

ORIGINAL

Decision No. 34285

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
THOMAS W. GILBOY, doing business as)
GILBOY COMPANY, for a certificate) Application No. 21802
authorizing the extension of oper-)
ative rights.)

In the Matter of the Investigation on)
the Commission's own motion, into the)
operations, rates, charges, contracts,) Case No. 4311
and practices, or any thereof, of)
THOMAS A. GILBOY, doing business as)
GILBOY COMPANY.)

GYWN F. BAKER, for Applicant.

EDWARD STERN, for Railway Express Agency,
Incorporated, Protestant.

H. W. HOBBS and F. X. VIEIRA, by F. X.
Vieira and Ansel S. Williams, Jr.
for Southern Pacific Company and
Pacific Motor Trucking Company,
Protestants.

PHILLIP M. WAGY, for Special Service Trans-
portation Corporation, Ltd.,
Protestant.

GERALD E. DUFFY and G. F. HURST by C. R.
Bishop for The Atchison, Topeka and
Santa Fe Railway, Interested Party.

HAROLD FRASHER, by H. F. Hershey, for
Valley Motor Lines and Valley Express
Co., Interested Parties.

DOUGLAS BROOKMAN and FRANK M. CHANDLER, for
California Motor Transport Co., Ltd.
and California Motor Express, Ltd.,
Interested Parties.

BY THE COMMISSION:

O P I N I O N

Thomas W. Gilboy, applicant and respondent in the above-entitled proceedings, is providing a highway common carrier service as authorized by the Commission's Decision No. 28235, dated September 19, 1935, for the transportation of motion picture films and advertising matter, motion picture theater supplies, etc. over and along nine separate routes including termini and all intermediate points. These routes, in general, embrace a territory which includes San Francisco, Santa Rosa, Healdsburg, St. Helena, Redding, Marysville, Sacramento, Auburn, Jackson, Stockton, Tracy, Fresno, Porterville, Delano, Monterey, Salinas, Watsonville, Santa Cruz and San Jose. The main office of Gilboy Company is located in San Francisco.

In the above-entitled application Gilboy (hereinafter referred to as applicant in connection with the application) seeks authority to extend the foregoing described operation to provide service:

(a) Between San Francisco, and other points now served, and the following points: Coalinga, Arvenal, Riverdale, Clovis, Corcoran, Shafter, Wasco, Bakersfield, Sausalito, Mill Valley, Garberville, Ukiah, Cloverdale, Willits, Eureka, Ferndale, Fortuna, Colfax, Grass Valley, Nevada City, Weaverville, Winters, Niles and Willow Glen and intermediate points:

(b) Between Los Angeles on the one hand, and Bakersfield, Shafter, Wasco and San Francisco, on the other hand.

The rates to be charged are those set forth in Exhibit "A" attached to the application herein. The rules and

regulations applicable thereto are those appearing in applicant's tariff C.R.C. No. 2 now on file with the Commission.

In the above-entitled case the Commission instituted a general investigation into the operations, etc. of respondent Thomas W. Gilbo⁽¹⁾y (hereinafter in reference to the investigation Gilbo⁽¹⁾y will be referred to as respondent) which was more particularly directed to a determination of whether respondent is performing a highway common carrier service between San Francisco and Los Angeles and intermediate points without an operative right or certificate of public convenience and necessity therefor as required by Section 50-3/4 of the Public Utilities Act.

Five days of public hearing was had in these proceedings on a consolidated record before Examiner Paul, at the conclusion of which the matters were submitted upon concurrent briefs which have since been filed.

The route for which certification is sought between Los Angeles and San Francisco is over U. S. Highways Nos. 99 and 50 and State Route No. 120 with diversions therefrom to serve numerous points in San Joaquin Valley. Between San Francisco and Eureka, U. S. Highway No. 101 would be used with diversions therefrom to serve Ferndale. U. S. Highway No. 40 would be used between San Francisco and Colfax through Sacramento with diversions from Auburn to Grass Valley and Nevada

(1) By the order of investigation in this proceeding, respondent was erroneously designated as "Thomas A. Gilbo⁽¹⁾y." At the hearing where respondent appeared and voluntarily testified as a witness, he announced his true name as "Thomas W. Gilbo⁽¹⁾y." The record has been corrected accordingly and he will be referred to herein by his true name.

City. Weaverville would be served from San Francisco over a route extended from the termination of applicant's present route at Redding. Winters would be served over a route extending from U. S. Highway No. 40 between Vacaville and Dixon, returning to said U. S. Highway No. 40 at Davis Junction. Service to Niles would be provided from San Francisco either via Dumbarton Bridge or via a route extended from applicant's present route terminating in Hayward. Willow Glen would be served by the extension of applicant's service between San Francisco and San Jose.

