

ORIGINAL

Decision No. 46920

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
BECKMAN EXPRESS & WAREHOUSE CO., a )  
corporation, for a certificate of )  
public convenience and necessity as )  
a highway common carrier between )  
East Bay cities and San Francisco )  
and East Bay Cities. )

Application No. 31797,  
as amended.

Scott Elder, for applicant.

Reginald L. Vaughan, for Peoples Express Co., Inter-Urban  
Express Corporation, West Berkeley Express and Drayage Co.,  
United Transfer Co., Haslett Warehouse Co., East Bay  
Drayage and Warehouse Co., and Kellogg Express and Drayage  
Co., protestants.

Bertram S. Silver and Edward M. Berol, for Highway Transport,  
Inc., Highway Transport Express and Canton Transbay Express,  
Inc., protestants.

N. R. Moon and Douglas Brookman, for Merchants Express  
Corporation, protestant.

Douglas Brookman, for California Motor Express, Ltd., protestant.

O P I N I O N

Applicant requests a certificate of public convenience  
and necessity as a highway common carrier as defined in Section 213  
of the Public Utilities Code for the transportation of general  
commodities, except uncrated used household goods, liquids in bulk,  
livestock and fresh fruits and vegetables,

(1) Between each of the following cities namely, San Pablo,  
Richmond, El Cerrito, Albany, Berkeley, Emeryville, Oakland,  
Piedmont, Alameda, San Leandro and Hayward (said cities being  
sometimes called in the application the "East Bay Cities").

(2) Between San Francisco and South San Francisco, on the  
one hand, and each of said East Bay cities, on the other hand.

(3) Between said East Bay cities, on the one hand, and  
San Jose, on the other hand, serving also intermediate points  
between said East Bay cities and San Jose along State Highway 17  
and along the unnumbered highway via Mission San Jose, and serving

also intermediate and off-route points along and within two miles laterally on either side of U. S. Highway 101 and U. S. Highway 101 By-Pass between San Francisco and San Jose.

In performing said service applicant proposes to traverse the streets and highways in said cities, San Francisco-Oakland Bay Bridge, U. S. Highways 101 and 101 By-Pass, State Highway 17 and the unnumbered highway via Mission San Jose.

Applicant also requests authority as such highway common carrier for the transportation of sand in dump trucks between Antioch and points within a radius of three miles of Antioch, on the one hand, and, on the other hand, said "East Bay cities", San Francisco, South San Francisco, San Jose and the intermediate and off-route points hereinbefore described.

In performing the latter service applicant proposes to traverse the streets and highways hereinbefore specified and also State Highway 4 and U. S. Highway 40 between Antioch and San Francisco; and also State Highway 24 between Antioch and Berkeley. The transportation of sand in dump trucks is proposed as an on-call service.

Public hearings were held before Examiner Austin on April 17, 18 and 19, and June 8, 1951, in Oakland, and on May 2, June 11 and August 27, 1951, in San Francisco. Oral and documentary evidence was adduced and on the latter date the matter was duly submitted upon the filing of briefs which have been received. The matter is therefore now ready for decision.

Applicant's president began driving trucks in 1913 and commenced this trucking business in 1924. He described generally the corporation's operations under its radial highway common carrier permit and its facilities and equipment. Applicant has never transported property as a highway contract carrier. Applicant

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operates a warehouse and maintains a terminal which is used only to garage and repair the operating equipment. This company does not operate over a dock like most other trucking companies. At present applicant neither owns nor operates any van-type equipment. All the equipment is of the open type. Certain of the trucks have removable tops and tarpaulin is also used on other equipment as a protection against the weather. If certificated, the witness testified, the company expects to acquire 24-foot vans.

Applicant proposes to charge rates substantially in accordance with the minimum rates, charges, rules and regulations prescribed by the Commission for highway common carriers in Highway Carriers' Tariff No. 7, except that for emergency service requiring a special trip for a single shipment, the charge will be computed at the weight rate applied under other provisions of its tariff or at the following hourly rates, whichever is higher. Shipments requiring truck capacity up to 6,500 pounds, \$5.25 an hour; 6,500 to 10,000 pounds, \$5.53 an hour; 10,000 pounds to 15,000 pounds, \$6.31 an hour; 15,000 to 20,500 pounds, \$7.10 an hour and over 20,500 pounds, \$7.87 an hour.

