

ORIGINAL

Decision No. 42040

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation to determine whether
Emergency Transportation Resolutions
should be revoked or amended; and to
determine whether the safety rules
and other regulations contained in
General Order No. 93-A, applicable to
passenger stage corporations and highway
common carriers, should be amended.

Case No. 4946

H. J. BISCHOFF, for So. Calif. Freight Lines and
So. Calif. Freight Forwarders.
EDWARD STERN, for Railway Express Agency, Inc., and
Railway Express Agency, Inc., of California.
DOUGLAS BROOKMAN, for Pacific Greyhound Lines, Calif.
Motor Express, Ltd., and Merchants Express Corp.
JOHN F. BALLAM, for Peerless Stages, Inc.
ROBERT E. GOCKE, for Gibson Lines.
R. EDWARD BURTON, for Valley Motor Lines and Valley
Express Company.
F. G. PELLETT, for Brotherhood of Railroad Trainmen.
BARDEN FULLER, for International Brotherhood of Teamsters.
GEORGE S. BEACH, for Libby, McNeill & Libby, and Cannery
League of California.
LOUIS WELSH, for Atchison, Topeka & Santa Fe Railway Co.,
and Santa Fe Trail Transportation Company.
GEORGE BALLARD, for F. G. Pellett, State Representative,
Brotherhood of Railroad Trainmen.
W. J. MARTINDALE, for Railway Express Agency.
JOHN CURTIS, for Stanley M. Lanham of the Los Angeles
Transit Lines.
E. L. H. BISSINGER, for Pacific Electric Railway Company.
JACKSON W. KENDALL, for Bekins Van Lines, Inc.
LLOYD R. GUERRA, for Western Truck Lines, Ltd.
JOHN B. KRAMER, for Santa Fe Transportation Company.
THOBURN S. HAWORTH, for Orange Belt Stages.
JOHN STEVENSON, for Teamsters Union and Highway Council.
W. A. STEIGER, for So. Calif. Freight Lines and So. Calif.
Freight Forwarders.
JOE ARAIZA, for The Santa Fe Transportation Company.

O P I N I O N

This investigation was instituted on the Commission's
own motion for the purpose of determining whether any or all of the
existing Emergency Transportation Resolutions should be revoked or

(1)
amended; and for the further purpose of determining whether any of the safety rules and other regulations covering the operation of passenger stage corporations and highway common carriers, contained in General Order No. 93-A, and in so far as such regulations deal with the subject matter of any of the Emergency Transportation Resolutions involved herein, should be altered or amended.

Public hearings have been held in this matter at San Francisco, April 29 and May 20, 1948, and at Los Angeles, May 6 and 27, 1948. The matter is now under submission and ready for decision.

In the interest of developing the greatest efficiency of all available equipment to meet, as nearly as possible, the augmented and urgent public needs for the transportation of passengers and property, the Commission, during the period of World War II,

-
- (1) EM-T-1 (Dec. 12, 1941) Authorizing changes in routes and schedules by passenger stage corporations and highway common carriers where necessary in the national defense.
 EM-T-3 (Dec. 23, 1941) Modifying Rule 1.014 of General Order No. 93-A, defining the term "urban service."
 EM-T-4 (Dec. 30, 1941) Curtailment of passenger service by railroads in connection with the national emergency.
 EM-T-5 (Jan. 20, 1942) Curtailment of service by common carriers by vessel because of war emergency.
 EM-T-10 (May 12, 1942) Elimination of duplicate and excess services by motor vehicle freight carriers in order to conserve transportation facilities and equipment.
 EM-T-10A (July 27, 1943) Modification of EM-T-10.
 EM-T-11 (June 16, 1942) Modification of Rule 2.08 of G.O. 93-A, relating to standing passengers in passenger stages.
 EM-T-12 (June 26, 1942) Emergency diversion of freight by common carriers of property.
 EM-T-16 (Feb. 2, 1943) Authorizing highway carriers and city carriers to acquire motor vehicle equipment other than by formal lease arrangement, and permitting highway common carriers to deviate from the leasing provisions of G.O. 93-A.
 EM-T-17 (April 13, 1943) Regulations governing the unloading of transportation equipment in the San Francisco-East Bay Area.
 EM-T-18 (April 20, 1943) Notice to Office of Price Administration of rate increase applications by common carriers.
 EM-T-19 (May 4, 1943) Regulations governing the unloading of transportation equipment in the Los Angeles Area.
 EM-T-20B (June 6, 1944) Regulations governing the imposition of demurrage charges upon shipments of agricultural products transported by highway carriers when loading or unloading is unreasonably delayed.
 EM-T-21 (Aug. 24, 1943) Authorizing passenger stage corporations to deviate from the equipment leasing provisions of G.O. 93-A.
 EM-T-22 (June 26, 1945) Reducing minimum age limit of drivers of highway common carriers from 21 to 19 years.

