

Decision No. 83033**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of STANLEY FENTON, an individual, doing business as DURKEE DRAYAGE COMPANY, for a certificate of public convenience and necessity to extend his present operating authority to include San Jose, Saratoga, Los Gatos, Vallejo, San Rafael and intermediate points; for the transportation of general commodities.

Application No. 54108
(Filed June 19, 1973)

O P I N I O N

Stanley Fenton, an individual doing business as Durkee Drayage Company (Durkee), transports general commodities as a permitted carrier under the authority of a radial highway common carrier permit and highway contract carrier permit. Durkee's principal place of business is 2225 Ingalls Street, San Francisco. The Commission's records show that Durkee is a California resident.

Durkee also operates as a highway common carrier pursuant to Decision No. 79793 dated March 14, 1972 (Application No. 53112). In that decision the Commission authorized the transfer of a common carrier certificate from Durkee Drayage Company, a corporation, to Stanley Fenton, an individual doing business as Durkee Drayage Company.

The aforementioned certificate authorizes applicant to conduct operations as a highway common carrier for the transportation of general commodities, with certain exceptions, within the limits of the San Francisco-East Bay Cartage Zone.

In this application applicant requests authority to extend its highway common carrier operations so that the boundaries will be extended to run south to San Jose and Los Gatos, north to San Rafael,

Richmond, and Vallejo, and east to Livermore and all points in Contra Costa County, and to various intermediate points.

The rates proposed will be those established under Minimum Rate Tariff 2. The applicant proposes service on the basis of morning pickup and same-day delivery, together with overnight delivery between all points within the proposed service area, provided that no service will be performed on Saturdays, Sundays, or holidays.

Applicant and applicant's predecessor for more than thirty years have been engaged in the business of transporting general commodities as a permitted carrier under authority of a radial highway common carrier permit and highway contract carrier permit. For many years the applicant and applicant's predecessor have also continuously operated as a highway common carrier. Applicant presently operates a fleet of motor vehicle equipment consisting, at the time of the application, of 15 two-ton vans, 3 one and one-half ton vans, and a passenger car.

The application states that for many years applicant has engaged in transporting general commodities within the area in question under its permitted authority, and that with the growth of the communities within the area, the frequency of movements therein is continually increasing to the point that the area should be served under certificated authority.

Applicant furnished a profit and loss statement and a balance sheet for the period January 1, 1972 to December 31, 1972 and states that it is in a position to add to its fleet such additional equipment as the proposed service may require. The Commission has additionally taken notice of applicant's 1973 annual report on file with the Commission.

Applicant will provide service in the expanded area in intrastate, interstate, and foreign commerce. Notice of this application was published in the Federal Register of July 19, 1973.

Applicant served a copy of this application upon certain common carriers within the proposed area, and then served additional carriers at the request of the Commission. No protests have been received.

Findings

1. 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 this decision.

2. A public hearing is not necessary.

3. Applicant possesses the necessary experience, equipment, and financial ability to institute and maintain the proposed service.

4. The order herein will provide for the revocation of the certificate which applicant presently holds pursuant to Decision No. 79793, and the issuance of a new certificate in appendix form to the applicant.

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

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 reflect the names of redesignated highways and roads and do not in any way exceed the geographical scope of the proposed operation as published in the Federal Register.

Applicant 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 Stanley Fenton, an individual doing business as Durkee Drayage Company, authorizing him to operate as a highway common carrier, as defined in Section 213 of the Public Utilities Code, between the points 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 he accepts the certificate he 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 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.

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. 79793, 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 ten days after the date hereof.

Dated at San Francisco, California, this 25th day of JUNE, 1974.

Vernon L. Sturgeon
President
William J. Sturgeon Jr.
William J. Sturgeon Jr.
William J. Sturgeon Jr.
William J. Sturgeon Jr.
Commissioners

Stanley Fenton, an individual, doing business as Durkee Drayage Company, 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. Between all points and places on or within 10 miles laterally of the following routes:
 - A. U.S. Highway 101 between San Rafael and San Jose, inclusive;
 - B. Interstate Highway 280 and State Highway 82 between San Francisco and San Jose, inclusive;
 - C. State Highway 17 between Los Gatos and Oakland, inclusive;
 - D. State Highway 9 between Los Gatos and Saratoga, inclusive;
 - E. State Highway 85 between Saratoga and Mountain View, inclusive;
 - F. Interstate Highway 80 between San Francisco and Vallejo, inclusive;
 - G. Interstate Highway 680 between Vallejo and its junction with State Highway 237, near Milpitas, inclusive; and
 - H. Interstate Highway 580 between San Leandro and Livermore, inclusive.

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(an individual)
doing business as
DURKEE DRAYAGE COMPANY

- II. Between all points and places in Contra Costa County or within 10 miles of the boundary line of Contra Costa County.
- III. Between all points and places included in Paragraphs I (A through H) and II.

In performing the service herein authorized, carrier may make use of any and all streets, roads, highways and bridges necessary or convenient for the performance of said service.

Mechanical duplications and overlaps which occur in describing the operating authority granted herein shall not be construed as conferring more than one operating right to transport the same commodities between the same points.

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 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.

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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. Commodities requiring the use of special refrigeration or temperature control in specially designed and constructed refrigerator equipment.
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.

(END OF APPENDIX A)