

ORIGINALDecision No. 47391

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 Overland Freight Transfer Company,)
 a corporation, for a certificate of) Application No. 32112
 public convenience and necessity for)
 the transportation of property.)

Marvin Handler, for applicant.
Edward M. Berol and Bertram S. Silver, for Highway
 Transport, Inc.; Douglas Brookman, for Merchants
 Express Corp., Peoples Express Co., Inter-Urban
 Express Corp., United Transfer Co., Haslett
 Warehouse Co., East Bay Drayage and Warehouse Co.,
 Kellogg Express and Draying Co., California
 Motor Express, Ltd.; N. R. Moon, for Merchants
 Express Corp.; and Frederick W. Mielke, for Delta
 Lines, Inc., protestants.

William Meinhold, for Southern Pacific Co., Pacific
 Motor Trucking Co.; Willard S. Johnson, for J. A.
 Nevis, J. Christenson Co.; C. A. Millen, for
 Valley Express Co., Valley Motor Lines, Inc.; and
Cliff Brooks, for Delivery Service Co., interested
 parties.

O P I N I O N

By the instant application as amended, Overland Freight Transfer Company, a corporation, seeks a certificate of public convenience and necessity authorizing operations as a highway common carrier for the transportation of general commodities except petroleum products in bulk in tank trucks, uncrated household goods, explosives, and livestock, between all points and places in the Bay area south to San Jose and north to Pittsburg, with restrictions against local movements between points south of San Bruno and north of San Pablo, and a 20,000-pound weight limitation on shipments moving to or from the San Pablo, Vallejo, Pittsburg area.

Public hearings were held in San Francisco before Examiner Gillard, and the matter was submitted for decision on January 8, 1952.

Applicant's Articles of Incorporation and amendments thereto, copies of which were filed in this proceeding, disclose original incorporation in 1883 with power, among other things, to conduct a drayage operation "in and through the City and County of San Francisco, and to and from any portion of the world". Applicant's predecessor commenced the drayage business in 1867, and operations have been continuous since that date. City, contract, and radial permits were secured from the Commission in 1935. Applicant's two stockholders are also the sole owners of the Gibraltar and the Turner-Whittell public warehouses, both separate entities and located in San Francisco. Transportation services in and out of these warehouses are principally supplied by applicant.

Applicant also has extensive experience as a motor carrier of interstate commerce, particularly in the field of pool car distribution in San Francisco and Oakland. Applicant has acquired space, under lease, in the Southern Pacific Company's Melrose station in Oakland, which at present is used exclusively for pool car distribution. There is no area there for storing motor vehicles, but if the application is granted, such facility will be acquired, and a terminal also will be established in San Jose.

In San Francisco, applicant has a terminal on Bryant Street and another across the street on Fourth. These facilities include garage, storage and dock. An office is also maintained at 201 California Street, staffed by 40 people. The company has a total of 185 employees, and operates 161 pieces of equipment, none of which is insulated or equipped with mechanical refrigeration. Applicant's general manager estimated that this equipment could accommodate 25 per cent to 30 per cent additional traffic.

Applicant's balance sheet as of December 31, 1950 shows assets of \$490,324 including current assets of \$194,252, and a

capital account of \$339,286 which includes \$239,286 earned surplus. The company had no long-term liabilities, and its current liabilities are listed at \$145,579.

A profit and loss statement for 12 months ending December 31, 1950 discloses "drayage" revenue of \$801,465 and miscellaneous income of \$2,436, or a gross of \$803,902. A net loss of \$16,897 was sustained. Gross revenue for 1947, 1948 and 1949 was \$892,568, \$842,125 and \$722,249, respectively, and \$223,189 for the first quarter in 1951. Net revenue for these periods was not disclosed.

Another exhibit, and the testimony in connection therewith, discloses that not in excess of 25 per cent of applicant's gross drayage revenue (or approximately \$200,000 for 1950) is derived from intrastate transportation between cities, the balance being attributed to local, interstate, and "nontariff" (e.g., pickup and delivery services for other carriers) revenue.

It is apparent from the foregoing that applicant possesses the equipment, resources and experience necessary to enable it to conduct a highway common carrier operation.

In connection with general trucking activities within the Bay area, and the probable future trend of those activities, applicant introduced into evidence a study of William A. Spurr, Professor of Business Statistics, Stanford University. The area under consideration in this analysis consisted of the counties of San Francisco, Alameda, Contra Costa, Solano, San Mateo and Santa Clara. Professor Spurr estimated that the demand for trucking service within this area should increase over 40 per cent between 1950 and 1960. He labeled this estimate as conservative because it assumes that trucks will make no further competitive gains over other forms of transportation, and because the demands of the current military mobilization have not been considered.

While this potential growth of demand for trucking services in the Bay area will not by itself support a finding in favor of applicant, it does furnish the Commission with vital information as to the future of the trucking industry. Existing carriers are not faced with static conditions, but are presented with opportunities to grow and expand despite the advent of new competitive factors.

