

37475

Decision No. \_\_\_\_\_

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

In the Matter of the Application of )  
COAST LINE EXPRESS, a corporation, )  
to transfer its express operative )  
rights to CALIFORNIA MOTOR EXPRESS, )  
LTD., a corporation, and to merge )  
said operative rights with the ex- )  
press operative rights of CALIFORNIA )  
MOTOR EXPRESS, LTD. )

Application No. 24366

VALLEY MOTOR LINES, INC., a corpo- )  
ration, )  
Complainant, )  
vs. )

E. L. McCONNEL, doing business as )  
Coast Line Express, COAST LINE )  
EXPRESS, a corporation, JAMES C. )  
COUGHLIN, an individual, CALIFORNIA )  
MOTOR TRANSPORT, LTD., a corporation, )  
CALIFORNIA MOTOR EXPRESS, LTD., a )  
corporation, First John Doe, Second )  
John Doe, Third John Doe, Fourth John )  
Doe Corporation and Fifth John Doe )  
Corporation, )  
Defendants. )

Case No. 4601

DOUGLAS BROOKMAN and REGINALD L. VAUGHAN, for Coast  
Line Express and California Motor Express, Ltd.,  
applicants in Application No. 24366 and defendants  
in Case No. 4601; and for E. L. McConnel, doing  
business as Coast Line Express, James C. Coughlin,  
California Motor Transport, Ltd., and California  
Motor Express, Ltd., defendants in Case No. 4601.

WILLARD S. JOHNSON and HEROL & HANDLER for Valley Motor  
Lines, Inc., complainant in Case No. 4601 and pro-  
testant in Application No. 24366; and for Valley  
Express Co., protestant in Application No. 24366.

WALLACE K. DOWNEY and DANIEL P. BRYANT, for Pacific  
Freight Lines, protestant in Application No. 24366  
and interested party in Case No. 4601.

F. X. VIEIRA for Southern Pacific Company and Pacific  
Motor Trucking Company, interested parties.

EDWARD STERN, for Railway Express Agency, Inc., inter-  
ested party.

ARLO D. POE and JOSEPH J. GEARY, for Associated Freight  
Lines, interested party.

BY THE COMMISSION:

O P I N I O N

In these proceedings the validity of an operative right as an express corporation, sought to be transferred by Coast Line Express to California Motor Express Ltd. and the lawfulness of the operations conducted thereunder, have been challenged. A public hearing was had before Examiner Austin at San Francisco and San Luis Obispo, when these proceedings were submitted upon briefs, since filed. The application and the complaint were heard upon separate records, but to avoid needless repetition, both matters will be dealt with in this decision.

By Application No. 24366, Coast Line Express, a corporation, sought authority to transfer to California Motor Express, Ltd., a corporation, certain operative rights as an express corporation, as defined by Section 2(k), Public Utilities Act, comprising a right arising under the "grandfather" provisions of Section 50(f) of that Act, and rights resting upon certificates granted by the Commission. <sup>(1)</sup> Under the "grandfather" or prescriptive right, Coast Line Express assertedly had served the territory, generally speaking, extending from central to southern California, including intermediate points. All of these operative rights would be merged with that held by the purchaser, California Motor Express, Ltd., which operates as an express corporation between central and

---

(1) No question has been raised concerning the validity of the operative rights based upon certificates issued by the Commission, nor the lawfulness of the operations conducted thereunder. In general, these certificates authorized short extensions to points adjoining the territory served by Coast Line Express.

southern California territory, serving no intermediate points. Upon the consummation of this transaction, Coast Line Express will discontinue its public utility operations, and eventually will be dissolved.

