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ORIGINAL

Decision No. 30001

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

In the Matter of the Application of )  
Freightways, Inc., a corporation, )  
for a certificate of public convenience )  
and necessity to operate a motor truck )  
service for the transportation of )  
property, under contract for J. Nelson ) Application No. 20694  
Kagarise, doing the business of an )  
express corporation under the name and )  
style of Keystone Express Company, in )  
the Los Angeles short haul territory. )  
J. Nelson Kagarise joining in said )  
petition. )

Tanner, Odell & Taft, by Robt. A. Odell and  
Donald Odell, for applicant.  
Wallace K. Downey, for Pacific Freight Lines and  
Keystone Express System, protestants.  
Wallace K. Downey and Robert Hardie for Western  
Truck Lines, Ltd., protestants.  
Ansel Williams, for Southern Pacific Company and  
Pacific Motor Transport Company, protestants.  
Edward Stern, for Railway Express Agency, Inc.,  
protestants.  
E. J. Bischoff, for Southern California Freight Lines  
and Southern California Freight Forwarders,  
protestants.  
Phil Jacobson, for Rex Transfer Company of Redlands,  
protestants.  
C. W. Cornell, Randolph Karr and F. F. Willy, for  
Pacific Electric Railway Company,  
protestants.  
R. S. Sawyer and R. E. Crandall, for Associated  
Jobbers and Manufacturers, interested party.  
Harry S. Payne, for Highway Express & Forwarding  
Company, interested party.

BY THE COMMISSION:

O P I N I O N

By its application, as amended, Freightways, Inc., a  
corporation, seeks a certificate of public convenience and necessity  
authorizing it to operate as a highway common carrier, as defined

in the Public Utilities Act, solely for the purpose of transporting property for J. Nelson Kagarise, engaged in business under the fictitious name of Keystone Express Company as an express corporation, as defined in Section 2(k), Public Utilities Act, and for other express corporations, under contracts defining the conditions under which its service will be carried on. Operations will be conducted only upon call, and not under any regular schedules. Applicant will serve the territory previously served by Keystone Express System, which extended to four districts surrounding Los Angeles. These districts and the routes proposed to be served are described as follows:

District No. 1

From Los Angeles to:

(a) Alhambra, South Pasadena, Pasadena, Altadena, Lamanda Park, Sierra Madre, Monrovia, returning to, and terminating at Pasadena.

(b) Alhambra, San Marino, Temple, Arcadia, Monrovia, Duarte, Azusa, Glendora, Claremont, Upland, Ontario, Cucamonga, Etiwanda, Fontana, Rialto, San Bernardino, Highlands, terminating at Redlands.

(c) Alhambra, San Gabriel, Rosemead, El Monte, Baldwin Park, Covina, San Dimas, La Verne, Pomona, Ontario, Guasti, Bloomington, Colton, San Bernardino, Redlands, Montone, returning to and terminating at Redlands.

(d) Monterey Park, Wilmar, El Monte, Hillgrove, Puente, Spadra, Pomona, Nared, Chino, Ontario, Mira Loma, Riverside, Arlington, Highgrove, Colton, Loma Linda, Bryn Mawr, terminating at Redlands.

District No. 2

From Los Angeles to:

(a) Belvedere Gardens, Montebello, Pico, Whittier, Brea, Olinda, Yerba Linda, Placentia, Atwood, Olive, Orange, terminating at Santa Ana.

(b) Whittier, Los Nietos, La Habra, Buena Park, Fullerton, Anaheim, Santa Ana, Tustin, Irvine, returning to and terminating at Santa Ana.

(c) Rivera, Downey, Los Nietos, Santa Fe Springs, Norwalk, Artesia, Buena Park, Stanton, Westminster, Garden Grove, terminating at Santa Ana.

(d) Maywood, Bell, Hollydale, Clearwater, Hynes, Bellflower, Artesia, Los Alamitos, Westminster, Seal Beach, Sunset Beach, Huntington Beach, Newport Beach, Balboa, Costa Mesa, terminating at Santa Ana.

