

ORIGINALDecision No. 84595**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

In the Matter of the Application of
 APPLGATE DRAYAGE COMPANY, INC., a
 corporation, for a certificate of
 public convenience and necessity to
 extend highway common carrier service.

Application No. 54182
 (Filed July 19, 1973)

In the Matter of the Application of
 EDWARD L. HESTON, an individual, doing
 business as HESTON TRUCKING CO., for a
 certificate of public convenience
 and necessity to extend highway common
 carrier service.

Application No. 54315
 (Filed September 12, 1973)

Bertram S. Silver and Michael J. Stecher, Attorneys
 at Law, for Applegate Drayage Company, Inc.,
 applicant in A.54182 and protestant in A.54315.
E. H. Griffiths, for Edward L. Heston, dba Heston
 Trucking Co., applicant in A.54315 and protestant
 in A.54182.
Loughran, Berol & Hegarty, by Marshall G. Berol,
 Attorney at Law, for Delta Lines, Inc., protes-
 tant in A.54182 and 54315.

O P I N I O N

Applegate Drayage Company, Inc. (Applegate), by Application No. 54182, and Edward L. Heston (Heston), an individual, doing business as Heston Trucking Co., by Application No. 54315, each seek extensions of their certificates to operate as highway common carriers of property. Duly noticed public hearings in each matter were held on separate records before Examiner Arthur M. Mooney in Sacramento, Susanville, and San Francisco during the months of December 1973 and January, February, April, and May 1974. The matters were submitted on oral

arguments in May 1974. Because of the similarity of the issues in the two proceedings, they have been consolidated for decision.

Applegate does not seek corresponding interstate authority for the service it proposes. Heston does seek such authority. A copy of Heston's 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 October 11, 1973.

Both applications were protested by Delta Lines, Inc. (Delta). Heston protested the portions of the requested extensions in Applegate's Application No. 54182 which he now serves under his present certificate. Likewise, Applegate protested the portions of the requested extensions in Heston's Application No. 54315 which it presently serves under its current certificate.

The present authority of each applicant and the extensions each seeks will be set out separately below. Likewise, the evidence and argument presented by each applicant and the position of the protestants in each matter will be set out under separate heading. This will be followed by a discussion which will relate to both proceedings. The findings and conclusions as to each applicant will be separately stated.

Present and Sought Authority

Applegate

Applegate's current highway common carrier certificate is set forth in Appendix A to Decision No. 78692 dated May 18, 1971 in Application No. 52146. (The decision is reported at 72 CPUC 204; however, Appendix A to the decision is not reported.) The decision transferred the authority to Applegate from Ringsby-Pacific Ltd. (Ringsby), a corporation. The certificate authorizes the transportation of general commodities, with the usual exceptions, between all points and places on or within 10 miles of Interstate 80 between

Sacramento and Roseville; State Highway 65 between Roseville and Marysville; State Highway 20 between Marysville and Yuba City; State Highway 70 between Marysville and its intersection with U.S. Highway 395, thence via U.S. Highway 395 and unnumbered state or county road to Herlong and the Sierra Ordinance Depot; and between the intersection of State Highways 70 and 89 and Greenville, including an off-route loop from Greenville to Taylorsville returning near Crescent Mills. The certificate includes a restriction against service to off-route points west of State Highway 70 between Marysville and Oroville. Applegate also holds authority to operate as a permitted carrier and as a certificated cement carrier, which authorities are not involved herein.

By Application No. 54182 Applegate seeks an in lieu general commodities highway common carrier certificate which would include, in addition to its present rights, the following additional routes with authority to serve all points on and within 10 miles thereof:

1. State Highway 99 between Sacramento and Yuba City.
2. Interstate Highway 80 at Roseville to Auburn, thence via State Highway 49 to its point of intersection with State Highway 70 at Vinton.
3. U.S. Highway 395 at Herlong Junction to the junction of U.S. Highway 395 and State Highway 36, thence via State Highway 36 to its junction with State Highway 89, thence via State Highway 89 to Greenville.
4. State Highway 147 between its junction with State Highway 36 and State Highway 89.

Heston

Heston's current highway common carrier certificate was obtained from Harold Hallman, doing business as H. Hallman Transportation Co., pursuant to a transfer authorized by Decision No. 75103 dated December 17, 1968 in Application No. 50668. The certificate was granted to the transferor by Decision No. 65370 dated May 14, 1963 in Application No. 45256 and is set forth in Appendix A to that decision. It authorizes the transportation of general commodities, with the usual exceptions, between Sacramento, Peterson Corner, North San Juan, Camptonville, Indian Valley Outpost, Goodyear's Bar, Downieville, and Sierra City. He also holds a highway contract carrier permit.

By Application No. 54315 Heston seeks an in lieu certificate authorizing the transportation of general commodities, with the usual exceptions, between Sacramento and points located within 5 miles thereof and all points and places on and within 3 miles laterally of the following routes:

1. State Highway 49 between North San Juan and its intersection with State Highway 70 at Vinton.
2. State Highway 89 between Sierraville and its intersection with State Highway 36, 5 miles west of Chester.
3. State Highway 36 between its intersection with State Highway 89, 5 miles west of Chester, and its intersection with U.S. Highway 395.
4. U.S. Highway 395 between Hallelujah Junction and Litchfield.
5. County Road A3 between Buntingville and Standish.

6. Unnamed county road between Bassetts and Graeagle.
7. Off-route point of Herlong located at the approximate intersection of County Roads A25 and A26.

Evidence and Protests

Application No. 54182 - Applegate

Testimony in support of the sought extensions was presented by Applegate's president. He stated that he is the founder of Applegate and has been in the trucking business for 33 years and that the business has expanded from a three-employee operation to its present size with 31 employees. He testified that, at the present time, applicant operates 1 bobtail truck, 19 tractors, 22 van trailers, 14 flat trailers, various specialized trailers, 12 dollies, 2 pickup trucks, and 3 passenger cars. The witness stated that in 1971, Applegate purchased Reno-Loyalton-Calpine-Stagelines, a small carrier operating from Reno, Nevada to Downieville, California; that it is operated with Applegate's equipment; and that it was merged into Applegate in 1974. He testified that Applegate has terminals in Sacramento, Quincy, and Reno. According to financial data presented by the president, as of October 31, 1973, Applegate had assets of \$1,076,963.98, liabilities of \$798,903.54, and a net worth of \$278,060.44, and for the first 10 months of 1973, its profit, less interest paid, and operating ratio were \$40,579.89 and 92.63 percent, respectively.

The president testified that Applegate is basically a family owned and run business. He stated that up until 1971 Applegate was primarily a truckload carrier of freight and a common carrier of cement; that during this earlier period its contract carrier operations accounted for approximately 20 percent of its business and included the distribution of soap and appliances in less-than-truckload

quantities from Fresno to Redding and from Sacramento to various destinations; that in 1970 it was offered its current common carrier rights by Kingsby, and as it felt they would fit in with its overall operations, it purchased them and commenced the certificated service on July 1, 1971; that the dollar volume of this business for the six months of 1971 was \$68,539 and for the year 1972 was \$181,950; and that it has been increasing. He asserted that service into the certificated area is on a daily basis, with same day service to closer points and overnight service to the more distant points. He explained the certificated operation as follows: A line unit with freight from the Sacramento area and interlined traffic from other carriers leaves Sacramento at approximately 3:00 a.m. and arrives at Quincy around 7:00 a.m. and drops its trailer; the local driver and tractor in Quincy pick up the trailer and distribute the freight; deliveries are made first to Quincy, generally by 10:00 a.m., and then to Greenville by 11:00 a.m., to Portola by 2:00 p.m., and to Loyalton by 4:00 p.m.; the driver then returns to Quincy with freight and return shipments he has picked up for various points throughout California; and the trailer is later pulled back to Sacramento by a line tractor. He stated that this driver is presently the only employee at the Quincy terminal and that the described schedule could fluctuate from day to day, depending upon the volume of traffic and demands for service.

