

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
FRED LUDEKENS, operating under the
fictitious name of Martinez-San
Francisco Express Company, for a cer-
tificate of public convenience and
necessity to operate an automobile
truck line as a transportation com-
pany for the carrying of freight be-
tween Oakland on the one hand, and
Albany, El Cerrito, Stege Junction,
San Pablo, Pinole, Hercules, Rodeo,
Oleum, Tormey and Selby on the other
hand, and for authority to establish
local rates for said service between
said points; and the joint appli-
cation of said Fred Ludekens, oper-
ating under said fictitious name, and
H. L. Hinman, doing business under the
fictitious name of Merchants Express
& Drayage Company, and R. H. Rasmussen
and J. C. Svane, a co-partnership doing
business under the fictitious name of
Santa Fe Express & Drayage Company,
for authority to establish through
routes and joint freight rates between
San Francisco on the one hand and Al-
bany, El Cerrito, Stege Junction, San
Pablo, Pinole, Hercules, Rodeo, Oleum,
Tormey and Selby on the other hand.

Application No. 10629.

Edward R. Solinsky, for Applicant;

L. N. Bradshaw, for Southern Pacific Company,
Protestant;M. G. Lickteig, for American Railway Express
Company, Protestant.

BY THE COMMISSION:

O P I N I O N

By the Second Amended Application filed herein, Fred
Ludekens seeks a certificate of public convenience and necess-
ity authorizing the operation of an automotive truck service
for the transportation of property between Oakland, on the one

hand, and Albany, El Cerrito, Stege Junction, San Pablo, Pinole, Hercules, Rodeo, Oleum, Tormey and Selby on the other hand, and locally between such points, subject to the exception that no service in either direction will be performed between San Francisco and Oakland, on the one hand, and Albany, El Cerrito or Stege Junction on the other hand, applicant, however, desiring the privilege of local service between Albany, El Cerrito and Stege Junction, and between these points and Martinez and all intermediate points north of Stege Junction. In addition, and subject to the exception above stated, Fred Ludekens, H. L. Hinman, doing business under the fictitious name of Merchants Express & Drayage Company, and R. E. Rasmussen and J. C. Svane, co-partners doing business under the fictitious name of Santa Fe Express & Drayage Company, have jointly applied for permission to establish and maintain through routes and joint class and commodity rates on freight moving between San Francisco, on the one hand, and Albany, El Cerrito, Stege Junction, San Pablo, Pinole, Rodeo, Oleum, Tormey and Selby on the other hand, in connection with the service now conducted by Merchants Express & Drayage Company and Santa Fe Express & Drayage Company, respectively, between San Francisco and Oakland, and the service sought to be established by Fred Ludekens between Oakland and the points of destination mentioned. No interchange of equipment is contemplated under this arrangement. One round trip daily is proposed, applicants using their present equipment. Accompanying the application is a schedule of the class and commodity rates proposed to be established between San Francisco and Oakland, respectively, and said points of destination.

Public hearings were held before Examiner Austin at San Francisco on April 2, 1925, and at Martinez on April 27, 1925, when evidence was offered, the matter was duly submitted, and

it is now ready for decision.

Applicant, Fred Ludekens, formerly held a certificate of public convenience and necessity for the operation of an automobile truck line as a common carrier of express packages between San Francisco and Martinez and intermediate points, which was granted by this Commission's Decision No. 6919, in Application No. 4909, dated December 9, 1919; subsequently this operative right was transferred to a co-partnership consisting of Fred Ludekens and C. D. Rasmussen, under authority conferred by this Commission's Decision No. 8758, in Application No. 6634, dated March 17, 1921. This service, it will be noted, included the towns for which a certificate is now sought. In a proceeding instituted by the Commission itself, it was determined that the holders of this operative right had been guilty of various infractions of the Auto Stage and Truck Transportation Act. (Stats. 1917, Chap. 213, as amended, Stats. 1919, Chap. 280), and the Commission's regulations, with respect to the unauthorized transfer of such operative right and the non-observance of tariff rates and provisions, consequently the certificate was revoked. (Decision No. 12140, in Case No. 1880, dated May 25, 1923).

By this Commission's Decision No. 13091, in Applications Nos. 9149 and 9360, dated January 28, 1924, a certificate of public convenience and necessity for the operation of an automotive truck line as a common carrier of freight between San Francisco and Oakland on the one hand and Port Costa, Crockett and Martinez on the other hand, was granted to R. E. Rasmussen, J. C. Svane and Fred Ludekens, as co-partners; and by the same decision such co-partners were authorized to transfer this certificate to Fred Ludekens, applicant herein. This certificate did not include the towns mentioned in the instant application, all of which are

intermediate to Oakland and Crockett.

