

ORIGINALDecision No. 49369

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 INTER-URBAN EXPRESS CORPORATION for)
 a certificate of public convenience)
 and necessity authorizing the trans-)
 portation of property between)
 Oakland, Antioch and specified)
 points, as an extension of its pres-)
 ent operations.)

Application No. 32927

Reginald L. Vaughan, Varnum Paul, John G. Lyons,
 for Inter-Urban Express Corporation, applicant.
Scott Elder, for Circle Freight Lines and Stapel
 Truck Lines; Spurgeon Avakian, for Stapel
 Truck Lines; Frederick W. Mielke, for Delta
 Lines, Inc.; N. R. Moon, for Merchants Express
 Corporation; Robert W. Walker and Richard K.
Knowlton, for The Atchison, Topeka and Santa
 Fe Railway Company and Santa Fe Transportation
 Company, protestants.
Willard S. Johnson, for J. Christenson Co. and
J. A. Nevis Trucking, Inc.; Clifford Worth,
 for Fibreboard Products, Inc., interested
 parties.

O P I N I O N

Applicant Inter-Urban Express Corporation, a California corporation, is engaged in the transportation of general commodities as a highway common carrier between San Francisco, certain East Bay points, Martinez and specified intermediate points. By its application, as amended, applicant seeks operating authority between Oakland and Antioch (as an extension of its existing operations), via State Highway No. 24, serving all intermediate points along this route and all off-route points situated laterally within three miles from such route.^{1/} The application was opposed by common carriers

^{1/} The application, as originally filed November 23, 1951, also sought authority to operate between Walnut Creek and Danville via State Highway No. 21. By an amendment to the application, filed April 15, 1952, the proposal to operate between these points was withdrawn.

now serving this territory, who appeared as protestants.^{2/}

Public hearings were held before Examiner Austin at San Francisco, following which the matter was submitted on briefs, since filed.^{3/}

Following the original submission of this matter, protestants Circle and Stapel filed their petition requesting that the matter be reopened for the purpose of receiving additional evidence. By its order dated April 28, 1953, the Commission reopened this proceeding for further hearing, which would be limited, however, to the presentation of evidence bearing upon certain subjects. Pursuant to the stipulation between the parties, filed October 15, 1953, the matter was resubmitted.^{4/}

Evidence was introduced by the respective parties. Applicant called its vice-president and general manager, its secretary-treasurer and certain shipper witnesses. Certain protestants produced their operating officials. Such a showing was made on behalf of Santa Fe, Delta, Circle, Stapel and Merchants.

^{2/} The common carriers appearing as protestants comprised Circle Freight Lines, Stapel Truck Lines, Delta Lines, Inc., Merchants Express Corporation and The Atchison, Topeka and Santa Fe Railway Company (including its affiliate Santa Fe Transportation Company). J. Christenson Co. and J. A. Nevis Trucking, Inc. appeared originally as protestants but withdrew their objections when applicant stipulated that any certificate which might be issued in this proceeding would preclude the transportation of commodities moving in insulated and mechanical refrigerated equipment; and iron or steel articles moving to or from Pittsburg, in lots or shipments of 30,000 pounds or more. For convenience, these carriers will be referred to by their short titles.

^{3/} Hearings were held at San Francisco on April 15, 16, 17, 23, May 27, June 2, and November 12, 1952. (Examiner Daly presided at the hearing held November 12, 1952.) Closing briefs were received March 13, 1953.

^{4/} Under this stipulation, which was signed by counsel for the interested parties, it was agreed that certain financial statements of protestants Circle and Stapel, and also of applicant, accompanying the stipulation, might be deemed correct and be received in evidence and that the proceeding might be resubmitted for decision without further hearing. Cross-examination respecting these statements was thereby waived.

The record discloses that applicant is well able to provide the service for which operating authority is sought. Its financial resources are ample, and its equipment adequate, for this purpose. According to its proposal, an overnight service would be furnished, under which shipments picked up prior to 3 p.m. would be delivered on the following morning at Contra Costa points. Pickup service would be supplied twice daily throughout the Bay Area, both during the morning and the afternoon.

During August, 1951 applicant undertook to serve the territory involved, acting ostensibly under its permit as a radial highway common carrier. Assertedly, this service was established to meet the shippers' requirements for a carrier able to distribute their products throughout this territory, as well as that which applicant is now authorized to serve under its certificate. The shippers desire to avoid the inconvenience of preparing their shipments for delivery to several carriers, each having a small territorial coverage, preferring rather to deal with a single carrier serving the entire area. To meet their threat that traffic would be diverted to permitted carriers unless the extended service is provided, applicant embarked upon this operation. So far as possible, it was said, this had been confined to shippers whom applicant previously had served regularly.