The witness testified that Applegate presently performs some operations under its permitted authority into the sought extended areas. He explained that he owns a warehouse in Sacramento under a separate corporation; that the Frigidaire Corporation and the White King Soap Company store merchandise in this warehouse; that Applegate hauls for these two companies, under written contract with each, from the warehouse to Susanville once or twice a month and to the Auburn, Grass Valley, and Nevada City areas one to three times a week. He stated

that Applegate also provides service under this authority one or two times a month, on an irregular basis, to the eastern side of Lake Almanor and Canyon Dam pursuant to the request of customers and that Delta does not serve this area.

The president set forth the following four reasons for seeking the additional certificated authority: First, the business of Applegate's customers has been continually growing, and many are requesting regular service into the sought extended areas; second, it is difficult to explain to customers that service can be performed on a regular basis only to the area which is currently certificated; third, Applegate's service into the sought area has built up slowly to meet the needs of its customers and cannot be further extended without the required certificate; and fourth, the only common carrier now authorized to serve most of the sought extended areas also serves most of California and is competitive with other common carriers interlining freight with it to these areas, and several of the other carriers have informed Applegate that since it is not competitive with them for freight originating elsewhere in the state, they would enter arrangements with it to provide interline service to the extended areas if the application is granted.

The president stated that should the extensions be authorized, Applegate does not anticipate opening any additional terminals at the present time but would open one in Susanville should the need develop; that another tractor and driver would be immediately stationed at Quincy; that one would make deliveries along the Susanville, Westwood, and Greenville routes and the other along the Portola-Loyalton routes; and that service to the part of the sought areas along State Highway 49 now served by Heston under his current certificate could be handled either by the Loyalton schedule or as tail-end freight on the Herlong schedule which is usually truckload shipments from Sacramento. He

asserted that Applegate has sufficient equipment and fuel allocations to serve all of the sought areas on a daily basis. He pointed out that there is now no intrastate common carrier service between Calpine, Sattley, and Sierraville. He explained that the reason for requesting 10-mile laterals along the sought routes is that many hardware stores, feed stores, grocery stores, and other consignees are located off the main routes, and it is essential that it be authorized to serve them in order to give a full service to its customers and be competitive with the present carriers in the area. The witness stated that although Applegate does not serve along U.S. Highway 99 between Sacramento and Marysville, it does traverse this section of highway and has had numerous requests for service along it.

The president explained that he had made an extensive investigation of the sought extended areas and their potential; that the most recent U.S. Census of Population shows populations of 6,608 for Susanville, 1,934 for Westwood, and 2,104 for Chester; that the population in these areas has been steadily increasing together with a continual growth of the economic and business potential therein; that as a result of this investigation he has concluded that the additional areas would fit in perfectly with Applegate's present operations and would enable it to provide a more efficient service to the public on a more economical basis. He asserted that public convenience and necessity require that the sought extensions be granted.

Representatives of four shippers, 12 businesses in the sought extended areas, the Susanville Merchant's Association, the Plumas County Chamber of Commerce, the California Conservation Center, and two common carriers testified for applicant. The four shippers are located in Sacramento. They ship automobile glass, batteries, tires, automobile parts and supplies, draperies, drapery fabrics and hardware, and all types of construction materials and supplies, except

lumber, to various destinations in the sought areas. Their shipments range in weight from 50 to several thousand pounds with most in the lower weight range. The frequency of their shipments to these areas varies from occasional to several per week, and the particular points to which each requires service likewise vary. All now use Applegate to its present certificated area, are satisfied with its service, and have indicated that they will use it to the sought areas if the extensions are granted. All use or have used Delta and two have used Consolidated Freightways (Consolidated) to the requested areas. Two also use the services of United Parcel Service and Greyhound to these areas for their smaller shipments. Generally, the shippers have not been satisfied with Consolidated's service because of delays in delivery. As to Delta's service, one shipper asserted that it has had complaints from customers regarding delays in delivery, another stated that it stopped using Delta because of such delays, and a third asserted that Delta's service is satisfactory. One expressed the opinion that there should be another common carrier in the sought areas.

Of the 12 receivers of freight, nine are located in Susanville, one is located near Susanville, one is located near Canyon Dam, and one is located in Auburn. They are in various businesses, including building materials and supplies, lumber, glass, the manufacturing of metal moldings for plastic cases, furniture and appliances, electrical supplies, recreational equipment, the distribution of beer and soft drinks, tractor sales and servicing, and mobile and modular homes. All but one, who has just commenced receiving beer shipments from a distributor in Quincy, receive shipments from Sacramento. Some also receive shipments from other parts of the state and from outside of the state. Delta is the only carrier with through intrastate service between the Susanville area and most of the

state beyond Sacramento. Consolidated serves this area via Reno. Shipments originating beyond Sacramento and transported by other common carriers are interlined at Sacramento with a delivery carrier. The frequency of service they require into these areas varies from infrequent to three or more times per week. All have received shipments by either Delta or Consolidated or both. One uses the services of Heston for hardware shipments from a supplier in Sacramento. Some have used permitted carriers, and one uses United Parcel Service. Except for occasional truckload quantities, most of the shipments they receive vary in weight from a few to several hundred pounds.

Most of the 12 witnesses stated that their businesses require a reliable common carrier service, particularly for emergency shipments; that they feel Applegate would give such service; and that an additional competing common carrier in the area would assure this. A few have used Applegate on an occasional, irregular basis and are satisfied with its service. Several pointed out that they are located off main routes and that the laterals proposed by Applegate would include their places of business. Many were not satisfied with Consolidated's service. Some asserted that they have experienced problems with Delta regarding delays in delivery, damage to freight, and damage claims. Others stated that they have no major complaints about Delta's service. One, who also ships from Susanville, alleged that Delta has not been prompt in picking up outbound shipments. Most stated that although they have not as yet used the services of Applegate, they intend to do so when they can specify the delivery carrier.

The representative of the Susanville Merchant's Association testified that the association has approximately 50 members; that a verbal resolution had been passed by the association to support Applegate's request; and that the competition of another carrier

would improve the quality of service in the area. The president of the Plumas County Chamber of Commerce stated that it has a membership of over 300 businesses; that he had been authorized by its board of directors to testify in support of the application; and that the additional service proposed by Applegate would be helpful to the county. The representative of the California Conservation Center testified that it is located eight and one-half miles east of Susanville; that machinery, tools, food items, and various supplies are shipped to the center from all over the state; that the frequency of shipments from Sacramento ranges from several per day to several per week, and the weight of the shipments varies; that it now uses the services of Delta, Consolidated, and United Parcel Service; and that it has experienced shortages and damage in connection with shipments handled for it by Delta.

