

Decision No. 42515

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 PAUL LENKE and PAUL DOTTEFIELD, a)
 co-partnership, doing business as BAY)
 AREA DELIVERY, for a certificate of)
 public convenience and necessity to)
 operate a truck service for the trans-)
 portation of limited commodities be-)
 tween Oakland, Alameda, Berkeley,)
 Richmond, San Leandro, San Pablo,)
 Concord, Walnut Creek, Hayward and)
 other points.)

Application No. 29462

Marquam C. George, for applicant;
Robert S. Crossland, for Furniture Fast Freight and
 Furniture Freight Forwarders, protestants;
William Meinhold, for Southern Pacific Company and
 Pacific Motor Trucking Company, protestants;
Reginald L. Vaughan, for Kellogg Express & Draying
 Company, United Transfer Company, Interurban
 Express Corporation, Haslett Warehouse Company,
 East Bay Drayage & Warehouse Company, and West
 Berkeley Express, protestants;
Douglas Brookman, for Merchants Express Corporation,
 protestant;
Spurgeon Avakian, for Stapel Truck Lines, interested
 party;
Scott Elder, for Circle Freight Lines, interested party;
Cliff Brooks, for Delivery Service, interested party.

O P I N I O N

By their application, as amended, Paul Lenke and Paul
 Dottenfield, partners transacting business under the firm name of
 Bay Area Delivery, (referred to hereafter as the applicant), seek
 authority, under Section 50-3/4 of the Public Utilities Act, to
 engage in the transportation of certain commodities (which will be
 designated as household appliances⁽¹⁾), as a highway common carrier

- (1) The commodities transported would be limited to cooling or
 freezing machines, drying machines, dishwashing machines,
 ironing machines, washing machines, radio receiving sets,
 phonographs and combinations of radios and phonographs,
 refrigerators, sinks, sinks and dishwashers combined, kitchen
 cabinets, stoves or ranges, and water heaters.

between specified East Bay and Contra Costa County points. Generally, the operation would extend from Oakland, Emeryville, Piedmont and Berkeley southerly to Hayward, easterly to San Ramon and Walnut Creek, and northerly to Concord and San Pablo. ⁽²⁾ Neither San Francisco nor Martinez would be served.

The matter was submitted at a public hearing had before Examiner Austin at Oakland. ⁽³⁾ At the outset, certain carriers now serving the territory appeared, some as protestants and others, as interested parties. In view of a stipulation in which applicant and certain protestants joined, the latter withdrew their opposition to applicant's proposal. Though other protestants did not participate in this stipulation, only Furniture Fast Freight and Furniture Freight Forwarders (which will be considered as a single party, since they are controlled by the same interests) thereafter actively ⁽⁴⁾ opposed the application.

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- (2) Applicant proposes to operate between Oakland, Emeryville, Piedmont, Berkeley, Albany, El Cerrito, Richmond, San Pablo, Orinda, Lafayette, Walnut Creek, Concord, Alamo, Danville, San Ramon, Castro Valley, Moraga, Hayward, San Lorenzo, San Leandro, Alameda and all intermediate points. Between these points, specified routes would be followed. In addition, service would be provided "...from, to and between all points and places within a radius of ten miles airline distance of all points and places", along the routes described, "via any and all available roads". However, no service would be performed "west of Richmond or Oakland /thus excluding San Francisco/, north of Concord or south of Hayward."
- (3) Hearings were held at Oakland on October 4, 5, 25 and 26, 1948, when the matter was submitted.
- (4) When the application was first called for hearing certain carriers appeared as protestants. They comprised Southern Pacific Company, Pacific Motor Trucking Company, Kellogg Express & Draying Company, United Transfer Company, Interurban Express Corporation, Haslett Warehouse Company, East Bay Drayage & Warehouse Company, West Berkeley Express, Merchants Express Corporation, Furniture Fast Freight and Furniture Freight Forwarders. Of these, all but Southern Pacific Company, Pacific Motor Trucking Company, Furniture Fast Freight and Furniture Freight Forwarders withdrew their protests, in view of a stipulation which presently will be considered. Since the latter two alone thereafter actively opposed the application, they will be referred to as the protestant; in view of their common control by the same interests, they will be considered as a single party. In addition, certain carriers appeared as interested parties, viz.: Stapel Truck Lines, Circle Freight Lines and Delivery Service.

