

Decision No. 28691

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

In the matter of the Application of C. R. BECKER, an individual, doing business under the firm name and style of the DELIVERY SERVICE COMPANY, for a Certificate of Public Convenience and Necessity, to operate an inter-city auto truck pick-up and delivery service for the transportation of packaged property as a partial and limited common carrier between Alameda, Oakland, Piedmont, Emeryville, Berkeley, Albany, El Cerrito, California, and intermediate points, and along the roads traversed in reaching said points, and to be limited in the application thereof to the following retail and wholesale businesses only, to-wit: Meats, Groceries, Auto Accessories and Parts, Mechanical Tools (not exceeding 100 lbs.), periodicals and Magazines, Newspaper (single issues), Films and Prints (developed and undeveloped) Cosmetics, Barber Supplies, Drugs and Sundries, Stationery Supplies, Liquor, Wines (packages), Paper Supplies, Bags, Twine, Medical Supplies and Equipment, Optical Supplies and Equipment, Dental Supplies and Equipment, Confections, Ice Cream, Candies and Cakes (packaged), Blue Prints, X-ray Pictures, Cigars, Cigarettes, Tobacco, Photo Supplies and Cameras.

ORIGINAL

Application No. 20144.

Raymond H. Schubert, for applicant;  
Sanborn & Roehl and Clair MacLeod, for  
V. Fred Jakobsen, doing business as Special  
Delivery Service, interested party;  
E. H. Hart, for Motor Tariff Bureau, interested  
party.

BY THE COMMISSION:

O P I N I O N

In this matter C. R. Becker, doing business under the name and style of Delivery Service Company, seeks a certificate of public convenience and necessity for the operation of an automotive parcel

delivery service, as a highway common carrier, limited to the transportation of certain commodities,<sup>(1)</sup> between Alameda, Oakland, Piedmont, Emeryville, Berkeley, Albany and El Cerrito. This service will be confined to packages weighing not in excess of 100 pounds each.

A public hearing was had in this matter before Examiner Austin at Oakland on February 14, 1936, when the matter was submitted and it is now ready for decision.

Within the area it now seeks to serve, applicant has performed under contracts entered into with various shippers a parcel delivery service transporting auto parts, barber supplies, candy, cameras, drugs, groceries, meats, liquors and paper. Originally drugs only were handled, but later meats also were included, and subsequently the other commodities as well. It was shown that applicant had entered into bona fide contracts with each of his patrons, each of which was for a definite period of time and each specified the rates and the minimum quantity guaranteed weekly by the shipper. Applicant now holds permits as a Highway Contract Carrier and as a City Carrier, issued under the Highway Carriers' Act and the City Carriers' Act, (Statutes 1935, Chapters 223 and 312, respectively). His good faith in conducting this service has not been questioned. Because of the limitations imposed by law upon his private carrier service, and due

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(1) Applicant seeks authority to transport only the following named commodities, viz: Auto Parts, Accessories and Supplies; Bags, Barber Supplies; Blue Prints; Cakes; Candy and Confections; Cameras; Cigars, Cigarettes, Tobacco and Pipes; Cosmetics; Dental Supplies and Equipment; Films and Prints; Groceries and Grocers' Supplies; Ice Cream; Labels; Drugs and Medical Supplies and Equipment; Liquors, Beer, Ale and Wines (packages); Meats; Mechanical Tools; Optical Supplies and Equipment; Paper and Stationery Supplies; Periodicals, Magazines and Newspapers (single issues); Photographic Supplies; Rubber Stamps; Twine; and X-ray Plates and prints.

to his inability to enter into contracts with new shippers extensively without so expanding the scope of his operations as to become a Highway Common Carrier, applicant now seeks a limited certificate under which he may lawfully undertake to serve all shippers of the commodities above described.

Applicant testified this service will meet the needs of merchants, druggists and others requiring a regular and frequent delivery of their parcels. For this service a demand exists which has been voiced not only by shippers with whom applicant has executed contracts, but also by many others, including proprietors of meat markets, vegetable stores and drug stores, as well as others. This necessity, so applicant stated, is limited to carrying only the commodities he has undertaken to handle, it being impracticable, in his opinion, to mingle parcels of this kind with general freight. Such shipments can best be handled alone. Applicant undertook not to accept bulk packages which might be broken up and distributed among several consignees. More particularly, he stipulated with E. H. Hart, who appeared for the Motor Tariff Bureau, representing the transbay certificated carriers, that he would not accept bulk packages originating in San Francisco and tendered to him in Oakland for distribution.

