

ORIGINAL

Decision No. 48008

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of KELLOGG EXPRESS AND DRAYING CO. for a certificate of public convenience and necessity authorizing the trans- portation of property between specified San Francisco Bay Points.))))))	Application No. 32606
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In the Matter of the Application of HASLETT WAREHOUSE COMPANY, for a certificate to operate as a highway common carrier for the transportation of property.)))))	Application No. 32504 .
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In the Matter of the Application of UNITED TRANSFER COMPANY, for a certificate to operate as a highway common carrier, for the transportation of property.)))))	Application No. 32505
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In the Matter of the Application of INTER-URBAN EXPRESS CORPORATION for a certificate to operate as a highway common carrier, for the transportation of property.)))))	Application No. 32506 .
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In the Matter of the Application of CANTON TRANSBAY EXPRESS, INC. for a certificate to operate as a highway common carrier for the transportation of property.)))))	Application No. 32507 -
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In the Matter of the Application of J. M. ATTHOWE, doing business as EAST BAY DRAYAGE & WAREHOUSE COMPANY, for a certificate to operate as a highway common carrier, for the transportation of property.))))))	Application No. 32508
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Edward M. Berol and Scott F. Harrington for applicants Haslett Warehouse Company, United Transfer Co., Inter-Urban Express Corp., Canton Transbay Express, Inc., and J. M. Atthowe, doing business as East Bay Drayage and Warehouse Company; Reginald L. Vaughan and John G. Lyons for applicant Kellogg Express & Draying Company; Ward G. Walkup, Jr., for Merchants Express Corp., protestant; Willard S. Johnson for J. Christenson Company, interested party; Frederick W. Mielke for Delta Lines, Inc., interested party; Grant G. Malquist for the Commission staff.

O P I N I O N

Each of the above-named applicants presently serves generally between points in the San Francisco Bay Area as a highway common

carrier under authority of this Commission. Due to an increase in population and a consequent expansion of the industrial and mercantile area of this region into such points as Daly City, Colma and South San Francisco, as Hayward, Castro Valley and Mount Eden, parts of San Leandro and San Lorenzo and as parts of Richmond, San Pablo and El Cerrito, it is alleged that the drayage area of the San Francisco Bay territory has expanded so as to properly include these points.

Applicant Kallogg Express and Draying Company herein proposes to serve Mount Eden, Hayward, Castro Valley, Daly City, Colma and South San Francisco. Applicant Haslett Warehouse Company now proposes to serve a part of Richmond, San Pablo, El Cerrito, a part of San Leandro, San Lorenzo, Mount Eden, Hayward, Castro Valley, Daly City, Colma and South San Francisco. United Transfer Company seeks to serve a part of Richmond, San Pablo, El Cerrito, a part of San Leandro, San Lorenzo, Mount Eden, Hayward, Castro Valley, Daly City, Colma and South San Francisco. Inter-Urban Express Corporation requests authority to serve a part of Richmond, Giant, a part of San Leandro, San Lorenzo, Mount Eden, Hayward, Castro Valley, Daly City, Colma and South San Francisco. Applicant, J. M. Atthowe doing business as East Bay Drayage and Warehouse Company asks permission to serve a part of Richmond, San Pablo, El Cerrito, a part of San Leandro, San Lorenzo, Mount Eden, Hayward, Castro Valley, Daly City, Colma and South San Francisco. Applicant Canton Transbay Express, Inc., requested permission to dismiss its application.

Consolidated public hearings were held before Examiner Austin in San Francisco on November 5, 6 and 7, and on December 10, all in 1951, and at Hayward, California, December 17, 1951. Oral and documentary evidence was adduced and on the latter date the matter was submitted for decision on briefs now on file.

Applicants assert that with the rights herein requested they respectively can fully serve the San Francisco transbay metropolitan area as it actually exists. The reason only portions of Richmond and San Leandro are sought to be included is because the remaining portions of said cities are presently covered under the three-mile pickup and delivery limit provided in Section 1063 of the Public Utilities Code (Formerly Sec. 50-3/4 of the Public Utilities Act). The request of Canton Transbay Express, Inc. for a dismissal will be granted and said application will receive no further consideration in this opinion. The applications each seek authority to carry general commodities, except uncrated household goods, petroleum products in bulk and livestock. Each application was later amended so as to exclude the transportation of commodities in insulated equipment under mechanical refrigeration.

