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Decision No. 82931

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
J. D. DRAYAGE CO., a corporation,
for a certificate of public convenience
and necessity to extend its present
operating authority to include
Geyserville, Sacramento, Stockton,
Merced, Hollister, Salinas, Monterey,
Santa Cruz and intermediate points
for the transportation of general
commodities.

Application No. 53716
(Filed November 29, 1972;
amended July 24, 1973)

Marquam C. George, Attorney at Law, for applicant.
Marshall G. Berol, Attorney at Law, for Delta
Lines, Inc., Nielsen Freight Lines, Tesi Drayage
Co., and Associated Freight Lines; and Richard
S. Kopf and W. A. Gregory, Attorneys at Law, for
Pacific Motor Trucking Company; protestants.

O P I N I O N

This application was heard before Examiner Fraser at San Francisco on June 12, July 24, 25, 26, and October 25, 26, and 29, 1973. It was submitted on the last day of hearing. Protests were filed by Delta Lines, Inc. (Delta), Nielsen Freight Lines (Nielsen), Tesi Drayage Co. (Tesi), Associated Freight Lines (Associated), and Pacific Motor Trucking Company (PMT).

Applicant is a California corporation with its office and terminal at 1050 3rd Street, San Francisco. It hauls general commodities under a highway contract carrier permit and a certificate of public convenience and necessity, which is registered with the Interstate Commerce Commission and authorizes the transportation of general commodities, with the usual exceptions, from

San Francisco south to Redwood City, Palo Alto, San Jose, and Los Gatos; east to Oakland, San Leandro, Hayward, Pleasanton, Livermore, and all of Contra Costa County; and north to Albany, Richmond, and Vallejo. All roads and routes are to be used with laterals of five miles, except for a 30-mile lateral on Highway 99 and a 30-mile lateral from Sacramento.

Applicant has applied to extend its general commodity authority, with the usual exceptions, southerly to Salinas, Monterey, and Hollister, thence easterly to Los Banos and Highway 99 on Highway 152, northeasterly from Vallejo along Highway 80 to Sacramento, southerly along Highway 99 to Merced, south from Merced on Highway 59 to its intersection with Highway 152, north from San Francisco to Geyserville on Highway 101, and from Vallejo to Geyserville on State Highways 128 and 29. Applicant has asked for a five-mile lateral on all routes and points and for authority to use any road, street, or highway within its zone of operation as a convenience to provide more efficient service. Applicant will provide service in intrastate, interstate, and foreign commerce in the expanded area. Notice of this application was published in the Federal Register of December 28, 1972.

Applicant will provide a scheduled service Monday through Friday. Service will not be performed on Saturdays, Sundays, or holidays. Applicant will provide overnight delivery between all points served. The rates charged will be identical to those published in Minimum Rate Tariff 2. Applicant's operating equipment as of June 12, 1973 includes 4 van-type trucks (3-18 feet and 1-16 feet), 10 tractors, 13 van trailers (24 or 27 feet), a Ford pickup, a Chevrolet station wagon, 4 dollies, and 2 heavy duty fork lifts. Radios are on order and will be installed in all pickup units.

Applicant's balance sheet as of December 31, 1972 shows total assets of \$171,003.35 and current liabilities of \$8,702.03; all liabilities total \$65,115.32. The income statement for 1972 indicates a gross income of \$412,642.99, expenses of \$364,040.91, and a net income of \$48,601.38.

The president of applicant testified as follows: He has been in business for 20 years as a driver and owner. In 1963 he started his own company, doing business as J. D. Drayage. It was incorporated on November 14, 1968 and he is the sole stockholder. Applicant operates with 10 employees; the president, an office worker, and 8 drivers. Applicant's main terminal is in San Francisco. There are also smaller terminals in Watsonville and Santa Rosa, which consist of a parking area and small office with a phone. Same-day service is provided throughout its present certificated area. Freight usually arrives about 11:00 a.m. and is delivered by 3:30 p.m. About 40 percent of applicant's shipments are over 5,000 pounds. If this application is granted, 25 percent or 30 percent of applicant's shipments will be delivered on the date received. The area applied for is now served under applicant's permitted authority. Frequency is increasing and Sausalito, San Rafael, Napa, Petaluma, Santa Rosa, Stockton, and Sacramento are served every other day. Carmel, San Jose, Hollister, Modesto, Vallejo to Sacramento, and Watsonville are served about twice a week. South of Modesto is served once a week. Applicant filed this application to accommodate its present customers who are demanding more frequent service to points beyond applicant's certificated area. If applicant is denied this expansion it may lose some of the shippers it has served for many years.