The territory to be served is divided into two zones, one of which, Zone 2, includes the central business area of Oakland, extending from the Estuary, on the south, to 41st Street, Piedmont Avenue, Moss Avenue, Santa Clara Avenue, Elwood Avenue and Mandana Avenue, on the north, and from Market Street on the west, to Lakeshore Avenue, 12th Avenue and Fallon Street, on the east. Zone 1 includes the remainder of the territory. Through traffic will move in heavier volume from Zone 2, the other zone including the

neighborhood area, will require more frequent service.

A regular pick-up and delivery service, and a flag service, both operating upon a regular schedule, will be maintained. A regular service will be accorded in Zone 2 for handling drugs and medicines, and in both zones for groceries and meats. A flag service will be available in both zones for such items as auto parts and accessories and certain other commodities, including liquors, stationery and photographic supplies; it will be available only in Zone 1 for other commodities such as candy and confections, cigars and tobacco, and for drugs and medicines. A casual or on-call service will be extended to both zones covering all items. Generally speaking, the service will be conducted on an hourly schedule, extending from 9:00 A.M. to 7:00 P.M. daily, excepting on Sundays and holidays when it will be available between 10:00 A.M. and 1:00 P.M. and between 4:00 P.M. and 8:00 P.M. The routes traversed will include any of the streets within the communities named.

In this service applicant will use thirteen small delivery trucks, viz: six Fords and seven Chevrolets, all of which he now owns. Some twenty-four men, including drivers, are now employed. Applicant appears to be financially able to conduct these operations.

The proposed rates, which decrease as to each shipper as the volume of tonnage tendered by him during a weekly period increases, are based upon the present contract transportation charges, and they appear to be compensatory.

Applicant offered affidavits from some forty patrons now using the present private service, comprising retail and wholesale druggists, dealers in barber's supplies, photographic developers, proprietors of retail meat markets, grocers, retail liquor dealers, retail candy and ice cream proprietors, wholesale candy dealers,

dealers in auto parts and accessories, and dealers in cosmetic supplies. Each stated the service had been satisfactory and reliable, and that an efficient, reliable and frequent parcel delivery service was necessary in his business.

In addition, applicant called six witnesses, including dealers in barber and beauty supplies, retail groceries, retail drugs, wholesale auto parts and photo finishing supplies, engaged in business in Oakland, Piedmont and Berkeley. They testified that an expeditious delivery service was essential to their business. In their opinion the hourly schedule proposed by applicant was preferable to a schedule operated every one and one-half hours. Through the medium of applicant's private service, which they had found quite satisfactory, parcels have been delivered to all of the points involved.

No protest was voiced against the granting of this application. Appearances as interested parties were entered by V. Fred Jakobsen, doing business as Special Delivery Service, and by E. H. Hart of the Motor Tariff Bureau, representing the certificated carriers operating within the East Bay territory and between San Francisco and these points.

Jakobsen has recently been granted a certificate of public convenience and necessity authorizing a similar service.<sup>(2)</sup> His counsel stated there was no objection to the limited certificate sought.

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(2) Decision No. 28,246, on Application No. 19884, dated September 30, 1935. Under his filed time schedules, he offers to conduct within the same area a parcel delivery service operating under a one and one-half hour schedule.

Following the stipulation between applicant and counsel for Motor Tariff Bureau, adverted to above, restricting shipments of bulk packages brought from San Francisco and delivered to applicant in Oakland for distribution within the area served, the latter announced he had no objection to the granting of the application. And a letter from counsel for United Parcel Service was presented stating that this operator would not object to the granting of a certificate in this matter.

From the showing made it is apparent that a certificate should be granted, limited, however, to a parcel delivery service handling only the commodities hereinabove described, restricted to a maximum weight of 100 pounds per package, and subject to the condition that no bulk packages shall be received or accepted by applicant, originating at San Francisco and tendered to him in Oakland, or delivered to him from any source, which are intended to be broken up and distributed within the area proposed to be served. Clearly, it is in the public interest that applicant be permitted to enlarge the scope of his operations from those of a Contract Carrier to those of a Highway Common Carrier. By so doing, he will be enabled to dedicate to the public the satisfactory, efficient and necessary service in which he has been engaged.

