

ORIGINAL

Decision No. 49004

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of	)	
GORDON A. SAMUELSON and GILBERT J.	)	
MUNSON, copartners, doing business	)	
as CIRCLE FREIGHT LINES for an order	)	
amending Decision No. 43825 to name	)	Application No. 34119
Emeryville as a point which applicants	)	
are authorized to serve as a highway	)	
common carrier and to clarify it in	)	
other respects.	)	

O P I N I O N

By their application in this matter, filed February 25, 1953, Gordon A. Samuelson and Gilbert J. Munson, partners, doing business as Circle Freight Lines, seek a modification of Decision No. 43825, from which their operating rights originally stem, so that (a) Emeryville may be included among the East Bay points which Circle is authorized to serve; and that (b) certain zonal restrictions, affecting Circle's operations at both Walnut Creek and Concord, may be removed. We shall deal with these proposals in the order mentioned.

Omission of Emeryville as a Service Point

Applicant alleges that Decision No. 43825 followed the language of the amended application filed in that proceeding, viz., Application No. 28856, from which, by inadvertence, specific

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- (1) For convenience, applicants Samuelson and Munson, doing business as Circle Freight Lines, will be referred to hereafter as applicant or as Circle.
  - (2) The certificate, under which Circle initially was authorized to operate as a highway common carrier, was granted by Decision No. 43825, rendered February 14, 1950, in Application No. 28856 (49 Cal P.U.C. 377).

reference to Emeryville was omitted; that Circle desired and intended to serve that point; that said proceeding was tried as though Emeryville had been named expressly as a proposed point of service; that evidence concerning the need for applicant's service to and from Emeryville, as well as other points, was supplied by various shipper witnesses; that Emeryville was indicated as a proposed point of service in the briefs; and that it was named as a tariff point in the tariff which Circle filed, following the rendition of Decision No. 43825. Circle, it is stated, understood and believed that it was authorized, by Decision No. 43825, to provide service to and from Emeryville, and accordingly, it has served that point continuously. Assertedly, the omission of Emeryville as a named point of service first came to applicant's attention following the issuance of Decision No. 48136, rendered January 6, 1953 (in Applications Nos. 28649, 28856 and 32309), where that circumstance was pointed out. Public convenience and necessity, it is said, require the extension of Circle's operations to Emeryville.

An inspection of the record in Application No. 28856 reveals that Emeryville was not designated as a proposed point of service. By its application in that proceeding, Circle specifically sought authority to operate as a highway common carrier "between San Francisco and Oakland and those parts of Albany, Alameda, Berkeley and Piedmont described in the description of the Oakland Pickup and Delivery Zone in Highway Carriers' Tariff No. 2", on the one hand, and certain Contra Costa County points, on the other hand. Although Emeryville was included within the outer boundaries of the zone mentioned, nevertheless it was not indicated in the application as a point to be served.

During the course of the hearing in that matter, evidence was offered concerning the movement of traffic to and from Emeryville. Applicant referred to that point, along with other East Bay cities. Many of the shipper witnesses, engaged in business at various Contra Costa County communities, mentioned shipments which they had received from Emeryville, among other San Francisco Bay cities. No objection to the relevancy of this testimony, predicated on the ground that Emeryville had not been designated in the application as a proposed service point, was raised by protestants. Similar testimony was offered by some, but not all, of the protestants. This subject, however, was accorded but scant consideration in the briefs, receiving only the most cursory mention.

Decision No. 43825 did not expressly authorize service to and from Emeryville. (3) In this respect it followed the language of the application, which as stated above, made no reference to that city. Had Circle requested that the application be amended to conform to the proof, its motion undoubtedly would have been granted. However, applicant did not see fit to do so. Clearly, in issuing the certificate, the Commission was entitled to rely upon the allegations of the application; it neither was authorized, nor was it required, to assume that applicant desired to expand the scope of its offer of service.

By a certificate subsequently granted, Circle was authorized to operate between certain San Francisco Bay points (including Emeryville) and Contra Costa County points which it

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(3) By Decision No. 43825, Circle was certificated to operate between certain San Francisco Bay points (excluding Emeryville), described above, and Walnut Creek, Danville, Saranap, Concord, Pacheco, Clayton and certain intermediate points and lateral zones.

had not theretofore been authorized to serve. These comprised Port Chicago, Pittsburg, Antioch, Oakley, Knightsen, Brentwood, Orinda, Lafayette, Bethal Island and certain intermediate points and lateral zones. In that proceeding, however, Circle expressly sought authority to serve Emeryville. Thus, Circle may now operate between some Contra Costa County points and Emeryville, but not between that city and other Contra Costa County points.

