

Decision No. 47426

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Commission
Investigation into the operations and
practices of Earl L. Wilson, Gertrude
E. Wilson, William J. Wilson and
Madoline L. Wilson, doing business
as PONY EXPRESS or as PONY EXPRESS
FAST FREIGHT.

Case No. 5257

Boris H. Lakusta, for Field Division, Public
Utilities Commission. Getz, Aikens & Manning, by
DeWitt Morgan Manning, for respondents. Donald
Murchison for Auto Parts Delivery Inc., and John
B. Robinson for Southern California Freight Lines
and Southern California Freight Forwarders,
interested parties.

O P I N I O N

This proceeding was instituted upon the Commission's own motion to determine whether Earl L. Wilson, Gertrude E. Wilson, William J. Wilson and Madoline L. Wilson, doing business as Pony Express or as Pony Express Fast Freight, hereinafter called respondents, have operated, or are operating, as a highway common carrier over regular routes or between fixed termini anywhere within the State of California without having obtained a certificate of public convenience and necessity, or having possessed a prior right to so operate, as required by Section 1063 of the Public Utilities Code.

Public Hearings were held before Examiner Rogers, evidence was presented, respondents filed a written petition for a proposed report, and the matter was submitted.

Rule 69, of the Commission's Rules of Procedure, requires that a petition for a proposed report set forth the reasons why it is believed that the issuance of such a proposed report will promote the administration of justice and will not cause unreasonable delay

in the final determination of the proceeding. The only statement in the said petition herein for a proposed report, relative to the above set forth requirements of the Commission, is that the ends of justice will be served by the granting of the petition. Why or how the ends of justice will be served is not stated. For the reason that the petition for a proposed report does not comply with the rule referred to, it will be denied.

The parties stipulated that Earl L. Wilson, Gertrude E. Wilson, William J. Wilson and Madoline L. Wilson, are partners, doing business as Pony Express or Pony Express Fast Freight, with offices in Huntington Park, California, that they own, control, operate or manage auto trucks used in the business of transportation of property for compensation over public highways in California, and that they have engaged in said business since August 23, 1946. It was further stipulated that, since August 23, 1946, the partners have held a radial highway common carrier's permit, a highway contract carrier's permit, and a city carrier's permit, and do not possess, and at no time have possessed, a right to operate as a highway common carrier within the State of California.

Pony Express, also known as Pony Express Fast Freight, was started in 1936 by Earl L. Wilson and Robert Simon. They then made pickups and deliveries with one pickup truck in a portion of the City of Los Angeles. Their business was confined to serving the automobile industries and deliveries for Pacific Greyhound Lines. Gertrude E. Wilson, the wife of Earl L. Wilson, became active in the business in 1937, and in 1942 Simon separated therefrom. In 1946 William J. Wilson and Madoline L. Wilson joined the business and the present partnership came into existence. The presently held city carrier's permit, highway contract carrier's permit, and radial highway common carrier's permit, were then issued to the partners

doing business as Pony Express. A respondent testified that no services have been performed pursuant to the radial highway common carrier's permit for about one year. There is no evidence of use of that permit prior to the latter period. There is no evidence relative to the use of the city carrier's permit. In view of these facts, the radial highway common carrier's permit and the city carrier's permit will be disregarded herein.

Respondents serve within a radius of 65 miles of the City of Los Angeles, and also between Los Angeles and Redlands, including intermediate points, giving service five days a week. They use 30 standard pieces of equipment. ⁽¹⁾ In 1946 respondents had only 24 pieces of equipment. ⁽²⁾ They have one terminal which is in Huntington Park, and they also have the use of five truck spaces at the dock of the General Motors Plant at Van Nuys, at which place one of respondents' dispatchers remains during business hours. Fifty per cent of respondents' hauling is for General Motors Corporation. Respondents have 34 employees, including the Van Nuys dispatcher. They have ostensibly eleven routes over which shipments are carried for companies other than General Motors Corporation, and six routes ⁽³⁾ over which the shipments for General Motors Corporation are carried. These routes are not fixed but are varied to meet the need of the shippers.

A Commission representative was informed by respondents that they average 520 freight bills per day. During a ten-day check period selected by the Commission's staff, they carried an average ⁽⁴⁾ of 220 shipments per day.

