

Decision No. 19410

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

In the Matter of the Application of L. R. KAGARISE for permission to extend his present motor freight and express operations to include a service from and to Pasadena, also Santa Ana, etc.

Application No. 13087

In the Matter of the Application of MOTOR SERVICE EXPRESS, a corporation, for a certificate of public convenience and necessity extending its service between Pasadena and Cucamonga via Foothill Blvd., and points between Alhambra and Ontario via Valley Blvd.

Application No. 13378

Warren E. Libby and Harry N. Blair, for Applicant L. R. Kagarise.

H. J. Bischoff, for Applicant Motor Service Express.

M. Thompson, for American Railway Express Company, Protestant.

B. J. Cross, for Southern Pacific Company, Protestant.

BY THE COMMISSION:

O P I N I O N

L. R. Kagarise, doing business under the fictitious name of Keystone Express, has petitioned the Railroad Commission, in accordance with his amended application, for an order declaring that public convenience and necessity require the extension of his present freight and express truck service, excepting however Los Angeles proper and territory intermediate between Los Angeles and

San Gabriel Boulevard, into that certain territory and over and along those certain routes delineated and shown on that certain map marked applicant's Exhibit No. 1, attached to said amended application and serving all of those points, places, towns and cities named in paragraphs 2 and 3 on pages 3 to 8 inclusive of said application.

Applicant also prays for an order validating his present prescriptive freight and express motor truck service between Los Angeles, El Monte, Covina, Azusa, Pomona, Ontario, Claremont, Cucamonga and intermediate points with the right to make all necessary diversions to any points within five miles of the travelled highway routes, provided that no service shall be rendered intermediate points between Los Angeles and San Gabriel Boulevard.

Applicant proposes both a scheduled and an on demand service between Pasadena and over and along the Foothill Boulevard, joining with his present operative rights at Azusa, passing through the points and places above referred to and described in said paragraphs two and three of said application, together with the right to serve all of said territory for a distance of five miles on either side of the highway travelled.

Applicant proposes to charge rates in accordance with Exhibit "B" attached to and made a part of said application, and to operate on a time schedule in accordance with Exhibit "C" attached to and made a part of said application. Applicant proposes to use his equipment now in use throughout his authorized territory and any further equipment that may be necessary.

Motor Service Express, a corporation, has petitioned the Railroad Commission for an order declaring that public convenience and necessity require the operation by said applicant of an automobile truck line as a common carrier of

freight and express to and from all points between Pasadena and Cucamonga by way of Foothill Boulevard and between Alhambra and Ontario by way of Valley Boulevard, on the one hand, to and from San Bernardino and Riverside and intermediate points, and all points southerly and easterly now authorized to be served by applicant under authority of this Commission's Decisions Nos. 15952 and 16547, on the other hand, together with the authority to pick up and deliver freight within a radius of five miles on either side of the routes travelled. Said proposed service is sought as an extension of the present authorized service of Motor Service Express as follows: between Los Angeles, on the one hand, and Riverside, San Bernardino and intermediate points, on the other hand, from and to all points between Los Angeles and Riverside and San Bernardino and intermediate points via Valley Boulevard, on the one hand, to and from all points between Beaumont, Banning, Cabazon, Whitewater, Palm Springs, Indio, Coachella, Thermal and Mecca, on the other hand, pursuant to Application No. 12244, Decision No. 15952 dated February 8, 1926; also, pursuant to Application No. 12740, Decision No. 16547 dated April 23, 1926, a further extension of operating rights as granted applicant to Oasis; also, pursuant to Application No. 11820, Decision No. 17586 granted November 10, 1926, applicant is authorized to extend its service by including the right to pick up and deliver freight from all points on the Valley Boulevard between the East boundary line of the City of Ontario and Riverside, and between Riverside and San Bernardino, as an extension and enlargement of its present authorized service.

Motor Service Express proposes to charge the same rates as it now charges to and from the City of Los Angeles under its present Tariff C. R. C. No. 1, issued April 19, 1926, effective May 24, 1926, and the rules and regulations described in said tariff, so far as applicable to the proposed service, will be adopted.

Applicant proposes to operate on a time schedule in accordance with Exhibit "B" attached to said application and made a part hereof.

American Railway Express Company, the Southern Pacific Company and the Pacific Electric Railway Company protested the granting of the application of Motor Service Express.

Motor Service Express protested the application of L.R. Kagarise, in so far as a certificate is sought to transport freight to points beyond Ontario and Cucamonga on the east.