District No. 3

From Los Angeles to:

(a) Vernon, Central Manufacturing District, Huntington Park, Walnut Park, South Gate, Lynwood, North Long Beach, Signal Hill, Long Beach, Seal Beach, returning to and terminating at Long Beach.

(b) Watts, Compton, Dominguez, Davidson City, Watson, Wilmington, terminating at Long Beach.

(c) Florence, Athens, Gardena, Moneta, Torrance, Lomita, Walteria, Harbor City, Wilmington, San Pedro, Terminal Island, terminating at Long Beach.

District No. 4

From Los Angeles to:

(a) Glendale, Burbank, Roscoe, Pacoima, San Fernando, Sepulveda, terminating at Glendale.

(b) Glendale, North Hollywood, Van Nuys, Reseda, North Los Angeles, Chatsworth, Canoga Park, Girard, Tarzana, Encino, Sherman Oaks, Universal City, terminating at Glendale.

Applicant also seeks the right to serve all intermediate and intervening points and to make any necessary diversion to any point within five miles of the main highways traversed.

Although J. Nelson Kagarise, who is engaged in business as an express corporation under the fictitious name of Keystone Express Company, has joined as an applicant in this proceeding, he seeks no certificate or other affirmative action in his own behalf. Unless otherwise indicated, we shall hereafter refer to Freightways, Inc., as the applicant.

Protesting this application, the carriers serving the territory which applicant seeks to enter asserted their facilities were adequate, and that applicant had failed to establish its ability to conduct the proffered service.

A public hearing was had before Examiner Austin at Los Angeles on September 4th, 5th, 8th and 10th, 1936, when evidence was offered, the matter submitted, and it is now ready for decision.

Following the hearing, applicant Freightways, Inc., on June 22nd, 1937, filed a supplemental application seeking authority to issue certain securities. This will be adverted to later.

By Decision No. 26605, on Application 19198, dated December 4, 1935, a certificate was granted J. Nelson Kagarise, operating under the fictitious name of Keystone Express Company, authorizing him to continue the express and freight forwarding service he had been conducting over the lines of various transportation companies, serving the points set forth in certain tariffs previously filed with the Commission, and which are co-extensive with those embraced in the instant application. Subsequently this order was vacated by Decision

No. 27593, dated December 17, 1934, holding in effect that no certificate was necessary to sanction operations commenced prior to August 1, 1933, under tariffs duly filed with the Commission.

On May 18, 1933, J. Nelson Kagarise, doing business as Keystone Express Company, entered into a contract with L. R. Kagarise, doing business as Keystone Express System,<sup>(1)</sup> by which the latter, a highway common carrier serving the territory embraced within the pending application, undertook to perform the actual transportation of express matter over his lines as an underlying carrier for the compensation therein provided. By its terms this contract was subject to rescission by either party upon written notice to the other of not less than ninety days. Under this contract, as subsequently modified in writing in respect to certain rates, and until its termination in September, 1936, L. R. Kagarise continued to act as the underlying carrier.

By Application 20580, filed May 27, 1936, L. R. Kagarise, operating under the fictitious name of Keystone Express System, sought permission to sell to Keystone Express System, a corporation, and the latter sought authority to purchase from the former his operative rights and equipment, in consideration of certain shares of stock of the corporation to be issued to L. R. Kagarise. The requested authority was granted by Decision No. 28850, dated May 28, 1936, and subsequently the transfer was consummated. Thereafter, the control of Keystone Express System, a corporation, passed to Pacific Freight Lines, one of the protestants herein.

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(1) Unless otherwise noted, J. Nelson Kagarise, doing business as Keystone Express Company, will hereafter be referred to as Keystone Express Company, and L. R. Kagarise (the father of applicant J. Nelson Kagarise), doing business as Keystone Express System, will be designated as Keystone Express System. For brevity, J. Nelson Kagarise will subsequently be referred to as J. N. Kagarise.

