

Decision No. 25022

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 SOUTHERN PACIFIC RAILROAD COMPANY)
 and SOUTHERN PACIFIC COMPANY for)
 authority to discontinue operation)
 of trains carrying passengers, their)
 baggage, and express between Gilroy)
 and Tres Pinos, California.)
 Application
 No. 15127.

In the Matter of the Application of)
 RAILWAY EXPRESS AGENCY, INCORPORATED,)
 of California, for a certificate of)
 public convenience and necessity to)
 reroute and extend and operate by)
 motor vehicles, express matter for)
 RAILWAY EXPRESS AGENCY, INCORPORATED,)
 or its successors; also for the trans-)
 portation of Milk, N.O.S.; Cream, N.O.S.,)
 and baggage, that may be offered by)
 and for Southern Pacific Company, a)
 corporation, between Gilroy, Hollister,)
 San Juan and Tres Pinos via San Juan.)
 Application
 No. 18013.

ORIGINAL

In the Matter of the Application of)
 PACIFIC GREYHOUND LINES, INC., a cor-)
 poration, to abandon its operative)
 rights and route between Hollister)
 and Tres Pinos.)
 Application
 No. 18066.

H. W. Hobbs for Southern Pacific Company,
 John Kane and Edward Stern for Railway Express Agency, Inc.
 H. C. Lucas for Pacific Greyhound Lines, Inc.,
 J. Hills Wythe for Valley Truck Line,
 James Slaven for New Idria Quicksilver Mines, Inc., and
 Lathrop Hay & Grain Co., interested parties.

BY THE COMMISSION:

O P I N I O N

Southern Pacific Railroad Company and Southern Pacific
 Company, applicants in above application No. 15127, have pe-
 titioned the Railroad Commission of the State of California

for a supplemental order modifying its Decision No. 20801, dated February 18, 1929, by eliminating therefrom the requirement that a substitute motor bus service by Southern Pacific Motor Transport Company be provided between Hollister and Tres Pinos.

Railway Express Agency, Inc. of California, in above named Application No. 18013, has petitioned the Railroad Commission for an order declaring that public convenience and necessity require the operation by it of an auto truck service as a common carrier for the transportation of property, to-wit:

First: Express matter of the Railway Express Agency, Inc. of Delaware, or its successors, originating at or destined to Gilroy, Hollister, San Juan or Tres Pinos, at which places the Railway Express Agency, Inc., of Delaware, maintains agencies;

Second: Milk, N.O.S., Cream, N.O.S., Cottage Cheese, Pot Cheese, Unflavored Ice Cream Mix and concentrated milk, and baggage, which the Southern Pacific Company desires to have transported for it;

Third: To use the route via San Juan in lieu of via Sawyer, which is the present route operated by said applicant between Gilroy and Hollister.

Applicant proposes to handle the express matter for the Railway Express Agency, Inc. of Delaware, or its successors, under contract and the rates to be charged to the public for the transportation of such express matter on applicant's vehicles will be those of the Railway Express Agency, Inc., of Delaware, or its successors, according to the lawful tariff rates of said company or its successors, between its offices or stations on said route and between said stations and elsewhere in the territory served by the Railway Express Agency, Inc., of Delaware or its successors, both interstate and intrastate. And the limitations and

conditions upon said transportation shall be those set forth in the classification and tariffs of the Railway Express Agency, Inc. of Delaware, or its successors, on file with the Railroad Commission of the State of California.

The basis for compensation agreed to between applicant and the Railway Express Agency, Inc., of Delaware, or its successors, is on file with the Railroad Commission in re Application No. 17443.

The proposed time schedule and route for said service by applicant's vehicles between the points involved, is shown in Exhibit "A" attached to said application and made a part thereof, and in so far as description of equipment, it is that now under lease from the Railway Express Agency, Inc., of Delaware, now in operation between Gilroy and Hollister, the description of which is on file with the Railroad Commission. A map showing the territory to be served is also attached to the application and marked Exhibit "B."

