

ORIGINAL

Decision No. 59927

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of  
RAILWAY EXPRESS AGENCY, INCORPORATED,  
for authority (a) to provide collection  
and delivery of express shipments by  
motor trucks operated between Oakland  
and termini in the East Bay area; (b) to  
close its offices now serving said  
termini; and (c) to change the waybilling  
of shipments from said offices to the  
Oakland office thereby increasing cer-  
tain intrastate charges.

Application No. 41694

Pillsbury, Madison & Sutro, by Eugene M. Prince  
and Dudley A. Zinke, for applicant.  
Roger L. Ramsey, for United Parcel Service;  
E. A. McMillan, for California State Legis-  
lative Committee, Brotherhood of Railway and  
Steamship Clerks, Freight Handlers, Express  
and Station Employees; Ernest G. Jorn, for  
Richmond City Council, protestants.  
Robert T. Anderson and Robert P. Berkman, for  
City of Berkeley, interested party.  
William R. Peters, for the Commission staff.

## O P I N I O N

Railway Express Agency, Incorporated, operates as an  
express corporation in the transportation of property over the lines  
of railroads and other transportation companies between points in  
this State.<sup>1/</sup> It is so engaged also throughout the United States and  
to and from 42 foreign countries. The Agency proposes to consoli-  
date its express operations in the East Bay area by furnishing  
collection and delivery service by motor trucks directly between its  
Oakland office and 16 other East Bay communities now served by 13  
separate offices. It also proposes to make Oakland the waybilling

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<sup>1/</sup> Applicant will sometimes be hereinafter referred to as "the  
Agency".

point for all shipments forwarded from, or delivered to, the communities now served by said offices.

As a necessary step in the execution of the foregoing plan, the Agency seeks authority by this application, as amended, as follows:

(1) To close the express offices now maintained at the 13 points in question, viz.: Alvarado (a district within Union City), Berkeley, Hayward, Lafayette, Livermore, Newark, Niles (a district within the City of Fremont), Orinda, Pleasanton, Richmond, St. Mary's College, San Leandro and Walnut Creek.

(2) To increase rates and charges to the extent that such will result from the proposed transfer of waybilling of shipments from the 13 offices to Oakland.

(3) To operate as a highway common carrier (as defined in Section 213 of the Public Utilities Code) in the transportation of property, exclusive of certain specified articles, between Oakland, Berkeley, El Cerrito, Fremont, Hayward, Lafayette, Livermore, Newark, Orinda, Pleasanton, Richmond, St. Mary's College, San Leandro, <sup>2/</sup> San Lorenzo, San Pablo, Union City and Walnut Creek. At the same time revocation is sought of the certificate by which the Agency is presently authorized to operate as a highway common carrier between Oakland, San Leandro and Hayward.<sup>3/</sup>

Public hearing of the application was held before Examiner Carter R. Bishop at San Francisco on February 1, 2 and 3, 1960. With

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<sup>2/</sup> El Cerrito and San Pablo are within applicant's collection and delivery limits of Richmond; San Lorenzo is within said limits of Hayward.

<sup>3/</sup> The certificate in question was granted by Decision No. 39874, dated January 21, 1947, in Application No. 28122.

the filing of concurrent briefs on February 19, 1960, the matter was taken under submission.

Evidence was adduced on behalf of applicant by its president, its regional vice president, the superintendent of its Northern California, Nevada and Oregon Division, and by seven shipper witnesses. No evidence was offered by other parties to the proceeding. The granting of the application was opposed by the Richmond City Council, by the State Legislative Committee of the express employees' brotherhood and by United Parcel Service. The City of Berkeley appeared as an interested party. Counsel for these parties and a representative from the Commission's staff participated in the development of the record through examination of applicant's witnesses.

According to the application, the proposed revamping of the Agency's operations in the East Bay area will have the effect of: (1) providing improved express service to the communities served by the carrier's East Bay offices, through more expeditious handling of shipments and provision of collection and delivery service in many areas not now so served; (2) reducing charges on air express traffic, and on some surface shipments, moving from and to the points involved herein;<sup>4/</sup> and (3) reducing substantially the Agency's operating costs in the East Bay area. The estimated savings amount to \$32,000 per year.

The proposed consolidation of East Bay offices, the record discloses, is one of many such consolidations which the Agency is undertaking throughout the United States. In California alone applicant plans centralization of operations at various key

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<sup>4/</sup> The record indicates that the increases in rates resulting from the centralization of waybilling in the Oakland office will be minor.

points which, if accomplished, will affect some 97 offices. The proposed consolidations, the president stated, are one phase of applicant's nationwide program of modernizing its facilities and operating practices, in an attempt to reverse the continuing downward trend in the carrier's surface traffic and revenues, and to meet effectively the competition of other transportation agencies. Assertedly, the modernization program is made imperative by applicant's precarious financial condition.

