

ORIGINALDecision No. 48724

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 EVELYN O. SIMMONDS, doing business)
 as WEST BERKELEY EXPRESS AND DRAYING)
 CO., For a certificate of public) Application No. 33974
 convenience and necessity removing)
 certain restrictions now appurtenant)
 to certain of her highway common)
 carrier operations.)

Marvin Handler and William E. Shuholm, for
 applicant.
Robert W. Walker, Wallace L. Ware and Matthew
Witte, for The Atchison, Topeka and
 Santa Fe Railway Company and Santa Fe
 Transportation Company, protestants.
Frederick E. Fuhrman and William Meinhold,
 for Southern Pacific Company and Pacific
 Motor Trucking Company, protestants.
Edward M. Berol, Bertram S. Silver and Thomas
Brown, for Highway Transport, Inc., protestant.
Douglas Brookman and Norman R. Moon, for
 Merchants Express Corporation, protestant.
Frederick Mielke, for Delta Lines, Inc.,
 protestant.

O P I N I O N

By her application filed December 24, 1952, Evelyn O. Simmonds doing business as West Berkeley Express and presently rendering service as a highway common carrier between Antioch and San Jose and named intermediate points including San Francisco, subject to weight restrictions at certain points, seeks authority to remove said weight restrictions and to serve all intermediate points.

Public hearings were held before Examiner Daly on March 24, and 25, 1953 at Oakland; March 26, 1953 at San Jose; and March 27, May 19 and 20, 1953 at San Francisco. Appearances in protest to the authority sought were entered by The Atchison, Topeka and Santa Fe Railway Company, Santa Fe Transportation Company, Southern Pacific Company, Pacific Motor Trucking Company, Highway Transport, Inc., Merchants Express Corporation and Delta Lines, Inc.

Proposed Operations

By Decision No. 46966 dated April 8, 1952, in Application No. 32113, applicant was authorized to transport general commodities, with certain exceptions, between Antioch and San Jose and named intermediate points, subject to the restrictions that applicant shall transport no shipment unless it weighs 4,000 pounds or more or bears a charge applicable to a shipment of 4,000 pounds or more to or from Hercules, Oleum, Crockett, Avon, Shell Point, Clyde, Port Chicago, Nichols, Antioch, Castro Valley, Alvarado, Decoto, Centerville, Irvington, Milpitas and Santa Clara. Applicant requests the removal of the weight restriction and the authority to serve all intermediate points.

It is alleged that the restriction creates a great deal of confusion in view of the fact that the present authority permits the transportation of shipments of any weight to said points provided they consist of empty containers, acids as described in Items 50 to 215, inclusive, and chemicals as described in Items 9955 to 12030, inclusive, of the Western Classification No. 75, Cal. P.U.C. No. 8. It is further alleged that in spite of the fact that applicant's shippers and drivers have been informed as to the extent of the existing operative rights many shipments are picked up which do not fall within the scope of such authority. This confusion, it is claimed, is intensified by the three-mile provision of Section 1063 of the Public Utilities Code. For example, San Jose is unrestricted whereas Santa Clara, which is within the three-mile radius, is a restricted point. If applicant had excluded Santa Clara from her proposal it is asserted that she might have served it as an unrestricted point under said Section 1063. Applicant also claims that the failure to include all intermediate points is of little meaning in view of the fact that the three-mile provision of such section practically covers all of the intermediate points sought. The

restriction, it is asserted, works a substantial hardship and has caused applicant to discontinue transporting a large volume of traffic formerly transported as a permitted carrier. Although a pickup and delivery service is provided at all points served, applicant's inability to transport any-quantity shipments to or from all points results in a low load factor and is, allegedly, uneconomical.

Public Witness Testimony

(1)
Sixteen witnesses testified on behalf of applicant. In substance these witnesses testified that they use applicant to unrestricted points and are very satisfied with the nature of the service. They further testified that in addition to intermediate points they had used applicant to both restricted as well as unrestricted points as a permitted carrier. After certification, however, many found it necessary to discontinue the use of applicant to restricted points. They asserted that they had shipments of less than 4,000 pounds and if the restriction were removed that they would once again utilize applicant to all points that she served. The factors which would prompt the witnesses' use of applicant to a greater extent ranged from the convenience of same day service offered and provided by applicant, dissatisfaction with existing carriers, and the desire to minimize the number of trucks calling at their places of business because of limited dock facilities, and the advantage that would be available to several in the use of applicant on split deliveries. With respect to the last mentioned reason, applicant as a practical matter has been accepting and transporting split delivery shipments of less than 4,000 pounds if the total weight of the aggregate is 4,000 pounds or more.

Two witnesses representing Shippers Express Company and Machado Truck Lines, highway common carriers rendering service to points between the Los Angeles and San Francisco areas, testified

(1) A breakdown discloses that one witness was from San Francisco, three from Berkeley, three from Oakland, one from Niles, four from San Jose, three from Santa Clara and one from Mission San Jose.

that their respective carriers have been authorized to enter into joint rates with applicant. They stated that their companies would have shipments of less than 4,000 pounds destined to restricted points and that the removal of the restrictions would facilitate the movement of these shipments under the joint rate arrangement.

Protestants introduced evidence both oral and documentary indicating the nature of their respective operations. The evidence indicates that the existing carriers for the most part render a daily overnight service to the points within the area herein considered.

In considering this record, the Commission is mindful of the fact that the restrictions here considered were imposed because the Commission found that applicant had previously failed to make a sufficient showing of public convenience and necessity to the restricted points. The Commission found that although applicant's exhibits contained many shipments of less than 4,000 pounds to restricted points they were chiefly transported subsequent to the filing of her application. It is evident that since certification applicant has complied with the weight restrictions and now seeks their removal for the purpose of rendering a more complete service to her customers. The Commission is of the opinion that the instant record justifies the removal of the restrictions as requested as well as service to all intermediate points.

After full consideration of the evidence, the Commission is of the opinion and so finds that public convenience and necessity require that the application be granted.

O R D E R

A public hearing having been held and upon consideration of the evidence adduced therein,

IT IS ORDERED:

(1) That ordering paragraph 1 of Decision No. 46966 dated April 8, 1952, in Application No. 32113, is hereby amended to read as

follows:

(1) That a certificate of public convenience and necessity be and it is hereby granted to Evelyn O. Simmonds authorizing the establishment and operation of a service as a highway common carrier, as defined in Section 213 of the Public Utilities Code, for the transportation of general commodities except household goods, petroleum products in bulk, fresh fruits and vegetables, and commodities requiring refrigeration between San Francisco, South San Francisco, Pittsburg, Hercules, Oleum, Crockett, Avon, Shell Point, Clyde, Port Chicago, Nichols, Antioch, Martinez, Stege, San Pablo, Richmond, El Cerrito, Albany, Berkeley, Emeryville, Oakland, Piedmont, Alameda, San Leandro, San Lorenzo, Castro Valley, Hayward, Newark, Alvarado, Decoto, Centerville, Irvington, Niles, Milpitas, Santa Clara, San Jose and all intermediate points, provided that no shipment shall be transported between San Francisco or South San Francisco, on the one hand, and Santa Clara or San Jose, on the other hand.

(2) That in all other respects Decision No. 46966 shall remain in full force and effect.

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

Dated at San Francisco California, this 16th day of June, 1953.

Commissioner Konnoth Potter, being necessarily absent, did not participate in the disposition of this proceeding.

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

R. B. [Signature]
 President
Justin J. [Signature]
[Signature]
 Commissioners