

Decision No. 67424

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of RAILWAY EXPRESS AGENCY, INCORPORATED, for authority to extend operations under its highway common carrier certificate granted in Decision No. 64640 to Alamo, Danville, Diablo, San Ramon and San Ramon Village.

Application No. 45863

Dudley A. Zinke and Pillsbury, Madison & Sutro for applicant.

Graham, James and Rolph, by Boris H. Lakusta and E. Myron Bull, Jr., for California Motor Transport Co., California Motor Express, Ltd., Delta Lines, Inc., Merchants Express of California, Sterling Transit Co., Inc., and Pacific Motor Trucking Company, protestants.

Cecil W. Borton, for San Ramon Valley Chamber of Commerce; E. A. McMillan and H. W. Taggart for State Legislative Committee, Brotherhood of Railway Clerks; A. I. Lawrence for Brotherhood of Railway Clerks; interested parties in support of application.

O P I N I O N

By this application Railway Express Agency, Incorporated (the Agency) seeks an extension of its highway common carrier certificate which was granted by Decision No. 64640,^{1/} to include Alamo, Danville, Diablo, San Ramon and San Ramon Village. These points will be hereinafter designated as the San Ramon Valley points. The above-mentioned certificate represented a coupling of two prior certificates, one embracing numerous points from South San Francisco, on the north, to Gilroy, on the south, and the other

1/ Dated December 11, 1962, in Application No. 44996.

covering the area generally from San Pablo on the north to Oakland on the west, Fremont on the south and Walnut Creek, Livermore and Pleasanton, on the east.^{2/}

By the authority herein sought, applicant would be authorized to operate as a highway common carrier between any two of said San Ramon Valley points, also between any of said points, on the one hand, and, on the other, any of the points presently specified in the certificate granted by the aforesaid Decision No. 64640.^{3/} The amended certificate would be subject to the limitations and restrictions that are set forth in the certificate as it is presently framed. Thus, the proposed highway carrier service would be limited to the transportation of express traffic of petitioner under a through bill of lading or express receipt, and said traffic would be required to receive, in addition to the proposed highway carrier movement, an immediately prior or immediately subsequent movement by rail, water, air or truck transportation. Moreover, the commodities to be transported would not include certain articles which are customarily designated as the "standard exceptions."

Public hearings of the application were held before Examiner Bishop at Danville on December 17 and 18, 1963, at Pleasanton on February 4, 1964, and at San Francisco on February 5 and 6, 1964. With the filing of closing briefs on April 13, 1964, the matter was taken under submission.

^{2/} Highway common carrier rights within the South San Francisco-Gilroy group were granted by Decision No. 60890, dated October 18, 1960, in Application No. 42528. The East Bay certificate was granted by Decision No. 59927, dated April 12, 1960, in Application No. 41694.

^{3/} Applicant proposes to render collection and delivery service at all points within defined areas centering on each of the five involved communities. These areas would be contiguous and would, for the most part, extend both westerly and easterly of State Highway 21.

Evidence on behalf of applicant was adduced through the superintendent of its Northern California-Nevada-Oregon Division, the president of the San Ramon Valley Chamber of Commerce, the sales manager of a community development company and 14 shipper witnesses. Additionally, six individuals, speaking on their own behalf, testified in support of the proposals.

The record shows that pursuant to Decision No. 59927, above, Railway Express Agency, Incorporated consolidated its express operations in the East Bay area by instituting collection and delivery service by motor trucks between its Oakland terminal and 16 other communities in that area, and by closing 13 offices which had theretofore served those communities. Oakland was made the waybilling point for all shipments originating or terminating in said communities and Oakland rates were made applicable to all such shipments. Additionally, toll-free telephone service was established between the 16 communities and Oakland, thus enabling patrons affected by the consolidation plan to request pickup service and to transact other business without having to pay a toll charge.

The aforesaid consolidation of offices was designed to provide improved express service to the communities served by the carrier's East Bay offices, through more expeditious handling of shipments and provision of collection and delivery service in many areas not theretofore served; to reduce charges on air express traffic, and on some surface shipments, moving to and from points involved in the consolidation; and to reduce substantially the Agency's operating costs in the East Bay area.