#### Historical Background

The history of applicant and its predecessor companies was reviewed in some detail by the president. The express service dates back to the early 1830's when a railroad conductor began to carry small packages personally over his run. By 1838 he had given up his railroad job and was advertising a weekly express service between Boston and New York. To render this service he contracted with railroad and steamboat companies to carry a box wherein he packed express shipments, for which he agreed to be responsible.

The express business grew rapidly. By 1886 it had reached the point where the United States Supreme Court said: "It has become a public necessity, and ranks in importance with the mails and the telegraph."<sup>5/</sup> In some instances railroads conducted their own express business; however, the general practice was for a railroad to contract with an independent express company to transport express matter over the railroad's lines, the express company itself collecting and delivering express matter, handling it at terminals, waybilling the shipments, collecting the charges, and doing the accounting.

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<sup>5/</sup> Express Cases (117 U.S. 1,20.)

Between 1839 and World War I many express companies were formed but few survived for long. By 1917 there were only seven, four of which handled 95 percent of the nation's express business. These four companies were Adams, American, Wells Fargo and Southern. Wells Fargo & Co. Express was founded in 1852. With headquarters in San Francisco (prior to 1900), it became the pre-eminent express company not only of California but of the entire West.

In 1918 the express business of the four above-mentioned companies was taken over by American Railway Express Company.<sup>6/</sup> This was a war measure in which the Federal Director General of the railroads agreed to contract with a single merged corporation for the latter to conduct the express business as his agent. After the termination of Federal control American Railway Express continued to operate throughout the country until March 1, 1929, when its operations were taken over by Railway Express Agency, Inc., the applicant herein.

The distinctive feature of the Agency, as contrasted with American Railway Express, is that the former is owned by the railroads themselves. According to the record, when the Agency took over the express business in 1929 its ownership was represented by 1,000 shares of stock held by 86 leading railroads. As of the present, the Agency has retired 35 shares and the rest are owned by 65 railroads. In addition to its agreement with the owning roads, the Agency has contracts with other railroads and with highway, air and water carriers for transportation over their respective lines. Altogether, applicant has domestic line-haul service over 328,000 route miles.

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<sup>6/</sup> After the above-mentioned changeover, Adams and American continued to operate in other types of enterprise; Wells Fargo still engages in the transportation of express in Mexico and Cuba.

The most important of applicant's contracts is the Standard Express Operations Agreement (sometimes hereinafter referred to as the "Standard Agreement"). The current agreement is that which became effective October 1, 1959. Applicant, the president testified, has never paid a dividend and does not pay out revenues to stockholders as such. Under the terms of the Standard Agreement it accrues no net earnings and "shall have no net taxable income other than profit on real property and equipment sold". Applicant pays its wages and other expenses. The line-haul carriers which are parties to the Standard Agreement are paid whatever may be left after direct expenses of applicant have been paid. These latter payments are made to the various underlying carriers in accordance with a formula set out in the Standard Agreement.

The arrangement just described has prevailed ever since 1929, when the Agency took over rail express service. Under the current agreement said arrangement will continue in effect until July 1, 1961. Effective with that date a new basis of compensation to the underlying railroads will go into operation. The roads will be paid on the basis of agreed rates per express car-foot mile of transportation service rendered. The rates will be provisional, intended to reflect the out-of-pocket costs of the railroads. Beginning with January 1, 1963, the car-foot mile rates will be based on a uniform out-of-pocket cost formula. Another feature of the new arrangement, effective July 1, 1961, is that 50 percent of any profit which the Agency may make will be paid to the railroads. The remainder will be put back into the express business for development and modernization.

#### Financial Position of Applicant

Since World War II, the president testified, the Agency's payments to the railroads parties to the Standard Agreement have

fallen far short of meeting the costs incurred by those carriers in carrying express matter. Deficits, he said, have run into millions of dollars. These are out-of-pocket deficits, no overhead or return on investment being considered.<sup>7/</sup> The railroad deficits increased each year, reaching \$40,000,000 in 1958, for the country as a whole.

The situation came to a head in December 1958 when a major eastern road gave notice under provisions of the Standard Agreement that it would withdraw from said agreement on January 1, 1962. Withdrawal of one major carrier, the president testified, would have precipitated withdrawal by all, which, in turn, would have made liquidation of the Agency mandatory under other provisions of the agreement.<sup>8/</sup> According to the witness, the only alternative would have been nationalization of the Agency's express business. He pointed out that a bill had been introduced in the United States Senate proposing that the express operation be taken over by the Post Office Department.

