

ORIGINAL

Decision No. 89793 DEC 19 1978

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of James William Livesay, a general partner, and Daniel George Hoxter, a limited partner, doing business as Golden Bay Freight Lines (a California limited partnership) for a certificate of public convenience and necessity extending highway common carrier service.

Application No. 57091
(Filed February 16, 1977)

Loughran & Hegarty, by Ann M. Pougiales and Thomas M. Loughran, Attorneys at Law, for James William Livesay and Daniel George Hoxter, dba Golden Bay Freight Lines, applicants.

Eldon M. Johnson, Attorney at Law, for Hermanehildo Campos, dba Campos Delivery Service, and Hatfield Trucking Service, Inc.; Handler, Baker & Greene, by William D. Taylor and Randall Faccinto, Attorneys at Law, for Lodi Truck Service, Inc., Associated Freight Lines, and Ditto Freight Lines, Inc; and Dunne, Phelps & Mills, by Marshall G. Berol and James O. Abrams, Attorneys at Law, for Delta Lines, Inc., Nielsen Freight Lines, and Ted Peters Trucking Co.; protestants.

O P I N I O N

All certificates, permits, and other assets owned by the applicant partnership in this proceeding were transferred to James William Livesay (Livesay), an individual doing business as Golden Bay Freight Lines, under the authority of Commission Decision No. 88903, dated May 31, 1978, (after the filing of this application and public hearing on this matter) in Application No. 57798, and the Interstate Commerce Commission decision in MC-FC-77513, served May 5, 1978.

Applicants are a limited partnership organized and operating pursuant to a limited partnership agreement, a copy of which was filed with this Commission in Application No. 56488, filed May 18, 1976.

Under said agreement, Livesay is a general partner and Daniel George Hoxter a limited partner.

Applicants presently hold authority from this Commission to operate as a highway common carrier, pursuant to Section 213 of the California Public Utilities Code, transporting general commodities with certain exceptions, in the San Francisco Territory which is embraced generally by San Francisco and Richmond on the north and Saratoga and Los Gatos on the south. Their present authority was originally issued to Portola Drayage Company in Decision No. 60839, dated October 4, 1960, in Application No. 42114, as amended by Decision No. 74082, dated May 7, 1968, in Application No. 48547. This certificate was registered with the Interstate Commerce Commission and a Certificate of Registration issued in Docket No. MC-120708 (Sub-No. 1) dated March 6, 1964. Said certificates were subsequently transferred to Livesay, an individual doing business under the fictitious name of Golden Bay Freight Lines pursuant to Decision No. 78541, dated April 13, 1971, in Application No. 52469. Livesay transferred the certificates to the applicants herein pursuant to Decision No. 86236, dated August 10, 1976, in Application No. 56488.

Applicants have applied to extend their general commodity authority (for all general commodities) northerly to Santa Rosa, Calistoga, Knights Landing, Roseville, and Sacramento; easterly to Sacramento and down to Fresno; with westerly boundary down Highway 1 from San Francisco south to Santa Cruz and Carmel; and thence easterly through Salinas, Gilroy, and Los Banos to Chowchilla on Highway 99. Applicants have asked for a 20-mile lateral on all routes and points and for authority to use any road, street, or highway within its zone of operation as a convenience to provide more efficient service. Applicants will provide service in intrastate, interstate, and foreign commerce in the expanded area. Notice of this application was published in the Federal Register of March 10, 1977 and republished on April 7, 1977 due to an error which identified the laterals as ten rather than twenty miles. Applicants further request that an in lieu certificate be issued to combine all of their certificated operating authority in a single document.

Applicants' operating equipment as of May 31, 1977 included nine 27-foot van trailers, one 26-foot flatbed trailer, seven bobtails, and six tractors. Two trailers, one tractor, and two bobtails are operated under a long-term lease from Blue Fast Freight, Inc. (all of Blue Fast Freight, Inc.'s stock is held by Livesay), while the remainder of the equipment is owned by applicants' partnership. Applicants employ thirteen drivers, two dock workers, one yard man, one mechanic, one office clerk, one traffic clerk, and a salesman, dispatcher, and terminal manager. A terminal is leased at 1097 Old County Road in San Carlos, which includes a dock with five rollup doors and a shop equipped to perform major truck repairs. Applicants' trucks are all radio-equipped and the company operates two base stations.

