

ORIGINAL

Decision No. 67247

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of  
 JOHN P. LEE and FREDERICK THOMAS JEWETT,  
 a co-partnership doing business as  
 MERCURY PARCEL & DRAYAGE SERVICE for  
 authority to amend its Certificate of  
 Public Convenience and Necessity to  
 remove equipment and commodity  
 restrictions and to transport general  
 commodities as a highway common carrier  
 from, to and between all points presently  
 served.

Application No. 45198  
 (Filed February 21, 1963)

Marvin G. Giometti, for applicants.

Graham James and Rolph, by Boris Lakusta and E. Myron Bull, for California Motor Transport Co. and California Motor Express, Ltd., Delta Lines, Inc., Garden City Transportation Company, Merchants Express of California, Pacific Motor Trucking Company and Willig Freight Lines, protestants.

### O P I N I O N

This application was heard before Examiner Fraser on May 28 and 29 and September 23 and 24, 1963. It was submitted on January 27, 1964 after the filing of concurrent opening and closing briefs.

The applicants, a copartnership, are operating under permitted authority, as a radial highway common carrier and a highway contract carrier within a 100 mile radius of San Francisco; and as a city carrier in San Francisco, Alameda, Emeryville, Albany, Oakland, Berkeley and Piedmont. The applicants also operate as a highway common carrier under certificates of public convenience and necessity granted by Decision No. 54584, dated February 25, 1957, in Application No. 38727 for the transportation of paint, painters' equipment and supplies, paint sundries, printing equipment and printers' supplies, tapes and labels, wallpaper and paper hangers' supplies and equipment

between San Francisco on the one hand and on the other hand Oakland, Berkeley, Emeryville, Richmond, San Pablo, El Cerrito, Albany, San Leandro, San Lorenzo, Hayward, Symnyvale, Cupertino, Saratoga, Los Gatos, Campbell, Santa Clara, San Jose, Agnew, Alviso, Milpitas, Centerville and Alvarado over and along the following highways:

U. S. Highway 101, Bayshore Highway, (U.S. 101 By-Pass), U.S. Highway 40, State Highways 17 and 9, U.S. Highway 50, the Santa Clara-Los Gatos Road, the San Jose-Alviso Road, and the Alviso-Milpitas Road,

subject to the restriction that applicant shall operate no trucks of a rated carrying capacity in excess of two tons.

The applicants now request that their certificate be amended under the authority of Sections 1061, 1063 and 1064 of the Public Utilities Code to authorize the transportation of general commodities, with the usual exceptions, to remove the restriction precluding operation of trucks with a rated carrying capacity in excess of two tons, to slightly extend the boundaries of the area now served by the applicants and to authorize transportation from, to and between, all places in this extended area, without regard to routes.

Jewett testified as follows: he has been a partner in Mercury Parcel and Drayage Service since 1947, when they started operating; each of the two partners holds a 50 percent interest in the business but Lee is not active in the operation of the partnership; the applicants operate out of a terminal in San Francisco with two pickup trucks and thirteen other trucks; they employ nine drivers, two people in the office and an accounting service which is employed part time; the applicants have filed this application because many of their regular customers have moved out of San Francisco to other locations in the Bay Area and because these

customers are also demanding that the applicants transport regularly all kinds of goods not included in their certificate, provide trucks of a greater capacity than the applicants are now authorized to use and serve all points within the Bay Area and down the Peninsula to San Jose; applicants now carry the following commodities under their radial highway common carrier permit: foam rubber, copy machines, duplicating supplies, upholstery supplies, radio and electronic equipment, garden and nursery supplies, duplicating chemicals, rugs, costume jewelry, optical goods, sun glasses, musical instruments, dry goods, wearing apparel, casein (dried milk), cameras and photographic supplies; these items are hauled for 16 principal shippers from the same points of origin to an increasing number of destinations within the area the applicants now serve; frequency varies with each shipper, item carried and destination from less than one delivery a month to several or more a day, over a five or six-day week. Their office manager testified that they haul one split-delivery shipment a week for a large shipper, with up to twenty or more separate deliveries; this operation was checked in 1962 by a Commission investigator, who suggested the applicants should have their certificate amended to include additional commodities and to eliminate the weight restriction on their trucks. Several of their shippers have more than one plant or distributing point and have requested regular service between them; the applicants' present certificate does not authorize this type of service since they can only haul from certain points to certain other points; the applicants are now primarily concerned with offering good service to their present customers rather than with the solicitation of new customers; if the applicants' certificate is amended as has been requested the scale of rates from Minimum Rate Tariff No. 2 will be applied; the proposed service will be five days a week, excluding Saturdays, Sundays and holidays, and on call, for a few large shippers who have requested the service;

truckload and less-than-truckload quantities will be carried; applicants are now negotiating to obtain a much larger terminal to replace their present one; they do not plan to purchase any more equipment if this application is granted.