Following this transfer Keystone Express System, a corporation, and L. R. Kagarise individually, respectively, gave written notice to J. N. Kagarise, doing business as Keystone Express Company, terminating as of September 10, 1936, the agreement of May 18, 1933, as amended, under which Keystone Express System had been acting as an underlying carrier.<sup>(2)</sup> After the service of these notices, and before the date of termination therein specified, certain correspondence passed between Pacific Freight Lines and Keystone Express Company, on the one hand, and J. N. Kagarise, on the other, evincing the former's willingness to enter into a new contract, subject to the approval of the Commission, but nothing came of this.

Upon the termination of this contract, it became necessary for Keystone Express Company, if it would use the facilities of Keystone Express System as an underlying carrier, to pay the latter its full tariff charges, since the lower rates provided by the contract were no longer effective. The other common carriers operating within this territory are competing with applicant, Keystone Express Company, consequently, it has not sought to arrive at any agreement with them for the transportation of its property at less than tariff rates.

This application proposes to substitute for Keystone Express System as underlying carrier the applicant Freightways, Inc.

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(2) The notice of Keystone Express System, signed by G. M. Duntley, as President, was dated June 11, 1936, and provided that the contract would be terminated ninety-one days from date. That signed by L. R. Kagarise and dated June 12, 1936, specified the contract would be terminated ninety days from date. Under both notices the rescission became effective September 10, 1936.

The basis upon which the rates will be divided between them has not yet been determined. The latter, however, will publish no tariffs naming rates available directly to the public.

For many years J. N. Kagarise was associated in the trucking business with his father L. R. Kagarise, serving during part of the time as manager of both the company and the system, although his authority was somewhat curtailed. By Decision No. 26786, dated February 6, 1934, in Case 3686, as modified by Decision No. 26893, dated March 21, 1934, in the same case, J. N. Kagarise was required to desist from conducting certain operations. Failure to heed this admonition culminated in an order (Decision No. 27585, in Case 3686, dated December 10, 1934) adjudging him guilty of contempt of the Commission and imposing upon him a fine of \$500.00.

The difference between "longhaul freight service" and "short haul operations" has been heavily stressed by applicant J. N. Kagarise, who testified that the operations of Keystone Express Company fall within the latter class. Designed to serve the territory adjacent to Los Angeles, a service of this nature, confined largely to the handling of many small packages, so he stated, must provide more frequent schedules than the long haul service, which is better fitted to the accommodation of larger and heavier shipments. Since dispatch is essential in the short haul service, the accounting, he asserted, should be centralized and the forms simplified. For the long haul service, however, decentralized accounting, he testified, should be provided and more cumbersome forms are commonly used. The commingling of operations of both types by a single carrier resulted, so he maintained, in inefficiency and delay. From his study of this situation, he has evolved

certain forms of bills of lading, exemplars of which were submitted along with those of Pacific Freight Lines, a typical long haul carrier, which, he contended, were less suited to the needs of a short haul service. That company, however, asserting that its forms were filled in in typewriting and, consequently, more legible than those of Keystone Express Company, which were filled in merely with pencil, produced several copies of the latter's forms, the writing on which was wholly illegible. This protestant challenged applicant's contentions, asserting, on the contrary, that its operations within both the long haul and the short haul territory have been carried on efficiently.

To conduct this service, applicant proposes to secure from Brockway Pacific Beach Company such trucks and trailers as may be necessary to accommodate the traffic. Pending the consummation of this arrangement, it will undertake to hire trucks on a commission basis from other operators. Some general discussion has been had between witness B. B. Rose, a distributor of Brockway trucks, and J. N. Kagarise regarding the terms of sale, but no definite understanding has been reached. Mr. Rose suggested a cash payment of at least ten per cent, the amount depending upon the situation existing when applicant was ready to commence operations.