Twenty shippers testified for the applicant. A manufacturer of wire rope testified he ships from San Francisco to all of applicant's proposed service area. Individual loads vary from 200 to 8,000 pounds and vans are required although overnight service is satisfactory. Applicant is located a half mile from his place of business. A liquor distributor in San Francisco has incoming shipments to 30,000 pounds and outgoing from 35 to 300 pounds. He prefers applicant's service because of prompt delivery and no lost or damaged shipments. He ships about once or twice a week to most points, and he needs applicant's service because liquor shipments are subject to damage and theft. A manager of the purchasing division for a group of Catholic schools testified he uses applicant on incoming shipments of school and athletic supplies. He does not use applicant south of San Jose and admitted he changes carriers about once a year. He will use applicant south of San Jose if this application is granted. A tea and coffee distributor ships all over California from its San Francisco warehouse, with shipments varying from a few thousand pounds to a truckload. He uses applicant and finds service is excellent, although he also uses other carriers and has his own truck. A San Francisco importer hires applicant to haul Japanese goods from the San Francisco piers to Alameda and Contra Costa County customers. The loads range from 400 to 33,000 pounds in weight. Applicant has been used for a year and service is good. The witness also manufactures machinery in Stockton and ships it to Japan. Applicant would transport these loads to the pier if it had the authority. A carpet distributor ships loads up to 7,200 pounds out of his warehouse in Berkeley. He also ships out of Burlingame and has used applicant

since March 1973 to haul from the warehouse to the customer. A shipper of lamps and holiday items has average shipments of 200 to 2,200 pounds and occasionally ships full truckloads. He has used applicant for a year or so to the East Bay, Contra Costa County, and down to San Jose. All shipments originate in San Francisco. A food broker uses applicant to haul loads of imported foods from its warehouse in San Francisco to the East Bay and Contra Costa County. Loads average 200 to 3,500 pounds and are imported from England. He advised that applicant has provided the best truck service in his experience, and he has used the applicant for a year. A bank official testified he has used applicant to transport checks, forms, carpets, and furniture from a San Francisco warehouse to branches in the East Bay and occasionally to other areas. A plumbing contractor ships plumbing and air-conditioning supplies all over California. He ships by applicant because deliveries are on time. Other carriers are always late and his installation crews are paid full wages as they wait for the truck. He requires an early morning delivery and daily shipments on most jobs. He has been using applicant's service for seven years and it is excellent. A shipper of drapery hardware has used applicant since 1971. He ships from San Francisco to all of northern California with shipments averaging 400 pounds. His material is fragile, but only one rod was bent by applicant and the claim was promptly settled. An auto parts man testified that he ships to all of northern California. He has used applicant for seven years on shipments from 50 to 8,000 pounds. He favors applicant's service because of prompt pickup and delivery. There are long delays in transit with other carriers. An importer of Christmas merchandise testified his shipments weigh from 200 to 5,000 pounds and he has used applicant for three years. His merchandise