All competitors and interested parties were served with copies of the applications and were duly notified of the hearings. Only Merchant's Express protested this application. The Commission staff submitted an exhibit based upon road checks which indicated that in this area only 25.3% of the freight moving over the highways was carried by certificated highway common carriers while 39.8% moved by so-called permitted carriers. The balance, except that moving in interstate commerce, was carried in proprietary vehicles. This tends to indicate that in this area the Commission's statement of policy in Decision No. 42648 dated March 22, 1949 in Case No. 4823 is still applicable. Such liberality in granting applications should not, as contended by the sole protestant, be restricted to an operation in favor of those permitted carriers who have engaged in service in the area. This protestant, with authority to serve the entire expanded area, now seeks to limit competition by preventing these certificated applicants from giving their customers the

complete service required if this metropolitan area is to be satisfactorily served. This limitation, if permitted, would benefit Merchants Express at the expense of public convenience and necessity.

Except Inter-Urban which started to handle shipments to the Hayward area on or about August 1, 1951, the applicants have lawfully restricted their service within their respective certificated authority. The extent of the demand for this service is indicated by the fact that Inter-Urban although it solicited no business in this territory actually transported over 600 shipments into Hayward during August and September, 1951. The San Leandro Chamber of Commerce representative indicated that body's active support of the five applications based upon the needs of that city and the surrounding area. The uncontradicted evidence showed that the Bay Area has enjoyed and will continue to undergo a phenomenal population and industrial growth. Each of the five applicants submitted operating testimony showing a minimum of 25 years of continuous service to the bay area and adequate financial ability. More specifically the applicants introduced the testimony of eighteen public witnesses as to public convenience and necessity.

Summarized, this public witness testimony supports the following findings. The San Francisco Bay Metropolitan Area properly includes the points herein sought to be served by the applicants. This is shown by testimony of the representatives of manufacturers and other distributors who stated that to completely meet their delivery requirements these points must also be served. Several of these shippers asserted that it was of importance to their firms to include these points in the area to be served by split delivery shipments. Although most of the applicants were parties to joint rate contracts into these points the necessity for the transfers to the vehicles of other carriers with the inevitable

delay and occasion for increase in damage claims resulted in an almost total nonuse of such joint rates. It is obvious that if applicants are to operate at all to these requested points the service must be improved by permitting their carrying the goods in their respective equipment and under their separate tariffs. The claimed expansion of the service area is demonstrated by the testimony that many manufacturing plants and even more mercantile and service firms have followed the movement of population to the fringe points above named. Protestant's contention that its own service to these points is so efficient and complete that there is no need for any additional carriers is not convincing. Applicants made no effort to prove poor service on the part of protestant Merchants Express Corporation. On cross examination, however, this protestant revealed some actual criticism of its highway common carrier service. Also by faint praise and the statement by some customers of Merchants that they desired and felt the need for the proposed services this cross examination indicated a rather definite need for competition.

Finally, it is significant that protestant attempted only to combat applicant's showing by bringing in thirteen shipper witnesses from the Hayward area. These witnesses, as well as the additional ten witnesses covered by a stipulation merely stated that as they were themselves being served adequately by Merchants they had no individual need for the services proffered by applicants.

From a careful consideration of all the evidence of record in these consolidated proceedings the Commission finds as a fact that public convenience and necessity require that each of the proposed services be furnished to the public in the areas as described in the following order.

O R D E R

Applications as above entitled having been filed, public

hearings having been held thereon, the matters being duly submitted on briefs, and the Commission hereby finding that public convenience and necessity so require,

IT IS ORDERED:

(1) That as requested Application No. 32507 of Canton Transbay Express, Inc. be, and it hereby is dismissed.

(2) That a certificate of public convenience and necessity be, and it hereby is, granted to Kellogg Express and Draying Company, a California corporation, authorizing it to operate as a highway common carrier, as defined in Section 213 of the Public Utilities Code, as an extension of and to be consolidated with the present operations for the transportation of general commodities, excepting uncrated household goods, petroleum products in bulk and livestock and excepting the transportation of commodities in insulated equipment under mechanical refrigeration between San Francisco, Oakland, San Leandro and San Lorenzo on the one hand and on the other hand South San Francisco, Daly City, Colma, Castro Valley, Hayward and Mount Eden via U. S. Highways Nos. 101 and 101 Bypass, and 101 Alternate U. S. Highways 50 and 40 and California State Highways 17 and 9 and unnumbered highways and serving all intermediate points on the above-described routes and all off-route points within three (3) miles laterally from such routes.

