

ORIGINAL

Decision No. 47996

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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| In the Matter of the Application of |) | |
| KELLOGG EXPRESS AND DRAYING CO. for a |) | |
| certificate of public convenience and |) | Application No. 32605 |
| necessity authorizing the transportation |) | |
| of property between San Francisco and |) | |
| San Jose and intermediate points. |) | |

Reginald L. Vaughan and John G. Lyons, for applicant; Douglas Brookman and N. R. Moon, for Merchants Express Corporation; Edward M. Berol, Scott L. Harrington and Bertram S. Silver, for Highway Transport, Inc. and Highway Transport Express; Glanz and Russell, by Arthur H. Glanz, for Peninsula Motor Express, protestants; Willard S. Johnson, for J. Christenson Company and James H. Lucas, for Peninsula Delivery Service, interested parties; Grant L. Malquist, for the Commission's staff.

O P I N I O N

Applicant seeks, as an extension of its existing highway common carrier authority in territory within approximately 50 miles of San Francisco, a certificate of public convenience and necessity for the transportation of general commodities, except uncrated household goods, petroleum products in bulk, livestock and commodities requiring transportation in mechanically refrigerated equipment, between -

- (a) San Francisco and San Jose via U. S. Highways Nos. 101, 101 Alternate and 101 Bypass;
- (b) Redwood City and Woodside via unnumbered highway;
- (c) Oakland and Los Gatos via California State Highway 17;
- (d) Oakland and Warm Springs via U. S. Highway No. 50 and California State Highways 9 and 21;
- (e) Milpitas and Saratoga via California State Highway 9; serving all intermediate points on the above-described routes and all off-route points within three miles laterally of such routes.

The application was submitted on briefs after extensive public hearings before Examiner Gregory at San Francisco, San Jose and Redwood City during the first half of 1952.

The issue is whether public convenience and necessity

require the extension of applicant's service to and from the points enumerated above. Applicant contends in substance that existing common carrier services in the proposed territory are inadequate to meet the needs of shippers not only in that area but also of those in the areas surrounding San Francisco Bay on the north and east who desire common carrier transportation to or from points on the San Francisco Peninsula or down the east side of the bay to San Jose; that the growth of unrestricted general commodity common carrier transportation service has not matched the substantial recent development of the territory; that, from applicant's standpoint, substantial operating economies in terminal, pickup and delivery and overhead expense would be realized if the application were granted.

Protestants, chiefly Merchants Express and Highway Transport, maintain that the proposed territory is already "saturated" with common carrier service; that the grant of a new operative right to serve the peninsula would divert traffic from them and cause financial losses in addition to those from which they appear to have suffered in the early part of 1952; that the evidence indicates no need for applicant's proposed service since, they assert, applicant's own witnesses are generally satisfied with existing services.

As for the other carriers who appeared in the proceeding, Peninsula Motor Express presented a statement by way of protest, concerning its operations, stipulated to by counsel for applicant; Peninsula Delivery Service, originally a protestant, withdrew its opposition during the hearings and remained as an interested party; J. Christenson Company, originally an interested party, withdrew from the proceeding upon applicant's agreement to accept a restriction against transportation of any commodity in mechanically refrigerated equipment. Other common carriers holding either

restricted or unrestricted operative rights in the territory generally including San Francisco, the East Bay cities and peninsula points, neither appeared nor otherwise manifested⁽¹⁾ opposition to applicant's proposal.

Kellogg commenced highway common carrier service between San Francisco and East Bay points in 1933. From 1937 to 1945 its operations were extended under authority of the Commission to San Leandro, to Marin County points and to Vallejo and Napa. It has terminals at San Francisco, the hub of its operations, and at Oakland, Vallejo, Napa and San Rafael. Additional terminals are proposed at San Jose and in the San Carlos-Redwood City area. Overnight service is rendered to all points presently served. Twice-a-day service is furnished to many points where there is a demand for it, including the East Bay metropolitan area, the greater part of Marin County and the City of Vallejo and its adjacent area. Similar service is contemplated from San Francisco and Oakland to San Jose and peninsula points. Applicant appears to have the facilities, experience and financial resources with which to inaugurate the proposed operation.

Of the 57 shipper witnesses produced by applicant representing firms requiring transportation of a wide variety of general commodities throughout the territory sought to be served, approximately one-half the number had complaints concerning the service of one or more of the protesting carriers. Complaints included: delayed pickups at San Francisco, Oakland and San Rafael; delayed deliveries at peninsula points; breakage

(1) As noted in protestants' brief, those carriers include: California Motor Express, Ltd., California Motor Transport Co., Ltd., Pacific Motor Trucking Co., West Berkeley Express and Draying Co., Overland Freight Transfer Co., M. S. Dodd, Warren Transportation Co. and Garden City Transportation Co., Ltd. No rail line appeared or otherwise made protest.

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due to transfer of shipments from one carrier to another; difficulty in tracing shipments; unreliability of so-called "same-day" service by the two protestants who regularly offer that type of service.

Although complaints concerning delays in delivery were substantiated, to some extent, by exhibits produced by protestants themselves showing time in transit of shipments during selected periods, these complaints, together with others indicated above, appear to be of a minor nature considered in connection with the large amount of traffic handled by protestants in the course of their day-to-day operations.