Applicants' balance sheet dated March 31, 1977 shows total assets of \$188,522 and current liabilities of \$115,502; all liabilities total \$191,743. The profit and loss statement for the first three months of 1977 lists operating income of \$195,912 and operating expenses of \$205,417; there is an item of \$2,378 titled other income and \$2,920 as other expense, in addition to the other totals. The statement reveals that applicants suffered a loss of \$10,047 during the first three months of 1977.

This application was protested by Delta Lines, Inc. (Delta), Nielsen Freight Lines (Nielsen), Ted Peters Trucking Co. (Peters), Lodi Truck Service, Inc. (Lodi), Associated Freight Lines (Associated), Ditto Freight Lines, Inc. (Ditto), Hermanhilldo Campos, dba Campos Delivery Service (Campos), and Hatfield Trucking Service, Inc. (Hatfield). Public hearings were scheduled and held in San Francisco on May 31, June 1, 2, and 3, and July 11, 12, and 13, 1977. The matter was submitted on concurrent briefs filed on October 6, 1977.

Livesay testified as follows for the applicants: This application was filed primarily due to an Advisory Conference in January 1977 between the witness and members of the Commission staff wherein the latter advised that the applicants were probably operating as a certificated common carrier in certain areas they now serve under permit authority. Applicants must retain this expanded

business which is steadily growing. There has been little growth in the business represented by those shippers applicants serve under their certificate. Second, many of applicants' shippers use both the certificated and permitted service. These customers may be lost if applicants do not expand the territorial scope of their certificate. Third, applicants have been forced to turn down traffic to points they do not serve. Applicants do not use interline carriers because the loads are frequently delayed while the interline carrier delivers its own merchandise first. Fourth, applicants have not been able to solicit business in many of the areas they serve regularly due to lack of an expanded certificate. Applicants have also been providing special services when requested. Their drivers will pick up or deliver at a specified time; drivers will carry merchandise inside and place it on shelves or in bins; applicants will also pick up and deliver at locked storage areas for certain customers. The driver is provided with a key to enter and locks the premises after picking up the merchandise. This service eliminates the need to keep shipper employees on the premises. The evidence shows that applicants handled 1,280 shipments in October 1975, 1,543 in August 1976, and 2,103 in April of 1977. Applicants' present loss is a little over \$10,000; it was \$25,802 for the three-month period ending in December of 1976. There is also a debt of \$13,000 owed to applicants which is listed on the balance sheet as an account receivable. This is collectible and is a reserve. Applicants are solvent and have eliminated most of their losses. Their financial position steadily improves.

Applicants will provide regular service on Monday through Friday, with holidays excepted. Delivery will be same day or overnight and applicants propose to establish rates and charges comparable to those of competing motor carriers, which will be published in tariffs issued by Pacific Motor Tariff Bureau, Inc.

Nineteen shipper witnesses testified for the applicants as follows:

1. Pacific Coast Service Company and Pacific Coast Distributing - This shipper represents two warehouses located in South San Francisco. They ship from their warehouses one to twelve daily shipments going south as far as Fresno. Daily shipments average from 200 to 1,000 pounds,

although a few to the Sacramento area may average 5,000 to 10,000 pounds. Applicants carry about 80 percent of their goods to Sacramento, Modesto, and Stockton. They also use other carriers and will continue to do so. They ship to most other points in the area applicants have applied for from once a week to once a month. Applicants schedule an early pickup for this shipper and have provided a second pickup, when requested. Applicants are also efficient in tracing shipments when warehouse customers call to ask whether certain items were actually delivered. This shipper will use applicants' service in the expanded area if a certificate is granted.

2. Duracell Products (Duracell) - The manager for 11 western states testified that his company sells and distributes batteries to stores, pharmacies, food chains, and wholesale customers throughout California. Business has increased 800 percent during the last four years, with shipments presently averaging 150 to 1,000 pounds. Traffic moves to Sacramento on a daily basis, and to Fresno three times a week, with the same frequency to Monterey-Salinas, Modesto, Merced, and Marin County. Willig Freight Lines is now used to transport some of these shipments. Carriers must pick up before 2:30 in the afternoon since they close at 4:30 p.m. The Duracell facility in South San Francisco has three loading doors. One is used for large trailers and another for United Parcel. Only one entrance is assigned for common carriers. The company is now in the process of reducing the number of carriers employed and the manager initially testified that the applicants would be used to all areas they propose to serve. Applicants have also agreed to make late pickups and deliveries, if requested. Duracell occasionally receives special items by air, which are picked up at San Francisco Airport and would prefer applicants for this service. On cross-examination it was admitted that Duracell will continue to use Willig Freight Lines if this application is granted.
3. The administrative manager of Savin Business Machines Corporation of San Francisco testified that it markets photocopy machines, paper, and other accessories. Shipments range in weight

from 30 to 200 pounds with frequency of service from twice to 12 times a month. Time of pickup and delivery is critical to Savin's operation and the manager testified that the applicants have provided the best service in this category.