In Case No. 4601, Valley Motor Lines, Inc., a highway common carrier operating between San Francisco Bay and San Joaquin Valley points, among others, has assailed the validity of the prescriptive operative right sought to be transferred, and has questioned the lawfulness of the operations conducted thereunder. Although others were named as defendants, (including five fictitiously named defendants none of whom appeared), the record discloses that Coast Line Express, the present owner of the operative right, and California Motor Express, Ltd., which seeks to acquire it, are the real parties in interest; and they hereafter will be considered as such. (2)

We shall first dispose of the questions raised by the complaint. This proceeding involves the operations conducted by Coast Line as an express corporation or as a freight forwarder (as severally defined by Sections 2(k) and 2(ka), Public Utilities Act) between points in the San Joaquin Valley extending from Fresno to Bakersfield, on the one hand, and King City and points north, (to and including San Francisco Bay cities, Stockton and Sacramento), and also points south of San Luis Obispo, on the other hand.

---

(2) For brevity, complainant Valley Motor Lines, Inc., and defendants Coast Line Express and California Motor Express, Ltd., will be referred to hereafter as Valley, as Coast Line, and as California Motor, respectively. Coast Line Express will also be referred to, at times, as defendant. Valley and Coast Transit Company (a corporation), a highway common carrier used by Coast Line Express as an underlying carrier, will be designated as Valley and Coast.

Complainant contends that such operations were unlawful, in that:

(1) No certificate of public convenience and necessity had been obtained under Section 50(f), Public Utilities Act, nor did such operations rest upon any valid "grandfather" or prescriptive operative right.

(2) That if any such prescriptive operative right existed, it had been abandoned by non-operation during the year 1939.

(3) That the service had been conducted over the line of an underlying highway common carrier, Valley and Coast Transit Company, which held no operative authority sufficiently broad in scope to enable it to perform the service.

In its opening brief complainant withdrew the charge that the operation had been abandoned, conceding that the proof was insufficient to establish that contention, thus leaving for determination the first and the third issues only. These will be considered in the order mentioned.

Regarding defendant's asserted lack of operating authority, complainant contends that the tariff alone is not determinative of the scope or validity of the operative right; and that the traffic carried on and prior to August 1, 1933, the critical date prescribed by Section 50(f), was insufficient to establish a bona fide operation. Defendant, on the other hand,

---

(3) Pacific Freight Lines, which intervened in this proceeding on behalf of Valley Motor Lines, Inc. contended in its briefs that the operation between San Joaquin Valley points and points south of San Luis Obispo had been abandoned. As an intervener, however, Pacific Freight Lines is bound by complainant's election to narrow the scope of the issues presented for determination.

asserts that, prior to the critical date, its predecessor had made extensive preparations to engage in business as an express corporation and had transported traffic in substantial volume within the scope of his public offer. Moreover, it asserts that the validity of the operative right has been upheld in decisions previously rendered.

We shall deal first with the contention last mentioned. Defendant points to three decisions, two of which were rendered in Application No. 19197, and the third in Case No. 3988. Each in turn will be considered.

Application No. 19197 was occasioned by legislation enacted in 1933 which, for the first time, subjected express corporations (previously regulated in other respects) to the requirement of certification as a prerequisite to the establishment or extension of their operations. Under the provisions of Section 50(f), (added to the Public Utilities Act by Stats. 1933, Ch. 784) no express corporation could commence operation after August 1, 1933 without first having secured from the Commission a certificate of public convenience and necessity; and any express corporation which had commenced operation between May 1, 1933, and the effective date of the Act, viz., August 19, 1933, was also required to obtain a certificate, application for which must be filed within ninety days after such effective date.

Alleging that he had commenced business within the latter period, defendant's predecessor, E. L. McConnel, doing business as Coast Line Express, seasonably applied for authority to conduct the service thus initiated. By Decision No. 26604, rendered ex parte on December 4, 1933, a certificate was granted to McConnel authorizing the continuance of the service which, it was

found, had been commenced July 29, 1933 and had been thereafter conducted between the points specified in his tariff. This tariff, (filed July 27, 1933 and which became effective July 29, 1933), so the decision recites, named rates ".... between San Francisco, Paso Robles, San Luis Obispo, Santa Barbara, Los Angeles, Vernon, Los Angeles Harbor, Long Beach, San Jose and Salinas, on the one hand, and various points in southern and central California, on the other." On December 7, 1933, McConnell filed his acceptance of this certificate.