Subsequently Fred Ludekens was authorized to abandon the operative right between San Francisco and Port Costa, Crockett and Martinez, retaining the operative right between Oakland and these points; and he was permitted to establish joint class and commodity rates between San Francisco on the one hand and Crockett, Port Costa and Martinez on the other hand, in connection with the Merchants Express & Drayage Company and the Santa Fe Express & Drayage Company, which operated between San Francisco and Oakland. (Decision No. 14067, in Application No. 10376, dated September 16, 1924).

By the pending application, applicant seeks authority to extend his present service from Oakland and the joint rates now maintained from San Francisco to the intermediate points named therein.

At the hearing applicant Ludekens testified that he was operating a truck line between Oakland and Crockett, Port Costa and Martinez giving daily service except Sundays and holidays. This line passes through the towns to which service is sought to be extended by the pending application, which now have no truck service, but are served by the railroad and express lines. One of the applicant's drivers, W. L. Castell, who had travelled over this route for five years, stated he had formerly served the towns mentioned in this application and was acquainted with substantially all the merchants and business men along the route. In conversation, they had frequently requested the extension of applicant's service. The towns of Albany, El Cerrito and Stege, he stated, were now served by another line, consequently

the pending application does not seek to extend service to them, except locally, and between points over that portion of the route extending from Stege Junction to Martinez.

R. L. Burtis, Manager of applicant, Merchants Express & Drayage Company, testified that this applicant desired to join in establishing through rates from San Francisco to the points in question, stating that his line operated between San Francisco and Oakland and in connection with applicant Ludekens handled freight under joint rates from San Francisco to Crockett, Port Costa and Martinez. He frequently has received calls for the establishment of a joint service from San Francisco to the intermediate points mentioned in the application. Explaining the proposed tariff the witness stated that the delivery zones within San Francisco described in the tariff covered the business district within which there would be no additional pick-up or delivery charge, but from or to points beyond these zones an arbitrary charge would be imposed for such additional service.

The representative of the applicant, Santa Fe Express & Drayage Co., R. E. Rasmussen, one of the partners engaged in conducting that enterprise, testified that his line also joined in the pending application and that it was now, in connection with the line of applicant Ludekens, performing a joint service for handling freight from San Francisco to Crockett, Port Costa and Martinez.

From the testimony of these three witnesses it appears that applicant Ludekens now operates one round trip daily between Oakland and Martinez leaving Oakland at 7:30 a.m., arriving at Martinez between 11:00 a.m. and 12:00 M., leaving Martinez on ^{the} return trip at 1:30 p.m. and arriving at Oakland between 3:00 and 4:00 p.m.

The last regular scheduled truck of the Merchants Express & Drayage Company leaves Oakland for San Francisco at 12:15 p.m., but this applicant will accept freight destined to San Francisco at a later hour. If received in Oakland by 4:00 p. m., such shipments will be delivered in San Francisco the same day, although it is rather unusual to handle shipments at so late an hour. The Santa Fe Express & Drayage Company will receive freight from Ludkens, in Oakland, at any time during the day. Freight transferred at Oakland at about 5:00 p.m. will be delivered in San Francisco the next morning. North bound freight will leave San Francisco about 5:30 p.m. and will be handled from Oakland the next morning on applicant Ludkens' regular schedule.

Applicants called several witnesses to show the necessity for this service. A representative of the National Lead Company, maintaining a plant at Selby for the manufacture of ammunition, testified that applicants' service would be a great convenience in handling small shipments from Selby to Oakland and San Francisco, but he would not use it in the opposite direction. He stated he had occasionally used the American Railway Express for such shipments, but had found its service unsatisfactory and slow. Therefore, these shipments will be handled by Ludkens, even though the charges are somewhat higher, the need for expedited service being paramount.

The shipping clerk of L. Dinkelspeil & Co. of San Francisco, stated that his firm will occasionally use applicants' line for shipping packages to the points in question, preferring this service to that of the American Railway Express Company which, he stated, had been unsatisfactory.

