

ORIGINAL

Decision No. 68451

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application
of DELIVERY SERVICE COMPANY, a
corporation for an extension and
amendment of its certificate of
public convenience and necessity
as a highway common carrier.

Application No. 46107
(Filed January 16, 1964)

Philip A. Winter, for applicant.

Graham James & Rolph, by Boris H. Lakusta
and E. Myron Bull, Jr., for protestants.

O P I N I O N

Public hearings were held before Examiner Power in San Francisco on April 28, and July 16, 1964. On the last-named date the matter was submitted subject to the filing of briefs. These were received on September 21, 1964.

Applicant seeks to bring about the elimination of certain restrictions from its certificate. A request for a territorial extension to Napa was abandoned by applicant at the hearing.

The application was protested by Delta Lines, Inc., the California Motors Group, Merchants Express of California, and Pacific Motor Trucking Company.

Just what interest these protestants had in this proceeding was never made clear. Applicant is a parcel carrier. Like all such carriers it has authority to deviate from the Commission's minimum rate orders to the extent that it can publish rates by the parcel and the pound rather than in cents per hundred-weight. The protestants do not have or at least do not exercise,

such authority. The Commission's understanding is that shippers use parcel carriers where the parcel rates are advantageous. When the contrary is true they use the standard common carriers like the protestants.

In addition to applicant there are at least three other carriers who quote parcel rates in applicant's service territory. These did not protest. These direct competitors do not appear to have such limitations in their certificates.

The restrictions in question read as follows:

"PROVIDED, HOWEVER, that applicant shall neither accept, transport nor deliver any packages or parcels in bulk intended for distribution anywhere within the territory authorized to be served, whether originating in San Francisco or elsewhere." (Decision No. 28691.)

"For shipments consisting of two or more parcels and weighing more than 100 pounds, transported between points embraced in this certificate, except shipments to and from El Cerrito, applicant shall publish and file tariff rates and charges which are not less than the minimum first-class rates and charges per shipment set forth in City Carriers' Tariff No. 2-A - Highway Carriers' Tariff No. 1-A, amendments thereto and reissues thereof. For shipments transported to or from El Cerrito, applicant shall publish and file tariff rates and charges which are not less than the minimum rate-basis 'A', first class rates and charges per shipment set forth in City Carriers' Tariff No. 2-A - Highway Carriers' Tariff No. 1-A, amendments thereto and reissues thereof. The provisions of this paragraph shall apply to articles for which minimum rates have been established by the Commission and to articles for which minimum rates have not been established by the Commission." (Decision No. 48324.)

The certificate granted under Decision No. 47358, as amended by Decision No. 47592 contains the following restriction, among others:

"Each shipment or carriage of freight or merchandise from one consignor to one consignee, to an individual point of destination, consisting of one or more packages or parcels which in the aggregate weigh one hundred (100) pounds or more, shall be transported between the points

embraced within this certificate at rates and charges not less than either the any-quantity, first-class rate at actual weight or the minimum charge per shipment, whichever is the highest, concurrently published as minimum rates or charges in Highway Carriers' Tariff No. 2 and as amended for freight or merchandise not exempt from prescribed minimum rates in California Public Utilities Commission Highway Carriers' Tariff No. 2, as now or hereafter amended, regardless of whether or not either one or more or all of the articles contained in a shipment are exempt as set forth in Items 40 and 41 series in California Public Utilities Commission Highway Carriers' Tariff No. 2, and as amended, from prescribed minimum rates."

It will be at once apparent that restrictions of this kind can never be of benefit to the shipping public. That public does not benefit from either complexity or confusion. As a rule such restrictions do not originate with shipper witnesses but with protesting competitors.

Restrictions in a certificate, stated in terms of rates to be assessed, are inherently undesirable. The intention is, of course, that such rates will not be used. Nevertheless, they are on file and, under certain circumstances, might be applied.

The restriction against accepting parcels in bulk is a very old one. In terms of present practices in the industry, its meaning is obscure which, in itself, is a good reason for eliminating it.