Following is a summary of the evidence presented by the representatives of Willig Freight Lines and System 99: Neither carrier serves most of the areas included in Applegate's current certificate or the additional areas it seeks. However, both do serve a substantial portion of the balance of the state. They would prefer not having to interline freight, destined to the portions of the extended areas they do not serve, with Delta with whom they compete in other parts of the state. Applegate now provides a good interline service to its present areas. They bring interline freight to Delta's terminal, whereas, Applegate will pick up such freight from their terminals. Also, they would like to participate in any traffic Applegate might generate in the sought areas for points beyond Sacramento.

Of the two protestants, Delta and Heston, evidence was presented by Heston only. Heston testified as follows: His protest is limited to the portion of Applegate's application which duplicates

the State Highway 49 area between Peterson Corner and Sierra City which he now serves under his present certificate. There is not enough traffic in this area to warrant the services of two common carriers. He has never received any complaints from his customers regarding his certificated service. Generally, his equipment is loaded to approximately 80 percent of its carrying capacity with both certificated and permitted shipments, and the certificated freight accounts for about 10 percent of the used capacity. For the period January through November 1973, his gross operating revenues for his certificated and permitted operations were \$6,837 and \$19,675, respectively.

Counsel for Delta, in his closing statement, pointed out that his client protests only the portions of the sought extensions that duplicate its common carrier authority. These, he explained, include State Highway 99 between Sacramento and Yuba City; Interstate Highway 80 from Roseville to Auburn, and from there along State Highway 49 to Grass Valley and Nevada City; and State Highway 36 between its junctions with State Highway 89 west of Chester and U.S. Highway 395 east of Susanville. He asserted that there was no showing whatsoever by Applegate that there is any public need for its service on the proposed route between Sacramento and Yuba City and that the sought route between Roseville and Nevada City is now adequately served by various highway common carriers.

Following is a summary of the argument presented by Delta's counsel regarding the proposed State Highway 36 route and the proposed 10-mile laterals adjacent thereto: The three main communities located on or near this route are Susanville, with a population of about 6,500, and Westwood and Chester, both of which have populations of under 2,000. The California Conservation Center at Leavitt and the small community of Johnsville are also located on or near the route. This

is a rural, sparsely populated, mountainous area. The area is now receiving adequate service which meets the needs of the public from the two highway common carriers now authorized to serve it, Delta via Sacramento and Consolidated via Reno. It is also served by various permitted carriers and by United Parcel Service and Greyhound. Traffic is almost exclusively inbound to this area with negligible outbound. Another common carrier in the area would have a serious diversionary effect on the limited amount of traffic available to the existing carriers and would also have an effect on the environment.

Delta's counsel asserted that the service provided by his client in the sought areas is adequate and satisfactory to the public and that if there are any problems, they are minimal. In this regard, he pointed out that some of the public witnesses stated that they were satisfied with Delta; that the complaints about service or damage claims referred to by others were few in number; and that some of the complaints were concerned with interlined shipments and may not have been Delta's fault.

Counsel for Delta explained that after reviewing the records in this application and in Heston's application, it was his opinion that the two records, neither individually nor jointly, demonstrate a need for any additional common carrier service in any of the sought areas, and, for this reason, he concluded that there was no necessity to present any direct evidence in support of his client's position in either matter. He asserted, however, that even assuming there was a need for additional service along the State Highway 36 route, which he does not agree that there is, it is certainly not a need for the services of two additional common carriers or for any 10-mile laterals. He argued that the Commission has heretofore denied a request for an extension of highway common carrier operating rights under circumstances

similar to those herein in its decision in Walkup's Merchants Express (1966) 66 CPUC 578. In Walkup's applicant had requested authority to extend its highway common carrier certificate to include service to Fort Bragg, and it was protested by the only highway common carrier serving the area. The decision, in denying the request, found that the territory was already sufficiently and satisfactorily served; that the proposed area was sparsely populated with a static economy, had rugged terrain, and was subject to inclement weather; and that the addition of a second highway common carrier in such an area would result in two marginal operations in place of a viable one.

The representative of Heston in his closing statement argued that there is no evidence in the record to support the entry of an additional common carrier into the area served by Heston under his current certificate; that Heston is furnishing a reasonable and adequate service here; that no public witnesses appeared to dispute this; that the demand for service in the area is very seasonal, and there is no return traffic from it; and that a new carrier would add additional truck transportation within the area with a resulting effect on the environment.

In his closing statement, counsel for Applegate asserted that the evidence clearly establishes that there is a public need for the proposed service; that applicant has the necessary equipment, financial ability, and fitness to provide the service; and that the effect on present carriers, both certificated and permitted, in the proposed areas would be insignificant if the application is granted. He stated that the testimony of the public witnesses who appeared in support of the application shows that they ship a variety of general commodities; that all of the main communities throughout the sought areas require a consistent common carrier service; that they are not now receiving such service; that they have tried the protestants

and were not satisfied with them; and that Applegate would perform the consistent, overnight service which they require. He pointed out that Heston testified that he did not anticipate the loss of any traffic from his customers should an additional common carrier come into his certificated area. He argued that because of Delta's size and earnings, the entry of another common carrier in the portions of the sought areas it serves would have a minimal effect on its financial position. He stated that Applegate now has interstate authority to serve Downieville and that it has applied to the Interstate Commerce Commission for authority to serve the areas covered by its application. He alleged that the sought intrastate authority, if granted, would have no adverse effect on the environment. As to the Walkup's Merchants Express, supra, decision referred to by Delta's counsel, he asserted that the facts and circumstances there differed from those here. He stated that affirmative evidence was presented by the protestant-carrier in that proceeding to establish the adequacy of its service and the decline in population in the Fort Bragg area and that no such evidence was presented by either protestant here. In this regard, he pointed out that the evidence presented by Applegate shows that the population in the sought areas has been increasing and that the businesses of most of the public witnesses have been expanding. He asserted that public convenience and necessity require that the application be granted.

Application No. 54315 - Heston

It is noted that there is a discrepancy in the application between Exhibit B, which describes the additional sought authority, and Exhibit C, which is a map of the sought routes. Several additional routes are shown on the map in Exhibit C which are not described in Exhibit B. These include State Highway 70 between Blairsden

and Hallelujah Junction, County Road A15 between State Highways 89 and 70, and State Highway 147 between its intersections with State Highways 89 and 36. Since the evidence presented by Heston related to the requested extensions as shown on the map in Exhibit C, it is evident that the map correctly shows the sought extensions.

Heston has been in the trucking business for 22 years. He has no employees. His terminal is located at his home in Downieville. He operates one 1970 International Truck. It is a 3-axle, 22-foot, high cube van equipped with a power lift gate and has a 25,000-pound capacity. He also has a 1973 4-wheel drive International Scout II. Heston commenced his present certificated service in early 1969. He now operates twice weekly to his certificated area. Pickups are made at Sacramento on Tuesdays and Thursdays and deliveries are made on Wednesdays and Fridays. Should the sought authority be granted, he will provide an on-call service Monday through Friday with same-day or next-day delivery, depending on the time of day the shipping orders are received, lease a small terminal facility in Sacramento, initially add one unit of equipment and driver, and gradually add additional equipment and personnel as his business in the sought areas builds up. Heston testified that he is in a financial position to do this. The rates and charges for the proposed service will be on the same level as those named in Minimum Rate Tariff 2. As stated above, he proposes to operate in both intrastate and interstate and foreign commerce. According to Heston's balance sheet of December 31, 1972, he had assets of \$26,340.67, liabilities of \$4,933.45, and proprietor's capital of \$21,407.22. His profit and loss statement for the year 1972 shows income of \$35,682.71, operating expenses of \$25,721.61, and a profit, after income taxes, of \$9,961.10. Included in the income is a retirement settlement he received from the Crystal Creamery of \$1,022.41 and interest of \$34.61.

