

ORIGINAL

Decision No. 49444

## BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
 PENINSULA DELIVERY SERVICE, a cor- )  
 poration, for a certificate of ) Application No. 34021  
 public convenience and necessity. )

Frank Loughran and John A. O'Connell for  
 Applicant.

Preston Davis and Roger Ramsey for United  
 Parcel Service, interested party.

Marvin Handler and Daniel W. Baker for Peninsula  
 Motor Express and West Berkeley Express and Drayage  
 Company, protestants.

Edward M. Berol, Bertram S. Silver and Thomas  
 Brown, Jr., for Highway Transport, Inc., protestant.

William Meinhold and Frederick E. Fuhrman for  
 Pacific Motor Trucking Company and Southern Pacific  
 Company, protestants.

## O P I N I O N

The application as originally filed January 14, 1953 sought a certificate of public convenience and necessity to authorize it to carry general commodities freed of all the limitations and restrictions now attached to its rights between all points now in anyway served. A motion to dismiss the original application was filed on behalf of Beckman Express and Warehouse Co., Highway Transport, Inc., Highway Transport Express, Kellogg Express and Drayage Co., Merchants Express Corporation and Evelyn O. Simmonds, doing business as West Berkeley Express and Drayage Co. The grounds relied upon in this motion were that substantially the same rights were sought by this application as in Application No. 32376 denied July 28, 1952 by Decision No. 47525. On February 13, 1953 Peninsula Motor Express joined in the above-mentioned motion.

By subsequent amendments the prayer of the application was modified so that it now seeks only the elimination of restrictions to its rights involving the carriage of automotive parts, and accessories

and supplies necessary for and used in the building, maintenance, operation, repair and servicing of automotive equipment. The right to carry general commodities was acquired under a separate certificate and is now not sought to be affected by the amended application.

Public hearings were held in San Francisco before Examiner Rowe on May 25, August 24 and November 23, 1953. Oral and documentary evidence was adduced and the matter was submitted for decision on the latter date.

At the first day of hearing there was evidence indicating that applicant may have been exceeding its operative rights. Testimony received at the November 23, 1953 hearing, however, made it apparent that this arose primarily due to a misunderstanding on the part of the witness for applicant of its operative rights and of the weights actually carried. Much of the testimony at the first day of hearing is now irrelevant in view of the amendment to the application made at the November hearing. This amendment likewise removed much of the force of the objection expressed in the motion to dismiss.

The evidence as to the need for the services of applicant in the carriage of automotive parts, and accessories and supplies necessary for and used in the building, maintenance, operation, repair and servicing of automotive equipment appears convincing and uncontradicted. Applicant has been operating thus in the past due to a belief that it had the right to so operate and if the application is granted it will continue to operate as before. No protestant submitted any evidence of operations carried on or offered. The public witnesses appearing on behalf of applicant were unanimous in praising the service performed by applicant and in stating that its continuance was necessary to the proper operation of their respective businesses. The Commission finds that public convenience and necessity require the removal of the restrictions as requested in the amended application. These restrictions were against carrying automotive parts to other than consignees for whom applicant had performed a

purchasing service. The application will be granted by the issuance of a new certificate of public convenience and necessity.

O R D E R

Application therefor having been filed, public hearings having been held, the Commission being fully advised and finding that public convenience and necessity so require,

IT IS ORDERED:

(1) That Peninsula Delivery Service, a corporation be, and it hereby is, granted a certificate of public convenience and necessity authorizing it to operate as a highway common carrier, as defined in Section 213 of the Public Utilities Code between San Francisco and Oakland, on the one hand and San Jose, on the other, serving the intermediate points of South San Francisco, Burlingame, San Mateo, Beresford, Belmont, San Carlos, Redwood City, Atherton, Menlo Park, Palo Alto, Mayfield, Sunnyvale, and Santa Clara for the transportation of automotive parts and for the transportation of automobile accessories and supplies necessary for and used in the building, maintenance, operation, repair and servicing of automotive equipment when moving to automotive parts houses, garages and service stations and when moving to automobile parts houses with multiple departments engaged in other lines of business, said shipments must be directly consigned to the automotive parts department.

(2) That 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 on 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.

(c) Subject to the authority of this Commission to change or modify the service or routes by further order applicant shall conduct operations over and along the following described routes:

Over and along U. S. Highway 101 and U. S. Highway 101 Bypass with lateral connections between the two at Burlingame, Redwood City, Palo Alto, and Sunnyvale.

(3) That the highway common carrier operative rights for the carriage of automotive parts, and accessories and supplies necessary for and used in the building, maintenance, operation, repair and servicing of automotive equipment granted by Decision No. 30653 dated February 28, 1938 in Application No. 21155 and Decision No. 28187 dated August 26, 1935 in Application No. 20039 and acquired by this applicant by Decision No. 37688 dated February 27, 1945 in Application No. ~~30088~~<sup>34488</sup> are canceled and revoked contemporaneously with the acceptance by applicant of the certificate granted in ordering paragraph (1) hereof.

*(Handwritten mark)*

(4) That the motion to dismiss referred to in the opinion be, and it hereby is, denied.

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

Dated at San Francisco, California, this 15<sup>th</sup> day of December, 1953.

*[Signature]*  
President  
*[Signature]*  
*[Signature]*  
*[Signature]*  
*[Signature]*  
Commissioners