None of the five communities embraced by the instant application were involved in the East Bay consolidation plan, and apparently none of them has had the benefit of Agency service in

the past. Prior to the aforesaid consolidation of offices, the nearest of applicant's offices was located at Walnut Creek. That office was closed as a part of the consolidation, so that San Ramon Valley patrons of the Agency must tender or receive shipments at Oakland. The record herein indicates that, prior to the filing of the East Bay office consolidation application in 1959, the Agency made a survey of the San Ramon Valley points and concluded that the express traffic to be developed in the area would be insufficient to justify including said points in the proposed East Bay collection and delivery service.

The record discloses that the instant application was prompted by the presentation to the Agency by San Ramon Valley Chamber of Commerce of a petition, dated May 3, 1963, in which extension of collection and delivery service to San Ramon Valley was requested. The petition was signed by approximately 60 persons, residents and merchants of Danville and Alamo. Some of these individuals testified at the hearings in support of the application.

Applicant's superintendent testified that until recent years the San Ramon Valley was primarily devoted to livestock ranching, grain farming and orchards; that because of the economic and population expansion of the East Bay area and the Valley's favorable climate and close-in location, the Valley has recently become a rapidly growing residential area; and that this increase in population has been accompanied by considerable commercial development and the establishment of some light industry. He pointed out that in 1960 the estimated population of the area proposed to be served was about 13,000, whereas currently the estimate is 25,000. The witness mentioned by names numerous

residential projects, as well as shopping centers, which have been completed or are being developed. There are about 200 business establishments in the Valley. Most of the industrial concerns are located in the vicinity of San Ramon.

Testimony of the president of the San Ramon Valley Chamber of Commerce and of the sales manager of one of the developers of San Ramon Village was to the effect that the population of that portion of the Valley which is located in Contra Costa County has been doubling every ten years; that in San Ramon Village, which is in Alameda County, 1400 new homes have been completed and occupied since September 1962; and that the current rate of construction of 800 homes per year is planned for the next ten years. It is further anticipated that the Contra Costa County section will continue to develop at an accelerated rate.

Although the Valley's nearest Agency office is at Oakland, ^{4/} the record shows that residential, commercial and industrial shippers continue to use the Agency's service, making the trip to that city, and return, in order to tender or take delivery of their shipments. According to an exhibit introduced by the superintendent, some 218 surface express and 41 air express shipments were picked up or delivered at the Agency's Oakland office, during the month of October 1963, by persons residing or having businesses in San Ramon Valley. Of these shipments 42 were intrastate in character.

^{4/} Distances, in miles, to applicant's Oakland office are as follows: From Alamo, 22; from Danville, 24.8; from Diablo, 28; from San Ramon, 27.9; and from San Ramon Village, 24.9.

It is proposed, the superintendent stated, to provide collection and delivery service for both surface and air express daily, except on Saturdays, Sundays and holidays. Service would be performed on a scheduled basis, operating over any and all convenient streets and highways, as is currently the arrangement between the Oakland terminal and other East Bay points included in the present highway common carrier certificate. The pickup truck currently serving Pleasanton and Livermore out of Oakland would be rerouted to serve also the San Ramon Valley points and a second truck, leaving Oakland at a somewhat later time, would be placed in operation also to serve both areas. Toll-free telephone service would be provided between applicant's Oakland office and the Valley.

The superintendent further testified that it would not be satisfactory for the collection and delivery service to be performed at the Valley points for applicant by highway common carriers presently certificated in the area. For the kind of service (involving expeditious and careful handling, among other factors) which the Agency holds itself out to offer, it is necessary that there be a one-carrier responsibility from origin to destination. The Agency's collection and delivery schedules must be tailor-made to the requirements of the Agency's service. It has been applicant's experience, he said, that highway carriers give primary consideration to their own customers, resulting sometimes in delays to the Agency's traffic.^{5/} It has been found also that such carriers do not give the Agency's traffic the same careful handling that the express company's own employees are trained to give. Moreover, the witness said, applicant provides a variety of services for which most motor carriers are not set up or which they

^{5/} In some areas highway common carriers have, in recent years, acted as the underlying carrier for the Agency.

do not hold themselves out to furnish. Examples of these services are: The handling of live animals; protective signature service (hand-to-hand signature for articles of high value); transportation of valuable items, such as currency, coins, gems and securities; transportation of human remains, cut flowers and explosives; armed guard service.