Based upon the evidence herein adduced, the Commission hereby finds as a fact, that public convenience and necessity require the operation by C. R. Becker, doing business under the firm name and style of Delivery Service Company, of an automotive parcel delivery service for the transportation of packages, as a Highway Common Carrier, as defined in Section 2-3/4 of the Public Utilities Act, over the public highways between Alameda, Oakland, Piedmont, Emeryville, Berkeley, Albany and El Cerrito, and between any two or

more of said points, for the transportation of the following commodities only, viz: Auto Parts, Accessories and Supplies; Bags; Barber Supplies; Blue Prints; Cakes; Candy and Confections; Cameras, Cigars, Cigarettes, Tobacco and Pipes; Cosmetics; Dental Supplies and Equipment; Drugs and Medical Supplies and Equipment; Films and Prints; Groceries and Grocers' Supplies; Ice Cream; Labels; Liquors, Beer, Ale and Wines (packages); Meats; Mechanical Tools; Optical Supplies and Equipment; Paper and Stationery Supplies; Periodicals, Magazines and Newspapers (single issues); Photographic Supplies; Rubber Stamps; Twine; and X-ray Plates and Prints; PROVIDED, HOWEVER, that applicant shall neither accept, transport nor deliver any packages of parcels in bulk intended for distribution anywhere within the territory authorized to be served, whether originating in San Francisco or elsewhere.

C. R. Becker 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

A public hearing in the above entitled application having been held, the matter having been submitted, and now being ready for decision:

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA does hereby declare that public convenience and necessity require the operation by C. R. Becker, doing business under the firm name and style of Delivery Service Company, of an automotive parcel delivery service for the transportation of packages, as a Highway Common Carrier, as defined in Section 2-3/4 of the Public Utilities Act, over the public highways between Alameda, Oakland, Piedmont, Emeryville, Berkeley, Albany and El Cerrito, and between any two or more of said points, for the transportation of the following commodities only; viz: Auto Parts, Accessories and Supplies; Bags; Barber Supplies; Blue Prints; Cakes, Candy and Confections; Cameras; Cigars; Cigarettes, Tobacco and Pipes; Cosmetics; Dental Supplies and Equipment; Drugs and Medical Supplies and Equipment; Films and Prints; Groceries and Grocers' Supplies; Ice Cream; Labels; Liquors, Beer, Ale and Wines (packages); Meats; Mechanical Tools; Optical Supplies and Equipment; Paper and Stationery Supplies; Periodicals, Magazines and Newspapers (single issues); Photographic Supplies; Rubber Stamps; Twine; and X-ray Plates and Prints; PROVIDED, HOWEVER, that applicant shall neither accept, transport nor deliver any packages of parcels in bulk intended for distribution anywhere within the territory authorized to be served, whether originating in San Francisco or elsewhere.

IT IS HEREBY ORDERED that a certificate of public convenience and necessity for such a service be, and the same hereby is granted to C. R. Becker, doing business as aforesaid, subject to the following conditions:

1. Applicant shall file his written acceptance of the certificate herein granted within a period of not to exceed fifteen (15) days from date hereof.
2. Applicant shall file, in triplicate, and make effective within a period of not to exceed thirty (30) days after the effective date of this order, on not less than ten days' notice to the Commission



and the public a tariff or tariffs constructed in accordance with the requirements of the Commission's General Orders and containing rates and rules which, in volume and effect, shall be identical with the rates and rules shown in the exhibit attached to the application insofar as they conform to the certificate herein granted, or rates satisfactory to the Railroad Commission.

3. Applicant shall file, in duplicate, and make effective within a period of not to exceed thirty (30) days after the effective date of this order, on not less than five days' notice to the Commission and the public, time schedules covering the service herein authorized in a form satisfactory to the Railroad Commission.
4. 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.
5. 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.

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 6th day of April, 1936.

W. B. Davis  
Leon A. Wiley  
M. A. Cline  
Robert H. Brown  
Frank R. Wiley  
Commissioners.