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- (1) Exhibit No. 13. This exhibit shows 33 pieces of equipment. Earl L. Wilson testified that trucks 6, 14 and 38 had been retired. Trucks 1A and 1B are used for shop maintenance only.
(2) Exhibit No. 14.
(3) Exhibit No. 2.
(4) Exhibit No. 10.

In September 1950 respondents had an advertisement in the Los Angeles Classified Telephone Directory, reading "Pony Express Fast Freight, fast daily service to Southern California points." The current volume of the Los Angeles Classified Directory contains an advertisement reading; "Pony Express Fast Freight. Fast daily service to Southern California points. Contract - radial and city carrier." Respondents' witness testified that the wording in the first advertisement was inserted at the suggestion of a telephone company representative, that respondents never intended to serve the general public, and in order to correct misunderstanding the wording was changed. The witness stated that respondents do not solicit and have not solicited business.

An associate transportation representative of the Commission testified that on September 28 and 29, 1950, the respondents Earl L. Wilson and Gertrude Wilson stated that they had written contracts with 27 shippers, and oral contracts with 48 shippers. He prepared lists of these claimed contracts from the information furnished by the respondents.⁽⁵⁾

On January 18, 1951, an assistant transportation rate expert of the Commission had a conversation with respondent Gertrude E. Wilson. At that time, he said, Gertrude E. Wilson stated that respondents had 62 written contracts and approximately 25 oral contracts. The written agreements were given to the witness for his inspection, and are on three different forms placed in evidence as Exhibits Nos. 5, 6 and 7. From the written agreements furnished to

(5) Exhibits Nos. 3 and 4.

the witness, he prepared a list of those shippers having such agree-
ments with respondents on that date. ⁽⁶⁾ All of the written agreements
shown the witness on that date were on the form introduced in evi-
dence as Exhibit No. 6, except seven which were either on the form
of Exhibit No. 5 or No. 7.

On January 18, 1951, Gertrude E. Wilson also furnished
the transportation rate expert with a list of oral agreements be-
tween the respondents and shippers which were in effect on that
date. ⁽⁷⁾

Respondents introduced into evidence a list of written
agreements in effect on November 30, 1951. ⁽⁸⁾ This list contains the
names of 67 shippers and shows the type of written agreement entered
into with each. One has an agreement on the form of Exhibit No. 7,
six have agreements on the form of Exhibit No. 5, and the balance
have agreements on the form of Exhibit No. 6. All but five of the
written agreements were executed subsequent to August 23, 1946, the
date upon which respondents received their presently effective per-
mits from this Commission.

Gertrude E. Wilson presented a list of 21 oral agreements
in effect in November 1951. ⁽⁹⁾ Thirteen of these oral agreements were
made prior to the formation of the present partnership by the
present partners' predecessors.

The three forms of written agreements upon which claimed
contracts are made are exemplified by Exhibits Nos. 5, 6 and 7,
heretofore referred to.

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- (6) Exhibit No. 9.
 - (7) Exhibit No. 8.
 - (8) Exhibit No. 17.
 - (9) Exhibit No. 18.

Exhibit No. 5.

Under this form of written and dated agreement, the shipper employs the respondents to transport certain commodities by motor vehicle between points specified. The respondents agree to furnish adequate equipment and capable drivers, and to perform the services at specified rates. The shipper agrees to tender for shipment, and respondents agree to transport by motor vehicle in intrastate commerce, all shipments between designated points, except where the consignees have designated a different carrier. Service is on call, rates are specified, and a provision is included that "This agreement shall inure to the benefit of and be binding on the respective parties, their heirs, successors and assigns and shall continue in effect until canceled. Either party may cancel this agreement upon giving thirty (30) days' notice in writing to the other party." Both respondents and the shipper execute the agreement.

Exhibit No. 6.

Under this form of written and dated agreement, the shipper hires the respondents to perform the transportation of described commodities between named points. It provides that the shipper agrees to ship and the respondents agree to transport, in the alternative, all, or a designated number of pounds per week, of the traffic which shipper shall have to be transported by truck during the life of the agreement from and to points named. Rates are designated and the provision is inserted that "This agreement shall continue for a period of one month after the date hereof, and thereafter until terminated by either party giving thirty (30) days' notice to the other. Such termination shall in no way affect any cause of action which has accrued, or may accrue, by reason of any act done during the existence of this agreement." This agreement is signed by both the shipper and the respondents.

