

Decision No. 27845.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Order to
Show Cause why the tariff of
WESTERN STATES EXPRESS should
not be cancelled. }

Case No. 3725.

F. W. Herron, for respondent.

H. E. McElroy and Morton G. Smith, for Southern
Pacific Company, Pacific Motor Transport Com-
pany and Railway Express Agency, Inc., inter-
ested parties.

BY THE COMMISSION:

ORIGINAL

O P I N I O N

On April 25, 1933, respondent Western States Express filed with the Commission, effective May 27, 1933, its Local Express Tariff No. 2, C.R.C. No. 2, naming rates for the transportation of express between San Francisco and Los Angeles and other points in California. It seemed however that respondent neither operated as an express corporation under tariffs on file with the Commission on May 1, 1933, nor filed an application for a certificate of public convenience and necessity as appeared to be required under Section 50(f) of the Public Utilities Act (Chapter 724, Statutes of 1933). The Commission therefore ordered Western States Express to appear before it and show cause if any it had why said Local Express Tariff should not be cancelled. Upon the advice of counsel respondent refused to testify and the Commission thereupon issued its order cancelling the tariff (Decision No. 27429 of October 8, 1934).

At this time there were pending before this Commission a

number of other proceedings involving the same issue.¹ In disposing of them the Commission held that any one having commenced operations as an express corporation between the period May 1, 1933, and August 1, 1933, was not required to secure a certificate of public convenience and necessity (Decision 27593 of December 17, 1934). This finding was based upon the conclusion that Section 50(f) of the Act was inconsistent and ambiguous and that the date of May 1, 1933, appearing therein should be construed as though it read August 1, 1933.

Following the disposition of these related cases respondent in the instant proceeding represented to the Commission that in view of its finding in the other cases this proceeding should be reopened. This request was granted and the matter reopened for further hearing, which was had at San Francisco before Examiner Williams.

At the further hearing respondent testified that between May 27, 1933, the effective date of the tariff, and August 1, 1933, it engaged in transporting shipments of merchandise from San Francisco to numerous points in Southern California and from Los Angeles to a number of points in Northern California at the tariff rates; that it did not receive property at points other than San Francisco and Los Angeles "except where a shipment is once handled by this company and for some reason is to be returned to the original shipper or because of wrong address or on account of failure to effect delivery"; and that it operated over the lines of other common carriers, paying them their published tariff rates.

Under these circumstances the respondent here seems to be in a position similar to that of the carriers involved in Decision 27593, supra. It should therefore be permitted to file with the Commission a tariff covering such service as it was actually performing under its Tariff C.R.C. No. 2 between May 1 and August 1, 1933. Respondent is

¹ Application 19177, In re Application of Pacific Motor Transport Co. and related proceedings.

put on notice, however, as were the parties to the other proceedings, that this action by the Commission must not be construed as a finding that the mere filing of a tariff effective on or before August 1, 1933, constitutes "operating" as of that date to the extent indicated by the tariff. The tariff to be filed must conform strictly with respondent's good faith operations on August 1, 1933.

O R D E R

This matter having been duly heard and submitted, and the Commission being now fully advised,

IT IS HEREBY ORDERED that respondent Western States Express be permitted on or before twenty (20) days from the effective date of this order, on not less than ten (10) days' notice to the Commission and the public, to file a tariff naming rates for the transportation of property as an express corporation as that term is defined in Section 2(k) of the Public Utilities Act, between those points now shown in its Tariff C.R.C. No. 2 between which it operated in good faith between May 1 and August 1, 1933.

IT IS HEREBY FURTHER ORDERED that upon the filing of said tariff this proceeding be and it is hereby discontinued.

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

Dated at San Francisco, California, this 25th day of March, 1935.

John A. Whelan
M. A. Cunn
M. B. Harris
W. H. ...
STAN R. ...
Commissioners.