Applicant testified that during a period of time prior to May 29, 1937 he had followed the practice at Los Angeles of gathering together shipments of motion picture films, advertising supplies, lobby displays, flags, banners, trailer films and theatrical supplies which were consolidated and consigned to himself at San Francisco, and shipped over the facilities of California Motor Express or other common carriers. Motion picture trailers comprised about 30 per cent of the commodities shipped. Upon the receipt of these shipments at San Francisco, applicant paid the transportation charges which in turn were later collected from the consignees of the individual shipments. Applicant stated that the use of the facilities of those carriers having become unsatisfactory, he began the operation of his own trucks on or about May 29, 1937 for the transportation of those commodities between Los Angeles and San Francisco, and has continuously so operated since that date on a daily basis. As part of this operation he occasionally makes deliveries of those commodities at Bakersfield, Wasco or Shafter. He further stated that between fifteen and twenty shippers are

now using this service. He said that he will accept all business for the transportation of motion picture films between those points and that he has never refused any shipment when properly packed.

Those shipments generally arrive at San Francisco from Los Angeles about 9:00 a.m. In some cases shipments of films are delivered to the film exchanges or distributors while the remainder are assembled at applicant's San Francisco depot with films and other supplies received from various film exchanges and poster companies of San Francisco. The posters and advertising matter are generally received in bulk lots which are broken down and then reassembled into correlated units, that is, the film to be shown on a given date at a particular theater is combined into a single shipment with lobby display material, posters, advertising matter, etc., for the succeeding show at that theater. These shipments are then transported to destinations by applicant. Upon arrival at destination, the new program is delivered to the theater for which the film is booked, and the old program, including film, advertising matter, etc. is picked up and returned to San Francisco. However, in some cases, programs having been booked for circuit showing are transported directly from the theater upon the conclusion of the show in that house to other theaters on the circuit and upon completion of the circuit run are returned to San Francisco. The used programs upon arrival at San Francisco are broken down and segregated for return to the various film exchanges, poster companies or screen service companies. Those commodities destined to Los Angeles are assembled into lots and returned by applicant. It was appli-

cant's contention that in order properly to serve his customers he is required to control the movement of the various shipments which he transports between Los Angeles and San Francisco.

Applicant further stated that about fifteen years ago he began the correlation and consolidation of shipments of films and other commodities at San Francisco which were forwarded to various consignees over the facilities of various carriers. Sometime thereafter, or about twelve years ago, he established his own automotive service for the transportation of those shipments between unspecified points.

Applicant is now serving over 320 theaters in various communities, some of which are served under his certificate, while others are not so served. He stated that his services not only consist of transportation but also of checking the bookings of his various patrons, obtaining the correct films and advertising matter to comply with such bookings, obtaining substitute bookings in the event of shortage of the particular film booked and in cases of emergencies arranging for expedited delivery of films or supplies when needed.

The routes of his operations are established according to the various program changes.

Applicant stated that he established service for the transportation of moving picture films and supplies from San Francisco to moving picture theaters at Clovis, Coalinga and Avenal at the insistence of owners or operators of theaters at those places; that he established service over the Redwood Highway to Fortuna, Eureka and Arcata at the request of the operator of moving picture theaters at those places, and that

he established service to Colfax and Nevada City for theater operators there who desired to book moving pictures for showing within thirty days, instead of within ninety days, of the release of those pictures for showing, which bookings would not be provided by the distributors of the film because of the time required for transportation by other carriers, thus reducing the most desirable rental period of newly released pictures.

Applicant contends that services of Railway Express Agency are inadequate at Davis, Clovis, Selma, Coalinga, Avenal, Corcoran and Riverdale because no pickup and delivery of shipments is provided at such points.

He also stated that ever since May 29, 1937 he has continuously transported newspapers for the San Francisco Examiner and the San Francisco Chronicle from San Francisco to Modesto, Merced, Fresno and Bakersfield. The service for the San Francisco Chronicle is under a written contractual arrangement.

Six public witnesses testified in support of the application. Three were motion picture exhibitors who are operating more than 100 theaters in Northern California, something less than one-third of them being situated in the San Francisco Bay district. Of the remainder, one represented an advertising poster company, one a screen service company, and the other a motion picture film exchange. The firms represented by the last three witnesses are located at San Francisco.

It was adduced from the testimony of one of the exhibitors that his firm is operating six theaters at towns on the Redwood Highway, one each at Ukiah, Fortuna and Arcata and three at Eureka. Another theater is operated at Fort Bragg.