Applicant's proposal was described by one of the partners; in addition, some seven shipper-witnesses were called, and the parties stipulated that eight other shippers would testify similarly. The owner of both Furniture Fast Freight and Furniture Freight Forwarders described the operations afforded by those carriers.

During the past two years, applicant has served the territory involved, under carrier permits issued by the Commission.⁽⁵⁾ This operation is confined largely to the transportation of household appliances for retail dealers located in the East Bay communities, for whom applicant provides a delivery service.⁽⁶⁾ Some 25 to 30 shippers are served, under oral agreements which are somewhat indefinite as to their terms. In addition, applicant has engaged in the transportation of household furniture - an undertaking which it proposes to continue. However, this would not exceed 10 per cent of the total business handled. Occasionally, these operations extend to San Francisco.

As an adjunct to its transportation business, applicant conducts a small private warehouse, situated at No. 1321 East Twenty-third Street, in Oakland, where applicant's office and garage are also maintained. The space available for storage comprises about 12,000 square feet. Here, dealers for whom applicant performs a transportation service and who themselves have no adequate storage facilities, are permitted to keep household

(5) Applicant holds permits authorizing operation as a radial highway common carrier, as a highway contract carrier and as a city carrier.

(6) Applicant's service has been confined largely to the smaller retail dealers in household appliances. As a rule, it was shown, the larger concerns employ their own trucks for the distribution of their goods. Applicant has served no wholesale distributors, nor does it propose to do so.

appliances which may be awaiting distribution. During the eight months preceding the hearing, about five dealers had taken advantage of this service. A monthly charge of five cents per square foot is imposed, subject to a minimum of \$25, covering 500 square feet. No warehouse receipts are issued.

To provide the service, applicant would continue to use its existing equipment. This consists of three units, comprising a 1939 1½ ton Ford van, a 1937 2-ton G.M.C. van, and a 1948 1½ ton International Harvester Truck. The International has been adapted to the transportation of appliances, it having high paneled sides and a removable top cover. If the need arose, it was stated, additional equipment would be obtained. Five drivers are employed, who also serve as helpers. One partner performs the office work.

Applicant submitted a statement indicating its financial status. Assets of \$10,934.13 were reported, liabilities of \$363.77, and a net worth of \$10,570.36. During the eight months' period

(7) The balance sheet indicates assets and liabilities, as of August 31, 1948, as follows:

Current Assets

Cash in Bank	\$ 1,070.79	
Accounts Receivable	<u>3,902.02</u>	
		\$ 4,972.81

Fixed Assets

Trucks	\$ 6,070.25	
Other Items	<u>626.07</u>	
	\$ 6,696.32	
Less Reserve for Depreciation	<u>735.00</u>	
Total Assets		\$10,934.13

Current Liabilities

Reserve for Damage	\$ 1.72	
Employment Taxes	270.66	
Transportation Taxes	<u>91.39</u>	
Total Liabilities		\$ 363.77

Assets	\$10,934.13
Liabilities	<u>363.77</u>
Net Worth	\$10,570.36

ending August 31, 1948, the business yielded a gross income of \$25,409.01, and expenses of \$16,748.77 were incurred, leaving a net profit of \$8,660.24⁽⁸⁾. About 10 per cent of this was attributed to the transportation of household goods. During May, 1948, the income was \$3,300.15 and the expenses aggregated \$1,801.39, leaving a net profit of \$1,498.76. From the standpoint of both revenue and expense, it was said, this month should be regarded as typical.

A small reserve to meet loss and damage claims is maintained, amounting approximately to \$10 per month. No larger reserve is required, it was stated, since applicant assertedly carries adequate cargo insurance. The record shows that applicant's policy covers loss of or damage to shipments transported, within the limits of \$5,000 for a single vehicle or a total of \$10,000, attributable to certain contingencies; full coverage is not

(8) Revenues received and expenses incurred during the period, January 1 to August 31, 1948, are reported as follows:

Income

Transfer
Storage

\$24,168.36
1,240.65

\$25,409.01

Expenses

Motor Repairs
Gasoline and Oil
Salaries and Wages
Bridge Tolls
Administrative Expense
Insurance
License

\$ 942.28
1,137.93
10,057.09
169.69
3,538.75
708.03
195.00

\$16,748.77

Net Profit

\$ 8,660.24

(9) provided. Applicant also is insured against public liability and property damage, within limits of \$25,000/\$50,000. However, no insurance is carried which would protect applicant against loss occasioned by collision of its equipment with other vehicles.