The Superintendent of Petroleum Products Company, engaged in manufacturing lubricating oils at its plant in Shepherd's Canyon between Martinez and Port Costa, testified he had formerly used applicants' service to the points in question (before the same was discontinued), and found it very satisfactory, and he continuously uses this service to Crockett. At present, in order to reach El Cerrito and Albany, it is necessary to send shipments by rail to Berkeley and have them hauled back by another trucking company, which he stated involves considerable expense as well as a delay of from two to three days. Due to this condition, his firm has practically withdrawn from this market, since it cannot meet competition of other firms which can make immediate delivery. He also makes use of applicants' service on shipments moving beyond Oakland to San Jose and intermediate points and has found it satisfactory.

A representative of the U. S. Cartridge Company, maintaining a plant at Selby, stated that before applicants' service had been discontinued he had used it constantly and will again use it if such service is resumed, it having been found satisfactory, particularly in the transportation of expedited shipments. Speed, he stated, was essential in the handling of his company's products, particularly ammunition, for which there was a considerable demand during the hunting season. At present carload shipments destined to San Francisco or Oakland are sent by rail or by steamer, while less-than-carload shipments move by express, it having been found impracticable to use the less-than-carload rail freight service. He expressed dissatisfaction with the present rail and water service because it was not sufficiently expeditious, and stated that if applicants' service were established, he would patronize it.

B. E. Emerson, a druggist at Pinole, testified that

he received supplies from San Francisco in small quantities, using either Southern Pacific or Santa Fe rail freight service, or the American Railway Express service. As a rule, rail shipments were not delivered until three days after the order was placed, and in addition he was obliged to pay drayage charges at Pinole, which were never less than 50 cents per hundred pounds. The American Railway Express service, he stated, was expeditious but the charges were so high that as a rule he used this service only for emergency shipments. He shipped over Iudekens' line before it was discontinued, and will do so again if the service is restored, sending on an average three shipments a week. Applicants also called B. G. Hall, the proprietor of a garage at Pinole, who stated he purchased his supplies and automobile parts in San Francisco and Oakland and had them shipped mostly by parcel post or rail. However, he desired to use applicants' service because it will be more expeditious than the present facilities, time being the important factor in his business. He has practically no outbound shipments. By stipulation of the parties, it was understood, that the testimony of seven witnesses engaged in business at Pinole, Rodeo and San Pablo would be substantially the same as that given by Mr. Emerson and Mr. Hall.

Protestant Southern Pacific Company called P. W. Bernard of its General Manager's Office, who described the movement of less-than-carload freight during March, 1925, from Oakland and San Francisco respectively to the points mentioned in the application. From San Francisco the total movement was 139,594 pounds and from Oakland 20,970 pounds. The freight stations at San Francisco and Oakland close at 4:00 p. m.

daily and shipments are available for delivery on the following day at all of these points, ranging from 10:45 a.m. at Pinole until 3:00 p.m. at Selby. Upon arrival of shipments the consignee is notified by telephone wherever practicable, otherwise post card notices are sent out. F. G. Ruthrauff, Traveling Freight Agent, testified he had discussed protestant's service with various merchants at the points in question, who had found it satisfactory. In general these conversations were had with the more important merchants, who were most likely to complain of the service, the smaller merchants as a rule using the express service only. Protestants Southern Pacific Company and American Railway Express Company also called as witnesses two merchants who expressed approval of their service. Mr. Konig, a merchant of Rodeo, stated he had continuously used the railroad freight and express service for the past five years and found them very satisfactory. Frequently orders telephoned to Oakland or San Francisco as late as 5:00 p.m. would arrive by express the next day by 11:00 a.m. Furthermore he had found the freight service to be dependable. He gave most of his orders to salesmen, and only those which were overlooked were telephoned to the supply houses in San Francisco and Oakland. Nearly all his shipments move by freight, emergency shipments only being sent by express. As a rule, all freight shipments are delivered within two days after the order is placed. All freight and express shipments are hauled from the depot to the store by the firm's trucks, it being unnecessary to rely upon local drayage concerns. So far as his firm is concerned applicants' proposed service is not necessary and would not be used.

A. S. Clifton, Manager of a hotel at Selby, testified that supplies were shipped in once or twice a week by freight and until recently express shipments were received daily. At present, such express shipments move only once a week. With respect to emergency shipments he stated that frequently he telephoned orders to San Francisco during the morning, which were shipped from San Francisco at 2:45 p.m. and arrived at Selby the same afternoon at 4:00 p.m. Orders telephoned during the afternoon were delivered the next morning. He stated that both the rail and express services were satisfactory, and there was no need, so far as he is concerned, for any additional truck service. In his opinion such service would not be as expeditious as that of the American Railway Express Company.