The applicants' balance sheet, (Exhibit No. 2), dated December 31, 1962, shows total assets of \$28,015.64 and total liabilities of \$10,706.26, with no long term obligations. Their profit and loss statement for the period from July 1 to December 31, 1962 shows a total freight revenue of \$59,712.65 and other revenue of \$3,174.09; operating expenses total \$56,219.72, which leaves a net profit of \$6,667.02 for the six-month period.

The applicants presented eight shipper witnesses. The first witness represented a large corporation which ships paper products from a plant in Sunnyvale to points on both sides of the Bay and down the Peninsula. He testified their split-delivery shipments aggregate 20,000 to 30,000 pounds and they prefer the applicants, who deliver directly to the consignee, rather than to a terminal for distribution to delivery trucks. The second shipper testified his firm handles sporting goods and ships to various schools and other organizations in the San Francisco Bay area and Peninsula; applicants pick up daily during the busy season and two or three times a week in the slack season. Another shipper testified he ships business and accounting forms throughout the Bay Area in shipments ranging up to 5,000 pounds; applicants average two pickups and five to ten daily shipments. The next witness testified he ships garden supplies and other items throughout the area previously described; the applicants provide two pickups a day with same day delivery on the morning pickup and shipments occasionally exceed 5,000 pounds. The fifth witness ships sheets, towels, blankets, bedspreads, bedding and pillows throughout the same area by the

applicants, who provide two pickups a day on shipments ranging from 100 to 2,500 pounds; the applicants provide a same day delivery for this shipper when requested. A representative of three chemical companies testified his organization ships painting supplies, insecticides and chemicals throughout the area the applicants are seeking to serve, in shipments ranging up to 10,000 pounds. Another witness testified that his company ships photographic paper, reproduction machines and supplies, cleaning compounds, photocopy paper and other allied products; the machines weigh about 840 pounds and shipments to a single customer can exceed 2,000 pounds; Mercury Parcel and Drayage has been used exclusively in the area they serve. The last witness testified his company ships foam rubber, synthetic foam rubber, tacks, twines, mattress ticking, drapery hardware and all items that go into the production of furniture and bedding; the Peninsula is served from San Francisco and the East Bay from Oakland; applicants pick up two or three times each day, five days a week; ten or twelve deliveries are made in a day directly to the customers and the applicants are used exclusively, whenever it is possible. These shippers favor the service provided by the applicants because of prompt pickup and delivery, same day service when requested, drivers who make every effort to satisfy the requests of the consignees, and special considerations, such as continually notifying the shipper of the time of delivery on large copying machines, so an installation man can be sent to the consignee to put the machine in operation without any waste of time. The shipper of foam rubber testified that the applicants have never refused a shipment, although other carriers will not haul foam rubber. All of the shippers testified they favor the service provided by the applicants to that of the other carriers they have tried and that they will use the applicants extended service if this application is granted.

Five of the protestants presented evidence. California Motor Transport Co. and California Motor Express, Ltd.; Merchants Express of California; Willig Freight Lines; Garden City Transportation Company and Pacific Motor Trucking Company submitted oral and documentary evidence.

All five of these protestants maintain they have adequate equipment to handle any foreseeable increase in the public need for service throughout the area applied for by the applicants. All of them state they have equipment operating in this region at much less than full capacity and that they occasionally have trucks which are inoperative due to a lack of business. They claim they are losing business and along with other carriers will be forced to petition this Commission for a substantial raise in rates if many more general commodity carriers are certificated in the area where they operate. Testimony was presented to inform this Commission that at least 20 general commodity carriers, in addition to the five protestants, have been certificated to serve in the East Bay and down the Peninsula to San Jose. The five protestants state they are opposing this application because another general commodity carrier is not needed in any part of the area for which authority is sought herein and because the applicants can serve all of their customers adequately under the operating authorities they now hold.

Based upon a consideration of all the evidence herein, we find as follows:

1. That the applicants have sufficient financial stability and the necessary experience, equipment and personnel to perform the proposed service.