On behalf of applicant, one of its partners expressed the opinion that the operation contemplated could be conducted profitably. In the past, he testified, the over-all operation had yielded a profit. On cross-examination, he described in some detail the costs that would be incurred. The wages currently paid both drivers and helpers, he stated, exceed the prevailing union scale.

An on-call, rather than a scheduled service, would be afforded; this is regarded as an essential element of the proposed operation. The traffic would not move through any terminal; applicant's warehouse would not be used for such a purpose. Whenever practicable and more economical to do so, shipments would be interchanged between trucks so that freight destined to the same points could be consolidated. To facilitate this inter-change, the drivers frequently would telephone the office for instructions while performing the pickup service. Ordinarily, it is contemplated delivery would be accomplished within a period ranging from thirty minutes to six hours after receipt of the pickup call, depending upon the time when the call was placed, and the distance to be

(9) By this policy, applicant is insured against loss of or damage to cargo carried in specified vehicles, which may be occasioned by fire; by the stranding, sinking, burning, or collision of a regular ferry; by the accidental collision of the truck or trailer containing such cargo with any other automobile, vehicle or object; by the overturning of such truck or trailer; and by the collapse of any bridge. It does not insure against loss or damage attributable to any other cause, such as vibration of the vehicle, inadequate padding, slippage of pads while the cargo is in transit, dropping or striking of cargo while loading or unloading, or marring of floors, walls or furniture while unloading cargo.

traveled. Same-day delivery would be supplied whenever possible; in any event overnight delivery would be provided. In these respects, it was stated, the service would correspond with that now performed.

Only a limited class would be served. Shipments would be picked up at a dealer's store, or from stock which he may have stored in applicant's warehouse or in a public or another private warehouse, but not at any steamship dock or railway terminal. No manufacturer or wholesale dealer would be served. Freight would be transported from the store or warehouse to another warehouse (including that maintained by applicant) for storage; to a branch store maintained by the consignor; or to the consignee's residence. The evidence is somewhat contradictory regarding the transportation of shipments consigned to other stores, to be resold in the usual course of business. Traffic of this nature would comprise only a small share of the total volume, it was stated. ⁽¹⁰⁾ Essentially, the service is designed to accommodate shipments moving from the retail dealers' stores or warehouses to their customers' residences; about 95 per cent of the traffic handled, it was estimated, would fall within this category. In effect, applicant would function as the delivery department of the stores which it served.

A specialized service would be supplied. When delivery

(10) Initially, both applicant's counsel and the partner who was called as a witness stated that no such traffic would be handled. However, appliances destined to a store or place of business, to be used by the consignee personally would be transported. Subsequently, this partner testified that shipments consigned to local appliance dealers who, in turn, intended to redistribute them, would be accepted. He estimated that freight of this character would not exceed one per cent of the total intrastate movement. It does not clearly appear whether applicant would be willing to forego this traffic.

is accomplished, appliances would be placed at a location designated by the consignee. In the case of bulky shipments, this might necessitate the removal of doors or windows. Electrical appliances would be plugged in to the house wiring circuit, but applicant would not undertake to connect pipes or set up and install mechanical devices, such as dishwashers, stoves and water heaters. To perform this service adequately, two men, a driver and a helper, ordinarily would be required; at times, special equipment must be used to unload heavy shipments.

At the outset, there was some uncertainty regarding the extent to which applicant would engage in the transportation of both crated and uncrated shipments, or whether an uncrating service would be performed. It does not seek particularly to handle uncrated goods, but will accept them, when offered. During the course of the hearing, applicant stipulated that it would perform an uncrating service at or prior to the time of delivery of all shipments of crated household appliances which may be transported. Thereupon, all the protestants, other than those mentioned above, withdrew their opposition to applicant's proposal. Subsequently, the application was amended accordingly.

A proposed tariff was submitted, indicating the rates to be established. Three zones would be set up, throughout which the rates would progressively increase, depending upon length of haul. Accessorial charges would be imposed covering additional services performed, or compensating for delays incurred, in connection with the pickup and delivery service. Articles offered by the consignee, in exchange for appliances received from stores, and shipments handled between dealers' stores and warehouses, would

move at somewhat lower rates than those applicable to similar commodities transported from store or warehouse to residence. The proposed rates, it was stated, are substantially higher than the established minimum rates. Almost universally, the transportation charges would be paid by the consignee.