To serve the points named in the tariffs of Keystone Express Company, at least five line haul trucks will be required for the noon schedule and fewer for the afternoon schedule, so J. N. Kagarise asserted. However, it was shown that Keystone Express System, during its operations as an underlying carrier for Keystone Express Company, found it necessary to operate some seventy-five pieces of equipment, including sixty trucks and fifteen trailers, which were scattered over the system and engaged in both



line haul and pick-up and delivery service. In the suburban towns, the pick-up and delivery service will be performed by local draymen, under contracts to be entered into with applicant, providing for the payment of compensation on a commission basis. At certain points terminals will be rented by applicant where traffic will be transferred by line haul trucks to the local trucks. Arrangements have been consummated, so J. N. Kagarise testified, with several of the local operators, four of whom were called on behalf of applicant.

Otto C. Knudsen, of Knudsen Truck & Warehouse Company, whose headquarters were at Redlands, testified he had discussed with J. N. Kagarise the performance of a pick-up and delivery service at Redlands and also the carriage of property between points in the vicinity of that community. Since this carrier holds no certificate, its operations being conducted wholly under a highway contract carrier's permit issued to it by this Commission pursuant to the Highway Carriers' Act (Stats. 1935, Chap. 223), it cannot function, either directly or indirectly, as an underlying carrier for an express corporation where operations are conducted over regular routes or between fixed termini.

Re Pacific States Express, 22 C.R.C. 925.

Re Coast Truck Line, 36 C.R.C. 856.

Harry S. Payne of Corona, President of Highway Express & Forwarding Company, an express corporation, and owner of Pacific Motor Express, stated that Highway Express & Forwarding Company was willing to enter into an arrangement with Freightways, Inc., to provide service between points where no satisfactory contracts existed with underlying carriers, such as Orange County and the

Foothill section. This express corporation formerly operated over certain lines which were subsequently acquired by Pacific Freight Lines and it now desires to reach this territory through another underlying carrier. Though this company had published a tariff naming some 500 points, its right to serve them was challenged by the protestants, who asserted that the points actually served were far fewer in number.<sup>(3)</sup> They called in their behalf Payne's predecessor in the direction of this operation, William E. Mullikin, who stated the company served less than fifty points, possibly as few as twenty. Having but meager assets, this carrier has lately been operating at a loss.

Hubert Green, of Bahler Transportation, Inc. which is engaged in business in and around San Bernardino, testified he had reached no definite understanding for the handling of traffic for applicant, their discussions having been quite general in character. He was unable to state the tonnage he expected to handle, the compensation to be paid, the equipment to be supplied, or other details. The conversation embraced not only the local pick-up and delivery at San Bernardino, but also the line haul from Los Angeles. However, this carrier also holds no certificate under which such an underlying service can be provided.

W. H. Tolson, formerly engaged in the trucking business as manager and a stockholder of Tolson Transportation System, and now employed by the Adley Truck Line, discussed with J. N. Kagarise

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(3) Protestants contend that under the Commission's ruling in Re Pacific Motor Transport Company, Decision No. 27593, in Application 19177, etc., dated December 17, 1934, to the effect that mere tariff filing does not constitute operation within the meaning of Section 50(f), Public Utilities Act, the Highway Express & Forwarding Company has no authority to serve more than 50 points of the 500 named in its tariff.

the performance of local service for applicant in Torrance and its vicinity, but no definite understanding was reached. It is contemplated that his compensation will be measured by the tonnage handled. This witness is no longer engaged in the transportation business, the company which he managed, viz: Tolson Transportation System, being now bankrupt.

At Los Angeles two pick-up schedules will be provided; one in the morning, and the other in the afternoon, goods picked up on the later schedule being delivered the following morning. The number of trucks required could not be estimated, since this depended, so J. N. Kagarise testified, upon the volume of traffic and the number of calls. At the outset this service will be performed through local draymen, who possibly may supply their own drivers. When Keystone Express System operated here as the underlying carrier, twenty regular pick-up routes were served by approximately twenty-five trucks and additional equipment was leased from time to time as occasion demanded.

Over these various routes a daily<sup>(4)</sup> service will be conducted, not, however, upon any definite schedules, but wholly on an "on call" basis. No definite time schedule was submitted either as an exhibit to the application or at the hearing. It is proposed, however, that whenever the volume of traffic is sufficient, certain points will be served twice daily. Under the arrangement which formerly existed between Keystone Express Company and Keystone Express System, all points were reached under a regular daily schedule.