Upon application of certain carriers including Valley Express Company, filed December 13, 1933, for reopening or rehearing, the Commission on December 27, 1933 reopened Application No. 19197 and set it for hearing. Extensive hearings followed, in which McConnell participated.

Construing Section 50(f), which patently was inconsistent and ambiguous, Decision No. 27593<sup>(4)</sup>, (rendered December 17, 1934) held that no express corporation which had commenced operation between May 1 and August 1, 1933, was required to secure a certificate. Accordingly, Decision No. 26604 was set aside and Application No. 19197 dismissed. Such action, it was stated, should not be viewed as a finding that the mere filing of a tariff effective on or before August 1, 1933, constituted "operating," within the meaning of the statute, "...to the extent indicated by the tariff as of that date;..." and the applicants affected were admonished to bring their tariffs into conformity with their good faith operations.

---

(4) Re Pacific Motor Transport Co., et al, 39 C.R.C. 242. This disposed of Application No. 19197 and other similar proceedings.

Neither of the decisions rendered in Application No. 19157, it is clear, determined the validity or the scope of defendant's prescriptive operative right. Immediately following the rendition of Decision No. 26604, the proceeding was reopened, and ultimately that decision was vacated. It, therefore, lacks vitality as an adjudication of those issues. Decision No. 27593 holds generally that no certificate need be obtained under Section 50(f) by one who had commenced operation as an express corporation prior to August 1, 1933. It did not deal specifically with the operative rights of any of the carriers involved. That it left these matters for future consideration is apparent from the admonition mentioned. This could mean only that the carriers themselves were expected voluntarily to observe the limitations therein prescribed.

The issue presented in Case No. 3988 involved the lawfulness of the operations conducted by E. L. McConnell as an express corporation. Complainant, Valley Express Company, alleged, first, that McConnell had published rates and transported property between points he was not authorized to serve under his prescriptive operative right; and second, that between San Francisco Bay and San Joaquin Valley points, Valley and Coast, the underlying carrier serving McConnell, had operated in violation of certain weight and territorial restrictions prescribed by its certificates.

By Decision No. 33274, rendered July 3, 1940, this proceeding was dismissed. As to the first issue, it was held, no evidence had been offered regarding McConnell's asserted lack of authority to serve the points named in his tariff; consequently, it must be assumed, for the purposes of the case, that his operative right extended to all tariff points. Disposing of the second issue,

the Commission ruled that the absence of evidence indicating the manner in which Valley and Coast had performed the underlying transportation service, or disclosing the extent to which that carrier had participated therein, justified a finding that complainant had failed to establish the alleged violations. In short, there had been a complete failure of proof. The decision, therefore, cannot be accepted as a determination of the validity or the scope of defendant's operative rights.

We turn now to a consideration of the evidence dealing with defendant's asserted lack of operating authority. To establish this contention, complainant called various operating officers and employees of Coast Line and of Pacific Freight Lines; it produced shipping records; and it offered the testimony of the former owner of the operative right, given in an earlier proceeding.

The testimony of the operating officers and employees of Coast Line was largely negative in character. Complainant called two former employees, and certain officers who first became associated with the company in July 1941, when the present management assumed control. None recalled or was familiar with the operations conducted by defendant's predecessor, E. L. McConnell, on and prior to August 1, 1933, which we shall refer to hereafter as the critical period. However, three employees, whose connection with Coast Line antedated 1933, testified, generally, that no bills of lading, freight bills or manifests relating to the movement of traffic during August 1933 could be produced. All shipping records at San Luis Obispo then over two years old, it appears, were destroyed in 1936 at McConnell's instance. A careful search at San Luis Obispo and other points where records were maintained was unavailing, they stated.



