

Decision No. 25983

**TWINING**

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

In the Matter of the Application of the  
20th CENTURY DELIVERY SERVICE, INC., for a  
certificate of public convenience and  
necessity to operate a package delivery  
service between Los Angeles and various  
points in Southern California.

} Application No. 18406.

Frank P. Doherty, for applicant.  
Fred G. Athearn and Douglas Brookman, for  
United Parcel Service of Los Angeles,  
Inc., Protestant.  
Edward Stern, for Railway Express Agency,  
Incorporated, Protestant.  
H. W. Hobbs, for Southern Pacific Company and  
Pacific Motor Transport Company, Pro-  
testants.

BY THE COMMISSION:

O R D E R

In view of the decision of the Commission in United Parcel Service of Los Angeles, Inc. vs. 20th Century Delivery Service, Inc. et al., Decision No. 25274, of date October 24, 1952, the Commission set this application down for a limited hearing on the question of applicant's fitness to be certificated. Evidence adduced at that hearing indicated a general reorganization of applicant, a change of management, the filing of tariffs as an express corporation and at least an effort to carry on business on a different basis than that condemned in the decision referred to. Under the showing made the Commission does not feel justified in refusing to take testimony on the question of public convenience and necessity and in summarily denying the application.

However, the situation which existed at the time the application was filed is not the situation which exists at present. The United Parcel Service of Los Angeles, Inc. has been ordered to accept and carry express matter tendered it by express corporations, (re United Parcel Service of Los Angeles Inc., Decision No. 35565, of date January 16, 1953) and applicant is now operating under an express tariff.<sup>1</sup>

Under the circumstances it seems appropriate to call attention to the rule that certificates are not granted merely to meet the desire of an operator (re Cowan, 33 C.R.C. 389, 391; Pacific States Express Co., 31 C.R.C. 350, 360; Palo Verde and Imperial Valley Transportation Co., 17 C.R.C. 722, 724) and that "the law looks not to the operator but to the convenience and necessity of the public and clearly contemplates that applications of this character shall be decided on the basis of this test alone and not on the basis of the desires or necessities of the operators." (Re Santa Clara Valley Auto Line, 14 C.R.C. 112, 113.)

1. Witness Noyes, who seems to be in full control of applicant, after referring to the fact that the applicant was thus operating, was asked:

"Q. And you are able to operate quite well, aren't you?"  
to which he replied: "A. Well, I don't know, it is not very profitable."

The inference from his testimony was that certification as a transportation company would advantage his company and also would enable it to give a better service than it was giving through utilization of the facilities of certificated carriers other than the United Parcel Service of Los Angeles, Inc., which was at that time refusing to accept express matter tendered it by applicant.

IT IS THEREFORE ORDERED that if applicant desires to proceed further with the application it be placed on the calendar for hearing at some appropriate and convenient date.

May Dated at San Francisco, California, this 29<sup>th</sup> day of ~~May~~, 1958.

C. C. Leary  
M. H. Lee  
M. B. Harris  
A. V. Moore  
Commissioners.