is consigned to applicant's warehouse, where it is stored and later hauled to his customers. His business operates from August through December with as many as 50 shipments a day. Applicant is prompt and reliable and will continue to carry his merchandise. A shipper of soil nutrients has shipments from 5 to 2,500 pounds and occasionally hires applicant. He has his own truck for most shipments. Applicant hauls out an average of 5 to 8 loads a month and also brings in supplies from Oakland. A candy distributor ships from 350 pounds to truckload out of a warehouse in Emeryville. He delivers from north of Fresno to Crescent City and has used applicant in the East Bay and Contra Costa County. He has used applicant for more than two years because deliveries are always made when promised. A shipper of Christmas bows and ribbons stores his merchandise at applicant's warehouse and also uses the truck service. The incoming shipments arrive on his own truck but everything going out is hauled by common carrier. A shipper of wallpaper and adhesives testified he has used applicant for 8 or 9 years to haul shipments up to 10,000 pounds throughout the Bay Area and to Marin County and Santa Cruz. He also uses other common carriers regularly but favors applicant, who hauls to Santa Rosa, Healdsburg, and Sacramento for him. A shipper of paper and corrugated products has used applicant for 2 or 3 years to haul shipments up to 5,000 pounds from San Francisco down to San Jose. Most of his shipments are hauled on his own trucks, although he will ship to Sacramento by applicant if this application is granted. The superintendent of traffic for the San Francisco office of the Pacific Gas and Electric Company testified his office ships up to 520 tons in one shipment. Fast delivery is essential, since work crews cannot start until the equipment is received. Applicant has been used regularly with

several other carriers. The equipment and supplies are picked up at a warehouse in San Francisco and consigned at PG&E jobs and installations all over northern California. Applicant usually hauls pole line hardware, heavy construction equipment, meters, transformers, and cable where fast transport is essential. The Bay Area terminal manager for Universal Carloading and Distributing Co. testified his organization is registered as an interstate freight forwarder in 50 states. They have no intrastate freight and use only I.C.C. registered carriers on loads up to 25,000 pounds. About eight carriers are used out of the Bay Area. Applicant is favored because of fast service and early delivery.

Most of the shippers who testified received poor service from other carriers who are now operating in the area applicant proposes to serve. The principal complaint involved time in transit, where an advertised overnight service delivers three or more days after pickup. A few shipments were damaged in transit and payment on claims was occasionally delayed, or denied, where several interline carriers were involved. A majority advised they require an early pickup or an early delivery. Many carriers pick up and deliver at a convenient time for the driver, not at the time requested by the shipper or consignee. Those who testified ship large quantities of merchandise into all of the area applicant proposes to serve. Points are served from less than once a month to more than three a day depending on the shipper, the merchandise, and the time of the year. All who testified have utilized applicant's service for varying periods, and all praised applicant's efficiency, courtesy, and ability to satisfy each shipper's special requirements. All promised to use applicant's expanded service if this application is granted.

Four of the protestants presented testimony and documentary evidence. PMT provided a witness who testified that it serves all points in applicant's proposed area without interlining. Exhibit 8 lists the 20 terminals that serve the area with facilities, operating equipment, and personnel. The witness noted that the San Rafael Terminal was closed about three years ago due to steadily declining business. He noted that PMT trucks are usually about half full and can handle many more accounts on their present schedules. A set of freight bills was placed in evidence (Exhibit 9) to illustrate that PMT hauls for some of the shippers who testified for the applicant. The PMT witness emphasized there are already too many carriers in the area. The vice president of Nielsen testified that his company serves northern California and hauls less than truckload shipments. Nielsen does not serve the Sacramento Valley or Salinas-Monterey, but interlines with carriers who do. Nielsen has terminals at San Francisco, Petaluma, and Santa Rosa with 195 employees and 350 vehicles and trailers. Nielsen hauls 75 percent of its freight out of the Bay Area and 35 percent of its operation is in interstate commerce. Nielsen also hauls for some of applicant's shipper witnesses. He advised there are more than 30 certificated carriers competing for business in the area requested in this application. He further advised that fuel allocations have been decreased and it seems wasteful to have 30 carriers serving the same points, when 5 could handle all the available business at lower rates. He asserted that northern California is saturated with carriers and when new authority is granted, some business is taken from the

