

ORIGINAL

Decision No. 47358

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
C. R. BECKER, doing business as DELIVERY)
SERVICE COMPANY, for certificate of)
public convenience and necessity to)
operate an Inter-City Auto Pickup and)
Delivery Service for the Transportation)
of parcels and packages as a common)
carrier in the wholesale classification)
within fifty (50) air miles of his)
terminal to municipalities within the)
counties of Solano, Contra Costa, and)
portions of Alameda County outside of)
East Bay Cities covered by his present)
common carrier certificate granted by)
Decision No. 28691, rendered April 16,)
1936.)

Application No. 31832,
as amended.

- Clifton E. Brooks and Philip A. Winter for applicant.
- Scott Elder for Circle Freight Lines, protestant.
- Eugene A. Reed for Oakland Chamber of Commerce, interested in support of the application.
- N. R. Moon for Merchants Express Corporation, interested party.
- Frederick W. Mielke for Delta Lines, interested party.
- M. J. Kiep for Railway Express Agency, interested party.

O P I N I O N

C. R. Becker doing business as Delivery Service Company is engaged in the business of transporting packages and parcels only and designates himself as a parcel delivery carrier. The service he performs consists of picking up packages and parcels at the shipper's place of business, transporting them to applicant's terminal located in Oakland, of routing and sorting them there to trucks bound for various areas and of thereafter delivering the parcels and packages to the respective consignees.

At present applicant performs this service as a highway common carrier under authority of this Commission ⁽¹⁾ between the East Bay cities of Alameda, Albany, Berkoley, El Cerrito, Emoryville, Oakland, Piedmont and intermediate points, which cities and towns

(1) Decision No. 28691, dated April 6, 1936, in Application No. 20144.

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will hereinafter sometimes be referred to generally as Zone 1.

The application as amended alleges that this service as a parcel delivery carrier is presently performed under Highway Contract Carrier's Permit No. 1-55 for packages and parcels between the cities included in Zone 1 and the following cities and towns:

Alvarado, Antioch, Brentwood, Benicia, Castro Valley, Centerville, Clayton, Concord, Crockett, Danville, Decoto, Dublin, El Sobrante, Hayward, Irvington, Lafayette, Livermore, Martinez, Mission San Jose, Mt. Eden, Newark, Nichols, Niles, Oakley, Orinda, Pacheco, Pinole, Pittsburg, Pleasanton, Port Chicago, Richmond, Rodeo, San Leandro, San Lorenzo, San Pablo, Santa Rita, San Ramon, Sunol, Vallejo, Walnut Creek, Warm Springs and intermediate points. These cities and towns will hereinafter sometimes be referred to generally as Zone 2.

Applicant herein requests authority for the transportation of packages and parcels in the wholesale classification as a highway common carrier as defined in Section 213 of the Public Utilities Code over the public highways between the points in Zone 1 on the one hand, and points in Zone 2 on the other hand. The service is to be restricted to picking up packages and parcels in Zone 1 and delivering them in Zone 2, at the request of consignors in Zone 1, with charges borne by consignor, and to picking up packages and parcels in Zone 2 and delivering them in Zone 1 at the request of consignees in Zone 1 only, with charges paid by said consignees.

Packages and parcels in the wholesale classification are defined in the application as packages and parcels moving between wholesalers, jobbers, dealers, distributors, industries, retail stores, officers, commercial houses, schools, hospitals, clubs, governmental agencies and institutions. The routes proposed to be used are U. S. Highways 40, and 50 and Highways 4, 9, 17, 21, 24 and

48, and any other city and county roads and the streets in and between the cities and towns to be served.

The rates proposed to be charged are alleged to be generally at the levels of the present rates now being charged by applicant as a contract carrier. These proposed rates are as follows:

Schedule A

The first twenty single parcels or packages delivered within any week, weighing 25 pounds or less \$0.60 each.

Each additional parcel or package over twenty delivered within a week \$0.55 each.

On any parcel or package exceeding twenty-five pounds additional charges will be assessed at the rate of one cent per pound for each excess pound or fraction thereof.

The above rates are subject to a weekly minimum guarantee of \$5.00 for regular pickup service. Such minimum may accrue from the deliveries.

On casual or on-call service, where the merchant does not guarantee a minimum for regular pickup service, a twenty-five cent pickup charge will be added on each parcel or package in addition to the delivery charge. When parcel or package is brought to the applicant's terminal the pickup charge will be omitted.

Schedule B

Rates restricted to Dental Supplies, in parcels or packages, shall be charged for as follows:

Subject to notes (a) and (b)

All deliveries weighing less than five pounds \$0.33 each.

