

Decision No. 41485

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
CHARLES I. DOWD (DOWD'S EXPRESS &)
STORAGE) for authorization to effect)
changes in operating rights: to aban-)
don portions of his certificated)
route and to use alternate route)
between Oakland and certain Marin)
County points.)

Application No. 27789

Frank Loughran for applicant

OPINION ON REHEARING

Charles I. Dowd, the applicant herein, is a highway carrier of household goods and related articles doing business as Dowd's Express & Storage. He maintains an office and storage warehouse in Mill Valley. Applicant possesses a certificate of public convenience and necessity, granted by Decision No. 16737, dated May 17, 1926, in Application No. 11337, authorizing the operation of an automobile truck line as a common carrier of furniture and household goods, including baggage, between (1) Mill Valley and Oakland and intermediate points, (2) Mill Valley and San Francisco and intermediate points, and (3) Sausalito and San Rafael, serving Mill Valley and intermediate points. He also is the holder of permits to operate as a radial highway common carrier and city carrier.

By Decision No. 40509 in this proceeding, dated July 8, 1947, applicant was authorized to use the San Francisco-Oakland Bay Bridge and Golden Gate Bridge in conducting his operations to and from San Francisco and Oakland, but was denied authority to abandon his certificated operations between points in Marin County.

Our denial of authority to abandon operations was predicated upon applicant's testimony that he would under his radial highway common carrier permit, continue operations in the same manner as they had been conducted in the past and that no showing had been made that such operations would be other than those of a highway common carrier. Pursuant to applicant's petition therefor, a rehearing was held before Examiner Bradshaw at San Francisco on March 25, 1948.

The questions presented on rehearing relate solely to operations in transporting intra-Marin County traffic. In support of applicant's view that he is not a highway common carrier, so far as intra-Marin County operations are concerned, considerable stress is placed upon the fact that an infrequent service is rendered and that shipments are mostly in truck-load quantities.

It is claimed that no regular route is followed in the intra-Marin County operation. The record discloses, however, that in serving the communities covered by his certificate, applicant uses definite routes over a limited number of roads. For instance shipments from Mill Valley to Corte Madera and Larkspur move over Throckmorton Avenue and a connecting road to Tiburon Wye, thence over U. S. Highway 101 and Corte Madera Road to Corte Madera and Magnolia Street beyond. Similarly, shipments from the same point to Kentfield, Ross and San Anselmo start out over the same route as those destined to Corte Madera and Larkspur, but continue on U. S. Highway 101 to Greenbrae and thence along Sir Francis Drake Boulevard to destination. Shipments for San Rafael are routed northward along U. S. Highway 101 until they reach the city limits of the latter point. It appears that departures from the usual routes traversed

occur only when necessary to reach the precise point of shipment or destination within or in the vicinity of the several communities served.

An exhibit of record purports to show the number of shipments transported by applicant, by classes, during the last four months of 1947. A summary of the data follows:

	<u>Shipments</u>
Between Marin County points and San Francisco	179
Between Marin County points	28
Between Marin County points and points outside of Marin County, except San Francisco	12
Locally within city boundaries in Marin County	36

Of the 28 shipments transported between points in Marin County, 21 moved from and to points included in applicant's certificated rights. No regularity of movement occurred in handling intra-Marin County shipments, although in some cases they were transported on successive days. In a few instances, two or three shipments moved on the same day between points covered by applicant's certificate. However, during only 17 days of the four-months' period (122 days) were any shipments transported between any of such points. ⁽¹⁾ Applicant testified that he considered these four months as "average" months, although the volume of business might be greater during the summer. He also stated that his business was not as good in 1947 as it was in 1946.

At the original hearing applicant presented several exhibits showing the number of shipments transported during January, February and March, 1946. Further details have been submitted concerning such of these shipments as moved between points in Marin

(1) The dates on which these shipments moved were: September 8, 16 and 17; October 2, 7, 18, 22, 23, 26, 27 and 28; November 3 and 8; and December 2, 5, 9 and 13.

County.

An analysis of the additional data appears in the following tabulation:

	<u>Janu- ary</u>	<u>Febru- ary</u>	<u>March</u>
Total number of shipments between points in Marin County	34	31	34
Number of shipments between points covered by certificate	26	24	21
Number of shipments from or to one of the termini (Sausalito and San Rafael) specified in certificate	21	10	11
Number of days during month on which shipments were transported between points covered by certificate	20	17	15

Attempts to locate the line between radial and fixed termini or regular route operations have proven to be a troublesome question for many years. Experience has also demonstrated that where carriers engage in specialized services, such as the transportation of household goods, changes sometimes occur in their status. In the development of highway transportation, many carriers commencing business on a small scale have by increasing the scope of their undertaking become highway common carriers, as defined in Section 2-3/4 of the Public Utilities Act. See In re Carpenter, 39 C.R.C. 207. The converse would be true in some cases where the scope of their undertaking has been restricted.

A determination of the status of a particular operation depends upon whether the service is conducted over specified routes or between definite points. In re Willis et al., 42 C.R.C. 408, 423. The application of this test to applicant's intra-Marin County operations, as portrayed by the record in this proceeding, indicates that at the time of the original hearing he was operating as a highway common carrier, as defined in Section 2-3/4 of the Public Utilities

Act.

However, it is evident from an examination of the operations conducted during the last four months of 1947 that a considerable change has occurred with respect to transportation between the points in Marin County covered by applicant's certificate. The movement of 21 shipments on 17 days spread over a period of 122 days when considered in connection with the rest of the evidence, cannot, in our opinion, be characterized as a "fixed termini or regular route" operation.

Under the circumstances, it appears that the abandonment of operations between points in Marin County under applicant's certificate of public convenience and necessity is justified. An order will be entered modifying the aforesaid certificate and authorizing applicant to cancel his tariff of rates and charges and time schedules so far as they pertain to transportation moving between Sausalito, Mill Valley, San Rafael and intermediate points.

In view of the possibility of changed conditions in the future, applicant is admonished that, in the event the volume of traffic between the points here under consideration increases to the extent that the regularity and frequency of operations approaches that experienced during the first three months of 1946, an application for a certificate of public convenience and necessity authorizing resumption of operations as a highway common carrier should be filed without delay.

O R D E R

A rehearing having been had in the above-entitled proceeding and, based upon the evidence received and upon the conclusions

and findings set forth in the preceding opinion on rehearing,

IT IS ORDERED:

1. That the declaratory paragraph of the order in Decision No. 16737, dated May 17, 1926, in Application No. 11337, reading as follows:

"THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA HEREBY DECLARES that public convenience and necessity require the operation by Charles I. Dowd of an automobile truck line as a common carrier of furniture and household goods, including baggage, between Mill Valley and Oakland and intermediate points, and between Mill Valley and San Francisco and intermediate points, also between Sausalito and San Rafael, serving Mill Valley and intermediate points."

be and it is hereby amended by striking therefrom the following clause:

also between Sausalito and San Rafael, serving Mill Valley and intermediate points.

2. That Charles I. Dowd be and he is hereby authorized to cancel on not less than 5 days' notice to the Commission and the public all tariffs containing rates and charges and all time schedules, in so far as they are applicable to the transportation of furniture and household goods, including baggage, between Sausalito, Mill Valley and San Rafael and intermediate points.

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

Dated at San Francisco, California, this 20th day of April, 1948.

R. T. [Signature]
Justice J. [Signature]
[Signature]
[Signature]
COMMISSIONERS