

Decision No. 28930

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
 KELLOGG EXPRESS & DRAYING CO., a
 Corporation, for a certificate of
 public convenience and necessity to
 transport property, as a common
 carrier, for compensation, between
 the cities of San Francisco and
 Alameda, Berkeley, Emeryville and
 Oakland, on the one hand, and El
 Cerrito, Stege, Pullman, Richmond,
 Point Richmond, San Leandro, Hayward,
 and San Lorenzo, on the other hand.

Application No. 20,029.

ORIGINAL

Sanborn and Roehl, by H. H. Sanborn and Clair McLeod
for Applicant;

R. S. Myers for Southern Pacific Company,
Pacific Motor Transport Company, and
Pacific Motor Trucking Company,
protestants,

Fitzgerald, Abbott & Beardsley, by M. W. Dobrzensky
and Crellin Fitzgerald for Merchants Express
Corporation,

Ernest I. Spiegl for Western Pacific Railroad, pro-
testant.

BY THE COMMISSION:

O P I N I O N

Applicant seeks herein a certificate of public convenience and necessity to establish and operate a highway common carrier service for the transportation of property between San Francisco, Alameda, Albany, Emeryville, and Oakland, on one hand, and El Cerrito, Stege, Pullman, Richmond, Point Richmond, San Leandro, Hayward and San Lorenzo, on the other hand.

Public hearings thereon were conducted by Examiner W.R. Williams at Oakland, Hayward and San Francisco. The matter was submitted without briefs and now is ready for decision.

While the applicant seeks a certificate de novo based on present convenience and necessity the preponderance of testimony was produced with the intent to show common carrier service prior to May 1, 1917 and continuously thereafter.

Applicant's predecessor, William Bolt, operating as Kellogg Express Company, was authorized to transfer his rights to applicant in March of 1933 (Decision 25744, Application 18745); and for a period of sixteen years (1917 to 1933), such predecessor did not once assert the existence of a "prior" operative right between the points involved herein. Applicant made no claim that such right existed until a year and a half after it had acquired the business (October 26, 1934), and then only after the Commission had instituted an investigation. In the 1935 proceeding (Decision No. 27966, Case 3924, the record of which case was stipulated in the present proceeding), the Commission found that applicant had failed to show that its predecessor operated as a common carrier in good faith prior to May 1, 1917 between the points involved.

The claim of operation in good faith prior to regulation has been decided adversely to applicant. (Re Kellogg Express and Draying Company, 39 C.R.C. 314; writ of review denied by California Supreme Court on July 22, 1935, in Kellogg Express and Company v. Railroad Commission, S. F. No. 15488.

The existence or non-existence of a "prior right" is not involved in this proceeding. Public convenience and necessity is the sole question for determination.

The chief demand shown in the record is that of San Francisco shippers who are now using the present service of applicant and desire applicant's proposed service to the points

sought herein. Such desire is for convenience only and is not enough to justify even a limited certificate in view of the existing adequate service.

Protestant Merchants Express Corporation has 234 pieces of equipment available for its service between San Francisco and East Bay Points. This equipment has a capacity of 1744 tons. It is used daily in constant transfers of its cargoes between San Francisco and all East Bay points and to and from rail and vessel stations and docks. At least two schedules for line haul delivery and pickup are maintained between San Francisco and all East Bay Points, including those involved herein, on morning and evening bases, and some instances a third schedule is provided.

Railway Express Agency transports shipments to San Leandro and Hayward on four Southern Pacific passenger trains each way daily, with pickup and delivery at all points. Other transbay shipments are transferred to trains for El Cerrito and Richmond on seventeen east bound trains and eighteen trains west bound, also with pickup and delivery. Express service to Hayward also is maintained on one Western Pacific train.

Southern Pacific L.C.L. shipments are delivered to Pacific Motor Transport for delivery at all points involved at rail rates. Freight received by Pacific Motor Transport Company prior to 5:45 p.m. is delivered the next morning, at all points except El Cerrito and Stege. For this service there is utilized about 125 pieces of equipment at San Francisco and about 30 in the East Bay District. Pacific Motor Trucking Company performs pickup and delivery service for Southern Pacific Company and Pacific Motor Transport Company and operates its own highway common carrier service between Oakland and San Jose, via San

Leandro, San Lorenzo and Hayward. Merchants Express Corporation service also is available.

Richmond Navigation and Improvement Company furnishes direct service between San Francisco and Richmond, serving 150 shippers and making truck deliveries early the next morning.

Full consideration of the record in the instant application (including the record in Case 3924), does not disclose the support, in fact, of public necessity for the service proposed, in view of the existing adequate service. There is nothing in the record to justify expectation that applicant's service would be materially different. No advantage in rates is proposed. The service proposed by applicant would be a duplication.

It is our conclusion and we find as a fact that public convenience and necessity do not require the automotive truck service for the transportation of property, as applied for herein; and that the application should be denied.

O R D E R

Kellogg Express and Draying Co., a corporation, having made application for a certificate of public convenience and necessity, as above entitled, public hearings having been held and the matter having been duly submitted,

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA
HEREBY DECLARES that public convenience and necessity do not
require the establishment of service as herein proposed; and

IT IS HEREBY ORDERED that the application be and the
same hereby is denied.

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 June, 1936.

W. B. Lewis

W. H. Lewis

W. H. Lewis

Stewart R. Wilson
Commissioners.