

Decision No. 21998.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

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In the Matter of the Application of
H. L. HINMAN operating under the
firm name and style of MERCHANTS
EXPRESS AND DRAYING COMPANY for a
certificate of public convenience
and necessity to operate auto truck
service as a common carrier between
Alameda County and South San Francisco,
San Mateo County, California.

ORIGINAL

Application No. 16122

Athearn, Chandler & Farmer, and Frank R. Devlin, by
Frank R. Devlin, for Applicant.

W. S. Johnson, for Southern Pacific Company,
Protestant.

E. G. Wilcox, for Oakland Chamber of Commerce,
Supporting Applicant.

J. G. Walker, for Manufacturers' Association
of South San Francisco, supporting
Applicant.

BY THE COMMISSION:

O P I N I O N

H. L. HINMAN, operating under the fictitious name of
Merchants Express and Draying Company of Oakland has made
application to extend the automotive freight service conducted
by him between points in Alameda County and San Francisco to
include South San Francisco, San Mateo County.

A public hearing herein was conducted by Examiner
Williams at San Francisco.

Applicant is operating, under a prescriptive right, a
service between Oakland, Berkeley, Alameda, Emeryville and

other points in Alameda County, and the City and County of San Francisco under rights acquired by bona fide service previous to May 1, 1917, and continuously thereafter.

In the present application it is desired to extend this service from the South City limits of San Francisco seven miles to the City of South San Francisco at rates set forth in Exhibit "A" attached to the application and on schedules shown in Exhibit "B". Free pick-up and delivery is to be established in South San Francisco to equal the same service given by applicant at East Bay Points.

Applicant proposes to use either of two routes in the City and County of San Francisco -- either directly from the Embarcadero via Third Street and Bay Shore Highway, or via Market Street, Potrero Avenue and San Bruno Avenue to the conjunction of the two roads just north of the South San Francisco limits. From the conjunction of the roads the route is to follow San Bruno Avenue to the City of South San Francisco.

Applicant urges in support of the necessity for the extension of the operations that frequent demands are made upon him by shippers now served in Oakland, for movements to South San Francisco, and also expressed desire on the part of manufacturers in South San Francisco for similar shipments to Oakland. The application is based upon the theory that its express service between the two points by which immediate delivery on the same day could be made between either point. Applicant's Schedule No. 1, with which it is proposed to begin service, leaves Oakland at 7:00 a.m. and reaches South San Francisco at 10:00 a.m. The return trip leaves South San Francisco at 12 Noon, arriving at Oakland at 2:30 p.m. Schedule No. 2 leaves Oakland at 12 Noon, arriving at South

San Francisco at 4:00 p.m., reaching Oakland at 7:00 p.m.

Applicant is now the proprietor of a very large transportation business in the east bay communities, using approximately 60 trucks in his service. According to the testimony of Anson B. Weeks, Assistant Manager of the Company, it is the purpose to establish the first schedule at the start of operations and to use the second schedule if business requires it. Mr. Weeks further testified that many requests had been made upon this carrier to transport, between South San Francisco and Oakland, macaroni, wire and wire products, bolts and nuts, radios, steel castings, meats (without refrigeration), metal furniture, marble, etc. In the opposite direction, demand has been made to transport coal oil, stoves, printed matter, waxed paper, paint, motors, candy, etc. Investigating the demands made, Mr. Weeks testified that he had visited the industries at South San Francisco and found them uniformly favorable toward a daily express service. He estimated that South San Francisco would contribute at the outset approximately four tons daily, and that Oakland would contribute approximately one and one-half tons daily. Upon the result of this survey, the application was filed.

H. H. Hinman, associated with his father in the conduct of the business, testified that the tariff attached to the application extended to San Francisco and Oakland down-town business districts, the same rates for shipments to and from South San Francisco as they now enjoy between the inner business areas. From the extreme points or other zones in Oakland and San Francisco, approximately 5¢ per 100 (maximum) additional has been added to the applicant's rate structure (C.R.C.No.3) to compensate for the additional distance to South San Francisco

and return. For larger quantities than the ordinary l.c.l. shipments, the added rate becomes less as the volume increases. The rates other than those to South San Francisco testified to by Mr. Hinman are all included in a new tariff and classification of applicant filed by Pacific Motor Tariff Bureau as C.R.C. No.1, effective January 2, 1930.

E. G. Wilcox, Traffic Manager of the Oakland Chamber of Commerce, testified that there had been several requests at his office for transportation by a common carrier between Oakland and South San Francisco, particularly for sheet metal products, jellies and bronze castings. He further testified that in his opinion the development of the traffic between the two cities has been so rapid and abundant that the service proposed has become a real need for Oakland shippers.

