

Decision No. 10115

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
THE PACIFIC STATES EXPRESS (a corpor-
ation) for certificate of public
convenience and necessity to operate
a motor express service between the
PORT OF LOS ANGELES, (Wilmington),
CALIF., and the CITY OF LOS ANGELES,
CALIF., as a unit of service in
conjunction with through express
traffic via steamers of The Los
Angeles Steamship Company between
the PORT OF LOS ANGELES, CALIF.,
and SAN FRANCISCO, CALIF.

Application

No. 7441

John W. Hart and B.F. McKibben, for Applicant
L.N. Bradshaw for Southern Pacific Company,
Protestant
A. B. Roehl and Mark Thompson for American
Railway Express Company, Protestant
C.W. Byer for Los Angeles and San Pedro
Transportation Company, Protestant
C.H. Tibbett for Thos. Richards Motor Express
Protestant
C.W. Cornell for Pacific Electric Railway
Company, Protestant

BY THE COMMISSION

O-P-I-N-I-O-N

The Pacific States Express, a corporation, has petitioned the Railroad Commission for an order declaring that public convenience and necessity require the operation by it of an automobile truck service as a common carrier of express between the Port of Los Angeles (Wilmington) and the City of Los Angeles, such service being a unit in a proposed express service to be established between San Francisco and Los Angeles via the steamers operated by the Los Angeles Steamship Company between the Ports of San Francisco and Los Angeles (Wilmington.)

Public hearings on the application were conducted by Examiner Handford at Los Angeles, the matter was duly submitted and is now ready for decision.

Applicant proposes to charge rates in accordance with a schedule marked exhibit "A" attached to the application in this proceeding; to operate over the highway between Wilmington and Los Angeles at necessary intervals as required to connect with incoming and outgoing steamers of the Los Angeles Steamship Company; using as equipment one 1920 model Kleiber Truck of 1 1/2 ton capacity and such other equipment as may be necessary to meet the demands of traffic.

Applicant relies as justification for the granting of the desired certificate on the alleged facts that the applicant company was incorporated for the purpose of transacting an expedited or express service under contract with the Los Angeles Steamship Company operating the steamers "Yale" and "Harvard" between Los Angeles Harbor (Wilmington) and San Francisco; that formerly the American Express Company operating via said steamers and the Los Angeles and Salt Lake Railroad maintained a through express service between Los Angeles and San Francisco; that such through express service was discontinued at the time the said steamers were withdrawn from the above route and assigned to the service of the United States government during the war; that the American Express Company on July 1, 1918 became a part of the American Railway Express Company, which latter company now operates over the aforesaid Los Angeles and Salt Lake Railroad and all other rail routes; that with the restoration of the steamers "Yale" and "Harvard" to the service between Los Angeles (Wilmington) and San Francisco as operated by the Los Angeles Steamship Company it is the desire of applicant, operating under contract with said Los Angeles Steamship Company to restore the through or expedited express service which was withdrawn as a result of war conditions, and as the substitution of the rail service between Wilmington and Los Angeles is not now possible by reason of contract existing

between the American Railway Express Company and the Los Angeles and Salt Lake Railroad, the use of a motor service between Wilmington and Los Angeles becomes necessary to provide the through service herein contemplated by applicant. No local service is to be undertaken by applicant between Wilmington and Los Angeles, the business to be confined to the through carriage of shipments between Los Angeles and San Francisco.

Mr. B. F. McKibben, a witness for applicant, testified as Secretary and Treasurer of the applicant corporation as to the proposed service to be established; that the applicant company was duly incorporated in September, 1921; that the proposed rates were approximately 12½ per cent less than the existing rates of the American Railway Express Company which company already had made or was contemplating a request for an increase of its rates; that the pick-up and delivery service in San Francisco was to be cared for by the facilities of the Wirth Draying Company and the similar service in Los Angeles was to be performed by the facilities of Russell Peck. The proportion of the through rate to accrue to the Los Angeles Steamship Company for the use of its facilities was stated to have been agreed upon as 52½ per cent of the through rate. The expense of free pick-up and delivery in Los Angeles and San Francisco was to be cared for by a proportion of the through rate, such proportion at both terminals to be 25 per cent of the amount remaining after the deduction from the through rate accruing to the Los Angeles Steamship Company had been paid. Under this method as proposed the following would be the division of rates accruing to other companies and the applicant:

| | <u>Per Cent</u> |
|-------------------------------|-----------------|
| Los Angeles Steamship Company | 52.5 |
| Wirth Drayage Company | 11.875 |
| Russell Peck Delivery | 11.875 |
| Applicant | 23.75 |
| Total | <u>100.00</u> |

