

Decision No. 18443

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

In the Matter of the Application of )  
H. E. Holmes and P. W. Holmes, co- )  
partners doing business under the )  
name of GARDEN HIGHWAY TRUCK LINE, )  
for a certificate of public conven- )  
ience and necessity to operate a )  
through freight truck service between )  
Sacramento and Yuba City and Sacra- )  
mento and Marysville. )

Application No. 12938.

**ORIGINAL**

Thelen & Marrin, by Paul S. Marrin, for Applicant.  
L. N. Bradshaw, for Southern Pacific Company, Protestant.  
Charles R. Detrick, R. D. Williams and L. I. McKim, for  
Sacramento Northern Railway and The Western Pacific  
Railroad Company, Protestants.  
Edward Stern, for American Railway Express Company,  
Protestant.  
W. G. Stone, for Thomson-Diggs Company.

BY THE COMMISSION:

O P I N I O N

H. E. Holmes and P. W. Holmes, co-partners under the firm name of Garden Highway Truck Line, have petitioned the Railroad Commission for an order declaring that public convenience and necessity require the operation by them of an automobile truck line as a common carrier of through freight between Sacramento and Yuba City, and Sacramento and Marysville, as an extension to their present authorized service to certain intermediate points between Sacramento and Marysville.

Public hearings on this application were conducted before Examiner Satterwhite at Sacramento and Marysville, the matter was submitted and is now ready for decision.

Applicants propose to charge rates and to operate under

a time schedule in accordance with Exhibits A and B attached to said application, and to operate the equipment described in Exhibit C attached thereto.

Sacramento Northern Railway Company, Southern Pacific Company, Western Pacific Railroad Company and the American Railway Express Company protested the granting of said application.

Applicants are now the owners and operators of an operative right granted to one H. O. Varrier in this Commission's Decision No. 15013 dated June 6, 1925, on Application No. 10624, which operative right was transferred to applicants under Decision No. 15862 on Application No. 12412.

The record shows that the certificate under which applicants now operate does not permit them to carry freight received in Sacramento to its ultimate destination in Yuba City or Marysville, nor does it permit them to carry freight received in Yuba City or Marysville into Sacramento. At least 95 percent of the freight carried by applicants to Marysville or Yuba City is now delivered to them by Sacramento shippers at their station established just outside of the City limits of Sacramento.

This Commission does not look with favor upon certain acts and practices initiated and carried on by H. O. Varrier and the present applicants during the period of the exercise by each of them of the operative rights involved in this proceeding. It is conceded by all of the parties that this proceeding is not the proper one to determine the legality of the acts or practices followed by applicants in the operation of their restricted authorized intermediate service between Sacramento and Marysville, but the record shows that the protestants intend to test the legality of such practices when this instant proceeding is terminated.

In the granting of certificates to operate an auto

stage or truck service, or both of them, the Commission has always imposed various restrictions and conditions with the expectation that such restrictions and conditions should in good faith be strictly observed. H. O. Varrrier, as shown by the record, filed his written acceptance of the certificate of public convenience and necessity granted to him in the above named Decision No. 15013, together with all restrictions and conditions imposed therein which included a special restriction that no through service should be rendered between Sacramento and Yuba City or between Sacramento and Marysville. Almost immediately after commencing his operations as restricted, Varrrier devised and inaugurated a scheme, plan or subterfuge to circumvent his restricted intermediate service whereby he obtained a through freight business between Sacramento and Marysville and Yuba City. He established a depot or station where none had ever existed on the Garden Highway at a point where it crosses the American River about one-half mile from the northern city limits of Sacramento and thereafter by personal solicitation, as well as by continuous advertisements in a Marysville daily newspaper, secured deliveries of shipments by merchants at this newly created station of through freight from Sacramento to Marysville, consisting of more than 95 percent of the volume of his entire tonnage. This entire tonnage moved northbound from Sacramento to Marysville and Yuba City and the southbound back-haul consisted of little else than empties.

