

Decision No. 32712

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of  
PACIFIC FREIGHT LINES, a corporation,  
for certificate of public convenience  
and necessity to extend trucking serv-  
ice as a common carrier between Los  
Angeles and San Bernardino to Riverside,  
Redlands, Highlands, etc.

Application No. 21715

HUGH GORDON and W. R. WILLIAMS, for applicant.

H. J. BISCHOFF, for Southern California Freight  
Lines, protestant.

A. S. WILLIAMS, for Southern Pacific Company,  
Pacific Motor Transport Company, Pacific  
Motor Trucking Company, Pacific Electric  
Railway Company, interested parties.

RUSSELL F. MELHAM, for Waldon Carnall, inter-  
ested party.

E. L. H. BISSINGER, for Pacific Electric Railway  
Company, interested party

H. E. SCRUGGS and EDWARD STERN, by E. E. Scruggs,  
for Railway Express Agency, Inc., protestant.

G. T. BEARST, BERNIE LEVY and G. E. DUFFY, for The  
Atchison, Topeka and Santa Fe Railway Company,  
and for the Santa Fe Transportation Company,  
protestants.

WADE H. LOVE and EDWIN C. RENWICK, for Union Pacific  
Railway Company, interested party.

RILEY, Commissioner:

O P I N I O N

By this application, Pacific Freight Lines, a corporation,  
seeks a certificate of public convenience and necessity to establish  
and operate a highway common carrier service between San Bernardino  
and Highlands, East Highlands, Patton, Redlands, Del Rosa, Mentone,

Bryn Mawr, Loma Linda, Fontana, Bloomington, Colton, Rialto, and Riverside, and all intermediate points, including a lateral right of five miles on each side of the routes traversed. This certificate is sought as an extension and enlargement of applicant's existing operative right between Los Angeles and San Bernardino and other points, heretofore granted, and is to be consolidated with that operative right.

A public hearing on this application was held in Los Angeles on February 10, 1938, at which time the application was taken under submission, subject to the filing of briefs which have been duly filed with the Commission, and the matter is now ready for decision.

The granting of this application was protested by Southern California Freight Lines, Railway Express Agency, Inc., Southern Pacific Company, Pacific Motor Transport Company, Pacific Motor Trucking Company, Pacific Electric Railway Company, The Atchison, Topeka & Santa Fe Railway Company, and the Santa Fe Transportation Company. Waldom Carnall and the Union Pacific Railroad Company appeared as interested parties.

The operative rights possessed by applicant and its affiliated carriers with whom we are here concerned, and the service they have conducted, were described by C. G. Anthony, Vice President and General Traffic Manager of applicant, the only witness called. By stipulation of the parties, there was embodied in the record a description of the service performed by protestants, The Atchison Topeka & Santa Fe Railway Company, Santa Fe Transportation Company, Southern Pacific Company, Pacific Electric Railway Company, Pacific Motor Transport Company, Railway Express Agency, Inc., and Southern California Freight Lines.

Applicant Pacific Freight Lines operates as a highway common carrier over the routes extending generally from Los Angeles to Fresno, San Luis Obispo, Los Angeles Harbor points, San Diego, Imperial Valley points and San Bernardino, with various branches. This proceeding involves only the Los Angeles - San Bernardino service; between these points, applicant may handle traffic without restriction. Keystone Express System, a corporation, operates as a highway common carrier between San Bernardino and the points named in this application. The capital stock of this carrier is wholly owned by the applicant. Pacific Freight Lines Express Company, a corporation, formerly known as Boulevard Transportation Company, which has succeeded to the operative rights formerly held by the Richards Express, has been and is now engaged in business as an express corporation between Los Angeles and the points named in the application, employing as underlying carriers applicant, Pacific Freight Lines, between Los Angeles and San Bernardino, and Keystone Express System between San Bernardino and points beyond. Through an interlocking directorate, Pacific Freight Lines Express Company is controlled by applicant. Traffic handled by the express company destined to points named in the application is transferred at San Bernardino from applicant's equipment to that of Keystone Express System. Applicant now seeks to substitute its own service as a highway common carrier for that now rendered by the express company through the instrumentality of its underlying carriers. This substitution of service, Mr. Anthony testified, was applicant's primary objective.