(3) That a certificate of public convenience and necessity be, and it hereby is, granted to Haslett Warehouse Company, a California corporation, authorizing it to operate as a highway common carrier as defined in Section 213 of the Public Utilities Code as an extension of and to be consolidated with its present operations for the transportation of general commodities, except uncrated household goods, petroleum products in bulk, and livestock and except the transportation of commodities in insulated equipment under mechanical

refrigeration between Oakland, Emeryville, Albany, Piedmont, Berkeley, Alameda, Melrose, Fruitvale, and San Francisco on the one hand and on the other hand Richmond, San Pablo, El Cerrito, San Leandro, San Lorenzo, Mount Eden, Hayward, Castro Valley, Daly City, Colma, and South San Francisco and all intermediate points via U. S. Highways 101 and 101 Bypass, 101 Alternate, 50, 40, California State Highways 17 and 9, and unnumbered highways.

(4) That a certificate of public convenience and necessity be, and it hereby is, granted to United Transfer Company, a California corporation, authorizing it to operate as a highway common carrier as defined in Section 213 of the Public Utilities Code as an extension of and to be consolidated with its present operations for the transportation of general commodities, except uncrated household goods, petroleum products in bulk and livestock, and except the transportation of commodities in insulated equipment under mechanical refrigeration between San Francisco, Oakland, Alameda, Albany, Emeryville, Piedmont, Fruitvale and Melrose on the one hand and on the other hand Richmond, San Pablo, El Cerrito, San Leandro, San Lorenzo, Mount Eden, Hayward, Castro Valley, Daly City, Colma and South San Francisco via U. S. Highway 101, 101 By-Pass, 101 Alternate, 50, 40, California State Highways 17, 9 and unnumbered highways.

(5) That a certificate of public convenience and necessity be, and it hereby is granted to Inter-Urban Express Corporation, a California corporation, authorizing it to operate as a highway common carrier as defined in Section 213 of the Public Utilities Code as an extension of and to be consolidated with its present operations for the transportation of general commodities, except uncrated household goods, petroleum products in bulk, and livestock, and except the transportation of commodities in insulated equipment under mechanical refrigeration between San Francisco, Oakland, Berkeley, Alameda,

Piedmont, Emeryville, Fruitvale, Melrose, San Pablo, Albany and El Cerrito on the one hand and on the other hand Richmond, Giant, San Leandro, San Lorenzo, Mount Eden, Hayward, Castro Valley, Daly City, Colma and South San Francisco via U. S. Highways 101, 101 By-Pass, 101 Alternate, 50, 40, California State Highways 17, 9, and unnumbered highways.

(6) That, a certificate of public convenience and necessity be, and it hereby is granted to J. M. Atthowe, doing business as East Bay Drayage & Warehouse Company, authorizing him to operate as a highway common carrier as defined in Section 213 of the Public Utilities Code as an extension of and to be consolidated with his present operations for the transportation of general commodities, except uncrated household goods, petroleum products in bulk, and livestock, and except the transportation of commodities in insulated equipment under mechanical refrigeration between San Francisco, Oakland, Berkeley, Alameda, Emeryville, Piedmont, Fruitvale, Melrose and Albany on the one hand and on the other hand Richmond, San Pablo, El Cerrito, San Leandro, San Lorenzo, Mount Eden, Hayward, Castro Valley, Daly City, Colma, and South San Francisco via U. S. Highways 101, 101 By-Pass, 101 Alternate, 50, 40, California State Highways 17 and 9, and unnumbered highways.

(7) That in providing service pursuant to the certificates herein granted applicants shall comply with the following service regulations:

- (a) Within thirty (30) days after the effective date hereof, each of said applicants shall file a written acceptance of the certificate herein granted to it.
- (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 each of said applicants shall establish the service herein authorized and file in triplicate and concurrently

make effective tariffs satisfactory to the Commission.

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
Justin F. [Signature]
Harold P. [Signature]
Remond [Signature]
John E. [Signature]
COMMISSIONERS