4. The same witness represented Price Enterprises and Jet Dragon Fireworks Co., both from San Carlos. One deals in fireworks and the other in artificial flowers, candles, candle holders, and varied gift items. Shipments are made to most areas applicants seek to serve, with frequency varying from once to 12 or more a year. Shipments of fireworks vary in weight from 300 to 1,500 pounds, with occasional loads to 2,500; Price shipments seldom exceed 300 pounds. Many shipments are sent by United Parcel and Delta. This witness testified that applicants' service is preferred to other common carriers.
5. Cole Business Furniture is a wholesaler of steel and wood office furniture, located in South San Francisco. It is a warehouse operation serving all of California, with shipments averaging from 50 to 3,000 pounds. There are daily pickups, with individual towns or points served from once to twice a week.
6. A warehouseman represented both Long Life Products and Solar Electric. They manufacture, sell, and ship light bulbs and fluorescent tubes out of a warehouse in Menlo Park. Shipments to points concerned in this application vary from once a month to three times a week and are usually less than 100 pounds. Applicants are used whenever possible because of the risk of breakage. Applicants deliver cargo in good condition and will deliver on the day the shipment is picked up, if requested. Applicants also pick up at the same time every day. This is very important, since the merchandise is placed on the dock just before the truck pulls up. If a truck is late, everyone must work around the pile in the loading area until the missing vehicle arrives.
7. A traffic manager for Xerox Corporation testified that it ships copy and computer-related machines, along with paper and chemicals all throughout northern California. Shipments average from 100 to 1,000 pounds out of the facility in South San Francisco. Shipments are daily to the more

populated areas around San Francisco Bay. Applicants' service has been used since 1972 and is favored because it is reliable. Xerox Corporation requires shipments to offices and stores where workmen are repairing machines. Applicants provide this service, pick up and deliver on time, and have an efficient claims tracing and reimbursement policy.

8. Furnas Electric Company (Furnas) is located in Burlingame and distributes electric motor controls throughout the area applicants seek to serve, with loads averaging 200 pounds and service once or twice a week. Applicants have been able to provide same-day service on a few deliveries when Furnas had an emergency. Furnas prefers to use only a few good carriers and would include applicants in this category.
9. The treasurer of Forderer Cornice Works testified that his company is located in San Francisco and manufactures hollow metal doors and frames. It ships to construction sites where the doors are to be installed. Current shipments are destined to Santa Rosa, Guerneville, Salinas, Modesto, Sacramento, and other points, with shipments ranging from 10 to 135,000 pounds. He testified that carriers are required to appear when scheduled and to leave their vans while loaded by Forderer Cornice Works' personnel, which prevents most damage in transit. The carrier must also reach the jobsite at a specified time, when crews are ready to install the doors. Applicants satisfy these requirements and their service is used as frequently as possible.
10. A Menlo Park distributor testified for the Red and White Valve Company, which manufactures bronze and iron valves. He distributes from the Oregon border south to Santa Maria, with shipments averaging from 500 to over 2,000 pounds. Frequency varies from once a week to once a month. He has used applicants for 3½ years and their service is reliable. They have furnished pickups late in the day and have picked up early with same-day delivery on an emergency shipments.
11. A witness testified for Golden Gate Fireplaces, Inc. of Menlo Park. It supplies fireplaces from San Luis Obispo north to Oregon. There are more than 50 dealers in north and central California, along with many job and construction sites where

fireplaces are to be installed. Frequency of shipments to an area will vary from three times a week to once a month, with loads averaging 400 or 500 pounds each. Applicants are used whenever possible on shipments to jobsites, where the merchandise must arrive at the time promised, so expensive installation men do not stand around waiting for a late shipment.

