

ORIGINAL

Decision No. 46966

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 EVELYN O. GLAESER, doing business)
 as WEST BERKELEY EXPRESS AND DRAYING)
 CO., for a certificate of public con-) Application No. 32113
 venience and necessity to operate as)
 a highway common carrier, for the)
 transportation of property.)

Marvin Handler, for applicant.
Edward M. Berol and Bertram S. Silver, for Highway
 Transport, Inc.; Douglas Brookman and N. R. Moon,
 for Merchants Express Corporation; Frederick W.
Mielke, for Delta Lines, Inc.; Reginald L. Vaughan
 and John G. Lyons, for Kellogg Express and Draying
 Co. and Inter-Urban Express Corporation; Edward S.
Waldie, for Inter-Urban Express Corporation;
Willard S. Johnson, for J. A. Nevis Trucking, Inc.,
 protestants.
C. V. Shawler and A. C. Allen, for the Department of
 Finance and Accounts, Public Utilities Commission.

O P I N I O N

Evelyn O. Glaeser, doing business as West Berkeley Express and Draying Co., by the instant application as amended, seeks authority to extend her highway common carrier services (presently conducted between San Francisco, Oakland, Alameda, Piedmont, Emeryville, Berkeley, Albany, El Cerrito, Richmond, San Pablo and Stege) to South San Francisco, San Jose, Castro Valley, Antioch, Pittsburg, and all intermediate points, for the transportation of general commodities except household goods, petroleum products in bulk, fresh fruits and vegetables, and commodities requiring refrigeration. No service is proposed between San Francisco and South San Francisco, on the one hand, and San Jose and Santa Clara, on the other.

Public hearings were held before Examiner Gillard in San Francisco commencing May 15, 1951, and concluding November 14, 1951.

The matter was submitted for decision by the parties on November 27, 1951. On February 5, 1952, the proceeding was reopened for further hearing relative to applicant's financial ability to conduct the proposed service, and resubmitted for decision on February 29, 1952.

Applicant's business was commenced in 1904 by Louis Erickson, her father. In 1933 the Commission established his prescriptive highway common carrier rights as embracing the points hereinabove set forth. Applicant became sole owner in 1948.

In addition to this highway common carrier service, applicant renders services as a permitted carrier in Northern California. Applicant's exhibits herein, showing all permitted operations conducted within the area sought to be certificated, represent about 60 per cent of her total permitted operations.

All of applicant's highway carrier operations are conducted from one terminal on 6th Street in Berkeley. That property consists of three to four acres, and contains an office, a 50 x 200-foot dock, a 40 x 200-foot private warehouse, and storage areas for the equipment. No other terminal facilities are maintained, and it is not anticipated that any will be required in the future. It is contemplated that a telephone and possibly a small pickup truck will be installed in San Jose and also in Pittsburg.

Fifty pieces of equipment are utilized at present in all operations. Of these, 22 pieces have been newly acquired since July 1, 1948, and during the same period, 14 overage pieces have been retired.

Applicant's net income has not been good for the past three years, but her assets and financial backing are sound, and the revenue picture will be bettered if current requests for rate increases within the East Bay drayage area are granted.

We are satisfied that applicant has equipment, facilities and financial resources sufficient to enable her to inaugurate the proposed service.

Exhibits of record depicting applicant's operations as a permitted carrier during 1950 to the points sought to be certificated herein, disclose regular and frequent movements of general commodities to South San Francisco, San Leandro, San Lorenzo, Hayward, Newark, San Jose, Nichols and Pittsburg, with less frequent movements to other intermediate points. However, with the exception of South San Francisco, San Leandro, Hayward and San Lorenzo, only 72 shipments weighing less than 4,000 pounds (excluding empty containers returning) were transported during the entire year, and 57 of these consisted of acids or chemicals. The other 15 shipments were delivered to seven communities, no one of which received more than three such shipments during the year.

Applicant's general manager testified that the 1950 traffic was similar to, although perhaps a little heavier than, the two preceding years.

Commencing in June, 1951 (after the first public hearing held herein), applicant's less-truckload business showed a vast increase. In this connection, applicant's assistant general manager testified that the new business came primarily from traffic that had been offered in the past but which applicant had refused to carry. During these years, to the areas herein involved, applicant had confined herself to truckload business or "special handling for a particular and valued customer". In June, 1951, according to the testimony of this witness, applicant commenced to accept this business for the purpose of gaining experience in handling small shipments to these outlying points so that she would be in a better position with respect thereto if this application were granted.

Operations commenced subsequent to the filing of an application for a certificate, pursuant to Decision No. 42646 dated March 22, 1949, are not within the scope of the invitation contained in that decision, and we therefore find that the less-truckload operation commenced by applicant in June, 1951, may not be considered within the scope of her application as a permitted carrier.

