

Decision No. 28852

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of C. B. McClain, to sell, and PACIFIC FREIGHT LINES, a corporation, to purchase, an automobile freight line, operated between Los Angeles, California, and Laguna Beach, California, and certain intermediate points; for PACIFIC FREIGHT LINES to consolidate the operative right of said automobile freight line, as extended, as herein requested, with its present operative rights; to extend the operative right to be acquired from said C. B. McClain, in order that service may be rendered to all points between Los Angeles, California, on the one hand and the communities between Los Alamitos and Laguna Beach, on the other hand; to extend said operative right to allow local service between all points between Los Alamitos and Laguna Beach, both inclusive, and to extend said operative right laterally two miles from all the highways traversed between Los Alamitos and Laguna Beach.

TURNED

Application No. 20301

Wallace K. Downey for Applicant;

H. J. Bischoff for Southern California Freight Lines, Protestant;

H. J. Haley for Railway Express Agency, Inc., interested party;

M. H. Richards for Richards Warehouse and Trucking Co., interested party.

BY THE COMMISSION:

O P I N I O N

C. B. McClain, an individual, has petitioned the Rail-

road Commission for an order approving the sale and transfer by him to Pacific Freight Lines, a corporation, of an operating right for the automotive transportation as a highway common carrier of property between Los Angeles and Laguna Beach, via Los Alamitos, Talbert, Westminster, Huntington Beach and Newport Beach, and Pacific Freight Lines has petitioned for authority to purchase and acquire said operating right and to hereafter operate thereunder, the sale and transfer to be in accordance with an agreement, a copy of which, marked Exhibit "A", is attached to the application herein and made a part thereof.

The consideration to be paid for the property herein proposed to be transferred is given as \$6,000.00. Of this sum \$500.00 is alleged by the applicant to be the value of the equipment and \$5,500 is alleged to be the value of the intangibles.

Applicant Pacific Freight Lines also requests consolidation of the right, if acquired, with its rights between Los Angeles and San Luis Obispo, Fresno, Imperial Valley, San Diego and Los Angeles Harbor, and intermediate points. This portion of the application was protested by Southern California Freight Lines on the ground that the testimony in support of consolidation is insufficient; also that it will provide duplicate service from San Bernardino and San Diego.

Three witnesses from Laguna Beach and one from Huntington Beach supported applicant. Their testimony appears sufficient. One of these witnesses was G. A. Portus, secretary of the Chamber of Commerce at Laguna Beach. He testified that the summer population at this resort includes about 4,000 transients who come from all parts of Southern California and who need through service

from points beyond Los Angeles for their furniture and baggage.

Protestant's principal objection is that a new through service, competitive with its own, would be established from Los Angeles Harbor Points, San Bernardino, San Diego and Riverside to Newport Beach and Laguna Beach, which protestant has been granted under Decision No. 28675, dated March 30, 1936, on Application No. 20048. The record does not justify sustaining this protest. Applicant Pacific Freight Lines is conducting a long established operation serving many distant points not served by protestant and upon acquisition and consolidation of the right herein involved will be able to furnish direct through service from all its points, which protestant cannot, except to Laguna Beach from San Bernardino and San Diego.

Applicant also asks an extension of service to points on the Ocean Highway not more than two miles southerly from Laguna Beach in order to serve unincorporated, but well populated areas. This was not opposed.

We are of the opinion that the authority to transfer the right, as proposed, should be granted; that the right be consolidated with the rights of Pacific Freight Lines as set forth in Decision No. 24396 (37 C.R.C. 40) and Decision No. 24136 (36 C.R.C. 694), both in application No. 17517, and as modified or amended, and that the extension sought also be granted.

The operating right herein proposed to be transferred was created by Decision No. 20637, dated December 23, 1928, on

Application No. 15258.

Pacific Freight Lines, a corporation, 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

Pacific Freight Lines, a corporation, having made application for authority to acquire by purchase the operating rights of C. B. McClain, between Los Angeles and Laguna Beach and certain intermediate points, and to consolidate said right with other rights of Pacific Freight Lines, as set forth in the foregoing opinion and to extend the right thus acquired from the south line of the City of Laguna Beach two miles, a public hearing having been held and the matter now being duly under submission,

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA hereby declares that public convenience and necessity require the transfer, consolidation and extension applied for, and

IT IS HEREBY ORDERED, that the transfer of the operating right of C. B. McClain, an individual, to Pacific Freight Lines, a corporation, as set forth in the foregoing opinion, be and the same hereby is approved; and

IT IS HEREBY FURTHER ORDERED that the right herein authorized to be transferred be consolidated and merged with the rights of said Pacific Freight Lines as created by Decision No. 24396, dated January 18, 1932, on Application No. 17517, and all amendments or modifications thereof, subject to all the conditions, limitations and duties therein contained; and,

IT IS HEREBY FURTHER ORDERED that a certificate of public convenience and necessity be, and it is hereby granted to Pacific Freight Lines to extend the terminus of the right herein authorized to be acquired and consolidated, to a point two (2) miles southerly from the south boundary of Laguna Beach, over and along Ocean Highway, and subject to the following conditions:

1. Applicant shall file his written acceptance of the certificate herein granted within a period of not to exceed fifteen (15) days from date hereof.
2. The consideration to be paid for the property herein authorized to be transferred shall never be urged before this Commission, or any other rate fixing body, as a measure of value of said property for rate fixing, or for any other purpose other than the transfer herein authorized.
3. Applicant C. B. McClain shall within twenty (20) days after the effective date of the order herein unite with applicant Pacific Freight Lines, a corporation, in common supplement to the tariffs on file with the Commission, covering service given under the certificate herein authorized to be transferred, applicant C. B. McClain withdrawing and applicant Pacific Freight Lines accepting and establishing such tariffs and all effective supplements thereto, and simultaneously therewith Pacific Freight Lines shall prepare and file with the Commission a tariff or a supplement to Los Angeles-Newport Freight Line Local Freight Tariff C.R.C. No. 9 showing rates, rules and regulations to cover the extended service herein authorized.
4. Applicant C. B. McClain shall within twenty (20) days after the effective date of the order herein withdraw all time schedules filed in his name with the Railroad Commission and applicant

Pacific Freight Lines shall within twenty (20) days after the effective date of the order herein file, in duplicate, in its own name time schedules covering service heretofore given by applicant C. B. McClain, which time schedules shall be identical with the time schedules now on file with the Railroad Commission, in the name of applicant C. B. McClain or time schedules satisfactory to the Railroad Commission, including therein service under the extension herein authorized.

5. The rights and privileges herein authorized may not be sold, leased, transferred nor assigned, nor service thereunder discontinued, unless the written consent of the Railroad Commission to such sale, lease, transfer, assignment or discontinuance has first been obtained.
6. No vehicle may be operated by applicant Pacific Freight Lines 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.
7. The authority herein granted to sell and transfer the rights and/or property shall lapse and be void if the parties hereto shall not have complied with all the conditions within the periods of time fixed herein unless, for good cause shown, the time shall be extended by further order of the 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 1st day of

June, 1936.

W. B. Lavin

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Frank R. Lavin
Commissioners