(a) Provided merchant guarantees Delivery Company \$10.00 per week from Zone 1 to Zone 2. Such minimum may accrue from the deliveries.

(b) For all deliveries weighing more than five pounds

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rates in Schedule A will apply.

The frequency of the proposed service is to pick up parcels or packages once each day, Monday through Friday, except holidays, in Zone 1 and to deliver parcels and packages in Zone 2 on the same day, except it is proposed to pick up and deliver twice each day to the following towns and cities: to wit; San Leandro, Hayward, Orinda, Lafayette, Walnut Creek, Richmond and Concord, and to pick up once each day Monday through Friday except holidays in Zone 2 and to deliver packages once each day Monday through Friday except holidays, in Zone 1.

The amended application contains the statement that applicant is willing to have his operations limited as follows:

1. No trucks of a larger rating than 1/2 ton will be used.
2. No parcels or packages weighing more than one hundred pounds will be transported.
3. No parcels with a combined length and girth of more than one hundred and sixty inches will be transported.
4. Applicant will not carry in a single day parcels and packages from a single consignor to a single consignee of a total weight in excess of three hundred pounds.
5. Applicant will publish only a tariff for parcel delivery in which charges are made per parcel or per package delivered.
6. Each shipment of freight or merchandise to an individual point of destination consisting of one or more packages or parcels which in the aggregate weighs one hundred pounds or more shall be transported at rates and charges not less than concurrently published as minimum for property not exempt from prescribed minimum rates in California Public Utilities Commission Highway Carriers' Tariff No. 2, and as amended, regardless of whether or not either

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one or more or all of the articles contained in a shipment are exempt as set forth in Items 40 and 41 series in California Public Utilities Commission Highway Carriers' Tariff No. 2, as so amended.

Public hearings were held before Examiner Rowe, in Oakland on January 24 and 25, in Pittsburg on February 7, in Vallejo on March 10, in San Leandro on March 11, and in San Francisco on March 20 all in 1952. Oral and documentary evidence was adduced and the matter duly submitted upon the filing of concurrent briefs which have been received and consequently the matter is now ready for decision.

The application was at first protested by Merchants Express Corporation, Delta Lines, Inc., Railway Express Agency and Circle Freight Lines. However, all protestants withdrew their protests and changed their appearances to that of interested party during the progress of the hearings, with the exception of Circle Freight Lines.

Approximately twenty-nine public witnesses representing shippers in Zone 1 appeared or by stipulation their testimony was included in the record, on behalf of the application. According to their testimony this service is needed by their respective businesses and at the rates proposed. Also many appeared from Zone 2 and testified that public convenience and necessity require the proposed service. This evidence justifies the conclusion and the Commission hereby finds as a fact that public convenience and necessity require the proposed service of applicant as a highway common carrier. Protestant Circle Freight Lines herein sometimes called Circle in its brief states that it does not protest the granting of the certificate to applicant for the transportation of freight weighing fifty pounds or less, but claims that operative rights should be restricted against the transportation of heavier

shipments. The possibility of serious competition between applicant and this protestant requires some discussion at this time. The only points of such possible competition are between Zone 1, and the cities and towns of Walnut Creek, Concord, Danville, Pacheco and Clayton. This is only a small portion of the area sought to be served by applicant. Also since Circle operates between San Francisco as well as East Bay cities and the points above named, it appears that this competition can affect only a small portion of Circle's operations. While it may be true that Circle does carry a large proportion of freight weighing less than 100 pounds, only a small amount of such light weight articles are of such an emergency nature as to require expedited movement. In the opinion of the Commission, a limitation of 50 pounds imposed upon applicant would not be justified by the small benefit it would confer on Circle and in the light of the frequent inconvenience to the shippers using applicant who covers all of Zone 2. Any weight limitation imposed should be well above the weight of freight which shippers would frequently offer the carrier.

Protestant Circle Freight Lines' attack upon applicant's proposed rate structure is not convincing. Applicant has shown contrary to the statement of said protestant that the proposed charges are justified. No reason is stated and no reason is apparent why such a showing may not appropriately be made in this proceeding. A separate hearing for that purpose alone appears to involve an unnecessary delay and expense to applicant. Protestant's statement that applicant will have an undue rate advantage over Circle overlooks the fact that if Circle wishes to render the same type service as is proposed by applicant it may seek approval ✓ of similar rates. Moreover, in view of the testimony of Circle's

witness and the statement in its brief that it does not protest the granting of rights to applicant to carry parcels weighing 50 pounds or less, it is safe to assume that the freight Circle carries weighing 100 pounds or less is predominantly over 50 pounds in weight and, more important, of much greater value than that carried by applicant. Consequently the actual competition between these two carriers is found to be negligible. The chief competitors of applicant have been and will be parcel Post, motor cycle delivery contractors and proprietary facilities.

