

Decision No. 62255**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of RAILWAY EXPRESS AGENCY,)
 INCORPORATED, for authority (a) to)
 provide collection and delivery of)
 express shipments by motor trucks from)
 Martinez, Suisun and Vallejo to termini)
 in the Martinez, Suisun and Vallejo)
 areas; (b) to close its offices now)
 serving said termini; and (c) to change)
 the waybilling of shipments from said)
 offices thereby increasing certain)
intrastate charges.

Application No. 43281

Pillsbury, Madison & Sutro, by Eugene M. Prince
 and Dudley A. Zinke, for applicant.
Roger L. Ramsey, for United Parcel Service,
 protestant.
Richard D. Van Bolt, for Mayacamas Vineyards;
A. L. Lawrence, for Brotherhood of Railway
 Clerks; E. A. McMillan, for California State
 Legislative Committee, Brotherhood of Railway
 Clerks; interested parties.
E. G. McLane and John F. Specht, for the
 Commission staff.

O P I N I O N

Railway Express Agency proposes to consolidate its express operations in three areas as follows: (1) in the area lying generally between Calistoga, on the north, and Crockett and Rodeo, on the south, hereinafter designated the "Vallejo Area"; (2) in the area extending from Dixon, on the north, to Suisun, on the south, hereinafter designated the "Suisun Area"; and (3) the area lying generally between Martinez, on the west, Concord, on the south, and Antioch, on the east, hereinafter designated the "Martinez Area". Said consolidation would be accomplished by furnishing collection and delivery service by motor trucks directly between Vallejo, Suisun and Martinez, on the one hand, and points in the above-mentioned respective

areas. Vallejo would be the waybilling point for the Vallejo Area, while Suisun and Martinez would be the waybilling points for their respective areas.

As a necessary step in the accomplishment of its plan the Agency, by this application seeks the following authority:

1. To close its offices at Antioch, Avon, Calistoga, Concord, Crockett, Dixon, Napa, Pittsburg, Port Chicago, Rodeo, Selby, St. Helena and Vacaville.

2. To operate as a highway common carrier (as defined in Section 213 of the Public Utilities Code) for the transportation of property, exclusive of certain specified articles, between Antioch, Avon, Benicia, Calistoga, Concord, Crockett, Dixon, Fairfield, Martinez, Napa, Pittsburg, Pleasant Hill, Port Chicago, Rodeo, St. Helena, Selby, Suisun, Travis Air Force Base, Vacaville, Vallejo, Yountville, and all points on California State Highway 29 between Vallejo and Calistoga.^{1/}

3. Authority to establish increased rates to the extent that such will result from the designation of Vallejo, Suisun and Martinez as waybilling points for the respective areas.

Public hearing of the application was held before Examiner Carter R. Bishop at Vallejo on May 8 and 9, 1961. Evidence on behalf of applicant was offered through its regional general manager, the superintendent of its Northern California, Nevada and Oregon Division, and six shipper witnesses. Granting of the application was conditionally opposed by United Parcel Service. Counsel for that organization, representatives of an employees' organization and of

^{1/} Applicant now holds a certificate to operate as an express corporation and as a highway common carrier between Suisun, Fairfield and Travis Air Force Base pursuant to Decision No. 41126.

the Commission's Transportation Division participated in the development of the record through examination of applicant's witnesses.

The consolidation plan embraced by the proceeding herein, the record shows, is one of a series which the Agency has instituted on a nation-wide scale in an effort to place its operations on a sound basis and to assure its continued existence as an essential transportation agency.^{2/}

Collection and delivery service is presently provided by applicant at Antioch, Benicia, Calistoga, Concord, Crockett, Fairfield, Martinez, Napa, Pittsburg, Pleasant Hill, St. Helena, Suisun, Travis Air Force Base, Vacaville and Vallejo. Under the proposed consolidation plan applicant would also provide such service at Avon, Dixon, Port Chicago, Rodeo, Selby and Yountville. Additionally the present collection and delivery areas of Concord, Napa, Pittsburg and Vacaville would be enlarged.^{3/}

The testimony of applicant's general manager discloses that ✓ there has been a marked decrease in the number of passenger trains operating in California on which applicant's traffic can be carried. The reduction has been most pronounced in local or short-haul service, and in service to smaller communities. This situation has resulted

^{2/} The history of the Agency and its predecessor companies, the nature of its services, its methods of operation, its contractual relationships with the railroads, its financial difficulties, and the rehabilitation program which it has initiated have been set forth in some detail in Decision No. 59927 of April 12, 1960, in Application No. 41694. That proceeding relates to a similar consolidation plan of the Agency for operations in Oakland and vicinity.