Exhibit No. 7.

Under this form of written and dated agreement, the shipper agrees to give respondents certain described delivery work and to pay for the service at rates listed. The respondents agree to perform the described work. It is provided that "This agreement shall be for the period of one year from the date hereof, subject to automatic renewal for like periods thereafter, unless terminated by either party at the expiration of the original or any renewal period, which right is reserved unto the parties hereto." This agreement is signed by the shipper and by the respondents.

According to respondent Gertrude E. Wilson, respondents had 21 oral agreements on November 30, 1951. The terms of each agreement, she said, are shown on records kept in the regular course of business, and each agreement sets forth a definite radius from the shipper's place of business within which shipments are to be carried; lists the commodities to be carried, provides a minimum quantity to be shipped each week via respondents, and provides that a 30-day notice of intention to terminate the agreement must be given by either party prior to termination. Four witnesses testified that the company each one represented was served by respondents pursuant to oral agreements, and that in each instance no notice of termination or minimum amount of shipments was to be given to respondents.

A compilation of the information contained in the said Exhibits Nos. 3, 4, 8, 9, 17 and 18, lists of written or oral agreements, is set out below:

Oral and Written Agreements in
existence as of dates shown below

| | <u>1</u> | <u>2</u> | <u>3</u> | <u>4</u> | <u>5</u> | <u>6</u> |
|---|-----------------|-----------------|----------------|----------------|-----------------|-----------------|
| | <u>Oral</u> | <u>Written</u> | <u>Oral</u> | <u>Written</u> | <u>Oral</u> | <u>Written</u> |
| | <u>Oct.1950</u> | <u>Oct.1950</u> | <u>1-18-51</u> | <u>1-18-51</u> | <u>Nov.1951</u> | <u>11-30-51</u> |
| Acme Elec. Supply | x | | | x | | x |
| Acme Quality Paint | | x | | x | | x |
| Acme White Lead and Color | | x | | x | | x |
| Auto Lite Battery Corp. | x | | x | | x | |
| The Alemite Co. | x | | x | | x | |
| Allied Tool & Abrasive Supply | | | | | | x |
| Automotive Warehouse | x | | | | | |
| Auto Electric Service | x | | | | | |
| Allen Bradley Co. | x | | | x | | x |
| Barnett, Brownell & Hubbard | | x | | x | | x |
| Bell Auto Parts | x | | | | | |
| L. A. Brainard Brake Lining Service | x | | x | x | | x |
| Andrew Brown Co. | | x | | x | | x |
| Calif. Wire Cloth Corp. | x | | | x | | x |
| Capitol Brush Co. | | x | | x | | x |
| Carpenter Paper & Fed. Envelope | x | | x | | x | |
| Coleman Co. | | | | | x | |
| Caro Auto Parts | x | | | | x | |
| Caswell Coffee Co. | | | | x | | |
| C & G Distributors | x | | | | x | |
| L. D. Coffing | | | | x | | x |
| Community Motors | | | | x | | x |
| Carborundum Corp. | x | | x | | x | |
| Chevrolet, L.A. & Fisher Body | | x | | x | | x |
| Cone Chevrolet | | x | | x | | x |
| Crumm and Lynn | | x | | x | | x |
| Cone Bros. | | | | x | | x |
| Crescent Bronze Powder Co. | | | | x | | x |
| Electrical Spec- ialties | x | | | x | | x |
| Ever Dry Corp. | x | | | x | | x |
| Fey & Krause, Inc. | x | | | x | | x |
| Firestone Tire & Rubber Co. | | x | | x | | x |
| O. C. Foster Inc. | x | | | x | | x |
| Freedom Valvoline Charles R. Hadley Company | x | | x | x | x | x |
| W. W. Grainger | x | | | x | | x |
| General Motors Corp. | | x | | x | | x |
| General Shipping Room Supplies | x | | | x | | x |
| Gookin Hardware Co. | x | | | x | | x |
| Harrison Pontiac | | | | x | | x |
| General Paper Co. | x | | | x | | x |
| Guaranty Chev- rolet Co. | | x | | x | | x |

