

ORIGINALDecision No. 71290

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of RAILWAY EXPRESS AGENCY, INCORPORATED, for a highway common carrier certificate of public convenience and necessity authorizing pickup and delivery of express shipments by motor truck within portions of Santa Fe Springs and adjacent unincorporated territory as described in application.

Application No. 47925

James C. Ingwersen, for applicant.

Arthur H. Glanz, for Alco Transportation Company, Boulevard Transportation Company, California Cartage Company, California Motor Transport Co., Delta Lines, Inc., Desert Express, Di Salvo Trucking Company, Oregon-Nevada-California Fast Freight, Pacific Intermountain Express Co., Pacific Motor Trucking Company, Ringsby-Pacific, Ltd., Shippers Express Company, Southern California Freight Lines, Inc., Sterling Transit Co., Inc., T.I.M.E. Freight, Inc., Walkup's Merchants Express and Willig Freight Lines, protestants.

Lester D. Hinkley, for Xerox Corporation, interested party.Joseph Braman, for the Commission staff.O P I N I O N

Railway Express Agency, Incorporated (Agency) serves the City of Whittier as an express corporation, performing collection and delivery service within the corporate limits by means of its own trucks operating from its office facilities there. It proposes to enlarge its Whittier collection and delivery area to include therein portions of the City of Santa Fe Springs and certain unincorporated territory adjacent thereto. In order to accomplish this purpose, Agency seeks, by this application, as amended, a certificate of public convenience and necessity to operate as a highway common carrier between all points, exclusive of intracity movements, within the proposed enlarged collection and delivery area.¹

¹ The proposed collection and delivery area is defined by metes and bounds in Exhibit A, and is delineated on a map comprising Exhibit B, of the application.

Public hearing was held at Santa Fe Springs before Examiner Rogers on January 4 and before Examiner Bishop on January 5, 1966, and at Los Angeles before the latter examiner on March 22, and 23, 1966.

Evidence on behalf of applicant was adduced through the division operations manager of its Pacific Southern Division, and through seven shipper witnesses. The manager's testimony disclosed the following facts: For many years applicant maintained an office in Santa Fe Springs at the station of The Atchison, Topeka and Santa Fe Railway Company (Santa Fe). This office was a so-called joint commission office where the railroad agent handled the express business in connection with his other duties. No collection or delivery service was provided by applicant; the office afforded only over-the-counter service.

On September 20, 1963, Santa Fe requested immediate discontinuance of the joint arrangement. Assertedly, applicant was unable to secure a suitable representative in Santa Fe Springs to replace the Santa Fe joint agency and was of the opinion that its Santa Fe Springs traffic could be handled through its Whittier office without too much inconvenience. Accordingly, the Agency's Santa Fe Springs office was posted for closing, effective October 23, 1963, under this Commission's General Order 36-B. There were no protests, and since that date all express business for Santa Fe Springs has been transacted at the Whittier office.

From time to time, the record shows, complaints have been received by applicant from commercial and industrial concerns in Santa Fe Springs about the inconvenience experienced in having to go to the carrier's Whittier office to tender or receive express shipments. ² These parties, the witness testified, urged applicant

² The distances to the Agency's Whittier office are approximately 6 miles from downtown Santa Fe Springs and 8-1/2 miles from the most southerly point in the proposed service area.

to provide the same service that its Whittier patrons enjoy. On investigation it was found that a substantial amount of traffic handled through the Whittier office was Santa Fe Springs business. An exhibit shows that in July 1965 a total of 371 surface shipments consigned from or to patrons in Santa Fe Springs were handled through the Whittier office. Of these shipments 46 were in intrastate commerce, the balance having moved from or to out-of-state points.^{3/} Applicant concluded that the increasing amount of business for Santa Fe Springs was creating a great public inconvenience, both because of the necessity of going to the Whittier office and because traffic consigned to patrons in Santa Fe Springs had to be kept at the Whittier office until picked up. This procedure involves delays of 24 hours or longer.