The partner appearing on behalf of applicant testified that a survey had been made of the traffic which would develop if a certificate were granted. This, it was said, is based largely upon requests for service received from dealers. He asserted that the tonnage undoubtedly would grow were applicant free to solicit business. Such statements, however, appear to rest largely upon the witness' conclusions; no comprehensive investigation appears to have been undertaken.

In support of its proposal, applicant called shipper-witnesses representing seven retail dealers in household appliances, situated in the East Bay. They ranged from small establishments, each conducting a single store, to one concern operating a main store and five branches. Three maintain their own warehouse facilities; of these, one also leases storage space in applicant's warehouse. All distribute their products in substantial volume throughout the territory involved. The parties stipulated that spokesmen for an additional eight retail organizations dealing in these commodities would, if called, testify substantially to the

(11) All of these dealers are located in Oakland. The large establishment mentioned operates its main store and two branches in Oakland, two branches in Berkeley, and one branch in San Leandro. All of them deal in most of the commodities which applicant offers to transport; some deal in all of these commodities.

(12)
same effect as the witnesses who had been produced.

These witnesses related their transportation requirements. All of them emphasized the need for prompt delivery of their shipments; from their standpoint, this is of paramount importance. Competition between dealers is so intense that often the consummation of a sale depends upon the salesman's ability to guarantee immediate delivery. Since they cannot anticipate the hour when their requirements for transportation might arise, in response to their customers' demands, their operations could not well be geared to a regular schedule, it was stated. Consequently, an on-call service is essential for their needs. It is quite important, they said, that a household appliance be delivered at a point within the customer's residence where it conveniently can be installed; in view of this circumstance sidewalk delivery would not suffice. As a rule, delivery must be accomplished at a time satisfactory to the customer. Crating is desirable for some of these commodities, which are quite susceptible to damage while in transit, it was pointed out. An uncrating service performed by the carrier also would be advantageous, they stated. Frequently a customer, seeking to guard against the delivery of a dealer's floor sample, will accept only an article which has been crated, but he requires that the shipment be uncrated when it reaches his residence.

Some of these shippers described their experience in conducting a delivery service with their own trucking facilities. Three provide such a service and another formerly had done so, but has discontinued it. Of the three shippers mentioned, one uses his

(12) Of the eight firms covered by the stipulation, seven are situated in Oakland and one, in Alameda.

own trucks to deliver the lighter shipments (weighing under 150 pounds), but he employs applicant to distribute the heavier articles. The other two shippers no longer use their own equipment to deliver household appliances of any description. Because of inadequate training on the part of their drivers to perform so highly specialized an operation, merchandise of this character frequently had been damaged while in transit or in course of delivery, they stated; also, the doors, walls and floors of customers' residences had been badly marred. The resulting liability was substantial, they said. To avoid this, they have transferred to applicant the burden of performing their delivery service. They have found his employees to be well trained, skillful and careful.

The shipper witnesses unanimously expressed a need for the type of service which applicant proposes to supply. All had previously used its facilities, and would continue to do so if the operation were certificated. In the past, this service was satisfactory, they said. Two of them also had patronized two small local permitted carriers, but had found them so unsatisfactory that they no longer used them. Inbound shipments consigned to some of these dealers have moved over the lines of certain protestants, but the latter have refused uncrated shipments of household appliances offered for transportation to customers located in this territory. Only one of these shippers has utilized the facilities of Furniture Fast Freight, and then only for goods moving inbound from Los Angeles. None appeared to be familiar with the service offered by that carrier locally within the affected territory.

Other than Furniture Fast Freight and its affiliate, Furniture Freight Forwarders, none of the carriers which appeared at the hearing offered any testimony. Their showing in opposition

to the application was presented by Melvin A. Pixley, owner and manager of both companies.

In general, Furniture Fast Freight is engaged in the transportation of uncrated new furniture between San Francisco, East Bay Cities, Los Angeles and other points in Central and Southern California, under certificates issued by this Commission. Pursuant to a certificate acquired from another operator, that carrier also is authorized to transport furniture and other commodities (including household appliances) between San Francisco, Oakland and other points, including some which applicant proposes to serve. Service is limited to a narrowly restricted class of shippers. Furniture Fast Freight may operate only as an underlying highway common carrier for Furniture Freight Forwarders, an express corporation. The latter serves a territory cointensive with that embraced within the former's operating rights.

