

Decision No. 28675

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
SOUTHERN CALIFORNIA FREIGHT LINES,
a corporation, for a certificate of
public convenience and necessity
authorizing it to extend its service
to points intermediate Oceanside and
Long Beach via the Ocean Highway.

Application No. 20,048.

H. J. Bischoff, for applicant.

Robert Brennan and Wm. F. Brooks, for Wm. F. Brooks,
for The Atchison, Topeka and Santa Fe Railway
Company, protestant.

R. E. Wedekind, for Pacific Electric Railway
Company, and Pacific Motor Transport Company,
protestants.

Richard T. Eddy, for Los Angeles and Newport Freight
Lines, protestant.

Wallace K. Downey, for Pacific Freight Lines, pro-
testant.

Charles A. Bland, for Board of Harbor Commissioners
of the City of Long Beach, interested party.

Edward Stern, for Railway Express Agency, Inc.,
protestant.

H. C. Lucas, and Edward Stern, by Edward Stern,
for Pacific Greyhound Lines, protestant.

BY THE COMMISSION:

O P I N I O N

Applicant herein conducts automotive freight service be-

tween Los Angeles Harbor and Long Beach, on one hand, and Oceanside and San Diego and points intermediate to Oceanside and San Diego, Fallbrook, and Escondido, by authority of Decision No. 26908 on Application No. 18381, issued April 2, 1934. Applicant now proposes to perform service to all points between Long Beach and Oceanside, as an extension of the certificate granted by said Decision No. 26908. Applicant proposes no additional service except intermediate points through which its service now passes daily. Nor will the establishment of service to the additional points involve any considerable capital investment, applicant being able to utilize the equipment now in service for the added points.

Public hearings thereon were conducted by Examiner Williams at Long Beach and San Diego.

Applicant produced fifteen witnesses from San Pedro, Long Beach and the intermediate points of Newport Beach, Laguna Beach and Seal Beach, indicating that each was shipping a considerable volume of traffic between the Harbor District, Long Beach and the points in question. It appears also that most of this transportation is conducted either on the vehicles owned and operated by the shippers themselves or private carriers. Those who use highway common carrier truck services, between the Harbor District, Long Beach and the points sought, are required to ship via Los Angeles, and thence over carriers from Los Angeles to many of the points involved. There is no direct freight truck service from either the Harbor District and Long Beach and the points between Long Beach and Oceanside.

Applicant includes in the list of intermediate points San Juan Capistrano, which is not on the route now traversed

by it in the service between San Pedro-Long Beach and Oceanside and points south and east of Oceanside. The application also provides for a lateral right five miles on either side of the route now used (the Ocean Highway). Applicant proposes to serve San Juan Capistrano by diversion from Serra Junction. In view of the fact that there is insufficient testimony to support either San Juan Capistrano or the five-mile or any other lateral right, this portion of the application may be deemed denied and dismissed from further consideration.

The testimony produced by applicant from applicant's witnesses in the Harbor District, Long Beach, San Diego and intermediate points indicates that there is a need by merchants at certain intermediate points, who deal at either Long Beach or the Harbor points or San Diego, for a daylight service between said points. Applicant proposes a schedule leaving the Harbor District at approximately 7:00 A.M., reaching San Diego at 2:00 P.M., and leaving San Diego at 7:30 A.M., and arriving at San Pedro at 1:00 P.M. Return movements are conducted in the afternoon with ability to deliver at either terminus or intermediate points in the early morning hours. The distance between termini is approximately 130 miles. Applicant now serves all the points except those between Long Beach and Oceanside.

Full consideration of the record indicates a need of service as proposed only for the points of Newport Beach (including Balboa Beach, a part of the City of Newport Beach) Costa Mesa, Corona del Mar, Laguna Beach, Aliso Beach and Dana Point, and all other points intermediate to Newport Beach and Serra, but not including Serra, with authority to serve these points from all other points authorized by Decision No. 26908

on Application No. 18381. While Newport Beach is the terminus of rail service from Los Angeles Harbor and Long Beach the service does not appear to fit in with the expeditious transfer between the harbors at both cities and the yacht harbor at Newport Beach.