12. A terminal manager testified for Lawi-CSA Consolidators, a freight consolidation company located in San Francisco. They unload rail cars from the east and distribute the contents to numerous consignees in California. His company distributes - with its trucks - in the greater Bay Area. Applicants are now used for everything shipped south of San Mateo, and other carriers to the north and east. They ship daily to Fresno, Sacramento, and Stockton, decreasing to three or four times a week to such towns as Modesto, Tracy, Monterey, Salinas, Santa Cruz, and Vallejo. Shipments to Contra Costa County average at least three a week, with all shipments in the 10 to 15,000 pounds a day range. Applicants' service is preferred; they leave trailers overnight to be loaded and always provide next-day service. If this application is granted, applicants will be hauling at least twice the freight it now handles for CSA Consolidators.
13. The president of Continental Warehouse, Inc. testified that it is a public utility warehouse located in Burlingame. It serves the entire area applicants seek to serve, with shipments averaging from 75 to 2,000 pounds. Frequency varies from daily to less than once a week, depending on the area. Applicants have been used on a daily basis for the last two and a half years and their service has been excellent.
14. McClary, Swift and Company, Inc. is located in San Francisco and provides freight forwarding from the San Francisco Port, Oakland, and Richmond to points throughout the greater Bay Area, with shipments averaging from 500 to 35,000 pounds and deliveries from once a week to once or twice a year. Applicants' service is used and is favored; McClary, Swift and Company, Inc. has been plagued by late pickups (several days delay) and a delay in the delivery of documents from the two protestants employed.

15. D. N. Mallory Distributing of South San Francisco ships about 16,000 craft and hobby items throughout northern California on a daily to monthly basis, depending on the area served, with shipments averaging from 100 to 500 pounds. Its representative testified that the applicants' service is used on a daily basis and is excellent.
16. A witness for Tarco Western of South San Francisco testified that it imports and wholesales floor and wall coverings, which come into San Francisco by ship in large containers. Shipments go to contractors and retailers throughout north and central California, with shipments averaging from several hundred to several thousand pounds. Frequency is intermittent and about one delivery a month in most areas. Applicants have been used to all areas they presently serve. Tarco Western prefers their service because of prompt pickup and delivery, which is critical when floor covering is delivered to a jobsite for immediate installation.
17. A regional director from Belmont testified for UNICEF, a charitable organization. She advised that it sends greeting cards to volunteers in seven states. The greeting cards are delivered to a store or home or other place designated by the volunteer. Applicants have been delivering the cards for the past two years and have provided outstanding service. Their drivers have carried packages inside for some of the volunteers and have even returned to deliver at a later time when no one was available to accept the first delivery. She has had many difficulties with other carriers who have missed pickups and deliveries, or provided discourteous drivers. She observed that greeting cards are not profitable to haul and deliver, so some carriers provide marginal performance.
18. Hoyt, Shepston & Sciaroni is a custom-house broker and freight forwarder operating out of San Francisco. It receives from overseas at the San Francisco International Airport and at the ports of Oakland, Stockton, and San Francisco. It ships from these points throughout the area applicants are seeking to serve, daily to some points, and less than one shipment a week to others. Shipments range from 50 to 5,000 pounds. Applicants are used to haul in the Bay Area and service has been very good.

19. The distribution manager of Cordis Dow Corporation, located in South San Francisco, testified that it manufactures and ships hemodialysis equipment and artificial kidneys over 14 western states and the Pacific Ocean and Canada. Items are under prescription and are only received by hospitals, doctors, or clinics. Shipments average one or two a week to most areas, and there are exceptions where units are delivered to private homes for patients with defective kidneys. It has used applicants in the Bay Area for three years and has received excellent service.

Applicants' drivers have provided exceptional service, as deliveries come off the truck and have to be carried to storerooms, bedrooms, storage area, or doctors' offices. Pickups and deliveries have to be on time as most consignees do not store this type of equipment.

All of the shippers praised the prompt pickup and delivery service offered by applicants and the quality of their drivers, who will provide special service when requested. Applicants always provide overnight service as promised and have provided same-day service on special orders. Those who have items being transported to jobsites for installation praised applicants' ability to always deliver on time, so work crews are not kept waiting. Most of the shippers testified regarding unfortunate experiences with other carriers, where pickups were late or delayed for one or more days, goods were lost, and drivers were discourteous or unreliable.

Eight protestants opposed the application. Six of the protestants (Lodi, Associated, Ditto, Delta, Nielsen, and Peters) objected to the application "en toto" and two (Campos and Hatfield) protested any grant of authority to transport interstate and foreign shipments having a prior or subsequent movement by air carrier. The protestants presented the following testimony:

1. The general traffic manager of Delta testified that it serves on the west coast from the Canadian to the Mexican border. Delta provides overnight service throughout the area applicants seek to serve on both interstate and intrastate shipments, on truckload and less than truckload consignments. Delta also provides same-day service on special request, but it is seldom necessary. Delta has 11 terminals and 800 employees in the area applicants seek to serve,

with more than 200 line-haul and pickup units available at the terminals. Delta's profit margin has been decreasing since 1965 due to steadily increasing competition provided by newly certificated carriers in California. The witness stated it is impossible to serve an extensive area without a number of terminals. Shipments designated for five or more areas may be picked up by the same truck and would normally be transferred to other trucks for delivery at a terminal. The applicants' single truck cannot pick up and deliver to widely spaced areas at the other end of the carriers' service area unless only a few selected shippers are being served. There is also the problem of C.O.D. and "will call" shipments, which are normally handled out of local terminals. Delta's exhibits indicate a slight raise in 1977 gross revenue over the 1976 total. The witness explained that a raise in rates has accounted for the increase in revenue. If rates had not been increased there would have been a loss in revenue during 1977 as compared to 1976.

2. A former vice president testified for Associated. He advised he is now employed as a traffic consultant because the company is much smaller after reorganization. Associated provides both intrastate and interstate service in the area applicants seek to serve. It has five terminals in the area of this application and a total of 377 vehicles as operating equipment, staffed by 206 employees. He testified that Associated is recovering from a recent strike and reorganization. Any loss of business or revenue to a new carrier of whatever size would be disastrous, since trucks usually run at 40 to 50 percent of total capacity.
3. The president of Nielsen testified that his company operates from Crescent City to San Jose and has nine terminals, with four servicing applicants' proposed area. Nielsen has 403 units in its fleet and 198 employees; terminals operate an average of 60 hours a week and every effort is made to keep equipment up-to-date and efficient. Business is falling off, however, since all business goes out from the Bay Area and there is nothing to carry on the return trip. As more new certificates are issued the available business is being divided among a steadily increasing group of carriers who are forced to ask for rate increases as their revenues decline. Exhibit No. 27 lists 30 former

shippers who recently purchased their own trucks due to the rising cost of common carrier transportation. If a new carrier is financially unable to get business, it can still sell its certificate and further harass the established carriers.

4. The president of Ditto testified that it operates from the greater Bay Area to the Los Angeles area and has four terminals in applicants' proposed area, handling mostly interstate freight and intrastate flatbed hauls. Every new carrier will take one or two accounts from existing carriers; if not, the newcomer cannot operate profitably. This threatens all carriers in the area with decreased income and increased operating costs. No additional carriers should be certificated until the existing carriers have a surplus of business.
5. An official of Lodi testified that Lodi provides service in interstate and intrastate commerce from Eureka and Redding, south to Oceanside and San Diego. All areas are covered that applicants seek to serve in the present application. Lodi has more than 525 pieces of operating equipment statewide and five terminals in the area presently in dispute. Between 150 and 200 are usually employed with about 100 drivers included in the total. Lodi performs all types of hauling, including containers and service for customhouse brokers, where documents are carried with the freight. He noted that Lodi has been in business for 45 years, and is now faced with increasing operating costs and decreasing revenues, due to too many new carriers being certificated.
6. The president of Peters testified that Peters operates throughout the extended area applicants seek to serve and provides same-day or overnight service in intrastate and interstate commerce. Peters provides five-day a week service, with an on-call supplement on Saturdays, on both truckload and less than truckload assignments. Operating equipment includes 54 tractors, 12 refrigerated vans, 12 dry vans, and 2 flatracks. The witness testified that 65 percent of Peters' operation consists of container hauls, which move at a very low rate; Peters is able to handle this business because of high volume. When new carriers are certificated, they try for some of the container business. If successful, the

limited number of shippers are spread through more carriers. If dilution of this specialized hauling continues, none of the involved carriers will operate at a profit, since those who take business from the established operators may do so by reducing their rates. The witness provided a list of 86 certificated carriers who now operate in the area applicants seek to serve. The list does not include all carriers, but is representative of a group of over 100 who are involved, plus hundreds of permitted carriers and private trucks. The witness inferred that some carriers will apply for an extension of a certificate to provide an exclusive service for a few shippers, with a minimum of operating equipment.

Two protestants (Campos and Hatfield) were opposed to that portion of the application which requests authority to transport ex-air shipments moving in interstate and foreign commerce. Ex-air is defined as an interstate or foreign shipment having a prior or subsequent movement by air carrier.

The executive vice president of Hatfield testified that his company handles air freight exclusively and has recently satisfied the requirements for issuance of an authority from the Interstate Commerce Commission to extend service to four counties in Nevada. Exhibits illustrated Hatfield operating authority, equipment, terminals, and service routes. It was noted that the airlines do not use forklifts to move air freight containers due to a possibility of damage; Hatfield vans and trailers are built for air freight carriage and equipped with special rollers to load and unload the containers. It was also noted that Hatfield is listed as an approved air freight carrier in the official information booklet published by the airlines. He described six of Hatfield's scheduled routes and stated Hatfield is protesting because of the limited air freight business available and the high degree of specialization required to handle it.