^{3/} It is proposed to serve Rodeo, Selby, Crockett, Benicia, Napa, Yountville, St. Helena, Calistoga and the above-indicated points on State Highway 29 out of Vallejo. Antioch, Pittsburg, Port Chicago, Concord and Pleasant Hill would be served from Martinez. Service to Dixon, Vacaville, Fairfield and Travis Air Force Base would be rendered from Suisun.

in increased handlings and delays due to long layovers while shipments are in transit. The superintendent pointed out that the proposed consolidation, in Vallejo, Martinez and Suisun, of area operations will have the effect of eliminating many of the handlings and will speed up the dispatch of shipments.^{4/}

An essential part of the consolidation plan is applicant's offer to provide toll-free telephone service to its Vallejo, Martinez and Suisun offices for customers located in the respective consolidation areas but who are outside the local telephone calling areas of said cities. This arrangement will enable such patrons to request pickup service and to transact other business without having to pay a toll charge.

According to the record, the proposal to make Vallejo, Martinez and Suisun the waybilling points for all shipments originating or terminating in the respective consolidation areas will result in some minor increases and reductions in rates. Most of these changes will result in reductions. In many instances there will be no changes in rates. Commodity rates published from or to points involved herein, the superintendent testified, will be adjusted to provide for uniform application throughout the areas at the lowest present rate levels.

No employees will lose their positions with the company, the superintendent testified, if the proposed consolidation of offices is accomplished. The salaried agent at Napa and the exclusive commission agents at Antioch, Concord and Pittsburg would

^{4/} The record discloses that line-haul service from and to all of the Agency's offices involved herein is performed by certain highway carriers, operating under contract between said offices and rail terminals in the San Francisco Bay Area or elsewhere. Under the proposal herein line-haul movement from and to Vallejo, Martinez and Suisun would still be accomplished by vehicles of Pacific Motor Trucking Company.

be transferred to the key offices. The agents at the nine other offices proposed to be closed are either merchant commission agents or joint commission agents. The agents in the former group are engaged principally in businesses of their own, and those in the latter group have as their primary employer the Southern Pacific Company or the Santa Fe Railway. If the application herein is granted, each of these nine commission agents will continue in his principal occupation.^{5/}

Applicant estimates that the consolidation plan here under consideration will result in net savings of over \$30,000 per year in operating expenses. This amount does not include certain additional anticipated savings, the dollar amount of which could not be estimated. Among the latter are the reduction in administrative, supervisory, auditing and tariff expenses which will result from centralization of the Agency's activities in three terminals instead of 16 separate offices, as at present, and the decrease in loss and damage payments which will follow the reduction in the number of handlings that will be accorded shipments.

The testimony of the shipper witnesses was offered to show the continuing need for the transportation service here in issue, as proposed to be performed under the sought highway common carrier certificate. These witnesses severally represented an oil refinery, a vegetable dehydrator, a fancy food store, a steel fabricator, and two chemical manufacturers. All of these concerns

^{5/} The proposed plan of operation, the record shows, will enable applicant to eliminate one express messenger position on the truck route between Vallejo and Calistoga. The messenger will not lose his employment, but will simply displace a junior employee, and so on down the line. Applicant anticipates that, due to the normal employee turnover from retirements, deaths and resignations, vacancies will occur which will absorb the displacements and will prevent the loss of employment by any of the workers involved.

are located at points involved herein. The testimony of the shipper witnesses was substantially as follows: All are regular patrons of the Agency; for each establishment applicant's services are essential, notably because of the fast service and specialized handling accorded shipments; all would benefit by the more expeditious service contemplated under the agency's proposed plan of operation; applicant's value to those concerns which do not now enjoy store door pickup and delivery service of express shipments will be enhanced if such service is accorded them.