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(4) The service will be conducted daily except Sundays and holidays.

Applicant was unable to present any definite program for financing its operations, in the event a certificate were granted. It is expected, so J. N. Kagarise testified, that funds will be secured through the sale of applicant's capital stock to the general public. Applicant Freightways, Inc., organized in June, 1936, shortly prior to the filing of this application, is entirely without assets. Those of J. N. Kagarise, available for this service, consist of a small amount of office equipment and stationery, one Chevrolet truck and semi-trailer, and certain contracts with Keystone Express System, the value of which was not established. The cost of conducting the pick-up and delivery and the line haul operations was not shown, J. N. Kagarise testifying in this connection that no actual figures were available. The rates to be paid the underlying carriers, who will operate under contracts with applicant, have not been determined. There has been no survey of the probable traffic available. Nor has any investigation been made to determine the receipts necessary to yield a profit.

On behalf of applicant, eight public witnesses were called, about evenly divided between wholesale and retail dealers, including a distributor of oranges at Ontario and of dates at Monrovia, a pottery manufacturer and a wholesale merchant at Los Angeles, as well as a wholesale distributor of auto parts and tires in San Bernardino. Three of them, who were engaged in business at Monrovia, San Bernardino and Ontario, respectively, voiced some complaint about delays in the service of Keystone Express System since its acquisition by Pacific Freight Lines. The others had no complaint of the service, but nearly all stressed the desirability of an additional competitive service.

On behalf of the protestants there was introduced through Mr. P. W. Bernard, of the Bureau of Transportation Research, Southern Pacific Company, a summary of the scheduled services performed by the carriers operating within the territory which applicant seeks to enter. In a few instances but one daily schedule is available, but generally from three to five schedules daily are accorded by the carriers, the number increasing at some points to ten or more schedules. Eleven carriers serve this field, comprising four railroads, three express companies providing service via rail and truck, and four motor carriers. In the opinion of this witness, applicant, if authorized to operate, would draw tonnage from the carriers now serving this territory, all of whom are competing for the traffic available. In addition to the carriers shown on this exhibit, Rex Transfer Company serves San Bernardino and other points.

Since Keystone Express System has acquired the operative rights of L. R. Kagarise, the old equipment has been largely replaced, and new trucks have been added.

The record discloses that for some months preceding the transfer of the operative rights of Keystone Express System, the latter consistently and regularly withheld from its consignors, for considerable periods, the money collected from consignees upon C.O.D. shipments. These funds were commingled with the company's general funds in one bank account, from which was supplied the moneys essential to carry on the business and defray operating costs. Frequently this account was overdrawn. These remittances were withheld for periods extending up to ninety days, approximately 75 per cent having been retained in excess of ten days. On June 1, 1936, Keystone Express System owed in excess of \$26,000 in

outstanding C.O.D. collections for which it had failed to account to the shippers. The complaints voiced by the latter, and their demands for prompt payment, were given scant consideration. Former employees of Keystone Express System, familiar with the situation, testified they frequently had consulted with J. N. Kagarise, then manager of this company, regarding the policy of handling C.O.D. collections. One of them, who then acted as office manager for Keystone Express System, stated that daily he supplied J. N. Kagarise with a financial statement showing, among other things, the amount of C.O.D. collections on hand and the periods during which payments had been withheld from the consignors. Immediately following the transfer to the present Keystone Express System and within a period of three days, so this witness stated, the outstanding indebtedness arising from such C.O.D. collections was discharged.

On behalf of the protestants some eighteen public witnesses were called, representing business institutions widely scattered throughout the territory which applicant sought to enter. Although, for the most part, they appeared for retail stores of various kinds, some represented wholesale distributors and a few spoke for manufacturing institutions. In substance, all of them testified the existing transportation service was adequate and satisfactory for their needs. Although a few used Keystone Express System exclusively, most of them patronized other carriers as well. Some stated they had observed no deterioration or change in the service which had been rendered since the transfer.

