

Public hearings were held at San Francisco, evidence heard and the matter taken under submission.

It appears from the record that Pacific States Express, Inc., is an express corporation with tariffs on file with the Railroad Commission covering service between Los Angeles and San Francisco and East Bay points. It utilizes the vessels of the Los Angeles Steamship Company which are operated four days a week between San Francisco and Los Angeles. The vessels leave San Francisco on Tuesday, Wednesday, Friday and Saturday of each week. They leave Los Angeles (Wilmington) on Sunday, Tuesday, Thursday and Friday of each week, arriving in San Francisco on the following days. This boat service, it is claimed by applicant and express officials, is subject to delays caused by docking facilities, storms, repairs and excursions, preventing at times performance of an efficient, expeditious express service and causing dissatisfaction among shippers. Applicant claims also that there is a demand for daily service, and it proposes to augment the existing steamer service by a service by truck on non-steamer days with an early morning delivery at termini.

The application was opposed by Southern Pacific Company, Railway Express Agency, Inc., California Motor Express, Ltd., and California Motor Transport, Ltd. Bekins Van Lines, Inc. also protested but withdrew its protest on stipulation by applicant that certain commodities would not be transported.

Applicant offered but one public witness in support of its contention, submitting the matter to the Commission on the testimony of employees and officials of the express company and the applicant and expressing reliance on the Commission's decision.

in what is generally referred to as the Sundberg case. (Decision No. 22774, 34 C.R.C. 532).

It appears from the record that there is common ownership of applicant, the express corporation and the Worth Drayage Company, the latter company appearing, in the main, as the source of the trucking equipment proposed to be used in the proposed service. The Worth interests propose to finance the service. The Drayage Company, it appears, is also to perform the pick-up and delivery service for Pacific States Express in San Francisco.

Epitomized the testimony of applicant's witnesses was to the effect that officials of Pacific States Express, who are also officials of applicant corporation, had been importuned by its customers to provide service daily or, briefly, to round out the service now given via steamship by a trucking service on two days of the week. Express company solicitors testified that they had solicited business on a daily service basis, a combination of ship and truck, and had been assured of sufficient business to justify operation of the truck line proposed by the applicant herein. From 4 to 6 tons per trip, according to applicant, is necessary to make the service a compensatory one, and, it is claimed, this amount of freight is available. The only public witness, F. J. Jeckel, is traffic manager for Sears, Roebuck & Co. His testimony was to the effect that his firm shipped approximately 200 tons a month southbound and approximately 30 tons a week northbound, all of which tonnage had been handled up to the present by existing carriers and by truckmen with whom his concern had private arrangements. He said he found the "contract carriers" undependable and unreliable, and therefore favored establishment of the service proposed by applicant, particularly in view of the fact that Worth Drayage Company was now performing for Sears, Roebuck & Co. a transportation

service in San Francisco. He had no complaint to make against existing services, except as to certain packing requirements affecting what he described as "hamper shipments." He had never used the present boat facilities provided by Pacific States Express, but would use the truck service of applicant because objectionable packing requirements would be eliminated. Protestant's testimony was to the effect that they were prepared, in some instances, at lower rates, to provide all the service necessary. They also presented testimony showing that their facilities were not at any time taxed to capacity. None of the witnesses had any complaint against services of protestants.

In re Southern Pacific Motor Transport Company, decided on October 17, 1929, (Decision No. 21683) the Commission granted applicant a certificate to carry express matter of Railway Express Agency, Inc., in effect making it possible for the Agency to supplement and round out its then existing service. While applicant here leans strongly on the holding in re Sundberg, 34 C.R.C. 532, the situation there dealt with is, it seems to me, less in point than that in the earlier case. Each recognizes the propriety of certificating for the limited purpose of transporting express matter consigned by a particular express company. In the earlier case there was evidence by so-called public witnesses as to the need of augmented service. In the Sundberg case the existence of a business, largely patronized and which was in the twilight zone between a private and a public business and in the conduct of which no element of concealment or bad faith appeared, was deemed to sufficiently establish public convenience and necessity when the proprietors of the business offered to dedicate it as a public one and accept public regulation and control.

Here there is no such situation as was developed in the Sundberg case. Nor is there the convincing evidence of the need of

rounding out and supplementing the existing service that was presented in the Southern Pacific Motor Transport case. Applicant's main reliance was in the size-up by the affiliated express company of the needs and desires of its customers. This testimony must be viewed in the light of the fact that this express company, appearing as a protestant in the Sundberg case, joined with other protestants in that case in applying for a rehearing and in representing to the Commission that existing facilities and service were then adequate to meet the needs of the shipping public.

It has been the general policy of this Commission to require very definite evidence of the need of the public for the service sought to be certificated. This has usually taken the form of testimony of so-called public witnesses respecting the inadequacy of existing facilities or the need of some improved or specialized service. In the Sundberg case the conditions then existing under the peculiar circumstances disclosed were very properly deemed to supply this proof. Certification has been granted an applicant to transport the express matter of the Railway Express Agency, Inc. when trains have been discontinued and there was no other means of continuing the service. (Re Custer, decided April 1, 1930, Decision No. 22271). The desire of the applicant or the applicant's estimate of the business possibilities of the proposed service has not been deemed sufficient to justify certification.

While the Pacific States Express, Inc. is the only proposed shipper, the close affiliation between it, the applicant, and the Worth Drayage Company is such and its position assumed in the Sundberg case as to the adequacy of existing service is so inconsistent with that it now takes that estimates presented by its officials cannot be viewed in the same light as evidence from an individual agency as to the extent of the business for which it required transportation.

To grant this application under the present record would, it seems to me, involve an extension of the rule or policy declared in the express company cases referred to, as well as a letting up on the requirements for certification long observed by the Commission. I am not prepared to recommend either. However, in view of the uncertainty in the minds of counsel as to the scope of the ruling in the express company cases, this application should be dismissed without prejudice. It may be that the supplemental service sought is essential to the needs of the shipping public even though the present record does not indicate it.

I recommend the following form of order:

O R D E R

This matter having been duly heard and submitted, and the Commission being duly advised,

IT IS HEREBY ORDERED that Application No. 16679 be and the same is hereby denied without prejudice.

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

The above Opinion and Order are hereby declared to be the Opinion and Order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 5th day of November, 1930.

[Signature]
[Signature]
Leon Whitely
[Signature]
Commissioners.