Oakland would be the waybilling point for shipments originating or terminating at the San Ramon Valley points and Oakland rates would apply to such shipments, via both surface express and air express. The record shows that through air express rates from the San Ramon Valley points in many instances would be lower than the combination of highway common carrier and air freight rates from and to the same points. Thus, to Los Angeles this would be the situation on all less-than-carload class rates shipments up to a weight of at least 50 pounds. On such shipments to Eureka and San Diego the through express charges would be lower for shipments weighing up to at least 25 pounds.

The superintendent pointed out that applicant's highway common carrier certificate presently enables the carrier to serve substantially all of the East Bay points with collection and delivery service out of Oakland. Granting of the instant application, he said, would enable applicant to round out its service in that territory.

The 20 witnesses called by applicant or testifying on their own behalf in support of the proposed extension included three representatives of manufacturing concerns, several retail merchants, two insurance brokers, the superintendent of the Valley's high school district, the aforesaid sales manager of a community development company, a country club manager, a landlord and a housewife. Witnesses from all five of the communities in question

testified. Most of the public witnesses use the services of applicant to some extent, although such use involves the necessity of going to Oakland to tender or receive shipments. In most instances the shipments are inbound, routing being controlled by the shipper. Some of the witnesses have urged their consignors not to ship by the Agency because of the great inconvenience experienced in taking delivery at Oakland. Most of these witnesses testified that if the Agency were authorized to provide collection and delivery service in the Valley, they would commence using the service or, in the case of those who are presently using the service, would increase such use.

Other reasons, besides the convenience of door-to-door collection and delivery service, advanced by these witnesses in support of the proposals were: (1) the expedited service rendered by applicant; (2) the careful handling given by this carrier to all kinds of shipments, and particularly to those of a fragile nature; (3) the lower rates provided by the Agency, as contrasted with the rates of general truck haulers, for the smaller shipments; (4) the convenience of direct air express service and the lower rates applicable thereto, as contrasted with the combination of air freight and truck rates currently available to the Valley shippers and receivers; (5) the one-carrier responsibility assumed by applicant because of its extensive service, throughout California and the nation; (6) the absence of limitations as to packing dimensions, such as are imposed by regulations governing parcel post shipments;^{6/}

^{6/} The operator of a dress shop testified, for example, that suits and dresses received by parcel post must be folded in order to keep the parcels within said limitations, so that it is often necessary for the garment to be pressed before it can be offered for sale. On shipments transported by applicant this disadvantage would not be encountered.

and (7) applicant's offering of both collection and delivery service, as contrasted with parcel post, which offers delivery service only.^{7/}

The foregoing witnesses testified regarding some of the commodities which they were prepared to ship or receive via the Agency. Among these were fragile instruments, electronic parts, machine parts, gift items, drugs, men's and ladies' ready-to-wear, including accessories, hardware, printed matter, golf supplies, fresh fruits and vegetables, and fresh fish. A substantial majority of the shipments which are now moving, or which, if the proposed service were to be established, would move, via the Agency from or to the Valley are and would be interstate in character. Most of the shipments would be inbound, the bulk of them originating at points in eastern states. California intrastate commercial shipments, the record indicates, would originate mainly in the Los Angeles and San Francisco areas.^{8/}

The president of the San Ramon Valley Chamber of Commerce read into the record a resolution of the board of directors of that organization expressing their support of the application herein.

Granting of the sought certificate extension was opposed by five highway common carriers of general commodities and the affiliated express corporation of one of them. Evidence was offered on behalf of four of these operators: Delta Lines, Inc., Merchants Express of California, California Motor Transport Co., and its affiliate, California Motor Express, Ltd. According to the testimony

^{7/} The foregoing is a summary of advantages of the proposed services advanced by the witnesses as a group.

^{8/} We point out that the "prior-or-subsequent-haul" provision of the Agency's highway common carrier certificate as herein sought to be amended would bar movement thereunder of any shipments originating at any of the San Ramon Valley points and terminating at any of the East Bay, Peninsula or Santa Clara County points now named in the certificate, or vice versa.

of their witnesses, all of these named companies are now authorized to serve all points within the collection and delivery limits proposed herein by applicant; said carriers now provide daily service (Monday through Friday) from and to the points in question; said carriers provide, under their own certificates or by means of connecting carriers, service between the San Ramon Valley points, on the one hand, and points throughout the State, on the other hand, in the transportation of general commodities, subject to certain exceptions, in small shipments as well as large ones. Assertedly, these carriers provide overnight service from and to said Valley points, except to and from such distant points as San Diego.

