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Decision No. 31801

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
CO-OPERATIVE DELIVERY SERVICE, LTD., )  
a corporation, for a certificate of )  
public convenience and necessity to ) Application No. 20135  
operate as a common carrier between )  
Los Angeles and Vernon, Huntington )  
Park, Central Manufacturing District )  
Belvedere Gardens and Beverly Hills. )

LAURENCE BERGER, for Applicant.

DOUGLAS BROOKMAN, for United Parcel Service of  
Los Angeles, Interested Party.

H. J. BISCHOFF, for Southern California Freight  
Lines, Protestant.

BY THE COMMISSION:

O P I N I O N

By this application, as amended, Co-operative Delivery Service, Ltd., a corporation, seeks a certificate of public convenience and necessity authorizing it to engage in the transportation, as a highway common carrier, of packages and parcels of less than one hundred pounds in weight, between Los Angeles, on the one hand, and Vernon, Huntington Park, Central Manufacturing District and Belvedere Gardens and intermediate points, on the other hand.

A public hearing was had at Los Angeles when evidence was offered, the matter submitted, and it is now ready for decision.

The granting of this application was protested by United Parcel Service of Los Angeles and by Southern California Freight Lines. After applicant stipulated that it would so restrict its offer that shipments would not be received from any store doing business as a retail store, United Parcel Service of Los Angeles withdrew its protest.

Since its organization in 1930 applicant has been engaged in the operation of a fleet of trucks to transport packages and property for hire not only between Los Angeles and the points it now seeks to serve (Vernon, Huntington Park, Central Manufacturing District, and Belvedere Gardens) but also between Los Angeles and other adjacent communities such as Pasadena, South Pasadena, Glendale and Beverly Hills. Since 1919 applicant's predecessor, Irving Bekey (president of applicant corporation) had been engaged in a similar service.

While it appears from this record that a substantial portion of applicant's operations was performed wholly within the city of Los Angeles, it is also evident that throughout this period a service has been regularly conducted between Los Angeles and the points it now seeks to serve.

Applicant proposes to perform a daily scheduled service affording four pickups in Los Angeles and regular deliveries to the points served. Rates will be assessed in accordance with the proposed tariff which was submitted at the hearing.

This operation is designed primarily to accommodate the needs of wholesale manufacturers, jobbers, and distributors, whose business establishments are located within the district applicant proposes to serve. Although applicant in the past has handled shipments weighing in excess of one hundred pounds, its present offer/<sup>is</sup>to limit shipments to packages and parcels weighing less than one hundred pounds.

In support of its proposal applicant called representative shippers, including printers, paint manufacturers, leather dealers, wholesale druggists, book manufacturers, dealers in canvas goods and supplies, a wholesale auto parts dealer, a wholesale chemist, manufacturers of book binders, and others. Representatives of these

firms testified in substance that they would use applicant's proposed service were it certificated and would find that service a distinct convenience. Altogether some sixteen shipper witnesses were called on behalf of applicant. Their testimony, however, discloses no substantial complaint as to the adequacy of other existing public transportation service and particularly that performed by the protestant Southern California Freight Lines.

It is proposed to provide this service through the utilization of some forty-seven pieces of equipment most of which are old, many of them being 1924 and 1929 models. Upon this equipment applicant has placed a value of \$2,274.87. Most of the vehicles referred to have been in use for many years in the performance of this service.

Though the evidence offered on behalf of applicant by its president and by shipper witnesses tends to show that the establishment of the proposed service would serve the convenience of these firms and others, nevertheless we cannot on that ground alone authorize the establishment of the service which applicant seeks to conduct. Without ignoring a long line of decisions we cannot close our eyes to, nor condone, the unauthorized operations conducted by the applicant and its predecessor, over the routes and between the points for which it now seeks a certificate. Almost without

exception the shipper witnesses produced by the applicant testified they had used its service and that of its predecessor, and of its president, between the points as to which it now seeks a certificate for periods ranging from four years to seventeen years prior to the time of the hearing. Though much of this service was confined to the limits of the city of Los Angeles nevertheless their testimony clearly establishes the fact that a substantial volume of this traffic moved regularly between Los Angeles and the points applicant now seeks authority to serve.

On cross examination applicant's president Irving Bekey frequently admitted that through this long period applicant and its predecessor had served some three hundred shippers transporting their shipments over the routes herein involved. In fact this witness admitted applicant would take any business "it can line up." No contract has been entered into with any of his shippers other than the issuance of a shipping receipt or bill covering each specific shipment.

Neither applicant nor its predecessor ever selected the shippers to be served nor undertook in any way to limit this class; on the contrary it appears that they have held themselves out to serve the public in general. Because of the close connection between applicant and its president, Mr. Bekey, which was shown to exist, Mr. Bekey being in fact the manager of the applicant corporation and in control of its affairs, the continuity of the operations conducted, first by Mr. Bekey and subsequently by applicant, is such that the operations should be viewed as one, rather than as a disconnected series of operations. But even though we disregard the service offered to these shippers by Mr. Bekey, the record is clear that since its organization in 1930, the applicant corporation has held itself out to serve the public generally. In the absence of a

certificate of public convenience and necessity these operations are unlawful.

In view of the circumstances shown by this record there can be but one conclusion. The application will be denied.

O R D E R

A public hearing having been held, the matter having been duly submitted, and the Commission now being fully advised,

IT IS ORDERED that the application herein is hereby denied.

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

Dated at San Francisco, California, this 6<sup>th</sup> day of March, 1939.

Robert W. Hughes  
Frank D. Dixon  
Ray H. Siley  
W. H. Miller  
Justus J. Coe  
COMMISSIONERS