At this crucial point, the record indicates, applicant took immediate and drastic measures to save itself. It practically stopped advertising and postponed equipment maintenance. Executive, administrative, sales and overhead expenses were slashed; departments

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<sup>7/</sup> In recent years this Commission has found, in several rate increase proceedings of the Agency, that the rates in effect at the time were not returning the costs incurred in the performance of the California intrastate express service. The most recent statements are in Decision No. 58313, dated April 28, 1959, in Application No. 40678, and in Decision No. 59856, dated March 29, 1960, in Application No. 41607.

<sup>8/</sup> The Standard Agreement in effect at that time was one adopted March 1, 1954. Both the 1954 and the 1959 agreements were approved by the Interstate Commerce Commission.

were reorganized; and the retirement age of employees was reduced from 70 years to 65 years. Other measures were adopted to cut costs and improve operating efficiency. Additionally, express rates were increased by 25 cents per shipment in some territories and 35 cents in others. These increases became effective on interstate traffic September 1, 1959.<sup>9/</sup>

As a result of negotiations with the railroads the Agency, in July 1959, obtained unanimous consent to cancellation of the Standard Express Operations Agreement of 1954 and consent of 157 railroads to a new agreement to be made effective October 1, 1959. Under its terms, no railroad could withdraw from the new agreement prior to July 1, 1961. The parties to the 1959 agreement included the aforementioned eastern road and all major railroads of the country except one in the middle West.

As previously pointed out, the basis of compensation to the railroads for transporting the Agency's express traffic will be radically changed, effective July 1, 1961. Thereafter, payments to the rail lines will be on the basis of their out-of-pocket costs of transporting said traffic. They will not merely receive what is left over after the Agency's own expenses are paid. This means that the Agency will then have to "stand on its own feet" financially; it will no longer be able to rely on the contracting rail lines to carry it along. Moreover, the president pointed out that the Agency has a relatively short time in which to get on its feet, since any railroad may cancel its contract with the Agency on or after July 1, 1961.

An important feature of the 1959 agreement is that it gives freedom of routing of shipments by the Agency so that the

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<sup>9/</sup> An increase of 35 cents per shipment, with exceptions, in applicant's California intrastate rates was authorized by this Commission in Decision No. 59856, dated March 29, 1960, in Application No. 41607.



latter is no longer tied to the rail lines and is not required to divide business among the contracting railroads on an obsolete traffic pattern dating back to 1926. Express traffic can now be routed in the interest of speed and efficiency. Another significant effect of the provisions which will become operative in 1961, the president stated, is that the officers and employees of the Agency will have an incentive to make the business a profitable one. Such incentive was lacking under the old basis of compensating the railroads.

The Agency's nationwide program of closing many of its smaller offices for the receipt and delivery of express, and of centralizing operations through the larger terminals, is one part of its immediate program of modernizing the service and of improving its financial position.

#### The East Bay Service

All shipments moving via applicant from and to the offices involved herein pass through the Oakland terminal. Originally all of this traffic, except that originating at or destined to Orinda, moved via rail from and to said offices. With one exception, the shipments now are transported between Oakland and said offices by motor truck. Express shipments from and to Richmond move largely by Southern Pacific boxcar between that point and Oakland. A small volume of Richmond express traffic is handled by Santa Fe passenger trains. The Agency makes deliveries with its own trucks from its Richmond terminal to consignees located within the Richmond delivery limits, which include also El Cerrito and San Pablo.<sup>10/</sup>

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<sup>10/</sup> Where, in this opinion, operations are described involving the delivery of shipments to consignees in the subject East Bay communities it is to be understood that the reverse of such operations obtain in the collection of shipments from consignors located in said communities.

The record indicates that presently shipments consigned to Berkeley are delivered direct to consignees from Oakland in applicant's trucks. Shipments to Hayward (including San Lorenzo) and to San Leandro, are transported from Oakland in applicant's line-haul trucks to its offices in those communities, deliveries to consignees being made from those offices in local delivery trucks. Shipments to Orinda, Lafayette and St. Mary's college are transported from the Oakland terminal to applicant's offices in these communities via Merchants Express of California, a highway common carrier, under contract with applicant. Consignees obtain their shipments at the aforesaid offices. Applicant at present provides no store-door or home delivery service in these communities.