The public witnesses who testified on behalf of applicant stated that the service was required to meet their business needs because of its adaptability, speed, almost immediate availability, the fact that there was no handling over the dock and the fact that the trucks were equipped to lift and load heavy and awkwardly-shaped articles. Many stated that for their purposes van-type trucks would not be satisfactory. A total of 25 shipper witnesses testified on applicant's behalf. Several including shippers of sand and scrap iron stated a need for the use of the dump trucks operated by applicant. Others required the low bed open equipment for moving heavy and awkward freight.

The protestants described their respective operations which consist of the usual trucking service involving pickup operations, a movement over a dock, a line haul followed by another movement over a dock and delivery by smaller trucks to the consignee. This, of course, is supplemented by direct transportation of heavier loads where the operation over the dock is not necessary.

There is considerable difference between this type of operation and the operations of this applicant, since applicant does not use van-type equipment and does not use a platform or dock for the transfer of freight from truck to truck. As a matter of fact, most of applicant's public witnesses testified that the services offered by protestants would not meet their needs with respect to the freight now carried by applicant.

Some of the protestants contend there is no justification for authorizing an additional carrier to transport freight between East Bay points, on the one hand, and San Jose and Peninsula points below San Francisco, on the other hand. While it is true that such traffic has been somewhat irregular and infrequent, many of the public witnesses testified they had a need for a service such as applicant has afforded and would have used it had they known it was available.

Another contention of protestants was that applicant should be limited to the hauling of iron, steel and iron and steel articles to and from other points than Berkeley. This is not supported by the record.

After considering all of the evidence of record herein we find that public convenience and necessity require the services of applicant as hereinafter granted.

Beckman Express & Warehouse Co., a corporation, is hereby

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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, public hearings 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:

(1) That a certificate of public convenience and necessity be, and it hereby is, granted to Beckman Express & Warehouse Co., a corporation, authorizing the establishment and operation of service as a highway common carrier (as such term is defined in Section 213 of the Public Utilities Code) for the transportation of general commodities, except uncrated used household goods, liquids in bulk and fresh fruits and vegetables; (a) between each of the following cities namely, San Pablo, Richmond, El Cerrito, Albany, Berkeley, Emeryville, Oakland, Piedmont, Alameda, San Leandro and Hayward (said cities being sometimes called herein the "East Bay cities"); (b) between San Francisco and South San Francisco, on the one hand, and each of said East Bay cities, on the other hand; (c) between said East Bay cities, on the one hand, and San Jose, on the other hand, serving also intermediate points between said East Bay cities

and San Jose, along State Highway 17 and along the unnamed highway via Mission San Jose, and serving also intermediate and off-route points along and within two miles laterally on either side of U. S. Highway 101 and U. S. Highway 101 By-Pass between San Francisco and San Jose.

(2) That a certificate of public convenience and necessity be, and it hereby is, granted to Bockman Express & Warehouse Co., a corporation, authorizing the establishment and operation of service as a highway common carrier (as such term is defined in Section 213 of the Public Utilities Code) for the transportation of sand in dump trucks between Antioch and points within a radius of three miles of Antioch, on the one hand, and, on the other hand, said "East Bay cities", San Francisco, South San Francisco, San Jose and the intermediate and off-route points stated in ordering paragraph (1) herein.

(3) That the operating rights granted by ordering paragraph (1) and (2) herein are granted subject to the restriction that applicant shall operate only open equipment and shall not own or operate any van or closed-type equipment, provided, however, that this restriction shall not prevent applicant from using removable tops or tarpaulin to protect the freight from the weather.

(4) That in providing service pursuant to the certificates 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 certificates herein granted.
- (b) Within sixty (60) days after the effective date hereof, and on not less than five (5) days' notice to the Commission and the public, applicant shall establish the service herein authorized and file, in triplicate, and concurrently make effective, appropriate tariffs and timetables.

- (c) Subject to the authority of this Commission to change or modify the service or routes by further order applicant shall conduct operations over and along the following described routes:

Over and along any streets and highways in the named cities and to reach off-route points and over the San Francisco-Oakland Bay Bridge, U. S. Highways 101 and 101 Bypass, State Highway 17 and the unnumbered Highway via Mission San Jose.

Over and along State Highway 4 and U. S. Highway 40 between Antioch and San Francisco and State Highway 24 between Antioch and Berkeley.

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

Dated at San Francisco, California, this 1<sup>st</sup> day of April, 1952.

*R. E. [Signature]*  
PRESIDENT  
*James F. [Signature]*  
*Harold [Signature]*  
*[Signature]*

COMMISSIONERS