A witness from Campos testified that Campos provides service from San Francisco and San Jose Airports to Watsonville and Monterey County in the handling of air freight. Most of the business is from San Francisco International Airport to Monterey County.

Campos operates six days a week and on Sunday if requested. This witness agreed with the testimony of the prior witness. He stated that there is not sufficient business in the area served by Campos to support another air freight carrier.

Discussion

The applicants' combined common carrier and highway carrier operation has experienced a growth in business and is financially solvent. The shipper testimony demonstrates that the applicants have provided, and may be expected to continue to provide, very good service to the shipping public. It appears that the ability or desire to provide consistently high quality service have been the most important factors in the success of the applicants' carrier operations. Certainly an important element to consider in determining whether an applicant has demonstrated the requisite public convenience and necessity for granting a certificate or extension of certificated operating authority, is the quality of service or benefit that will be afforded the shipping public. In this instance the applicants' proposed service is sought by numerous shippers not because of price, but because the shippers expect high quality service to continue.

This evidentiary record shows that the public interest would be served by the proposed territorial extension of the applicants' common carrier operations (with the condition that ex-air freight shipments shall not be carried). The applicants possess adequate financial fitness and ability to render public utility common carriage service to the shipping public within the territory encompassed by the in lieu certificate they seek.

Most of the protestants believe the public interest would be better served by denying this application, because the applicants may divert traffic and revenue from existing common carriers. While we would ideally like all common carriers to operate with high load factors and be financially viable, we should not administer entry requirements regulation to insure that result; if, indeed, it could ever be attained through regulation. Highway carrier operations, as any business, thrive in the marketplace if they are well-managed and render a service shippers prefer. The record demonstrates that

shippers place a premium on service that meets their particular requirements. To deny a common carrier the opportunity to compete and render a service of the quality the shipping public desires in the interest of protecting existing carriers from revenue diversion, when it is shown they cannot or will not provide the quality of service proposed, is not in the overall public interest. In this instance entry of the applicants into the service territory of the protestants may provide existing carriers impetus to upgrade their service in an effort to keep or obtain the business of the numerous shippers who testified in the proceeding.

We are convinced that for the present there is not enough ex-air freight traffic to warrant granting the applicants authority to transport such commodities. Unlike general commodities carriage, handling air freight containers requires specialized equipment. The protestants now providing the service have invested in such specialized equipment and have tailored their operations around air freight service. We are not persuaded by the evidence in this case that public convenience and necessity require additional service be authorized. Accordingly, as the record stands on air freight, we do not believe it is in the public interest to allow the applicants to transport that relatively specialized commodity. Conditions may change. And if the applicants can demonstrate at a later time that there is a need for their service for ex-air freight, we will, of course, consider conditions at that time.

Delta's contention that the applicants will require a network of terminals to conduct the proposed service and that the application should be denied because the applicants do not propose to establish such terminals is not convincing. Radio dispatching and creative management may serve as a substitute for a terminal network. At some point the applicants may require a terminal network, depending on their volume of business; however, that is essentially a business judgment. It appears the applicants are sufficiently experienced at operating a highway carrier enterprise to determine if terminals are required. The applicants should be afforded the

opportunity to provide public utility common carriage in the most efficient manner they see fit. If they are not efficient and service deteriorates because of their management, they will bear the economic consequences.

Findings

1. Livesay has provided a general commodity service since 1971.
2. This application requests that Livesay and his limited partner (dba Golden Bay Freight Lines) be authorized to extend service north to Sacramento and south to Gilroy, Los Banos, and Fresno.
3. Applicants will provide an overnight or same-day service on Monday through Friday, with holidays excepted, and will charge rates comparable to those of competing motor carriers.
4. Service will also be provided in interstate commerce between points within the State of California.
5. Livesay was advised by Commission representatives in January of 1977 that shipments were being transported to certain areas with such frequency that a certificate extension may be required.
6. Numerous shipper customers have employed applicants for many years and would like to see the applicants' common carrier service expanded.
7. The 19 shippers who testified for the applicants prefer the service provided by applicants to that of other common carriers.
8. The decision as to when a terminal may be required is best left to a carrier's management. It should not be assumed by this Commission.
9. A shipper is entitled to prefer the service of a particular carrier over that provided by all the others who are available and the favored carrier is entitled to rely on this preference as a basis for extending its service. (Tesi Drayage Co. (1970) 71 CPUC 24, 28.)
10. The possibility that a new carrier, in the process of expansion, may in time take some of the business from existing common carriers is not sufficient reason to deny a territorial extension of a certificate.