Public hearings on said applications were conducted by Examiner Satterwhite at Los Angeles, Pomona, San Bernardino and Pasadena, the matters were submitted and are now ready for decision. Said applications were consolidated for the purpose of receiving evidence and for decision.

L. R. Kagarise called a large number of witnesses in support of his application, all of whom testified to the demand and need for the proposed extension of freight service sought by this applicant. Motor Service Express also called a considerable number of witnesses at the hearing at San Bernardino, all of whom testified in favor of proposed extension of this applicant to the point desired to be served.

The record shows the territory now served by L. R. Kagarise, which stretches easterly from the San Gabriel Boulevard to Ontario and Cucamonga along the Foothill and Valley Boulevards, has made a very rapid and material growth in the last few years. This area, including the other proposed extensions of this applicant, is devoted extensively to citrus fruit orchards and other agricultural pursuits.

Innumerable commercial enterprises and manufacturing concerns of all kinds have been established in this district and have

found a lucrative market for their goods and products throughout the extended territory proposed to be served by this applicant. It appears also that many business and manufacturing enterprises in the extended area sought to be served ship a considerable volume of freight into the San Gabriel Valley as far west as Pasadena and into other portions of the territory now served. Many of the owners and representatives of various industries and business enterprises appeared at the hearings in support of the proposed extended service of L. R. Kagarise. The evidence shows that the following firms or establishments are some of those who desire the proposed extended service:

The California Fruit Wrapping Mills, whose plant at Pomona has a fruit wrapping output of 3000 tons a year, sell and ship to fruit growers in Riverside, Redlands, San Bernardino, Ontario, Orange and many other points. Their paper is used by innumerable packing houses in this area. The Day & Night Water Heater Company has its factory at Monrovia and sells and transports at least 15 tons monthly to jobbers and dealers in Pasadena, Riverside, Redlands and Santa Ana and other Orange County points. The business of this company is growing and it indicated its willingness to patronize the proposed service of L. R. Kagarise for the transportation of 75 per cent of its tonnage. The Drew Carriage Company at Ontario, with branch stores at Covina, Riverside and San Bernardino, transport about 50 carloads yearly in their own trucks consisting of hardware and farm implements to all these points and would use the proposed service to a large extent. Southern Service Company, with headquarters at Pomona, maintain a system of laundries covering 23 plants in Southern California and make constant shipments to many of the communities in the territory proposed to be served. Singer Sewing Machine Company maintains agencies at Pasadena and San Bernardino and other communities

and make sales and ship its machines between all these places. The San Bernardino Hardware Company, wholesalers and retailers in hardware, China, crockery and kindred merchandise at Riverside transport their goods to Pasadena, Santa Ana and numerous other points within the desired freight extensions. The Exchange Orange Products Company at Ontario, a large factory manufacturing orange products, such as juice, oils, and flavoring, sell to numerous customers as far east as Highlands, Redlands and other points south to Santa Ana. The Edison Electric Appliance Company, at Ontario, employing 450 people, manufacture electrical appliances of every description and ship to nearly every point in the area proposed to be served. J. B. Kingham, a large manufacturer of flume gates, pipe jackets, sprinklers and similar products, has numerous customers wherever oranges or garden truck are raised in the citrus belt in Southern California. Pomona Tile Company operates a floor tile factory at Pomona and ships its products to numerous customers at Anaheim, Riverside, Redlands, Santa Ana, Pasadena, Orange and other points. The Kofig Factory at Pomona manufactures a substitute for coffee and sells to various jobbers and retailers at Santa Ana, Pasadena, San Bernardino, Riverside and other points. Brogdex Company at Pomona manufacture a product for treating citrus and other fruits for the market and do a large business throughout the citrus fruit belt. A. P. Drull, dealer in antique furniture at Pomona, ships to Pasadena, Riverside, Santa Ana and various intermediate points. K. E. Adamson, manufacturer of orchard heaters at Pomona, testified that the citrus growers throughout the orange belt in the counties proposed to be served purchase his products and his shipments range from truck-load lots weighing from one to five tons. F. F. McConnell operates a factory at Pomona for making box shock for orange boxes and he has

daily shipments to Riverside, Redlands, Anaheim and Olive in truck-load lots or less. This factory used 500,000 feet of lumber per month. N. H. Edgar, owner of Hotel Edgar, testified that he has daily requests to forward trunks both east and west covering the points of Redlands, Riverside and San Bernardino. These requests are from commercial travellers who desire to make direct shipments of small trunks. George C. Griswold at Claremont makes marmalades, preserves and candied fruits and sells and ships his goods to Pasadena and other points in packages weighing from 45 to 75 pounds. The Promotor Cigar Company, wholesalers in cigars, tobacco and candies, deliver in their own trucks east to El Monte and Fontana and west to Azusa and all way points. In the summer they sell extensively at Balboa and other beaches. Philadelphia Storage & Battery Company, wholesale dealers in tires and batteries, distribute to Redlands, Riverside, Fontana and other points.