promulgated Emergency Transportation Resolutions (designated as EM-T) Nos. 1 to 22, inclusive. Certain of these Resolutions were modified subsequent to the time they were originally adopted. To date, all of these Resolutions have been revoked, except the ones involved herein. The purpose of this proceeding is to determine what action, if any, should be taken with respect to Resolutions now in effect, in the light of prevailing conditions.

A number of Emergency Transportation Resolutions were promulgated to provide a working plan of operation between this Commission and certain Federal war time agencies. The functions of these agencies have since been revised or abolished in whole or in part. Some of the Resolutions; namely, Nos. 3, 11, and 16, have the effect of superseding certain provisions prescribed by the Commission's General Order No. 93-A, effective January 2, 1941. (2)

The Commission's staff introduced testimony outlining the changed conditions that have taken place subsequent to the time the Resolutions under consideration were issued, the operating results obtaining from the application of certain of them, and offered recommendations as to future action by the Commission relative to the disposition of these Resolutions based upon public interest. The record shows that with the passing of the war time emergency requirements, the public need of for-hire transportation can be met with available facilities based upon what might be termed normal standards.

With the exception of Emergency Resolutions Nos. 3, 11, 12, and 16, the record is convincing that, based upon public interest, prevailing conditions do not justify the continuance in effect of

(2) General Order No. 93-A prescribes "Safety Rules and other Regulations" governing the operation of "Passenger Stage Corporations" and "Highway Common Carriers" as such are defined by the Public Utilities Act.

these Resolutions, and, therefore, the order will provide for their revocation.⁽³⁾ This leaves for consideration the question of appropriate treatment of these four remaining Resolutions.

Emergency Resolution No. 12 provides a basis for assessing charges in connection with shipments diverted in compliance with General Order No. 1 of the Office of Defense Transportation now in effect. This General Order, among other things, requires rail carriers to divert less than carload shipments to other carriers when they find that they cannot forward such shipments within 36 hours by specific provision to be found in its Section 500.6. It was the recommendation of a member of Commission's staff that Resolution No. EM-T-12 be continued in effect so long as Section 500.6 of the Office of Defense Transportation's General Order No. 1 is effective; with the provision that if and when the Office of Defense Transportation revokes the requirements of said Section 500.6 of its General Order No. 1, the Commission give consideration to the revocation of Emergency Resolution No. 12.

Emergency Resolution No. 3 expands the scope of "urban service"⁽⁴⁾ as defined in Section 1.014 of General Order No. 93-A. Under that definition, "urban service" is restricted to an operation with routes limited to 25 miles in length. Emergency Resolution

(3) Emergency Resolutions Nos. 1, 4, 5, 10, 10A, 17, 18, 19, 20B, 21 and 22.

(4) From Section 1.014, Part I, General Order No. 93-A, effective January 2, 1941 (Decision No. 33674, Case No. 3963):
 "The term 'urban service,' when used in this order, means a service similar to that performed by street cars in frequent stop service, or service performed as an extension of or in lieu of street car service, provided such service is performed in full or in part in an area either wholly within business or residential districts or municipalities, or between business districts, residential districts, and municipalities in close proximity, provided, however, the one-way route mileage of such service shall not be more than 25 miles."