It was stipulated that applicant established transportation service from San Francisco to these theaters at the request of the witnesses on February 13, 1936 and has continuously served them to date. This request was made, so it was said, because the service then provided by Railway Express Agency was inadequate to meet his needs. Prior to the establishment of applicant's service to and from Eureka this witness stated that he had been required to contract for films for two additional days of playing time there to avoid the consequences of delays in transit. He further stated that the rail carrier does not make deliveries at Eureka until late in the day, which is a further disadvantage, while applicant makes deliveries as early as 6:00 a.m. When matinees begin at 11:05 a.m. it is essential that deliveries are made early enough to avoid delays. They should be received at least one hour before show time.

The other exhibitors testified that their companies are operating theaters at a number of towns which have been served by applicant from San Francisco for a number of years. Some of them are served by applicant under his presently held certificate while others are served at Coalinga, Grass Valley, Nevada City and Wasco without such authority which is herein sought.

A film exchange witness testified that his company distributes moving picture films from San Francisco to more than 350 theaters in Northern California and that applicant provides the transportation to about 320 of them. He stated that time is of the essence in the transportation of these films from the exchange to theaters for exhibition, and their

prompt return to the exchange, after showing, there to be inspected preparatory for use at other theaters. There are many cases, however, in which the films are booked on a circuit as hereinbefore described. Under this arrangement, it is essential that the exchange can rely upon the prompt return of the film on completion of its showing so that it then may be used to fulfill booking engagements at other theaters. He also stated that there are occasions when his company experiences a shortage of some particular film which is then booked from an exchange located at Los Angeles. In those cases, as a rule, an overnight delivery service from Los Angeles is adequate to meet such emergency. For approximately two years his company has been using the services of applicant for the transportation of these emergency shipments of films from Los Angeles to San Francisco. His company serves theaters at Colfax, Grass Valley, Ukiah, Willits, Cloverdale, Shafter and Wasco, as well as numerous other points. The transportation of these films from San Francisco to those points is provided by applicant, and the witness stated that by the use of that service there has been a saving of one day's time in each case in which the films have been out of the possession of the exchange. This saving in time is of considerable importance to the exchange because it is thereby enabled to provide more bookings for its films which increases the amount of revenue therefrom.

In substance it was shown through the testimony of the witnesses that the service now provided by applicant not only between the certificated points, but also between the points for which a certificate is sought, is a service peculiarly

designed and arranged to fit the distinctive needs of the exhibitors of motion pictures and the distributors of their supplies. It was shown that in a number of cases by the use of applicant's service considerable savings in time can be achieved in the use of films, trailers and advertising matter.

It was also shown that an essential feature of the service provided by applicant is that of correlation into one lot shipment of the component parts which go to make up a moving picture program. It was the experience of the witnesses that absolute reliance could be placed upon applicant to see that these units are received at the proper time. His truck drivers are provided with keys to the various theaters so that shipments may be delivered therein at any hour of the day or night and that shipments which were to be returned could be picked up at the time of delivery of the program for the succeeding show.

It was shown that in some cases pictures could be held for a longer run at some theaters by using applicant's expedited service. Also, in those cases where pictures proved to be unsatisfactory and it was desired to make a quick change of program, arrangements could be made with applicant under which a new program could be picked up at San Francisco on short notice and delivered at an early hour to permit a quick change.

Since the establishment of applicant's service it was stated that exhibitors in some cases, when desirable, are now able to add two additional days of showing on a given booking of any particular film at some of the points served. It was alleged that this could not have been done if the facilities

of Railway Express Agency were used. It was stated that there is no other carrier in the field that can or does provide a service comparable to that of applicant.

The application was opposed by Railway Express Agency, Inc., Southern Pacific Company, Pacific Motor Trucking Company and Special Service Transportation Corporation, Ltd. Interested parties were The Atchison, Topeka & Santa Fe Railroad Company, Valley Motor Lines, Valley Express Co., California Motor Transport and California Motor Express, Ltd.

Evidence in regard to the services of Southern Pacific Company and Railway Express Agency was adduced from the testimony of operative witnesses. It was shown that at San Francisco Railway Express Agency provides a pickup and delivery service which is designed to meet the needs of various industries served. Service is provided on Sundays or holidays for those industries which require that service. However, at some of the other points involved herein, it was shown that no pickup or delivery service is provided on Sundays while at others no pickup or delivery service is provided at any time. It was stated that at those places where no agent is on duty shipments can be received from or tendered to the express messengers on the trains. No agency is maintained at Avenal. No pickup or delivery service is provided at Clovis, Ferndale, Fortuna, Riverdale, Shafter, Wasco, or Colfax. Pickup and delivery is made daily except Sundays at Cloverdale, Niles and Willits.