Heston testified that he commenced operating under his contract authority beyond Sierra City to the Portola-Quincy area approximately three years ago and that he expanded this operation to include the other sought areas about two years ago. He stated that the shippers he serves under both his certificated and permitted authorities are located mainly in the Sacramento area; that ten of these customers ship on a regular basis and 15 or more ship on an irregular basis each month or so; that many of his customers have shipments to both his certificated and contract service areas and have requested that he extend his certificate to include regular scheduled service to the sought areas; and that the contracts he now has with his customers for service to the sought areas are not written. Heston testified that most of the traffic he handles originates in the Sacramento area and that there is very little return movement from his certificated and contract areas. He explained that he does perform some delivery service of interline freight to his present certificated area and the sought areas for Kern Valley Trucking and Peters Truck Line. He asserted that if the certificate extensions are granted, various other common carriers will use his service to deliver both intrastate and interstate interline shipments from Sacramento to the requested areas.

Heston further testified as follows: His truck is usually loaded to 80 percent of its carrying capacity with freight for both his present certificated and sought areas. He performs a personalized service for his customers. He has very few claims filed against him, substantially less than one percent of his revenue. His operating ratio for 1972, based on his freight revenue only, was 74.2 percent. His business and earnings have been steadily increasing and will continue to do so. Should the authority be granted, he would most

likely divert some freight from other carriers now serving the sought areas and from shippers who now perform some of their own transportation with proprietary equipment. There is, in his opinion, sufficient traffic from Sacramento to the sought areas for two but not for three highway common carriers. He has been assured by his supplier that he would have no difficulty in obtaining fuel for any additional equipment he might operate. A Commission representative, after making a routine investigation of his operations, advised him that because of the frequency with which he is serving the sought areas, he should request a certificate for this service.

Heston summed up his reasons for filing the application as follows: The admonishment from the Commission representative to obtain a certificate; the increase in the number of shipments by his customers to the sought areas, and their request that he obtain a certificate for it; statements to him by his customers that they are having problems with other carriers in the sought areas and need better service there; from a financial standpoint, he could not afford to cut back the service he is now performing in the sought areas; and many of the points he is requesting authority to serve have no other common carrier service at the present.

Heston's accountant, who is engaged by him on a contractual basis, testified that her office is located at her home in Sacramento; that she rates and bills all of his shipments; and that she records all of his business activities and does all of his accounting work. She stated that for the months of October and November 1973, Heston's gross operating revenue from his certificated area was \$1,035 and from his permitted area was \$3,980; that as evidenced by these, he earns approximately four dollars from his permitted operations to every one dollar earned from his certificated operations; that this

ratio has been approximately the same for the entire year 1973; that with the growth of Heston's business more accounts are added yearly; and that his gross operating revenue for the year 1973 will approximate \$42,000. The accountant testified that the investigation by the Commission representative was conducted at her office during 1973 and that he informed her that Heston was apparently operating as a highway common carrier in the sought areas and that his certificate should be amended to include these areas. She stated that apparently several of the shipments Heston delivered into the sought areas for other carriers originated outside the state and that because of this, he was advised by the Interstate Commerce Commission to cease and desist from handling such shipments.

The accountant testified that she prepared Exhibits 4, 5, 6, and 7 from Heston's 1973 freight bills. Exhibit 4 is a summary of the total number of shipments handled by Heston into the requested areas during the first eleven months of 1973. The date, origin, destination, freight bill number, and weight of each shipment are shown. All of these shipments originated at Sacramento, West Sacramento, or North Highlands, which is within the pickup and delivery limits of Sacramento. According to the exhibit, Heston transported, during the month of July 1973, 114 shipments to the requested areas. Of these, 38 were delivered to Susanville, 16 were delivered to Quincy, 10 were delivered to Portola, the balance were delivered to various other points in the sought areas, and the frequency of shipments to the other points ranged from one to eight. For the 10 other months, although there were some differences in the frequency served, the destinations were generally the same. The witness stated that the majority of the shipments listed in Exhibit 4 were transported for the following four shippers: Thomson Diggs Company, National Wholesale Building

Materials, Nabisco, Inc., and J. B. Specialty Sales. While a few of the shipments weighed from 1,000 to 9,500 pounds, the majority of the shipments listed in Exhibit 4 weighed under 500 pounds. According to Exhibits 5 and 6, Heston transported shipments for 79 shippers in the Sacramento area to over 200 different consignees located at various places in the sought areas during 1973. The accountant explained that the transportation included both prepaid and collect shipments. Exhibit 7 shows that during 1973, Heston delivered 64 interline shipments for eight common carriers to the sought areas and that most of the shipments were under 300 pounds in weight. The witness explained that these shipments were picked up from the terminals of the common carriers; that the full minimum rates were assessed by Heston for the transportation from Sacramento to destination; and that if the application were granted, Heston could have joint through rates for such service. She stated that the purpose of Exhibits 4 through 7 was to show, based on Heston's present operations, that public convenience and necessity require the requested extensions.

Representatives of seven shippers and 15 receivers of freight testified in support of Heston's request for additional certificated authority. Six of the shippers are located in Sacramento, and one is located in North Highlands. All of the seven shippers have customers in most of the major communities in the sought areas, including Susanville, Portola, and Quincy, and some also have customers at other locations therein. They ship a variety of products, including hardware, building materials and supplies, concrete tools and supplies, sporting goods, housewares, appliances, toys and games, office furniture and supplies, food items, liquor and alcoholic beverages, and related commodities. The frequency and weight of their shipments vary with most shipments in the 100- to 700-pound category

and occasional shipments in the 1,000-pound to truckload range. Most have both prepaid and collect shipments. Some have used Heston to his present certificated area. Six now use his service to the proposed areas, and the other one has used his service to these areas in the past. All consider Heston's service excellent and will continue to use it if the application is granted. Most stated Heston was referred to them by a customer or business acquaintance. Some have used or are now using either Applegate or Delta, or both to their respective certificated areas. One complained about late deliveries of several shipments by Applegate. Several stated they have had problems with Delta regarding delays in deliveries or damage claims. One stated it uses the services of United Parcel Service for its smaller shipments. Two, who are liquor distributors, make deliveries to the sought areas with their own trucks twice a month or so and use Heston for emergency and other shipments. Some would prefer the daily service to the sought areas proposed in the application rather than the twice-weekly service now provided by Heston.

