

Decision No. 79857

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
JAMES R. MULLENS, an individual,)
HOWARD W. HESTER, an individual, and)
BERNARD J. GLASER, an individual,)
doing business as a partnership under)
the fictitious name of ACTION DRAYAGE)
CO., for a certificate of public con-)
venience and necessity authorizing)
the transportation of general com-)
modities between points within)
San Francisco Territory and other)
designated points.)

Application No. 53096
(Filed January 14, 1972)

O P I N I O N

Applicants request a certificate of public convenience and necessity for the transportation of general commodities, with the usual exceptions, between points and places in the San Francisco Territory and over the routes and between the points set forth in Appendices A and B of this decision. Applicants presently operate pursuant to highway contract carrier and radial highway common carrier permits which authorize the transportation of general commodities, with the usual exceptions, between all points in California except those wholly within San Diego, Los Angeles, and Orange Counties.

Applicants' proposed transportation will be daily, Monday through Friday. Time in transit for this service will be both same day and overnight, depending upon the time of day requests for service are received. The rates to be assessed will be on the same scale as those contained in the Commission's Minimum Rate Tariff 2 and other applicable minimum rate tariffs. Tariffs containing such rates and related rules and regulations will be filed upon receipt of the sought certificate.

Applicants propose to perform service in both intrastate and interstate commerce, wholly within the State of California, and, therefore, request that this Commission specifically find that the public convenience and necessity require the service in interstate and foreign commerce, as well as in intrastate commerce. Applicants have the financial ability to render the proposed service and applicants possess a substantial fleet of equipment suited for the proposed service.

Applicants assert that public convenience and necessity require the proposed service for the following reasons:

Applicants first commenced operations as a for-hire motor carrier within the State of California in 1967. At that time, and continuously since, applicants have conducted operations, primarily in the area known as the San Francisco Territory, as a permitted carrier. When applicants first commenced operations, they utilized one piece of operating equipment and served a limited number of shippers. Since that time, they have substantially increased their fleet of operating equipment and their scope of operations. They now serve a large number of shippers on virtually a day-to-day basis between fixed termini and over regular routes to and between all points in the San Francisco Territory and points beyond said Territory.

Applicants' expansion is attributable to the large-scale population influx in the area covered in this application, and it is expected that such expansion will continue to increase due to the expected population increases. As a result of this increased population and a continued increase in demand for their services, applicants have found themselves in the position of either being compelled to curtail their service or ask for increased authority commensurate with the service which they are presently making available to the shipping public.

The service which they have provided, and propose to provide, is responsive to the needs of the shipping public. Applicants are desirous of acquiring additional authority to serve both intrastate, interstate and foreign commerce to allow them to continue their operations in response to increased demands without extending themselves to the point that they would be operating in violation of their presently existing authority. Therefore, applicants respectfully request authority to operate in intrastate, interstate and foreign commerce in the area requested herein.

A public hearing is not necessary.

Findings of Fact

1. Applicants operate as a highway contract carrier and radial highway common carrier within points and places in the San Francisco Territory and adjacent areas.

2. Applicants have been providing an almost daily service of general commodities within the San Francisco Territory and adjacent areas. This service is approaching a certificated carrier type of service.

3. Applicants have the experience, equipment, personnel, and financial resources to institute and maintain the service authorized herein.

4. Applicants' service is needed in interstate and foreign commerce within the same area that it serves in intrastate commerce.

5. Public convenience and necessity require that the proposed service be authorized in intrastate commerce, interstate and foreign commerce.

The Commission concludes that the application should be granted.

Applicants are 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. A certificate of public convenience and necessity is granted to James R. Mullens, Howard W. Hester, and Bernard J. Glaser, doing business as a partnership under the fictitious name of Action Drayage Co., authorizing them to operate in intrastate commerce as a highway common carrier as defined in Section 213 of the Public Utilities Code between the points particularly set forth in Appendices A and B attached hereto and made a part hereof.

2. In providing service pursuant to the certificate herein granted, applicants 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, applicants shall file a written acceptance of the certificate herein granted. Applicants are placed on notice that, if they accept the certificate of public convenience and necessity herein granted, they 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.
- (b) Within one hundred twenty days after the effective date hereof, applicants 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-Series.
- (e) Applicants shall maintain their 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 their operations in such

form, content, and number of copies as the Commission, from time to time, shall prescribe.

- (f) Applicants shall comply with the requirements of the Commission's General Order No. 84-Series for the transportation of collect on delivery shipments. If applicants elect not to transport collect on delivery shipments, they 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 28th day of MARCH, 1972.

William J. Sullivan Chairman
John P. [illegible]
James L. [illegible]
[illegible] Commissioners

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

James R. Mullens, Howard W. Hester and Bernard J. Glaser, individuals, doing business as Action Drayage Co., by the certificate of public convenience and necessity granted by the decision noted in the margin, are authorized to conduct operations as a highway common carrier as defined by Section 213 of the Public Utilities Code for the transportation of general commodities as follows:

1. BETWEEN all points and places in the San Francisco Territory as described in Appendix B.
2. BETWEEN all points on or within five miles of the following routes:
 - a. State Highway 24 between its intersection with Interstate Highway 80 and its intersection with Interstate Highway 680, inclusive;
 - b. Interstate Highway 680 between its intersection with State Highway 24 at Walnut Creek and its intersection with State Highway 24 below Willow Pass Road, inclusive;
 - c. State Highway 24 between its intersection with Interstate Highway 680 below Willow Pass Road and its intersection with Willow Pass Road to Concord, inclusive;
 - d. State Highway 24 between its intersection with Interstate Highway 680 below Willow Pass Road and its intersection with Concord Avenue to Concord, inclusive;
 - e. Interstate Highway 680 between its intersection with State Highway 24 at Walnut Creek and its intersection with U.S. Highway 50, inclusive;
 - f. U.S. Highway 50 between its intersection with Interstate Highway 680 and its intersection with State Highway 7, inclusive;
 - g. Interstate Highway 680 between its intersection with U.S. Highway 50 and its intersection with Bernal Avenue, inclusive;

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h. Bernal Avenue between its intersection with Interstate Highway 680 and the City of Pleasanton, inclusive;

EXCEPT THAT 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 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, truck and trailers combined, buses and bus chassis.
4. 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.
5. Commodities when transported in bulk in dump trucks or in hopper-type trucks.
6. Commodities when transported in motor vehicles equipped for mechanical mixing in transit.
7. Cement.
8. Logs.
9. Commodities of unusual or extraordinary value.

(END OF APPENDIX A)

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Appendix B JAMES R. MULLENS, HOWARD W. HESTER and Original Pagel
 BERNARD J. GLASER, individuals, dba
 ACTION DRAYAGE CO.

The San Francisco Territory includes all points and places within the following area:

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 Hillsdale Avenue; easterly along Hillsdale 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; southwesterly 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; southwesterly 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 shoreline to the Pacific Ocean; southerly along the shoreline of the Pacific Ocean to point of beginning.

(END OF APPENDIX B)

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