

Decision No. 47525**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)

PENINSULA DELIVERY SERVICE,)
a corporation,)

Application No. 32375

for a certificate of public)
convenience and necessity.)
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In the Matter of the Application of)

PENINSULA DELIVERY SERVICE,)
a corporation,)

Application No. 32376

for a certificate of public)
convenience and necessity.)
-----)James H. Lucas, for applicant.Reginald L. Vaughan and John G. Lyons, for Kellogg
Express and Draying Company, West Berkeley Express
and Draying Company, Interurban Express Corporation,
East Bay Drayage and Warehouse Company, United
Transfer Company - Carley and Hamilton, and Haslett
Warehouse Company.N. R. Moon, for Merchants Express Corporation.Arthur Glanz, for Peninsula Motor Express.Edward M. Berol, Bertram S. Silver and Scott L. Harrington,
for Highway Transport, Inc., Highway Transport Express
and Canton Transbay Express, protestants.Willard S. Johnson, for J. Christenson Company, interested
party.O P I N I O N

By its applications, as amended, applicant, Peninsula Delivery Service, presently rendering service as a highway common carrier for the transportation of freight between San Francisco and certain East Bay points, on the one hand, and points on the Peninsula, to and including San Jose, on the other hand, subject to certain limitations on commodities and weight, seeks authority to transport general commodities between San Francisco and the East Bay from San Pablo on the north to San Leandro on the south as well as between San Francisco and said East Bay area, on the one hand, and points south of San Francisco to and including San Jose, on the other hand.

Public hearings were held before Examiner Daly at San Francisco and San Jose with the matter being submitted on June 18, 1952. Appearing in protest to the authority sought were Kellogg Express and Draying Company, West Berkeley Express and Draying Company, Interurban Express Corporation, East Bay Drayage and Warehouse Company, United Transfer Company - Carley Hamilton, Haslett Warehouse Company, Merchants Express Corporation, Peninsula Motor Express, Highway Transport, Inc., Highway Transport Express and Canton Transbay Express. The appearance of J. Christenson Co., was changed from a protestant to that of an interested party as the result of a stipulation to the effect that applicant did not propose to render a refrigerated service with the use of insulated vans or mechanical refrigeration.

By Decision No. 37341, in Application No. 26328, applicant was authorized to transport auto parts moving to auto parts houses, garages, and service stations between San Francisco, Oakland and San Leandro, on the one hand, and points on the peninsula south of San Francisco to and including San Jose on the other hand. By the same decision applicant was further authorized to transport general commodities in shipments of packages weighing 100 pounds or less between San Francisco and Menlo Park and intermediate points and of 50 pounds or less to or from that area between Menlo Park and Palo Alto.

Applicant owns and maintains a terminal at San Francisco. It proposes to establish additional terminals at San Jose and one at either Redwood City or Belmont. Its present service is provided through the use of 12 two-ton vans and if the proposed service is authorized two additional pieces of equipment will be acquired. The proposed service would be the same as that now being rendered, that is a morning pickup with afternoon delivery and an afternoon pickup

with a following morning delivery. Of its existing traffic 40 per cent receives a same day service and 60 per cent an overnight service.

Although applicant relied upon the liberal policy as announced by the Commission in Case 4823, no exhibits were introduced reflecting its past operations with respect to shipments moving beyond the scope of its present operative rights. According to applicant's general traffic manager 10 per cent of its existing traffic would not be covered by its present authority based upon a liberal interpretation of its certificate. Assertedly it is to transport this traffic in addition to meeting the request from certain other shippers for same day service that the above-entitled applications were filed.

Applicant based its showing on two factors, viz: (1) a need by certain of its present customers for applicant's service on all shipments moving in the proposed area; (2) a need for a same day service in the proposed area.

To support its case applicant introduced the testimony of 29 public witnesses. At least 23 of these witnesses were presently using applicant's service and desired to continue to use it. Ten of the witnesses represented businesses engaged in the manufacture, distribution or use of auto parts and accessories. In addition there were approximately seven witnesses who represented businesses which dealt in industrial supplies. The remainder represented concerns engaged in the following business: floor covering, leather belting, paint, hardware, plumbing, engraving, yeast, paper boxes, agricultural sprays, sheet metal and bicycles.

In brief these witnesses testified that they shipped to one or more of the points covered by the applications; that they use or desire to use applicant's service; that in addition thereto they use

the services of the various existing carriers; that they are engaged in a business where speed in transit is a material aid in meeting competition or permitting them to maintain a low inventory and that they require a same day service to meet emergencies (this was more prevalent with those dealing in automotive parts and supplies).

There was no showing nor was there any attempt to show that the existing carriers were not providing an adequate overnight service. The only question therefore, is to determine whether a need exists for applicant's same day service and if so whether that need is being met. In view of the fact that protestants did not introduce any public witness testimony, the extent of the alleged need for a same day service must be determined through the testimony of applicant's witnesses.

Applicant's existing service is admittedly designed to meet the needs of those engaged in the shipping and receiving of automotive parts and supplies. According to its president it now enjoys approximately 90 per cent of this type of traffic moving in the Bay Area. Those witnesses who were not engaged in such businesses and who testified to a need for same day service stated that they were using either their own equipment, contract carriers, Greyhound Bus Lines, applicant or the existing certificated carriers. Several of these witnesses testified that they receive same day service from one or another of the existing carriers on transbay shipments. By the same token several of these witnesses stated that Highways' "Bullet Service" is same day to peninsula points as well as transbay and is in all respects satisfactory. Many who asserted they required a same day service further testified that they were unaware of the service provided by the existing carriers and had never inquired to determine whether such a service was available.

Protestants limited their showing to operating testimony. Generally they serve the area covered by the instant applications. According to the record, Interurban Express Corporation, Highway Transport Express and Haslett Warehouse Company render a same day service either upon request or as a matter of course.

In the absence of any exhibits reflecting the extent of applicant's past non-certificated operations the only support for granting the authority sought must be found in the testimony of the public witnesses. The major portion of this testimony appears to support an operation which applicant is already authorized to render. With respect to the same day aspect of applicant's proposed service there is no showing that the existing carriers have failed to meet this need.

After full consideration of the evidence the Commission is of the opinion and finds that public convenience and necessity has not been shown. The applications will therefore be denied.

O R D E R

Public hearings having been had and based upon the evidence therein adduced,

IT IS ORDERED:

(1) That Applications Nos. 32375 and 32376 be and they are hereby denied.

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

Dated at San Francisco, California, this 29th day of July, 1952.

R. Z. [Signature]
President
Justus F. [Signature]
Harold A. [Signature]
[Signature]
[Signature]
Commissioners