

Decision No. 32503

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
GEORGE A. BAKER, doing business under)
the name and style of BAKER & STANTON)
TRANSFER AND STORAGE CO., for certifi-)
cate of public convenience and neces-)
sity to operate a trucking service for)
household goods, as a common carrier,)
between Eureka and San Francisco and)
other points)

Application No. 22648

ORIGINAL

ORLA ST. CLAIR, for Applicant.

MRS. ANNIE MCGARAGEAN, for McGaraghan Drayage
Company, Protestant.

F. E. HORNUNG, for Hornung Van and Storage
Company, Protestant.

BY THE COMMISSION:

O P I N I O N

In this proceeding George A. Baker, doing business as Baker & Stanton Transfer and Storage Co., seeks a certificate of public convenience and necessity for the establishment and operation of a highway common carrier service for the transportation of second-hand, packed or unpacked, crated or uncrated household goods, furniture, pianos, musical instruments, trunks, baggage and personal effects (as a part of and in connection with household goods); and office, store and restaurant furniture or fixtures, between Eureka and San Francisco Bay points as follows:

Serving between Eureka and Santa Rosa and intermediate points, including thirty (30) miles on each side of the highway between Eureka and Santa Rosa; also between all points between Eureka and Santa Rosa, excluding Santa Rosa, on the one hand, and the following cities and all intermediate points between said following cities, on the other hand, to-wit: The southerly city limits of Santa Rosa, Petaluma, San Rafael, Mill Valley, Sausalito, San Francisco, Hayward, Alameda, Oakland, Berkeley, Albany, El Cerrito, Richmond, and thence to San Rafael.

A public hearing was had at Eureka on July 13, 1939, before Examiner Paul, and the matter having been taken under submission is now ready for decision.

Applicant testified that during the last eleven years he has been engaged, at Eureka, in the transportation and storage of the commodities enumerated hereinbefore. He has been providing transportation service since 1935 under contract carrier, city carrier and radial highway common carrier permits issued by the Railroad Commission. His service between the points he now proposes to serve as a highway common carrier has developed and grown to such an extent that he has determined to dedicate such service to the public as a highway common carrier. Service will be provided upon demand. No minimum quantity for such demand service is proposed but applicant stated that a minimum tonnage would be provided in his tariff if a certificate should be granted.

Applicant stated that during the calendar year of 1937 he made thirty-six trips between the points proposed to be served. Approximately 140 tons were transported. During the year of 1938 thirty trips were made and about 113 tons of traffic were handled. The average load for each trip was 3.83 tons. The majority of the movements were between Eureka and San Francisco. The number of trips made each month varied from one to five. ⁽¹⁾ The number of trips made during the first six months of the year 1939 have been slightly more frequent than the preceding two years. During the years of 1937 and 1938 not more than twelve to fifteen trips were made to or from off-route points. The greatest distance served off route between Eureka and San Francisco was Lakeport which is less than twenty miles, Napa which is about

(1) Exhibit No. 1.

twenty-five miles, and Vallejo which is less than twenty-five miles from such route. A few trips were made to San Jose, Los Altos and Santa Cruz.

Applicant testified further that many summer homes are now in the course of construction at points contiguous to or nearby, the proposed route. Such development is now in progress in the neighborhood of Benbow, Redway, Garberville, Fortuna and other points in the Redwood district from Willits to Eureka.

Applicant stated that his automotive equipment and warehouses are fully paid for; that he has no outstanding indebtedness save and except current liabilities which include sales taxes and other taxes and accounts payable which amount to approximately \$431.41; that he has notes payable amounting to \$2,527.73, cash on hand of \$638.95, and accounts receivable of \$3,562. The sum of his unemployment reserve and social security taxes amount to less than \$100.

Several witnesses, testified as to their needs for the type of service proposed by applicant.

The only protests offered were those of McGaraghan Drayage Company and Hornung Van & Storage Company. From the record it appears that protestants are providing a transportation service under city carrier, contract carrier and radial highway common carrier permits issued by this Commission.

