

ORIGINALDecision No. 42450

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 VIC ADELSON for a certificate of)
 public convenience and necessity as) Application No. 32628
 a highway common carrier for the)
 transportation of property.)

Scott Elder, for applicant.
N. R. Moon, for Merchants Express Corp.; Reginald L. Vaughan, for East Bay Drayage & Warehouse Co., Haslett Warehouse Co., Inter-Urban Express Corp., Kellogg Express & Draying Co., Peoples Express Co., United Transfer Co. and West Berkeley Express & Draying Co.; Edward M. Berol and Scott L. Harrington, for Highway Transport, Inc., Highway Transport Express and Canton Transbay Express, Inc.; Frederick W. Mielke, for Delta Lines, Inc., protestants.
Willard S. Johnson, for J. Christenson Co., as its interests may appear.

O P I N I O N

Victor Adelson, an individual doing business as Vic Adelson Drayage under permits issued by this Commission, seeks by this application to establish a certificated highway common carrier service for the transportation of general commodities, except used uncrated household goods and other commodities for which the Commission has prescribed minimum rates in Appendix A, Decision No. 32325, City Carriers' Tariff No. 3 - Highway Carriers' Tariff No. 4, and except commodities in bulk and live animals uncrated, between the following points via specified routes:

1. Between El Cerrito, Albany, Berkeley, Emeryville, Oakland, Piedmont, Alameda, San Leandro, San Lorenzo, Hayward and Castro Valley (said points being herein called "The East Bay Cities");
2. Between said East Bay Cities, on the one hand, and San Francisco and South San Francisco, on the other hand;

3. Between said East Bay Cities, San Francisco and South San Francisco, on the one hand, and, on the other hand, Livermore, Pleasanton, Dublin, points and places within five miles of the city limits of Livermore, points and places within five miles of the Pleasanton Post Office, and points and places on or within one mile laterally of U. S. Highway 50 between Dublin and Livermore.

Applicant, alleging uncertainty as to the scope of his permitted authority and economic growth of the area proposed to be served, states that he desires to make an unequivocal dedication of service to the public under a certificate of public convenience and necessity, in order to clarify his position, to continue service to his present patrons and to permit him to serve the general public need.

The proposal includes service daily except Sundays and holidays, also emergency service on Saturdays, with deliveries the same day or overnight, depending on schedules and upon origin and destination points of shipments. Rates and regulations will be generally the same as the minimum rates and regulations prescribed by the Commission in Highway Carriers' Tariff No. 2. The record indicates that applicant possesses financial resources, facilities and equipment, as well as experience, with which to inaugurate the proposed service.

Applicant has been engaged in a general drayage business since 1946 between the points he now seeks to serve as a certificated common carrier. He has also, through a subhauler, served points in the San Joaquin Valley between Tracy and Merced, and has transported truckload shipments to other points in California. In addition, he has performed pickup and drayage service in connection with interstate and foreign commerce. He does not possess interstate operative rights. From January through August, 1951, applicant transported 1,420,403 pounds of freight between points in the

territory for which he now seeks a certificate, and 1,161,589 pounds of freight in intracity service, chiefly within Oakland. Those figures exclude traffic handled outside the area involved in this application and interstate and foreign tonnage.

The application was supported by representatives of 25 shippers or receivers of freight from both sides of San Francisco Bay and the Livermore-Pleasanton area ⁽¹⁾ and also by the Board of Directors of the Livermore Chamber of Commerce. The record indicates that substantial industrial development has occurred in the Livermore area during the past few years. An eventual population of approximately 30,000 is expected at Camp Parks alone, situated a few miles east of Dublin. This growth has resulted in an increased demand for rapid and dependable transportation of various supplies and commodities from San Francisco Bay distributors to industrial and retail outlets in the Livermore area.

The record establishes that shippers and consignees who have used applicant's facilities, as well as those of various protestants, both between the bay area cities and between those cities and the Livermore area, have come to rely upon applicant to give prompt and dependable service. Although the protesting carriers, as a rule, pick up freight twice a day on each side of the bay, their deliveries, especially in the southern portion of the east bay territory, have been subject to delay on occasions. In some cases, consignees have had to call at Oakland terminals in their own

(1) Firms represented were located in San Francisco, Oakland, Emeryville, San Leandro, Hayward, Livermore and Pleasanton. Commodities shipped include: electrical supplies and appliances, pipe, valves, fittings, shoes, shipping cases, scrap and secondary metals, paint, plumbing and heating equipment, liquors, steel, industrial equipment, spices and seasonings, well drilling tools and supplies, groceries, hardware, crockery, glass cloth and safety fuses.

