

Decision No. 2287A

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

In the Matter of the Application of  
MOTOR TRANSIT COMPANY, a corporation,  
for a certificate of public convenience  
and necessity to transport express for  
Railway Express Agency, Incorporated,  
between Pomona and Chino and inter-  
mediate points.

} Application No. 17557.

R. E. Wedekind, for applicant.  
H. J. Haley, for Railway Express Agency,  
Incorporated.  
A. D. Mitchell, interested party.  
Harry S. Payne, protestant.

**ORIGINAL**

SEAVEY, COMMISSIONER:

O P I N I O N

Motor Transit Company, a corporation, has petitioned the Railroad Commission for an order declaring that public convenience and necessity require the transportation by it of express matter for Railway Express Agency, Incorporated, between Pomona and Chino and intermediate points, and that the applicant be permitted to haul such express without limit as to weight and on other passenger equipment or such other equipment as the amount of express to be transported may justify, and at the rate set forth in Exhibit "A" attached to the application.

A public hearing on this application was conducted at Los Angeles on August 18th and the matter was submitted and is now ready for decision.

Testimony of witnesses of the applicant and of the Railway Express Company, Incorporated, substantiated the facts set forth in the application and in addition showed the application

was, in effect, the substitution of Motor Transit Company as a carrier in place of the Southern Pacific Company, which now has a contract with the Railway Express Agency for this territory. The record shows that the transfer of this business from the Southern Pacific Company, which now conducts such operations on mixed trains, to applicant would give much more convenient and regular service to the public than is possible under the present arrangements.

The parties appearing in interest and protesting offered no testimony in opposition to the application. Their only concern was as to whether or not the right sought would give to either the Motor Transit Company or the Railway Express Agency additional territory or pick-up and delivery service competitive to present service which protestant now renders. The record shows that the instant application does not invade the rights and territory of the other existing carriers. It would therefore appear that the application as sought should be granted.

Motor Transit Company, a corporation, 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.

#### ORDER

Public hearing having been held in the above entitled proceeding, -the matter having been submitted and the Commission being fully advised,

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA HEREBY  
DECLARES that public convenience and necessity require the carriage  
of express matter of the Railway Express Agency, Incorporated, by  
Motor Transit Company, a corporation, between Pomona and Chino and  
intermediate points.

IT IS HEREBY FURTHER ORDERED that a certificate of public  
convenience and necessity be and the same is hereby granted to  
Motor Transit Company, a corporation, subject to the following  
conditions:

1. Applicant shall file its written acceptance of the certificate herein granted within a period not to exceed ten (10) days from date hereof, stipulating in said acceptance that such certificate permits the transportation of express matter, without any restriction as to equipment, between Pomona and Chino, but only for Railway Express Agency, Incorporated, and at less than tariff rates, in accordance with the contract marked "Exhibit "A" attached to the application, and for no other alteration or enlargement of its existing operative rights.
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 it under a contract or agreement on a basis satisfactory to the Railroad Commission.

For all other purposes the effective date of this order shall be twenty (20) days from the date hereof.

Dated at San Francisco, California, this 24<sup>th</sup> day of August, 1931.

C. Scammy  
Leon Whelan  
W. B. Harris  
Fred G. Woodcock  
Commissioners.