

ORIGINAL

Decision No. 46241

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 M. G. MARINELLI, an individual doing)
 business as M & L TRUCKING COMPANY,)
 for a certificate of public conven-)
 ience and necessity to operate as a) Application No. 31880
 highway common carrier for the trans-)
 portation of general commodities)
 between San Francisco, Oakland etc.)

Marquam C. George, for M & L Trucking Company,
 applicant.

Clair W. MacLeod, for The Fred Jakobsen

(Trans Bay Motor Express Co.), protestant.

Douglas Brookman, for Merchants Express Corporation.

William Meinhold, for Southern Pacific Company, and

Pacific Motor Trucking Company, protestant.

R. D. Stokes, for Howard Terminal, interested party.

Charles H. Atthowe, for East Bay Drayage and

Warehouse, protestant.

Clarence E. Miller, for Kellogg Express and Draying

Company, protestant.

Aaron H. Glickman, for West Berkeley Express and

Draying Company, protestant.

Joseph A. Jeans, for West Berkeley Express and

Draying Company, protestant.

Scott Elder, for Beckman Express and Warehouse

Company, interested party.

Reginald L. Vaughan, for Peoples Express Company,

Inter-Urban Express Corporation, West Berkeley

Express and Draying, United Transfer Company,

Haslett Warehouse Company, Canton Trans-bay

Express, Inc., East Bay Drayage Warehouse, and

Kellogg Express and Draying Company.

O P I N I O N

M. G. Marinelli requests the issuance of a certificate of public convenience and necessity authorizing him to transport general commodities, except uncrated furniture, liquids in bulk and livestock, as a highway common carrier between South San Francisco, San Francisco, San Pablo, Richmond, El Cerrito, Albany, Berkeley, Emeryville, Oakland, Piedmont, Alameda, San Leandro, San Lorenzo, Hayward and Castro Valley, via any

and all city streets and highways, including the San Francisco-Oakland Bay Bridge, and U. S. Highway 101 By-pass, San Mateo Bridge and an unnumbered road between Hayward and South San Francisco.

Public hearings were held at Oakland and San Francisco before Examiner Silverhart.

It appears from the record that applicant has been engaged in the trucking business for nine years, during which time he served the points encompassed within the scope of the application as a permitted carrier. Applicant's terminal is located in Berkeley and includes an office, dock and an undercover area for his equipment. In conducting his operations, applicant utilizes nine trucks, four tractors and seven semitrailers of the low bed, van and flat rack types.

The proposed service will continue applicant's present operating procedures. An on-call service will be furnished daily, except Saturdays, Sundays and holidays; usually, equipment will be dispatched to the point of pickup from which delivery is effected directly to the point of destination. Special pickup vehicles are not employed as the same equipment is used for both pickup and delivery. Drivers, upon completion of delivery, telephone the dispatcher, who deploys them in accordance with pickup requests theretofore received at the terminal. Shipments picked up in the forenoon will be delivered the same day; shipments picked up in the afternoon will be delivered the following morning. Applicant proposes to publish the rates and enact such rules and regulations as are contained in the Commission's Highway Carriers' Tariff No. 2 and Highway Carriers' Tariff No. 1A.

The applicant testified that he did not specialize but engaged in the transportation of general commodities; that such commodities consisted of household supplies, cast iron, steel,

metal stampings, nuts and bolts, motors, motor parts, automobile parts, paint, ladders, machinery and machinery parts, and drugs; that shipments range in weight from 500 pounds to 30,000 pounds; that 60 per cent of his business is transacted between points on the east side of the bay and 40 per cent is conducted transbay. He stated that in 1944 he had nine pieces of equipment and five or six accounts; that he presently possesses 21 pieces of equipment and 35 accounts; that he expects his business to expand; that he conducted an investigation and found there was a need for his services in transporting the commodities above named, transbay. The witness's testimony showed that he did not and does not handle fresh fruits and vegetables and that he made no investigation as to any need for his service in transporting such commodities. The applicant further testified that he moved pigment from San Francisco to Berkeley, cast iron from San Francisco and South San Francisco to Oakland, gear drives from San Francisco to Oakland, Berkeley and Richmond; that he dispatches from one to four trucks daily to San Francisco; that in the event such trucks leave with a one-way load, he will be able to obtain return shipments to the East Bay area from sources to which he now has access. The record indicates applicant has sufficient equipment and resources to initiate and maintain the proposed service.

Representatives of various manufacturing concerns and business establishments collectively making shipments to San Francisco and South San Francisco and in, to, and between East Bay cities from Richmond on the north to Hayward on the south, testified in support of the application. Their testimony disclosed that shipments range from five pounds to 40 tons; that they are made as often as four or five times a day and as infrequently as once a month; that the commodities transported include paint,

petroleum meters, metal signs, dehydrated fruits and foods, gears, machinery parts, castings (aluminum, zinc dye, iron, steel), plastic parts, forgings, metal stampings, household articles, bulk steel, ship-riggers' supplies, manila rope, and industrial hardware; that applicant has been and is rendering a satisfactory service; that they will utilize the proposed service if authorized.

