

Decision No. 27593.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of PACIFIC MOTOR TRANSPORT COMPANY, a corporation, for a certificate of public convenience and necessity authorizing the continuing in effect of rates and service to and from all points served by Motor Transit Company in San Bernardino County, A.M. Atkins, S.B. Herrick Co., and Frederickson & Sons in Lake County, Tahoe Transportation Company and Covelo Stage Line.

Application No. 19177.

In the Matter of the Application of INTERCITY TRANSPORT LINES, INC., for a Certificate of public convenience and necessity.

Application No. 19194.

In the Matter of the Application of CALIFORNIA MOTOR EXPRESS, LTD., for certificate to continue operations commenced since May 1, 1933.

Application No. 19196.

In the Matter of the Application of E. L. McCONNEL, doing business as COAST LINE EXPRESS, for certificate to continue express business.

Application No. 19197.

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 express company, and also as a freight forwarder, inaugurated prior to the controlling date of Section 50(f) of the Public Utilities Act, within the counties of Los Angeles, Riverside, San Bernardino and Orange, as evinced by tariff now on file with the Railroad Commission.

Application No. 19198.

Reginald L. Vaughan, for Intercity Transport Lines, Inc.
Douglas Brookman, for California Motor Express, Ltd.
Hugh Gordon, for Coast Line Express and Richards Express Company.
Warren E. Libby, for Keystone Express Company.
Willard E. Mullikin, Jr., for Highway Express and Forwarding Company.
Henry J. Bischoff, for Southern California Freight Forwarders.
C. J. Huff, for Dyson Shipping Company, Inc.
Edward Stern, for Railway Express Agency, Inc.
Wallace K. Downey, for Motor Freight Terminal Company.
W. S. Johnson, for Valley Express Co.

BY THE COMMISSION:

O P I N I O N

These matters were heard separately but were joined for oral argument. They will be disposed of in one decision. In the application proceedings certificates of public convenience and necessity authorizing applicants to continue express service commenced since May 1, 1933, and prior to August 1, 1933, are sought; in Cases 3722, 3723 and 3724 respondents were directed to appear before the Commission and show cause, if any they had, why schedules first effective after May 1, 1933, but prior to August 1, 1933, and covering express operations for which no certificates had issued should not be cancelled.

The legislature in 1933 amended the Public Utilities Act by adding thereto a new section, Section 50(f), reading 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 ne-

cessity 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. The Railroad Commission may at any time, for good cause shown and upon notice to the holder of any such certificate, revoke, alter, or amend any such certificate."

Prior to this amendment express corporations and freight forwarders were not required to obtain certificates as conditions precedent to their operations. ^{The former} were, however, required to file tariffs.

The applications here under consideration were filed pursuant to this amendment and were granted by the Commission without a hearing. Upon petition of Valley Express Co., Railway Express Agency, Inc. and Pacific Motor Transport Company the proceedings were reopened and a hearing granted. At the time the orders to show cause issued, respondents therein, although they had since May 1, 1933, established rates for service for which they held no certificates, had filed no applications with the Commission. One of them, Richards Express Company, filed one at a later date. A number of the applications are said to have been filed through "an abundance of caution", it being applicants' contention that such filing was not required. This contention is based primarily upon an alleged inadvertence in the statutory provision hereinbefore set forth, which inadvertence is said to render the statute inconsistent, conflicting and ambiguous.¹

It will be noted that as it now stands the statute divides express corporations and freight forwarders into three classes according to the time they commenced operations.² The first class covers

¹ Other contentions advanced were that if the statute were construed literally, proof that service was actually commenced between May 1, 1933, and August 1, 1933, was all that was required of applicants; that the Commission was without jurisdiction to reopen these proceedings, and that public convenience and necessity had been shown.

² For convenience, reference to the commencing of operations will throughout this decision include also the extension of operations, and express corporations and freight forwarders will jointly be referred to as carriers.

those that commenced operating after August 1, 1933. It is expressly provided that a carrier may not do so "unless and until it shall first secure from the Railroad Commission * * * a certificate that public convenience and necessity require such operation". The second class embraces those carriers which commenced operations "between May 1, 1933 and the effective date of this act" (August 21, 1933). As to this class it is provided that they "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 third class covers carriers which commenced operating prior to May 1, 1933. There is no statutory requirement respecting the certification of this group.

