

ORIGINAL

Decision No. 80720

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of DONALD TOBENER
doing business as GOLDEN GATE
TRUCKING for a Certificate of
Public Convenience and Necessity
to operate as a Highway Common
Carrier for intrastate commerce
and for a corresponding Certificate
of Registration for interstate
commerce.

Application No. 53231
(Filed March 27, 1972)

Eldon M. Johnson, Attorney at Law, for applicant.
Handler, Baker & Greene, by Raymond A. Greene, Jr.,
Attorney at Law, for Dowdell Trucking Co., Lodi
Truck Service, Brooks Terminal and Drayage, and
Morris Draying Co., protestants.

O P I N I O N

By this application, applicant seeks a certificate of public convenience and necessity to transport general commodities with certain exceptions in intrastate, interstate and foreign commerce between all points and places in the San Francisco Territory. Said territory covers generally the area surrounding San Francisco Bay. A copy of the application has been filed with the Interstate Commerce Commission under Section 206(a)(6) of the Interstate Commerce Act, and notice thereof appeared in the Federal Register on April 12, 1972.

The application was protested by four carriers. Public hearing was held before Examiner O'Leary at San Francisco on September 12, 1972. At the hearing counsel for applicant presented an amendment to the application which provides that the sought certificate be restricted to traffic having either a pickup or delivery within the City and County of San Francisco. Said amendment was received in evidence as Exhibit 1. Upon receipt of Exhibit 1, counsel for protestants advised they would withdraw as protestants and the matter was submitted.

Applicant operates pursuant to highway contract carrier and radial highway common carrier permits. Both permits authorize the transportation of general commodities with the usual exceptions. The highway contract carrier permit authorizes statewide operations. The radial highway common carrier permit authorizes operations within a radius of one hundred (100) miles from San Francisco.

Applicant's operating equipment includes 9 tractors, 7 trucks and 5 trailers. Applicant's Statement of Financial Position as of December 31, 1970, shows total assets of \$60,867, total liabilities of \$36,852 and capital of \$24,015. Applicant's statement of income for the year 1970 discloses a net income from operations of \$1,753.

Applicant proposes to maintain rules and rates generally on the same level with those prescribed in the Commission's applicable minimum rate tariffs or the prevailing common carrier tariffs, and will publish all tariffs and supply the Commission with any and all information requested by it pertaining to the proposed service.

Applicant alleges that public convenience and necessity require the proposed service, because applicant's existing services have grown substantially since he received his permits on February 11, 1969. In February of 1969, when his permits were initially granted, applicant's entire fleet of equipment consisted of only two bobtails, and his operations were extremely modest in scope and territory served. In the intervening period, applicant has substantially increased his fleet, and at the present time, the scope of his operations has increased to the extent that he serves a sizable number of shippers on a day-to-day basis. Applicant further alleges that his expansion is, in part, attributable to the high quality of service provided in his operations, and also his ability to attract a large repeat business from his customers.

After consideration, the Commission finds that:

1. Applicant possesses the experience, equipment, and financial resources to institute and maintain the proposed service.

2. Public convenience and necessity require that applicant be authorized to engage in operations in intrastate commerce as proposed in the application as amended by Exhibit 1, and also require that applicant be authorized to engage in operations in interstate and foreign commerce within limits which do not exceed the scope of the intrastate operations authorized by the order herein.

The Commission concludes that the application should be granted as set forth in the ensuing order.

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, these 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 Donald Tobener, doing business as Golden Gate Trucking, authorizing him to operate as a highway common carrier, as defined in Section 213 of the Public Utilities Code, between the points particularly set forth in Appendix A attached hereto and made a part hereof.

2. 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 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.

- (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-Series.
- (e) Applicant 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.
- (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, 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 NOVEMBER, 1972.

I dissent:




Commissioner

Yuan L. Sheng
President

William J. ...

J. M. ...



Commissioners

Donald Tobener, 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:

I Within the San Francisco Territory as described in Note A.

RESTRICTION: The point of origin or point of destination shall be within the City and County of San Francisco.

Carrier will not transport any shipments of:

1. Used household goods, personal effects and office, store and institution furniture, fixtures and equipment not packed in accordance with the crated property requirements set forth in Item 5 of Minimum Rate Tariff 4-B.
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.: 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.
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. Portland or similar cements, in bulk or packages, when loaded substantially to capacity of motor vehicle.

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8. Logs.
9. Articles of extraordinary value.
10. Class A and B explosives.

NOTE A

SAN FRANCISCO TERRITORY

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 Line meets the Pacific Ocean; thence easterly along said County Line to a point one mile west of State Highway 82; southerly along an imaginary line one mile west of and paralleling State Highway 82 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 two 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 Division Street; easterly along Division Street to the Southern Pacific Company right-of-way; southerly along the Southern Pacific right-of-way to the Campbell-Los Gatos City Limits; easterly along said limits and the prolongation thereof to South Bascom Avenue (formerly San Jose-Los Gatos Road); northeasterly along South Bascom Avenue to Foxworthy Avenue; easterly along Foxworthy Avenue to Almaden Road; southerly along Almaden Road to Hillsdale Avenue; easterly along Hillsdale Avenue to State Highway 82; northwesterly along State Highway 82 to Tully Road; northeasterly along Tully Road and the prolongation thereof to White Road; northwesterly along White Road to McKee Road; southwesterly along McKee Road to Capitol Avenue; northwesterly along Capitol Avenue to State Highway 238 (Oakland Road); northerly along State Highway 238 to Warm Springs; northerly along State Highway 238 (Mission Blvd.) via Mission San Jose and Niles to Hayward; northerly along Foothill Blvd. and MacArthur Blvd. to Seminary Avenue; easterly along Seminary Avenue to Mountain Blvd.; northerly along Mountain Blvd. to Warren Blvd. (State Highway 13); northerly along Warren Blvd. to Broadway Terrace; westerly along 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; westerly, northerly and easterly along the campus boundary to

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/nb

Appendix A

Donald Tobener
doing business as
GOLDEN GATE TRUCKING

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Euclid Avenue; northerly along Euclid Avenue to Marin Avenue; westerly along Marin Avenue to Arlington Avenue; northerly along Arlington Avenue to San Pablo Avenue (State Highway 123); northerly along San Pablo Avenue to and including 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 A)

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