Applicant also produced representatives of 16 firms to testify to their needs for the extension of applicant's certificated services into the areas herein sought. Some of these witnesses testified they had used applicant's service in the past to the extended area, and desired to continue to use it in the same fashion in the future. The testimony of these witnesses confirms the type of operation applicant has conducted in the past, and indicates the public need for its continuation in the future.

Other witnesses, some of whom were using applicant's service within her certificated area, testified as to their needs for the service to the extended area. Since the testimony of these witnesses is not founded upon past use of applicant's service to the extended area, the adequacy of existing services must be considered in determining the question of public convenience and necessity.

Judged by this standard, the public need for applicant's service on less-truckload traffic, in addition to that which she has established as a result of actual operation, is limited to Newark, Niles, San Jose, Martinez and Pittsburg.

After thorough consideration of the entire record, we find that public convenience and necessity require that the application be granted to the extent indicated in the foregoing opinion and in the order to follow. ✓

Applicant also requests that her existing operative authority be restated. By Decision No. 26540 dated November 20, 1933, in Case No. 3642 and Case No. 3674, applicant's predecessor

was found to have prescriptive highway common carrier rights intercity between Berkeley, Emeryville, Albany, Alameda, Oakland, Piedmont, El Cerrito, Richmond, San Pablo, and Stogo, and transbay between San Francisco and Emeryville, Berkeley and Albany. Applicant alleges that by virtue of Section 50-3/4 (c) of the Public Utilities Act (as amended in 1941; now contained in Section 1066 of the Public Utilities Code) these rights have been unified and transbay operations are performed between San Francisco and all East Bay points named.

We believe that applicant had statutory authority to render the service as alleged, and therefore in the interests of clarification, an in lieu certificate will be issued.

O R D E R

Public hearings having been held, and the Commission upon the evidence received having found that public convenience and necessity so require,

IT IS ORDERED:

(1) That a certificate of public convenience and necessity be and it is hereby granted to Evelyn O. Glaeser authorizing the establishment and operation of a service as a highway common carrier, as defined in Section 213 of the Public Utilities Code, for the transportation of general commodities except household goods, petroleum products in bulk, fresh fruits and vegetables, and commodities requiring refrigeration,

- (a) between San Francisco, South San Francisco, Pittsburg, Martinez, Stogo, San Pablo, Richmond, El Cerrito, Albany, Berkeley, Emeryville, Oakland, Piedmont, Alameda, San Leandro, San Lorenzo, Hayward, Newark, Niles, and San Jose; and

- (b) between Hercules, Oleum, Crockett, Avon, Shell Point, Clyde, Port Chicago, Nichols, Antioch, Castro Valley, Alvarado, Decoto, Centerville, Irvington, Milpitas and Santa Clara, and between each of said points, on the one hand, and all points referred to in subparagraph (a), on the other;

provided, that no shipment shall be transported between San Francisco or South San Francisco, on the one hand, and San Jose or Santa Clara, on the other; provided, further, that no shipment, except empty containers, acids as described in Items 50 to 215, inclusive, and chemicals as described in Items 9955 to 12030, inclusive, of the Western Classification No. 75, Cal. P.U.C. No. 8, shall be transported under the authority conferred in subparagraph (b) unless it weighs 4,000 pounds or bears a charge applicable to a shipment of 4,000 pounds or more.

(2) 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 file in triplicate, and concurrently make effective, tariffs and time schedules satisfactory to the Commission.
- (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:

Between San Francisco and South San Francisco:
U. S. Highways Nos. 101 and 101 By-pass; between Richmond, El Cerrito, Albany, Berkeley, Emeryville, Oakland, Piedmont, Alameda and San Leandro: all available highways; between Berkeley and Antioch: U. S. Highway No. 40, State Highways Nos. 4 and 24, and unnumbered road between Crockett and junction with State Highway No. 4; between San Leandro and San Jose: U. S. Highway No. 50 and State Highways Nos. 9 and 17; between San Leandro and Castro Valley: U. S. Highway No. 50; between San Jose and Santa Clara: U. S. Highway No. 101; between San Francisco and Oakland: San Francisco-Oakland Bay Bridge.

Alternate routes: State Highway No. 21 between Martinez and Mission San Jose; U. S. Highway No. 50 between Castro Valley and Dublin; U. S. Highways Nos. 101 and 101 By-pass between South San Francisco and San Jose; Dumbarton and San Mateo Bridges and approaches.

(3) That the foregoing certificate is granted in place of the highway common carrier operative rights set forth in Decision No. 26540 dated November 20, 1933, in Case No. 3642 and Case No. 3674, and that such operative rights are hereby revoked and annulled.

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

Dated at San Francisco, California, this 8th day of April, 1952.

[Signature]
President

Justus F. Cravens

Harold P. Kula

Kenneth H. Potter

[Signature]
Commissioners