

Decision No. 36751

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
PACIFIC STATES EXPRESS, a corporation,)
and NORTHWEST FORWARDERS, INC., a)
corporation, for authority to sell)
and transfer all of their intrastate)
express operative rights to CALIFORNIA)
MOTOR EXPRESS, LTD., a corporation.)

ORIGINAL

Application No. 25569

BAKER, COMMISSIONER:

Appearances

Douglas Brookman for California Motor Express, Ltd.,
Pacific States Express and Northwest
Forwarders, Inc.;
Edward Stern for Railway Express Agency, Inc., as
its interest may appear;
Berol & Handler by Edward M. Berol for Valley Express
Company, as its interest may appear;
William Meinhold for Pacific Motor Trucking Company
and Southern Pacific Company, as their interests
may appear.

O P I N I O N

In the original application in this proceeding Pacific States Express and Northwest Forwarders, Inc. sought authority to sell all of their express operative rights to California Motor Express, Ltd. The last named applicant desired permission to purchase these rights and to merge them with its existing rights. A public hearing was held at San Francisco on June 7, 1943. Subsequently, an amended application was filed restricting the scope of the proceeding to the proposed transfer of the operative rights of Pacific States Express.¹

Applicants declare themselves to be express corporations as that term is defined in Section 2(k) of the Public Utilities Act. Generally speaking, their tariffs on file with the Commission

¹ Northwest Forwarders, Inc. now seeks to transfer its operative rights to Coast Line Express, another express corporation. (Application No. 25891.)

name local rates between San Francisco and certain East Bay cities, on the one hand, and numerous southern California points on the other hand.²

The operative rights proposed to be sold are said to be prescriptive rights created by virtue of operations conducted prior to August 1, 1933, the date after which a certificate of public convenience and necessity has been required to commence operations as an express corporation.³ The consideration for the sale of these operative rights is \$1,250, payable in cash. No tangible property is to be sold.

A witness for Pacific States Express testified that this carrier has been operating unprofitably and that he knew of no operating economies which could be introduced to improve its financial condition.

A witness for California Motor Express, Ltd. testified that no new facilities would be required to continue the operations being conducted under the operative rights it seeks authority to purchase and merge with existing rights, and contended that the additional cost of handling the added traffic would not be great. To show the financial condition of this carrier the 1942 Annual Report to the Commission was made a part of the record by reference. This report shows an operating income after federal income taxes of \$37,873.46.⁴

² The tariff of Pacific States Express names rates between San Francisco and certain East Bay cities on the one hand, and Stockton, Sacramento and numerous southern California points, many of which are located in the so-called Los Angeles Basin area, on the other. The tariff of California Motor Express, Ltd. provides rates from certain San Francisco Bay points to most but not all of the southern California points served by Pacific States Express, and from Los Angeles to San Francisco Bay points, Stockton and Sacramento.

³ See Section 50(f) of the Public Utilities Act and Decision No. 27593 in Case No. 3724 et al., 39 C.R.C. 242.

⁴ Its 1941 operating income, according to its annual report, was \$41,235.91 after federal income taxes.

Other common carriers participated in the cross-examination of applicants' witnesses but did not oppose the granting of the application.

It appears that applicant California Motor Express, Ltd. has the experience and is financially able to conduct operations presently being conducted by Pacific States Express and that the best interests of the public would be served by granting the amended application.

It should be clearly understood that the authorization hereinafter granted is not an approval of the purchase price of these operative rights in any respect, nor a finding of value for the purpose of rate fixing, issuance of securities, accounting or for any other purpose. By the authorization, moreover, the Commission is not determining either the existence, character or extent of the operative rights involved, but is merely permitting California Motor Express, Ltd. to acquire whatever express operative rights are held by Pacific States Express.

California Motor Express, Ltd. 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.

I recommend the following form of order:

O R D E R

A public hearing having been held in the above entitled proceeding and based upon the evidence received at the hearing and upon the conclusions set forth in the preceding opinion,

IT IS HEREBY ORDERED that Pacific States Express, a corporation, be and it is hereby authorized to sell and transfer to California Motor Express, Ltd., a corporation, whatever operative rights it may now possess to conduct operations as an express corporation.

IT IS HEREBY FURTHER ORDERED that the authority herein granted is subject to the provisions of Section 52(b) of the Public Utilities Act and further to the condition that California Motor Express, Ltd., its successors or 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 said rights.

IT IS HEREBY FURTHER ORDERED that all tariffs on file with the Commission naming rates, rules and regulations governing operations conducted under the express operative rights hereinabove authorized to be sold, shall be canceled simultaneously with the transfer of said operative rights on not less than five (5) days' notice to the Commission and to the public and that effective concurrently with their cancellation California Motor Express, Ltd. shall merge said operative rights with its existing operative rights and shall file rates, rules and regulations which are no higher than those named in the tariffs to be canceled.

This order shall become effective 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 7th day of December, 1943.

Frank R. Havenner

Justus J. Cramer

Francis C. O'Leary
Commissioners