Effective August 27, 1965, applicant established collection and delivery service in Santa Fe Springs on interstate traffic only, with trucks operating out of the Whittier terminal.⁴ This service included also the unincorporated area embraced by the present application. Thereafter the Agency filed the application herein for intrastate traffic.⁵

Applicant staffs its Whittier office with four salaried employees. It provides collection and delivery service in Whittier on all traffic and, as above described, outside that city on interstate traffic, with three panel trucks. One of these trucks covers Santa Fe Springs and the unincorporated area in the collection and delivery of interstate shipments. This truck, the manager testified, will also serve the sought territory for intrastate shipments, if the application herein is granted.

3 The corresponding figures for the month of November 1965 are 569 and 58 shipments, respectively. Interstate shipments increased from 325 in July to 511 in November.

4 It appears that this service was instituted on the basis of the exemptions provided in Section 202(c)2 or Section 203(b)8, or both, of the Interstate Commerce Act.

5 The area proposed, in this proceeding, to be served for intrastate traffic includes also an area within the southerly portion of the corporate limits of Santa Fe Springs which is not now included in applicant's published collection and delivery limits for interstate traffic.

Service would be provided Monday through Friday, according to the needs of the shipping public, and applicant proposes to use any and all convenient public streets and highways.

It is proposed to transport general commodities, subject to the usual exceptions. Normal express traffic, the manager stated, includes perishables, drugs and medicine, cut flowers, films, legal papers, jewelry, articles of unusual value, live animals, raw hides, baby chicks, commodities contaminating or injurious to other lading, radioactive materials, and human remains, among others. It is also characterized, he stated, by shipments requiring great dispatch or unusual care in handling. He also enumerated various specialized services rendered by his company, including armed guard service, the making of bank deposits, and the recording and filing of legal documents.

The rates proposed to be applied from and to the sought area are those which are applicable on shipments from and to the Whittier office. Whittier will be the waybilling point of said area.

The manager further testified that the Agency is willing to have the sought certificate made subject to a condition that transportation thereunder shall be limited to express traffic of applicant, moving under a through bill of lading or express receipt and having either a prior or subsequent movement by rail, water, air or line-haul truck transportation. In this connection the record shows that immediate line-haul movements of applicant's traffic to and from Whittier are via Pacific Motor Trucking Company or Los Angeles Airways, as underlying carrier.

In the event the application is denied, the manager stated, the Agency will not attempt to serve the sought area through some other presently authorized carrier. Such an arrangement, he said,

would be too expensive; other carriers give priority to their own traffic; general commodity haulers do not accord shipments the high degree of care in handling required by much of applicant's traffic; also applicant's drivers are necessarily trained to perform specialized services, such as making deposits and collections and recording or filing legal documents.

Seven shipper witnesses testified in support of the application. They are owners or officers of commercial or manufacturing concerns located in Santa Fe Springs. All of these concerns, the record shows, use the services of applicant in varying degrees. While the larger portion of this traffic is interstate, the bulk of the express shipments of one of the witnesses is intrastate in character. The weights of the shipments are generally not more than 250 pounds, although occasionally greater weights are involved, even up to 7,000 pounds.

Most of the express traffic of these companies is inbound. Because of the delivery service provided by parcel post, the services of that agency are used on the smaller packages, but the shipper witnesses indicated strong dissatisfaction with parcel post because of delays in transit and the high percentage of damage claims. They testified that if the application herein is granted they will divert a substantial portion of the parcel post traffic to applicant. They prefer the service of the latter carrier because of the greater speed, the careful handling, and the reliability which it offers. One of the companies in this group manufactures delicate measuring instruments. Its witness testified that an instrument weighing only 20 pounds may be valued at \$1500. The company has never had a damage claim with applicant.

All of these witnesses have found the necessity of tendering or receiving their intrastate express shipments at the Agency's Whittier office extremely inconvenient. They strongly urged that

the application be granted. The record shows, however, that these shippers utilize the services of the general freight haulers for the larger shipments and will continue to do so regardless of the outcome of this proceeding.