This proceeding is primarily one to determine the requirement of public convenience and necessity as to the proposed highway common carrier service. However, all highway common carriers have been duly notified that he proposes the service at the rates heretofore herein stated. Applicant has shown that his proposed rates and tariffs are reasonable, just, compensatory and feasible. Mr. Becker has experienced an operating ratio before taxes of 93.51 under these rates. His expected business increase from certification should not adversely affect this ratio but will probably improve it. The record supports the conclusion that to require applicant to publish tariffs no lower than the minimum rates provided in Highway Carriers' Tariff No. 2 would impair his ability to operate successfully this proposed highway common carrier service and would injure shippers who have been availing themselves of his multiple shipment rates in his contract carrier service and who testified they cannot use the service if the minimum rates are charged. Applicant, therefore, should not be required to discontinue the rate structure under which he is presently carrying on his operations, and which rates this Commission after hearings has authorized him to charge, as a contract carrier, by exempting him from the minimum rate order. (2)

(2) Decision No. 31606, dated December 27, 1938, in Case No. 4246.

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This rate structure is for a type of service not generally offered by highway common carriers of freight other than packages and parcels. The proposed tariff before it is filed should be made more definite by clarifying the meaning of the phrase "dental supplies" and by stating definitely what articles are covered thereby.

C. R. Becker doing business as Delivery Service Company 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 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 held in the above-entitled proceeding, the matter being duly submitted, the Commission being fully advised and 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 C. R. Becker doing business as Delivery Service Company, authorizing the establishment and operation of service as a highway common carrier as that term is defined in Section 213 of the Public Utilities Code for the transportation of property between Alameda, Albany, Berkeley, El Cerrito, Emeryville, Oakland, Piedmont and intermediate points on the one hand and on the other hand Alvarado, Antioch, Brentwood, Benicia, Castro Valley,

Centerville, Clayton, Concord, Crockett, Danville, Decoto, Dublin, El Sobrante, Hayward, Irvington, Lafayette, Livermore, Martinez, Mission San Jose, Mt. Eden, Newark, Nichols, Niles, Oakley, Orinda, Pacheco, Pinole, Pittsburg, Pleasanton, Port Chicago, Richmond, Rodeo, San Leandro, San Lorenzo, San Pablo, Santa Rita, San Ramon, Sunol, Vallejo, Walnut Creek, Warm Springs and intermediate points.

(2) That the above certificate of public convenience and necessity is granted subject to the following restrictions:

1. Applicant shall not use trucks of a larger rating than one-half (1/2) ton.
2. Applicant shall not carry any package or parcel weighing more than one hundred (100) pounds.
3. Applicant shall not carry any package or parcel with a combined length and girth of more than one hundred sixty (160) inches.
4. Applicant shall not carry in a single day parcels and packages from a single consignor to a single consignee of a total weight in excess of three hundred (300) pounds.
5. Applicant shall publish only a tariff for parcel delivery in which charges are made per parcel or package delivered.
6. Each shipment of freight or merchandise to an individual point of destination consisting of one or more packages or parcels which in the aggregate weighs one hundred (100) pounds or more shall be transported at rates and charges not less than concurrently published as minimum for freight or merchandise not exempt from prescribed minimum rates in California Public Utilities Commission Highway Carriers' Tariff No. 2, as now or hereafter

amended, regardless of whether or not either one or more or all of the articles contained in a shipment are exempt as set forth in Items 40 and 41 series in California Public Utilities Commission Highway Carriers' Tariff No. 2, as so amended.

(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 thirty (30) 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 appropriate tariffs and timetables, the rates and charges being no lower than those appearing in the opinion of this decision.
- (c) Subject to the authority of this Commission to change or modify the service or routes by further order applicant shall conduct operations pursuant to the certificate granted herein over and along the following routes:

Along U. S. Highways 40 and 50 and State Highways 4, 9, 17, 21, 24 and 48 and any other appropriate state and county roads and streets in and between the above-named cities and towns.

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

Dated at San Francisco, California, 24th day of June, 1952.

R. T. [Signature]
PRESIDENT
Justice J. Gallen
Harold D. Hele
[Signature]
[Signature]
COMMISSIONERS