

Decision 30070.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
RAILWAY EXPRESS AGENCY, INCORPORATED,)
OF CALIFORNIA, for certificate of)
public convenience and necessity to)
operate motor vehicles for the trans-)
portation of express matter for the)
Railway Express Agency, Incorporated,)
of Delaware, or its successors, be-)
tween San Luis Obispo and Santa Maria,)
only, and between Guadalupe and Santa)
Maria, only.)

Application No. 21140.

ORIGINAL

EDWARD STERN, Counsel for Railway Express Agency,
Incorporated, of California, Applicant.

WALLACE K. DOWNEY, Counsel for Pacific Freight
Lines, Protestant.

HUGH GORDON, Counsel for Valley and Coast Transit
Company and Coast Line Express, Protestants.

H. C. GRONDELL, Counsel for Pacific Coast Railway,
Protestant.

WAKEFIELD, Commissioner:

O P I N I O N

This is an application by Railway Express Agency, Incorporated, of California, a California corporation, hereinafter referred to as the "California Company", for a certificate of public convenience and necessity to operate an automotive service as a highway common carrier of property between San Luis Obispo and Santa Maria only, and between Guadalupe and Santa Maria only, limited to the transportation of express matter in the custody of Railway Express Agency, Incorporated,

a Delaware corporation, referred to as the "Delaware Company", or its successors. No local or intermediate service between the points enumerated above is proposed by applicant; express matter is to be transported only under contract between applicant and the Delaware Company or its successors; and the rates proposed to be assessed are to be the rates of the Delaware Company or its successors.

Public hearings in this proceeding were held in Santa Maria on May 6 and 7, 1937, at which time the matter was submitted on briefs.

Applicant's reason for seeking the certificate herein referred to is twofold in nature:

1. Santa Maria Valley Railroad, over whose rails between Guadalupe and Santa Maria the Delaware Company now transports its express matter, has advised the Delaware Company that it is its intention to discontinue train service between these points.
2. On March 21, 1937, the Southern Pacific Company made certain changes in the schedules of both its northbound and southbound passenger trains; schedules on which the Delaware Company transported its express matter. These schedule changes involved an earlier departure time in several key instances, the result of which was to seriously delay the movement of the Delaware Company's express matter to the points involved herein.

Applicant's first reason involving the cessation of service by Santa Maria Valley Railroad Company is self-explanatory and no further discussion of this particular point appears necessary except to state that the railroad has agreed to maintain the service during the pendency of this application.

In regard to the second reason of applicant, it appears pertinent and necessary to discuss the effect of the changes by Southern Pacific Company in more detail so as to bring out more clearly the conditions resulting from the change.

Prior to the change in the scheduled operation of Southern Pacific Company train No. 69, express traffic originating in Los Angeles departed at 10:00 o'clock P. M.; the late departure permitted the Delaware Company to furnish shippers with pickups as late as 5:00 o'clock P. M., later pickups in emergencies, and permitted a cleanup of the entire express traffic for the day.

On March 21, 1937, the schedule of train No. 69 was changed to leave Los Angeles at 6:05 o'clock P. M. This earlier departure does not permit shipments to be picked up as late as 5:00 o'clock P. M. and to be brought to terminals, sorted and way-billed in time to be moved on this train. Emergency shipments picked up or tendered at the Los Angeles terminals by shippers after 8:00 o'clock P. M. must be held over for next day's train departure. A cleanup of the day's business for movement on train No. 69 cannot be effected with the present service.

The next available express service is Southern Pacific train No. 1, leaving Los Angeles at 8:00 o'clock P. M. but, due to operating conditions and the necessity for the Southern Pacific to maintain its through schedule, that train cannot be stopped at Guadalupe.

Train No. 71, leaving Los Angeles at 8:20 o'clock A. M., affords the next available express service with connections at Guadalupe or San Luis Obispo. However, express so transported arrives too late in the day at Santa Maria to effect delivery suitable to receivers and this service results in a delay of approximately twenty-four hours.

A similar condition for traffic southbound from San Francisco has resulted from a change in the scheduled departure time of train No. 70 which now leaves San Francisco at 6:15 o'clock P. M.

Through counsel Pacific Freight Lines, Valley and Coast Transit Company, Coast Line Express and Pacific Coast Railway protested the granting of the instant application. All of the protestants presented offers of service as underlying carriers to serve the needs of the Delaware Company in its capacity as an express corporation. All of these proposals of service were rather general in nature encompassing offers to provide a reasonable schedule suitable to the needs of the Delaware Company and including on the part of Pacific Freight Lines and Valley and Coast Transit Company offers to provide special equipment or locked hampers on regular equipment. Pacific Coast Railway offered to provide service from San Luis Obispo to Santa Maria by rail motor car. The record is barren of any cost figures in regard to these offers of protestants.