In our judgment the applicants have shown, by a preponderance of the evidence, that public convenience and necessity require the establishment of the proposed service. Our conclusion is justified by the testimony of substantial merchants and business men who have unhesitatingly recommended the re-establishment of applicants' service and have stated that they would use it. This showing has not been met by the testimony of protestants. The witnesses called by them, it is true, would have no use for a truck service and they have found the rail and express service satisfactory. But this does not prove there is no need for the proposed service, nor can this testimony overcome the positive testimony of the many witnesses called by applicants.

We are, therefore, of the opinion and hereby find as a fact that public convenience and necessity require the op-

eration by Fred Ludekens of an automotive truck service for the transportation of property, as follows:

1. Between Oakland on the one hand and San Pablo, Pinole, Hercules, Rodeo, Oleum, Tormey and Selby on the other hand;

2. Between Albany, El Corrito, Stege Junction, San Pablo, Pinole, Hercules, Rodeo, Oleum, Tormey, Selby, Port Costa, Crockett and Martinez, and between any and all of said points.

We are further of the opinion and hereby find as a fact that public convenience and necessity require that the applicants Fred Ludekens, H. L. Hinman, doing business under the fictitious name of Merchants Express & Drayage Company, and R. E. Rasmussen and J. C. Svane, co-partners doing business under the fictitious name of Santa Fe Express & Drayage Company, should be permitted to establish and maintain through routes and joint class and commodity rates for the transportation of property over their several lines between San Francisco on the one hand and San Pablo, Pinole, Hercules, Rodeo, Oleum, Tormey and Selby on the other hand.

O R D E R

A public hearing having been held in the above entitled application, the matter having been duly submitted, the Commission being now fully advised and basing its order on the findings of fact which appear in the opinion preceding this order.

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA hereby declares that public convenience and necessity require

the operation by Fred Iudekens of an automotive truck service for the transportation of property as follows:

(1) Between Oakland on the one hand and San Pablo, Pinole, Hercules, Rodeo, Oleum, Tormey and Selby on the other hand;

(2) Between Albany, El Cerrito, Stege Junction, San Pablo, Pinole, Hercules, Rodeo, Oleum, Tormey, Selby, Port Costa, Crockett and Martinez, and between any and all of said points.

IT IS HEREBY ORDERED that a certificate of public convenience and necessity be and the same is hereby granted to said Fred Iudekens to conduct the service hereinabove described, subject to the conditions hereinafter set forth.

IT IS FURTHER ORDERED that said Fred Iudekens, H. L. Eimman, doing business under the fictitious name of Merchants Express & Drayage Company, and R. H. Rasmussen and J. C. Svane, co-partners, doing business under the fictitious name of Santa Fe Express and Drayage Company, be and they are hereby jointly and severally authorized and permitted to establish and maintain through routes and to establish, publish and maintain joint class and commodity rates over their respective lines for the transportation of property between San Francisco on the one hand and San Pablo, Pinole, Hercules, Rodeo, Oleum, Tormey and Selby on the other hand, subject to the limitation hereinafter set forth.

The authority herein granted is subject to the following conditions:

1. That neither the applicants nor any of them shall be authorized hereunder to establish or conduct

any automotive truck service, establish or maintain any through route, nor establish, publish or maintain any joint rate, for the transportation of property between San Francisco or Oakland on the one hand, and Albany, El Cerrito or Stege Junction on the other hand.

2. Applicants shall file their written acceptance of the certificate herein granted within a period of not to exceed ten (10) days from date hereof; shall file, in duplicate, tariff of rates and time schedules within a period of not to exceed twenty (20) days from date hereof, such tariff of rates and time schedules to be identical with those attached to the application herein; and shall commence operation of said service within a period of not to exceed thirty (30) days from date hereof.

3. The rights and privileges herein authorized may not be discontinued, sold, leased, transferred nor assigned unless the written consent of the Railroad Commission to such discontinuance, sale, lease, transfer or assignment has first been secured.

4. No vehicle may be operated by applicants herein unless such vehicle is owned by said applicants or is leased by them under a contract or agreement on a basis satisfactory to the Railroad Commission.

For all purposes, other than hereinabove stated, the effective date of this order shall be twenty (20) days from the date hereof.

Dated at San Francisco, California, this 29th day of October, 1925.

H. B. Prindig
C. L. Bailey
George D. Tynes
Ernest J. ...

Commissioners.