

Decision No. 28401

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of  
CALIFORNIA MOTOR TRANSPORT CO., LTD.,  
for extension of certificates to  
include Oakland.

Application No. 20093.

**ORIGINAL**

Douglas Brookman and W. H. Kessler for applicant.  
James J. Broz for Valley Express Company, protestant.  
H. W. Hobbs for Southern Pacific Railroad and  
Pacific Motor Transport Company, protestants.  
E. Stern for Railway Express Agency, Inc., protestant.  
Robert Brennan and Leo E. Sievert for The Atchi-  
son-Topeka and Santa Fe Railway, protestant.  
Edward G. Wilcox for Oakland Chamber of Commerce in  
support of applicant.

BY THE COMMISSION:

O P I N I O N

Applicant is now operating between San Francisco and Los Angeles under certificate for the transportation, exclusively, of shipments consigned between the terminals in either city of California Motor Express, Ltd., an express corporation. Applicant is subject to other restrictions also. In the instant application, as amended, applicant seeks a certificate authorizing extension of its limited and restricted service from San Francisco terminal to the terminal of (at this time) Peoples Express Company, in Oakland (531 Webster Street) and by this means improve the service of California Motor Express, Ltd. Practically, the Express Company, which owns the Motor Company, will perform its own line

haul between the Bay cities. (1) Peoples Express Company will continue to make pickup and delivery in East Bay Cities, applicant being under restriction not to perform such service. Applicant asks the extension and enlargement subject to all the restrictions originally imposed. Rates to be charged, and rules and regulations are to be the same as those applicable between San Francisco and Los Angeles in Applicant's C.R.C. No. 3 and supplements thereto.

Public hearings thereon were conducted by Examiner Williams at San Francisco and Oakland.

The traffic of the Express Company is now transported between San Francisco and East Bay Cities by Peoples Express Company, long ago certificated by this Commission. The daily volume of traffic thus transported is about two tons. In addition, some shippers transport in their own trucks East Bay traffic to the San Francisco terminal. R. W. Lacey, president of Express Company, testified that the volume by both means was about four tons. Two daily services are maintained between San Francisco and Los Angeles -- a preferred schedule running 13½ hours between terminals, at a premium rate and a slower service at lesser rates. East Bay shipments are transported on each. Both Mr. Lacey and Eyland Hinman, the latter owner of Peoples Express, testified that the schedules of Peoples Express do not facilitate morning pickup or delivery in the East Bay Cities and that the volume available for this carrier is not enough to justify separate earlier or later schedules (the one schedule used reaches Oakland about 12:30 P. M.) under the terms of the contract between the two carriers. Both agree that improvement is practical only by applicant extending its service across the Bay.

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(1) See Decision No. 22274, dated April 2, 1930, on Application No. 16,027, 34 C.R.C. 532; Decision No. 22,509 on Application No. 16544, and Decision No. 27,063 on Application No. 19436.

Protestants resisted this application by producing a number of witnesses in Oakland who testified that the services of protestants are adequate and efficient; that Southern Pacific Company, for its subsidiary Pacific Motor Transport Company, has established 12½ hours rail service between San Francisco, Oakland and East Bay Cities, and Los Angeles by a special train of baggage cars, which includes an Oakland car moving from Oakland to San Jose, where it is attached to and detached from the Los Angeles-San Francisco trains.

Applicant has not alleged inadequacy nor inefficiency on the part of any carrier except its patron Company, California Motor Express, which now seems to have dropped behind in providing expedition for its East Bay shippers. The deficiency, palpably, is in the schedules of its underlying carrier, Peoples Express Company. Consolidated Motor Express Company proposes, as an improvement in service for the benefit of its patrons in the East Bay district, to transport through applicant its own traffic between terminals. That it is a benefit to East Bay shippers is patent in the testimony of Edward G. Wilcox, traffic manager of the Oakland Chamber of Commerce. The traffic committee of this body gave its approval to applicant's proposal after a hearing (October 21st) at which representatives of other carriers were present. This action met the further approval of the Chamber's Executive Committee, which instructed Mr. Wilcox to appear and support applicant. (See Exhibit No. 4).

In view of the fact that the Express Company is validly serving all the points involved under the authority of this Commission and that, by the application herein, it seeks to improve its service to East Bay patrons by using its affiliate truck service in lieu of an admittedly insufficient service by Peoples

Express Company, we believe the application should be granted, subject to all the limitations and restrictions heretofore imposed.

California Motor Transport Co., Ltd., is hereby placed on 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 feature 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

California Motor Transport Co., Ltd., having made application as above entitled, public hearings having been held and the matter being duly submitted,

The Railroad Commission of the State of California hereby declares that public convenience and necessity require a through automobile truck service between San Francisco and Oakland, such service to be limited to the transportation of property consigned to it by California Motor Express, Ltd., and between terminals of said Express Company only; and

IT IS HEREBY ORDERED that a certificate of public convenience and necessity therefor be and the same hereby is granted to California Motor Transport Co., Ltd., via the ferries of the Southern Pacific Golden Gate Ferries, Ltd., and subject to the following conditions:

1. Applicant shall within ten (10) days from date hereof file with this Commission its acceptance of the certificate herein granted, stipulating in said accept-

ance that the certificate is accepted, not as a new or separate certificate, but as an extension and enlargement of its rights as granted by Decision No. 22274 on Application No. 16027, and all amendments thereto, and subject to each and all the limitations, restrictions and conditions contained in said Decision No. 22274, or as amended, and that the grant herein is consolidated therewith.

2. Applicant shall file with the Commission copy of any or all contracts entered into by it with California Motor Express, Ltd., covering services authorized herein, at least ten (10) days before any service, as herein authorized, is begun.

3. Applicant is not authorized by the grant herein to render pickup or delivery service in the City of Oakland, the operating right herein granted authorizing service only between main terminal depots of California Motor Express, Ltd.

4. That within twenty (20) days from date hereof applicant shall file with the Railroad Commission tariffs, by amendment or reissue of its C.R.C. No. 3, effective December 6, 1932, and supplements thereto, to conform to the certificate herein granted.

5. Applicant shall file, in duplicate, and make effective within a period of not to exceed thirty (30) days after the effective date of this order, on not less than five days' notice to the Commission and the public, time schedules covering the service herein authorized in a form satisfactory to the Railroad Commission.

6. The rights and privileges herein authorized may not be discontinued, sold, leased, transferred nor assigned unless the written consent of the Railroad Commission to such discontinuance, sale, lease, transfer, or assignment has first been secured.

7. No vehicle may be operated by applicant herein unless such vehicle is owned by said applicant or is leased by it under a contract or agreement on a basis satisfactory to the Railroad Commission.

For all other purposes the effective date of this Order shall be twenty (20) days from the date hereof.

Dated at San Francisco, California, this 2nd day of <sup>December</sup> ~~1935~~,  
1935.

Leon White  
M. A. Carr  
W. B. Young  
D. J. [unclear]  
Brown [unclear]

Commissioners.