(13) Decision No. 33814 (43 CRC 246); Decision No. 35453.

(14) Decision No. 36204.

(15) The commodities (in addition to furniture) which can be transported under the certificate mentioned include, among others, the following: household refrigerators, stoves, radio receiving sets and talking machine combines, and household laundry machines.

(16) This protestant is authorized to serve Berkeley, Richmond, San Pablo, San Leandro, Hayward, Lafayette, Moraga, Orinda, Walnut Creek and Concord, among others, as well as intermediate points situated on specified routes.

(17) With certain exceptions, not material here, this protestant is limited to the transportation of "...shipments which are destined to furniture manufacturers, furniture retailers, furniture stores, furniture dealers, furniture brokers, furniture jobbers, hotels, auto courts, hospitals and schools." (Decisions Nos. 33814 and 35453). Under the acquired certificate, mentioned above, it may engage in transportation "...only from, to or between the places of business of wholesalers, retailers or jobbers, or for wholesalers, retailers or jobbers." (Decision No. 36204).

(18) Decisions Nos. 36824 and 36933.

Between the points in the affected territory, where its service extends, protestant operates on-call. This service is available six days weekly. Some communities, such as Walnut Creek and Concord, are served less frequently than others, depending upon the shippers' requirements.

To provide the service, equipment devoted to the long-distance operations is used as well as units assigned specifically to this territory. About ten trucks perform the pickup and delivery service. This equipment is designed especially for the convenient handling of the commodities which protestant transports; the latter constantly is experimenting with new types. Terminals are maintained both in Berkeley and in San Francisco. (19)

A pick up service is supplied both in San Francisco and in the East Bay. Dispatchers stationed at the Berkeley terminal direct the activities of the drivers, who frequently telephone them for instructions. Freight picked up in response to calls from shippers is brought to the terminals, where it is consolidated and transferred to other equipment for distribution. Protestant undertakes to respond promptly to calls; ordinarily, shipments picked up during the morning are delivered that afternoon, and those received later are delivered on the following day. Two men accompany each truck, the driver alone being unable to handle shipments of this character.

To some extent, the local service is interwoven with the

(19) The Berkeley terminal is located at 1922 Second Street (near University Avenue and East Shore Highway); and the San Francisco terminal is situated at 1403 Third Street.

long-distance operations. For example, shipments destined to points such as San Leandro and Hayward, both of which are located on the main-line route, sometimes move in trucks which also serve the southern territory.

A highly specialized service is provided. To promote economy, protestant aims, wherever possible, to consolidate the shipments destined to a given area. Occasionally, this entails some delay. Frequently, shipments are delivered to the consignee's residence at a time suitable for some social occasion, or which might facilitate the immediate installation of an appliance. Occasionally, emergencies arise, which must be met. Sometimes, doors or windows must be removed. As the delivering agency of the store which it serves, protestant endeavors to leave with the customer a good impression of the dealer.

Protestant's rates are somewhat higher than those which applicant proposes to establish on similar commodities. On household appliances, they are blanketed throughout the area involved. Protestant's manager testified that these rates, though recently increased, are still too low to yield an adequate profit. Most of this traffic, especially that consigned to residences, moves prepaid.

Within this territory, protestant transports a substantial volume of household appliances, its manager stated. Much of this moves from East Bay manufacturers. By far the larger share is consigned to local retail dealers; not over five per cent of the total, it was estimated, is delivered directly to customers' residences. The major East Bay furniture and appliance stores, which protestant serves, distribute their products largely through

the instrumentality of their own trucking facilities. Consequently, protestant receives from these establishments only the overflow which they find themselves unable to handle.

Protestant regarded its service as superior, in some respects, to that proposed by the applicant. Because of its ability to draw traffic from an area more widespread than that accommodated by the applicant, including both San Francisco and Southern California in addition to the East Bay, protestant would attract a heavier volume of tonnage, its manager testified. Moreover, he stated, protestant, unlike the applicant, could serve East Bay manufacturers, and also local retail dealers to whom shipments would be consigned. For these reasons, he asserted, protestant reasonably could expect to enjoy a better load factor.