Protestants' witnesses further testified that the traffic which their companies presently enjoy from and to the Valley is insufficient to afford favorable load factors; that there is a very poor balance between inbound and outbound loads since relatively few shipments in the latter category are available; that said carriers, together with others who assertedly also provide service, are fully equipped to take care of the traffic needs of the Valley; and that granting of the sought certificate would simply result in sharing with one more highway carrier the available traffic. According to these witnesses the volume of shipments handled into and out of the Valley is insufficient to make the operation a profitable one.

According to the aforesaid witnesses, protestants welcome freight in the small shipment category. Merchants Express, its witness said, would take a shipment weighing as little as a half pound, if it were tendered. Approximately 90 percent of the shipments handled by Delta Lines weigh less than 250 pounds, and a study made by the California Motor Transport companies showed that 45 percent of their shipments weigh 100 pounds or less.

The record discloses that protestants would have no objection to the granting of a certificate to applicant which would be restricted to services not normally performed by general commodity haulers, such as the transportation of live animals, cut flowers, human remains, and articles of very high value such as precious gems, paintings, securities and documents, and the furnishing of armed guard and hand-to-hand signature service.

Discussion, Findings and Conclusions

The proposal before us is essentially one in which Railway Express Agency seeks to include within its East Bay collection and delivery zone five communities which are now excluded from the carrier's defined collection and delivery limits but which are geographically a part of its East Bay service area. Prior to the 1960 consolidation of East Bay offices the Agency's patrons in the San Ramon Valley tendered and received their express shipments at its Walnut Creek office, involving one-way distances ranging from 3 to 13.5 miles. The distances from the Valley communities to the Agency's Oakland Terminal range from 22 to 28 miles. Had the Valley attained, in 1959 and 1960, the level of population and economic growth that it enjoys today, the Agency undoubtedly would have included the points here in issue in the highway common carrier certificate which it sought at that time in connection with its East Bay office consolidation program.

As was stated in Decision No. 59927, above, applicant's business is primarily that of the fast transportation of valuables and package traffic, and the variety of services which the carrier offers includes, for example, recording a deed, shipping the family dog, carrying jewelry or furs under hand-to-hand service, forwarding highly perishable traffic such as cut flowers,

transporting a corpse and providing armed guard service. While, in some respects, the services which applicant offers are duplicated by protestants and other general freight haulers, the spectrum of its functions is broader and at the same time more specialized.

One important aspect of these services relates to the treatment of packages which, because of their fragile character, require unusually careful handling. Such handling is assured by reason of the training which applicant's employees receive in this respect, coupled with the fact that the Agency provides, because of its wide geographical coverage, one-carrier responsibility from origin to destination. Prior decisions in the various office consolidation proceedings of the Agency, as well as evidence adduced in the instant matter, show that where careful handling is important, the services of applicant are distinctly preferred to those of the general freight haulers and of parcel post.

Protestants are fearful that the granting of the sought certificate will have an adverse effect on their traffic from and to the San Ramon Valley. It appears that their apprehension is not well founded. In the first place, the record clearly shows that there has been a marked residential and commercial growth, as well as some industrial growth, in the San Ramon Valley during recent years and that this development will continue at least for several years to come. A consequence of such expansion will be an increase in the volume of traffic available to for-hire carriers. Secondly, from the standpoint of rates, the Agency will be competitive with the general haulers only in the transportation of small or relatively small shipments. The Agency's charges in the heavier weight brackets will be prohibitive for those shipments which may just as well move via the general common carriers of

freight. Thirdly, while a principal feature of applicant's services is expeditious handling, it appears from the record that time in transit of shipments transported by it between the San Ramon Valley and other California points would be generally the same as via the general haulers.

A substantial part of the Valley traffic which the Agency will handle under the proposed certificate now moves via parcel post. A clear indication of this is revealed by the testimony of witnesses regarding unsatisfactory service via parcel post due to careless handling, slow deliveries and restrictions as to weight and dimensions of packages.

Of the traffic which applicant now receives from or delivers to San Ramon Valley customers at its Oakland terminal, only a small proportion moves in California intrastate commerce. It further appears that if the Agency establishes the proposed collection and delivery service the great majority of the Valley shipments will be interstate in character. Based upon these circumstances, protestants contend that the volume of intrastate shipments, present and prospective, is insufficient to justify issuance of the sought highway common carrier certificate.

