

Decision No. 36542

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 for)
 the transportation of baggage and)
 corpses by motor truck for the account)
 of the Southern Pacific Company)
 between Salinas and Pacific Grove, and)
 the intermediate points of Del Monte)
 and Monterey, via California State)
 Highway No. 117-A.)

ORIGINAL

Application No. 25199
1st Supplemental

BY THE COMMISSION:

O P I N I O N

By its supplemental application in this proceeding, Railway Express Agency, Incorporated, of California, a subsidiary of Railway Express Agency, Incorporated (a Delaware corporation), seeks a certificate of public convenience and necessity authorizing it to engage in the transportation of baggage and corpses, as a highway common carrier, for the account of Southern Pacific Company, between Salinas and Pacific Grove and intermediate points comprising Del Monte and Monterey. By Decision No. 36354, rendered May 11, 1943, in this proceeding, applicant was authorized to operate between these points as an underlying carrier for Railway Express Agency, Incorporated, of Delaware. Applicant alleges that the traffic it now seeks to carry was formerly handled by Southern Pacific passenger trains, which have been withdrawn. Although the volume of this traffic is limited it is important, so applicant alleges, that an adequate transportation service be provided to handle it. Assertedly, applicant is better qualified than other carriers in the field to supply such a service. The other carriers performing a passenger or express service in this territory have

advised the Commission in writing that they have no objection to the granting of the application.

As stated in the application, the service would be rendered for Southern Pacific Company under a contract between it and the applicant. Assertedly, the rates available to the public and the conditions surrounding the movement of the traffic would be those published in the tariffs of Southern Pacific Company. It is alleged, however, that joint rate arrangements would be consummated between the rail line and the applicant. As pointed out in a recent decision,⁽¹⁾ Southern Pacific Company, under this plan, would itself become an express corporation within the meaning of Section 2(k), Public Utilities Act. Since it has not been shown herein that that carrier is authorized to operate in such a capacity, we must withhold our approval of this proposal. With the exception of traffic handled by applicant under its existing operative right as an underlying carrier for Railway Express Agency, Incorporated, of Delaware, all traffic interchanged at Salinas should move under joint rates to be established between applicant and the rail line.

In our judgement a public need for this service has been shown. Accordingly, applicant, in addition to its present service, will be authorized to operate as a highway common carrier between the points described under joint rates to be established between it and Southern Pacific Company. Although corpses may be carried locally between these points as well as in interline movement, the

(1) Re J. E. Miller, doing business as M & M Transfer Company, Decision No. 36362, rendered May 18, 1943, in Application No. 25521. See also Re Pacific Motor Transport Company, 41 C.R.C. 166, 169, 170.

baggage to be handled will be confined to that received from or to be delivered to Southern Pacific Company at Salinas, the junction point between the rail and the truck lines. No public hearing appears necessary.

Railway Express Agency, Incorporated, of California is placed upon notice that "operative rights" as such do not constitute a class of property which may be capitalized or used as an element of value in rate fixing for any amount of money in excess of that originally paid to the State as the consideration for the grant of such rights. 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.

ORDER

Application having been made as above entitled; and the Commission now finding that public convenience and necessity so require,

IT IS ORDERED as follows:

(1) That a certificate of public convenience and necessity be and it hereby is granted to Railway Express Agency, Incorporated, of California, authorizing the establishment and operation of a service as a highway common carrier, as defined by Section 2-3/4, Public Utilities Act, between Salinas and Pacific Grove and intermediate points comprising Del Monte and Monterey; that said operation shall be limited to the transportation of baggage and corpses subject to the following restrictions:

- (a) No baggage may be handled excepting that received from or delivered to Southern Pacific Company at Salinas.
- (b) Corpses may be transported between Salinas and Pacific Grove, and said intermediate points, locally, or they may be received from or delivered to Southern Pacific Company at Salinas.
- (c) All traffic received from or delivered to Southern Pacific Company at Salinas shall receive, in addition to the highway carrier movement by applicant, an immediately prior or subsequent movement by rail.
- (d) Excepting express traffic transported by applicant for Railway Express Agency, Incorporated, of Delaware, under its existing operative right, all traffic received from or delivered to Southern Pacific Company at Salinas shall be transported only under joint rates to be established between applicant and Southern Pacific Company.

(2) The certificate herein granted shall be subject to the following condition:

The authority herein granted is subject to the provisions of Section 52(b) of the Public Utilities Act and further to the condition that Railway Express Agency, Incorporated, of California, its successors and assigns, shall never claim before this Commission, or any court or other public body, a value for said operative rights or claim as the cost thereof, an amount in excess of that paid to the State as the consideration for such rights.

(3) That in the operation of said common carrier service applicant shall comply with and observe the following service regulations:

1. 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.

2. Applicant shall comply with the provisions of General Order No. 80 and Part IV of General Order No. 93-A, by filing, in triplicate, and concurrently making effective, tariffs and time schedules satisfactory to the Commission within sixty (60) days from the effective date hereof and on not less than five (5) days' notice to the Commission and the public.
3. Subject to the authority of this Commission to change or modify it at any time by further order, conduct said highway common carrier operations over and along the following route:

Between Salinas and Pacific Grove via
California State Highway No. 117-A.

The effective date of this order shall be the date hereof.

Dated at San Francisco, California, this 27th day
of July, 1943.

Francis A. Havenue
H. P. Park
Arthur H. Hulse
Francis W. Dancy
COMMISSIONERS