Operating officials of protestant Pacific Freight Lines, called by complainant, testified that during 1933 that carrier, then known as Motor Freight Terminal, entered into an arrangement with Coast Line to act as its underlying carrier. This undertaking assertedly was limited to traffic moving between points served by the former and territory north of San Luis Obispo. As an underlying carrier for Coast Lines, Motor Freight Terminal, it was stated, neither accepted nor transported any traffic between Los Angeles and the San Joaquin Valley, since these points were served directly by the latter over its own lines. A search of the company's records, they testified, disclosed but one shipment handled by Motor Freight Terminal during the critical period as an underlying carrier for Coast Line; and this moved from Los Angeles to San Francisco.

Testimony given in an earlier proceeding by E. L. McConnel, founder of the Coast Line express operations, who died shortly before the hearing in the instant proceeding, was incorporated in the present record. Complainant offered excerpts from his testimony given during the hearing of Application No. 19175, in 1934; however, at defendant's instance, his entire testimony was received. This dealt with his preparation to engage in the express business, the establishment of the operation, and the nature of the traffic handled during the critical period.

The preparatory steps, McConnel testified, consumed a period of several months. These were initiated during the legislative session of 1933 when the bill, later enacted as Section 50(f), was under consideration. With a view to securing their cooperation in providing the underlying service, he discussed the project with various highway common carriers. These conversations involved the character of the service contemplated, the prospective

revenues and divisions, and the proposed tariff and rates.

Contracts between Coast Line and these carriers were negotiated, executed and filed with the Commission; and the tariff was prepared, printed and filed. The tariff became effective July 29, 1933. On that date the movement of traffic actually commenced.

(5) Of the contracts mentioned five were in writing and two were verbal. In general, they embodied the arrangements between Coast Line and the carriers named, to provide the underlying service and divide the revenues. Under the written agreements each of the underlying carriers was obligated to carry between designated points on its lines all express matter offered by Coast Line for transportation. Thus, Motor Freight Terminal Company undertook to serve the territory between San Luis Obispo, Los Angeles, and points south and east of that city; and Valley and Coast agreed to handle this traffic between San Francisco, Lompoc, San Simeon and San Joaquin Valley points.

The rates published by Coast Line in its initial tariff applied throughout a wide territory. Generally speaking, this embraced the area extending from San Francisco Bay points, Sacramento and Stockton to Los Angeles via the coast route; it also covered San Joaquin Valley points; and it included points south

- 
- (5) Written contracts were executed between Coast Line and Motor Freight Terminal Company, Clark Brothers, Oakland-San Jose Transportation Company, City Transfer and Storage Company and Valley and Coast Transit Company. Oral agreements were entered into with The River Lines and Highway Transport Company.

and east of Los Angeles, such as Long Beach, San Diego, El Centro and Calexico.

McConnel described the traffic transported by Coast Line during the critical period. At the hearing in Application No. 19197, this testimony was directed to the period, July 29 to August 19, 1933, when Section 50(f) became effective. As August 1, 1933, has since been recognized as the date by which the sufficiency of "grandfather" operative rights arising under this statute must be measured, evidence dealing with shipments moving subsequently will be disregarded.

The showing relating to the traffic carried by Coast Line during the critical period was confined to McConnel's testimony in Application No. 19197, and to the supporting shipping documents offered at the hearing in that proceeding. Because of the destruction of defendant's shipping records in 1936, additional evidence of that character, if it ever existed, is no longer available. However, McConnel's testimony, given in 1934 when the facts were fresh in his memory, stands uncontradicted in the present record and will be accepted as an accurate description of the nature and scope of defendant's operations during the period in question.

The character of the traffic is reflected by statements received, which are based upon exhibits offered in Application

(6)  
 No. 19197. The details appear below. Between July 29 and August 1, 1933, inclusive, some fifty shipments were transported by Coast Line between various points. Of these, three shipments, comprising nearly one-third of the total tonnage, moved between the San Joaquin Valley and other territory which it served.