This witness estimated the gross revenue to be approximately \$3500.00 per month, and from the net revenue to be received by applicant there would be required to meet the expense of administration, the salary and expenses of a Los Angeles agent, the salaries of messengers, the expense of maintenance and operation of the truck line between Los Angeles and Los Angeles Harbor (Wilmington), stationery, printing and the other miscellaneous incidentals necessary in the conduct of the business. It is the intention of applicant to employ messengers who will regularly accompany shipments from San Francisco, will give personal supervision to the classifying of such shipments as to delivery routes while in transit on the steamer, performing the necessary waybilling and other clerical work, and on arrival at Wilmington such messengers will operate the truck to the point at which interchange is made with the Russell Peck delivery in Los Angeles. The messengers will then load up the outbound shipments as received from the Russell Peck delivery, transport them by truck to Wilmington, attend to the loading upon steamer, and while the steamer is en route will classify, waybill and in other matters care for shipments to the end that they will be assorted as to delivery routes when the steamer arrives at San Francisco and the shipments are turned over to the Wirth Drayage Company for delivery in San Francisco. The basic feature of the service offered by applicant, according to the testimony of this witness, is an expedited delivery at a lesser rate than is at present charged by the American Railway Express Company.

Mr. E. Browning, a witness for applicant, testified that he was the Traffic Manager of the Broadway Department Store (a large retail mercantile establishment in Los Angeles); that he also represented an association known as the Retail Dry Goods Traffic Managers of Los Angeles, being Chairman of the Rate Committee of such association. This witness expressed a dissatis-

faction with the present facilities, or the manner in which same were used, of the American Railway Express Company.

It appears from the testimony of this witness that a considerable volume of express matter moves between San Francisco and Los Angeles, the movement being principally south-bound, and that due to the high rates now in effect for less than carload freight that many shipments move by express, particularly over long distances, that formerly and normally would move by freight. The testimony of this witness tends to the conclusion that he and the association which he represents are in favor of any additional service which will facilitate the receipt of their shipments, and it is clear that the offer of a lesser rate is not a paramount factor as on rush shipments the rate appears to be of little consequence, the character of goods requiring express and expedited shipment evidently being of such a nature as to readily absorb any slight excess transportation cost.

Other evidence was received in support of the application as to the experience of the officials now connected with the applicant company in the express business; as to the ability of the local drayage concerns in Los Angeles and San Francisco to satisfactorily handle their portion of the proposed service, the character and quantity of their equipment; as to the duties and service to be rendered by the proposed agent or representative at Los Angeles; and as to the facilities and service to be rendered by the Los Angeles Steamship Company in the way of providing space for the assorting of express matter on steamers, the care of shipments of a valuable nature and the meals and accommodations to be furnished the messengers who will be employed by applicant and accompany

shipments between Los Angeles, Wilmington and San Francisco.

The granting of this application is opposed by the American Railway Express Company, the Southern Pacific Company, the Pacific Electric Railway Company, the Los Angeles & San Pedro Transportation Company and Thos. Richards Motor Express.

Mr. Mark Thompson, a witness for protestant, American Railway Express Company, testified that he was the Superintendent of that company in Los Angeles district and from his long experience in the express business was thoroughly familiar with the traffic conditions and requirements of the public using express service between Los Angeles and San Francisco; that five trains each way per day were used by the American Railway Express over the line of the Southern Pacific Company and that additional trains were available over the line of the Atchison, Topeka & Santa Fe Railway but that such additional trains were infrequently used as regards through shipments between Los Angeles and San Francisco; that he was thoroughly familiar with the service formerly rendered between San Francisco and Los Angeles via a combination of the steamers of the Pacific Navigation Company (the same steamers "Yale" and "Harvard" as now operated by the Los Angeles Steamship Company and proposed to be used by applicant herein) and the Pacific Electric Railway Company with which latter company Wells Fargo and Company (predecessor of the American Railway Express Company) had an operating contract and agreement; that under the former existing arrangement the shipments moved as freight between the Pacific Navigation Company dock at San Francisco to the dock at East San Pedro (the former terminus of the steamers at Los Angeles harbor) that shipments were

