

Decision No. 18121

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)	
UNITED PARCEL SERVICE OF LOS ANGELES,)	
INC., a corporation, to extend its)	Application No. 12947
operative rights to include the cities)	
of Long Beach and Pasadena as points)	
of origin.)	

Devlin & Brookman, by Douglas Brookman, for Applicant.

Richard T. Eddy, for Donovan Transportation Co., Rice Transportation Co., Triangle Orange County Express and Santa Ana Express, Protestants.

BY THE COMMISSION:

O P I N I O N

In this proceeding United Parcel Service of Los Angeles, Inc. (a corporation), seeks a certificate of public convenience and necessity authorizing it to receive and deliver packages or parcels, not exceeding 100 pounds each in weight, originating either within the city limits of Long Beach or within the city limits of Pasadena destined to any point in the general territory within which applicant is at present permitted to operate, including the City of Los Angeles.

Public hearings were held before Examiner Austin at Pasadena on October 28, 1926, and at Long Beach on November 5, 1926, when evidence was offered, the matter was submitted, and it is now ready for decision.

1.

Applicant alleges that it is now conducting a motor transportation service for the delivery of parcels originating in Los Angeles and destined to points in a very extended territory suburban to Los Angeles, pursuant to certificates of public convenience and necessity granted by Decision No. 13429, in Application No. 9934, dated April 17, 1924, and Decision No. 16425, in Application No. 11122, dated April 7, 1926. In connection with this service, sub-stations have been maintained at Pasadena and Long Beach to receive packages originating in Los Angeles and redistribute them in the territory immediately adjacent to such substations, and also to accomplish intracity deliveries of parcels within these cities. There are continuous and insistent demands, it is stated, from the merchants of Pasadena and Long Beach, for the delivery of parcels to points in the general territory now served by applicant, including the City of Los Angeles; therefore, in order to accommodate these merchants, this application has been filed. Applicant proposes to pick up packages anywhere within the city limits of Pasadena and Long Beach respectively, for delivery to any point within the territory now served including Los Angeles. Accompanying the application are the rates, rules and regulations proposed to be established.

At the Pasadena hearing applicant called J. E. Casey, its president, and George F. Haver, manager of its Pasadena Division. Applicant now serves locally about twenty-nine customers in Pasadena, comprising a large majority of the wholesale and retail business houses of that city, and it receives from fifteen to twenty requests weekly for deliveries to points scattered generally throughout the area now served by applicant.

Similar testimony was given at Long Beach by Mr. Casey and W. F. Winfrey, branch manager at that point. Mr. Casey described generally the character of applicant's operations and its facilities, stating it was financially able to conduct the proposed service and to provide any necessary additional equipment. Applicant also called Mr. C. A. Bland, manager of the traffic bureau of the Long Beach Chamber of Commerce, and the representatives of two large wholesale and retail institutions, all of whom described the need for the proposed service.

No protest was made as to the extension to Pasadena, but at Long Beach, protests were made by Donovan Transportation Co., Rice Transportation Co., Triangle Orange County Express and Santa Ana Express. No testimony was offered by protestants, but through their counsel they moved to dismiss the application for lack of jurisdiction upon the grounds, (a) that service to points within five miles on either side of the highways traversed involved radial operations within the meaning of the Ben Moore case (Dec. 15818, 27 C.R.C. 388); and (b) that applicant's operations were not those of a common carrier, but were purely contractual or private, and as such exempt from regulation under Frost & Frost v. Railroad Commission _____ U.S. _____; 70 Law Ed. 682.

In respect to the first point, it is clear that applicant's operations are not radial or territorial, but rather involve service to territory adjacent to the highway, which may be termed lateral operations. Service of such a character appears to be authorized by section 1 (e), Auto Stage and Truck Transportation Act (Stats. 1917, Ch. 213, as

amended) which provides:

"The words 'between fixed termini or over a regular route' when used in this act, mean the termini or route between or over which any transportation company, usually or ordinarily operates any automobile, jitney bus, auto truck, stage or auto stage, even though there may be departures from said termini or route whether such departures be periodic or irregular."* * * * *

(emphasis supplied).

Clearly, sporadic and irregular departures from the highway, within a narrow strip parallel to the highway, such as is proposed by applicant herein, fall within the express terms of the statute which undoubtedly contemplates operations of such a character. Whether or not the lateral area proposed to be served is so extensive as virtually to comprehend a territorial or radial service, as defined in the Ben Moore case, supra, is a question of fact to be determined according to the circumstances of each individual case. In the instant case we hold that applicant's proposed operations fall within our jurisdiction.

As to the second point, it appears that applicant is holding itself out to serve the public generally under the rates, rules and regulations provided in its published tariffs on file with the Commission. While it is true that applicant exacts a contract from certain classes of shippers as a prerequisite to the handling of their parcels, nevertheless this service is open to all who will comply with the published rules, and this requirement no more transforms applicant into a private carrier than the exaction of bills of lading or livestock contracts, deprives a railroad of its status as a common carrier.

There is no merit in protestants' motion, consequently it will be denied.

Upon full consideration of the evidence in the above entitled proceeding, we are of the opinion and hereby find as a fact that public convenience and necessity require the extension of applicant's parcel delivery service so as to permit applicant to pick-up, receive and accept packages, parcels and cartons, not exceeding 100 pounds each in weight, within the city limits of Long Beach and/or within the city limits of Pasadena, and to transport the same to any and all points over or along applicant's present several routes and/or within the territory wherein applicant is now permitted to operate under existing certificates of public convenience and necessity, including the City of Los Angeles,

An order will be entered accordingly.

O R D E R

Public hearings 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 extension of applicant's parcel delivery service so as to permit applicant to pick-up, receive and accept packages, parcels and cartons not exceeding 100 pounds each in weight, within the city limits of Long Beach and/or within the city

limits of Pasadena, and to transport the same to any and all points over or along applicant's present several routes, and/or within the territory wherein applicant is now permitted to operate, under existing certificates of public convenience and necessity, including the City of Los Angeles.

IT IS HEREBY ORDERED that a certificate of public convenience and necessity be and the same is hereby granted to said United Parcel Service of Los Angeles, Inc. (a corporation) authorizing the establishment and maintenance of the service hereinabove described, subject to the conditions hereinafter set forth.

IT IS FURTHER ORDERED, that the motion to dismiss said application interposed by protestants Donovan Transportation Co., Rice Transportation Co., Triangle Orange County Express and Santa Ana Express, be and the same is hereby denied.

The authority herein granted is subject to the following conditions:

1. Applicant shall file its written acceptance of the certificate herein granted within a period of not to exceed ten (10) days from date hereof.
2. Applicant shall file, in duplicate, within a period of not to exceed twenty (20) days from the date hereof, tariff of rates and time schedules, such tariffs of rates and time schedules to be identical with those attached to the application herein, or rates and time schedules satisfactory to the Railroad Commission, and shall commence operation of said service within a period of not to exceed sixty (60) days from the 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 applicant herein unless such vehicle is owned by said applicant or is leased by it under a contract or agreement on a basis satisfactory to the Railroad Commission.

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

Dated at San Francisco, California, this 29th day of March, 1927.

Ernest W. East
H. B. Brundage
C. J. Seaman
Leon Whitell
Thos. S. Rountree
Commissioners.