

**ORIGINAL**Decision No. 61692

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of  
R. E. ELLIS, an individual, doing  
business as R. E. ELLIS DRAYING CO.,  
for a certificate of public convenience  
and necessity to operate as a highway  
common carrier.

Application No. 42930

Bertram S. Silver, for the applicant.O P I N I O N

Applicant has requested that his present certificate from this Commission be reissued in the name of Russell E. Ellis, doing business as R. E. Ellis Draying Co., to conform with the permits issued to the applicant by this Commission and with the Interstate Commerce Commission operating authorities held by him.

Russell E. Ellis, an individual, is operating under permitted authority as a radial highway common carrier, a highway contract carrier, a household goods carrier and a city carrier. The applicant also operates as a highway common carrier under certificates of public convenience and necessity granted by Decisions Nos. 51242 and 54017, which authorize the applicant to haul general commodities, with certain exceptions, between points in the San Francisco - East Bay Cartage Zone and between San Francisco and San Jose, with the right to serve intermediate points.

Applicant now requests a new certificate under Sections 1063 and 1064 of the Public Utilities Code for the transportation of general commodities between all points and places in the San Francisco Territory as described in Minimum Rate Tariff No. 2; and from San Francisco north on Highway 101 to Novato; from

San Francisco northeast to Sacramento; east to Stockton and Tracy and southeast to Santa Clara and San Jose.

A public hearing was held before Examiner Edward G. Fraser on January 20, 1961, at San Francisco, California. Prior to the hearing the applicant mailed copies of this application to twenty-six competing carriers. No protests were received and the matter was submitted on February 1, 1961 after the receipt of late filed Exhibit No. 7.

The evidence shows considerable industrial growth in the areas to which an extension now is requested. The applicant has customers who desire service into this extended area, and likewise, they desire split pickups and split deliveries to be made therein.

Three shipper witnesses testified they prefer the service offered by the applicant and that it would be beneficial to their respective companies to have applicant provide service to the additional areas applicant has requested authorization to serve. Applicant was prepared to introduce the testimony of twenty-one additional public witnesses. In the absence of protest, however, and as a matter of convenience to these people they were not personally called. Instead their names, their companies' names and locations, commodities handled and shipping points were placed on a list and received as late filed Exhibit No. 7.

The evidence further discloses that applicant is able to supply the extended service, has adequate equipment, has the necessary experience and is financially sound.

Upon consideration of all of the evidence adduced herein, we find that public convenience and necessity require that the application be granted in the manner set forth in the ensuing order

which will provide for an extension of the certificated zone presently served by the applicant and for a restatement of existing authority.

Applicant is hereby placed on notice that operative rights, as such, do not constitute a class of property which may be capitalized or used as an element of value in rate fixing for any amount of money in excess of that originally paid to the State as the consideration for the grant of such rights. Aside from their purely permissive aspect, such rights extend to the holder a full or partial monopoly of a class of business over a particular route. This monopoly feature may be modified or canceled at any time by the State, which is not in any respect limited as to the number of rights which may be given.

O R D E R

An application having been filed, a public hearing having been held and based on the evidence therein adduced,

IT IS ORDERED:

1. That a certificate of public convenience and necessity be and it is granted to Russell E. Ellis, authorizing him to operate as a highway common carrier, as defined in Section 213 of the Public Utilities Code, between the points and over the routes as more particularly set forth in Appendices A and B attached hereto and made a part hereof.

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. By accepting the certificate of public convenience and necessity herein granted, applicant is placed on notice that he will be required, among other things, to file annual reports of his operations and to comply with and observe the safety rules and other regulations of the Commission's General Order No. 99 and insurance requirements of the Commission's General Order No. 100-A. Failure to file such reports, in such form and at such time as the Commission may direct, or to comply with and observe the provisions of General Orders Nos. 99 and 100-A, may result in a cancellation of the operating authority granted by this decision.

(b) Within one hundred twenty days after the effective date hereof, and on not less than ten days' notice to the Commission and the public, applicant shall establish the service herein authorized and file in triplicate, and concurrently make effective, tariffs satisfactory to the Commission.

3. That the certificate of public convenience and necessity granted in paragraph 1 of this order supersedes the certificates of public convenience and necessity granted by Decisions Nos. 51242 and 54017, which certificates are hereby canceled and revoked, said revocation to become effective concurrently with the effective date of the tariff filings required by paragraph 2(b) hereof.

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

Dated at San Francisco, California, this 21<sup>st</sup> day of MARCH, 1961.

Charles W. [Signature]  
President  
[Signature]  
[Signature]  
George H. Hoover  
Fredrick B. Halbach  
Commissioners

Russell E. Ellis by the certificate of public convenience and necessity granted in the decision noted in the margin, is authorized to transport general commodities:

1. Between all points and places in San Francisco Territory as described in Appendix B.
2. Between all points and places on and within ten miles laterally of the following highways (See Exception):
  - a. State Highway No. 9 between Cupertino and Saratoga, inclusive;
  - b. State Highway No. 17 between Campbell and Los Gatos, inclusive;
  - c. U.S. Highway No. 101 between San Francisco and Novato, inclusive;
  - d. U.S. Highway No. 40 between Richmond and Sacramento, inclusive;
  - e. U.S. Highway No. 50 between Hayward and Sacramento, inclusive;
  - f. State Highway No. 4 between Pinole and Stockton, inclusive;
  - g. State Highway No. 24 between Oakland and Sacramento, inclusive;
  - h. State Highway No. 21 between Cordelia and Mission San Jose, inclusive;
  - i. State Highway No. 12 between Fairfield and Lodi, inclusive; and
  - j. Unnumbered highway between Concord and Byron, inclusive.

Exception: The ten mile extension above noted shall not apply north of Novato.

3. Through routes and rates may be established between any and all points and places specified in paragraphs 1 and 2 above.

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Applicant shall not transport any shipments of:

1. Used household goods and personal effects not packed in accordance with the crated property requirements set forth in paragraph (d) of Item No. 10-C of Minimum Rate Tariff No. 4-A.
2. Automobiles, trucks and buses, viz.: new and used, finished or unfinished passenger automobiles (including jeeps), ambulances, hearses and taxis; freight automobiles, automobile chassis, trucks, truck chassis, truck trailers, trucks and trailers combined, buses and bus chassis.
3. Livestock, viz.: bucks, bulls, calves, cattle, cows, dairy cattle, ewes, goats, hogs, horses, kids, lambs, oxen, pigs, sheep, sheep camp outfits, sows, steers, stags or swine.
4. Commodities requiring the use of special refrigeration or temperature control in specially designed and constructed refrigerator equipment.
5. Liquids, compressed gases, commodities in semi-plastic form and commodities in suspension in liquids in bulk, in tank trucks, tank trailers, tank semitrailers or a combination of such highway vehicles.
6. Commodities when transported in bulk in dump trucks or in hopper-type trucks.
7. Commodities when transported in motor vehicles equipped for mechanical mixing in transit.
8. Logs.
9. Articles of extraordinary value as set forth in Rule 3 of Western Classification No. 77, J. P. Hackler, Tariff Publishing Officer, on the issue date thereof.

End of Appendix A

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