Protestants have questioned the propriety of the operating method employed by Pacific Freight Lines Express to the extent that this involves the handling by Keystone Express System, as an underlying carrier, of shipments originating at Los Angeles and destined

to points beyond San Bernardino. This objection rests upon a restriction contained in Decision No. 19410, dated February 25, 1928, on Application No. 13087, which we shall discuss presently. The right of Pacific Freight Lines to operate between Los Angeles and San Bernardino has not been challenged.

Through witness Anthony exhibits were presented showing the tonnage moving by Pacific Freight Lines Express over the lines of Pacific Freight Lines and Keystone Express System from and to the points proposed to be served, exclusive of San Bernardino. These figures comprehend both interstate and intrastate shipments moving in carload and also in less-than-carload lots. He estimated that 95 per cent of the traffic moving to and from the points involved originated at or was destined to Los Angeles and contiguous territory. The witness was unable to state the proportion which moved interstate, nor could he name the points of origin and destination of the shipments described in the exhibits.

A total of 452,881 pounds, or 226.44 tons, of freight was transported from the points involved, exclusive of San Bernardino, during the period June to December, 1937, inclusive, and for the same period a total of 4,234,018 pounds, or 2117 tons, moved from Los Angeles to these points. During October, 1937, a total of 756 different consignees and 1,002 different shippers used this service to the points involved and for the same period a total of 112 different consignees and 55 different shippers used it from these points. During this same month, 2,273 shipments were handled inbound and 185 outbound. Based upon a 26-day operation for the month, the daily shipments averaged 87 inbound and 7 outbound; in volume, the daily movement averaged 11.63 tons inbound, and 1.24 tons outbound. The

traffic comprised general freight, averaging from 300 to 400 pounds per shipment.

From the record it is apparent that the current of traffic flows toward, rather than from the points beyond San Bernardino, with which we are here dealing. Very definitely, this territory is primarily a consuming area, dependent upon and in need of a daily, expeditious service such as that proposed by the applicant.

As previously stated, the right of Keystone Express System to engage in the transportation of this traffic has been challenged. Protestants point to the provisions of Decision No. 19410, supra, by which there was granted to L. R. Kagarise, predecessor of that company, a certificate authorizing the extension of his existing service to San Bernardino, Riverside and Orange County points, over specified routes which included the points sought to be served under the present application, subject to the following exceptions:

"...excepting however from and to Los Angeles proper and to territory intermediate between Los Angeles and San Gabriel Blvd. over and along those certain routes...."

Applicant contends, however, that these operations have been conducted lawfully. It asserts that since Keystone Express System handles the traffic as an underlying carrier for Pacific Freight Lines Express, only between San Bernardino and points beyond, and not from and to the excepted territory—a service rendered by

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(1) Kagarise was then authorized to operate between Los Angeles, Ardendale, Savannah, Rosemead, Amarillo, El Monte, Baldwin Park, Covina, Azusa, Glendora, San Dimas, La Verne, Claremont, Upland, Cucamonga, Puente, Walnut, Spadra, Pomona, Ontario and intermediate points.

applicant itself, assertedly under an independent operative right-- such operations were not violative of the restrictions imposed by the Commission.

It is apparent that the restriction above quoted and its purpose was to preclude the Keystone Express from physically transporting property having its origin or destination in the territory between Los Angeles on the one hand, and the territory intermediate between Los Angeles and San Gabriel Boulevard on the other hand. It would be a strained and unnatural construction of the restriction to hold that it precluded the Keystone Express from ever participating in the movement of traffic which had its origin and destination in the restricted area, but which was transported to or from this area by other carriers. In the instant case, the Keystone Express has not undertaken to serve this area. The service is rendered by the Pacific Freight Lines Express through the medium of underlying carriers. The only connection that Keystone Express has with the movement is to act as an underlying carrier between San Bernardino and Highlands, East Highlands, Patton, Redlands, etc. on traffic which was moving under the billing of the Pacific Freight Lines Express. In so doing, the Keystone Express did not violate the terms of its certificate.

