

Decision No. 19664.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

In the Matter of the Investigation upon  
the Commission's own motion into the  
operations, service and rates of **ELMER  
E. FROST & COMPANY**, doing business either  
under the name of **FROST EAST SERVICE**, or  
otherwise, in the transportation of  
freight or express matter between the  
termini of Los Angeles and San Diego.

Case No. 2519.

- Richard T. Eddy, for the Frost East Freight Service.
- H. J. Bischoff and R. E. McConnell, for the Boulevard Express and Coast Truck Line.
- S. P. Cowen, intervener.
- E. W. Camp and Berne Levy, for The Atchison, Topeka and Santa Fe Railway Company.
- E. B. Young, for the Pacific Electric Railway Company.

CARR, Commissioner:

O P I N I O N

This is a proceeding instituted by the Commission on its own motion to determine whether or not the operations of Elmer E. Frost and Company, doing business under the name of Frost East Freight Service in the transportation of freight between the termini of Los Angeles and San Diego, are conducted as a common carrier express corporation under Section 2 (k) of the Public Utilities Act and therefore under the jurisdiction of this Commission. A public hearing was held at Los Angeles on April 6, 1928.

The facts relating to the operations of respondents are not in dispute. Elmer E. Frost and Company is a copartnership consisting of Elmer E. Frost and Inc. M. Frost. Approx-

imately two months ago respondents inaugurated and extensively advertised to the shipping public what they term a "store door pick up and store door delivery service" for the transportation of freight between Los Angeles and San Diego. This service so far has only been rendered south bound from Los Angeles to San Diego and only on certain selected commodities capable of relatively heavy loading, respondents apparently preferring not to handle more bulky articles such as uncrated furniture. The shipments are picked up from individual shippers at their respective places of business in Los Angeles by the trucks of the Commercial Transfer Company, the latter, under contract, delivering the shipments to respondents' receiving station leased from and located in the freight sheds of The Atchison, Topeka and Santa Fe Railway Company, hereafter referred to as the Santa Fe. Here the individual packages are consolidated into one shipment, are tendered to the Santa Fe by respondents as consignors, and are thence transported over that railroad to San Diego, either as less than carload freight in trap cars or as carload shipments, depending on the size and nature of the consignments. The lawfully established rates of the Santa Fe contained in tariffs on file with this Commission are assessed. The consolidated shipments are all consigned to the C. & R. Transfer Company at San Diego, and the latter, after taking delivery on the team tracks of the Santa Fe, performs for respondents under contract the store door delivery services at destination. For the complete services respondents maintain and assess on shipments weighing less than 1000 pounds a rate of 70 cents per 100 pounds for articles rated first class, 65 cents per 100 pounds for those rated second class, 55 cents per 100 pounds for those rated third class, and 50 cents per 100 pounds for those rated fourth class. Lower class or commodity rates are established.

on shipments weighing over 1000 pounds. Until April 2, 1928, the articles were rated according to the Consolidated Freight Classification No. 5, C.R.C. No. 412, and since that date according to Monroe's "Ship-by-Truck" Freight Classification C.R.C. No. 5. Out of the total freight charges received by respondents they pay the Santa Fe its lawful freight rates and the charges of the draying concerns for rendering the pick up and delivery services.

Effective April 2, 1928, respondents filed, under protest, with this Commission Tariff C.R.C. No. 2, alleging that they did this solely because of the issuance of a temporary injunction by the Superior Court of the State of California in and for the County of Los Angeles, which restrained respondents from performing the freight services in question unless and until a tariff covering the operations should have been filed and published in accordance with the provisions of the Public Utilities Act.

Section 2 (k) of the Public Utilities Act defines an express corporation as follows:

The term "express corporation," when used in this act, includes every corporation or person, their lessees, trustees, receivers or trustees appointed by any court whatsoever, engaged in or transacting the business of transporting any freight, merchandise or other property for compensation on the line of any common carrier or stage or auto stage line within this state.

Respondents contend, in effect, that they are solely shippers of goods from Los Angeles to San Diego and are not in any sense actually transporting any freight, that service being performed by the Santa Fe, the shipments moving in Santa Fe equipment and in complete custody of that company from the time they leave Los Angeles until they arrive at San Diego. In support of this contention they rely upon the fact that they pay

the regular tariff rates of the Santa Fe and have no contract with that company such as usually exists between a railroad and an express corporation. The record, however, shows conclusively that the operations of respondents go beyond those of a mere shipper. In a circular distributed to shippers in Los Angeles and San Diego (Exhibit No. 2) respondents describe their services in part as follows:

Inasmuch as our Los Angeles-San Francisco Store Door Pick-up and Delivery Service has won such high favor among shippers of those two cities, we are pleased to announce an extension of this service to include San Diego and its environs. Rapid through carriage of heavier merchandise shipments, as well as Package Service - at rates comparable to the current drayage-transportation line rates - is the controlling feature of this new service.

This service offers and guarantees "No Shut-Outs". Freight received at our terminal as late as 6 P.M. is insured positive delivery in San Diego not later than 10 A.M. the following morning.

Our representative will be privileged to furnish you with rate schedules, or to answer any question regarding this practical solution of your transportation problems.

\* \* \* \* \*

Transportation is not ended until consignee is in possession of merchandise. (Underscoring ours)

Respondents thus hold themselves out, and the testimony shows they are engaged in transporting freight through the agencies of other carriers and giving a completed transportation service which commences when the shipments are picked up from the consignors at Los Angeles and ends only when they are finally delivered to the consignees at San Diego. Under the statutory provision here in question, the arrangement between respondents and the Santa Fe for performing the rail service, whether under contract or at the regular tariff rates, is not material to the determination of respondents' status in this proceeding.

After a careful consideration of all the facts of

record, I am of the opinion and so find that the service rendered by these respondents to the shipping public is that of a common carrier express corporation within the meaning of Section 2 (k) of the Public Utilities Act.

Respondents' Tariff C.R.C. No. 2 now on file with the Commission does not in all respects conform to the rules and regulations governing the construction and filing of express tariffs, and respondents will therefore be required to file a new and complete tariff.

I recommend the following form of order:

O R D E R

This proceeding having been duly heard, full investigation of the matters and things involved having been had, and basing this order on the findings of fact and the conclusions contained in the opinion which precedes this order,

IT IS HEREBY ORDERED that respondents, Elmer E. Frost and Ina M. Frost, doing business as a copartnership under the name of the Frost Fast Freight Service, be and they are hereby directed to establish within thirty (30) days from the date of this order a complete and comprehensive express tariff superseding their heretofore filed Tariff C.R.C. No. 2, and containing the rates, rules and regulations of this copartnership governing the transportation of express matter between Los Angeles and San Diego, such tariff to be constructed under the provisions of Commission Tariff Circular No. 2.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 23<sup>d</sup> day of April, 1928.

Leon Whitehall  
C. Seaver  
Ernest J. ...  
John O. ...  
M. J. ...  
Commissioners.