The two chief protestants, Merchants and Highway, compete with one another and with applicant, as well as with Peninsula Motor Express, in territory they all serve. Both Merchants and Highway serve points between East Bay cities and San Jose on the east side of the bay as well as on the peninsula. Each also conducts extensive operations beyond the bay area, Merchants to Healdsburg, Calistoga, Stockton, Sacramento and Redding and numerous intermediate points, and Highway to Livermore, Hollister, Soledad, Santa Cruz and Monterey Bay points, as well as the Carmel Valley.

Peninsula Delivery Service operates between San Francisco and Palo Alto and intermediate points under limited general commodity rights, and between San Francisco, Oakland, San Leandro and points on the peninsula to San Jose for the transportation of auto parts moving between auto parts houses, garages and service stations. Recent applications by this carrier to transport general commodities between East Bay cities, San Francisco and San Jose and intermediate points were denied upon the ground that the major portion of the testimony in that proceeding appeared to support an operation which applicant was already authorized to render; namely, transportation of auto parts, and that there was

no showing that existing carriers had failed to meet the needs of witnesses called by applicant in that case for same-day service. (Dec. 47525, Appls. 32375, 32376).

Protestants here, in their brief, rely upon certain language used in that decision purporting to summarize the testimony of some of the applicant's witnesses indicating their satisfaction with the same-day service of one of the protestants there, who is also a protestant here, and their lack of knowledge of similar service by other carriers. Such comments on testimony in another matter do not nullify the probative value of the evidence in the instant proceeding.

Protestants called, or stipulated with applicant's counsel to the testimony of, some 145 shipper witnesses. These witnesses, in the main, appeared to be satisfied with the services of the carriers they patronized. In a proceeding such as this, however, it is not enough that even a substantial number may be receiving transportation service satisfactory to them if there also exists, as the record here makes plain that there does, a formidable segment of the shipping public whose needs are not being met by existing facilities and who desire and would use the additional service proposed.

There are other reasons, amply supported by the record, which lead us to conclude that applicant should be granted the certificate it seeks.

It is common knowledge that San Mateo and Santa Clara Counties, and other portions of the San Francisco Bay area, have experienced a substantial growth in population and industry in the years following the last war. Exhibits placed in the record emphasize this growth. It is also a fact that no unrestricted highway common carrier rights for the transportation of general commodities between San Francisco and San Jose have been created

since 1927, excepting the right granted to Peninsula Motor Express in 1950 to extend its service from Palo Alto to San Jose. The only other common carriers (exclusive of Southern Pacific Company and Western Pacific Railroad Company) which now enjoy unrestricted rights in that area are Merchants, Highway and Pacific Motor Trucking Company (the latter did not protest this application); whose operations are founded on rights created in 1918, 1920 and 1927, respectively. As mentioned before, both Merchants and Highway perform extensive operations beyond the San Francisco Bay area, as do the rail lines and Pacific Motor. Peninsula Motor, at the time of the hearing, did not operate down the east side of the bay. It does not offer same-day service on the San Francisco peninsula except in connection with truckload shipments. The other common carriers who did not protest the application either operate under 20,000 pound minimum weight restrictions, or are restricted to serving specified warehouse accounts, operate only down the east side of the bay to San Jose, or were otherwise not interested in opposing the authority here sought.

Applicant has specialized, over the years, in the rapid handling of package shipments radiating about 50 miles from San Francisco to the East Bay cities, to Marin County points and to points in Solano and Napa Counties. In a sense, the operation has become not unlike an extended city drayage business. Many of applicant's customers who now use the service to presently authorized points desire the same service down the peninsula and the east side of the bay, in order to simplify loading procedures, to avoid multiple handling of shipments and to secure expedited transit of items needed by consignees.

We are not persuaded that the extension to San Jose of the type of service offered by applicant under existing authority to

other points in the bay area will create the ruinous competition feared by protestants: We are of the opinion, rather, that an additional distribution service such as the one here proposed will tend to meet the needs of a substantial portion of the shipping public in a growing territory and that, accordingly, the application should be granted.

O R D E R

Public hearing having been held in the instant proceeding, evidence and argument having been received and considered, the matter having been submitted for decision, the Commission now being fully advised and hereby finding that public convenience and necessity so require;

IT IS ORDERED:

1. That Kellogg Express and Draying Company be and it 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 in Section 213, Public Utilities Code of California, for the transportation of general commodities, except uncrated household goods, petroleum products in bulk, livestock and commodities requiring transportation in mechanically refrigerated equipment, between -

- (a) San Francisco and San Jose via U. S. Highways Nos. 101, 101 Alternate and 101 Bypass;
- (b) Redwood City and Woodside via unnumbered highway;
- (c) Oakland and Los Gatos via California State Highway 17;
- (d) Oakland and Warm Springs via U. S. Highway No. 50 and California State Highways 9 and 21;
- (e) Milpitas and Saratoga via California State Highway 9;

serving all intermediate points on the above-described routes and all off-route points within three miles laterally of such routes,

as an extension and enlargement of applicant's existing authority.

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 on not less than five (5) days' notice to the Commission and the public, applicant shall establish the service herein described and authorized and file in triplicate, and concurrently make effective, appropriate tariffs and timetables commensurate with the authority herein granted.

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

Dated at San Francisco, California, this 2nd day of December, 1952.

R. J. [Signature]
 PRESIDENT
James F. [Signature]
Harold P. [Signature]
Russell [Signature]
[Signature]
 COMMISSIONERS