Motor Service Express called as witnesses at San Bernardino the officials and representatives of several of the large business concerns in this community. These establishments comprise such large institutions as Smart & Final, wholesale grocers, the Crane Company, dealers in plumbing, the Pacific Pipe Supply Company, the Crow Company, handling building materials and cement products and also the Harris Company, a large department store. All of these firms have customers in the territory east from San Bernardino and favor a direct service to this territory as proposed by said applicant.

The testimony of the witnesses who appeared on behalf of nearly all of the foregoing business enterprises was to the effect that the railroad service does not furnish a direct service to many of the towns and communities in which they do business and in numerous instances shipments have to be made into Los Angeles and then reshipped back into the territory to its final destination.

Many of these shippers now use their own trucks for the transportation of their goods, but indicated a desire to use the proposed service of either applicant in the transportation of goods and products to many points to which they now have no direct truck or rail service.

The evidence offered by both applicants clearly indicates, without contradiction, that Pomona, Ontario and San Bernardino have become distributing centers for the towns and communities in the citrus growing territory proposed to be served by both applicants.

The proposed extensions of service sought by applicant Motor Service Express into and from all points between Pasadena and Cucamonga and between Alhambra and Ontario, on the one hand, to and from San Bernardino and Riverside and way points are substantially similar to the proposed service of L. R. Kagarise covering the same territory.

We are satisfied from all the evidence introduced herein that the public necessity does not require the granting of the proposed extensions of both applicants over this same area above mentioned.

The Motor Service Express offered little or no evidence to justify its proposed extension from Coachella Valley points into and from Pasadena and Ontario and intermediate territory. It appears in this connection that this-applicant has but two private contracts to transport dates and vegetables for two shippers from Coachella Valley during the summer season to packing houses at Monrovia and Pasadena.

Both applicants offered oral and documentary evidence showing that each has had ample experience as a common carrier in the operation of auto trucks and also has sufficient financial responsibility to conduct the proposed extensions. The record shows, however, that applicant L. R. Kagarise has for



nearly ten years conducted a satisfactory freight truck service into and from the points and communities between Alhambra and Pomona and Ontario, on the one hand, and Los Angeles, on the other hand, and that his present application to extend these operations as herein proposed antedated the proposed service of the Motor Express Service several months.

The evidence shows and we hereby find as a fact that the operative rights now being conducted by applicant L. R. Kagarise are those which he has conducted in good faith ever since May 1, 1917, and continuously since that time, and those acquired by virtue of Decision No. 7524, in Application No. 5343, which <sup>are</sup> specifically defined and set forth in this Applicant's Tariff C.R.C. No. 7, to-wit:- between Los Angeles, El Monte, Covina, Azusa, Pomona, Ontario, Claremont, Cucamonga and intermediate points as shown herein. The record also shows on page 2 of said Tariff C.R.C. No. 7 that the following places are specifically named as terminal and intermediate points, to-wit: El Monte, Baldwin Park, Covina, Azusa, Glendora, San Dimas, LaVerne, Claremont, Upland, Cucamonga, Ontario, Puente, Walnut, Spadra and Pomona.

The evidence further shows that L. R. Kagarise served in good faith on May 1, 1917, and continuously ever since said date as intermediate points between Los Angeles and El Monte all places along the Valley Boulevard west from El Monte through Ardendale, Savannah, Rosemeade and Amarillo to the San Gabriel Boulevard crossing and has applied and charged rates applicable to and from El Monte, which district was also formerly known and called the El Monte District.

L. R. Kagarise is hereby placed upon notice that "Operative rights" do not constitute a class of property which should be capitalized or used as an element of value in determining reasonable rates. Aside from their purely permissive aspect, they

extend to the holder a full or partial monopoly of a class of business over a particular route. This monopoly feature may be changed or destroyed at any time by the state which is not in any respect limited to the number of rights which may be given.

After a careful consideration of all the evidence in this proceeding, we are of the opinion and hereby find as a fact that said L. R. Kagarise, doing business under the name of Keystone Express, is entitled to a certificate of public convenience and necessity to operate the freight and express service proposed between the points specified in his application and that his application should be granted, and that the application of Motor Express Service, a corporation, should be denied.

