

Decision No. 33543

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
MERCHANTS EXPRESS CORPORATION for a)
certificate of public convenience and)
necessity to operate a motor truck)
service as a common carrier between)
South San Francisco, San Francisco,)
Oakland, Alameda, Albany, Berkeley,)
Emeryville, Piedmont, El Cerrito,)
Richmond, San Rafael, San Quentin,)
San Lorenzo, San Leandro or Hayward,)
and Orinda, Upton, Bryant and Glorietta.)

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Application No. 22993

FITZGERALD, ABBOTT and BEARDSLEY, by L. W.
Skinner and F. M. Mott, for Applicant.

DOUGLAS BROOKMAN and REGINALD L. VAUGHAN, for
Inter-Urban Express Corporation, Kollogg
Express and Draying Company, Peoples Ex-
press Company and United Transfer Company,
Interested Parties.

DOUGLAS BROOKMAN, for Robert G. Anderson, doing
business as Petaluma & Santa Rosa Express
Company and Sausalito-Mill Valley & San
Francisco Express Co., a corporation, In-
terested Parties.

EDWIN G. WILCOX, for Oakland Chamber of Commerce.

WALTER A. RHODE, for San Francisco Chamber of
Commerce.

BAKER, Commissioner:

O P I N I O N

By this application, as amended, Merchants Express Corporation seeks authority to establish and operate a highway common carrier service between Santa Rita Acres, Orinda, Glorietta, Bryant, Upton and all intermediate points as an extension and enlargement of its existing rights between San Francisco and various East Bay communities.

Public hearing in this application was had in Oakland on December 20, 1939, and in San Francisco on March 11 and April 12, 1940, where testimony

was taken, evidence received, exhibits filed, and the matter submitted on briefs, duly filed with the Commission, and it is now ready for decision.

No protests to the granting of this application appear of record but Inter-Urban Express Corporation, Kellogg Express and Draying Co., Peoples Express Company and United Transfer Company appeared, through counsel, as interested parties.⁽¹⁾

The record discloses that applicant proposes to serve the points herein named out of Richmond via San Pablo Creek Road (also known as San Pablo Dam Road) and one mile laterally on either side thereof, returning through Oakland via the Broadway Low Level Tunnel Road (Mt. Diablo Highway). Alternatively, at carrier's option, service will be rendered out of Berkeley via Fish Ranch Road or Grizzly Peak Boulevard, predicated on service demands on the San Pablo Creek Road route. Service is to be rendered twice weekly on Tuesday and Friday, subject to increase should traffic demands warrant.

At the outset, it appears of record that no doubt exists as to the financial or physical ability of applicant carrier to perform the service proposed. Likewise, the record clearly discloses that public convenience and necessity would be subserved by the establishment of said service. However, the territory involved, while giving every promise of quite rapid growth and inherent future stability, appears to be at the stage, presently, of being unable to provide any substantial amount of tonnage or revenue.

Evidence of record reveals that an approximate gross revenue of \$80.00 per month will be developed in this territory based upon application of minimum rates as established by the Commission.

(1) Merchants Express Corporation filed its application (No. 22993) on September 19, 1939. Subsequently, on December 14, 1939, Inter-Urban Express Corporation, Kellogg Express and Draying Co., Peoples Express Company and United Transfer Company jointly filed an application (No. 23188) seeking operating authority identical with that of Merchants Express Corporation. By stipulation of the parties both matters were heard on a consolidated record with the understanding that separate decisions should be rendered therein.

The territory herein proposed to be served is largely residential in character and is represented by a number of small communities, each with its complement of small business establishments, service stations, and so forth. At the present time, this area, dependent in the main upon San Francisco and Oakland distributors for its current commercial needs, is without regular truck transportation facilities and is dependent upon infrequently rendered service by contract or radial truck operators. According to the record, such services, while sufficient within their respective limits, have not been able to keep pace with either the territorial growth experienced or the reasonable and necessary practical commercial demands more and more frequently encountered in the area. Results, to date, indicate delay and dissatisfaction due to failure of efforts to obtain transportation services, under existing conditions, commensurate with demand.

Interested parties to this proceeding, while not protesting the establishment of the extended service herein under discussion, are unanimous in asserting that they, too, be afforded identical authority to serve the said area. Such an attitude is premised on the allegation that the territory involved is an extension of and commercially contiguous to the so-called East Bay Area composed of existing communities between Richmond, on the north, and San Leandro and Hayward, on the south. Under this interpretation, it is the position of these parties that the commonly known transbay carriers, of which they comprise a part, are now and have been for years competitively on a par. Each claims a distinct group of what is termed "regular patrons," with some of whom they maintain practically exclusive relations which would be disrupted to their mutual disadvantage were one of the group permitted to enlarge the scope of its activities to the exclusion of the others. In other words, a shifting of the balance of power would occur as represented by the entrance of applicant here into territory not included in the rights of its competitors. Allegedly, detrimental results are thus foreshadowed, according to these operators, which would serve neither the public interest nor the private desires of the carriers.

With this position I cannot concur. In the first place, the rather meager revenue expected at best is not conducive to a finding that the transportation problem of the territory involved would be solved by an incursion of some five carriers. Secondly, all of the carriers involved are not directly competitive at all of the points included in the so-called East Bay Area. Thirdly, applicant herein, all things being equal, and they appear in that light, is entitled to preference of priority by a long-established policy of this Commission.

Under these circumstances, I am of the opinion, therefore, that the application of Merchants Express Corporation should be granted. The requests of Inter-Urban Express Corporation, Kellogg Express and Draying Co., Peoples Express Company and United Transfer Company for similar certificates will, as agreed, be disposed of in a separate decision.

Merchants Express Corporation 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.

I recommend the following form of order.

O R D E R

A public hearing having been had in the above-entitled proceedings, evidence having been received, the matter having been duly submitted, briefs therein having been filed, and the Commission now being duly advised,

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA HEREBY DECLARES that public convenience and necessity require the establishment and operation by Merchants Express Corporation of an automotive service as a highway common

carrier, as such is defined in Section 2-3/4 of the Public Utilities Act, between Santa Rita Acres, Orinda, Glorietta, Bryant, Upton and intermediate points as an extension and enlargement of its existing rights and consolidated therewith, over and along the following routes:

A. Through Richmond via San Pablo Dam Road and one (1) mile laterally on either side thereof; returning via Broadway Low Level Tunnel Road (Mt. Diablo Highway)

B. Through Berkeley via Fish Ranch Road (Grizzly Peak Boulevard) as an alternate route only when service not required via San Pablo Dam Road.

IT IS HEREBY ORDERED that a certificate of public convenience and necessity therefor be, and the same hereby is, granted to Merchants Express Corporation, 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 in so far as they conform to the certificate herein granted, or rates and rules satisfactory to the Railroad Commission.
4. 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 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 to such discontinuance, sale, lease, transfer or assignment 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 after the date hereof.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 1st day of October, 1940.

Ray L. Riley
Frank D. Smith
Paul H. Hays
H. Peter
Justin J. Calmes
Commissioners.