The 15 receivers of freight who supported the application are in various businesses, including variety and general merchandise stores, retail general building supplies, retail furniture and appliances, auto dealerships, propane gas equipment and supplies, ceramic tile contracting, processing steel moldings for plastics, and eating establishments. Their businesses are at the following locations in the sought areas: Five are in or adjacent to Susanville, three are in Janesville, one is in Litchfield, three are in Quincy, one is in Blairsdon, and two are in Portola. The majority of the shipments they receive originate in Sacramento. Of those originating beyond Sacramento, some are handled directly from origin to destination by Delta via Sacramento or by Consolidated via Reno, and the balance handled by other carriers from origin is interlined at Sacramento with another carrier for delivery. The frequency with

which each of the 15 businesses receives shipments varies from occasional to several per week. The weight of the shipments ranges from under 100 pounds to several thousand pounds with most under 500 pounds and occasional truckloads.

The majority of the 15 witnesses testified that their companies have used Heston's service; that many of their customers travel quite a distance to buy from them; that for this reason, it is essential that they maintain adequate inventories and receive good service from truckers; that Heston's service is excellent, and they have had no loss or damage experience with him; and that he will give store-door delivery to those locations in the sought areas which do not now have common carrier service. A few stated that they would prefer the daily service Heston proposes rather than the twice-weekly service he now provides. Several of those who testified that they used Applegate's service complained that its driver handled their shipments roughly and damaged the merchandise; that it had not paid some of their damage claims; and that there were instances where it did not meet delivery commitments. Of those who used Delta, some stated that they were satisfied with its service; however, others complained regarding delays in deliveries and damage to shipments. Those who have used Consolidated complained about its service. Two stated that they also used the services of United Parcel Service and Greyhound. All stated they will use Heston's proposed certificated service if the application is granted.

Evidence protesting the sought authority was presented by Applegate only. The protest was limited to the portions of the sought authority which Applegate now serves under its current certificate. This includes generally from Canyon Dam on the north along State Highways 89 and 70 and U.S. Highway 395 through Greenville,

Quincy, Graeagle, Blairsdan, Portola, Loyalton, and other towns and communities along this route to Herlong. Applegate's president testified that his company performs transportation services into the areas it protests for four of the seven shippers and also for five of the six consignees located therein who testified in support of the application; that of the three shippers it has not served into these areas, two are liquor distributors who perform most of their own transportation, and the third has used Applegate's service to other areas; that apparently the one receiver Applegate has not served has never requested service from it; that during 1973, the number of shipments delivered by Applegate to the four receivers it serves ranged from 72 to 423, and the number delivered to the other consignee and shipped by the four shippers via Applegate ranged from 3 to 11; that the number of damage claims filed with Applegate in connection with this transportation is very negligible; and that to his knowledge, the several claims referred to by the witnesses have been satisfied. According to Applegate's Exhibit 26, which is a summary of the freight handled by it to and from the protested areas during 1973, Applegate handled a total of 14,197 shipments, the average number per day was approximately 56, the average weight per shipment was 392, and the average revenue per shipment was \$11.73; the total weight of all shipments into the areas was 5,094,226 and out of the areas was 468,243, and the average weight transported per day in was 20,215 and out was 1,858; the total revenue for all shipments into the areas was \$159,000 and out of the areas was \$7,597, and the average revenue per day in was \$631 and out was \$30; and of the inbound shipments, interline freight accounted for 76.97 percent of the weight and 68.14 percent of the revenue. The president asserted that both Heston and DiAnza Trucking have been delivering freight into this territory and are hurting Applegate; that if Heston were certificated here it could result in a further reduction in the amount traffic

available to Applegate; that Applegate is now providing a good common carrier service here which adequately meets the needs of the public; that its profit from this operation is small; and that any further dilution of the traffic available to it would make it impossible for it to continue to render such service.

Counsel for Delta, in his closing statement, pointed out that his client's protest to the application is limited to the portions of the sought areas served by it under its certificate. His motion to incorporate in this proceeding his argument protesting Applegate's Application No. 54182 because of the similarity of issues in the two matters was granted. He asserted that Delta provides both intrastate and interstate service in these areas it protests, and that no evidence whatsoever was presented by Heston regarding a need for interstate service by him here. In this connection, he stated that the evidence presented concerning shipments originating beyond Sacramento related to origins within California. He argued that the record shows that Heston does no advertising; that he obtains his business from recommendations by his customers to prospective customers; that Heston is now operating a twice-a-week service in the protested areas and is doing a good job there; that his customers are satisfied; that the evidence does not establish that Heston requires a certificate for this service; that should Heston increase the size of his operation, his service to the public would be different and less personalized; that each and every point in the protested areas is served by at least two carriers; and that the record, both here and in the Applegate matter, established that the public is receiving good service from Delta.

In closing, counsel for Applegate argued as follows: Applegate is providing a good service in the areas it protests. There is no evidence to justify Heston's request for interstate authority. Heston has not proven that public convenience and necessity require his proposed service. He has not demonstrated that he is a fit, willing, and able person to perform the sought service in this territory. In this regard, Heston has limited equipment and facilities and has been performing a regular service for the public under his permit. If the Commission is to grant a certificate to one carrier only for the Chester-Westwood-Susanville areas along State Highway 36, Applegate should receive the authority since it filed its application first, and Heston has been providing a questionable highway common carrier service there, whereas, Applegate has not.

The representative of Heston in his closing statement, in addition to summing up the evidence presented on behalf of his client, argued as follows: Heston's present service to the sought areas is provided throughout the year, irrespective of weather conditions. Motor truck is the only mode of transportation available throughout most of these areas, and no single highway common carrier now serves all of this territory. The businesses using Heston's service are supplying their customers with items they need in their everyday living. Because of the lack of adequate certificated service, many businesses must use their own vehicles for their transportation needs, and since most are one-man operations, they cannot afford to close their shops to pick up merchandise in Sacramento and elsewhere. The testimony of the shippers and receivers of freight clearly establishes that there is a public need for the proposed service. Delta is now providing a highway common carrier service in the Chester-Westwood-Susanville areas, and, other than Heston, there is no need for any

additional certificated carriers in these areas. As to Applegate's present certificated area, the customers Heston has been serving in this area have been served by him for some time and it is unlikely he will divert any freight from Applegate. The record fully supports a favorable decision in this matter.

Discussion

As stated above, because of similarities in much of the authority sought and in the issues in Applegate's and Heston's applications, the discussion will relate to both.

