

ORIGINALDecision No. 60736

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 collec-
 tion and delivery of express ship-
 ments by motor trucks operated between
 San Bernardino and termini within the
 radius of not exceeding 30 miles
 distant therefrom; (b) to close its
 offices now serving said termini; and
 (c) to change the waybilling of ship-
 ments from said offices to the San
 Bernardino office thereby increasing
 certain intrastate charges.

Application No. 42177

Newlin, Tackabury & Johnston, by George W. Tackabury
 and Hudson B. Cox, for applicant.
Roger L. Ramsay, for United Parcel Service,
 protestant.
Ganahl, Ganahl and Seidler, by John T. Ganahl and
Arthur R. Seidler, for the City of Corona and
 for Corona Chamber of Commerce; Bill M.
Thornton, for Lily Tulip Cup Corp.; Vernon L.
Gough and E. A. McMillan, for Brotherhood of
 Railway Clerks; interested parties.
Lloyd C. Young, for the Commission's staff.

O P I N I O N

Railway Express Agency proposes, in order to improve efficiency and to reduce operating costs, to close six agency offices in the area roughly bounded by Rialto, Mira Loma, Corona, March Air Force Base, Redlands and San Bernardino, and to consolidate express operations in that area by providing collection and delivery service by motor trucks directly between its San Bernardino office and 18 other communities in the said area. The Agency also proposes to make San Bernardino the waybilling point for all shipments forwarded from or delivered to, the communities in question.

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

1. To close the express offices now maintained at Corona, Mira Loma, Redlands, Bryn Mawr, Riverside and Arlington (a district of Riverside).

2. To establish increased rates and charges to the extent that such will result from the proposed transfer of waybilling of shipments from the above-mentioned six offices to San Bernardino.

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 San Bernardino, Colton, Rialto, Redlands, Bryn Mawr, Loma Linda, La Sierra, Sierra Heights, Arlington, Riverside, Highgrove, Country Club Estates, Home Gardens, Rubidoux, March Air Force Base, Corona, Norco, Mira Loma, and Glen Avon. 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 San Bernardino and San Bernardino Air Depot.¹

Public hearing of the application was held before Examiner Carter R. Bishop at Riverside on June 22 and 23, 1960. With the filing of concurrent briefs, the matter was taken under submission on July 13, 1960.

Evidence was adduced on behalf of applicant by its regional vice president, the superintendent of its Southern California-Arizona-New Mexico Division and by nine shipper witnesses. No evidence was offered by other parties to the proceeding. The granting of the application was opposed conditionally by United Parcel Service. Counsel for that organization, representatives of the Brotherhood of Railway Clerks and an associate transportation engineer from the Commission's staff participated in the development of the record through examination of applicant's witnesses.

¹The certificate in question was granted by Decision No. 36975, dated April 4, 1944, in Application No. 25876.

The history of the Agency and its predecessor companies, the nature of its services, its methods of operation, and its contractual relationships with the railroads (its principal underlying carriers) have been set forth in some detail in Decision No. 59927, dated April 12, 1960.² In that decision are also described the financial difficulties in which the Agency finds itself, and the program which it has initiated in an attempt to place its operations on an economically sound basis and to assure its continued existence as an essential transportation agency.

The consolidation plan embraced by the proceeding herein, the record shows, is one of a series which the Agency has instituted on a nation-wide scale as a part of the aforementioned program of modernization. At the present time, applicant provides collection and delivery service in eleven of the nineteen communities mentioned in numbered paragraph 3 above. It is proposed to provide such service in the other eight named communities and to extend the existing collection and delivery limits of Riverside, Rubidoux, La Sierra and Norco to meet the commercial expansion of those areas.³ Patrons located in those communities where no collection and delivery service is provided are presently required to forward or take delivery of express shipments at the nearest agency office. The proposed establishment of new collection and delivery zones and extensions of

² In Application No. 41694. The decision in question relates to a similar consolidation plan of the Agency for operations in Oakland and vicinity.

