

ORIGINAL

Decision No. 45076

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation into the tariffs, rules,)
 regulations, operations and practices)
 of MERCHANTS EXPRESS CORPORATION.)

Case No. 5209

Douglas Brookman for respondent.
Fred N. Bigelow for Pacific Southwest
 Railroad Association, as the interest of
 its members may appear.
J. T. Phelps for Transportation Department,
 Public Utilities Commission.

O P I N I O N

The Commission's order of investigation instituting this proceeding, dated June 20, 1950, recites that Merchants Express Corporation, hereinafter called respondent, is a certificated highway common carrier authorized to render service between, among other points, the San Francisco Bay area and the unincorporated community of Lafayette; that it is not authorized to serve the City of Walnut Creek, and its tariff contains an inexact definition of a pickup and delivery zone relative to Walnut Creek, and it is serving points in Walnut Creek in excess of three miles from the Lafayette post office. (1) The purpose of the investigation is to determine:

(1) Whether respondent should be ordered to publish and file a revised tariff redefining its pickup and delivery zones relative to Walnut Creek.

(1) Section 50-3/4 (c) of the Public Utilities Act provides that no certificate of public convenience and necessity shall be required of any highway common carrier "for the performance (Cont'd.)

(2) Whether respondent has operated or is operating as a highway common carrier without the requisite authority.

(3) Whether respondent should be ordered to cease and desist from operating as a highway common carrier until it shall have obtained the necessary authority therefor.

(4) Whether any or all of respondent's operating authority should be cancelled, revoked, or suspended.

A public hearing was held before Examiner Gillard in San Francisco on November 6, 1950, and the matter submitted for decision.

There is no dispute as to the facts herein. Respondent possesses highway contract carrier, radial highway common carrier, and city carrier permits, and various certificates of public convenience and necessity which authorize service, among other points, to the unincorporated community of Lafayette, but not the incorporated city of Walnut Creek.

Going in an easterly direction from Lafayette, along State Highway No. 24 (Mt. Diablo Boulevard), the distance of three miles from the Lafayette post office is reached at a point midway between Alpine Road and Bonanza Street, both within the city limits of Walnut Creek. The point referred to is three and one-half blocks west of Main Street, which is the principal business area of the city, and one-half block east of where the city limit crosses Mt. Diablo Boulevard.

(1) (Cont'd)

of pickup, delivery, or transfer services by such carrier within such carrier's lawfully published pickup and delivery zones insofar as such pickup and delivery limits do not include territory in excess of three miles from the corporate limits of any incorporated city or town or three miles from the post office of any unincorporated point."

Respondent's tariff was amended on September 19, 1949, to include in its pickup and delivery zones "that portion of the City of Walnut Creek along Mt. Diablo Boulevard (State Highway No. 24) situated west of 3rd Avenue." Third Avenue actually lies north of and parallel to Mt. Diablo Boulevard, so the tariff description is in error.

Respondent's freight bills disclose that it picked up, or delivered, in Walnut Creek, 22, 25, and 29 shipments, respectively, on April 12, 17, and 21, 1950. A Field Division representative testified these days were representative of respondent's shipments during April, 1950. All of the Walnut Creek addresses listed on the shipments referred to lie beyond the three mile limit from the post office at Lafayette. On the three days referred to, a total of 49 shippers were served. Most of the shipments moved between San Francisco, Oakland and Richmond, on the one hand, and Walnut Creek, on the other hand. There were also a few shipments moving between Walnut Creek and Alameda, Emeryville and Berkeley.

On September 26, 1950, respondent filed an application with this Commission to eliminate from its tariff the item above quoted defining its pickup and delivery limits in Walnut Creek. The request was granted on October 3, 1950, and on October 17, 1950, respondent filed revised page 56 of its tariff, Cal. P.U.C. No. 12, effective November 20, 1950, eliminating the Walnut Creek pickup and delivery zone.

There is a general provision in the tariff which limits the pickup and delivery zone in unincorporated territory to a radius of one mile from an established railroad depot or the post office or the center of the community. Under its present tariff, therefore, respondent cannot serve any part of Walnut Creek.

According to respondent's counsel, it has voluntarily relinquished the right to serve part of Walnut Creek because of the difficulty of confining operations to a portion of an incorporated city.

The number of shippers served by respondent in Walnut Creek were in such volume as to indicate a holding out to serve the public generally. In the absence of any evidence by respondent to the contrary, we conclude that respondent was acting as a common carrier between Walnut Creek, and San Francisco and the East Bay cities previously mentioned. Likewise, the frequency of shipments between the points named supports the conclusion, and in the absence of any evidence by respondent to the contrary we so find, that respondent was acting as a highway common carrier, as defined in Section 2-3/4 of the Public Utilities Act, between Walnut Creek, on the one hand, and San Francisco and the East Bay cities previously mentioned, on the other hand. We further find that respondent possessed no certificated or prescriptive right so to do. An order will be entered directing respondent to cease and desist from conducting such operations until it obtains a certificate of public convenience and necessity therefor.

O R D E R

A public hearing having been hold, and based upon the findings and conclusions set forth in the preceding opinion,

IT IS ORDERED:

That Merchants Express Corporation be, and it is hereby directed and required to cease and desist from operating, directly or indirectly, or by any subterfuge or device, any auto truck as a highway common carrier, as defined in Section 2-3/4 of the

Public Utilities Act, for compensation, over the public highways of the State of California, between San Francisco, Oakland, Richmond, Alameda, Emeryville and Berkeley, on the one hand, and that portion of Walnut Creek in excess of three miles from the post office of Lafayette, on the other hand, unless and until said Merchants Express Corporation shall have obtained from this Commission a certificate of public convenience and necessity therefor.

The Secretary is hereby directed to cause personal service of a certified copy of this decision to be made upon respondent, and this decision shall become effective upon the twentieth (20th) day after the date of such service.

Dated at San Francisco, California, this 5th day of December, 1950.

Arthur J. Brown
Justice J. Brown
Robert F. Brown
Harold A. Hilde
Robert F. Brown
 COMMISSIONERS