With the exception of Applegate's request for certain additional authority which will be discussed below, both request extensions of their intrastate highway common carrier certificates to include the entire so-called loop area which is generally from the intersection of State Highways 36 and 89, south and east along State Highways 89 and 70 to U.S. Highway 395, north on U.S. Highway 395 to its intersection with State Highway 36, and west along State Highway 36 to the point of beginning; the area generally east and north along State Highway 49 from North San Juan to its intersection with State Highway 70; and also certain points and areas in the vicinity of the two aforementioned routes. Each is currently authorized under its present certificate to serve a part of these areas, Applegate along State Highways 89 and 70 and U.S. Highway 395 from Greenville to Herlong, including all points within 10 miles thereof and certain off-route points; and Heston along specific named points along State Highway 49 between North San Juan and Sierra City, including Downieville. Applegate requests that it be authorized to serve all points within 10 miles of the sought routes, and Heston requests such authority within three miles thereof. Applegate has interstate authority for most of the areas it now serves, including authority to operate from Reno, Nevada to Downieville. Heston now has no interstate authority.

however, he requests such authority for the service he proposes to provide. Applegate does not request interstate authority herein for the extensions it seeks but is requesting such authority from the Interstate Commerce Commission.^{1/}

The basic issue for our determination is whether the above-described areas can support additional highway common carrier service. Protestant Delta now provides highway common carrier service along the State Highway 36 route, including the points of Leavitt and Westwood which are near this route. The segments now served by Applegate and Heston under their current certificates cover substantially all of the balance of these areas. All of the main cities and communities here are receiving highway common carrier service from one of the three carriers, and there are few locations in the areas that are not receiving such service. Other than interstate service by Consolidated via Reno, no other carriers provide highway common carrier service to this part of the state. Except for the testimony by some of the public witnesses that they were not satisfied with Consolidated's service, there is no evidence in either proceeding regarding the extent or quality of its service. We will, therefore, not consider its service. Furthermore, practically all of the public witnesses were concerned with direct service from or interline service through Sacramento which Consolidated does not provide. These areas also receive some service from permitted carriers, Greyhound, and United Parcel Service. However, such service is either irregular or specialized and differs from the highway common carrier type of service with which we are here concerned.

^{1/} Requests for interstate authority for transportation entirely within California or for extensions thereof by a highway common carrier which also operates in any other state are made to the Interstate Commerce Commission. Requests for such interstate authority by highway common carriers operating exclusively within California are made to the State Commission in accordance with Section 206(a)(6) of the Interstate Commerce Act.

Susanville is the largest city located on the State Highway 36 segment of the loop area. Its population is approximately 6,600. The other main towns along the loop include Westwood, Chester, Greenville, Quincy, and Portola. Their populations range from slightly over 1,000 to 2,500. The towns and communities along the State Highway 49 area and the adjacent areas, including North San Juan, Downieville, Sierraville, and Loyalton, are quite small. This part of the state is basically a rural area with no large communities. Much of it is rugged and mountainous and subject to extremely inclement weather conditions in the winter season. While it is now an area of low population density, it is not a dormant area. According to the evidence presented by both applicants and their numerous supporting public witnesses, its population and commercial potential are growing, and this trend is expected to continue.

We are not persuaded by Delta's argument that the evidence presented by Applegate and that presented by Heston, both individually and collectively, fail to establish a public need for any additional highway common carrier service along the segment of the loop area it serves under its certificate. Delta asserted that we should reach the same result here as we did in our decision in Walkup's Merchants Express, supra, wherein we denied the applicant's request to extend its highway common carrier certificate to serve the Fort Bragg area which was served by only one highway common carrier who vigorously opposed the request. In that proceeding, the protesting carrier presented direct, affirmative evidence to support its position. Here, other than cross-examination of Applegate's and Heston's witnesses, Delta presented no evidence whatsoever to show that the same conditions exist in the area it serves. While there are some similarities between the facts in the Fort Bragg proceeding and those in the two before us, there are sufficient differences to warrant a different result here. Both areas are rural, mountainous, and subject

to severe winter conditions. However, according to the evidence in the Fort Bragg matter, that area had a static economy, little or no population growth, was receiving adequate service from the one highway common carrier authorized to serve it, and could not support an additional certificated carrier; whereas, here the evidence is to the contrary. As stated above, this is a viable, growing area, and many of the public witnesses complained that the present common carrier service is not satisfactory or adequate and asserted that there is a public need for additional highway common carrier service. There is no evidence in the record to the contrary. Furthermore, Delta serves most of the state and does transport shipments from points beyond Sacramento directly to the area it protests. The competitive threat of either applicant to it is only in connection with traffic originating in the Sacramento area or interlined there from other carriers.

Based on a review of all the evidence presented by both applicants and their public witnesses, we are of the opinion that, with the exception of Susanville, all of the aforementioned areas each requests can support the services of two intrastate highway common carriers but not three. While taken as a whole this is a rural area of relatively small communities, sufficient need has been shown through the testimony of the public witnesses in both proceedings for additional highway common carrier service. Obviously, this need is not for the services of an unlimited number of highway common carriers, and two would adequately satisfy the demands of the public. It is noted that neither of the applicants nor the public witnesses presented evidence regarding service to each and every location within the sought areas. To require such would place an undue burden on the applicants which it is unlikely they could meet with a reasonable number of shipper witnesses. Although the witnesses who testified

in support of the sought extensions in this overall territory were not numerous and the evidence they presented was somewhat limited, nonetheless, a representative showing has been made which sufficiently establishes the need for the additional service in these areas.

(See "Call Mac" Transportation Co. (1966) 66 CPUC 111.) As to the protests by Applegate and by Heston regarding the areas each serve under their present certificates, we are not convinced that any diluting of the traffic available to each in their respective areas would be serious. In this connection, Heston is now providing service purportedly under his contract authority in Applegate's area, and Applegate is now providing service under its interstate authority in Heston's area.

With respect to Susanville, it, together with the nearby communities, is the major commercial center for this part of the state. Most of the consignee witnesses presented by each of the applicants were from here. Based on their testimony and the number of businesses and commercial establishments in and around Susanville, we are of the opinion that there is sufficient public demand for transportation service here to warrant the service of three intrastate highway common carriers.

One matter requiring comment regarding all of the above areas is the fact that freight is predominantly inbound with little outbound. With this imbalance in their present certificated areas both applicants have experienced favorable operating profits and assert that their earnings will continue to be such if their requests are granted. There is no evidence to contradict this, and their operations in their present areas and those proposed for the sought areas are designed for such conditions.

The next issue for our consideration is whether either or both Applegate and Heston have the necessary experience, financial ability, and reasonable fitness to provide any or all of the services each proposes. The evidence presented by Applegate and recited above clearly shows that he meets these tests, and no further comment is required regarding it. As to Heston, he has operated his own trucking business for a number of years and has the necessary experience. He is at present a one-truck operator and intends to add one additional truck initially and grow slowly if he is granted any additional certificated authority. While his financial resources are limited, it is apparent he would have no difficulty doing this. Applegate has questioned his fitness because of the number of customers he is serving in the sought areas under purported oral contracts. Applegate alleges that he is now providing a highway common carrier service without the necessary certificate. In this connection, we have consistently held that the number of customers served or the fact that contracts may be oral does not in themselves establish common carriage. Furthermore, Heston, upon being informed by the Commission that his contract service in the areas in question might be approaching that of a highway common carrier, filed his application with us. We are not convinced by the record before us that Heston is an unfit person.

From a review of the evidence, we are of the opinion that Applegate's certificated authority should be expanded to include all of the above-described loop area, State Highway 49 area, and adjacent areas, all with 10-mile laterals, and that with the exception of the State Highway 36 route from west of Susanville to its intersection with State Highway 89 and the route along State Highway 147, Heston's certificated authority should be similarly expanded with the requested

three-mile laterals and five-mile radius from Sacramento. The additional authority granted Heston will include Susanville and exclude Westwood. In lieu certificates will be issued to each applicant incorporating its present authority and that granted herein. The effect of this grant of authority to each applicant will be to provide service to the public by three intrastate highway common carriers in the Susanville area and by two highway common carriers throughout the balance of the areas.

With respect to Heston's request for interstate authority, we agree with both Delta and Applegate that there is not sufficient evidence herein on this issue to support a finding that public convenience and necessity require his service in interstate and foreign commerce.