The distribution of total traffic between intrastate and interstate commerce indicated above is consistent with the pattern which was revealed in the Agency's California office consolidation plans, beginning with the aforesaid East Bay program. In all of these proceedings the great majority of the express shipments moving from and to the involved areas were shown to be interstate.^{9/} This circumstance is understandable, in view of

^{9/} Exhibit No. 20 in Application No. 41694, of which official notice is hereby taken, shows that approximately 80 percent of the shipments transported from and to its East Bay service area during the 12-month period ended February 28, 1959 were interstate in character.

the carrier's nation-wide coverage. In each of the aforesaid office consolidation proceedings, the Commission granted the Agency a highway common carrier certificate, giving due weight to all the pertinent factors.

Although it is apparent that all of the traffic which would be transported under the sought certificate would fall in the less-than-carload category and that the preponderance of the shipments would weigh not more than a few pounds, applicant proposes no weight restriction in connection with its proposed collection and delivery operations. Since the service here in issue is not a purely local operation, but an adjunct to movement beyond Oakland under other operative rights, it would not be practicable to impose a weight limitation on shipments to be transported under the proposed certificate. We are of the opinion, moreover, that protestants' fears that, without such a restriction, the Agency might convert its traditional express company service to that of a full scale general freight operation with a competitive scale of rates is unfounded.

Upon consideration of the record as a whole the Commission finds that:

1. Applicant possesses the experience, equipment, personnel and financial resources necessary to institute and maintain the transportation service hereinafter authorized.
2. Applicant performs many services which general freight highway carriers do not hold themselves out, or are not equipped, to provide.
3. Applicant's operations are so organized as to provide more careful handling of shipments than is generally accorded shipments transported by parcel post or by general freight highway carriers.

4. Applicant, which would not be restricted as to the weight or dimensions of individual packages received by it for transportation, can provide a more valuable service than is possible via parcel post.

5. There is a need in the San Ramon Valley for the types of services (referred to in findings 2, 3 and 4) in which applicant excels.

6. Establishment of collection and delivery service by applicant in the San Ramon Valley will eliminate the inconvenience experienced by its patrons there of going to Oakland to tender or receive surface or air express shipments.

7. The extension of applicant's East Bay highway common carrier certificate to include the San Ramon Valley points will round out applicant's East Bay operative right.

8. Collection and delivery service by applicant in the San Ramon Valley can be efficiently integrated with its existing East Bay collection and delivery service.

9. The San Ramon Valley may be reasonably expected to continue to grow in population, in the number of commercial and industrial establishments and in the volume of available traffic, at least for several years.

10. Granting of the application will not adversely affect protestants.

11. Public convenience and necessity require the granting of the authority sought, subject to the conditions set forth in the following order.

The Commission concludes from the foregoing findings of fact that authority should be granted to applicant as specified in the ensuing order.

Railway Express Agency, Incorporated 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

IT IS ORDERED that:

1. A certificate of public convenience and necessity is hereby granted to Railway Express Agency, Incorporated, authorizing it 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 Appendix A, attached hereto and hereby made a part hereof.

2. Appendix A of Decision No. 64640 is amended by incorporating therein First Revised Page 2, attached hereto, in revision of Original Page 2.

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 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, applicant 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.

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

Dated at San Francisco, California, this 23rd day of June, 1964.

President

Paul E. ...

Commissioner

George T. ...

Commissioner

Fredrick B. ...

BETWEEN the following points:

Oakland, Alamo, Berkeley, Danville, Diablo, El Cerrito, Fremont, Hayward, Lafayette, Livermore, Newark, Orinda, Pleasanton, Richmond, St. Mary's College, San Leandro, San Lorenzo, San Pablo, San Ramon, San Ramon Village, Union City, Walnut Creek, Agnew, Atherton, Belmont, Brisbane, Burlingame, Cambrian Park, Campbell, Colma, Cupertino, Gilroy, Hillsborough, Los Altos, Los Gatos, Menlo Park, Millbrae, Milpitas, Morgan Hill, Mountain View, Palo Alto, Redwood City, San Bruno, San Carlos, San Francisco International Airport, San Jose, San Martin, San Mateo, Santa Clara, Saratoga, South San Francisco, Stanford University, Sunnyvale, and all points on U. S. Highway 101 between San Jose and Gilroy.

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

SUBJECT to the following condition:

The highway common carrier service herein authorized shall be limited to the transportation 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 truck transportation.

End of Appendix A

Issued by California Public Utilities Commission.

Decision No. 67421, Application No. 45863.