

ORIGINAL

Decision No. 36634

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of JAMES E. DOYLE for a certificate of public convenience and necessity for the transportation of property as a highway common carrier by automobile truck between San Francisco and points between San Francisco and the United States Navy Depot near Port Chicago, on the one hand, and the said United States Navy Depot, on the other hand, with the right to perform pick-up and delivery service at all points within the said United States Navy Depot. ) Application No. 25316

In the Matter of the Application of INTER-URBAN EXPRESS CORPORATION, a corporation, for a certificate of public convenience and necessity authorizing it to extend its operations as a highway common carrier between Martinez, California and Antioch, California and intermediate points. ) Application No. 24438

JOHN J. TAHENY, for applicant in Application No. 25316.

WILLIAM MEINHOLD, for Southern Pacific Company, protestant in Application No. 25316 and interested party in Application No. 24438.

J. E. HENNESSY, for Sacramento Northern Railway Company, protestant in both applications.

McCUTCHEN, OLNEY, MANNON & GREENE, by SCOTT ELDER, for The River Lines, interested party.

STARR THOMAS, for The Atchison, Topeka and Santa Fe Railway Company, protestant in Application No. 25316 and interested party in Application No. 24438.

REGINALD L. VAUGHAN, for applicant in Application No. 24438.

BY THE COMMISSION:

O P I N I O N

Application No. 25316, filed by James E. Doyle, requests a certificate of public convenience and necessity for the transportation of property as a highway common carrier between San Francisco

and points between San Francisco and the United States Navy Depot near Port Chicago, on the one hand, and said United States Navy Depot, on the other hand. Prior to the hearing, the application was amended to include a similar service between Brentwood and said United States Navy Depot.

Inter-Urban Express Corporation, hereinafter referred to as Inter-Urban, now provides a highway common carrier service in general between San Francisco Bay points and Martinez and certain intermediate points. By its Application No. 24438, it proposes to extend this service to Antioch from Martinez, including points intermediate to Martinez and Antioch via Port Chicago.

A public hearing was held before Examiner Cannon at Martinez on April 30, 1943. By agreement between the parties, the matters were consolidated for hearing and decision.

The granting of both applications was opposed by Sacramento Northern Railway Company. Southern Pacific Company and The Atchison, Topeka and Santa Fe Railway Company protested Application No. 25316.

The application of Inter-Urban was filed on September 5, 1941, but was removed from the calendar at the request of applicant. With the filing of the Doyle application, which proposes service to and from the United States Naval Depot near Port Chicago, applicant Inter-Urban requested that its application be heard at the same time. Counsel for Inter-Urban stated at the hearing that he did not propose at this time to urge that application except in the event the Commission should find that public convenience and necessity required service to and from Port Chicago.

Applicant Doyle testified that he is now operating as a highway contract carrier between San Francisco, points in Alameda

County and Contra Costa County. He owns three pieces of equipment and is in a position to add more if necessary. The Navy Base is approximately one mile northwesterly of Port Chicago and the bulk of shipments destined for that point, most of them originating in San Francisco, are now transported by applicant. Applicant stressed the need for fast service since most of the shipments are transported for use in the war effort. He operates a 6:45 P.M. schedule out of San Francisco arriving at the Base at 7:00 A.M. the next day. There is no other highway common carrier service to and from the Navy Depot. Applicant has contracts with 10 shippers in San Francisco and 5 in the East Bay region for the transportation of their commodities to the Depot. He testified that he could render a better service if the operation were conducted on a highway common carrier basis with a fixed regular schedule.

Two witnesses were called by applicant Doyle, both employed at the Navy Depot in connection with the handling of incoming shipments of supplies, clothing, toilet articles, drugs, etc. Their testimony was that Doyle was now rendering satisfactory service to the Depot. On the other hand, shipments coming into Port Chicago by train were slow in delivery.