The evidence shows that the above named applicants purchased this operative right with full knowledge of the aforesaid scheme or plan practiced by Varrrier. Having also accepted in writing from this Commission a transfer of the restricted operative rights, as above indicated, applicants in order to shorten the distance and increase the convenience to customers for deliveries of through freight to Marysville, promptly moved

this newly created station of Varrier's one-quarter of a mile nearer to the city limits of Sacramento, known now as their Twelfth Street depot. Although applicants did no newspaper advertising, they actively sought and have continued to secure through freight business by direct solicitation from shippers or consignors between Sacramento and Marysville. The record shows that the through freight shipments hauled by applicants delivered to their newly created depot just outside of Sacramento destined to Marysville or Yuba City, now constitute 99 percent of their business, the back-haul and the intermediate business amounting to about 1 percent of the tonnage carried.

It is obvious that the scheme of operation put into effect by applicants has entirely nullified the very purpose of the restriction imposed upon this operative right by the Commission, a restriction justified by the record and based upon the findings of fact in Decision No. 15013 to the effect that the existing through freight transportation facilities were wholly adequate and satisfactory between Sacramento and Marysville and Yuba City and that the protestants in that proceeding were entitled to be fully protected against invasion or injury by any additional through service as proposed by Varrier. Applicants definitely indicated at the instant hearing that in the event this application is denied, they intend to continue their operations between Sacramento and Marysville as above outlined and described and that the certificate herein sought or desired is unnecessary to conduct such operations.

Applicants called at the hearing seven witnesses, being shippers of freight at Sacramento, and also six witnesses, being receivers of freight at Marysville, who testified in favor of the proposed service. These shippers favored the proposed truck service on the basis that it would be more con-

venient for them to make deliveries to applicants at some nearer depot within the City of Sacramento than at applicants' Twelfth Street Depot just outside the city limits and that some of their consignees at Marysville had directed their shipments to be sent over applicants' truck line. The testimony of several of these shippers who have used applicants' service to transport through freight shows, however, that the great bulk of the freight consigned by them to Marysville merchants has been transported satisfactorily over the existing steam and electric lines and that they have never had any cause for complaint against the present transportation facilities. Several of the receivers of freight at Marysville who have used applicants' line testified that they desired the truck service because it will afford a store door delivery and that emergency and perishable shipments can be delivered to applicants at a later hour at Sacramento and be received earlier the next morning at Marysville. Applicants also gave testimony to the effect that they propose to establish a Sacramento station in the Union depot at Fourth and "S" Streets where shipments may be delivered more conveniently. The record indicates that the business of applicants has considerably increased since they established their depot at Twelfth Street for the purpose of handling through freight to Marysville and that a depot as desired at the Union Station will afford them an opportunity to increase their customers.

The protesting rail carriers offered considerable oral and documentary evidence in opposition to the proposed service of applicants.

There appeared at the hearing over thirty witnesses for the protestants, the record disclosing that these witnesses taken collectively constitute not only the leading and largest business firms and merchants at Marysville but represent almost every

kind and character of business conducted in that community. All of these merchants and business men testified to the effect that there was no need whatever for this proposed additional through truck service and that the service of the present electric and steam lines was entirely satisfactory.

The following quotations in part from the testimony of three or four of these witnesses discloses clearly the reasons for the entire satisfaction with the existing transportation facilities between points sought to be served.

W. G. Stone, Traffic Manager for Thomson-Diggs Company, one of the largest shippers of merchandise in Sacramento, testified as follows:

"As a distributor of merchandise at Sacramento in the hardware and iron and steel and sporting goods line, we find transportation conditions between Sacramento and Marysville and Yuba City just about as ideal as territory which we serve. We have our three rail lines, all of which are giving daily service, delivering merchandise in Marysville and Yuba City before noon the following day after shipment. Some of the railroad carriers are open at 9 in the morning in Marysville. In addition to the rail freight service we have several trains operating daily between Sacramento and Marysville on which express shipments may be forwarded; in fact in case of emergency shipments, one may make delivery to the express office late in the evening and the shipment will arrive in Marysville early the following morning, and, if the customer desires, he may take delivery upon the opening of the express office, or he may wait for an expressman to make delivery at his store. We have frequent shipments that move by express as well as by freight. In addition to this freight and express service, there is also an auto truck service operated by the Garden Highway truck, and we may forward shipments by delivering to their depot outside of the city limits of Sacramento a short distance, and those shipments likewise reach Marysville before noon the following day. \*\*\*\*\*

We have no complaint of the service of any one of these carriers. We find the service is just as good as one can expect. We have had no complaints from any one of our customers. \*\*\*\*\*"

Louis M. Rossi, owner and operator of the largest hotel in Marysville, testified as follows:

"Q. What is your opinion of that service as regards the adequacy of it in your business?

A. Well, in the seven months I have been using the service I have found it very satisfactory in getting

things up from Sacramento. We have had occasion to get freight up here very quickly from Sacramento, especially at the time of the opening of the hotel, and we found the service very satisfactory.

Q. In your opinion, is there any public need of such additional freight service, through freight service, from Sacramento to Marysville, as is proposed by the applicant?

A. No, I don't see how the present service could be improved. Our needs have been taken care of very well."

E. B. Wilcox, President of J. R. Garrett Company, one of the largest grocery firms at Marysville, testified as follows:

"A. From Sacramento we receive quite a quantity of merchandise. For instance, this week we have had carloads from there and less than carload shipments.

Q. You ship both carloads and less than carloads from Sacramento?

A. Yes.

Q. \*\*\*\*\* In your business is there any need of any truck service between Marysville and Sacramento?

A. None whatsoever, with the present facilities by rail. \*\*\*\*\*

Q. Do you find the service in that direction satisfactory?

A. We have not had any complaints.

Q. Have you now any need for any additional service to Sacramento?

A. Never has come to my knowledge that we required any further service."

The evidence shows that the Marysville Merchants Association through its Ways and Means Committee, after a careful consideration of the matter, passed a resolution that this organization was opposed to the additional proposed service of applicants on the ground that there was no public necessity for such service.

Fred N. St. Vrain appeared at the hearing and testified to the effect that he was especially directed to appear in behalf of the Merchants and Manufacturers Association of Sacramento and that this Association was also opposed to the

granting of the proposed service of applicants on the basis that there was no public necessity for such additional truck service.

A study and examination of the various exhibits introduced in evidence by the protesting rail companies shows that the Sacramento Northern Railroad Company maintains a fast electric train service operating several round trips daily between Sacramento and Marysville and Yuba City; that the Sacramento Northern and the Western Pacific Railroad each operates a local freight service daily between Sacramento, Marysville and Yuba City; that the Southern Pacific Railroad Company operates a local freight service over two different routes between these terminals. The combined daily freight service of all these rail carriers indicates that the service for shipments of L. C. L. freight between Sacramento and Marysville and Yuba City is such that consignees can obtain deliveries daily as early as 8:30 A. M. at the respective freight stations of all these rail carriers.

Protestant American Railway Express Company also offered in evidence an exhibit showing the passenger train schedules, consisting of at least five trains daily, over which express matter may be shipped and be available to consignees immediately upon arrival of trains.

After careful consideration of all the evidence in this proceeding, we are of the opinion and hereby find as a fact that public convenience and necessity do not require the proposed additional service of applicants, and that the application should be denied.

#### O R D E R

Public hearings having been held in the above entitled proceeding, the matter having been duly submitted and being now



ready for decision,

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA HEREBY  
DECLARES that public convenience and necessity do not require the  
proposed extended through service of applicants between Sacramento  
and Marysville and between Sacramento and Yuba City, and

IT IS HEREBY ORDERED that said application be and the  
same is hereby denied.

Dated at San Francisco, California, this 1st day  
of June 1927.

H. M. Brundage

O. S. ...

Thos. G. ...

Commissioners.