#### O R D E R

Public hearings having been held in the above entitled applications, the matters having been duly submitted, the Commission being now fully advised and basing its order upon the conclusions and findings of fact which appear in the opinion which precedes this order.

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA hereby declares that public convenience and necessity require the operation by L. R. Kagarise, doing business under the fictitious name of Keystone Express, of the extensions of his present freight and express truck service, excepting, however, from and to Los Angeles proper and from and to territory intermediate between Los Angeles and San Gabriel Boulevard, into that certain territory and over and along those certain routes delineated and shown on that certain map marked Applicant's

Exhibit No. 1, attached to said application and serving all of those points, places, towns and cities as follows, to-wit:

Scheduled service between Pasadena and Foothill Boulevard to junction with present operative rights at Azusa, viz:-

- |                                 |                        |
|---------------------------------|------------------------|
| 1 - Pasadena ----- 0 mi.        | 4- Arcadia             |
| Lomanda Park ----- 3 mi.        | a detour ----- 8 mi.   |
| Santa Anita ----- 6 mi.         | 5- Monrovia ----- 9½ " |
|                                 | Duarte ----- 11 "      |
| 2 - Sierra Madre                | Azusa ----- 15 "       |
| a detour ----- 8 mi.            |                        |
| 3 - Santa Anita Wash ---- 7 mi. |                        |

Scheduled service, San Gabriel Boulevard crossing following the Valley Boulevard to junction with present operative rights at El Monte, passing through the following places to-wit:

- |                                  |                      |
|----------------------------------|----------------------|
| 6 - San Gabriel Blvd. ---- 0 mi. | Savannah ----- 3 mi. |
| Crossing.                        | Ardendale ----- 3½ " |
| Amarillo ----- 1 mi.             | El Monte ----- 4 "   |
| Rosemead ----- 2 mi.             |                      |

Scheduled service from junction with present operative right at Ontario, north to junction with present operative right at Uplands, passing through the following places to-wit:

- |                        |
|------------------------|
| 7- Ontario ----- 0 mi. |
| Euclid Avenue -----    |
| Uplands ----- 7 mi.    |

Scheduled service, from junction with present operative right at Guasti (South Cucamonga) north to junction with present operative right at Cucamonga, passing through the following places, to-wit:

- |                        |
|------------------------|
| 8- Guasti ----- 0 mi.  |
| Archibald Avenue ----- |
| Cucamonga ----- 4 mi.  |

Scheduled service from junction with present operative rights at Cucamonga, north to Alta, Loma, as follows:

- |                           |
|---------------------------|
| 9 - Cucamonga ----- 0 mi. |
| Alta Loma ----- 2 mi.     |

Scheduled service from junction with present operative rights  
at Cucamonga, east to Highlands, passing through the  
following places to-wit:

10 - Cucamonga -----	0 mi.	Rialto -----	13 mi.
Etiwanda Road Jctn.---	4½ "	San Bernardino ---	16 mi.
11 - Etiwanda (a detour)---	6 "		
12 - Fontana -----	9 "	13-Highlands -----	22 mi.

Scheduled service, connecting San Bernardino and Colton,  
also Highlands with Redlands, as follows, to-wit:

14 - San Bernardino -----	0 mi.	15-Highlands -----	0 mi.
Mt. Vernon Avenue-		Orange Avenue	
Colton -----	3 mi.	Redlands -----	4½ mi.

Scheduled service from junction with present operative right  
at Guasti (South Cucamonga) east to Redlands, passing  
through the following places, to-wit:

16 - Guasti -----	0 mi.	17-Colton -----	17 mi.
Bloomington -----	12 mi.	Redlands -----	23 mi.

Scheduled service from junction with present operative rights  
at Ontario East through Riverside to Colton, passing through  
the following places, to-wit:

18 - Ontario -----	0 mi.	19-Highgrove -----	20 mi.
Wineville -----	8 mi.	Colton -----	30 mi.
Riverside -----	17 mi.		

On demand service, applicable when carrier has accumulated freight  
weighing in aggregate 5000 pounds or more for distribution  
along one or more route or routes, in a general direction:

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20- Pasadena -----	0 mi.	Whittier Boulevard-Jct. -	9 mi.
Alhambra -----	4 mi.	Telegraph Road -----	
El Monte Road Jct. -----	5 mi.	Downey -----	16 mi.

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21- Pasadena -----	0 mi.	22 - El Monte Road Jct. -	5 mi.
San Gabriel -----	3 mi.	Pico-----	10 mi.