A manufacturer of paint and industrial finishes, located in Berkeley, testified that he receives daily shipment of raw materials from San Francisco and Oakland; that he makes daily shipments averaging four to five a day; that applicant transports 90 per cent of his outbound shipments and 60 per cent of his inbound shipments; that applicant makes pickups when requested and deliveries as promised; that applicant furnishes him same-day pickup and delivery to San Francisco; that two-thirds of his shipments require same-day delivery; that carriers, other than applicant, do not furnish a fast enough service on inbound shipments.

The traffic manager for an Oakland manufacturer of dehydrated fruits and foods testified that his company makes daily shipments to bakeries and institutions in San Francisco and other points in the Bay Area; that applicant renders same-day pickup and delivery service to San Francisco and also furnishes rush service the same day.

An employee of Cutter Laboratories in Berkeley testified that it ships hospital merchandise, drugstore material and general biologicals to San Francisco, South San Francisco, Richmond, El Centro, Albany, Emeryville, Oakland, Piedmont, Alameda, San Leandro, San Lorenzo, Hayward, Castro Valley and occasionally to San Pablo; that speed is necessary in the transportation of its products as they are delivered directly to hospital supply rooms;

that applicant gives same-day pickup and delivery service and moves about 75% of its shipments.

Fred Jakobsen, doing business as Transbay Motor Express Company, Merchants Express Corporation, Southern Pacific Company, Pacific Motor Trucking Company, East Bay Drayage and Warehouse, Kellogg Express and Draying Company, West Berkeley Express and Draying Company, Canton Transbay Express, Inc., Inter-Urban Express Corporation, Peoples Express Company, United Transfer Company, and Haslett Warehouse Company protested the granting of the application.

Protestants Fred Jakobsen, Southern Pacific Company, Pacific Motor Trucking Company and Peoples Express Company did not testify or offer any witnesses in their behalf.

Protestants Canton Transbay Express, Inc., East Bay Drayage and Warehouse, Inter-Urban Express Corporation, Kellogg Express and Draying Company, Merchants Express Corporation, and West Berkeley Express and Draying Company testified as to the services they rendered within the area here involved. Merchants Express Corporation is the only protestant serving all the points encompassed within the scope of the application. Generally, these protestants offer a regular pickup service, same-day delivery when shipments are picked up in the morning, overnight transbay delivery, and an additional on-call pickup service when required. It was stipulated that, if called, Haslett Warehouse Company and United Transfer Company would present testimony generally to the same effect as that of the testifying protestants.

The evidence demonstrates that applicant has been and is holding himself out to serve the public or a portion thereof indiscriminately. The application was filed pursuant to and comes within the purview of the Commission's policy enunciated in Decision No. 42646, dated March 29, 1949 (48 Cal PUC 587), and reannounced

in Decision No. 45752 on Application No. 31331, dated May 22, 1951 (In the Matter of the Application of J. A. Nevis). The evidence does not indicate a need for applicant's proposed service in the movement of fresh fruit and vegetables. A restriction will therefore be imposed prohibiting the transportation of such commodities.

After careful consideration of the entire record in this proceeding, the Commission finds that public convenience and necessity require the establishment and operation of service by applicant as a highway common carrier for the transportation of general commodities between the points set forth in, and subject to the limitation set forth in, the ensuing order.

M. G. Marinelli 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

Public hearings having been had and based upon the evidence therein adduced and the findings and conclusions set forth in the foregoing opinion,

IT IS ORDERED:

(1) That a certificate of public convenience and necessity is granted to M. G. Marinelli, authorizing him to operate as a highway common carrier, as defined by Section 2-3/4 of the Public

Utilities Act, for the transportation of general commodities between South San Francisco, San Francisco, San Pablo, Richmond, El Cerrito, Albany, Berkeley, Emeryville, Oakland, Piedmont, Alameda, San Leandro, San Lorenzo, Hayward and Castro Valley, via any and all city streets and highways including the San Francisco-Oakland Bay Bridge, U. S. Highway 101 By-pass, San Mateo Bridge and an unnumbered road between Hayward and South San Francisco.

(2) That the certificate herein granted is subject to the following limitation:

- (a) Applicant shall not transport uncrated furniture, liquids in bulk, livestock and fresh fruits and vegetables.

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

- (a) Within thirty (30) days after the effective date hereof, applicant shall file a written acceptance of the certificate herein granted.
- (b) Within sixty (60) days after the effective date hereof, and upon not less than five (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, tariffs and time schedules satisfactory to the Commission.

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

Dated at San Francisco California, this 2nd day of October, 1951.

[Signature]
President

[Signature]
Commissioner

[Signature]
Commissioner

[Signature]
Commissioners