A consideration of the record impels the conclusion that applicant, Freightways, Inc., has failed to establish a public need for the service which it offers to supply. The carriers

serving this territory are according a service which seems to meet with the approval and to supply the necessities of their patrons. The tonnage applicant hopes to secure, it was established, will be drawn largely from the carriers already in the field, and it was not shown to be of sufficient volume to permit the division with an additional carrier. Since the record has not established any failure on the part of these carriers to accord the public the service to which it is entitled, or indicated their inability adequately to serve this territory, there appears to be no justification for permitting the entry of another carrier. Such a course will not tend toward monopoly, as a few of the shippers seemed to apprehend, because the existing carriers are themselves engaged in the sharpest competition. For these reasons, and because of the inability of applicant, Freightways, Inc., and J. N. Kagarise adequately to finance the proposed operation, and also because of the practices followed by the latter during his regime as manager of Keystone Express System in habitually withholding from consignors C.O.D. collections, by means of which that company was enabled to finance its operations, - a course of conduct which clearly establishes his unfitness to receive and hold a certificate such as that sought - we believe the application should be denied.

The denial of the application for a certificate will enable us to dispose, without a hearing, of the supplemental application for authority to issue stock. By this supplemental application Freightways, Inc., seeks permission to issue and sell securities to finance its contemplated operation in the local drayage business within the corporate limits of Los Angeles. Although this is a type of operation for which a permit must be obtained under the City Carriers' Act (Statutes 1935, Chapter 312), corporations engaging wholly in such activities are not subject to regulation under the

Public Utilities Act. Therefore, they are not required, under Section 52 of that act, to obtain from this Commission authority to issue and sell securities. Since a certificate to engage in business as a highway common carrier, under Section 50-3/4, Public Utilities Act, will be withheld from this applicant, it is clear that the type of business in which it will hereafter engage does not fall within the regulatory powers of this Commission under that act. Therefore, the supplemental application will be dismissed for want of jurisdiction.

Upon full consideration of the evidence, the Railroad Commission of the State of California hereby finds as a fact that public convenience and necessity do not require the operation by Freightways, Inc., a corporation, of an automotive transportation service as a highway common carrier, as defined in Section 2-3/4, Public Utilities Act, between the points and over the routes described in the application herein, as amended, or between any of said points or over any of said routes.

#### O R D E R

A public hearing having been had in the above entitled matter, evidence having been received, the matter having been duly submitted, and the Commission now being fully advised:

IT IS HEREBY ORDERED that the application of Freightways, Inc., a corporation, for a certificate of public convenience and

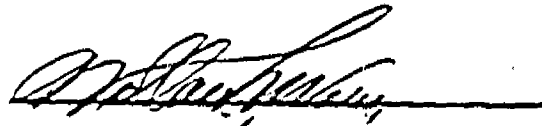



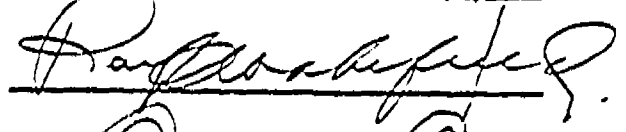
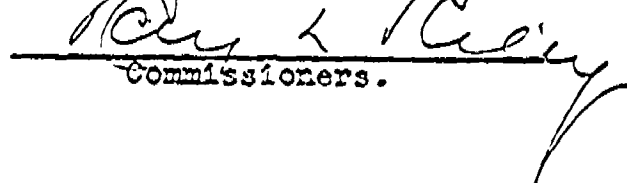
necessity to operate a motor vehicle service for the transportation of property as a highway common carrier, whether under contract with J. Nelson Kagarise, doing business under the name of Keystone Express Company, an express corporation, or otherwise, be and it is hereby denied.

IT IS HEREBY FURTHER ORDERED that the application of said Freightways, Inc., a corporation, for permission to issue and sell securities, as set forth in the supplemental application filed herein June 22, 1937, be and it is hereby dismissed for want of jurisdiction.

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

Dated at San Francisco, California, this 9<sup>th</sup> day of August, 1937.



  
  
  
Commissioners.