(6) The shipments described in the following tabulation moved July 29 to August 1, 1933, inclusive, between points served by Coast Lines, viz.:

<u>DATE</u>	<u>FROM</u>	<u>TO</u>	<u>NO. OF SHIPMENTS</u>	<u>WEIGHT</u>
July 29	Oakland	Los Angeles	2	2650
	Oakland	Taft	1	64*
	San Francisco	San Luis Obispo	3	249
	Los Angeles	Atascadero	1	20
	Los Angeles	Paso Robles	5	572
	Los Angeles	Salinas	1	55
	Los Angeles	San Jose	1	85
	Los Angeles	San Francisco	3	38
	Los Angeles	Morro Bay	1	85
	Los Angeles	Lompoc	1	11
			<u>19</u>	<u>3829</u>
July 31	Fresno	Paso Robles	1	5270*
	Bakersfield	Paso Robles	1	5000*
	Los Angeles	Atascadero	2	130
	Los Angeles	Paso Robles	4	229
	Los Angeles	Salinas	2	94
	Los Angeles	San Francisco	2	105
	Los Angeles	Morro Bay	1	100
	Los Angeles	Lompoc	3	866
			<u>16</u>	<u>11794</u>
August 1	Los Angeles	Atascadero	4	597
	Los Angeles	Paso Robles	1	300
	Los Angeles	Santa Clara	1	38
	Los Angeles	San Jose	1	120
	Los Angeles	San Francisco	2	60
	Los Angeles	San Simeon	1	30
	Los Angeles	Lompoc	4	281
	San Luis Obispo	Oakland	1	216
			<u>15</u>	<u>1642</u>

\*Shipments moving to and from points situated in San Joaquin Valley

The shipments carried during the three day period mentioned aggregate 17,265 pounds in weight. Those moving to and from San Joaquin Valley points totaled 5,270 pounds.

The parties are of divergent views regarding the significance of this showing. Complainant, on the one hand, contends that the filing of the tariff alone is not sufficient to show the establishment of an operative right; that McConnell's preparation to engage in the express business was inadequate, since no terminals or agencies were established, the service was not advertised and no business was solicited; and that the traffic carried between the points involved on and prior to August 1, 1933 was insubstantial. Defendant, on the other hand, asserts that the published tariff indicates the scope of the undertaking; that the preparatory steps taken to organize the business, which included surveys, investigations, and negotiations concerning contracts, rates and divisions, were adequate; and that the traffic moving during the critical period was substantial.

The record, we believe, impels the conclusion that on and prior to August 1, 1933 defendant's predecessor in good faith established and was engaged in the operation of an express service between the points with which we are here concerned. Following extensive investigations and continued negotiations by McConnell with prospective underlying carriers leading ultimately to their participation in agreements governing the terms under which the service would be conducted, the tariff was filed and the transportation of shipments actually was commenced before the critical date. The preparation to organize and establish the business was thorough and comprehensive. And the tariff clearly defined the scope of defendant's undertaking.

The transportation service performed during the critical period was substantial. The points between which the traffic moved may be considered as fairly representative of the territory,

considered as a unit, that McConnel had undertaken to serve. This is sufficient, for it is not essential that a carrier embarking in business should serve, at the outset, all of the points named in his tariff. So exacting a rule would ignore the normal growth and development of business that reasonably may be anticipated. San Joaquin Valley traffic comprised a substantial share of the total movement. In our judgment, the establishment of the prescriptive right claimed by defendant has been convincingly shown.

This brings us to the third and final issue raised by the complaint. Here the operations of Coast Line between the points involved have been challenged as unlawful because, it is claimed, Valley and Coast, in providing the underlying carrier service has violated the restrictions contained in its certificate. Assertedly these provisions forbade the performance of a scheduled service and subjected shipments to a minimum weight limitation. In reply, defendant asserts that the underlying carrier has fully observed the terms of its certificate.

