

Decision No. 36793

**ORIGINAL**

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )	
HOLMES EXPRESS, a corporation, to )	
sell, and of PACIFIC MOTOR TRUCKING )	Application No. 25619
COMPANY, a corporation, to purchase, )	
all operating rights and properties )	
of Holmes Express. )	

BY THE COMMISSION:

O P I N I O N

(1)  
Pacific Motor Trucking Company, a corporation, and Holmes Express, a corporation, both of which are highway common carriers, by joint application filed May 12, 1943, request the authority of the Commission for the purchase by the former of the operative rights and automotive rolling stock and office and terminal equipment from the latter for \$50,000. Pending determination of the application for the transfer the Commission was requested to authorize the lease from the latter to the former of the rights and property involved which was granted by the Commission's Decision No. 36468, rendered July 2, 1943. The leasing authority will expire January 1, 1944. As stated in said Decision No. 36468, a public hearing was had on June 21, 1943, at the conclusion of which the matter was submitted. No one opposed the application.

At the hearing it was shown that the Interstate Commerce Commission had authorized Pacific Motor Trucking Company, hereinafter called Pacific Motor, to lease said properties and interstate rights of Holmes Express, hereinafter called Holmes, for a period

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(1) Pacific Motor Trucking Company is a wholly owned subsidiary of Southern Pacific Company.

of one hundred eighty days ending December 5, 1943, pending determination of the application for transfer. On December 6, 1943, the Interstate Commerce Commission, Division 4, by report and order in docket No. MC-F-2191 authorized the transfer subject to the provisions of its order.

The record shows that a substantial financial benefit is expected to accrue to Southern Pacific Company from the proposed acquisition and use of the Holmes property by Pacific Motor. It was shown that the Holmes annual gross revenue is approximately \$95,000. The expected reduction in rail operating expenses in the San Francisco-San Jose territory would be approximately \$34,000 a year. By combining certain truck operations now conducted under the Holmes certificates, truck operating expenses would be reduced approximately \$40,000 annually resulting in a gross benefit to the parent company of about \$169,000 a year. To conduct the proposed operations under the Holmes operative rights would cost about \$138,000 a year leaving an annual net benefit of approximately \$31,000.

However, it was shown that the money benefit to be achieved is much less important than the badly needed physical relief for Southern Pacific's coast lines. It was stated that these physical reliefs would be substantially as follows.

Under present rail operations it is necessary to rail-haul freight originating at Oakland, Los Angeles and San Jose into San Francisco for consolidation in San Francisco box cars when destined to peninsula points intermediate to San Francisco and San Jose. This results in cross-hauls which could be eliminated by transferring such traffic to distribution trucks at San Jose.

At present all less-than-carload rail traffic is handled through freight stations at peninsula destinations, thus requiring freight station organizations which are now difficult to obtain. This method of handling this traffic consumes the time of freight train crews in switching set-out cars and for unloading peddler freight. By using the Holmes certificate freight would by-pass these peninsula stations and would be delivered direct to the consignees from the line-haul trucks.

According to the record it is estimated that the truck operation would eliminate the use of 1,292 box cars a year at the San Francisco freight house and the train yard, and the switching of that many cars in the yard as well as switching at San Francisco of cars from Oakland, Los Angeles and San Jose. It was further shown that operation under the Holmes certificate would afford important relief to Southern Pacific Company at its San Francisco freight station where it is becoming increasingly difficult to obtain sufficient labor to handle freight traffic. Under the proposed truck operation large shipments could by-pass the freight station entirely by loading direct to trucks at the shippers' warehouses. This would leave a much smaller number of shipments which would still have to pass through the freight house and would be a much less burden on the station force than the present traffic.

The physical properties involved in the proposed transfer consist of 25 units of automotive rolling equipment and office and terminal equipment as described in Exhibits "A" and "B" attached to the application. The consideration involved is \$50,000. It is asserted that \$19,740 of this sum represents the value of the physical assets and the remainder represents the reasonable value

of the intrastate and interstate operative rights of Holmes, including the going-concern value of the business proposed to be transferred.

The Commission, by Decision No. 30448, dated December 27, 1937, authorized highway common carriers having annual gross operating revenues of \$100,000 or more from their motor carrier operations to keep their accounts and records, until otherwise directed by the Commission, in the manner prescribed by the Interstate Commerce Commission by its order of November 29, 1937, as amended. Pacific Motor, we are advised, is keeping its accounts in the form prescribed by the Interstate Commerce Commission. On the basis of the record in this application we believe that the difference between said \$50,000 and said \$19,740, which difference is \$30,260, is a charge to "Other Intangible Capital." This amount, plus any additional increase in the charges to "Other Intangible Capital" because of the instant transaction, Pacific Motor should amortize in equal monthly amounts over a maximum period of 3 years, commencing with the date of consummation of the transaction in a manner consistent with the provisions of the Uniform System of Accounts for Class I Motor Carriers, prescribed by the Interstate Commerce Commission and adopted by us, or in lieu of amortization, in any month of the 3-year period, Pacific Motor may write off to surplus the unamortized balance of said amount, so as to remove from such account said amount in a 3-year period through either amortization or write-off of said amount.

Regardless of what may be the understanding between the seller and buyer as to the value of the properties of Holmes, it should be clearly understood that we are making no finding as to the value of the properties for the purpose of fixing rates or security issues or for any other purpose. If and when the value

of the properties becomes an issue before us we will consider it de novo. No examination has been made by this Commission, nor by its authorized representatives, of the physical assets involved in this transfer as to their existence, value or ownership.

Pacific Motor Trucking Company 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.

O R D E R

A public hearing having been had, the Commission being fully informed therein, and it being hereby found that public convenience and necessity so require,

IT IS ORDERED:

(1) That Holmes Express, a corporation, may sell and transfer to Pacific Motor Trucking Company, a corporation, and Pacific Motor Trucking Company may purchase and acquire and operate equipment and other physical property described in Exhibits "A" and "B" attached to the application herein, and the highway common carrier operative rights created by the Commission's Decision No. 17857, in Application No. 12354, Decision No. 35265 and Decision No. 36298, in Application No. 24511.

(2) That the authority herein granted is subject to the provision that Pacific Motor Trucking Company shall amortize said \$30,260 plus any additional increase in the charges to "Other Intangible Capital" in equal monthly amounts over a maximum period of 3 years, commencing with the date of consummation of the transaction in a manner consistent with the provisions of said Uniform System of Accounts for said Class I Motor Carriers, or in lieu of amortization in any month of the 3-year period, Pacific Motor Trucking Company may write off to surplus the unamortized balance of said amount, so as to remove from such account said amount in a 3-year period through either amortization or write-off of said amount, and provided further, Pacific Motor Trucking Company, 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 applicants shall comply with the rules of the Commission's General Order No. 80 and Part IV of General Order No. 93-A by filing, in triplicate, and concurrently making effective, tariffs and time tables satisfactory to the Commission within sixty (60) days from the effective date hereof, and on not less than one (1) day's notice to the Commission and the public.

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

Dated at San Francisco, California, this 30<sup>th</sup>  
day of December, 1943.

Francis R. Havenner

Justus Z. Cramer

Richard L. Kaylor

Thomas W. Davis

COMMISSIONERS