Express shipments to Alvarado, Newark, Niles, Pleasanton, Livermore and Walnut Creek, the record shows, are transported from the Oakland terminal to applicant's offices in these communities by Pacific Motor Trucking Company under contract with applicant. Store-door and home delivery service are provided by applicant's local trucks at Livermore and Walnut Creek only. In the other four communities named delivery is taken at applicant's offices.

Under the proposed consolidation plan express shipments would be transported in applicant's trucks directly between the Oakland terminal and premises of patrons in the communities where such direct pickup and delivery is not now performed, and the local offices of applicant would be closed.<sup>11/</sup> As previously stated, this method of operation is now in effect in Berkeley. In that community applicant's office, the record shows, is maintained as a convenience

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<sup>11/</sup> According to the Agency's superintendent, the company now has a sufficient number of vehicles assigned to the East Bay area to perform the proposed service in connection with the current volume of traffic.

for over-the-counter business. There would be no change in the collection and delivery service as now accorded patrons located within the Oakland<sup>12/</sup> collection and delivery limits. These limits will remain unchanged and as at present will be served directly from Oakland.

Concurrently with the closing of the 13 offices and the extension of collection and delivery service, applicant plans to establish toll-free telephone service from all points in the East Bay area outside the Oakland local calling area to its Oakland office. This arrangement will enable patrons affected by the consolidation plan to request pickup service and transact other business without having to pay a toll charge.

An important advantage in the proposed consolidation plan, applicant's superintendent testified, will be the expedited service which patrons will receive. In most of the communities affected, it is expected that not less than a day's time will be saved in the handling of shipments. It will no longer be necessary for inbound shipments, for example, to be transported from the Oakland terminal to applicant's local office at destination in one vehicle, there to be kept overnight and delivered to consignee in another vehicle the next day, or, when there is no local delivery service, be picked up by the consignee the next day at said office. The direct deliveries from Oakland to the patron's premises will save time.

Another advantage in the proposed plan is that collection and delivery service will be provided within defined limits at those points where no such service is now provided by applicant. As indicated above, these communities are Alvarado (district of Union City), Lafayette, Newark, Orinda, Pleasanton, St. Mary's College,

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<sup>12/</sup> The cities of Alameda, Albany, Berkeley, Emeryville and Piedmont, and the unincorporated area known as Kensington, are all located within the Oakland collection and delivery limits.

and Fremont (separately defined limits for Centerville, Irvington, Mission San Jose and Niles districts). Additionally, applicant proposes to enlarge the existing collection and delivery zones at Livermore and Walnut Creek to better serve the growing commercial areas of those communities.

Other advantages in the plan, the superintendent said, are found in the proposal to accord Saturday, Sunday and holiday service to all air shipments and to delivery of surface shipments of live-stock and perishables; and in the reduction in the number of handlings to be received by express shipments originating or terminating in the East Bay communities. Currently, most of the points involved receive only five-day service. The proposed week-end holiday service will be practicable when applicant performs the highway service with its own trucks and drivers. The reduction in handlings resulting from direct movement between Oakland and the Agency's patrons, this witness said, will mean that there will be less damage to shipments, and, therefore, a reduction in claims expense.

In its economic aspects, the superintendent testified, the proposed consolidation will result in substantial net savings in operating costs. It is anticipated that centralization of operations at Oakland will increase the Agency's expenses at that point and that other increased costs will result from the extension of service in the outside territory. These added expenses, however, are expected to be far less than those which will be eliminated by office consolidation and by improved methods of handling and service. According to an exhibit of record, the estimated net saving in operating costs will amount to \$32,000 per year. Additionally, the Agency anticipates that the speeding up of the service and the

increased operating efficiency will, in the course of time, result in an increase of express traffic from and to the East Bay area, and consequently in greater revenues.

The principal disadvantage to patrons, inherent in the proposed closing of 13 of the Agency's offices, relates to service to those patrons who are located outside the present or proposed collection and delivery limits. At the present time a patron whose premises are outside the present or proposed collection and delivery limits of Livermore, for example, but near that community, can tender, or take delivery of, express shipments at the Agency's local office. In the event of the closing of the Livermore office such patron would be required to go to Oakland, a distance of some 30 miles, to forward or take delivery of shipments via Railway Express Agency. Also, with respect to inbound shipments a related disadvantage exists. Often applicant is unable to deliver a shipment to a consignee located within its delivery limits because he is away from home. It may be necessary then for the consignee to go to the Agency's office to take delivery.<sup>13/</sup> Today, he may go to the local express office in his community. Under the consolidation plan he would go to the Oakland office for the shipment.