The limitations affecting the operative right of Valley and Coast were imposed by Decision No. 19651, rendered April 21, 1928, in Application No. 12258 (31 C.R.C. 628). The certificate granted there to E. L. McConnel, predecessor of Valley and Coast, authorized certain extensions of his scheduled operations, consolidating them into a single operative right; and it also authorized certain "on-call" operations, including those between coast line points which he then served, or was therein authorized to serve, and San Joaquin Valley points. The unification of the "on-call" operations was permitted, but their consolidation or merger

(7)  
with the scheduled operations was prohibited. The "on-call" service was limited to the transportation of truck loads, subject to a minimum weight of 5,000 pounds per truck. (8)

The showing upon this phase of the case dealt with the traffic moving during 1939 and 1940 between points in the San Joaquin Valley, and those situated north of King City and south of San Luis Obispo, respectively. At San Luis Obispo and Paso Robles, traffic was interchanged between trucks operating in the coast line scheduled service and those engaged in the "on-call" operations to and from San Joaquin Valley points. No through movement occurred between points located on the scheduled and on the "on-call" routes. Although traffic was tendered daily to Coast Line, the

---

(7) The order permitted the consolidation of McConnel's "on-call" operative rights, authorizing operation "... as one unified system of through service for the transportation of property, as a common carrier, between all the termini and intermediate points served by and along the fifty-two (52) routes, over and along which an 'on demand' or 'on call' service has been authorized and permitted by the terms of this order, as hereinabove set forth;..."

Such authority, however, was granted subject to the following limitation:

"... provided, however, that applicant shall not consolidate or merge such 'on call' or 'on demand' service or operation herein authorized, or any part thereof, with the service now conducted or herein authorized to be established by applicant, under the regular schedules hereinabove specifically described, without first obtaining permission therefor from the Commission, by appropriate supplemental application in this proceeding." (31 C.R.C. 651)

(8) The order authorized the operation "... of an automobile truck service for the transportation of property as a common carrier 'on demand' or 'on call' and within such time after request for transportation by shippers as may be provided in his tariffs hereafter to be filed with the Commission and handling only truck loads consisting of single or consolidated shipments, for one or more shippers, subject to a minimum weight of five thousand pounds for each truck or vehicle operated in said service, over and along the following routes, ..." (31 C.R.C. 648)

actual movement under the "on-call" operations occurred less frequently, and at irregular intervals; between the San Joaquin Valley territory and the interchange points mentioned, no regular schedule was observed.

Throughout this period, the record shows, the prescribed minimum weight limit was observed. During 1939 Valley and Coast transported between San Luis Obispo and Paso Robles and San Joaquin Valley points, as underlying carrier for Coast Line in the nonscheduled or "on-call" operations, a total of 105 truck loads, and during 1940 it transported 116 truck loads. On each of these trips, it was shown, the shipments carried weighed, in the aggregate, in excess of 5,000 pounds.

From the record it is clear that the service has not been conducted in violation of the restrictions, which have been invoked, imposed upon the underlying carrier, Valley and Coast. Since the traffic was interchanged at the junction points between the scheduled and the "on-call" operations, no through service was provided, nor were the San Joaquin Valley operations merged or consolidated with the Coast Line service. And, it is equally clear that the weight limitation has been observed. We are not concerned here with any territorial restriction resting upon the underlying carrier, affecting the points that may be served; the limitations involved relate only to the method of performing the service.

In considering the effect of limitations imposed upon the operative rights of the underlying carrier, the characteristics of the overlying carrier should not be overlooked. Through the medium of another common carrier, whose facilities are made available for that purpose, an express corporation undertakes to serve the public directly. In providing that service the underlying



carrier may not operate in violation of restrictions inherent in its operating authority. However, this does not impair the ability of the overlying carrier to serve the public through another underlying carrier not subject to such an impediment, if it is otherwise free to do so.

For the reasons mentioned, we conclude that complainant has not established its contentions; and the complaint, accordingly, will be dismissed.

We turn now to the application of Coast Line Express for authority to transfer to California Motor Express, Ltd. the operative right involved.