trucks for shipments originating in San Francisco. In one instance, because of delay by one of the protestants, an electric company in San Leandro was compelled to purchase supplies elsewhere and return the delayed merchandise to the original supplier. Merchants in the Livermore-Pleasanton area desired the early deliveries afforded by Adelson in contrast to the afternoon deliveries made by some of the larger protesting carriers.⁽²⁾

A manufacturer of woven fibre glass, located near Livermore, the bulk of whose product moved to Los Angeles via connecting carrier at San Francisco or Oakland, or to docks for export, complained of late pickups at his plant in the afternoon by one of the protestants, causing the shipments to miss connections in the bay cities. The service of this protestant, however, had improved about two or three weeks before the hearing, he said, following complaints made to the carrier's traveling representative. This witness stated he needed applicant's proposed service and would use it.

Other witnesses from the Livermore area, engaged in construction projects, desired applicant's service in preference to that of protestants because applicant makes deliveries at job sites early in the morning, thus permitting prompt commencement of work.

Protestants limited their showing to cross-examination of applicant's witnesses and to a description of their operative authority and service in the territory here involved. Although it was shown, as we have said, that these carriers, including the trans-bay drayage concerns, pick up freight twice a day in San Francisco and the East Bay Cities, their deliveries have not been as prompt

(2) In only one instance does the record show an unfounded complaint concerning delay. A Pleasanton merchant testified that one of the protestants picked up a shipment of television sets in San Francisco on November 9, 1951, and delivered the merchandise on November 14. Shipping documents in evidence, however, show an overnight delivery.

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or dependable in the East Bay or Livermore areas which they respectively serve as have been those afforded by applicant. The services of two of the protestants, recently inaugurated between the East Bay Cities and Livermore and other points on their lines, including San Francisco, had not been used by applicant's witnesses.

Applicant has shown that he desires to dedicate his transportation service to the general public as a highway common carrier; that a substantial number of shippers and receivers of a wide variety of general commodities desire his service in preference to that of protestants because of its dependability; that he possesses the facilities, resources and experience with which to establish the proposed operation. We therefore find that public convenience and necessity will be subserved by the issuance to applicant of the certificate he seeks. In addition to the items excepted by applicant from his proposal of service, hereinabove mentioned, a further exception will be made in connection with transportation of commodities requiring refrigeration in transit, since, the record shows, applicant has not carried such freight and no need for such service by him was established.

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 in the instant proceeding, evidence having been received and considered, the Commission now being fully advised and basing its order upon the findings and conclusions contained in the foregoing opinion,

IT IS ORDERED:

(1) That Victor Adelson, an individual doing business as Vic Adelson Drayage, be and he hereby is granted a certificate of public convenience and necessity authorizing the establishment and operation of service as a "highway common carrier," as that term is defined by Section 213 of the Public Utilities Code of the State of California, for the transportation of general commodities, except (a) used uncrated household goods and other commodities for which the Commission has prescribed minimum rates in Appendix A, Decision No. 32325, City Carriers' Tariff No. 3, Highway Carriers' Tariff No. 4; (b) commodities in bulk; (c) live animals, uncrated; (d) commodities requiring refrigeration in transit; between the following points and places:

- a. Between El Cerrito, Albany, Berkeley, Emeryville, Oakland, Piedmont, Alameda, San Leandro, San Lorenzo, Hayward and Castro Valley, said points being herein sometimes called "The East Bay Cities;"
- b. Between said East Bay Cities, on the one hand, and San Francisco and South San Francisco, on the other hand;
- c. Between said East Bay Cities, San Francisco and South San Francisco, on the one hand, and, on the other hand, Livermore, Pleasanton, Dublin, points and places within five miles of the city limits of Livermore, points and places within five miles of the Pleasanton Post Office, and points and places on or within one mile laterally of U. S. Highway 50 between Dublin and Livermore.

(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:

Via available streets and highways within said East Bay Cities, San Francisco, South San Francisco, Livermore and Pleasanton; via San Francisco-Oakland Bay Bridge between San Francisco and Oakland; via connecting roads and highways within the lateral and radial areas described above; via U. S. Highway 50 between Oakland and Livermore; via State Highway 24 between Oakland and Walnut Creek and State Highway 21 between Walnut Creek and its intersection with U. S. Highway 50; via U. S. Highway 50 between such intersection and Livermore.

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

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

[Signature]

 President
[Signature]

[Signature]

[Signature]

Commissioners

Commissioner Peter E. Mitchell, being necessarily absent, did not participate in the disposition of this proceeding.