United Parcel Service does not oppose applicant's plan to consolidate operations nor the granting of the sought highway common carrier certificate, provided that such certificate is restricted to traffic which shall move under a through bill of lading or express receipt, and which shall receive, in addition to the highway carrier movement in question, an immediately prior or subsequent movement by rail, water, air or line-haul truck transportation. As in the earlier proceedings in this series, United's counsel asserted that, while applicant is not now competitive with parcel delivery carriers or with general freight carriers, it could, under an unrestricted certificate, establish a full scale truck operation at competitive rates. He pointed out that applicant transports only very occasional shipments moving wholly within the consolidation areas.^{6/}

As in several prior proceedings in this series, the representative of the State Legislative Committee of the Brotherhood

^{6/} If the restriction requested by United were imposed, applicant could still accept shipments in one of the consolidation areas involved herein for delivery to a consignee in one of the other areas, provided the shipments were transported between the key points over the line of the Agency's underlying carrier.

of Railway Clerks requested that, if the application herein is granted, the authorization be made subject to the so-called "Burlington" conditions for employee job protection. Since it appears that none of applicant's employees will lose their jobs by reason of the granting of the application, the imposition of such conditions is unnecessary.

Conclusions

The evidence of record shows that adoption of the proposed consolidation plant as hereinbefore set forth will result in the following principal advantages: (1) the Agency will be in a position to furnish service to the public more efficiently and more expeditiously than under the present methods of operation; (2) collection and delivery service will be extended to areas not now served; (3) the elimination of multiple handlings will result in faster service and in fewer loss or damage claims; (4) limitations or restrictions on the handling of certain types of shipments will be eliminated; and (5) the proposed consolidation of offices will result in substantial savings in operating costs.

Based upon careful consideration of all the evidence and argument of record, we hereby find as follows:

1. That consolidation in the Vallejo, Martinez and Suisun offices of applicant of the service now rendered through the thirteen offices herein proposed to be closed will not be adverse to the public interest.

2. That, concurrently with consolidation of said service in applicant's Vallejo, Martinez and Suisun offices, public convenience and necessity will no longer require applicant to maintain any of the offices sought, by the application herein, to be closed.

3. That extension of the pickup and delivery limits, as proposed in the application herein, is in the public interest and should be placed in effect concurrently with the consolidation of offices hereinabove authorized.

4. That the increases in rates and charges proposed in said application are justified.

5. That public convenience and necessity require the issuance to applicant of a certificate of public convenience and necessity as a highway common carrier between all points set forth in numbered paragraph 6 of said application, and that said certificate should be subject to the conditions stated in numbered paragraphs 7 and 8 of said application (relating to routes of travel and to commodity exclusions, respectively).

6. That said certificate of public convenience and necessity should be subject to the further condition that transportation thereunder shall be limited to movements under a through bill of lading and having a prior or subsequent movement by rail, water, air or line-haul truck transportation.

7. That, concurrently with the effective date of tariff filings made pursuant to said certificate, the certificate of public convenience and necessity to operate as a highway common carrier granted to applicant by Decision No. 41126, dated January 13, 1948, in Application No. 28840, should be revoked, and that the certificate granted applicant by said Decision No. 41126 to operate as an express corporation between the points specified therein should remain in full force and effect.

The application will be granted to the extent indicated in the foregoing findings.