Pacific Greyhound Lines, Inc. in above named application No. 18066 has petitioned this Commission for an order authorizing said applicant to abandon its operative rights and route between Hollister and Tres Pinos and to cancel its tariffs and time tables therefor.

Public hearings on said applications were conducted by Examiner Satterwhite at Gilroy, the matters were submitted, and are now ready for decision. The three applications were consolidated for the purpose of receiving evidence and for decision.

No one appeared in opposition to the granting of any of said applications.

The record shows that by Decision No. 20801 in Application No. 15127, authority was granted to the Southern Pacific Company to discontinue operation of passenger trains Nos. 203-205-204 and 206 between Gilroy and Tres Pinos which decision provided in part as follows:

"IT IS HEREBY ORDERED the Southern Pacific Company be permitted and authorized to discontinue from operation passenger trains Nos. 203, 205, 204, 206, between Gilroy and Tres Pinos, subject, however, to the condition that upon the abandonment of said trains a substitute motor bus service will be provided to the public by Southern Pacific Motor Transport Company, as hereinafter set forth, and that the public be given at least five (5) days' notice of such changes" * * *

In pursuance of said decision a substitute motor bus service was provided by Southern Pacific Motor Transport Company, predecessor of Pacific Greyhound Lines, Inc. The evidence shows that the patronage of this motor bus service has declined to a point where the earnings have resulted in an annual deficit, which petitioner is required to make good with the Pacific Greyhound Lines. The evidence shows that the local passengers holding one-way Southern Pacific tickets between Hollister and Tres Pinos averaged only four per month between June and December of 1931 inclusive and that through passengers averaged seven per month. It also appears that passengers carried on Southern Pacific trains between Gilroy and Tres Pinos for week ending November 24, 1928, averaged five per day and the Southern Pacific passengers carried on Pacific Greyhound Lines buses between Gilroy and Tres Pinos at a later period during the month of November, 1931, averaged less than one per day and that passengers carried by Pacific Greyhound Lines between Gilroy and Tres Pinos during the month of November, 1931, also averaged less than one per day.

Pacific Greyhound Lines, Inc., among other operative rights and routes, operates between Gilroy and Tres Pinos, via Bolsa Junction,

Fairhaven School and Hollister, as authorized by Decision No. 23244 dated December 31, 1930.

Pacific Greyhound Lines, Inc. introduced testimony showing that the passenger revenue per mile for all schedules operated between Hollister and Tres Pinos during the period from June 30th to December 1st, 1931, inclusive, amounted to but 2.1 ¢ and that but 190 passengers were transported during this period. The express revenue is negligible and there is no baggage revenue at all. It was shown that the total revenue per mile for all schedules operated between said points was but 2.7 ¢ per mile compared with the operating expense of 20.7¢ per mile. Agate is a blind siding on the line of the Southern Pacific Company, the only tariff point intermediate between Hollister and Tres Pinos, from or to which there is no business handled. Railway Express Agency, Inc. will make its own arrangements for handling Railway express between Hollister and Tres Pinos, in the event the application for abandonment of the Pacific Greyhound Lines, Inc. is granted.

Railway Express Agency, Inc., in support of its proposed extended service between Hollister, San Juan and Tres Pinos, introduced testimony showing that the business which the Pacific Greyhound Lines, Inc. now handles for the transportation of the property of the Delaware corporation of the American Railway Express Agency will be handled by this applicant. Express shipments proposed to be carried will involve little or no local business and the service will embrace and involve numerous points in California beyond Gilroy, amongst which are Los Angeles, Bay cities, Salinas and San Mateo, as well as numerous interstate destinations and points of origin, such as Moosehart, Ills., Newark, N.J., St. Johnsbury, Vt., Chicago, Ills. and Cassapolis,

Mich. It was shown, as a matter of fact, that shipments have moved throughout the years to and from all cities in the Union.

For the six months period from October 31, 1931 to and including March, 1932, the milk and cream traffic of the Southern Pacific Company, which the Railway Express Agency Incorporated of California proposes to handle, amounted to 390 ten-gallon cans, equivalent to 19 tons in weight. The gross revenue to the Southern Pacific Company amounted to \$135.25, of which \$8.36 per month was paid to the Pacific Greyhound Lines for their portion of the haul to Gilroy. The destination points of these milk shipments during this period were San Francisco, Oakland and Willows. No local business was involved. The record shows that the only expense involved for the additional mileage of 25 miles per day under the proposed extended service will be the usual wear and tear of tires and equipment, gasoline and oil.