No. 3 redefines "urban service" wherein the operation is not limited to a one-way route mileage of 25 miles. (5) It was contended by the passenger carriers participating in the instant proceeding that if EM-T-3 is to be abolished and the provisions of General Order No. 93-A are to apply, the definition of "urban service" as set forth in General Order No. 93-A should be modified to include an operation extending through a number of municipalities or otherwise developed areas where the one-way route mileage was in excess of 25 miles. To meet this situation it was recommended that the definition of "urban service" be amended to read as follows:

"The term 'urban service', when used in this order, means a service similar to that performed by street cars in frequent stop service, or service performed as an extension of or in lieu of street car service, provided such service is performed in full or in part in an area either wholly within business or residential districts or municipalities, or between business districts, residential districts, and municipalities in close proximity, and shall include and apply to any part or portion of an operation or service traversing a territory as herein defined, provided that such part or portion shall not exceed a distance of 25 miles."

This matter of defining "urban service" ties in with the

(5)

From Resolution No. EM-T-3, effective December 23, 1941:
 "IT IS ORDERED that Section 1.014 of the Commission's General Order No. 93-A, defining 'urban service' shall be taken to include and apply to any part or portion of a route traversed within or between those residential and business districts described in said Section 1.014 when the part or portion of the route so traversed does not exceed twenty-five miles in length."

subject covered in EM-T-11 and will be considered in the disposition
(6)
of that Resolution.

Emergency Resolution No. 11 deals with the matter of
"standees" carried on passenger stages. Section 2.08 of Part II
of General Order No. 93-A provides, in part, as follows:

"Standees shall under no circumstances be permitted
on any passenger stage other than those operating
in urban service, * * *"

Emergency Resolution No. 11 provided that during the
national emergency, "standees" may be permitted on any passenger
stage having an aisle head room of 6 feet 2 inches or more, subject
to certain conditions which may be briefly summarized as follows:

- (1) "Standees" will be limited to the number that
can be safely carried and not be permitted
to occupy a position in the bus which will
interfere with the view of the driver,
necessary for safe operation.
- (2) Drivers of the vehicle shall advise passengers
on entering the bus after all seats are occupied,
that standing room only is available.

(6)

From Decision No. 33739, dated December 17, 1940 (Case No. 3963):
"IT IS HEREBY ORDERED that Key System is granted permission
on and after January 2, 1941, to comply with the rules and
regulations of General Order No. 93-A which apply to urban
service on its motor coach operations between Alameda County,
Contra Costa County, and the City and County of San Francisco,
with the exception, however, that it must comply with all of
the provisions of Part IV of said General Order covering Time
Tables, Rules, and Regulations."

From Decision No. 33879, dated February 4, 1941 (Case No. 3963):
"IT IS HEREBY ORDERED that Pacific Greyhound Lines is granted
permission to comply with the rules and regulations of General
Order No. 93-A which apply to "urban" service on its passenger
stage operations in the territory between San Francisco and
San Rafael, Fairfax, and Mill Valley, and in the territory
between San Francisco and San Mateo, with the exception, however,
that it must comply with all the provisions of Part IV of said
General Order covering Time Tables, Rules, and Regulations."

- (3) All passenger stage corporations except those engaged in "urban service" shall post notices in their stages that the authority to carry "standees" is pursuant to an order issued by the U. S. Office of Defense Transportation and the California Railroad Commission - now the California Public Utilities Commission.

This record contains considerable testimony relative to the subject of "standees." It was the consensus of opinion among the passenger carriers that participated in the proceeding that they should be permitted to carry "standees" on any operation up to 25 miles, regardless of the length of the route and time consumed in negotiating this distance. It was pointed out that the volume of traffic that presents itself for transportation along the route adjacent to cities and other developed communities varies considerably and it is uneconomical and impractical to operate sufficient equipment to provide seats for such occasional and varying loads. To do so would reduce the average load factor of an operation, and in turn may require higher fares, if the service is to be conducted on a profitable basis.

The operation between Los Angeles and San Francisco via the Valley route was cited as an example where the carrier is often presented with the problem of providing service to potential passengers along the route who desire transportation over comparatively short distances to neighboring cities or communities. It was contended that if the carrier is permitted to carry "standees" in such cases when there are no available seats for the distance up to 25 miles, it would redound to public interest from the standpoint of providing a much needed service to that class of the public, and at the same time permit of a more economical operation.

