Emeryville	Point Castro	San Pablo
Bay Farm Island	Ferry Point	Point Fleming	South San
Bayshore	Fruitvale	Point Isabel	Francisco
Berkeley	Government Island	Point Molate	Stege
Bernal	Hayward	Point Orient	Tanforan
Brisbane	Lawndale	Point Potrero	Treasure
Broadway	Lomita Park	Point Richmond	Island
Burlingame	Melrose	Point San Pablo	Union Park
Camp Knight	Millbrae	Richmond	Visitation
Castro Valley	Mills Field	Russell City	Westlake
Colma	Mt. Eden	San Bruno	Winehaven
Daly City	Oakland	San Francisco	Yerba Buena
East Oakland	Oakland Municipal Airport	San Francisco International Airport	Island

(END OF APPENDIX A)

Issued by California Public Utilities Commission.

Decision No. 79793, Application No. 53112.