In certain respects, applicant's showing of qualifications is deficient, it is claimed. Assertedly, applicant had underestimated its costs of operation, it had failed to anticipate the damage claims which normally might arise, and it had neglected to provide adequate insurance coverage. Protestant's criticisms of the cost showing were based on expert testimony relating to its own operations, recently offered in a rate proceeding before the Commission, the details of which do not appear in the present record. Coupled with this were the estimates of protestant's manager concerning applicant's operating costs, based upon the latter's showing. The allowance for possible damage claims, it was said, is inadequate; protestant's claim-ratio is approximately three per cent of the gross revenue, and formerly was somewhat higher. Applicant's failure to carry adequate collision insurance, it is contended, subjects the operation to considerable hazard of interruption.

Protestant's service might be impaired, its manager testified, if applicant were permitted to enter the field as a competitor. In his opinion, applicant probably would divert some of the traffic which protestant now enjoys. This traffic is fairly constant in volume, it was said, and possibly may decline to some extent, even in the absence of such competition, because of the lessening demand for household appliances which appears to be developing. Should protestant lose a material part of this traffic, he stated, the accompanying falling off in revenue might well compel a curtailment of operations, thus resulting in less efficient service. Possibly, still further rate increases might be sought. Recent advances, authorized because of higher operating costs, have served only to ameliorate, but not recoup, the losses previously experienced, it was said. During the lean periods, he testified, some of protestant's larger shippers voluntarily have diverted traffic from their own facilities to protestant, in order to help sustain its operations.

Protestant can accommodate all of the traffic offered, it was said. At present, its equipment does not always move loaded to capacity, its manager testified. However, he conceded that the load factor was quite favorable. The shippers have voiced no complaints regarding the service, he said. For the reasons mentioned, it is urged that protestant should be permitted to handle all of the available tonnage of household appliances moving throughout this territory.

With respect to the testimony of certain shipper witnesses, produced by applicant, to the effect that they never had heard of protestant's operations, the latter's manager described the steps taken to advertise the service. Protestant regularly has carried

advertisements in the publications of the Furniture Marts, both at San Francisco and at Los Angeles. These refer, generally, to protestant's offer to engage in the transportation of uncrated, unpacked furniture, and to the distribution of pool car shipments of crated furniture. Many times, it has circularized the dealers by mail. Protestant maintains a staff of solicitors at Los Angeles, and one is permanently stationed in the Bay Area. They regularly call upon prospective shippers in the East Bay, it was stated.

To summarize: the record shows, and we accordingly find, that applicant has functioned as the delivery department for a limited number of dealers in household appliances, located in the East Bay, most of whom operate on a small scale. The service provided, which it proposes to continue, has been highly specialized in character, being confined almost exclusively to the delivery of such appliances to customers' residences. The equipment and other facilities used are somewhat limited. Competition throughout the trade necessitates the expeditious delivery of merchandise sold; commitments to customers, in this regard, must be observed. In the past, applicant has met these requirements, and has supplied a satisfactory service. These dealers desire the continuation of this service, and would patronize it if applicant were certificated. Applicant is qualified to provide such a service. In some respects, however, applicant has underestimated its costs of operation; there is considerable doubt whether it could operate profitably under the rates proposed to be established.

Protestant operates throughout an extensive territory, handling a substantial volume of commodities other than household

appliances. Shipments are accepted from manufacturers as well as dealers, and are delivered both to retail stores and to customers' residences. In fact, residential deliveries comprise but a small share of the total. Both large and small distributors are served. The larger stores use protestant's service to supplement their own private truck delivery facilities. Protestant's operations are conducted both economically and efficiently. The service provided, especially in the delivery of household appliances to residences, is highly specialized. Notwithstanding recent rate increases, it has experienced difficulty in operating at a profit. Protestant fears the effect upon its service should applicant be granted the authority sought.

Applicant, we believe, would supply a service which would be used by a substantial number of dealers engaged in the marketing of household appliances. They have shown a need for its establishment on a common carrier basis. Protestant's service, we are convinced, is not designed especially to meet their requirements. Only to a minor extent does it undertake to handle appliances which may be consigned by dealers to their customers' residences. The application, therefore, will be granted.

The record, however, does not warrant the issuance of an unlimited certificate. No showing was made indicating the need for a service extending beyond the transportation of household appliances which may be received from retail dealers for delivery to branch stores, to warehouses for storage, to their customers' residences, or to customers' places of business when not intended to be resold. Moreover, the stipulation regarding the performance by applicant of an uncrating service should be observed. Appropriate provision will be made in the order which follows, to give effect to these limitations.