The inconsistencies and ambiguities of this Act are readily apparent. After stating in the first sentence in very clear and definite terms that carriers in the first class must secure a certificate as a condition precedent to operations commenced after August 1, 1933, the Act provides in the second sentence that those commencing operations between May 1, 1933, and August 21, 1933, "shall have ninety (90) days after the effective date of this act to file * * * a formal application for a certificate". Thus while a 90-day period within which to file an application is allowed those carriers commencing operations between May 1, 1933, and August 21, 1933, there is nothing in the Act requiring that a certificate must be obtained for any operations prior to August 1, 1933. As it now stands the Act provides a time within which may be done that which is not required and which would not reasonably be done unless required. Clearly this was not the intention of the legislature. If however there is substituted August 1, 1933, for the date of May 1, 1933, the statutory provision becomes clear and definite. Carriers commencing operations after August 1, 1933, must then as now secure certificates of public convenience and necessity, while

those operating prior thereto need not. The 90-day period allowed for the filing of applications will then extend to those carriers commencing operations after August 1, 1933, and before the effective date of the Act, all of which are definitely required to obtain certificates. We are satisfied that this was the intention of the legislature and that May 1, 1933, should be construed to mean August 1, 1933. While the Commission cannot change a clear and definite statutory provision to give effect to a supposed intention of the legislature, it may in construing an ambiguous, indefinite and inconsistent statute, consider the entire context of the statute and alter or amend words or phrases to avoid repugnancy and give effect to the obvious intention of the legislature. (See 25 Ruling Case Law page 978; 23 Cal. Juris 725, 734, 735, 736.)

All of the applicants here claim to have commenced operations between May 1, 1933, and August 1, 1933, the period within which we are satisfied the legislature neither intended to nor in fact did the statute require that certificates be required as conditions precedent to their operating. As to such operations therefore no certificate is necessary and the orders heretofore issued granting them should be rescinded.

It should be clearly understood however that by this action the Commission is not finding that the mere filing of a tariff effective on or before August 1, 1933, constitutes "operating" to the extent indicated by the tariff as of that date. While the tariffs of certain of these applicants cover extensive territory the record shows that they never handled a shipment to or from many of the points, maintained no representatives there and offered no proof of good faith operation other than such as is said to follow from the mere filing of tariffs. Applicants will be expected forthwith to take such steps as may be necessary to

bring their tariffs into conformity with their good faith operations on August 1, 1933. ³

There remain for consideration the orders to show cause in Cases 3722, 3723 and 3724. The respondent in Case 3722 is the applicant in Application 19304. From what has been said regarding all of the applicants it follows that this proceeding should be discontinued. The tariff of Northwest Forwarders (Case 3723) became effective July 1, 1933, and this respondent therefore is likewise in the same category with the various applicants. The tariff of respondent Dyson Shipping Company, Inc. (Case 3724) became effective August 18, 1933. The record shows that for a number of years prior to 1933, and thus prior to the time certificates for authority to engage in this service were required, this respondent engaged in the business of forwarding the commodities shown in its tariffs⁴ from San Francisco to San Pedro, Long Beach and Los Angeles, and from San Pedro to San Francisco. Its Tariff C.R.C. No. 1 however in addition to the foregoing names a rate to Vernon. There is no evidence in the record to show that applicant served Vernon prior to August 1, 1933, and this point should therefore be eliminated. When this has been done Case 3724 should likewise be discontinued.

O R D E R

These matters having been duly heard and submitted, and the Commission now being fully advised,

³ While there is evidence in the records made in the application proceedings indicating that some of the applicants were probably not operating legally, the Commission cannot in these proceedings bring the tariffs into conformity with the law, as no orders to show cause have been issued as required by Section 64 of the Public Utilities Act.

⁴ They are canned goods and related articles as shown in Items 45 and 25 respectively of Dyson Shipping Company, Inc., Local Express Tariffs C.R.C. Nos. 1 and 2.

IT IS HEREBY ORDERED that Decision No. 26600 of December 4, 1933, in Application 19177; Decision No. 26602 of December 4, 1933, in Application 19194; Decision No. 26603 of December 4, 1933, in Application 19196; Decision No. 26604 of December 4, 1933, in Application 19197; Decision No. 26605 of December 4, 1933, in Application 19198; Decision No. 26606 of December 4, 1933, in Application 19202; and Decision No. 26623 of December 11, 1933, in Application 19214 be and they are hereby vacated and set aside and the proceedings, together with Application 19304, dismissed.

IT IS HEREBY FURTHER ORDERED that Cases 3722 and 3723 be and they are hereby discontinued, and that upon the elimination of Vernon from the tariff of Dyson Shipping Company, Inc., Case 3724 be likewise discontinued.

The effective date of this order shall be twenty (20) days from the date hereof.

Dated at San Francisco, California, this 17th day of December, 1934.

Leon Whitley

W. A. Lee

M. B. Harris

W. H. [unclear]

Commissioners.