

Decision No. \_\_\_\_\_

**81167**

**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own  
motion to determine whether reference  
to express corporations should be  
eliminated from General Order No. 36-B.)

Case No. 9453  
(Filed October 17, 1972)

Archie C. Sims, Attorney at Law, for the Brotherhood  
of Railway, Airline Clerks; John J. C. Martin,  
Attorney at Law, for REA Express, Inc.;  
Harold S. Lentz, Attorney at Law, for Southern  
Pacific Transportation Company; and Marshall W.  
Vorkink, Attorney at Law, for Union Pacific  
Railroad Company; interested parties.  
James J. Cherry, Attorney at Law, and Paul A. Burket,  
for the Commission staff.

O P I N I O N

The order instituting investigation issued herein on October 17, 1972 was stated in terms broad enough to encompass a general reconsideration of General Order No. 36-B.<sup>1/</sup> That General Order, adopted in its present form by Decision No. 26827 dated February 26, 1934 in Application No. 19193, provides procedural rules for the establishment or abolition of depots, agencies, non-agency stations, and sidings or spurs, by railroads. It also establishes procedures for reduction of agency service by either a railroad or an express corporation.

Hearing was held before Examiner Gilman on January 16, 1973 in San Francisco. At the hearing the staff supported the proposal to exclude express companies from the requirements of General Order No. 36-B. It also raised a new issue in the form of a proposed rule concerning notice of abandonment based on the terms

---

<sup>1/</sup> However, the title block and the text of the proposed amendment, which was served on various potentially interested parties, indicated that the scope of the proceeding was limited to a proposal to repeal the provisions dealing with express corporations.

of Senate Bill 696,<sup>2/</sup> contending that the issue was within the scope of the Order Instituting Investigation.

Southern Pacific Transportation Company objected to consideration of the new issue on the grounds of lack of notice. The objection was sustained.

REA Express, Inc. supported the proposal to repeal the express company provisions. (Neither of the railroads appearing took a position on this issue.) The Brotherhood took the position that as long as REA was governed by the provisions of the Federal Railway Labor Act, it should likewise be governed by the General Order No. 36-Series.

#### Discussion

With the restructuring of the express business authorized in proceedings such as Application of Railway Express Agency, Inc., (1960) 57 CPUC 649, it is no longer appropriate to regulate express corporations in a general order designed for railroads. REA, the successor to the Railway Express Agency, no longer maintains facilities in smaller cities for handling freight. Instead, it uses motor vehicles to pick up and deliver freight in non-metropolitan areas.

Shippers and receivers of express traffic are now primarily interested in REA's pickup and delivery limits, rather than in the location of its agencies. The Commission's power to control REA's highway carrier operations by means of certification and tariff procedures now provides adequate protection for shippers and receivers.

The General Order No. 36-Series was never intended to provide consideration of job security issues; consequently, the fact that some of REA's employees are members of rail unions is irrelevant.

---

<sup>2/</sup> That statute (codified as Section 7531.5, Public Utilities Code) requires the Commission to notify the State Transportation Board of proposed track abandonments. The staff proposal would instead have required the railroad affected to provide notice. ✓

The modification of General Order No. 36-Series will have no significant effect on the operations of express corporations other than REA.

We find that:

1. REA provides service to customers in non-metropolitan areas primarily by means of motor vehicle pickup and delivery.
2. General Order No. 36-B does not affect the operations of other express corporations.
3. General Order No. 36-B is no longer appropriate for a carrier whose primary means of receiving and delivering freight is by motor vehicle pickup and delivery.

We conclude that General Order No. 36-B should be amended to exclude express corporations.

O R D E R

IT IS ORDERED that:

1. General Order No. 36-B is amended by striking the words "or express corporation" from paragraph 3.
2. The Secretary shall republish the General Order, as amended, as General Order No. 36-C.

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

Dated at San Francisco, California, this 20th  
day of MARCH, 1973.

Vernon L. Stinger  
President  
William J. Lyons  
J. H. Harkin  
Commissioners