Special Service Transportation Corporation, protestant,

provides a film delivery service between Los Angeles and Bakersfield similar to that provided by applicant.

The evidence unquestionably shows, and we so find, that public convenience and necessity require the operation by applicant of the proposed service between San Francisco, Coalinga, Avenal, Riverdale, Clovis, Corcoran, Shafter, Wasco, Sausalito, Mill Valley, Garberville, Ukiah, Cloverdale, Willits, Eureka, Ferndale, Fortuna, Colfax, Grass Valley, Nevada City, Weaver-ville, Winters, Niles, and Willow Glen, and intermediate points. There is no other common carrier in the field which offers to or can provide the expeditious transportation and handling of shipments of the kind involved. The need of the motion picture distributors and exhibitors for such service, in order to keep the distributors supplied with films and accessories and to permit use of the films as continuously as possible, has been clearly established. The Railway Express Agency does not provide the specialized and expedited service demanded to and from the various theaters. However, there is no evidence that the service of Special Service Transportation Corporation between Los Angeles and Bakersfield is inadequate, nor is there any evidence of any need for service between San Francisco and Bakersfield, as the Bakersfield exhibitors are supplied with films and accessories from Los Angeles. Between Los Angeles and San Francisco the movement is of a different character; the shipments consist, as has been said, of bulk lots. The evidence shows that the service of Railway Express Agency is available and adequate for such shipments. We therefore find that no public convenience and necessity has been shown to

exist for applicant's service between San Francisco or Los Angeles and Bakersfield, nor between Los Angeles and San Francisco.

Protestants contend the evidence shows that applicant's present operations between all the other points where certification is sought is illegal in the absence of a certificate of public convenience and necessity and that the certificate to serve those points also should be denied, as otherwise the applicant's illegal operations would be condoned. The evidence does, in fact, show that applicant's service between all the points where certification is here sought was illegally instituted without a certificate of public convenience and necessity, being offered and rendered to the public generally, or to such of the public as can use the specialized service performed, as a highway common carrier. It is also evident that applicant instituted this service in violation of law wilfully and knowingly. The operations are identical to those which applicant has long been conducting elsewhere under certificate and applicant frankly testified that he is seeking the certificate to legalize his present uncertificated operations.

The needs of the shipping public, however, must be our first consideration. In view of the public necessity hereinabove found for such a service as applicant's, and the fact that no other carrier offers to provide such a service, it would not be in the public interest to deny the certificate between the points where that convenience and necessity exists. The illegal operations wilfully instituted by applicant in anticipation of obtaining such a certificate should not be condoned.

however, and the attorney for the Commission will be directed to institute proceedings to secure the imposition of penalties therefor.

The application will be granted to the extent public convenience and necessity have been found to exist, and denied as to the remainder. Applicant will be ordered to cease and desist from his illegal operations for which certification is denied.

An order of the Commission directing a suspension or cessation of a highway common carrier operation is in effect not unlike an injunction by a court. A violation of such order constitutes a contempt of the Commission. The California Constitution and the Public Utilities Act vest the Commission with the power and authority to punish for contempt in the same manner and to the same extent as courts of record. In the event a party is adjudged guilty of contempt, a fine may be imposed in the amount of \$500 or he may be imprisoned for five days, or both. (C.C.P. 1218; Motor Freight Terminal Co. v. Bray, 37 C.R.C. 224; re Ball & Hayes, 37 C.R.C. 408; Wermuth v. Stamper, 36 C.R.C. 458; Pioneer Express Co. v. Keller, 33 C.R.C. 571).

O R D E R

A public hearing having been held in the above-entitled matters, evidence having been received, the matters duly submitted and the Commission now being fully advised therein:

IT IS HEREBY ORDERED that respondent Thomas W. Gilboy shall immediately cease and desist and abstain from conducting or continuing, directly or indirectly, by any subterfuge or device, any and all operations as a highway common carrier between San Francisco and Los Angeles and the intermediate point of

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Bakersfield unless and until he has first obtained from the Railroad Commission a certificate of public convenience and necessity authorizing such operation.