11. Air freight transport requires specially equipped vehicles and pickup routes that conform to airline schedules.

12. It has not been demonstrated that public convenience and necessity require additional air freight authorization at this time.

13. The other protestants (excluding the air freight carriers) are common carriers who may serve adequately overall, but who do not serve the personal requirements of many shippers as conveniently or as well as the applicants.

14. Applicants' expanded service will be used primarily by shippers who have used their service in other areas.

15. Protestants will not be unreasonably affected by applicants' expansion, which is designed primarily to serve their old customers in a new area.

16. It can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.

17. Applicants have the experience, equipment, personnel, and financial resources to institute and maintain the proposed service.

18. All certificates, permits, and other assets owned by the applicant partnership in this proceeding were transferred to Livesay under authority of Commission Decision No. 88903, dated May 31, 1978 in Application No. 57798, and Interstate Commerce Commission Decision No. MC-FC-77513, served on May 5, 1978.

19. In view of the transfer, an in lieu certificate should be issued to Livesay.

20. Public convenience and necessity require that the applicants be authorized to engage in operations in intrastate commerce as proposed in the application and also require that they 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.

21. In view of the need for the common carrier service of the applicants by the shipping public, the following order should be effective the date of signature.

Conclusion

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. ✓

Applicants' certificate should not include authority to handle air freight shipments.

Livesay 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 James William Livesay, an individual doing business as Golden Bay Freight Lines, 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 A of this decision.

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 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 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.
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3. The certificate of public convenience and necessity granted in paragraph 1 of this order shall supersede the certificates of public convenience and necessity granted by Decisions Nos. 78541 and 86236, which certificates are revoked effective concurrently with the effective date of the tariff filings required by paragraph 2(b).

The effective date of this order is the date hereof.

Dated at San Francisco, California, this 19th
day of DECEMBER, 1978.

Robert Bateman

President

William J. Lyons

Leonard L. Stegman

Robert D. Hoyle

Clair T. Debrich

Commissioners

JAMES WILLIAM LIVESAY
(an individual)
doing business as
GOLDEN BAY FREIGHT LINES

James William Livesay, an individual, doing business as Golden Bay Freight Lines, 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:

1. Between all points and places in the San Francisco-East Bay Cartage Zone as described in Note A hereof.
2. Between all points and places on and within twenty (20) statute miles of the following routes:
 - a. U.S. Highway 101 between Santa Rosa and Salinas, inclusive.
 - b. State Highway 17 between San Rafael and Santa Cruz, inclusive.
 - c. Interstate Highway 280 between San Francisco and San Jose, inclusive.
 - d. State Highway 82 between San Francisco and San Jose, inclusive.
 - e. State Highway 1 between San Francisco and Carmel, inclusive.
 - f. Interstate Highway 80 between San Francisco and Roseville, inclusive.
 - g. State Highway 99 between Sacramento and Fresno, inclusive.
 - h. Interstate Highway 5 between Woodland and junction with State Highway 152, inclusive.
 - i. State Highway 152 between Watsonville and junction with State Highway 99, inclusive.
 - j. State Highway 24 between Oakland and Walnut Creek, inclusive.

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- k. State Highway 68 between Salinas and junction with State Highway 1, inclusive.
- l. Interstate Highway 680 between Vallejo and Warm Springs, inclusive.
- m. State Highway 238 and Interstate Highway 580 between San Lorenzo and junction of Interstate Highway 5, inclusive.
- n. State Highway 120 and Interstate Highways 5 and 205 between Manteca and junction with Interstate Highway 580.
- o. U.S. Highway 50 and Folsom Boulevard between Sacramento and Rancho Cordova, inclusive.
- p. State Highway 4 between Pinole and junction with State Highway 160, inclusive.
- q. State Highway 160 and State Highway 12 between junction with State Highway 4 to junction with State Highway 99, inclusive.
- r. State Highway 12 between Santa Rosa and junction with State Highway 160, inclusive.
- s. State Highway 29 between Vallejo and Calistoga, inclusive.
- t. State Highway 37 between junction with U.S. Highway 101 and junction with Interstate Highway 80, inclusive.

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.