We come lastly to the two additional areas sought by Applegate. The first is the area along State Highway 99 between Sacramento and Yuba City. The only evidence presented by Applegate to support this request was the testimony by its president that it has had requests from customers for service here. This is not a sufficient showing to establish that public convenience and necessity require its service along this route.

The second additional area is from Roseville to Auburn via Interstate Highway 80 and thence via State Highway 49 to North San Juan. This would include Grass Valley and Nevada City. While there was some evidence presented by Applegate regarding this area, it is not persuasive. The service it performs for the White King Soap Company and the Frigidaire Corporation to this area is under written contract and pursuant to its highway contract carrier authority. No other authority would be appropriate for this service. Of the three public witnesses who testified in support of this extension, two were Sacramento shippers and one was an Auburn consignee. One

of the shippers has shipments of several thousand pounds ranging from approximately one per week to occasional to certain locations in this area, and the other shipper has daily shipments averaging from 150 pounds to 400 pounds into the area and also uses the services of United Parcel Service. The consignee does receive daily shipments in the two-pound to 500-pound category from Sacramento and has, on an irregular basis, received truckload shipments from Applegate which were transported under its permitted authority. However, as pointed out by Delta, the main population and business centers in this area are now served by several highway common carriers. The evidence does not establish with sufficient certainty that their service is inadequate. We agree with Delta that a public need for this extension has not been shown on this record. As stated above, Applegate will be authorized to serve from North San Juan, north and east along State Highway 49 to its intersection with State Highway 70 with 10-mile laterals. Because of the alignment of State Highway 49 and to avoid any uncertainty as to whether Nevada City could be considered within these laterals, this route will include a restriction that the laterals do not include any point on State Highway 49 south of North San Juan.

Findings

Application No. 54182 - Applegate

1. Applegate holds the highway common carrier certificate described above, which was transferred to it by Decision No. 78692. It also holds certificated authority from the Interstate Commerce Commission for most of the areas covered by its intrastate certificate and also to operate between Reno, Nevada and Downieville, California. Additionally, it holds various permitted authorities and a cement carrier certificate from this Commission.

2. Applegate has operated under the intrastate highway common carrier certificate described in Finding 1 since July 1, 1971.

3. Applegate has been providing intrastate service from Sacramento to many locations within the extended areas which it proposes to serve as a highway common carrier. This service has been performed under written contract with customers pursuant to its highway contract carrier authority or on an irregular basis pursuant to its radial highway common carrier authority. It has not operated as a highway common carrier in the sought extended areas.

4. The sought certificate extension along State Highway 99 between Sacramento and Yuba City is now served by various intrastate highway common carriers.

5. The sought certificate extension from Roseville to Auburn via Interstate Highway 80 and thence via State Highway 49 through Grass Valley and Nevada City is now served by several intrastate highway common carriers.

6. Parts of the balance of the sought certificate extensions not referred to in Findings 4 and 5 are now served by an intrastate highway common carrier. These include service by Delta along State Highway 36 between its junction with State Highway 89 west of Chester and its junction with U.S. Highway 395 east of Susanville, including

the off-route point of Westwood, and service by Heston between Sacramento and various points along State Highway 49 from North San Juan to Sierra City. The area also receives service from several permitted carriers and by Greyhound and United Parcel Service for parcel shipments. Additionally, it receives some interstate service from Consolidated via Reno, Nevada, and from Delta.

7. The witnesses from the two highway common carriers who do not serve the sought extended areas referred to in Finding 6 have interlined freight with Applegate at Sacramento for delivery to its present certificated area and indicated that its service is good. Since they compete with Delta for freight in other parts of the state, they would prefer not interlining with it and will interline their freight destined to these sought extensions with Applegate if the application is granted.

8. Eighteen of the nineteen shipper, consignee, and other public witnesses who appeared for Applegate supported its sought extensions to the areas referred to in Finding 6. Some now use Applegate to its present certificated area, and a few have used its permitted carrier service on an irregular basis to these sought areas. All who have used Applegate's service are satisfied with it. Of those who have used Delta to these areas, some complained that they have experienced delays and damage in connection with its service, and others have no major complaints with this carrier. Generally, most who have used Consolidated's service here have not been satisfied with it. A few use the services of Greyhound or United Parcel Service for their parcel shipments. Several who are located off main routes desire the laterals proposed by Applegate since they will include their places of business. Most feel the competition of another certificated carrier will improve the quality of the highway common carrier service available in these areas. All will use the services of Applegate here if these extensions are authorized.

9. Two of the shipper and one of the consignee witnesses who appeared for Applegate desire that it be authorized to render the service it seeks to perform in the area described in Finding 5. The evidence they presented does not establish with sufficient certainty that the service provided by the intrastate certificated carriers now authorized to serve this area is inadequate.

10. No public witnesses appeared on behalf of applicant to support its requested extension to the area described in Finding 4. The only evidence regarding this area is the testimony by Applegate's president that it has received some requests to serve here.

11. The territory referred to in Finding 6 is a rural area with relatively small communities. Much of it is mountainous and subject to severe winter conditions. Generally, its population and economic potential have been growing, and this trend may reasonably be expected to continue. It is a viable area. Susanville is the main center of population and business activity in this section of the state and can reasonably support the services of three intrastate highway common carriers. The balance of the areas described in Finding 6 can reasonably support the services of two intrastate certificated carriers.

12. Protestants Delta and Heston each now provide highway common carrier service in a part of the sought extended areas described in Finding 6. It has not been shown that either protestant carrier would be seriously affected by an expansion of Applegate's highway common carrier service into the area each is now authorized to serve.

13. Public convenience and necessity require that the proposed intrastate highway common carrier service in the extended areas referred to in Finding 6 be authorized.

14. It has not been established on this record that public convenience and necessity require the sought extensions of Applegate's highway common carrier certificate referred to in Findings 4 and 5.

15. Applegate has the experience, equipment, personnel, and financial resources to institute and maintain the proposed service in the extended areas referred to in Finding 6 and the ability to add additional personnel and equipment as required.

16. We find with reasonable certainty that the project involved in this proceeding will not have a significant effect on the environment.

Application No. 54315 - Heston

1. Heston holds the highway common carrier certificate described above which was transferred to it by Decision No. 75103. He also holds a highway contract carrier permit.

2. Heston has operated under the highway common carrier certificate described in Finding 1 since early 1969.

3. Heston has been operating under his highway contract carrier authority into the sought Portola-Quincy area for approximately three years and into the other sought extended areas for about two years.

4. Parts of the sought certificate extensions are served by an intrastate highway common carrier. These include service by Delta along State Highway 36 between its junction with State Highway 89 west of Chester and its junction with U.S. Highway 395 east of Susanville, including the off-route point of Westwood, and service by Applegate which is generally from Canyon Dam on the north along State Highways 89 and 70 and U.S. Highway 395 through Quincy and Portola to Herlong, including 10-mile laterals on either side of the route. The sought extended areas are also served by several permitted carriers, and by Greyhound and United Parcel Service which provide

parcel service. Additionally, this territory receives some interstate service from Consolidated via Reno, Nevada and from Delta and Applegate.

5. Heston's service in the proposed extended areas is approaching, if it is not already, a highway common carrier service.