2. Applicants now serve many customers under their radial permit with a frequency which comes close to overreaching such permitted authority.

3. Customers have relocated their businesses outside of San Francisco.

4. Customers have expanded their businesses, placing additional demands upon applicants, which demands applicants cannot meet unless the certificate is amended to remove equipment restrictions.

5. The relocation of customers and the building of new highways require that the certificate be amended to permit service in the area presently served without regard to routes.

6. The conflict in operating rights occasioned by hauling a portion of one shipment from a customer as a radial highway common carrier and another portion of such shipment as a certificated carrier is confusing to applicants, their customers, and to the Public Utilities Commission.

7. Many shippers require the type of service which applicants provide and have not been able to obtain it from other carriers. Shippers find the service provided and as proposed by applicants particularly convenient and desire to use applicants' service for the requested commodities in the requested area.

8. Applicants prefer to serve their principal shippers as a certificated carrier and their shippers favor certificated service.

9. Applicants are now providing a specialized service to a limited number of shippers on a limited number of commodities.

10. Public convenience and necessity require that the certificate now held by the applicants should be amended as provided in the following order.

11. Granting the authority as provided in the ensuing order will not prejudicially affect the rights of competing carriers.

Conclusions

1. Applicants should not be required to serve their shippers under contract as an alternative to obtaining a certificate where the evidence fails to show the shippers' preference for service from a highway contract carrier.

2. The restriction that the applicants can operate no trucks of a rated carrying capacity in excess of two tons should be removed from the certificate held by the applicants.

3. The certificate now held by the applicants should be amended to authorize service from, to and between all points in the certificated area they serve, regardless of route, and the boundaries of their service area should be extended as requested.

Applicants are 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

IT IS ORDERED that:

1. A certificate of public convenience and necessity is granted to John P. Lee and Frederick T. Jewett; a copartnership, authorizing them to operate as a highway common carrier, as defined in Section



213 of the Public Utilities Code, between the points and over the routes more particularly set forth in Appendices A and B attached hereto and made a part hereof.

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, applicants shall file a written acceptance of the certificate herein granted. By accepting the certificate of public convenience and necessity herein granted, applicants are placed on notice that they will be required, among other things, to file annual reports of their operations and to comply with and observe the safety rules of the California Highway Patrol, the 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, applicants shall establish the service herein authorized and file tariffs, in triplicate, in the Commission's office.
- (c) The tariff filings shall be made effective not earlier than thirty days after the effective date of this order on not less than thirty days' notice to the Commission and the public, and the effective date of the tariff filings shall be concurrent with the establishment of the service herein authorized.
- (d) The tariff filings made pursuant to this order shall comply with the regulations governing the construction and filing of tariffs set forth in the Commission's General Order No. 80-A.

Except as herein authorized the application is denied.  
The effective date of this order shall be twenty days  
after the date hereof.

Dated at San Francisco, California,  
this 19th day of May, 1964.

William L. Bennett  
President

John E. Mitchell

Robert W. Long

Frederick B. Hallock

Commissioners

I dissent.  
George H. Grover

Frederick T. Jewett and John P. Lee, by the certificate of public convenience and necessity granted in the decision noted in the margin, are authorized to transport general commodities from, to and between all points and places within the territory as described in Appendix B attached hereto.

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 Item No. 5 of Minimum Rate Tariff No. 4-3.
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, live poultry, mules, oxen, pigs, sheep, sheep camp outfits, sows, steers, stags or swine.
4. Commodities requiring protection from heat by the use of ice (either water or solidified carbon dioxide), by mechanical refrigeration, or by release of liquefied gases.
5. Liquids, compressed gases, commodities in semi-plastic form and commodities in suspension in liquids in bulk, in tank trucks, tank trailers, tank semi-trailers, 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.

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8. Fresh fruits and vegetables, nuts in the shell and mushrooms, from point of growth or from accumulation points to canneries, packing sheds, precooling plants, wineries and cold storage plants.
9. Explosives as described in and subject to the regulations of Motor Carriers' Explosives and Dangerous Articles Tariff 11, Cal. P.U.C. 6, American Trucking Associations, Inc., Agent, on the issue date thereof.
10. Articles of extraordinary value as set forth in Rule 3 of Western Classification 78, J. P. Hackler, Tariff Publishing Officer, on the issue date thereof.
11. House trailers, trailers other than house trailers, portable units designed for human occupancy other than trailers, and parts, contents or supports for such articles when accompanying such equipment.
12. Furniture, as described under that heading in Western Classification 78, J. P. Hackler, Tariff Publishing Officer, on the issue date thereof, and lamp shades or reflectors and lamp standards or electric lamps and shades combined when the furniture or other articles are tendered to the carrier loose (not in packages nor completely wrapped).
13. Garments on hangers.
14. Baled hay, fodder and straw.
15. Logs.

