

Decision No. 26605.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of  
J. NELSON KAGARISE, engaged in business  
under the fictitious name of KEYSTONE  
EXPRESS COMPANY, for certificate of  
public convenience and necessity to  
continue its rates and service as an ex-  
press company, and also as a freight  
forwarder, inaugurated prior to the con-  
trolling date of Section 50(f) of the  
Public Utilities Act, within the coun-  
ties of Los Angeles, Riverside, San Ber-  
nardino and Orange, as evinced by tar-  
riff now on file with the Railroad Com-  
mission.

Application 19198.

BY THE COMMISSION:

O P I N I O N

Applicant is engaged in transporting property over the lines of various common carrier transportation companies in this state, both as an express corporation and as a freight forwarder.<sup>1</sup> By application filed November 18, 1933, it seeks a certificate of public convenience and necessity authorizing it to continue in effect the service it now performs.

<sup>1</sup> Sections 2(k) and 2(ka) of the Public Utilities Act read in part as follows:

"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."

"Any person, firm or corporation who for compensation undertakes the collection and shipment of property of others, and as consignor or otherwise ships or arranges to ship the same via the line of any common carrier at the tariff rates of such carrier and/or acting as consignee of same receives such property, is a 'freight forwarder' within the meaning of this act and a common carrier as herein defined."

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

"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 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."

Applicant commenced the operation of its express and forwarding business on May 18, 1933, at which time its Local Express Tariff C.R.C. No. 1, filed May 16, 1933, became effective. The points served, all of which are in Southern California, are fully set forth therein. Thereafter it filed its Local Express Tariff No. 1, C.R.C. No. 2, adding effective July 28, 1933, numerous other points as shown on First Revised Page 5 and Original Page 5-A thereof.

Applicant alleges that since the filing of the aforesaid tariffs it has operated in good faith in accordance therewith and asks that it be authorized to continue its operations.

It appears that this is a matter in which a public hearing is not necessary, and that the certificate prayed for should be granted.

Applicant J. Nelson Kagarise, engaged in business under the fictitious name of Keystone Express Company, 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 J. Nelson Kagarise, engaged in business under the fictitious name of Keystone Express Company, authorizing it to continue the express and freight forwarding service 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.

Cl. Leary  
M. H. Van  
W. B. Young  
W. B. Young  
Commissioners.