delivered to a lighter and were ferried across to San Pedro where they were loaded into the cars of the Pacific Electric Railway, were rebilled and handled as express matter from San Pedro to Los Angeles and to ultimate consignees, being in charge of messengers at all times after leaving San Pedro; that no lighterage is now necessary for the reason that the steamers now dock at Wilmington instead of East San Pedro; that no service of the character above mentioned has been maintained by the American Express Company since the year 1916; that the American Railway Express Company now maintains service between Wilmington and Los Angeles, such service being operative over the line of the Pacific Electric Railway Company; that when notice of arrival of shipments destined to the care of the American Railway Express at Wilmington is received by his Company in sufficient time on the day of arrival of steamer at Wilmington (and it appears that telephone advice is given to his Company by the agent of the Los Angeles Steamship Company) that shipments move out of Wilmington at 1.30 P.M. resulting in deliveries being accomplished in the business district of Los Angeles on the same day that shipments arrive at Wilmington and as regards the residential and outlying districts delivery is accomplished on the first trip of delivery wagons on the following morning; that no complaint had been received from shippers or consignees in Los Angeles as to any difficulty experienced in delay to shipments; that the American Railway Express Company had ample facilities for the pick-up and delivery of shipments in Los Angeles and San Francisco; that the present service afforded by such Company was adequate and satisfactory in that frequent train service was available and on each day of the week, or if a shipper or consignee preferred service of a character similar to that proposed by applicant that such service could be rendered

by the shipments moving as freight between San Francisco and Los Angeles, and when south-bound to be consigned to the care of the American Railway Express at Wilmington and from such point they would be handled by the protestant to Los Angeles and to the ultimate consignee; that negotiations were at present being conducted with the Southern Pacific Company for the establishment of additional express service between Los Angeles and San Francisco by using Trains Nos. 75 and 76 (commonly known as the "Lark") it being intended by the use of such trains, which are the fastest scheduled between the above terminals, to further expedite the through movement of express between San Francisco and Los Angeles on shipments requiring expedited movement. This witness further testified that the bulk of the express business handled between San Francisco and Los Angeles was in the south-bound movement, his estimate that 60% so moved as against 40% north-bound.

A witness for the protestant, Los Angeles and San Pedro Transportation Company, testified that an average of 27½ tons per steamer was received by his Company at Wilmington for transportation to Los Angeles; that all classes of commodities were handled; that deliveries were made in Los Angeles on the afternoon of the day that the steamer arrived at Wilmington, and in all cases where perishable commodities or patent medicines were received, deliveries were made to the door of the consignee in Los Angeles. This protestant claims an investment of \$63,452 in facilities for handling shipments between Los Angeles and Harbor points; that twelve trucks and ten trailers constitute the equipment at present owned by this protestant and which is available to care for the business; that such amount of equipment has at all times been more than sufficient to handle all business offered between Los Angeles and Wilmington; and that but few complaints as to service have been made, the running time

between Wilmington and Los Angeles being but one hour forty-five minutes and goods being immediately passed to the care of a representative of this protestant when unloaded from the steamer to the dock.

Protestant, Pacific Electric Railway Company, introduced testimony as to service available between Wilmington and Los Angeles and that through rates and service existed between Los Angeles and San Francisco by reason of joint tariff with the Los Angeles Steamship Company. This protestant claims to have ample facilities for the handling of any shipments which may be offered over the territory herein sought and that any shipments arriving at Wilmington at 10.00 A. M. (the scheduled arriving time of the steamers) are in Los Angeles ready for delivery as of 7.00 A. M. the following morning.

Protestants, Southern Pacific Company and Thos. Richards Motor Express, introduced no testimony their protest being confined to statements of counsel objecting to the granting of the desired certificate on the basis that facilities now available by existing rail and truck carriers were ample to satisfactorily care for the volume of business offering or for any increase in such volume; that there was no new business which would be developed by the establishment of the proposed service and that the ability of the existing carriers to satisfactorily handle the business now offering would be weakened if competitive service were to be authorized. Counsel for Southern Pacific Company also directed attention to the fact that his Company under agreement with the American Railway Express Company participated in the express revenue on the basis of a division of the rate and that any diversion of

business from the American Railway Express Company would result in a corresponding loss of revenue to the Southern Pacific Company.