Protestant, Pacific Freight Lines, in its brief, directs attention to the fact that applicant also conducts its operations through an affiliated corporation, Southern California Freight Forwarders, an express corporation, which is now serving the points sought by applicant through their common carriers. Protestant urges that any certificate that may be granted herein should be restricted to local traffic and should contain an express prohibition against the handling of traffic of any express corporation or freight forwarder to and from Los Angeles and other points. This request is based upon the development of close operation between certificated truck corporations and express corporations, in which the certificated carrier becomes the mere servant of the express corporation. It is apparent that if the certificate herein to be authorized were in force, the express corporation would be in a position to contract for the carriage of express matter originating at Los Angeles or other points for transportation over the route and to the points indicated herein at through rates less than other carriers. The question is new and no such prohibition as requested by protestant has been made. It does not appear under the circumstances that it is a prohibition that should be made to the extent urged. It was brought out at the hearing that if the express operation were to be conducted by such linking up to the points herein granted (and which appli-

cant would not say was not the purpose), diversion of volume from the carriers now serving certain points (Newport Beach and Laguna Beach particularly) from Los Angeles, would seriously affect and impair their services. Should applicant thus be permitted to extend the express operations of its affiliated corporation, it appears probable that some of the business now transported by rail and truck carriers to Newport Beach, Laguna Beach and Serra would be diverted by reason of lesser rates. Applicant's purpose, as expressed in its application, is to perform a freight service only to the intermediate points which it is now not authorized to serve. This necessity appears, as indicated above, at certain points but not at all. The testimony produced by applicant concerns only local needs and not through express needs. It, therefore, appears reasonable that the Commission should, in granting the certificate herein indicated, impose a condition that applicant shall not enter into any contract, agreement, or understanding, directly or indirectly, with any express company or any highway common carrier for the transportation between Los Angeles and any of the points herein granted of any traffic at rates to the general public lower than a combination of local rates over Los Angeles Harbor and/or Long Beach.

The certificate granted herein is intended to fit into the need shown for certain local service, which applicant is in an economic position to render, and is not intended to either facilitate or deprive applicant of the right to enter into express contracts except in so far as such contracts may ^{unduly} impair and imperil other long established services.

Southern California Freight Lines 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 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

Southern California Freight Lines, a corporation, having made application as above set forth, public hearings having been held, the matter having been duly submitted and now being ready for decision,

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA HEREBY DECLARES that public convenience and necessity require the establishment and operation of auto truck service for the transportation of property between Newport Beach (including Balboa Beach, a part of the City of Newport Beach), Costa Mesa, Corona del Mar, Laguna Beach, Aliso Beach and Dana Point and all points intermediate to Newport Beach and Serra (junction), but not including Serra, and all other points applicant is authorized to serve by Decision No. 26908 on Application No. 18381, over and along the following route:

Ocean State Highway; and

IT IS HEREBY ORDERED that a certificate of public convenience and necessity therefor be, and the same is hereby, granted to Southern California Freight Lines, a corpora-

tion, not as a new and separate operating right, but as an extension and enlargement of the rights heretofore granted by Decision No. 26908 in Application No. 18381, subject to the following conditions:

1. Applicant shall file its written acceptance of the certificate herein granted within a period of not to exceed fifteen (15) days from date hereof, stipulating in said acceptance that said certificate is accepted as an extension and enlargement of the rights granted to applicant by Decision No. 26908 in Application No. 18381 and consolidated therewith, and not as a new or separate right.

2. Applicant shall file, in triplicate, and make effective within a period of not to exceed thirty (30) days after the effective date of this order, on not less than ten days' notice to the Commission and the public a tariff or tariffs constructed in accordance with the requirements of the Commission's General Orders and containing rates and rules which, in volume and effect, shall be identical with the rates and rules shown in the exhibit attached to the application in so far as they conform to the certificate herein granted, or rates satisfactory to the Railroad Commission.

3. Applicant shall not enter into any contract, agreement or understanding, directly or indirectly, with any express corporation or automotive highway common carrier for the transportation, between Los Angeles and any of the points herein granted, of any traffic at rates to the general public lower than a combination of local rates over Los Angeles Harbor and Long Beach.

4. 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.

5. 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.

6. 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.

IT IS HEREBY FURTHER ORDERED that, except as to the rights specifically granted herein, the application be and the same hereby is denied.

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 30th day of March, 1936.

M. B. Davis
Leon C. Whaley
W. A. Cunniff
W. A. Cunniff
Frederic R. Deven
COMMISSIONERS.