

Decision No. 36879

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
NORTHWEST FORWARDERS, INC., a corpor- )  
ation, for authority to sell and )  
transfer all of its intrastate express )  
operative rights to COAST LINE EXPRESS, )  
a corporation. )

ORIGINAL

Application No. 25891

BY THE COMMISSION:

Appearances

Douglas Brookman for Northwest Forwarders, Inc. and  
Coast Line Express.  
William Meinhold for Southern Pacific Company and  
Pacific Motor Trucking Company, as their  
interests may appear.

O P I N I O N

In this application Northwest Forwarders, Inc. seeks auth-  
ority to sell its intrastate express operative rights to Coast Line  
Express. The last named applicant desires permission to purchase  
these rights and to merge them with its existing rights.

A public hearing was had at San Francisco on January 7,  
1944, before Examiner Mulgrew.

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 name  
local rates between San Francisco and various southern California  
points not all of which are served by both carriers. In addition,  
the Coast Line Express tariff provides rates between a number of  
San Francisco Bay points and numerous central and southern California  
points.

The operative rights proposed to be sold are said to be pre-  
scriptive 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.<sup>1</sup> Northwest Forwarders, Inc. acquired the operative rights under the authority granted by Decision No. 29256, dated November 9, 1936, in Application No. 20815. Coast Line Express has agreed to pay in cash \$1,250 for the former operative rights. It is acquiring no tangible property. There is no evidence before us showing that Northwest Forwarders, Inc. or its predecessors have made any payments to the State of California for said operative rights. In our opinion Section 52 of the Public Utilities Act prohibits the capitalization of the \$1,250 payment. If Coast Line Express acquires said operative rights, it should charge the \$1,250 to Account 417, Miscellaneous Profit and Loss - Debits.

According to the record, Northwest Forwarders, Inc. has been operating unprofitably and knows of no economies which it can introduce to improve its financial condition. The transfer to Coast Lines Express, it asserts, would be in the public interest because this carrier will be able to render better service. Where applicants' rates are not uniform the lower of the two rates will be established by Coast Line Express. The income statement of this applicant shows a net operating income, after estimated Federal income taxes, of \$6,300.78 for the first eleven months of 1943.

Southern Pacific Company and Pacific Motor Trucking Company, although conceding that Northwest Forwarders, Inc. possesses operative rights, contend that its rights are not as broad as those indicated by the tariff. In a prior proceeding involving the sale of the operative rights herein again proposed to be sold, the Commission refused

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See Section 50(f) of the Public Utilities Act and Decision No. 27593 (39 C.R.C. 242).

Southern Pacific Company's request that the extent of these operative rights be determined before the granting of authority to transfer them (Decision No. 29256, supra). In doing so the Commission said: "The determination of the extent of the operating right, in our opinion, is not an issue in this proceeding."

Upon considering of all the facts of record we are of the opinion and find that applicant Coast Lines Express has the experience and is financially able to conduct operations presently being conducted by Northwest Forwarders, Inc.; and that the best interests of the public will be served by the granting of the application.

It should be clearly understood that the authorization hereinafter granted is not an approval of the purchase price. Moreover, the Commission is not determining either the existence, character or extent of the operative rights involved. It is merely permitting Northwest Forwarders, Inc. to sell to Coast Lines Express such rights which it may possess.

Coast Line Express 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

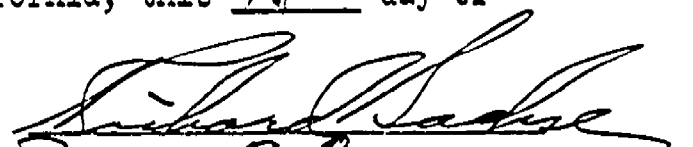


A public hearing having been held in the above entitled proceeding and based upon the evidence received at the hearing and upon the conclusions set forth in the preceding opinion,

IT IS HEREBY ORDERED that Northwest Forwarders, Inc., a corporation be and it is hereby authorized to sell and transfer to Coast Line Express, a corporation, whatever operative rights it may now possess to conduct operations as an express corporation, provided said Coast Line Express charges said payment of \$1,250 Account 417, Miscellaneous Profit and Loss - Debits, and provided further that Coast Line Express, its successors and assigns will 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 of California as the consideration for said rights.

IT IS HEREBY FURTHER ORDERED that the rates, rules and regulations now in effect for 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 such cancellation, Coast Line Express shall merge said operative rights with its existing operative rights and file rates, rules and regulations which are no higher than those now maintained by Northwest Forwarders, Inc.

This order shall become effective twenty (20) days from the date hereof.

Dated at Los Angeles, California, this 14<sup>th</sup> day of February, 1944.

  
Commissioners