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

Based upon the evidence of record and upon the findings and conclusions set forth in the preceding opinion,

IT IS ORDERED that:

1. Railway Express Agency, Incorporated, is authorized, concurrently with the consolidation of service in its Vallejo, Martinez and Suisun offices, as proposed in the application filed herein, to discontinue its offices at Antioch, Avon, Calistoga, Concord, Crockett, Dixon, Napa, Pittsburg, Port Chicago, Rodeo, Selby, St. Helena and Vacaville, subject to the following conditions:

- a. Within one hundred twenty days after the effective date hereof, and not less than ten days prior to the discontinuance of said agencies, applicant shall post a notice of such discontinuance at each of said offices, and within one hundred twenty days after the effective date hereof and on not less than ten days' notice to the Commission and to the public, applicant shall file in triplicate amendments to its tariffs showing the changes authorized herein and shall make reference in such notice and tariffs to this decision as authority for the changes. In no event shall the agents be removed, pursuant to the authority hereinabove granted, earlier than the effective date of the tariff filings required hereunder.

- b. Within thirty days after discontinuance of service as herein authorized, applicant shall, in writing, notify this Commission thereof and of compliance with the above conditions. Concurrently with discontinuance of said offices, applicant shall establish service to the extended pickup and delivery limits described in the application.

2. A certificate of public convenience and necessity is granted to Railway Express Agency, Incorporated, authorizing it to operate as a highway common carrier as defined by Section 213 of the Public Utilities Code for the transportation of property between the points, over the routes and subject to the conditions particularly set forth in Appendix A attached hereto and made a part hereof.

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. By accepting the certificate of public convenience and necessity herein granted, applicant is placed on notice that it will be required, among other things, to file annual reports of its 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-B. 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-B, 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 to the public, applicant shall establish the service herein authorized and file in triplicate, and concurrently make effective, tariffs satisfactory to the Commission.

4. Applicant is authorized to establish, on not less than ten days' notice to the Commission and to the public, and concurrently

with the closing of offices and the institution of highway common carrier service, as authorized in paragraphs 1 and 2 hereof, the increased rates and charges proposed in the application filed in this proceeding.

5. The certificate of public convenience and necessity granted in numbered paragraph 2 of this order supersedes the certificate of public convenience and necessity to operate as a highway common carrier granted by Decision No. 41126, which latter certificate is hereby revoked, said revocation to become effective concurrently with the effective date of the tariff filings required by numbered paragraph 3(b) hereof. The certificate of public convenience and necessity to operate as an express corporation granted by said Decision No. 41126 shall remain in full force and effect.

6. In all other respects Application No. 43281 is denied.

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

Dated at San Francisco, California, this 11th
day of July, 1961.

Charles H. Rogers
President
John D. Mitchell
E. Lynn Fox
George W. Brown
Fredrick B. Holsbach
Commissioners

Railway Express Agency, Incorporated, by the certificate of public convenience and necessity granted in the decision noted in the margin, is authorized to transport all commodities except the following:

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. Commodities requiring protection from heat by the use of ice (either water or solidified carbon dioxide) or by mechanical refrigeration.
4. 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.
5. Commodities when transported in bulk in dump trucks or in hopper-type trucks.
6. Commodities when transported in motor vehicles equipped for mechanical mixing in transit.
7. Excepted commodities as enumerated in Railway Express Agency, Incorporated's tariffs filed with this Commission and in effect on the effective date of this Decision No. 62255, in Application No. 43281.
8. Logs.

Issued by California Public Utilities Commission.

Decision No. 62255, Application No. 43281.

BETWEEN the following points:

Antioch, Avon, Benicia, Calistoga, Concord,
Crockett, Dixon, Fairfield, Martinez, Napa,
Pittsburg, Pleasant Hill, Port Chicago,
Rodeo, St. Helena, Selby, Suisun, Travis Air
Force Base, Vacaville, Vallejo, Yountville,
and all points on California State Highway 29
between Vallejo and Calistoga.

VIA any and all convenient public streets and highways between
said points.

SUBJECT to the following condition:

The highway common carrier service herein
authorized shall be limited to the transpor-
tation of express traffic of Railway Express
Agency, Incorporated, under a through bill
of lading or express receipt, and said
traffic shall receive, in addition to the
highway carrier movement by applicant herein
authorized, an immediately prior or immediately
subsequent movement by rail, water, air or
line-haul truck transportation.

End of Appendix A

Issued by California Public Utilities Commission.

Decision No. 62255, Application No. 43231.