³ Collection and delivery service is now provided at San Bernardino, Rialto, Colton, Redlands, La Sierra, Riverside, Arlington (a section of Riverside), Rubidoux, March Air Force Base, Corona and Norco. Such service is not now provided at Bryn Mawr, Loma Linda, Sierra Heights, Highgrove, Country Club Estates, Home Gardens, Mira Loma and Glen Avon.

existing zones will bring the Agency's service to said patrons' premises.⁴

Express shipments, the record shows, originally moved by passenger trains from and to the six Agency offices herein proposed to be closed. At the present time, however, the bulk of this traffic moves from and to those offices in highway vehicles of Santa Fe Transportation Company or of Pacific Motor Trucking Company as underlying carriers. There is a small movement, in some instances, via rail express car, and there is some air express service, which would continue to operate through San Bernardino, Riverside and Corona, in connection with the Agency's proposed highway operations.

According to the record, the proposed highway operation will greatly expedite the handling of express shipments from and to points in the consolidation area, and at the same time will provide the Agency's patrons with a much more flexible service, including later pickups, than is possible under the present arrangements with underlying carriers. Among the advantages, also, will be service on Saturdays, Sundays and holidays on air express shipments, when requested, and on rail express shipments of perishable commodities and live animals.

An essential part of the consolidation plan is the provision of toll-free telephone service to applicant's San Bernardino office for customers located inside the consolidation area but outside the local San Bernardino telephone calling area. This arrangement will enable patrons affected by the proposals herein to request pickup service and transact other business without having to pay a toll charge.

⁴ Under the consolidation plan involved herein, patrons located outside the proposed collection and delivery limits would be required to go to San Bernardino in order to utilize the Agency's services. However, the record indicates that the number of patrons who fall in this category is small. Those for whom the San Bernardino office is not convenient will presumably utilize parcel post.

The proposal to make San Bernardino the waybilling point for all shipments originating or terminating in the area, the record shows, will result in some minor increases and decreases in rail express charges. In most instances, there will be no change in rates. With respect to air express shipments, all patrons located outside the present air express collection and delivery limits will enjoy a reduction in charges of not less than \$2.36 per shipment, through the elimination of the present surface transportation charge. This charge now applies at all points involved herein except San Bernardino, Riverside and Corona.

Of the six offices sought to be closed Riverside and Redlands are manned by full-time salaried Agency employees. Arlington,⁵ Mira Loma and Corona have so-called joint commission agents, while the Bryn Mawr office is a merchant commission agency. The Riverside and Redlands employees, applicant's superintendent testified, will be transferred to other similar positions at San Bernardino or elsewhere. The joint commission agents are rail employees who perform Railway Express Agency duties at their respective stations on a commission basis. They will continue to serve in their capacities as rail employees. The merchant commission agent at Bryn Mawr is primarily engaged in the grocery business and performs Agency duties on a commission basis. According to the record, if the proposed consolidation plan is authorized no employee will lose his position as a result thereof.

Assertedly, the Agency has a sufficient number of vehicles assigned to the area to perform the proposed service.

According to exhibits of record, applicant estimates that the proposed consolidation plan will result in annual net savings in operating costs of \$12,200. This figure does not include certain anticipated savings, the amount of which, in dollars, could not be

⁵ Arlington is a branch office of the Riverside agency, for the receipt of outbound shipments only.

estimated. Among these items were the reduction in administrative, supervisory, auditing and security expenses which will result from the centralization of the Agency's activities in a single terminal, instead of seven separate offices, as at present.

The volume of Agency traffic now moving from and to points in the area in question is substantial. The testimony of the nine shipper witnesses was offered to show the continuing need for the transportation service here in issue, as proposed to be performed under the sought highway common carrier certificate. These witnesses severally represented various manufacturers and retail establishments and a combined hospital and medical college located in the consolidation area. The testimony of these witnesses was substantially as follows: all are regular patrons of the Agency; for each concern these services are essential, notably because of the fast service which their activities require; all would benefit by the more expeditious service contemplated under the Agency's proposed plan of operation; applicant's value to those concerns which do not now enjoy store door and collection service of express shipments will be enhanced if such service is accorded them; all will continue to need the Agency's services if the consolidation plan is placed in effect.