The representative of the Commission's staff suggested that, in view of the above-mentioned inconveniences inherent in the consolidation plan, the Commission consider requiring the continuance of agency offices at Hayward, Walnut Creek and Richmond, as delivering stations only, in order to avoid the necessity for persons located outside collection and delivery limits to come the entire distance to Oakland to pick up shipments consigned to them. According to applicant's witnesses the amount of traffic received from

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<sup>13/</sup> Applicant's tariffs provide for second or successive delivery attempts on the payment of additional charges.

patrons outside collection and delivery limits is small. It is the carrier's position that a material reduction in the number of its smaller offices is an essential part of its program to save the company, and that, as a result, it may be necessary to forego the business of some patrons located outside said limits. According to the record, operations of the three above-mentioned offices now costs \$79,000 per year. Applicant argues that there is no evidence to the effect that these offices could be operated at lower cost as on-hand stations only. It is not proposed to retain the three offices in question.

#### Rates

Because of the plan to make Oakland the express waybilling point for the communities involved in the proposed office closings, Oakland rates would apply in lieu of the rates presently applicable to and from those communities. This change would result in both increases and reductions. According to the record, both increases and decreases on surface express traffic would be minor, except that there would be quite substantial decreases in so-called "commodity" rates between said communities and Los Angeles.<sup>14/</sup> Air express charges would not be affected for any communities now served from the Oakland, Berkeley, Richmond and San Leandro offices. The communities now served by the other East Bay offices, however, would experience a reduction in air express charges of at least \$2.01 per shipment. The reason for this reduction is that, at present, the offices in question are not located within the Oakland Air Terminal area and are, therefore, subject to an additional ground service charge. Under the proposal herein, the affected communities will be included within said area, thus eliminating the additional charge.

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<sup>14/</sup> On a movement between Los Angeles and Pleasanton, for example, the commodity rate for a 100-pound shipment will be \$4.08 in lieu of the present rate of \$5.73.

### Effect on Employees

Applicant's offices at Lafayette, Orinda, Pleasanton and St. Mary's College are manned by so-called merchant commission agents and are set up in the establishments of those merchants. The handling of the express business by the merchant agents is incidental to the principal occupations of the latter. The offices at Alvarado, Newark and Niles are manned by so-called joint commission agents who are employed by Southern Pacific Company as its local agents and who handle the express business as a part of their duties. At the rest of applicant's offices proposed herein to be cancelled full time employees of the Agency are maintained. At Berkeley, Livermore and Walnut Creek there are one each, at Richmond there are six, at San Leandro three and at Hayward two. Additionally, Richmond and Hayward each have a part-time worker. The Agency's force at Oakland consists of 60 full-time, and 18 part-time employees.

According to the testimony of the superintendent, no full-time employees of applicant will be thrown out of work by reason of the sought office closings. The three supervisory positions at Richmond, San Leandro and Hayward, he indicated, would be placed in supervisory positions elsewhere. Those employees whose positions are subject to union agreement will be transferred to Oakland, at higher rates of pay than they now receive.

### Highway Common Carrier Certificate Proposal

As hereinbefore stated, applicant proposes to conduct the proposed collection and delivery service in its own trucks. Assertedly, this is necessary for full realization of the operating economies and features of service improvement anticipated under the consolidation plan. As previously mentioned, the Agency now operates

its own trucks between Oakland, San Leandro and Hayward under a highway common carrier certificate limited in scope to those points. It also possesses radial highway common carrier and city carrier permits.

As a part of this application, the Agency seeks a highway common carrier certificate for the transportation of property between all of the East Bay points involved in the consolidation plan. The carrier proposes to operate on an unscheduled basis over any and all convenient public streets and highways between said points, but will pick up and deliver shipments only within the defined limits as established from time to time in its published and filed tariffs. Applicant proposes to transport all types of property, subject to the usual exceptions,<sup>15/</sup> and to excepted commodities as provided in its tariffs.

According to the record, little, if any, of the express traffic involved in this proceeding moves locally between East Bay points. In order to take care of such local shipments as may be offered, however, applicant proposes no restriction in the sought certificate which would limit the authority thereof to transportation of shipments having a prior or subsequent movement beyond the East Bay area.

As to public convenience and necessity, the record shows that the volume of traffic now moving from and to the points in question is substantial and that the purpose of the sought certificate is to improve applicant's existing service as an express corporation. Testimony of the seven shipper witnesses was offered to show the need for the certificate, as well as to support the consolidation plan as a whole.

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<sup>15/</sup> These excepted commodities are specified in the amendment to the application herein.



