

ORIGINALDecision No. 47423

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 M. S. DODD for a certificate of)
 public convenience and necessity to) Application No. 32048
 operate as a highway common carrier)
 for the transportation of property.)

Marvin Handler, J. H. Sapiro, E. V. McKenzie, for
 applicant.

Frederick W. Mielke, for Delta Lines, Inc.; Edward M. Berol, Bertram S. Silver, for Highway Transport, Inc., and Canton Transbay Express, Inc.; Douglas Brookman, for Merchants Express Corporation, and California Motor Express, Ltd.; N. R. Moon, for Merchants Express Corporation; Reginald L. Vaughan, John Lyons, for Peoples Express Company, Inter-Urban Express Corporation, United Transfer Co., Haslett Warehouse Co., East Bay Drayage & Warehouse Co., and Kellogg Express and Draying Co., protestants.

Willard S. Johnson, for J. A. Nevis, doing business as Joe A. Nevis Trucking, and J. Christenson Co.; C. W. Millen, for Valley Express Co., and Valley Motor Lines, Inc., interested parties.

O P I N I O N

Applicant, M. S. Dodd, by his application as amended, requests authority to transport general commodities as a highway common carrier between points within the Bay area, points south to and including Gilroy, and north to Pittsburg and Vallejo. Authority is also sought to transport tin cans, tin plate, and products manufactured from tin plate, between the San Francisco Territory, on the one hand, and Stockton and Sacramento, on the other hand.

More specifically, applicant proposes to operate as follows:

(A) General Commodities, except petroleum products in bulk in tank vehicles, uncrated household goods, explosives, and livestock,

(1) Between San Francisco and Gilroy and intermediate points via U. S. Highway 101 and U. S. Highway 101 By-Pass.

(2) Between Oakland and San Jose and intermediate points via State Highway 17, with an alternate route via U. S. Highway 50, State Highways 9 and 21.

(3) Between San Francisco and Vallejo and intermediate points via U. S. Highway 40.

(4) Between Oakland and Pittsburg and intermediate points via U. S. Highway 40, unnumbered highway from Selby and State Highway 4, with service to Benicia as an off-route point and State Highway 4 from Hercules to Pittsburg as an alternate route.

(5) All intermediate points on both principal and alternate routes, in addition to all East Bay points whether intermediate points on such routes or not.

(B) Tin Cans and Tin Plate, between the San Francisco Territory, as defined in Item 270 Series of Highway Carriers' Tariff No. 2, on the one hand, and Sacramento and Stockton, and points and places within two (2) miles of each thereof, on the other hand, via U. S. Highways 40 and 50.

Applicant proposes no local service between Richmond and Pittsburg and intermediate points; between Richmond and Vallejo and intermediate points; between Gilroy and San Jose and intermediate points, on the one hand, and points south of Hayward and San Lorenzo on State Highways 17 and 21, on the other hand.

Public hearings were held before Examiner Daly at San Francisco and the matter submitted on November 23, 1951, upon briefs since filed and considered.

Appearing in protest to the authority sought were Delta Lines, Highway Transport, Inc., Canton Transbay Express, Inc., Merchants Express Corporation, California Motor Express, Valley Express Co., Valley Motor Lines, Inc., Peoples Express Company,

Inter-Urban Express Corporation, United Transfer Co., Haslett Warehouse Co., East Bay Drayage & Warehouse Co., Kellogg Express and Draying Company, J. A. Nevis, doing business as Joe A. Nevis Trucking, and J. Christenson Co.

During the course of the hearing, the appearances of J. A. Nevis, doing business as Joe A. Nevis Trucking, and J. Christenson Co. were changed from those of protestants to interested parties by virtue of stipulations and amendments to the application to the effect that applicant would not transport iron and steel articles including tin plate, in shipments of 20,000 pounds or more, to or from Pittsburg, nor transport commodities requiring refrigeration when moving in insulated vans with mechanical refrigerating systems.

The above-entitled application was consolidated with cases numbered 5253, 5254, 5258, and applications numbered 31797, 32112 and 32139, for the purpose of receiving the testimony of William A. Spurr, Professor of Business Statistics, Stanford University.

The record discloses that applicant has engaged in the business of public warehousing in San Francisco since 1913. In 1918 applicant commenced transporting property for-hire as a supplementary service to the warehouse business. Originally, this service of transportation was confined to the City and County of San Francisco, but as time passed it continually expanded to points in the East Bay and Peninsula. In 1935, upon the passing of the Highway Carriers' Act, applicant acquired and still possesses permits as a radial highway common carrier, highway contract carrier and city carrier. Since 1935, according to applicant, his operations in the transportation field have developed to

the point that he now operates to all of the points encompassed by the instant application. Applicant also asserts that he filed his application as the result of the Commission's investigation in Case No. 5253, which was instituted to determine whether applicant's operations were conducted as a highway common carrier without appropriate authority. In the event applicant is prevented from providing the transportation service presently being rendered, it is claimed that the effect upon his warehouse business would be materially adverse, due to the fact that a transportation service for warehouse customers is an integral part of a successful warehouse operation. Ninety per cent of applicant's transportation accounts, he stated, are also warehouse customers.