Mrs. McGaraghan stated that the operations now conducted by her were established by her husband many years ago at which time horse-drawn vehicles were used. Such vehicles have been replaced by motorized equipment. Only casual and infrequent trips are made to points at any distance from Eureka.

Mr. Hormung stated that he has been engaged in the business of transporting household goods for approximately thirteen years; and that at the present, and for some time past, he has been providing such service between Eureka and San Francisco. He did not indicate the frequency of the movements, nor the tonnages transported.

Said protestants are fearful that if applicant is granted the certificate of public convenience and necessity prayed for they will be deprived of their rights to continue their businesses under the permits they now hold. We doubt that such fears are well founded. The services provided by protestants under such permits are of a restrictive type. Neither protestant, under such permits, may lawfully provide a service of the common carrier nature and extent of that proposed by applicant. Protestants have not elected to dedicate their services to the public as common carriers for which certification is necessary. Protests of carriers providing a restrictive service under permits can have but little, if any, force to mitigate against the proved needs of the public for a common carrier service.

The record shows that there is a need for a specialized highway common carrier service of the type proposed by applicant. The application will be granted.

George A. Baker 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 having been held, evidence adduced, the matter duly taken under submission, and the Commission now being fully advised,

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA HEREBY DECLARES that public convenience and necessity require the establishment and operation by George A. Baker, doing business as Baker & Stanton Transfer and Storage Co., of an automotive service as a highway common carrier, as defined in section 2 3/4 of the Public Utilities Act, for the transportation of second-hand, packed or unpacked, crated or uncrated household goods, furniture and fixtures, pianos, musical instruments, trunks, baggage and personal effects (as a part of and in connection with household goods) and second-hand, crated or uncrated, office, store and restaurant furniture and fixtures, between Eureka, and San Francisco Bay points, and intermediate points, particularly as follows:

- (a) Between Eureka and Santa Rosa and intermediate points;
- (b) Between Eureka and Santa Rosa and intermediate points, (excluding Santa Rosa) on the one hand, and a point at the southerly city limits of Santa Rosa, San Francisco, Oakland, Richmond and intermediate points, on the other hand, over and along the following route and twenty-five (25) miles laterally therefrom, to-wit:

Over U. S. Highway No. 101 between Eureka and San Francisco, thence over U. S. Highway No. 40 to Richmond, thence over Richmond-San Rafael Ferry and connecting roads or highways to San Rafael.

IT IS ORDERED that a certificate of public convenience and necessity therefor is hereby granted to George A. Baker, doing business as Baker & Stanton Transfer and Storage Co., subject to the following conditions:

1. The authority herein granted shall lapse and be void if applicant shall not have complied with all of the conditions within the periods of time fixed herein unless, for good cause shown, the time shall be extended by further order of the Commission.
2. Applicant shall file a written acceptance of the certificate herein granted within a period of not to exceed thirty (30) days from the effective date hereof.
3. Applicant shall commence the service herein authorized within a period of not to exceed thirty (30) days from the effective date hereof, and shall file, in triplicate, and concurrently make effective on not less than ten (10) days' notice to the Railroad 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 herein, or rates and rules satisfactory to the Railroad Commission.
4. 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 (5) days' notice to the Railroad Commission and the public, a time schedule or time schedules covering the service herein authorized in a form satisfactory to the Railroad Commission.
5. The rights and privileges herein authorized may not be discontinued, sold, leased, transferred nor assigned unless the written consent of the Railroad Commission therefor has first been obtained.
6. No vehicle may be operated by applicant herein unless such vehicle is owned by said applicant or is leased by applicant under a contract or agreement on a basis satisfactory to the Railroad Commission.
7. Applicant shall, prior to the commencement of service authorized herein and continuously thereafter, comply with all of the provisions of this Commission's General Order No. 91.

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

Dated at San Francisco, California, this 24th day of October, 1939.

[Signature]
[Signature]
[Signature]
[Signature]
 JUSTICE F. CRAMER
 COMMISSIONERS