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|--|-----------------|-----------------|----------------|----------------|-----------------|-----------------|
| | <u>Oral</u> | <u>Written</u> | <u>Oral</u> | <u>Written</u> | <u>Oral</u> | <u>Written</u> |
| | <u>Oct.1950</u> | <u>Oct.1950</u> | <u>1-18-51</u> | <u>1-18-51</u> | <u>Nov.1951</u> | <u>11-30-51</u> |
| P.B.Hazleton Hudson Sales Corp. | x | x | x | x | | x |
| Hobbs Battery Co. Industrial Tape Co. | | x | | x | | x |
| Kelly-Springfield Co. | x | | x | | x | |
| Keuffel & Esser Co. | x | | | | x | |
| Keleket X-Rays Kirkhill Inc. | x | | x | | x | |
| Laher Spring & Tire Co. | x | | | x | | x |
| Lambert Co. Lincoln Engineer- ing | | x | | x | | x |
| Marshall & Clappett The Martin Senoor Co. | x | | | x | | x |
| Mailwell Envel- ope Co. | x | | | x | | x |
| Meinicke & Co. Montsanto Chemical Co. | X | | X | | X | |
| Modern Chevrolet Moore Business Forms | X | | X | x | X | x |
| R. W. McAllister B. F. McDonald Co. | x | | x | x | | x |
| Nash-Kelvinator Co. | | x | | x | | x |
| Orange County Auto Parts | | x | | x | | x |
| Paramount Manu- facturing Co. | x | | x | | | |
| Ohio Rubber Co. Pep Boys Pridemark Products Co. | x | | x | | x | x |
| Powers Wire Products | | | | x | | x |
| Pacific Abrasive Supply Co. | x | | | x | | x |
| Pacific Hide & Leather Co. | | | | x | | x |
| Richfield Oil Co. Russell, Burdsall & Ward Bolt | x | | x | | x | x |
| R. D. Sovetts Co. Sandoz Chemical Works | x | | x | | x | x |
| Saks Sales Co. Samson Chemical & Sales | | x | | x | | x |

Oral and Written Agreements in
existence as of dates shown below

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| | <u>Oral</u> | <u>Written</u> | <u>Oral</u> | <u>Written</u> | <u>Oral</u> | <u>Written</u> |
| | <u>Oct.1950</u> | <u>Oct.1950</u> | <u>1-18-51</u> | <u>1-18-51</u> | <u>Nov.1951</u> | <u>11-30-51</u> |
| Schultz & Co. | x | | | x | | x |
| Savage Haldeman Service Station Supply Co., (Wilco) | | | x | | x | |
| Sherwin-Williams | | x | | x | | x |
| Sonny's Auto Pts. | x | | | x | | x |
| States Battery Co. | | x | | x | | x |
| Turco Products Co. | x | | | x | | x |
| Troy Co. | | | x | | | |
| Union Oil Co. | | x | | x | | x |
| United Motors Service Co. | x | | x | | | x |
| United Automot- tive Service | | x | | x | | x |
| U.S. Spring & Bumper | | | x | | x | |
| Universal Match | x | | x | x | | x |
| Earl Vinson | | x | | x | | x |
| Washburn Motors | | | | x | | x |
| Wagner Electric | x | | x | | x | |
| West Bros. | | x | | x | | x |
| Western Wood Preserving Co. | x | | | | x | |
| Whittier Auto Electric Co. | | | | x | | x |
| Williams & Bennett Parts Distr. | x | | | | | |
| Willard Storage Battery Co. | | | | x | | x |

It will be seen that 99 companies have used respondents as carrier pursuant to written or oral agreements in the period from November 28, 1950, to November 30, 1951. Of these 99 shippers, 13 are omitted from the list of those having agreements in force in November 1951, prepared by the respondents (Exhibits Nos. 17 and 18). There is no evidence as to the reasons for their omission other than the information contained in Exhibit No. 19 showing three written and six oral agreements canceled since April 30, 1950. Four written and five oral agreements claimed by respondents to have been in effect in 1950, and prior thereto, are not included in the lists of written or oral agreements in effect in October 1950 (Exhibits

(10) Exhibit No. 17 - Written agreements with Allied Tool and Abrasive Supply, Modern Chevrolet, Washburn Motors and Willard Storage Battery. Exhibit No. 18 - Oral agreements with Freedom Valvoline Oil Company, Ohio Rubber Company, Sandoz Chemical Company, Savage-Haldeman Company, and U. S. Spring and Bumper Company.