These witnesses severally represented manufacturers of electrical equipment, upholstered furniture, industrial fibreglass, and scientific instruments, and household goods packing, frozen shrimp processing, and rose growing companies. The seven establishments are located at San Lorenzo, Fremont, Livermore, Walnut Creek, Richmond, Hayward and Pleasanton, respectively. Two of the concerns are now located within the Agency's collection and delivery limits. All are regular patrons of the Agency; for all its services are essential, primarily because of the fast service which their businesses require; all would benefit by more expeditious service; applicant's value to those concerns which do not now enjoy store-door collection and delivery of express shipments will be enhanced if such service is accorded them; all will still need the Agency's services if the consolidation plan is placed in effect. The foregoing summarizes the testimony of the shipper witnesses.

#### Position of Protestants

Protestant United Parcel Service has no objection to applicant's plan to carry out the proposed consolidation and to continue to render service as an express carrier to and from the communities involved by means of a substituted motor truck service. United objects strenuously, however, to issuance of authority, in the absence of demonstrated public need therefor, which would allow the Agency to provide unrestricted local service as a highway common carrier between points in the East Bay area. United urges that any certificate granted to applicant be limited to the transportation of express traffic of the latter under a through bill of lading or express receipt, said traffic to receive, in addition to the highway carrier movement in question, an immediately prior or subsequent movement by rail, water, air or line-haul truck transportation.

Such a restriction, United points out, has been incorporated in certificates issued to the Agency in other proceedings, both by this Commission and by the Interstate Commerce Commission. United, in its brief, asserts that the Agency is not competitive with general freight highway carriers or with parcel delivery carriers, such as United, but that, by a simple change in rate structure, the Agency could become competitive with either or both forms of transportation. Assertedly, the East Bay area is adequately served by general freight and parcel delivery carriers.

Counsel for protestant Richmond City Council presented a resolution which that body had adopted protesting the proposed closing of applicant's Richmond office. The Council is of the opinion that the continuing growth of the retail, manufacturing and residential areas of Richmond require the maintenance there of applicant's office, vehicles and personnel. The Council's representative questioned the Agency's superintendent regarding its failure to include three new residential sections of Richmond within the service limits of that city.

The position of the express employees' organization, protestant, is that it is sympathetic with the problems of applicant but does not concede the propriety of the proposed solution. The brotherhood is of the opinion that the estimated net savings from the proposed office closings will not be realized. Counsel for this organization requested that, in the event that the application is granted, the authorization be so conditioned as to protect the interests of employees who will be adversely affected by the consolidation plan. Specifically, he proposed that the authorization be

made subject to applicant's observance of the so-called "Burlington" conditions.<sup>16/</sup>

#### Conclusions

Railway Express Agency, Inc., and its predecessor companies, the record demonstrates, have performed a unique, essential and impressive function in the transportation history of our country. As pointed out by the Agency's president, the express business is primarily the fast transportation of valuables and package traffic. The variety of services which the Agency, as an express company, offers includes such things as recording a deed, shipping the family dog, carrying jewelry or furs under hand-to-hand service, forwarding highly perishable traffic such as cut flowers, transporting a corpse, or providing armed guard service.

Since World War II the nationwide volume of traffic handled by the Agency has rapidly declined from 235,000,000 shipments in 1940 to 73,000,000 shipments in 1958.<sup>17/</sup> The same downward trend has been observed in its California intrastate traffic. The record indicates that an important cause of the downward trend in volume of the Agency's surface traffic is the fact that its methods of operation and handling have not kept abreast of technical developments in transportation. Moreover, the increasing withdrawal of passenger

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<sup>16/</sup> Counsel cited the Interstate Commerce Commission's decision dated March 22, 1945, in Finance Docket No. 14400, Burlington-Rock Island Railroad Company Lease (261 ICC 815) as containing the employee protective conditions in question.

<sup>17/</sup> During this same period, however, applicant's domestic air express traffic increased from 3,000,000 to 5,500,000 shipments. A similar trend was experienced in its California air express traffic.

trains, on which express matter is customarily transported, has slowed down the Agency's service, with resultant loss of traffic to more expeditious means of transportation.

The record shows, additionally, that the handling and transportation of the Agency's traffic has in recent years resulted increasingly in financial losses, as far as the contracting railroads are concerned, and that the Agency has come to a crucial point in its history. Its existence as an essential transportation agency is clearly in danger. That this fact is realized by the carrier is evident from the vigorous steps which its management has already taken, and those which it is contemplating, to save the company.<sup>18/</sup>

The Agency's plan of closing numerous small offices throughout the country, and of centralizing operations at key points, is a reasonable step in the modernization of its services and in reduction of operating expenses. The record shows that most of these small stations were established in an era when railroads were the only practicable means of distance transportation and every town had an express office. With the advent of the motor vehicle and good roads many of the small express offices have become unnecessary.