Applicant also introduced into evidence a summary of shipments transported by it for selected months from 1941 to 1951. Since 1947, the months selected were May and July, 1948; January and September, 1949; September, October, November and December, 1950; March, 1951. A tabulation of these shipments since 1947, by area, discloses the following:

Shipments having origin or destination south of Hayward and Colma	29
Shipments having origin or destination north of Richmond	71
Shipments having both origin and destination in area including Hayward and Colma on south and Richmond on north	<u>2,730</u>
Total shipments ...	
2,830	

The distribution of the 71 shipments north of Richmond is as follows:

Oleum	41	Rodeo	1
San Pablo	19	Pittsburg	1
Crockett	8	Benicia	1

The 29 shipments south of Colma and Hayward were distributed in the following manner:

San Mateo	9	San Carlos	1
Burlingame	4	Redwood City	1
San Jose	3	Palo Alto	1
Santa Clara	3	Millbrae	1
Newark	3	Belmont	1
Sunnyvale	2		

On May 28, 1951, the date the foregoing summary of shipments was introduced into evidence herein, the traffic manager of the Gibraltar and Turner-Whittell warehouses testified that he was using applicant for services within the San Francisco Bay area, that he was satisfied with existing services north and east of Richmond, and that he had not used applicant down the peninsula because it did not render a daily service to those points. He expressed some dissatisfaction with the existing carriers, and would use applicant if authorized herein to serve peninsula points.

For the apparent purpose of showing the extent of the business down the peninsula that could be developed from these warehouses, applicant commenced this service, and at the hearing held on December 17, 1951, introduced into evidence an exhibit reflecting its operations in the East Bay and down the peninsula for the months of August and September, 1951. The exhibit discloses the following figures:

	<u>August</u>	<u>September</u>
Between San Francisco and points south thereof	226	271
Between San Francisco and East Bay points	<u>174</u>	<u>607</u>
Total shipments ...	400	878

All but 11 of the August and 19 of the September peninsula shipments originated at or were destined to the two warehouses. Of these 30 shipments, 16 were to South San Francisco, Bayshore and Daly City, the remaining 14 being divided among seven communities south of South San Francisco to and including San Jose.

Of the shipments in the East Bay, all were transported in the area between and including Richmond and San Leandro except two: one each to Niles and Newark.

Applicant produced 13 public witnesses in support of its application. Concerning past use of applicant's services, eight of these witnesses testified that applicant had served them only locally in San Francisco, or between San Francisco and principal East Bay cities; three had used applicant only locally in San Francisco and infrequently on truckload movements to a few other points; one had used applicant only in emergencies for truckload movements of sugar from Crockett or San Francisco; the remaining one stored all its products in the Turner-Whittell warehouse, and applicant made all arrangements for transportation.

This testimony corresponds very closely to the history of applicant's operations as disclosed in the exhibits referred to, with respect to both the area covered and the frequency of movement to or from outlying points.

Concerning the desires of these shippers to increase their future use of applicant, particularly down the peninsula, all but four failed to indicate any real need for the service, for one or more of the following reasons: (a) on most shipments the consignee selected the carrier; (b) it was admitted that present carriers were rendering an adequate service; (c) shipments to peninsula points by other than proprietary equipment were too infrequent. Of the four shippers who did not fall into this pattern, three stored their merchandise with applicant's affiliated warehouses, and the more extensive their use of applicant the more they could save in billing and office procedures. The other shipper, a manufacturer of sugar at Crockett, presented good reasons why relations with each highway common carrier serving that point had been terminated.

Protestants herein were mainly concerned about the proposed service down the peninsula, south of San Leandro, and north of Richmond. They stressed these features in exhibits analyzing

applicant's past operations and in their cross-examination of applicant's witnesses.

Operating testimony presented by eight of the protestants discloses that, despite severe competitive conditions, they are maintaining, and for the most part increasing, their revenues and tonnages. All render a twice daily service within the Bay area and are rendering satisfactory services in other respects.

Five of these carriers operate only between San Francisco and the East Bay between and including Richmond (or San Pablo) and San Leandro. All of these carriers have applied to the Commission for certificates to extend their service areas south and north of the territory now served. Of the other three protestants, all serve the same Bay area, and, in addition, two serve south of San Francisco and San Leandro to San Jose, and one of these also serves north of Richmond along U. S. Highway No. 40 through Vallejo, while the third serves Martinez, Pittsburg and Antioch.

The record herein supports the conclusion, and we therefore find, that public convenience and necessity require that the application be granted to the extent provided in the ensuing order, and that in all other respects the application be denied.

Applicant 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 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 Overland Freight Transfer Company, a corporation, 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 petroleum products in bulk in tank vehicles, uncrated household goods, explosives, and livestock, (a) between San Francisco, Bayshore, Daly City, South San Francisco, Richmond, El Cerrito, Albany, Berkeley, Emeryville, Piedmont, Oakland, Alameda and San Leandro; (b) between all points mentioned in subparagraph (a), on the one hand, and San Pablo, Crockett and intermediate points along U. S. Highway No. 40, on the other hand, provided that no shipment except empty pallets and empty containers shall be transported unless it weighs 20,000 pounds or bears a charge applicable to a shipment of 20,000 pounds or more; (c) between all points mentioned in subparagraph (a), on the one hand, and San Bruno, San Jose, and all intermediate points along U. S. Highways Nos. 101 and 101 Bypass, on the other hand, provided that no shipment shall be

transported unless it has either origin or destination in either a Turner-Whittell warehouse or a Gibraltar warehouse, or unless it moves to or from a person or firm which has a current storage account with either of said warehouses.

(2) That applicant shall not operate any mechanically refrigerated equipment.

(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 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:

All highways mentioned in paragraph (1) hereof; within the San Francisco Bay area: all available routes; between San Leandro and San Jose: U. S. Highway No. 50, State Highways 9, 17 and 21; between the East Bay and San Francisco peninsula: San Francisco-Oakland Bay Bridge, San Mateo Bridge and Dumbarton Bridge.

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

Dated at San Francisco, California, this 30th day of June, 1952.

[Signature]
Harold P. Hills President
[Signature]
[Signature]

Justice F. Craemer
Commissioner, Justices Commissioners, being necessarily absent, did not participate in the disposition of this proceeding.