W. W. Davis, Vice President of the E. H. Edwards Company, manufacturers of wire and wire products at South San Francisco, testified that this business has many uses for the service proposed by applicant; that many special trips are required to deliver emergency orders to east-bay cities and that such trips usually entail a cost of \$7.50. He further testified that the shipments that would be sent by truck were not of the class that had usually been shipped by rail by protestant from South San Francisco.

S. E. Mountain, Secretary and Traffic Manager of the Fontana Food Products Company, manufacturers of macaroni, testified that in shipping to dealers in Oakland, railroad service has not been used except in carload lots, and that the truck service proposed would be used almost daily by this concern in lieu of sending its own trucks and employing special transportation.

Mr. Mountain testified that practically all of the business that would accrue to the applicant, should the application be granted, is not now moving by rail.

A. E. Browning, representing the Laher Spring Company, of Oakland, testified that its needs require prompt, quick shipments of steel and bolts from South San Francisco, where they are manufactured, and that the service will fit their needs.

J. G. Walker, Executive Secretary of the Manufacturers' Association of South San Francisco, representing 24 industries, testified that at a meeting of the association held December 5th, the proposed service of applicant was discussed and approved. He further testified that the development of industries in this community and the expansion of their business was such that the service is now needed. In addition, Emeryville Industries Association, through a letter from its President, H. Y. Stuart, urged the granting of the application, expressing the belief that there is need for the service proposed.

The application was protested by the Southern Pacific Company on the ground that its service as now established, is adequate. The testimony of P.W. Bernard showed that the l.c.l. shipments received up to 2:30 p.m. at the South San Francisco freight depot are moved daily by motor van to the Southern Pacific freight depot at 4th and Berry Streets, and are returned from this terminal to South San Francisco by the same process. Shipments reaching the San Francisco depot by 4:00 p.m. are transported to Oakland in freight cars via ferry and are available at sub-depots in Oakland and other points by 8:00 a.m.

the following morning. Consignees are required in all cases to deliver and receive consignments at the stations or sub-stations, there being no store-door delivery. Shipments from Oakland to San Francisco, if deposited at the sub-agencies or general depot, by 4:00 p.m., are available for reception by the consignees in South San Francisco by 3:00 p.m. the following afternoon. No store-door delivery is made in South San Francisco.

The record before us indicates that shippers in east-bay points and at South San Francisco require a quick, accessible pick-up and delivery service between the two points and applicant offers to provide the same with the general efficiency that characterizes exchange of merchandise by it between east-bay points and the City and County of San Francisco. From the record it also appears that the great bulk of such movement would be commodities that are not now being shipped by rail method, and to that extent will not divert large tonnage from the existing facilities. Applicant's witnesses expressed their satisfaction with Southern Pacific service as such, but believed the service of applicant necessary in addition as a time-saving element over the best possible movement to be made by the rail line.

Applicant proposes no service between the City and County of San Francisco and South San Francisco, so that all shipments must be destined to or must originate at east-bay points. We believe the record demonstrates the necessity for the service, and an order granting a certificate will accordingly be made.

Applicant, H. L. Hinman, operating under the firm name and style of Merchants Express and Draying Company, is hereby placed upon notice that "operative rights" do not constitute a class of property which should be capitalized or used as an element of value in determining reasonable rates. Aside from their purely permissive aspect, they extend to the holder a full or partial monopoly of a class of business over a particular route. This monopoly feature may be changed or destroyed at any time by the state which is not in any respect limited to the number of rights which may be given.

O R D E R

H. L. Hinman, operating under the fictitious name of Merchants Express and Draying Company of Oakland, having made application to the Railroad Commission for authority to extend service now maintained by him between Oakland and Alameda County points and the City and County of San Francisco for the transportation of freight to South San Francisco, San Mateo County, a public hearing having been held, the matter having been duly submitted, and now being ready for decision,

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA HEREBY DECLARES that public convenience and necessity require the extension by applicant of such service between Alameda County points now served by him, and no others, and the City of South San Francisco, over and along the following route, and no other:

From the Embarcadero via Market Street, Tenth Street, Potrero Avenue and San Bruno Avenue; thence via San Bruno Avenue to the City of South San Francisco,

provided no transportation may be conducted between the City and County of San Francisco and South San Francisco, or points intermediate.

IT IS HEREBY ORDERED that a certificate of public convenience and necessity therefor be, and the same hereby is granted, subject to the following conditions:

1- Applicant shall file his acceptance of the above certificate within ten (10) days from the date hereof, stipulating in said acceptance that the certificate herein granted is accepted as an extension of his present operative rights only and not as a new or separate operating right.

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 him under a contract or agreement on a basis satisfactory to the Railroad Commission.

The effective date of this order shall be twenty (20) days from the date hereof.

Dated at San Francisco, California, this 10th day of

January, 1930.

C. P. Leary
Frank J. ...
Leon ...
Thos. ...
W. J. ...
Commissioners.