With reference to the particular program embraced by the application herein, the record shows that the proposed plan of operation would enhance the value of applicant's service to its East Bay patrons by reduction in transit time and in the number of package handlings; by the establishment of collection and delivery service where none is now provided and by extension of existing limits in other areas; and by the indicated rate reductions. The record is persuasive, moreover, that the proposed consolidation of offices will result in substantial net savings in operating costs.

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<sup>18/</sup> As a result of the reduction in operating expenses already effected by the Agency, the out-of-pocket deficit of the nation's railroads from handling the express traffic was reduced from \$40,000,000 in 1958 to \$18,500,000 (estimated) in 1959.

That some patrons will be inconvenienced by the closing of the 13 offices is apparent. These are the persons or businesses in the East Bay area who are located outside the proposed collection and delivery limits and for whom it is less convenient to go to the Agency's Oakland terminal than to one of said offices. In this category also are included those patrons who may find it necessary to take delivery of shipments at the Oakland terminal because of unsuccessful attempts of applicant's drivers to deliver same at the patrons' homes. However, the evidence indicates that the number of persons who will be inconvenienced by the consolidation plan is small.

It is clear from the record that an indispensable factor in the execution of the centralization proposal is the sought highway common carrier certificate. In the absence of that operative right, such arrangements for local transportation, including collection and delivery, as the Agency would be compelled to make, would be too costly and would not accord patrons the full benefit of the improved service herein proposed.

With reference to the requested imposition of employees' protective requirements on any authorization to be granted hereunder, the record indicates that all full-time employees of the Agency affected by the proposed station changes will be kept on the payroll and will be transferred to other locations. There appears to be no necessity to accede to this request.

Based upon careful consideration of all the evidence and argument of record, we are of the opinion and hereby find as follows:

1. That consolidation in the Oakland office of applicant of the service now rendered through the 13 offices herein proposed to be closed will not be adverse to the public interest.

2. That, concurrently with consolidation in applicant's Oakland office of said service, public convenience and necessity will no longer require applicant to maintain any of said 13 offices. In this connection, it does not appear from the record that applicant should be required, as suggested by the staff, to retain the offices at Hayward, Walnut Creek and Richmond as on-hand offices for inbound shipments.

3. That extension of the pickup and delivery limits as proposed in the application, as amended, is in the public interest and should be concurrently placed in effect together with consolidation of the 13 offices.

4. That the increases in rates and charges as proposed in the application, as amended, are justified.

5. That public convenience and necessity require the issuance to applicant of a certificate as a highway common carrier between all points set forth in numbered paragraph 6 of the amendment to said application, subject to the conditions stated in numbered paragraphs 7 and 8 of said amendment and subject further to the condition hereinbelow set forth.

6. That said certificate of public convenience and necessity shall be subject to the condition, as more specifically proposed in brief of United Parcel Service, limiting transportation thereunder to movements under a through bill of lading and having a prior or subsequent rail, water, air or truck haul.

7. That, concurrently with the effective date of said certificate, the highway common carrier certificate granted to applicant by Decision No. 39874, dated January 21, 1947, in Application No. 28122, should be revoked.

Subject to the condition set forth in numbered paragraph 5 above, the application, as amended, will be granted.

Applicant is hereby placed on 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, such rights extend to the holder a full or partial monopoly of a class of business over a particular route. This monopoly feature may be modified or canceled at any time by the State, which is not in any respect limited as to the number of rights which may be given.

O R D E R

Based upon the evidence of record and the findings and conclusions set forth in the preceding opinion,

IT IS ORDERED that:

1. Railway Express Agency, Incorporated, is authorized, concurrently with the consolidation of service in its Oakland office, as proposed in the application, as amended, filed herein, to discontinue its offices at Alvarado (within Union City), Berkeley, Hayward, Lafayette, Livermore, Newark, Niles (within City of Fremont), Orinda, Pleasanton, Richmond, St. Mary's College, San Leandro and Walnut Creek, subject to the following conditions:

- (a) Within ninety days after the effective date hereof and on not less than ten days prior to the discontinuance of said agencies, applicant shall post a notice of such discontinuance at each of said offices, and, within ninety days after the effective date hereof and on not less than ten days notice to the Commission and to the public, applicant shall file in duplicate amendments to its tariffs showing the changes authorized herein and shall make reference in such notice and tariffs to this decision as authority for the changes. In no

event shall the agents be removed pursuant to the authority hereinabove granted earlier than the effective date of the tariff filings required hereunder.