Nos. 3 and 4).

A Field Division representative secured from the respondents all shipping documents for the period of December 1950 and the first 13 days of January 1951. From these shipping documents he prepared Exhibit No. 10, showing a summary of intrastate highway carrier operations of the respondents for the periods of December 11 to 16, 1950, inclusive, and January 8 to 13, 1951, inclusive. This check shows that Allen Motors, Buffington Pontiac, Ed Clancy, Crew Olds, Culbretson Motors Company, Hadenfeldt Pontiac, Harris Motors, Kendall Chevrolet, C. Standlee Martin, Millikan Motors, Ronald D. Moran, Paramount Chevrolet Company, M. J. Sopp, S & J Chevrolet, and Suburban Sales, were the only companies served by respondents during the check period with which the respondents did not have either a written or oral agreement. These firms are all General Motors agencies, and, according to the respondents, were served pursuant to respondents' written agreement with General Motors Corporation. During the ten days included in the two check periods, respondents transported 2,201 shipments. Twenty-one of these shipments were carried for the 15 firms mentioned in this paragraph, none of which had either a written or oral agreement with the respondents. Twenty of the 21 shipments were collect shipments from General Motors Corporation, a firm having a written agreement with the respondents. The other shipment was from a nonagreement party to a nonagreement (General Motors Corporation) Chevrolet agency.

The appearing respondents testified that they do not intend to dedicate, and have not dedicated, their services to the general public. In support of this latter allegation, Exhibit No. 16 was placed in evidence. This exhibit is a file containing approximately 200 carbon copies of letters addressed to shippers who had requested that respondents serve them and informing these shippers that respondents cannot carry the shippers' merchandise as the respondents

are contract carriers and are operating to capacity. The earliest of these letters is dated February 1, 1946, and the latest is dated March 15, 1952. The respondents also testified that in 1946 they had set at 100 the number of contracting parties with whom they would do business. They said this number has never been reached.

Since respondents are not purporting to act as a radial highway common carrier but solely as a contract carrier, the basic problem for determination is whether respondents have, despite their protestations to the contrary, made an unequivocal dedication of their property to the public use and thereby become a highway common carrier operating without proper authority.

Have respondents dedicated their property to a public use?

The evidence herein shows that respondents now serve approximately 103 parties, about 62 shippers pursuant to valid written contracts, five shippers pursuant to written agreements valid in form but executed by respondents' predecessors, 21 shippers pursuant to oral agreements, and 15 consignees which respondents serve under the belief that by having a valid written contract with a consignor, collect shipments may be carried to any consignee to which that contracting consignor directs collect shipments. The record shows that respondents have restricted their services to transportation for a limited number of shippers, a total of 99 during the period of the investigation, excluding those to which collect shipments were directed, and that during that period the identity of the shippers has remained fairly constant, some having been dropped for violations of agreements, and others having been added to bring the total number of shippers to approximately 85 served at any one time. In addition to holding the number of shippers which they serve to a constant level, respondents, since the inception of the partnership, consistently have refused to serve the general public as shown by

approximately 200 letters contained in Exhibit No. 16. The 15 General Motors Corporation agencies to which respondents carried collect shipments are in addition to the 99 shippers with which respondents had ~~contracts~~ ^{agreements}.

We are of the opinion and find that an unequivocal intention by the respondents to dedicate their property to a public use is not shown by the evidence and for that reason it cannot be found on this record that they are operating as a highway common carrier. Therefore, the order instituting this investigation will be discontinued.

O R D E R

Public hearings having been held and based upon the findings and conclusions set forth in the foregoing opinion,

IT IS ORDERED that the order instituting the investigation in the above-entitled matter be and it is discontinued and Case No. 5257 be and the same hereby is dismissed.

Dated at South Pasadena, California, this 30th day of June, 1952.

[Signature]
President

[Signature]

[Signature]

[Signature]

Commissioners

Commissioner Justus E. Craemer, being necessarily absent, did not participate in the disposition of this proceeding.