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## TERRITORIAL DESCRIPTION OF SERVICE AREA

All of the city of San Jose and that area embraced by the following boundary: Beginning at the point the San Francisco-San Mateo County Boundary Line meets the Pacific Ocean; thence easterly along said boundary line to State Highway 5; southerly along State Highway 5 to its intersection with State Highway 9 at Saratoga Gap; easterly along State Highway 9 to Saratoga; southeasterly along unnumbered highway to Los Gatos; northeasterly along San Jose-Los Gatos Road to Foxworthy Avenue; easterly along Foxworthy Avenue to Almaden Road; southerly along Almaden Road to Hillsdale Avenue; easterly along Hillsdale Avenue to U.S. Highway 101; northwesterly along U.S. Highway 101 to Tully Road; northeasterly along Tully Road to White Road; northwesterly along White Road to McKee Road; southwesterly along McKee Road to Capitol Avenue; northwesterly along Capitol Avenue to Oakland Road; northerly along Oakland Road through Milpitas to its intersection with State Highway 9 at Warm Springs; northerly and westerly along State Highway 9 via Mission San Jose, Niles and Hayward to the intersection of State Highway 9 with Redwood Road; easterly and northerly along Redwood Road to the intersection with an unnumbered highway just east of Castro Valley; westerly and southerly along such unnumbered highway through Castro Valley to its intersection with Foothill Boulevard; northerly along Foothill Boulevard to 98th Avenue; easterly along 98th and Encina Avenues to Mountain Boulevard; northerly along Mountain Boulevard, Warrend Boulevard Freeway and Landvale Road to State Highway 24; northerly and westerly along State Highway 24 to Claremont Avenue; northerly along Claremont Avenue to the Berkeley-Oakland City limits; northerly along the Berkeley-Oakland City limits to the northern boundary of the University of California; westerly along said boundary and Cedar Street to San Pablo Avenue (U.S. Highway 40, Business Route); northerly along San Pablo Avenue to and including all of the cities of Richmond and San Pablo; southerly along Filbert Street to Castro Street; southwestly along Castro Street to State Highway 17 (Standard Avenue); northwesterly along State Highway 17 to the Richmond-San Rafael Bridge; southerly along an imaginary line from the Richmond-San Rafael Bridge to the San Francisco Waterfront at the foot of Market Street; westerly along said waterfront and shore line to the Pacific Ocean; southerly along the shore line of the Pacific Ocean to the point of beginning.

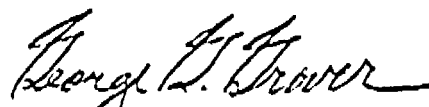
DISSENTING OPINION OF COMMISSIONER GEORGE G. GROVER

Applicants' evidence shows a preference for their service on the part of a few shippers, but wholly fails to show a public need for the service. There are at least twenty-five certificated highway common carriers hauling the commodities applicants propose to haul, in the territory which applicants propose to serve. Five of these carriers presented evidence that they have adequate equipment to handle any foreseeable increase in the public need for service throughout the area applied for by applicants. The certificated equipment presently operating in this area has excess capacity and sometimes is wholly inoperative due to lack of business.

The presently certificated carriers have offered to transport all of the commodities sought to be added to applicants' certificate. Except for foam rubber, there is no serious dispute that the protestants are willing to and could perform the required service. To satisfy the needs of shippers, at most an expansion of applicants' certificate to include foam rubber and perhaps a few other enumerated commodities would suffice.

So far as applicants' certificated area is concerned, the only extension that has been justified is an enlargement to include those areas where applicants' long-standing customers have relocated.

The standard by which the testimony for applicants must be measured is the need of the shipping public, not the benefit to applicants from the granting of a certificate. The broad authority requested in this case goes far beyond the needs of the shippers who sponsored testimony for applicants. Applicants have not shown that the service offered by existing common carriers is inadequate. Only by such a showing would we be justified in granting the certificate.

  
George G. Grover  
Commissioner