The Commission finds that:

1. The restrictions in applicant's certificate of public convenience and necessity referred to in the foregoing opinion are of no benefit to the shipping public.

2. Public convenience and necessity require that the application, as amended at the hearing, be granted.

The Commission concludes that Application No. 46107, as amended at the hearing of April 28, 1964 should be granted.

Applicant's certificate will be restated in the appendix form now in use by the Commission.

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

IT IS ORDERED that:

1. A certificate of public convenience and necessity is granted to Delivery Service Company, a corporation, 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 made a part hereof.

2. 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, and the insurance requirements of the Commission's General Order No. 100-C. Failure to file such reports, in such form and at such time as the Commission may direct, or to comply with the provisions of General Order No. 100-C, 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.

3. The certificate of public convenience and necessity granted in paragraph 1 of this order supersedes all existing certificates of public convenience and necessity authorizing the transportation of general commodities heretofore granted to or acquired by Delivery Service Company and presently possessed by it, which certificates are hereby 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 12th day of January, 1965.

Fredrick B. Halblaff
President

George H. Crover

William B. DeWitt
Commissioners

Delivery Service Company, by the certificate of public convenience and necessity granted by the decision noted in the margin, is authorized to transport:

- A. Packages between Alameda, Oakland, Piedmont, Emeryville, Berkeley, Albany and El Cerrito, subject to Restrictions 1, 2, 3 and 4.
- B. General commodities at wholesale between any two or more of the points described in subparagraph A above, subject to Restrictions 1, 2, 3 and 4.
- C. The following commodities at retail between any two or more of the points described in subparagraph A above, subject to Restrictions 1, 2, 3 and 4.

Auto Parts, Accessories and Supplies,	Labels,
Bags,	Liquors, Beer and Ale and Wines (packages),
Barber Supplies,	Mechanical Tools,
Blue Prints,	Optical Supplies and Equipment,
Cameras,	Paper and Stationery Supplies,
Candy and Confections,	Periodicals and Magazines and Newspapers (single issues),
Cigars, Cigarettes, Tobacco and Pipes,	Photographic Supplies, Rubber Stamps,
Cosmetics,	Twine,
Dental Supplies and Equipment,	X-ray Plates and Prints.
Drugs and Medical Supplies and Equipment	
Films and Prints,	
Grocers' Supplies,	

Issued by California Public Utilities Commission.

Decision No. 68451, Application No. 46107.

- D. Property between Alameda, Albany, Berkeley, El Cerrito, Emeryville, Oakland, Piedmont and intermediate points on the one hand and on the other hand, Alvarado, Antioch, Brentwood, Benicia, Castro Valley, Centerville, Clayton, Concord, Crockett, Danville, Decoto, Dublin, El Sobrante, Hayward, Irvington, Lafayette, Livermore, Martinez, Mission San Jose, Mt. Eden, Newark, Nichols, Niles, Oakley, Orinda, Pacheco, Pinole, Pittsburg, Pleasanton, Port Chicago, Richmond, Rodeo, San Leandro, San Lorenzo, San Pablo, Santa Rita, San Ramon, Sunol, Vallejo, Walnut Creek, Warm Springs, and intermediate points over and along U.S. Highways 40 and 50 and State Highways 4, 9, 17, 21, 24, and 48, and any other appropriate state and county roads and streets in and between the above-named points, subject to Restrictions 1, 2, 3, 4 and 5.

RESTRICTIONS:

1. Applicant shall not use trucks of a larger rating than one-half ton.
2. Applicant shall not carry any package or parcel weighing more than one hundred pounds.
3. Applicant shall not carry any package or parcel with a combined length and girth of more than one hundred sixty inches.
4. Applicant shall publish only a tariff for parcel delivery in which charges are made per parcel or package delivered.
5. Applicant shall not carry in a single day parcels and packages from a single consignor to a single consignee of a total weight in excess of three hundred pounds.

(End of Appendix A)

Issued by California Public Utilities Commission.

Decision No. 68451, Application No. 46107.