United Parcel Service does not oppose applicant's plan to consolidate area operations in San Bernardino nor to the granting of the sought highway common carrier certificate, provided that such certificate is restricted to traffic which shall move under a through bill of lading or express receipt, and which shall 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. United strongly objected to the issuance of a certificate devoid of such a restriction. According to that carrier's argument, the evidence of record was insufficient to justify the

issuance of a certificate which would permit the agency to transport by highway vehicle express shipments moving locally within the consolidation area. United pointed out that only two of the public witnesses indicated a local movement within the area, and these movements were only occasional. United further argued that, while applicant is not now competitive with parcel delivery carriers or general freight highway carriers, it could, under an unrestricted certificate, join an agency truck tariff and establish a full-scale truck operation.

Applicant seeks a certificate without restrictions. The superintendent testified that while the local traffic is very light, the Agency proposes to continue the local service even though it is used only occasionally.

Representatives of the express clerks' organization were in favor of the application herein being granted, provided that no Agency employee in the area would be adversely affected thereby. One spokesman asked that observance of the so-called "Burlington" conditions⁶ be required of the Agency if the application is granted.

Conclusions

The evidence of record shows that adoption of the proposed consolidation plan as hereinbefore set forth will result in the following principal advantages: (1) the Agency will be in a position to furnish service to the public more efficiently and more expeditiously than under the present methods of operation; (2) collection and delivery service will be extended to areas not now served; (3) the elimination of multiple handlings will result in faster service and in fewer loss or damage claims; (4) certain existing restrictions and limitations of the service will be removed; (5) charges on all air express shipments from and to most of the points in the area will be reduced by not less than \$2.36 per

⁶ Interstate Commerce Commission decision dated March 22, 1945, in Finance Docket No. 14400 (261 ICC 815).

shipment; and (6) the proposed consolidation of offices will result in substantial savings in operating costs.

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 San Bernardino office of applicant of the service now rendered through the six offices herein proposed to be closed will not be adverse to the public interest.

2. That, concurrently with consolidation in applicant's San Bernardino office of said service, public convenience and necessity will no longer require applicant to maintain any of said six offices.

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

4. That the increases in rates and charges as proposed in said application 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 said application, subject to the conditions stated in numbered paragraphs 7 and 8 thereof and subject further to the condition hereinbelow set forth.

6. That said certificate of public convenience and necessity shall be subject to the condition that transportation thereunder shall be limited 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. 36975, dated April 4, 1944, in Application No. 25876, will be revoked.

Subject to the condition set forth in numbered paragraph 6 above, the application 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 San Bernardino office, as proposed in the application filed herein, to discontinue its offices at Arlington, Bryn Mawr, Corona, Mira Loma, Redlands and Riverside, 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 triplicate 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.

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 certificate of public convenience and necessity granted in paragraph 2 of this order is in lieu of and supersedes

the certificate of public convenience and necessity granted by Decision No. 36975, which certificate is hereby canceled and revoked, said revocation to become effective concurrently with the effective date of the tariff filings required by paragraph 3(b) hereof.

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 filed in this proceeding.

6. In all other respects Application No. 42177 is denied. The effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco, California, this 13th day of September, 1960.

[Signature]
President
[Signature]
[Signature]

Commissioners

Matthew J. Dooley,
Commissioner Theodore H. Jenner, being
necessarily absent, did not participate
in the disposition of this proceeding.

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 refrigerated 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. 60735, in Application No. 42177.

Issued by California Public Utilities Commission.

Decision No. 60735, Application No. 42177.

BETWEEN the following points:

San Bernardino, Colton, Rialto, Redlands, Bryn Mawr, Loma Linda, La Sierra, Sierra Heights, Arlington, Riverside, Highgrove, Country Club Estates, Home Gardens, Rubidoux, March Air Force Base, Corona, Norco, Mira Loma and Glen Avon.

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. 60735, Application No. 42177.