In the conduct of this service, freight is interchanged at San Bernardino between the two underlying carriers. The elimination of this transfer, under applicant's proposal, will enable applicant to provide a more economical and efficient service than at present.

For the existing service, now provided through the agency of an express corporation operating over two underlying highway

common carriers, applicant proposes to substitute a service performed directly by a highway common carrier. This, it was shown, will simplify the operations, increase the efficiency of the service, and result in substantial economics.

The substantial movement of traffic between Los Angeles and the points involved, to which we have referred, is persuasive that the public need requires the continued maintenance of this service. The record discloses that this tonnage moved regularly in considerable volume, predominantly from Los Angeles. This fact, together with the economies and efficiencies to be effected through the substitution for the express corporation of a highway common carrier serving the public directly, is sufficient to show the existence of public convenience and necessity which would warrant the granting of this application.

Though the service provided by the protestants, respectively, appears to be adequate, the record indicates that the existing competition will not be materially increased, were this certificate granted.

In authorizing this service, we shall require Pacific Freight Lines Express, in consonance with the position it assumed at the hearing, contemporaneously with the establishment of service by Pacific Freight Lines as authorized by the following order, to discontinue and abandon all of its operations as an express

corporation, as defined by Section 2(k), Public Utilities Act, between all of the points involved in this proceeding, which it now serves through the instrumentality of Pacific Freight Lines as underlying carrier. We shall further require Keystone Express System, contemporaneously with the establishment by Pacific Freight Lines of the service herein authorized, likewise to discontinue and abandon all service as a highway common carrier, between all of the points now served by it and by Pacific Freight Lines, in common. The application will be granted accordingly.

Pacific 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

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

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA HEREBY DECLARES that public convenience and necessity require the establishment and operation by Pacific Freight Lines, a corporation, of an automotive service as a highway common carrier, as such is defined



by Section 2-3/4 of the Public Utilities Act, between San Bernardino and Highlands, East Highlands, Patton, Redlands, Del Rosa, Mentone, Bryn Mawr, Loma Linda, Fontana, Bloomington, Colton, Rialto and Riverside, and all intermediate points, over and along the following routes:

1. Between San Bernardino and Redlands, via Patton, Highlands, East Highlands, Bryn Mawr, Loma Linda and Colton;
2. Between San Bernardino and Arlington, via Colton and Riverside;
3. Between San Bernardino and Fontana, via Bloomington and Colton;

including a lateral right five (5) miles on each side of the highways traversed, as an extension and enlargement of applicant's existing rights and consolidated therewith, subject to the following conditions:

1. Pacific Freight Lines Express shall, contemporaneously with the establishment and operation of service by Pacific Freight Lines as herein authorized, file with the Commission its application to discontinue and abandon all of its operations as an express corporation, as such is defined in Section 2(k) of the Public Utilities Act, to, from and between all points involved in this proceeding, which it now serves through the instrumentality of Pacific Freight Lines, as underlying carrier.
2. Keystone Express System, shall, contemporaneously with the establishment and operation by Pacific Freight Lines of the service herein authorized, file with the Commission its application to discontinue and abandon all of its service as a highway common carrier to, from and between all points involved in this proceeding, now served by it and by Pacific Freight Lines, as highway common carriers, which are common to the lines of both of said carriers.

IT IS HEREBY ORDERED that a certificate of public convenience and necessity therefor be, and the same hereby is, granted to Pacific Freight Lines, subject to the following conditions:

1. The authority herein granted shall lapse and be void if applicant shall not have complied with all of 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.
2. Applicant shall file a written acceptance of the certificate herein granted within a period of not to exceed thirty (30) days from the effective date hereof.
3. Applicant shall commence the service herein authorized within a period of not to exceed thirty (30) days from the effective date hereof, and shall file, in triplicate, and concurrently make effective on not less than ten (10) days' notice to the Railroad 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 herein granted, or rates and rules satisfactory to the Railroad Commission.
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 (5) days' notice to the Railroad Commission and the public, a time schedule or 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.

The effective date of this order shall be twenty (20) days after 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 16<sup>th</sup> day  
of January, 1940.

Ray & Riley

Ray & Riley

Justice J. Cameron  
COMMISSIONERS