

ORIGINAL

Decision No. 48307

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Merchants Express Corporation,)
 a corporation,)
)
 Complainant)
)
 vs.)
)
 Overland Freight Transfer Company,)
 a corporation,)
)
 Defendant.)

Case No. 54-22

Douglas Brookman, for Merchants Express Corporation, complainant;
Reginald L. Vaughan, for Overland Freight Transfer Company, defendant.

O P I N I O N

Complainant Merchants Express Corporation, a highway common carrier engaged in the transportation of property between San Francisco and East Bay cities and also between San Francisco and East Bay cities, on the one hand, and San Bruno, San Jose, and all intermediate points thereto along U. S. Highways Nos. 101 and 101 By-Pass, on the other hand, on November 5, 1952, filed this complaint seeking revocation of the highway common carrier operative rights of defendant Overland Freight Transfer Company. The highway common carrier operative rights of defendant are similar to those of plaintiff, but defendant's peninsula operative rights are subject to the express proviso "that no shipment shall be transported unless it has either origin or destination in either a Turner-Whittell warehouse or a Gibraltar warehouse, or unless it moves to or from a person or firm which has a current storage account with either of said warehouses."

As grounds for revoking defendant's highway common carrier operative rights complainant alleges:

(1) That defendant intends to discontinue its operations as a highway common carrier, and as a part of its program of abandonment has filed an application for authority to transfer its highway common carrier rights to De Pue Drayage Corporation.

(2) That it is contrary to public interest for defendant's highway common carrier rights to be transferred to De Pue Drayage Corporation because De Pue Drayage Corporation has no ownership or control of the Gibraltar and Turner-Whittell warehouses, thus making operation by De Pue Drayage Corporation between the San Francisco Bay territory and San Jose and points intermediate thereto under said highway common carrier rights impractical.

(3) That as complainant and other certificated highway common carriers are in a position adequately to handle the traffic now handled under defendant's highway common carrier certificate, public convenience and necessity no longer require service under said certificate.

PUBLIC HEARING

Defendant filed its answer to the complaint and a public hearing was held before Examiner Cline at San Francisco on November 24, 1952.

The record in Application No. 32112 in which the highway common carrier certificate was granted to defendant, and the record in Application No. 33807, in which authority is sought to transfer said certificate, were incorporated by reference. In this proceeding complainant introduced no testimony through its own witnesses but actively participated in cross-examination of defendant's witnesses. At the conclusion of the hearing the matter was submitted for decision.

CONCLUSIONS

The record shows that defendant is in the process of liquidation and has made application to this Commission for authorization to transfer its highway common carrier operative rights to De Pue

Drayage Corporation. Witness Raymond, Vice-President and General Manager of Overland Freight Transfer Company, testified that if the Commission does not approve the proposed transfer of operative rights defendant will seek approval to transfer said rights to a new partnership to be established which will be known as Gibraltar warehouses.

The record further shows that defendant has not discontinued and abandoned service as a highway common carrier and that it has no intention of discontinuing such service unless the Commission authorizes the transfer of its highway common carrier operative rights.

It is not impractical for a carrier not affiliated with the Gibraltar and Turner-Whittell warehouses to handle shipments for patrons of these warehouses. The patrons of these warehouses select their own carriers and the record shows that at the present time carriers other than defendant handle shipments for patrons of these warehouses.

This Commission has previously granted defendant a certificate of public convenience and necessity. The record does not show that defendant has in any respect failed to fulfill its obligations and duties as a highway common carrier pursuant to its authorization from this Commission. A showing that other common carriers can serve customers now being served by this defendant, standing alone, will not justify revocation of defendant's highway common carrier operative rights. Accordingly, defendant's request that the complaint be dismissed will be granted.

O R D E R

Public hearing having been held in the above-entitled case, the matter having been submitted, and the Commission being fully advised and finding that complainant has failed to show that defendant's highway common carrier operative rights should be revoked,

IT IS HEREBY ORDERED that the complaint herein be dismissed.

The Secretary is directed to cause a certified copy of this decision to be served upon complainant and upon the defendant herein.

The effective date of this order shall be twenty days after the date of service upon complainant herein.

Dated at San Francisco, California, this 24th day of February, 1953.

R. T. [Signature]
President

Justice J. [Signature]
Harold P. [Signature]

[Signature]
[Signature]
Commissioners