According to the manager of applicant's drayage department, a transportation service is provided to approximately 30 warehouse customers who ship within the confines of the proposed area. These customers are principally brokers of food, chemical, and appliance commodities, who in turn serve five or six retail businesses thus increasing the number of customers served by applicant to approximately 180.

Applicant maintains and operates four warehouses within the City of San Francisco and owns and operates approximately 60 pieces of operating equipment. Terminals are maintained in San Francisco only; however, in the event the authority here sought is granted, he proposes to establish terminals in Oakland and San Jose. No scheduled service would be provided as the operations, it was stated, would conform to customer requirements. Applicant's financial statements for the year ending December 31, 1950, indicate total assets in the amount of \$544,610.45, total current liabilities amounting to \$62,083.02, total operating income of \$490,168.89 and a net operating income in the amount of \$21,149.36.

Applicant introduced the testimony of 16 public witnesses, all of whom, the record discloses, represent businesses which are warehouse customers of applicant with the exception of the witness representing American Can Company. These witnesses testified that they have used applicant's transportation service in conjunction with his warehouse facilities. It was, they stated, a great convenience to have both services available. Applicant became their shipping department, to whom they could disperse orders, have them filled from their stock on hand at the warehouse, and shipped immediately to their customers. This, they claimed, resulted in an expeditious service, necessary in highly competitive businesses, through the elimination of multiple handling of shipments and the delays experienced in pickup, terminal, line-haul and delivery operations of a carrier engaged solely in a transportation service. In the time that they have utilized the combined services, they testified, applicant has acquired a familiarity with their business needs and requirements as well as those of their respective customers. If applicant were forced to discontinue his transportation operations, they asserted, it would be necessary for them to cease warehousing with him and look to a business that could afford both types of services.

In support of his request to serve other than warehouse customers, applicant stated that he still transports shipments for previous warehouse customers, who have since expanded their facilities to store their own commodities, and that he has refused many requests from nonwarehouse customers to haul their shipments, in an attempt to stay within the scope of his permitted operations. The record, however, discloses that he is serving only four previous warehouse customers, namely, Puritan Preserves Company, R. C. Sofio Company, American Can Company and San Francisco Steel and Tin Mill Company. Exhibits reflecting applicant's past operations for 1950 and 1951 indicate that approximately 30 shipments were transported for

R. C. Sofio Company and less than five for the Puritan Preserves Company. With the exception of 31 shipments to its Sacramento plant from four different suppliers, the major transportation for American Can Company has been an interplant movement on shipments of tin plate and related articles between the Bay area, Sacramento and Stockton. Approximately 25 shipments of tin plate and related articles were transported for the San Francisco Steel and Tin Mill Company between San Francisco, South San Francisco, Oakland, San Jose and Sacramento.

The only other evidence in support of service to nonwarehouse customers is reflected in Exhibits 6 and 7, which consist of lists of shipments transported under contract by applicant transbay and between peninsula points for agencies of the United States government for the year 1950. Of the total number of shipments in Exhibit 6, it was stated that 75 per cent moved in interstate commerce while 50 per cent of the total number in Exhibit 7 moved in interstate commerce.

Exhibits 3, 4, 5, 10, 11 and 12 reflect applicant's past operations for selected periods during 1950 and 1951 moving transbay, between peninsula points to and including Gilroy, points beyond the Bay area, including shipments of tin plate and related articles for the American Can Company and San Francisco Steel and Tin Mill Company between the Bay area, Sacramento and Stockton. The major number of shipments transbay were to Oakland, with a substantial number moving to such points as Richmond, Alameda, Berkeley, Emeryville and San Leandro. The main points on the peninsula were San Jose, Palo Alto, San Carlos, San Mateo, Redwood City and Gilroy. The principal points served by applicant outside of the Bay area, with the exception of shipments of tin plate, were Richmond, Pittsburg and Vallejo. Although the bulk of shipments transported either originated from or were destined to applicant's warehouses, there were many instances where applicant provided service for warehouse customers on shipments which neither originated from nor were destined to the warehouses.

A question arose during the course of the hearing as to whether a number of the shipments set forth in Exhibits 3, 4 and 5 were interstate or intrastate in nature. According to the manager of applicant's drayage department, 96 per cent of the shipments set forth in Exhibit 3 were intrastate, 93 per cent of all shipments described in Exhibit 4 were intrastate, and all of the shipments in Exhibit 5 moved in intrastate commerce, with the exception of tin plate. In view of the substantial number of intrastate shipments, it would serve no useful purpose to make a detailed examination of those questionable shipments for the purpose of determining whether they moved in interstate or intrastate commerce.