By Application No. 24366, as amended, Coast Line proposes to transfer to California Motor the express operative right arising under the "grandfather" provisions of Section 50(f), above described, and also certain certificates, subsequently granted by the Commission, authorizing the extension of its express operations, generally speaking, to Fort Ord, Paso Robles Airport, Jolon Training Area and Port Hueneme.<sup>(9)</sup>

---

(9) The prescriptive operative right was transferred by E. L. McConnel, the original owner, to applicant Coast Line Express, a corporation, pursuant to Decision No. 32685, rendered December 27, 1939, in Application No. 23150. Certificates were granted by the Commission to Coast Line Express authorizing extensions of the service, as follows:

1. Between Fort Ord, including Camp Clayton, in Monterey County, and points south and east of, but not including Soledad, served by Coast Line. (Decision No. 33844, in Application No. 23952, dated January 28, 1941)
2. Between Paso Robles Airport, in San Luis Obispo County, and points served by Coast Line. (Decision No. 33844, supra)

(continued on next page)

California Motor, it appears, since 1930 has been operating as an express corporation between points in central and southern California. Upon acquiring the operative rights of Coast Line, California Motor plans to merge them with its existing operations. The application contemplates the transfer of the operative rights alone, no tangible property being involved. In consideration of the transfer of the operative rights California Motor has obligated itself to pay to Coast Line the sum of \$1,500 as the purchase price, an amount identical to that paid by the latter to McConnell when it acquired his express properties and rights. However, in this instance only the operative right is being transferred. The record does not show the payment of any fees to the State to acquire such rights. If California Motor pays \$1,500 for said operative rights, it should charge the payment to Account 417, Miscellaneous Profit and Loss Debits;

Applicants assert that the consummation of the transfer, and the consequent merger of these operative rights with those of the purchaser would result in more efficient service, and would effect certain operating economies. California Motor, were it permitted to acquire these operative rights, would be thus enabled to extend its service from the terminal area surrounding San Francisco Bay cities and Los Angeles, respectively, between which it presently operates, to the intermediate coast territory, and also to San Joaquin Valley points. The unification of these operations

---

(9) continued.

3. Between King City, San Lucas, San Ardo and Bradley, on the one hand, and Jolon Training Area, on the other hand. (Decision No. 34308, in Application No. 24249, dated June 17, 1941)
4. Between Oxnard and Port Hueneme. (Decision No. 36095, in Application No. 25368, dated January 5, 1943)

would result in substantial economies, amounting, it is estimated, to approximately \$6,000 annually. It was also shown that a more efficient service would be provided.

In support of their protest, Valley Motor Lines, Inc. and Valley Express Co. offered as a part of the record in this proceeding the evidence received in the companion proceeding, Case No. 4601. That showing was held insufficient to support the complaint therein, and for the same reason it must be rejected here. The application, accordingly, will be granted.

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.

#### O R D E R

A public hearing having been had in the above entitled proceedings; said matters having been duly submitted; and good cause appearing,

IT IS ORDERED as follows:

(1) That the complaint in Case No. 4601 be and it hereby is dismissed.

(2) That Coast Line Express, a corporation, be and it hereby is authorized to transfer to California Motor Express, Ltd., a corporation, all of the operative rights as an express corporation, as defined by Section 2(k) of the Public Utilities Act, described in the application herein, as amended.

(3) That California Motor Express, Ltd., be and it hereby is authorized to acquire from Coast Line Express said operative rights, and to merge said rights with the operative rights now held by California Motor Express, Ltd., as an express corporation, and thereafter to operate thereunder.

(4) That if California Motor Express, Ltd., acquires said operative rights and pays therefor the sum of \$1,500, it shall within ninety (90) days after the acquisition of said operative rights charge said payment to Account 417, Miscellaneous Profit and Loss Debit.

(5) That applicants shall comply with the provisions of Tariff Circular No. 2 by filing, in triplicate, and concurrently making effective appropriate tariff withdrawal and adoption supplements 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 twenty (20) days from the date hereof.

Dated at San Francisco, California November 9, 1944

Richard L. Jackson  
Justin F. Craven  
Francis C. Haven

Frank L. Russell  
COMMISSIONERS