established truck lines, who may have to petition for a raise in rates to recover the income lost to competitors. Nielsen provided Exhibit 15 to advise that it hauls regularly for five of the shippers who testified for the applicant, and Exhibit 16 lists 51 of Nielsen's former accounts who now operate their own trucks. A vice president of Associated testified that his organization operates in California, Nevada, and Arizona. Associated has six terminals in the area of this application and utilizes 568 trucks, trailers, and other vehicles, and 410 employees in its California operation. Pickup units are radio controlled and are available from 8:00 a.m. to 9:00 p.m. No line haul equipment operates fully loaded. All vehicles have sufficient capacity to handle additional business on present schedules. Associated hauls regularly for at least five of the shippers who testified for the applicant. One of the better Associated accounts is PG&E which will divert some business to the applicant if this application is granted. The general traffic manager for Delta testified it operates over the entire area applicant has applied to serve with nine terminals, 235 radio equipped vehicles, and 760 employees. Other terminals, vehicles, and employees outside the scope of the application are also frequently involved. He testified that all Delta vehicles operate partially empty. Many more shipments could be carried without increasing or changing present schedules. He advised there are already too many carriers competing for the one-way business out of the Bay Area. He recently reviewed Commission records and totaled 40 new certificated carriers operating out of the Bay Area. Delta has already lost accounts to a large carrier who recently obtained a certificate and has its own warehouse. Tesi was not available and it was stipulated that if he were called as a witness his testimony would be the same as that provided by the witness from Nielsen.

Tesi hauls on Highway 1 between San Francisco and Watsonville, Highway 101 between San Francisco and San Jose, Highway 9 between Santa Cruz and Los Gatos, and Highway 17, between Richmond and Santa Cruz. Tesi operates out of San Francisco and has a terminal in Santa Cruz which will be closed in the near future. Tesi has transported goods for some of the shippers who testified for the applicant and there have been no complaints. Tesi provides an overnight service throughout its area with scheduled and on-call pickups. Protestants emphasized that as the number of scheduled carriers is increased the income of each is decreased, which may result in petitions to raise the applicable freight rates, which in turn prompt the larger shippers to buy trucks and haul their own merchandise.

Discussion

On June 12, 1973 one of the protestants requested that the applicant file an Environmental Impact Report as required by Rule 17.1 of the Commission's Rules of Practice and Procedure. On July 24, 1973 applicant filed an "Amendment To Application" which alleged and argued that granting "this application will have no substantial environmental impact." We favor applicant's position. There are no restrictions on private automobiles, buses, or other truck operators. It would be ineffective and prejudicial to require one applicant to justify a minor extension of routes.

Protestants' arguments have been heard in previous proceedings. Applicant's initial expansion will serve its shippers who are sending goods to distant customers. Applicant may acquire or lose accounts in the process of expansion, but shippers have the right to select a preferred carrier, even when their transportation

need exceeds the carrier's authority. When a shipper expands its business, the carrier it employs must also expand or risk losing the business.

Findings

1. Applicant has provided a general commodity transportation service as a permitted and certificated carrier for more than ten years.

2. Prior to this application, applicant provided a certificated service in intrastate and interstate commerce throughout the East Bay, Contra Costa County, north to Vallejo, and from San Francisco south to San Jose and Los Gatos.

3. This application was filed to request that applicant's certificated area be extended north to Geyserville, northeast to Sacramento, east along Highway 99, and south to Salinas, Monterey, Hollister, and Los Banos.

4. Applicant will provide an overnight service on Monday through Friday and will adopt and publish the applicable rates as set forth in Minimum Rate Tariff 2.

5. Many shippers have used applicant's service for many years and would like to see its operations expanded.

6. The twenty shippers who testified for applicant prefer its service to that of other carriers.

7. A shipper is entitled to prefer the service of a particular carrier over that provided by all the others who are available and the favored carrier is entitled to rely on this preference as a basis for extending its service. (Tesi Drayage Co. (1970) 71 CPUC 24, 28.)

8. The possibility that a new carrier, in the process of expansion, may in time take some of the business from prior operators is not sufficient reason alone to deny a certificate.

9. Protestants are large or medium-sized carriers who serve adequately but are not able to cater to the personal requirements of each shipper as conveniently as applicant.

10. Applicant's expanded service will be used primarily by shippers who have used its service in other areas.

11. Protestants will not be immediately affected by applicant's expansion which is designed primarily to serve its old customers in a new area.