- (b) Within thirty days after discontinuance of service as herein authorized, applicant shall notify this Commission in writing thereof and of compliance with the above conditions. Concurrently with discontinuance of said offices, applicant shall establish service to the extended pickup and delivery limits described in the application, as amended.

2. A certificate of public convenience and necessity is granted to Railway Express Agency, Incorporated, authorizing it to operate as a highway common carrier as defined by Section 213 of the Public Utilities Code for the transportation of property between the points, over the routes and subject to the conditions particularly set forth in Appendix A, attached hereto and made a part hereof.

3. In providing service pursuant to the certificate herein granted, applicant shall comply with and observe the following service regulations:

- (a) Within thirty days after the effective date hereof, applicant shall file a written acceptance of the certificate herein granted. By accepting the certificate of public convenience and necessity herein granted, applicant is placed on notice that it will be required, among other things, to file annual reports of its operations and to comply with and observe the safety rules and other regulations of the Commission's General Order No. 99 and insurance requirements of the Commission's General Order No. 100-A. Failure to file such reports, in such form and at such time as the Commission may direct, or to comply with and observe the provisions of General Orders Nos. 99 and 100-A, may result in a cancellation of the operating authority granted by this decision.
- (b) Within ninety days after the effective date hereof, and on not less than ten days' notice to the Commission and to the public, applicant shall establish the service herein authorized and file in triplicate, and concurrently make effective, tariffs satisfactory to the Commission.



4. The highway common carrier certificate granted to Railway Express Agency, Incorporated, by Decision No. 39874, dated January 21, 1947, in Application No. 28122 is revoked.

5. Applicant is authorized to establish, on not less than thirty days' notice to the Commission and to the public, and concurrently with the closing of offices and the institution of highway common carrier service, as authorized in paragraphs 1 and 2 hereof, the increased rates and charges proposed in the application, as amended, filed in this proceeding.

6. In all other respects Application No. 41694 is denied.

The effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco, California, this 12th day of April, 1960.

Grant W. Rye  
President  
J. E. McMillan  
E. L. Fox  
Theodore Jenner  
Commissioners  
James H. [unclear]  
Matthew [unclear]

## Appendix A RAILWAY EXPRESS AGENCY, INCORPORATED Original Page 1

Railway Express Agency, Incorporated, by the certificate of public convenience and necessity granted in the decision noted in the margin, is authorized to transport all commodities except the following:

1. Used household goods and personal effects not packed in accordance with the crated property requirements set forth in paragraph (d) of Item No. 10-C of Minimum Rate Tariff No. 4-A.
2. Automobiles, trucks and buses, viz.: new and used finished or unfinished passenger automobiles (including jeeps), ambulances, hearses and taxis; freight automobiles, automobile chassis, trucks, truck chassis, truck trailers, trucks and trailers combined, buses and bus chassis.
3. Commodities requiring the use of special refrigeration or temperature control in specially designed and constructed refrigerator equipment.
4. Liquids, compressed gases, commodities in semi-plastic form and commodities in suspension in liquids in bulk, in tank trucks, tank trailers, tank semitrailers or a combination of such highway vehicles.
5. Commodities when transported in bulk in dump trucks or in hopper-type trucks.
6. Commodities when transported in motor vehicles equipped for mechanical mixing in transit.
7. Excepted commodities as enumerated in Railway Express Agency, Incorporated's tariffs filed with this Commission and in effect on the effective date of Decision No. 59927, in Application No. 41694.

Issued by California Public Utilities Commission.

Decision No. 59927, Application No. 41694.

Appendix A RAILWAY EXPRESS AGENCY, INCORPORATED Original Page 2

BETWEEN the following points:

Oakland, Berkeley, El Cerrito, Fremont, Hayward, Lafayette, Livermore, Newark, Orinda, Pleasanton, Richmond, St. Mary's College, San Leandro, San Lorenzo, San Pablo, Union City and Walnut Creek.

VIA any and all convenient public streets and highways between said points.

SUBJECT to the following condition:

The highway common carrier service herein authorized shall be limited to the transportation of express traffic of Railway Express Agency, Incorporated, under a through bill of lading or express receipt, and said traffic shall receive in addition to the highway carrier movement by applicant herein authorized, an immediately prior or immediately subsequent movement by rail, water, air or truck transportation.

End of Appendix A

Issued by California Public Utilities Commission.

Decision No. 59927, Application No. 41694.