It appears that there is some merit to this argument in view of the fact that unless an operator is permitted to carry "standees" in such cases, the passengers would in many instances be required to wait for long periods of time until the next regular service was available. It would not be practical either from a physical or economical standpoint to provide special service for a small volume of fluctuating traffic, due to the fact that additional equipment is not maintained at many of the locations where this condition arises. It is alleged that experience has shown that it is impossible to anticipate the transportation requirements necessary to meet the volume of traffic that desires transportation for a short distance in and out of the trading centers along routes of through bus operation.

Emergency Resolution No. 16 deals with the matter of leasing equipment by all types of for-hire carriers by motor vehicle, and in effect liberalizes the provisions of General Order No. 93-A, which is restricted to "passenger stage corporations," and "highway common carriers." This General Order does not apply to the so-called "permitted carriers," operating under authority of the Highway Carriers and City Carriers' Acts.

Part V (Leasing of Equipment) of General Order No. 93-A provides, among other things, as follows:

"All passenger stage corporations and highway common carriers shall either own their passenger stages or motor vehicles or lease such equipment for a specified amount on a trip, term, or mileage basis. The leasing of such equipment shall not include the services of a driver or operator. All employment of drivers or operators of leased vehicles shall be by contract or agreement, under which the relationship between the passenger stage corporation or highway common carrier and such driver or operator shall be that of master and servant."

The General Order also provides an exemption in case of an

emergency or where the service does not extend over a period of ten consecutive days. In addition, it prohibits the following:

" . . . the practice of leasing the equipment or employing drivers or operators on a basis of compensation dependent upon receipts per trip, or per period of time, or per unit of weight of property transported."

Emergency Resolution No. 16 relaxes the provision of General Order No. 93-A as related to leasing equipment by "highway common carriers," in that it allows such carriers to acquire and operate trucks in the transportation of property, notwithstanding the provisions of Part V of General Order No. 93-A. ⁽⁷⁾ This has the effect of permitting certificated carriers to employ owner-drivers and their equipment under any agreement satisfactory to the parties, without the necessity of placing such drivers on the pay roll of the employing carrier. This Emergency Resolution also applies to "radial highway common carriers," "highway contract carriers," and "city carriers," notwithstanding the fact that General Order No. 93-A is restricted to "Passenger Stage Corporations" and "Highway Common Carriers."

One of the Commission's staff testified that in his opinion Emergency Resolution No. 16 should now be revoked and, coincident therewith, General Order No. 93-A should be amended to permit

(7) From EM-T-16, effective February 2, 1943:
"IT IS HEREBY ORDERED that during the existing National emergency and until further order of the Commission, Highway common carriers, radial highway common carriers, highway contract carriers, and carriers as defined in the City Carriers' Act, herein termed city carriers, be and they are hereby authorized and permitted to acquire and operate trucks, combination truck-tractor and semi-trailers, full trailers, or any combination thereof, or any other rubber-tired vehicle propelled or drawn by mechanical power when used in the transportation of property, as hereinafter provided, notwithstanding the provisions of Part V of General Order No. 93-A (Decision No. 33674, dated November 19, 1940, in Case No. 3963)."

a for-hire carrier to employ the services of an owner and his equipment under any contractual plan they could agree upon with respect to the services of the owner and use of his equipment. Under such a plan, the owner-driver and his equipment would be responsible to the employing carrier and not to this Commission, and in turn the employing carrier would be responsible to the Commission with respect to compliance with all regulations applicable to the operation of the equipment under his control, engaged in for-hire transportation,

A number of carriers participating in the hearing expressed their approval of such a plan. The only objection offered to the plan proposed by the Commission's witness was that expressed by a representative for the Teamsters Union and Highway Council. It was his contention that if the owner-driver of leased equipment was not placed on the pay roll of the lessee with the relationship of master and servant, it would be adverse to public interest, in that in many cases, the equipment would not be properly maintained, hours of service would extend over excessive periods of time for safe operation, and it would make impractical the collection of social security taxes, as well as unemployment compensation.