Granting of the sought certificate was opposed by 17 highway common carriers of general commodities. Evidence was offered on behalf of eight of these operators.⁶ According to the testimony of their witnesses, all of these companies (except Oregon-Nevada-California Fast Freight, as explained below) serve Santa Fe Springs and the adjacent county territory here in issue; said carriers now provide daily service from and to the Santa Fe Springs district, with regular pickup and delivery routes, and can furnish extra pickup service on short notice, when requested; said carriers provide, under their own certificates or by means of connecting carriers, service between the Santa Fe Springs district and points generally throughout the State, including the carriage of small shipments. The Los Angeles basin terminals of these carriers are located nearby or within a few miles of Santa Fe Springs.

Reasons given by the protesting carrier witnesses for opposing the granting of the sought certificate were: (1) There is already ample for-hire truck transportation available in Santa Fe Springs and vicinity. In fact there are too many carriers presently in the field. The addition of another carrier would dilute the available traffic and result in increased operating costs. (2) The sought authority would be unrestricted as to weight or commodity, in effect going beyond the traditional range of traditional express shipments and service. (3) Through its piecemeal acquisition of unrestricted operative rights, applicant may eventually hook up those rights,

⁶ They are: Alco Transportation Company, Boulevard Transportation Company, California Cartage Company, Pacific Intermountain Express Company, Ringsby-Pacific, Ltd., Shippers Express Company, Oregon-Nevada-California Fast Freight, and Southern California Freight Lines, Inc. The last two named companies have a unified operation; their respective California operative rights are in different areas of the State.

enabling it to convert to a full scale truck operation which will be fully competitive with protestants.

Counsel for protesting carriers argued, among other things, that if applicant had limited its request to what has traditionally been known as express traffic, such as the handling of small shipments, with a weight limitation of a few hundred pounds, articles of high value, and articles, such as live animals, not usually handled by general freight carriers, and to the performance of applicant's customary specialized services, protestants would have had no objection and would not have appeared in the proceeding.

He further expressed the concern of protestants that with the granting of an unrestricted certificate ⁷ applicant could, at any time, abandon the express service field and become a general highway common carrier of freight, in full competition with existing motor carriers. This concern, of course, contemplated the possible hooking up, by future certificates, of the scattered highway common carrier rights which applicant now possesses, to form a statewide and nationwide general freight carrier system.

A representative from the Rate Branch of the Commission's Transportation Division assisted in the development of the record.

Railway Express Agency, Incorporated operates a nationwide and international single line common carrier express system. It employs as underlying carriers railroads, airlines, highway motor carriers and steamship lines. It provides, in many cities and adjacent areas, collection and delivery service with its own trucks and drivers. To other places it simply provides over-the-counter service. For many years applicant maintained the latter type of office at Santa Fe Springs as a joint commission office with the Santa Fe Railway. In 1963 this arrangement was terminated, involuntarily on

⁷ It is the position of protestants that a condition to the effect that there must be a prior or subsequent haul by rail, water, air or line-haul truck transportation would not satisfy their objections to the application.

the part of applicant, and the latter was unable to find a suitable person in Santa Fe Springs to act as a merchant agent for it.

Since that time complaints have been received from the carrier's Santa Fe Springs patrons concerning the necessity of going to Whittier to tender or receive their express shipments. They have urged that applicant's collection and delivery service at Whittier be expanded to include Santa Fe Springs. This was done as to interstate traffic in August 1965 under provisions of the Interstate Commerce Act. The instant application was filed in order to provide like service as to intrastate shipments.

The record shows that there is a need for the service and that applicant is financially able, and has the necessary employees and equipment, to render such service.

The various objections to the sought certificate which protestants voiced are substantially the same as those which were made, with considerable emphasis, by the protestants in Application No. 46714. In that proceeding the present applicant sought, and was granted, a highway common carrier certificate to enable it to provide collection and delivery service at Thousand Oaks and intermediate points from its office at Camarillo.⁸ Those objections were carefully appraised and disposed of in Decision No. 69586, dated August 24, 1965, in said proceeding.⁹

⁸ Six of the eight protestant carriers in Application No. 46714 are also protestants in the instant proceeding.

⁹ See pages 9-13, inclusive, in the mimeographed decision. Rehearing of Decision No. 69586 was denied by Decision No. 69879, dated November 2, 1965.