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23- Bassett -----	0 mi.	24 - Pico Jctn. -----	7½ mi.
Bartola -----	3 mi.	Whittier -----	8 "

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25- Valley Blvd.		Fullerton -----	13½ mi.
Brea Canyon Jctn.---	0 mi.	26 - La Habra -----	17 "
Brea -----	9 mi.	Whittier -----	26 "
Chapman -----	13 mi.		

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27 - Fullerton ----- 0 mi.	28 - Fullerton ----- 0 mi.
Anaheim ----- 2 $\frac{1}{2}$ "	Placentia ----- 3 mi.
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29 - Pomona ----- 0 mi.	Olinda ----- 16 mi.
Chino ----- 6 mi.	Placentia ----- 22 mi.
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30 - Placentia ----- 0 mi.	Peralta ----- 7 mi.
Richfield ----- 4 mi.	
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31 - Placentia ----- 0 mi.	Anaheim ----- 5 mi.
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32 - Peralta ----- 0 mi.	Orange ----- 10 mi.
Olive ----- 4 mi.	
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33 - Orange ----- 0 mi.	Anaheim ----- 6 mi.
Tustin Jct. ----- 4 mi.	
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34 - Orange ----- 0 mi.	Santa Ana ----- 4 mi.
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35 - Pico ----- 0 mi.	Downey ----- 6 mi.
Rivera ----- 3 mi.	
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36 - Downey ----- 0 mi.	Norwalk ----- 4 mi.
Studebaker ----- 2 mi.	
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37 - Norwalk ----- 0 mi.	Buena Park ----- 6 mi.
La Miranda ----- 3 mi.	Fullerton ----- 10 mi.
Northam ----- 5 mi.	
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38 - Downey ----- 0 mi.	Clearwater ----- 4 mi.
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39 - Clearwater ----- 0 mi.	Artesia ----- 6 mi.
Bellflower ----- 2 mi.	
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40 - Artesia ----- 0 mi.	Norwalk ----- 4 mi.
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41 - Artesia ----- 0 mi.	Los Alamitos ----- 4 mi.
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42 - Los Alamitos --- 0 mi.	Seal Beach ----- 7 mi.
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43 - Los Alamitos --- 0 mi.	Stanton ----- 4 mi.
Cypress ----- 2 mi.	Anaheim ----- 9 mi.
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44 - Seal Beach ----- 0 mi.	Westminster ----- 7 mi.

45 - Westminster -----	0 mi.	Santa Ana -----	9 mi.
Bolsa -----	4 mi.		
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46 - Westminster -----	0 mi.	Talbert -----	3 mi.
Smeltzer -----	2 mi.	Huntington Beach --	6 mi.
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47 - Huntington Beach ---	0 mi.	Fairview -----	10 mi.
Talbert -----	3 mi.	Newport Beach -----	15 mi.
Newport -----	8 mi.		
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48 - Newport Beach -----	0 mi.	Dehli -----	9 mi.
Harper -----	2 mi.	Santa Ana -----	11 mi.
Paul Arind -----	7 mi.		
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49 - Santa Ana -----	0 mi.	Tustin -----	3 mi.
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50 - Tustin -----	0 mi.	Irvine Station ---	6 mi.

Also, in connection therewith, to make all necessary diversions to any points within five miles of the highway travelled in all of the above named extensions.

IT IS HEREBY ORDERED that a certificate of public convenience and necessity be and the same is hereby granted to L. R. Kagarise, doing business under the fictitious name of Keystone Express, for the operation of the service hereinabove described, subject to the following conditions:

1. Applicant shall file his written acceptance of the certificate herein granted within a period of not to exceed ten (10) days from date hereof.
2. Applicant shall file, in duplicate, within a period of not to exceed twenty (20) days from the date hereof, tariff of rates and time schedules, such tariffs of rates and time schedules to be identical with those attached to the application herein, or rates and time schedules satisfactory to the Railroad Commission, and shall commence operation of said service within a period of not to exceed sixty (60) days from the date hereof.
3. The rights and privileges herein authorized may not be discontinued, sold, leased, transferred nor assigned unless the written consent of the Railroad Commission to such discontinuance, sale, lease, transfer or assignment has first been secured.

4. No vehicle may be operated by applicant herein unless such vehicle is owned by said applicant or is leased by him under a contract or agreement on a basis satisfactory to the Railroad Commission.

The effective date of this order will be twenty (20) days from date hereof.

IT IS HEREBY ORDERED that said application of Motor Service Express, a corporation, be and the same is hereby denied.

Dated at San Francisco, California, this 25<sup>th</sup> day of February, 1928.

Leon A. White

C. Seavey

W. B. Porter

M. H. Van

Commissioners.