In support of its proposal applicant called some 25 shippers, all of whom were engaged in business in the Bay Area. No shipper was produced from any Contra Costa point.^{5/} Collectively, they dealt in a variety of products.

^{5/} Of the firms reported by the witnesses called, 12 were engaged in business at San Francisco, 12 in Oakland and 1 in Berkeley.

The testimony of these witnesses may be briefly summarized. In general, they expressed satisfaction with the service provided by applicant, which all of them had used regularly. Several, whose shipping facilities were limited, voiced a desire to avoid the congestion incident to the division of their traffic among several carriers, each of whom served only a limited area. They sought to accomplish this by turning over to applicant, for transportation, all shipments destined to Contra Costa points as well as to other territory which it served. Thus, it was said, storage space in their establishments could be conserved and paper work minimized. Some criticized the service afforded by the existing carriers, pointing to delays occurring both in the pickup and in the line-haul operations. These complaints, however, were neither serious nor widespread.

The growth and development of the affected territory were convincingly shown. The population of the Contra Costa area has grown substantially; economically and industrially, its expansion has been outstanding.

The service provided by the protesting carriers was described. Such a showing was offered by Circle, Stapel, Delta and Merchants. The evidence presented by these carriers disclosed the service supplied, the facilities available and the impact upon their operations of applicant's entrance into the field. The record indicates that their equipment and facilities are sufficient to permit the performance of an adequate service. It also appears that they anticipate substantial loss of traffic due to the competition which applicant would supply. Both Circle and Stapel referred specifically to certain shipments which, it is claimed, were diverted to applicant as the result of its past operations.

Applicant asserts that the extension sought is necessary to permit the retention of its present customers. Assertedly, this

service can be provided without injury to the carriers in the field. Protestants, on the other hand, contend that to grant the application would result in the impairment of their ability to continue the service which they now afford; that no inadequacy in their service has been shown; that the service which applicant proposes to establish is not superior to that provided by protestants; that wasteful duplication of service would result from applicant's entrance into the field; and that at most, only minor inconvenience is occasioned to shippers through the congestion of freight at their loading docks.

Clearly the record does not indicate that the service supplied by protestants is inadequate to meet the shippers' requirements. Moreover, it does not appear that the service which applicant proposes to establish would be superior, in essential respects, to that now afforded by protestants. It offers no advantage respecting time in transit nor pickup and delivery service. However, it was not established that any of the protestants' ability to maintain their service would be impaired if applicant were certificated to enter the field. Assertedly, both population and volume of traffic are expanding at a rate sufficient to permit the continuance of profitable operation by all of these carriers.

By its proposal applicant seeks, in effect, to accommodate all of the traffic which is supplied by its customers. It proposes to expand its operations so as to encompass the growing and developing territory, within and adjoining the metropolitan Bay Area, throughout which its shippers and customers are engaged in the distribution of their products. It was not shown that a wasteful and uneconomical duplication of transportation facilities would result from permitting it to do so. The application, accordingly, will be granted.

O R D E R

Application as above-entitled having been filed, a public hearing having been held thereon, the Commission being fully advised and it being now found that public convenience and necessity so require,

IT IS ORDERED:

1. That this proceeding is hereby resubmitted for consideration and decision, pursuant to the stipulation of the parties, filed herein on October 15, 1953.

2. That a certificate of public convenience and necessity be and it hereby is granted to Inter-Urban Express Corporation, a corporation, authorizing the establishment and operation of a service as a highway common carrier, as defined by Section 213, Public Utilities Code of the State of California, for the transportation of general commodities between Oakland and Antioch via State Highway No. 24, serving all intermediate points on and along said route, and all off-route points located within three miles laterally from said route.

Said certificate is granted subject to the limitations that there shall not be transported thereunder:

- a. Any shipment of uncrated household goods, petroleum products in bulk, livestock, or commodities moving in insulated and mechanical refrigerated equipment;
- b. Any shipment of iron or steel articles moving to or from Pittsburg, in lots or shipments weighing 30,000 pounds or more.

3. In providing service pursuant to the certificate herein granted, applicant shall comply with and observe the following service regulations:

- a. Within thirty days after the effective date hereof, applicant shall file a written acceptance of the certificate herein granted.

b. Within sixty days after the effective date hereof, and upon not less than five days' notice to the Commission and the public, applicant shall establish the service herein authorized and file in triplicate, and concurrently make effective, appropriate tariffs satisfactory to the Commission.

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

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

R. F. [Signature]
President

Justus J. Caswell

[Signature]

[Signature]

[Signature]
Commissioners