A somewhat unusual and unique situation is before the Commission in this matter. The provisions of Chapter 213, Statutes of 1917, and its amendments, require a certificate of public convenience and necessity to be secured from the Railroad Commission before the business of transportation of persons or property for compensation, or as a common carrier, shall be commenced, except that such operation be within the limits of an incorporated municipality and with other minor exceptions not applicable to the present proceeding. The terminal highway points as covered by the application herein are both in the corporate limits of the City of Los Angeles, the route, however, which is proposed to be followed over the highway between Wilmington and Los Angeles runs for a small portion of the distance over territory not within the jurisdiction of the municipality of Los Angeles and applicant therefore, notwithstanding that no local business is proposed between Los Angeles and Wilmington, is properly before the Railroad Commission for a certificate. The fact that no local business is to be transported between Los Angeles and Wilmington, even though such is but a minor portion of the service herein proposed to be undertaken, requires the justification by the applicant of its contention that the public convenience and necessity requires the establishment of the proposed route and such justification therefore means that the primary purpose for which the track line is required as a portion of the through express business between Los Angeles and San Francisco requires an affirmative showing as to its public necessity if the desired

certificate is to be granted.

It appears clearly established from the testimony in this proceeding that no new business will be developed by the granting of the certificate herein sought, that whatever business is secured by applicant will be diverted from existing carriers, either express or freight. The test therefore to be applied is whether the applicant is offering to the public any superior service, either as to time or at a materially lesser cost to the shipping public; whether the service of existing carriers is deficient as to time consumed between shipper and consignee, or is offered to the public at rates which are excessive or unreasonable. The following tabulation of comparative rates is of interest as illustrating rates now available for the public by existing transportation lines and those as proposed by the applicant;

| <u>CARRIER</u> | <u>RATES IN CENTS PER CWT.</u> | | | |
|------------------------------------------------------------------------------------------------|--------------------------------|---------|------------------|---------|
| | Class 1 | Class 2 | Class 3 | |
| Applicant, The Pacific States Express | 295 | 225 | 185 | |
| American Railway Express Company | 334 | 251 | 207 | |
| Combination, P.E.Ry. Co. and Los Angeles S.S.Co. | | | | |
| Southern Pacific Co. | Class 1 | Class 2 | Class 3 | Class 4 |
| Los Angeles & Salt Lake R.R. | 90 $\frac{1}{2}$ | 72 | 62 $\frac{1}{2}$ | 55 |
| Combination, Los Angeles S.S. Co. | Class 1 | Class 2 | Class 3 | |
| and American Railway Express | 166 | 144 | 142 | |
| (First class rate used for steamer proportion) | | | | |
| Add 75 cents per cwt. as pick- up or delivery charge in San Francisco making total rates | 241 | 219 | 217 | |

It is apparent from the above comparison that no substantial saving is offered the public on the matter of rates as regards shipments moving under the first and second class express classifications, although a saving would be made on the so-called Class Three or Commodity rating. There is, however, nothing

before the Commission in the record on this proceeding indicating that the public are dissatisfied with existing rates and service on the classes of shipments which would be moved under the Class three rating of the American Railway Express Company, and the combination through rate arrived at by the use of the facilities of the Los Angeles Steamship Company and the American Railway Express Company affords a schedule of rates which in general is more advantageous to the public, with the exception of the commodity rate, in that practically the same expedited service is assured.

We will now consider the financial status of the proposed service and the possibility of its being successfully continued, should it be authorized. According to the testimony of Mr. McKibben, Secretary-Treasurer of applicant company, it is anticipated that the gross receipts from operation will approximate \$3,500.00 per month. The known expenses using such estimate of revenue as a basis are as follows:

| | |
|-----------------------------------------------------------------------------------------------------------------------------------------|------------------|
| Proportion accruing to Los Angeles Steamship Co. on basis of 52.5% of through rate | \$1837.50 |
| Proportion accruing to Wirth Draying Company for pick-up and delivery of shipments at San Francisco on basis of 11.875% of through rate | 415.63 |
| Proportion accruing to Russell Peck for pick-up and delivery of shipments at Los Angeles on basis of 11.875% of through rate | 415.63 |
| | <u>\$2668.76</u> |