All of the foregoing statements were introduced into the record through witnesses and by various exhibits. In addition other testimony and exhibits showed that the bulk of the traffic (80%) moved inbound from Los Angeles to Santa Maria, and some \$289.00 a month accrued to the Santa Maria Valley Railroad Company under its contract with the Delaware Company. The California Company introduced an exhibit to show that their proposed truck cost for this operation would be approximately \$188.00 per month and, further, their witness Carpenter testified that this operation could be conducted even at a loss because of the fact that the Delaware Company retains the entire earnings from point of origin to point of destination and secures the long haul over the rail lines from which it is compensated under a prorate method.

Witness Chambers of the Santa Maria Chamber of Commerce testified that he had received a number of protests from shippers in regard to service rendered subsequent to March 21,

1937, and further testified that he held no brief for any of the carriers but was solely interested in seeing that service be restored to the status existing prior to March 21, 1937.

While this witness was on the stand, stipulation was entered into by all counsel that public convenience and necessity existed for the establishment of the same service existing prior to March 21, 1937; that testimony of public witnesses would be to that effect and that the sole issue to be determined was who should render the service as an underlying carrier for the Delaware Company.

With this determination in effect, I review the record and find that the California Company proposes to transport, for the Delaware Company only, property delivered to it by the Delaware Company at Guadalupe or San Luis Obispo for transportation to Santa Marie or vice versa, with no intermediate service between the points enumerated. It is apparent from the record that the Delaware Company, for whom applicant proposes to transport property, has available between San Luis Obispo and Santa Maria the services of three underlying carriers, two motor carriers and Pacific Coast Railway, offering to transport in a rail motor car.

The motor carriers referred to, Pacific Freight Lines and Valley and Coast Transit Company, have for some years been serving this territory under certificate from this Commission and are thoroughly experienced and well established operators.

The third operator, Pacific Coast Railway, is a narrow guage railroad which, while not at the present time operating the particular service referred to, has offered to reinstate this service, previously abandoned voluntarily, and operate a rail motor car on a schedule coordinated with main line rail operation for the benefit of express matter of Delaware Company.

Pacific Freight Lines and Valley and Coast Transit Company have made offers of special schedules, special equipment and a service designed to meet exigencies of service changes by the Delaware Company's principal carrier, Southern Pacific Company, changes in whose schedule prompted the filing of the instant application. Between Guadalupe and Santa Maria the record is not so clear as to the adequacy of present underlying carrier service, particularly from the south from whence the bulk of the traffic moves.

The conclusion is inescapable that ordinarily an express corporation, which has been deprived of, or has dispensed with, the service of its underlying carrier does not by such a process establish a basis for a finding that public convenience and necessity require the operation of motor trucks either by itself or a subsidiary, particularly where other well established certificated highway carriers capable of performing such underlying service are available and willing to provide transportation facilities. Rather, I believe the express corporation should, wherever possible, make use of existing facilities, either highway or rail as the case may be.

I am of the opinion, therefore, based on the record herein, that the Delaware Company has available the services of common carriers between San Luis Obispo and Santa Maria which will permit a resumption of service on identical schedules previously available and no need exists for the California Company to operate motor vehicles over the highway for such service between San Luis Obispo and Santa Maria. I am of the opinion, however, that the record will sustain a finding to the effect that public convenience and necessity require applicant's proposed service between Guadalupe and Santa Maria and that a certificate should ensue.

Railway Express Agency, Incorporated, of California 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.

I recommend the following form of Order.

O R D E R

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA HEREBY DECLARES that public convenience and necessity require the establishment and operation of an automotive service by Railway Express Agency, Incorporated, of California as a highway common carrier, as such is defined in Section 2-3/4 of the Public Utilities Act, between Guadalupe, on the one hand, and Santa Maria, on the other hand, said service to be limited to the transportation of express matter consigned to it by the Railway Express Agency, Incorporated, a Delaware corporation, or its successors and for no other property.

IT IS HEREBY ORDERED that a certificate of public convenience and necessity therefor be, and the same is, hereby granted to Railway Express Agency, Incorporated, of California, subject to the following conditions:

1. Applicant shall file a written acceptance of the certificate herein granted within a period of not to exceed fifteen (15) days from date hereof.
2. No service shall be rendered to points intermediate between Guadalupe and Santa Maria.
3. Applicant shall commence the service herein authorized within a period of not to exceed thirty (30) days from the effective date of this order.

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 Railroad 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 obtained.

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

7. Applicant shall, prior to the commencement of service authorized herein and continuously thereafter, comply with all of the provisions of this Commission's General Order No. 91.

IT IS HEREBY FURTHER ORDERED that the application in all other respects be and the same is hereby denied.

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

The foregoing Opinion and Order are hereby approved and ordered filed as the Opinion and Order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 23^d day of August, 1937.

William M. ...
Leon ...
John R. ...
Robert ...
W. L. ...
Commissioners.