The purpose of Professor Spurr's testimony was to develop the future transportation demands in the San Francisco Bay area. Based upon the population forecasts, total production, truck tonnage demand and decentralization trends, it was the professor's opinion that the demand for trucking service should increase over 40 per cent between 1950 and 1960.

Protestants limited their showing to the introduction of evidence, both oral and documentary, indicating their present operations within the proposed area. For the most part, this consisted of the points they are authorized to serve, existing terminal facilities, and operating equipment. The service offered varied from same-day to overnight.

The record discloses that applicant provides, and has for many years provided, a unique and necessary combination warehouse and transportation service. So integrated are both operations that it would be impossible to affect one without affecting the other. There is very little evidence, either by way of public witness testimony or past performance, to support a need for service for other than warehouse customers. The evidence does justify the

granting of a certificate of public convenience and necessity limited to the transportation of shipments for applicant's warehouse customers. The needs of two previous warehouse users do not support the authority sought to transport tin plate and related articles between the San Francisco Bay area, Sacramento and Stockton.

To restrict applicant, as suggested by protestants in their briefs, to commodities and specific points, including intermediate points as reflected by his past operations, would result in an unworkable type of certificate, both from the point of view of operation and regulation. A cross section of the commodities listed in applicant's exhibits indicates that he has handled a wide variety of general commodities. Although applicant has not served every point encompassed by his application, he has indicated a substantial movement of shipments to the major points and a less frequent movement to many of the smaller points. In view of the conclusion that the certificate herein should be restricted to warehouse customers, applicant will be able to continue to provide the service that he is presently rendering, and has rendered for many years past, without diverting traffic from the existing carriers. Because of the above conclusion, it is unnecessary to impose restrictions against local service between intermediate points.

After full consideration of the evidence, the Commission is of the opinion, and so finds, that public convenience and necessity require the granting of a certificate to applicant to operate as a highway common carrier to the extent set forth in the ensuing order.

O R D E R

An application having been filed, a public hearing held thereon, the matter submitted, the Commission being fully informed in the premises and it having been found that public convenience and necessity so require,

IT IS ORDERED:

(1) That a certificate of public convenience and necessity is hereby granted to M. S. Dodd 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 shipments of general commodities, except petroleum products in bulk in tank vehicles, uncrated household goods, explosives, and livestock, having either origin or destination in one of M. S. Dodd's warehouses located in San Francisco, or moving to or from a person or firm which has a current storage account with one or more of said warehouses, between the following points:

- (a) Between San Francisco and Gilroy and intermediate points via U. S. Highway 101 and U. S. Highway 101 By-Pass.
- (b) Between Oakland and San Jose and intermediate points via State Highway 17.

Alternate route - U. S. Highway 50 and State Highway 9 between Oakland and Mission San Jose, via Hayward, State Highway 21 between Mission San Jose and Warm Springs.

- (c) Between San Francisco and Vallejo and intermediate points via U. S. Highway 40.
- (d) Between Oakland and Pittsburg and intermediate points as follows: U. S. Highway 40 from Oakland to Selby, unnumbered highway from Selby to junction State Highway 4 near Pittsburg, State Highway 4 from said junction to Pittsburg. Bonicia to be served as an off-route point.

Alternate route - State Highway 4 from Hercules to Pittsburg.

- (e) Intermediate points on principal and alternate routes including Hayward, San Leandro, Piedmont, Alameda, Oakland, Emeryville, Berkeley, Albany, El Cerrito, Richmond, Point San Pablo, Point Molate, and Point Richmond.
- (f) The following routes may be used for operating convenience only:

San Mateo Bridge and Dumbarton Bridge and the approaches thereof.

State Highway 21 between Martinez and Mission San Jose.

U. S. Highway 50 between Dublin and junction State Highway 9.

State Highway 24 between Berkeley and Pittsburg.

(2) That applicant shall conduct operations pursuant to the authority granted in paragraph (1) hereof subject to the following restrictions:

- (a) Applicant shall not transport iron and steel articles including tin plate, in shipments of 20,000 pounds or more, to or from Pittsburg.
- (b) Applicant shall not transport commodities requiring refrigeration when moving in insulated vans with mechanical refrigerating systems.

(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 of this order, applicant shall file a written acceptance of the certificate herein granted.
- (b) Within sixty (60) days after the effective date hereof, applicant shall file in triplicate, and concurrently make effective, appropriate tariffs and time schedules on not less than five (5) days' notice to the Commission and the public.

(4) That in all other respects the application is hereby denied.

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.

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

R. J. [Signature] President
Harold [Signature]
[Signature]
[Signature]

Commissioners