In view of all the surrounding circumstances and conditions, it would seem appropriate that Circle should have the right to operate between Emeryville and all the Contra Costa County points which it is authorized to serve. Quite apparently, the failure to specify Emeryville as a service point, in Application No. 28856, was due to an oversight on applicant's part. A certificate, therefore, will be issued authorizing the performance of such a service; and Decision No. 43825 will be modified accordingly.

Zonal Restrictions at Walnut Creek and Concord

By Decision No. 43825, Circle was authorized to extend its service to "Walnut Creek (including all points within a radius of one mile of the city limits)" and to "Concord (including all points within two miles of the city limits)". Applicant alleges that it is uncertain whether these parenthetical clauses would limit or affect the right conferred by Section 1063, Public Utilities Code, to provide pick up and delivery service, without a certificate, within zones not exceeding three miles of the corporate limits of any city which it serves. Within the area lying between the boundaries of these three mile zones and the territorial limits described above, it is said, there are places near both Walnut Creek and Concord where Circle's service to and from San Francisco Bay points is needed and required by public convenience and necessity. Applicant, accordingly, seeks an order clarifying and

amending Decision No. 43825 by eliminating the zonal restrictions prescribed at each of these municipalities.

The restrictions in question were established in accordance with, and responsive to, Circle's request. They follow literally the language of the application, as well as the amended application, filed in Application No. 28856. At the hearing no reference was made to either of the proposed zones, although the record disclosed the growth of the areas surrounding both communities. No question was raised by any participating party, in the record or on brief, regarding any possible conflict between the provisions of Section 1063, supra, and the proposed zonal restrictions.

It is true that the areas surrounding Walnut Creek and Concord, respectively, within which applicant was expressly authorized to extend its operations, are less extensive than the three mile zones throughout which a highway common carrier may provide pick up, delivery and transfer service, under the terms of Section 1063. However, as stated above, this limitation was imposed at Circle's request; presumptively, applicant was acquainted with the territory within which it desired apparently to confine its operations.

In considering the nature of the operations which may be conducted pursuant to Section 1063, supra (formerly Section 50-3/4 (c), Public Utilities Act), the Commission has pointed out that, under the provisions of this section, no additional local service may be performed within pickup and delivery zones. We need not concern ourselves here with the nature, scope and characteristics

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(4) East Bay Pickup and Delivery Limits of Highway Common Carriers, (1948) 48 Cal P.U.C. 348, 349, 350; Pacific Freight Lines vs. So. Cal. Freight Lines (1952) 51 Cal P.U.C. 385, 389, 390.

of the service which applicant lawfully may provide within such zones, since we believe that, in view of the showing made, the existing restrictions both at Walnut Creek and Concord should be eliminated.

Notice to Interested Parties

At the outset applicant served copies of the application in the instant proceeding upon some, but not all, of the parties who might be considered as having a substantial interest in this matter. Subsequently, at the Commission's suggestion, copies of the application were served upon all other parties who appeared to be interested. None of these carriers ever has voiced an objection to Circle's proposal to modify or amend Decision No. 43825 in any of the respects mentioned above. The application, accordingly, will be granted. No public hearing appears to be necessary.

O R D E R

Application as above entitled having been filed, the Commission having considered the same, and it appearing that the granting of the relief sought would not be contrary to the public interest and that public convenience and necessity so require,

IT IS ORDERED:

(1) That ordering paragraph (1) of the order contained in Decision No. 43825, rendered February 14, 1950, in Application No. 28856, be and it hereby is amended to read as follows, viz.:

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- (5) Those served originally comprised Railway Express Agency, Sacramento Northern Railway Company, Southern Pacific Company and Stapel Truck Line.
- (6) The parties subsequently served comprised Santa Fe Transportation Company, Delta Lines, Inc., Inter Urban Express Corporation, Merchants Express Corporation, J. A. Nevis Trucking, Inc., J. Christenson Co., Delivery Service Co. and West Berkeley Express and Draying Co.

"(1) That a certificate of public convenience and necessity be and it hereby is granted to Gilbert J. Munson and Gordon A. Samuelson, copartners, authorizing the establishment and operation of a service as a highway common carrier (as defined in Section 2-3/4 of the Public Utilities Act) for the transportation of general commodities between San Francisco and Oakland and those parts of Albany, Alameda, Berkeley, Emeryville and Piedmont described in the description of the Oakland Pickup and Delivery Zone in the Commission's Highway Carriers' Tariff No. 2, on the one hand, and on the other hand, the following points situated in Contra Costa County, viz.: Walnut Creek, Danville, Saranap, Concord, Pacheco and Clayton; all points intermediate to the above named points in Contra Costa County; and all points situated within one mile laterally on each side of California State Highway No. 21 between Pacheco and Danville."

(2) That in all other respects said Decision No. 43825 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 25<sup>th</sup> day of August, 1953.

[Signature]  
President  
[Signature]  
[Signature]  
Commissioners