Applicant is hereby 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 as above entitled having been filed, a public hearing having been held thereon, the matter having been submitted, the Commission being fully advised in the premises and hereby finding that public convenience and necessity so require,

IT IS ORDERED, as follows:

(1) (a) That a certificate of public convenience and necessity be, and it hereby is, granted to Paul Lemke and Paul Bottenfield, partners, authorizing the establishment and operation of a service as a highway common carrier (as defined by Section 2-3/4, Public Utilities Act) between Oakland, Emeryville, Piedmont, Berkeley, Albany, El Cerrito, Richmond, San Pablo, Orinda, Lafayette, Walnut Creek, Concord, Alamo, Danville, San Ramon, Castro Valley, Moraga, Hayward, San Lorenzo, San Leandro, and Alameda; together with all points intermediate thereto, along the routes hereinafter described; and all points and places situated within a radius of ten miles airline distance of any and all points and places herein described.

(b) Said certificate shall be limited to the transportation of household appliances, (as defined herein) from the stores of retail dealers in said commodities, and from public or private warehouses used by such dealers for the storage of said commodities, to branch stores of such dealers, to public or private warehouses for storage, to the residences of customers of said dealers purchasing such commodities, and to customers' places of business when such commodities are not intended to be resold in the regular course of business. Return shipments may also be transported from customers to dealers.

(c) The term "household appliances", as used herein, shall be deemed to comprise cooling or freezing machines, drying machines, dishwashing machines, ironing machines, washing machines, radio receiving sets, phonographs and combinations of radios and phonographs, refrigerators, sinks, sinks and dishwashers combined, kitchen cabinets, stoves or ranges, and water heaters.

(d) That in connection with the transportation of any of said commodities, which may be crated, an uncrating service shall be performed by applicant at or prior to the time of delivery of any such shipment.

(e) No service shall be performed to or from any points or places situated west of Richmond or Oakland, north of Concord, or south of Hayward.

(2) That in providing service pursuant to the certificate herein granted, applicant shall comply with and observe the following service regulations:

- a. Applicant shall file a written acceptance of the certificate herein granted within a period of not to exceed 30 days from the effective date hereof.

- b. Within 60 days from the effective date hereof and on not less than 5 days' notice to the Commission and the public, applicant shall establish the service herein authorized and 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, appropriate tariffs and time tables.
- c. Subject to the authority of this Commission to change or modify them by further order, applicant shall conduct operations pursuant to the certificate herein granted over and along the following routes:

From Oakland to San Pablo over U. S. Highway 40 along San Pablo Avenue and also over U. S. Highway 40 along East Shore Highway.

From Oakland to Richmond via U. S. Highway 40, both over San Pablo Avenue and over East Shore Highway to Panhandle Boulevard, thence via Pullman Avenue.

From Richmond to San Pablo via 23rd Street.

From San Pablo via unnumbered county road known as San Pablo Creek Road to its junction with State Highway 24.

From Oakland to Concord over State Highway 24.

From Walnut Creek to San Ramon via State Highway 21.

From San Ramon over unnumbered county road known as Crow Canyon Road to its junction with U. S. Highway 50, thence via U. S. Highway 50 to Oakland.

From the junction of the unnumbered county road known as Redwood Road and U. S. Highway 50 along said road to Pinchurst, thence along unnumbered county road to Moraga, thence to its junction with State Highway 24 at Orinda Junction.

From Oakland along State Highway 17 to San Lorenzo.

From Oakland to Hayward via East 14th Street.

From Hayward to San Lorenzo via "A" Street to its junction with State Highway 17, thence along State Highway 17, also along East 14th Street and unnumbered county road.

From Hayward along various roads connecting Hayward with U. S. Highway 50.

From Oakland to Alameda via Posey Tube, via Park Street, via Fruitvale Avenue and via High Street.

From Alameda to San Leandro via Maitland Drive,
thence via Jones Avenue or Davis Street to San
Leandro Street.

Over any and all available public streets and
highways, in conducting service from, to and
between all points and places within a radius of
ten miles airline distance of all points and
places along said routes above described.

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

Dated at San Francisco, California, this 15th
day of February, 1949.

R. J. Indranga
Justice P. Caceres
Deputy P. Caceres
Harold P. Kula
Harold P. Kula
COMMISSIONERS