12. Granting this application will not harm the shipping public.

13. The Commission finds with reasonable certainty that the project involved in this proceeding will not have a significant effect on the environment.

14. Applicant has the experience, equipment, personnel, and financial resources to institute and maintain the proposed service.

15. Public convenience and necessity require that applicant be authorized to engage in operations in intrastate commerce as proposed in the application 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 order which follows will provide for the granting of an in-lieu certificate of public convenience and necessity and the revocation of all existing authority.

The Commission concludes that the application should be granted as set forth in the ensuing order. The territorial description or routes of the authority granted reflects the names of redesignated highways and roads and does not in any way exceed the geographical scope of the proposed operation as published in the Federal Register.

J. D. Drayage Co. is 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 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 set forth in Appendix A, attached hereto and made a part hereof.
2. In providing service pursuant to the authority granted by this order, applicant shall comply with the following service regulations. Failure so to do may result in cancellation of the authority.
 - (a) Within thirty days after the effective date of this order, applicant shall file a written acceptance of the certificate granted. Applicant is placed on notice that if it accepts the certificate it will be required, among other things, to comply with 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 of this order, applicant shall establish the authorized service and amend or 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 authorized service.
- (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 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.

3. The certificate of public convenience and necessity granted in paragraph 1 of this order shall supersede the certificate of public convenience and necessity granted by Decision No. 77942, which certificate is revoked effective concurrently with the effective date of the tariff filings required by paragraph 2(b).

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

Dated at San Francisco, California, this 29th day of MAY, 1974.

Vernon L. Sturgeon
President

William Lyndon J.

Mark

Commissioners

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

J. D. Drayage Co., a California 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 between all points and places as follows:

1. U. S. Highway 101, between Geyserville and Salinas;
2. Interstate Highway 280 and State Highway 82, between San Francisco and San Jose;
3. State Highways 9 and 85, between Los Gatos and Sunnyvale;
4. State Highway 17, between Oakland and Santa Cruz;
5. Interstate Highway 580, between Oakland and its junction with Interstate Highway 205, near Mountain House;
6. State Highway 238, between its intersections with State Highway 17, near San Lorenzo and near Warm Springs;
7. State Highway 84 and Stanley Boulevard, between Pleasanton and Livermore;
8. Interstate Highway 680, between Fremont and Vallejo;
9. Interstate Highway 80, between San Francisco and Sacramento, including a radius of 30 miles from Sacramento;
10. State Highway 1, between Santa Cruz and Carmel;
11. State Highways 128 and 29, between Geyserville and Vallejo;

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12. State Highway 68, between Salinas and Monterey;
13. State Highway 156 between its junction with U. S. Highway 101 and its junction with State Highway 152;
14. State Highways 152 and 59, between Gilroy and Merced, via El Nido;
15. Interstate Highway 205 and State Highway 120, between the junction of Interstate Highways 580 and 205, and Manteca;
16. Interstate Highway 5, between its intersection with Hammer Lane, approximately 7 miles north of the junction of Interstate Highway 5 and State Highway 4, and State Highway 140;
17. State Highway 140, between its junction with Interstate Highway 5 and State Highway 99;
18. State Highway 99, between Sacramento and Merced;
19. Between all points and places within the County of Contra Costa;
20. Between all points and places set forth in paragraphs 1 through 19 inclusive; and
21. Between all points and places on or within 5 miles laterally of the routes named in paragraphs 1 through 17 and 30 miles laterally of the route named in paragraph 18.
22. In performing the service herein authorized, applicant may make use of any and all streets, roads, highways and bridges necessary or convenient for the performance of said service.

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Except that pursuant to the authority herein granted 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.: 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 semi-plastic 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. Logs.

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8. Trailer coaches and campers, including integral parts and contents when the contents are within the trailer coach or camper.
9. Commodities requiring the use of special refrigeration or temperature control in specially designed and constructed refrigerator equipment.
10. Portland or similar cements, in bulk or in packages, when loaded substantially to capacity either alone or in combination with powdered limestone.
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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