It being found that public convenience and necessity so require:

IT IS FURTHER ORDERED that a certificate of public convenience and necessity be and it is hereby granted to Thomas W. Gilboy authorizing the establishment and operation of a highway common carrier service, as such term is defined in Section 2-3/4 of the Public Utilities Act, for the transportation of the following commodities only: motion picture films, motion picture theater accessories and supplies, viz: advertising matter, crayons, water or oil colors, brushes, poster paper, display cards, electric lighting effects (including globes, bulbs and reflectors), tickets (in rolls), ticket choppers, motion picture projection machinery or parts. Said service to be provided as follows:

- (1) Between San Francisco and Eureka and intermediate points via Sausalito, San Rafael, Petaluma, Santa Rosa, Cloverdale, Willits, Garberville and Fortuna, with diversions to Mill Valley and Ferndale;
- (2) Between Redding and Weaverville and intermediate points.
- (3) Between Auburn and Colfax, and between Auburn, Grass Valley and Nevada City and intermediate points.
- (4) Between Davis and Winters.
- (5) Between Elyward and Niles.
- (6) Between San Jose and Willow Glen.
- (7) Between Fresno and Clovis.

(8) Between Lemoore and Riverdale, and between Leemore, Coalinga and Avenal and intermediate points.

(9) Between Tulare and Corcoran.

(10) Between Delano, Wasco and Shafter and intermediate points,

as an extension and enlargement of the operative rights heretofore created by the Commission's Decision No. 28235, dated September 19, 1935, as amended by Decision No. 29269, dated November 16, 1936, in Application No. 19890.

IT IS FURTHER ORDERED that in the operation of the foregoing described service applicant shall comply with and observe the following service regulations:

1. File a written acceptance of the certificate herein granted within a period of not to exceed thirty (30) days from the effective date hereof.
2. Subject to the authority of this Commission to change or modify such at any time by further order, applicant shall conduct the highway common carrier operations herein authorized over the following routes:

Between San Francisco and Eureka and intermediate points over U. S. Highway No. 101 with diversions over connecting public highways to Mill Valley and Ferndale; service to and from the other points authorized to be served shall be provided over the public highways directly connecting said points.

3. File, in triplicate, and concurrently make effective within a period of not to exceed sixty (60) days from the effective date of this order, on not less than five (5) 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, rules and regulations which in volume and effect shall be identical with the proposed rates, rules and regulations shown in the exhibit attached to Application No. 21802 in so far as they conform to the certificate herein

granted, or rates, rules and regulations satisfactory to the Railroad Commission.

4. File, in triplicate, and make effective within a period of not to exceed sixty (60) days from the effective date of this order, on not less than five (5) days' notice to the Commission and the public, time schedules covering the service herein authorized in a form satisfactory to this Commission.

IT IS FURTHER ORDERED that in all respects except as herein granted the instant application is denied.

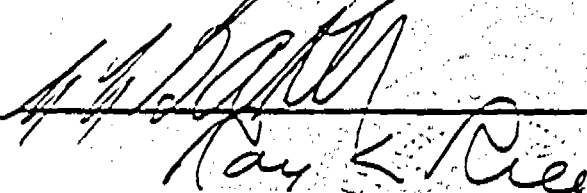
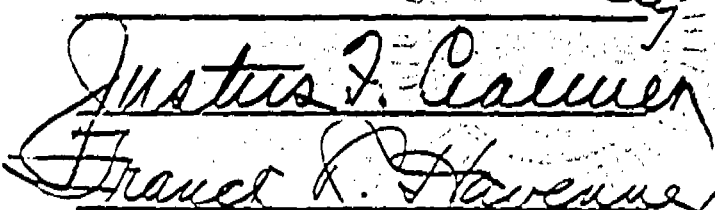
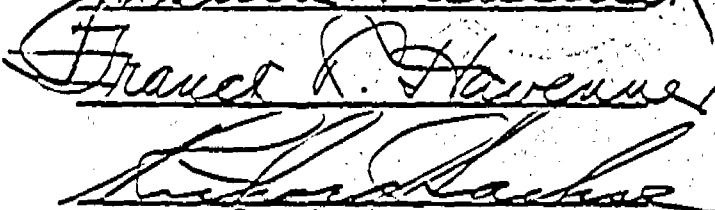

Except as herein otherwise expressly provided, this decision shall become effective as follows:

(A) As to the provisions thereof requiring respondent to cease and desist and abstain from conducting the described highway common carrier operations, twenty (20) days after personal service upon respondent of a certified copy thereof.

(B) In all other respects, twenty (20) days after the date hereof.

The Secretary of the Railroad Commission shall cause a certified copy hereof to be personally served upon respondent.

Dated at San Francisco, California, this 25 day
of July, 1941.


Ray K. Riley

Justus F. Calmer

Francis R. Haveman

Commissioners