After a careful consideration of all the evidence in these consolidated proceedings, we are of the opinion that the above numbered applications and each of them should be granted.

Railway Express Agency Incorporated of California 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 hearings having been held in the above entitled proceedings, the matters having been submitted and the Commission being now fully advised,

IT IS HEREBY ORDERED that the Commission's Decision No. 20801, dated February 18, 1929, which provided in part as follows:

"IT IS HEREBY ORDERED the Southern Pacific Company be permitted and authorized to discontinue from operation passenger trains Nos. 203, 205, 204, and 206, between Gilroy and Tres Pinos, subject, however, to the condition that upon the abandonment of said trains a substitute motor bus service will be provided to the public by Southern Pacific Motor Transport Company, as hereinafter set forth, and that the public be given at least five days' notice of such changes" * * *

be and the same is hereby modified by eliminating therefrom the requirement that a substitute motor bus service by the Southern Pacific Motor Transport Company be provided between Hollister and Tres Pinos.

IT IS HEREBY FURTHER ORDERED that Pacific Greyhound Lines, Inc. be and it is hereby authorized to abandon its operative rights and route between Hollister and Tres Pinos subject to the following conditions:

1. Applicant Pacific Greyhound Lines, Inc. shall post notice at least five (5) days before abandonment at their terminal stations and in vehicles used by them of the date of discontinuance.
2. Applicant Pacific Greyhound Lines, Inc. shall file supplement to tariffs, canceling same and shall withdraw and cancel time schedules within twenty (20) days from date hereof covering operations authorized to be abandoned.

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA HEREBY DECLARES that public convenience and necessity require the operation by the Railway Express Agency Incorporated of California of an auto truck service as a common carrier between Gilroy and Tres Pinos via San Juan for the transportation of property, to-wit:

First: Express matter of the Railway Express Agency, Inc. of Delaware, or its successors, originating at or destined to Gilroy, Hollister, San Juan or Tres Pinos, at which places the Railway Express Agency, Inc., of Delaware maintains agencies;

Second: Milk, N.O.S., Cream, N.O.S., Cottage Cheese, Pot Cheese, Unflavored Ice Cream Mix and concentrated milk and baggage, which the Southern Pacific Company desires to have transported for it.

IT IS HEREBY FURTHER ORDERED that a certificate of public convenience and necessity for such service be and the same is hereby granted to Railway Express Agency, Incorporated of California as described in the preceding paragraph in lieu of the right heretofore granted applicant by Decision No. 23812 of June 22, 1931.

IT IS HEREBY FURTHER ORDERED that the certificate of public convenience and necessity granted Railway Express Agency, Incorporated of California by Decision No. 23812 of June 22, 1931 on Application No. 17450 be and it is hereby revoked and annulled.

IT IS HEREBY FURTHER ORDERED that the authority herein granted to the Railway Express Agency, Incorporated of California is subject to the following conditions:

1. Applicant shall file its written acceptance of the certificate herein granted within a period of not to exceed fifteen (15) days from the date hereof.
2. Applicant shall file, in duplicate, within a period of not to exceed twenty (20) days from the date hereof, time schedules and tariff of rates, such tariff to show reference by C.R.C. numbers to the tariffs of Railway Express Agency, Incorporated in which the rates, rules and regulations to be observed by applicant will be found.
3. Applicant shall file in duplicate, and make effective within a period of not to exceed thirty (30) days from the date hereof time schedules, covering the service herein authorized, in a form satisfactory to the Railroad Commission.
4. 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.
5. No vehicle may be operated by applicant herein unless such vehicle is owned by said applicant or is leased by them 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 21st day of August 1932.

Clarence
Leon S. Wickham
W. J. Lee
W. B. Harris
James G. Stewart
COMMISSIONERS.