We find:

1. Applicant possesses the experience, equipment, personnel and financial resources necessary to institute and maintain the transportation service herein authorized.

2. Establishment of collection and delivery service by applicant with its own vehicles and employees will enable applicant to meet most effectively its obligations to the public.

3. Public convenience and necessity require the issuance to applicant of a certificate of public convenience and necessity as a highway common carrier as sought in the application herein, as amended, subject to the conditions stated in paragraphs 3 and 4 of said application, as amended (relating to routes of travel and to commodity exclusions), subject also to the condition that said certificate shall not apply to the transportation of portland or similar cements by motor vehicle loaded substantially to capacity or to the transportation of excepted commodities as enumerated in applicant's tariffs filed with this Commission and in effect on the date of issuance of this decision, and subject to the further condition that transportation thereunder shall be limited to movements on a through bill of lading and having an immediately prior or immediately subsequent movement by rail, water, air or line-haul truck transportation.

We conclude that the application, as amended, should be granted to the extent indicated in the foregoing findings.

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

IT IS ORDERED that:

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

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. Applicant is placed on notice that, if it accepts the certificate of public convenience and necessity herein granted, it will be required, among other things, to comply with and observe the safety rules of the California Highway Patrol and the insurance requirements of the Commission's General Order No. 100-D. Failure to comply with and observe the safety rules, or the provisions of General Order No. 100-D, may result in a cancellation of the operating authority granted by this decision.
- b. Within one hundred twenty days after the effective date hereof, applicant shall establish the service herein authorized and file tariffs, in triplicate, in the Commission's office.
- c. The tariff filings shall be made effective not earlier than thirty days after the effective date of this order on not less than thirty days' notice to the Commission and the public, and the effective date of the tariff filings shall be concurrent with the establishment of the service herein authorized.

- d. The tariff filings made pursuant to this order shall comply with the regulations governing the construction and filing of tariffs set forth in the Commission's General Order No. 80-A.
- e. Applicant shall maintain its accounting records on a calendar year basis in conformance with the applicable Uniform System of Accounts or Chart of Accounts as prescribed or adopted by this Commission and shall file with the Commission, on or before March 31 of each year, an annual report of its operations in such form, content, and number of copies as the Commission, from time to time, shall prescribe.

In all other respects Application No. 47925, as amended, 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, 1966.

President
George E. Crover

Frederick B. Holoboff

William Van Buren

Angela
Commissioners

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

Appendix A RAILWAY EXPRESS AGENCY, INCORPORATED Original Page 1

Railway Express Agency, Incorporated, by the highway common carrier 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 Items Nos. 5 and 10 of Minimum Rate Tariff No. 4-B.
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 semiplastic 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. Logs.
8. Excepted commodities as enumerated in Railway Express Agency, Incorporated's tariffs filed with this Commission and in effect on the date of issuance of Decision No. 71290, in Application No. 47925.
9. Cement when transported by any motor vehicle loaded substantially to capacity with and transporting portland or similar cements, in bulk or in packages.

Issued by California Public Utilities Commission.

Decision No. 71290, Application No. 47925.

BETWEEN all points and places (except intra-city movements) within the boundary described as follows:

The corporate limits of the City of Whittier and additional territory, as follows:

Beginning at the intersection of the Whittier corporate limits and Beverly Boulevard; northwest on Beverly Boulevard to Pico-Rivera - Los Angeles County boundary line, southerly along the Pico-Rivera - Los Angeles County boundary line and continuing along the western boundary line of Santa Fe Springs to its southernmost point, thence in a northerly direction along the eastern boundary line of Santa Fe Springs to Imperial Highway; east on Imperial Highway to Meyer Road; northwest on Meyer Road to Leffingwell Road; northeast on Leffingwell Road to intersection with the Whittier-Los Angeles County boundary line; northwesterly along the southerly boundary line of Whittier to Beverly Boulevard point of beginning.

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 line-haul truck transportation.

End of Appendix A

Issued by California Public Utilities Commission.

Decision No. 71290, Application No. 47925.