The only witness called by applicant Inter-Urban was its terminal manager. He stated that his company has had no request for service to or from Port Chicago, that the traffic between Martinez and Port Chicago was light, and that Inter-Urban had no intention of pressing for this service.

Southern Pacific Company, appearing herein as protestant in the Doyle application, offered an exhibit showing less carload service available by all rail lines serving Port Chicago to and from certain named points in the area involved. It appears from the

exhibit that shipments leaving San Francisco at 8:00 P.M. via Southern Pacific are not available at Port Chicago until 8:00 A.M. of the second day following. The Atchison, Topeka and Santa Fe provides a daily service leaving San Francisco at 6:00 P.M. and arriving at Port Chicago at 8:00 A.M. the next day.

As we view the Doyle application it is a request for authority to establish a highway common carrier service for the transportation of property between San Francisco and Oakland, on the one hand, and the Navy Depot at Port Chicago, on the other hand, via a specified route, and a similar service between Brentwood and the Navy Depot, with the right to perform pickup and delivery service at all points within said Navy Depot.

This applicant's showing as to the public necessity for a common carrier truck service between San Francisco and Oakland, on the one hand, and the Navy Depot, on the other hand, appears to justify the conclusion that the application should be granted. The record contains no evidence of a public need for such service as applicant proposes between any of the other points named in his application, including Brentwood and the Navy Depot and points between.

Applicant Inter-Urban's proposal does not include service to and from the Navy Depot, and goes only as far as Port Chicago, which already has three rail services. This applicant's position is somewhat inconsistent in that Port Chicago is one of the points it proposes to serve, while its counsel stated at the hearing that public convenience and necessity do not require service to that point at the present time. This application differs from the Doyle application in that the latter offers service to the Navy Depot while the Inter-Urban does not.

Upon this record, the application of Inter-Urban will be denied without prejudice which leaves the way open for that applicant to again bring the matter before the Commission at a later date.

James E. Doyle is placed upon notice that "operative rights" as such do not constitute a class of property which may be capitalized or used as an element of value in rate fixing for any amount of money in excess of that originally paid to the State as the consideration for the grant of such rights. 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

Application having been made in the above entitled matters, a public hearing having been held and the Commission being duly advised, and hereby finding that public convenience and necessity so require,

IT IS ORDERED as follows:

1. That a certificate of public convenience and necessity is hereby granted to James E. Doyle authorizing operation as a highway common carrier, as such term is defined in Section 2-3/4 of the Public Utilities Act, between San Francisco and Oakland, on the one hand, and United States Navy Depot near Port Chicago, on the other hand, subject to the following condition:

The authority herein granted is subject to the provisions of Section 52(b) of the Public Utilities Act and further to the condition that James E. Doyle, his successors or assigns, shall never claim before this Commission, or any court or other public body, a value for said operative rights or claim as the cost thereof, an amount in excess of that paid to the State as the consideration for such rights.

2. That in the operation of said highway common carrier service, James E. Doyle shall comply with and observe the following service regulations:

- (1) 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.
- (2) Applicant shall comply with the provisions of General Order No. 80 and Part IV of General Order No. 93-A by filing, in triplicate, and concurrently making effective, tariffs and time schedules satisfactory to the Commission within sixty (60) days from the effective date hereof and on not less than one (1) day's notice to the Commission and the public.
- (3) Subject to the authority of this Commission to change or modify them at any time by further order, conduct said highway common carrier operations over and along the most appropriate route or routes between the points herein authorized to be served.

IT IS FURTHER ORDERED that Application No. 24438 of Inter-Urban Express Corporation, a corporation, be and it hereby is denied without prejudice.

The effective date of this order shall be the date hereof.

Dated at ~~San Francisco~~ <sup>Los Angeles</sup>, California, September 28, 1943.

Francis P. Hever

W. H. B. K.

Justin J. Calver

Richard R. Backus

Wm. W. Chas.

COMMISSIONERS