6. Heston has not advertised or actively solicited business to the sought areas. His service here has been at the request of his customers or through the recommendation of his customers to prospective customers.

7. The seven shipper and 15 consignee witnesses who appeared for Heston desire that he be authorized to render the service he seeks authority to perform. Some use Heston's service to his present certificated area, and many use his highway contract carrier service to the sought areas. Most indicated that he provides an excellent, personalized, expedited service. Some who have used Delta or Applegate to the parts of the sought areas each serves under its certificated authority complained that they have experienced delays and damage in connection with the service, while others who have used them had no complaints. Those who have used Consolidated were not satisfied with its service. A few have used Greyhound or United Parcel Service for their parcel shipments. All stated they will use Heston's proposed certificated service if the application is granted.

8. The additional territory sought to be served by Heston is a rural area with small communities. Much of it is mountainous and subject to extremely inclement weather conditions in the winter season. The population and economic potential of this part of the state has been increasing and this trend may reasonably be expected to continue. Susanville is a major population and business center here and has the capacity to support the services of three intrastate highway common carriers. The balance of the sought areas can reasonably support the services of two intrastate certificated carriers.

9. Protestants Delta and Applegate each now provide highway common carrier service in a part of the sought extended areas. Applegate will be authorized by the decision in Application No. 54182 to extend its intrastate certificated service in the areas sought by Heston, including the State Highway 36 route from west of Susanville to its intersection with State Highway 89 and the route along State Highway 147.

10. It has not been shown on this record that public convenience and necessity require any additional intrastate highway common carrier service along State Highway 36 from west of Susanville to its intersection with State Highway 89 or along State Highway 147.

11. With the exception of the routes referred to in Finding 10, public convenience and necessity require the additional highway common carrier service in intrastate commerce proposed by Heston.

12. It has not been shown that either of the protestant carriers, Delta and Applegate, would be seriously affected by the expansion of Heston's highway common carrier service referred to in Finding 11.

13. Heston has the experience and financial ability to institute and maintain the additional highway common carrier service referred to in Finding 11 and the ability to add additional personnel as required, and the record does not establish that he is an unfit person to perform this service.

14. We find with reasonable certainty that the project involved in this proceeding will not have a significant effect on the environment.

15. It has not been shown that public convenience and necessity require that applicant be authorized to engage in operations in interstate and foreign commerce as requested.

Conclusion

Application No. 54182 - Applegate

The Commission concludes that Application No. 54182 should be granted to the extent set forth in the ensuing order and that in all other respects it should be denied.

Application No. 54315 - Heston

The Commission concludes that Application No. 54315 should be granted to the extent set forth in the ensuing order and that in all other respects it should be denied.

Notice to Applicants

Applegate and Heston are 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 Applegate Drayage Company, Inc., 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 of this decision.

2. A certificate of public convenience and necessity is granted to Edward L. Heston, an individual doing business as Heston Trucking Co., 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 set forth in Appendix B of this decision.

3. The certificate of public convenience and necessity granted to Applegate Drayage Company, Inc. in paragraph 1 of this order shall supersede the certificate of public convenience and necessity granted by Decision No. 78692, which certificate is revoked effective concurrently with the effective date of the tariff filings required by paragraph 5(b).

4. The certificate of public convenience and necessity granted to Edward L. Heston in paragraph 2 of this order shall supersede the certificate of public convenience and necessity granted by Decision No. 65370 and transferred to him by Decision No. 75103, which certificate is revoked effective concurrently with the effective date of the tariff filings required by paragraph 5(b).

5. In providing service pursuant to the authorities granted by this order, each applicant shall comply with the following service regulations. Failure so to do by either applicant may result in cancellation of that applicant's 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 administered by 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.

A. 54182, 54315 ep

- (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.

6. Except as herein granted Applications Nos. 54182 and 54315 are hereby denied.

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

Dated at San Francisco, California, this 24th
day of JUNE, 1975.

Vernon L. Steeger
President

~~Donald R. Ross~~
Donald R. Ross
John W. H. H. H.
Commissioners

Commissioner William Symons, Jr., being necessarily absent, did not participate in the disposition of this proceeding.

Applegate 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 of the following routes:
 1. Interstate 80 between Sacramento and Roseville;
 2. State Highway 65 between Roseville and Marysville;
 3. State Highway 20 between Marysville and Yuba City;
 4. State Highway 70 between Marysville and its intersection with U. S. Highway 395 (restricted against service to off route points west of State Highway 70 between Marysville and Oroville);
 5. State Highway 89 at the point of intersection with State Highway 70 and Greenville and unnumbered highways diverging from State Highway 89 at Greenville and at or near Crescent Mills to Taylorsville, this being in the nature of a loop operation; returning over the same regular routes in the reverse direction;
 6. Between the intersection of State Highway 70 and U. S. Highway 395 and Herlong via U. S. Highway 395; thence via unnumbered state or county road to Herlong and the Sierra Ordinance Depot;
 7. U. S. Highway 395 at Herlong Junction to the junction of U. S. Highway 395 and State Highway 36, thence via State Highway 36 to its junction with State Highway 89, thence via State Highway 89 to Greenville;

Issued by California Public Utilities Commission.

Decision No. 84595, Applications Nos. 54182 and 54315.

8. State Highway 147 between its junction with State Highway 36 and State Highway 89; and
 9. State Highway 49 between North San Juan and its intersection with State Highway 70 at Vinton (restricted against service to off-route points south of North San Juan).
- 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.
- III. 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 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,

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tank semitrailers or a combination of such highway vehicles.

5. Commodities when transported in bulk in dump-type trucks or trailers or in hopper-type trucks or trailers.
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.
8. Logs.
9. Articles of extraordinary value.
10. Trailer coaches and campers, including integral parts and contents when the contents are within the trailer coach or camper.

(END OF APPENDIX A)

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Edward L. Heston, an individual, doing business as Heston Trucking Co., 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 subject to exceptions and restrictions noted, as follows:

- I. Between Sacramento and points located within 5 miles thereof and all points and places on the following routes, or 3 miles laterally thereof:
 1. State Highway 49 between North San Juan and its intersection with State Highway 70 at Vinton;
 2. State Highway 89 between Sierraville and its intersection with State Highway 36, 5 miles west of Chester;
 3. Interstate Highway 395 between Hallelujah Junction and Litchfield;
 4. County Road A3 between Buntingville and Standish;
 5. Unnamed county road between Bassetts and Graeagle;
 6. Off-route point of Herlong located at the approximate intersection of County Roads A25 and A26;
 7. State Highway 36 between its intersection with U.S. Highway 395 and Susanville;
 8. State Highway 70 between Blairsdan and Hallelujah Junction; and
 9. County Road A15 between State Highways 89 and 70.

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- 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.
- III. Except that pursuant to the authority herein granted carrier shall not transport any shipments of:
1. Used household goods, personal effects not packed in salesmen's hand sample cases, suitcases, overnight or boston bags, brief cases, hat boxes, valises, traveling bags, trunks, 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, fibre-board, 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-type trucks or trailers or in hopper-type trucks or trailers.

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Appendix B

EDWARD L. HESTON
(an individual)
dba HESTON TRUCKING CO.

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6. Commodities when transported in motor vehicles equipped for mechanical mixing in transit.
7. Logs.

(END OF APPENDIX B)

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