Deducting the known expenses from the estimated monthly revenue of \$3500.00 leaves a balance of \$831.24 from which applicant will have to pay the expense of operation of a motor truck between Los Angeles and Wilmington; the expense of an agent and his office force at Los Angeles; the salaries of three messengers at \$75.00 per month each; the incidental items of stationery and printing, advertising and insurance. As the expense of the agent is estimated at \$250.00 per month it is but fair to allow \$100.00 per month for the expenses of his office; and three

messengers at \$75.00 per month each total \$225.00 per month for this item. The expense of operating a truck between Los Angeles and Wilmington on the basis of 16 round trips (which is the number of scheduled trips now being performed by the steamers "Yale" and "Harvard") would result in a mileage of approximately 640 which at a rate of 11 cents per mile would equal \$70.40 per month for the truck service. The expense of a driver has been eliminated from the above estimated rate per truck mile as the messengers of applicant company are to perform the work of driving the trucks between Los Angeles and Wilmington. A normal expense for a driver is estimated at \$5.00 per day and a driver would make one round trip of 40 miles as a day's work. A total of \$645.40 is made up of the incidental items referred to above leaving an amount of but \$185.84 from which to meet expenses of the San Francisco office and to provide for the items of stationery, municipal license in Los Angeles, general office supplies and expenses and return a profit to the promoters of the enterprise. We are of the opinion that the financial estimates are not on a sound basis and that the service proposed to be rendered could not long be continued unless applicant was granted an increase in the rates, and as shown above, practically a similar service can be secured by the shipping public, if they so desire, by the use of the already existing facilities of the present authorized rail and motor carriers. The Los Angeles Steamship Company would be the main beneficiary under the proposed arrangement were the desired certificate to be granted, as the proportion of the through rate accruing to that Company according to the proposed rates of applicant would be as follows and as regards the several classes:

| | <u>Class</u> | | |
|-------------------------------------------------------------------------------------|--------------|-------------|-------------|
| | <u>1</u> | <u>2</u> | <u>3</u> |
| Applicant's proposed rate | \$2.95 cwt. | \$2.25 cwt. | \$1.85 cwt. |
| Los Angeles Steamship Company's proportion based on 52.5% of the through rate | 1.55 cwt. | 1.18 cwt. | .97 cwt. |

The service rendered by the Los Angeles Steamship Company in connection with that herein proposed by applicant is the same as the freight service, with the exception that the Steamship Company proposes to accord space to the express messengers to permit the waybilling and assorting of shipments according to route destination, to provide a secure place for valuable shipments and to provide sleeping accommodations and sustenance for the messengers to be employed by applicant while aboard the steamers and en route. For these privileges the Steamship Company would enjoy a premium of \$0.75 per cwt. on the first class; \$0.39 per cwt. on the second class; and \$0.18 per cwt. on the third class (or commodity) rates of applicant over the Steamship Company's regular first class rate of \$0.79 per cwt. as published to apply between San Francisco and Wilmington. The proposed divisions of the through rate to accrue to the Los Angeles Steamship Company are unwarranted and are not justified by the service the Steamship Company would perform under the proposed arrangement.

At the present time, according to the record in this proceeding, the Los Angeles Steamship Company is operating a service of three round trips per week between San Francisco and Wilmington, later it is proposed to increase this service to four round trips per week, and in the summer season to operate a schedule of five round trips per week. Against this schedule of sailings the public have the regular seven day service of the

American Railway Express Company and with a number of schedules each day, therefore the convenience of the proposed service does not seem apparent, nor does there seem any necessity for the establishment of a service which would apparently only operate to the profit of the Los Angeles Steamship Company as a participant in the through rate, the applicant having made no showing that the business could be conducted profitably with the small margin over expenses as hereinabove fully discussed. The public can secure all the advantages of the existing service by using the present facilities now available and the Commission is not justified in authorizing a service which would tend to weaken or lessen the ability of existing carriers to properly render service to the public, and there is no showing herein that any of the existing carriers have not ample facilities to fully meet all the demands of traffic.

In view of the foregoing, we are of the opinion and find as a fact that the application and evidence herein presents a desire on the part of the applicant to enter the proposed business but we further find that such desire is not a proper justification for the granting of a certificate of public convenience and necessity, and that the application must, therefore, be denied.

O-R-D-E-R

Public hearings have been held on the above-entitled application, the matter having been duly submitted and the Commission being now fully advised and basing its order on the findings as appearing in the fore-going opinion,

THE RAILROAD COMMISSION HEREBY DECLARES that public convenience and necessity do not require the operation by The Pacific States Express, a corporation, of motor express service

between the Port of Los Angeles (Wilmington) and the City of Los Angeles, as a unit of service in conjunction with through express traffic via steamers of The Los Angeles Steamship Company between the Port of Los Angeles and San Francisco, and

IT IS HEREBY ORDERED that this application be and the same hereby is denied.

Dated at San Francisco, California, this 21st day of February, 1922.

H. R. Brundage
H. J. Loveland

W. H. Rucker
Commissioners.