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,

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fixtures and equipment not packed in salesmen's hand sample cases, suitcases, overnight or boston bags, brief cases, hat boxes, valises, traveling bags, trunks, lift vans, barrels, boxes, cartons, crates, cases, baskets, pails, kits, tubs, drums, bags (jute, cotton, burlap or gunny) or bundles (completely wrapped in jute, cotton, burlap, gunny, fibreboard, or straw matting).

2. Automobiles, trucks and buses, viz.: new and used, finished or unfinished passenger automobiles (including jeeps), ambulances, hearses and taxis, freight automobiles, automobile chassis, trucks, truck chassis, truck trailers, trucks and trailers combined, buses and bus chassis.
3. Livestock, viz.: barrows, boars, bulls, butcher hogs, calves, cattle, cows, dairy cattle, ewes, feeder pigs, gilts, goats, heifers, hogs, kids, lambs, oxen, pigs, rams (bucks), sheep, sheep camp outfits, sows, steers, stags, swine or wethers.
4. Liquids, compressed gases, commodities in semi-plastic form and commodities in suspension in liquids in bulk, in tank trucks, tank trailers, tank semitrailers or a combination of such highway vehicles.
5. Commodities when transported in bulk in dump-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. Logs.
8. Commodities requiring the use of special refrigeration or temperature control in specially designed and constructed refrigerator equipment.
9. Commodities having an immediately prior or subsequent movement by air.

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NOTE A

SAN FRANCISCO-EAST BAY CARTAGE ZONE

The San Francisco-East Bay Cartage Zone includes the area embraced by the following boundary: Beginning at the point where the San Francisco-San Mateo County Boundary Line meets the Pacific Ocean; thence easterly along said boundary line to Lake Merced Boulevard; thence southerly along said Lake Merced Boulevard to South Mayfair Avenue; thence westerly along said South Mayfair Avenue to Crestwood Drive; thence southerly along Crestwood Drive to Southgate Avenue; thence westerly along Southgate Avenue to Maddux Drive; thence southerly and easterly along Maddux Drive to a point one mile west of State Highway 82; thence southeasterly along an imaginary line one mile west of and paralleling State Highway 82 (El Camino Real) to its intersection with the southerly boundary line of the City of San Mateo; thence along said boundary line to U.S. Highway 101 (Bayshore Freeway); thence leaving said boundary line proceeding to the junction of Foster City Boulevard and Beach Park Road; thence northerly and easterly along Beach Park Road to a point one mile south of State Highway 92; thence easterly along an imaginary line one mile southerly and paralleling State Highway 92 to its intersection with State Highway 17 (Nimitz Freeway); thence continuing northeasterly along an imaginary line one mile southerly of and paralleling State Highway 92 to its intersection with an imaginary line one mile easterly of and paralleling State Highway 238; thence northerly along said imaginary line one mile easterly of and paralleling State Highway 238 to its intersection with "B" Street, Hayward; thence easterly and northerly along "B" Street to Center Street; thence northerly along Center Street to Castro Valley Boulevard; thence westerly along Castro Valley Boulevard to Redwood Road; thence northerly along Redwood Road to Somerset Avenue; thence westerly along Somerset Avenue and 168th Street to Foothill Boulevard; thence northwesterly along Foothill Boulevard to the southerly boundary line of the City of Oakland; thence easterly and northerly along the Oakland Boundary Line to its intersection with the Alameda-Contra Costa County Boundary Line; thence northwesterly along said County Line to its intersection with Arlington Avenue (Berkeley); thence northwesterly along Arlington Avenue to a point one mile northeasterly of San Pablo Avenue (State Highway 123); thence

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northwesterly along an imaginary line one mile easterly of and paralleling San Pablo Avenue to its intersection with County Road 20 (Contra Costa County); thence westerly along County Road 20 to Broadway Avenue; thence northerly along Broadway Avenue to San Pablo Avenue (State Highway 123) to Rivers Street; thence westerly along Rivers Street to 11th Street; thence northerly along 11th Street to Johns Avenue; thence westerly along Johns Avenue to Collins Avenue; thence northerly along Collins Avenue to Morton Avenue; thence westerly along Morton Avenue to the Southern Pacific Company right-of-way and continuing westerly along the prolongation of Morton Avenue to the shoreline of San Pablo Bay; thence southerly and westerly along the shoreline and waterfront of San Pablo Bay to Point San Pablo; thence southerly along an imaginary line to the San Francisco waterfront at the foot of Market Street; thence westerly along said waterfront and shoreline to the Pacific Ocean; thence southerly along the shoreline of the Pacific Ocean to point of beginning.

(END OF APPENDIX A)

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