With respect to the continuance in effect of Emergency Resolutions Nos. 1, 4, 5, 10, 10A, 17, 18, 19, 20B, 21, and 22, the record clearly justifies the conclusion that they have served their purpose and that under prevailing conditions, there is no justification for their continuance in effect. No one opposed the recommendation that they be revoked.

Emergency Resolutions Nos. 3 and 11 are interlocking with respect to the carrying of "standees," which is the only subject matter presented in this record that requires consideration in connec-

tion with the question of the revocation of these two Emergency Resolutions. If these Resolutions are to be revoked without restrictions or substitute provisions, it would follow that the provisions of General Order No. 93-A would apply with respect to the matter of regulation over "standees." The record shows that in addition to carriers engaged in "urban service," as defined in Section 1.014 of General Order No. 93-A, operating within a radius of 25 miles, there is a public need for passenger service in the vicinity of municipalities and trading centers along passenger stage routes which exceed 25 miles in length. To meet this situation, it appears that the most equitable and practical method of providing such service for the occasional passengers desiring transportation to the next municipality or trading center, would be to permit intercity operators to carry "standees" under reasonable restrictions.

"With respect to Emergency Resolution No. 12, for the reasons set forth in the foregoing opinion, it appears that this Resolution should be retained in its present form, pending further action by the Commission.

Referring to Emergency Resolution No. 16 which permits "highway common carriers" to deviate from the leasing provisions of General Order No. 93-A, the record impels the conclusion that this Emergency Resolution should be retained, pending further consideration. It is recognized that the terms of this Emergency Resolution have some objectionable features with respect to regulating for-hire operation. This matter should be the subject of further study and a more adequate record upon which to base an appropriate order. If this Resolution were abolished at this time, without an appropriate substitute, the control over the

subject matter would be governed by the provisions of Part V of General Order No. 93-A. It appears from this record that certain provisions of this General Order should again be reviewed in the light of prevailing conditions, particularly with respect to that portion dealing with the matter of leasing of equipment. This should be the subject of a more comprehensive record.

Upon a review of this record, the Commission finds that:

- (1) Emergency Resolutions Nos. 1, 4, 5, 10, 10A, 17, 18, 19, 20B, 21, and 22, should be revoked.
- (2) Emergency Resolutions Nos. 3 and 11 should be revoked and, coincident therewith, Section 2.08 of Part II of General Order No. 93-A should be revised to permit intercity operators to carry "standees" up to but not exceeding 25 miles.
- (3) Emergency Resolutions Nos. 12 and 16 should be retained, pending further action by the Commission.

The following order will so provide.

O R D E R

Public hearings having been had in the above-entitled proceeding, and based upon the evidence received at the hearings, and upon the findings and conclusions set forth in the preceding opinion,

IT IS HEREBY ORDERED that:

- I - Emergency Resolutions Nos. 1, 4, 5, 10, 10A, 17, 18, 19, 20B, 21, and 22, be and they are hereby revoked.
- II - Emergency Resolutions Nos. 3 and 11 be and they are hereby revoked and, coincident therewith, Section 2.08 of Part II of General Order No. 93-A be and is hereby revised to read as follows:

Standees. Standees shall under no circumstances be permitted on any passenger stage other than those operating in urban service, and in urban service shall not be permitted unless the major portion of the aisle head room is 6' 2" or more. The number of standees who shall be permitted on any passenger stage operating in urban service shall not exceed the number which

could reasonably and safely be accommodated without crowding, and each standee shall be supplied with a grab handle or other means of support. Standees shall not be permitted to occupy a position which will interfere with the view of the driver necessary for safe operation. Provided, however, that to accommodate a passenger desiring transportation to or from a municipality or trading center along its route, a passenger stage corporation may, when no seats are available, carry such a passenger as a standee on its stage engaged in intercity operation a distance up to but not exceeding 25 miles.

III - Emergency Resolutions Nos. 12 and 16 shall remain in effect until further order of this Commission.

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

Dated at San Francisco, California, this 14th day of September, 1948.

R. B. Anderson
Arthur F. Calver
Chas. H. Russell
Harold H. Huls
Herbert Lott
Commissioners