

Decision No. 26602.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
CALIFORNIA MOTOR EXPRESS, LTD., for )  
certificate to continue operations ) Application No. 19196.  
commenced since May 1, 1933. )

BY THE COMMISSION:

O P I N I O N

Applicant<sup>1</sup> is an express corporation engaged in the transportation of property over lines of railroads, steamship companies and certificated highway transportation companies in this State under tariffs on file with this Commission. By application filed November 18, 1933, it seeks an order of the Commission finding that it is not required to obtain a certificate of public convenience and necessity to continue operations commenced since May 1, 1933, and prior to August 1, 1933. In the event that a certificate of public convenience and necessity is required, it asks that the Commission grant it such a certificate.

Section 50(f) of the Public Utilities Act reads in part:

"No express corporation or freight forwarder shall after August 1, 1933, commence operating between points in this State or extend its operations to or from any point or points in this State not theretofore served by it, unless and until it shall

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<sup>1</sup> Section 2(k) of the Public Utilities Act reads:

"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."

first secure from the Railroad Commission, upon formal application therefor, a certificate that public convenience and necessity require such operation. Any express corporation or freight forwarder having between May 1, 1933, and the effective date of this act, commenced operations or extended its service as aforesaid, shall have ninety (90) days after the effective date of this act to file with the Railroad Commission a formal application for a certificate of public convenience and necessity for such service. The Railroad Commission shall have power, with or without hearing, to issue such certificate, or to refuse to issue the same, or to issue it for the partial exercise only of the privilege sought, and may attach to its order granting such certificate such terms and conditions as, in its judgment, the public convenience and necessity require."

On May 1, 1933, applicant was engaged in the transportation of property between San Francisco and points in Southern California as set forth in its Local Express Tariff and Classification No. 2, C.R.C. No. 4, effective April 7, 1933.<sup>2</sup> On July 29 it filed Supplement No. 1 to its C.R.C. No. 4, adding effective July 31, 1933, Belvedere, Compton, East San Pedro, Gardena, Terminal Island, Torrance, Walnut Park and Watts as additional points to be served from and to San Francisco. In C.R.C. No. 5 filed and made effective concurrently it also established rates for the transportation of property between Los Angeles on the one hand and Stockton and Sacramento on the other.

Applicant alleges that since the effective date of these tariffs it has held itself out to the public and has rendered for the public transportation service between the points shown in the said schedules and that public convenience and necessity require that applicant continue to render this service.

It appears that this is a matter in which a public hearing

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<sup>2</sup> Local Express Tariff and Classification No. 1-A, C.R.C. No. 3, effective January 23, 1933, shows that since April 10, 1933, applicant also held itself out to transport property between Los Angeles on the one hand and San Francisco, Oakland, Alameda, Berkeley and Emeryville on the other.

is not necessary, and that the certificate prayed for should be granted.

Applicant California Motor Express, Ltd., 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 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.

O R D E R

An application having been filed with the Commission, and it being fully advised,

IT IS HEREBY ORDERED that a certificate of public convenience and necessity be and it is hereby granted to applicant California Motor Express, Ltd., authorizing it to continue the express operations commenced since May 1, 1933, and prior to August 1, 1933, referred to in the opinion which precedes this order, subject to the following conditions:

1. Applicant shall file its written acceptance of the certificate herein granted within a period of not to exceed ten (10) days from the date hereof.
2. The rights and privileges herein authorized may not be discontinued, sold, leased, transferred or assigned unless the written consent of the Railroad Commission to such discontinuance, sale, lease, transfer or assignment has first been secured.

Dated at San Francisco, California, this 4<sup>th</sup> day of December, 1933.

C. L. Seavey

W. H. ...

M. B. ...

Commissioners.