

upon the question of the revocation, rescission, alteration or amendment of our prior decisions.

Hearings were held at Marysville on December 15th, and at Sacramento on December 16, 1927, on which latter date the matters were submitted.

In Application No. 10624, Decision No. 15013, H. O. Varrrier was granted a certificate to operate "an auto truck line as a common carrier of freight over and along the Garden Highway via Elkhorn, Verona, Nicolaus, Tudor, Oswald and Bogue between Sacramento and all intermediate points between Sacramento and Yuba City and between Marysville and all intermediate points between Marysville and Sacramento, provided that no local service shall be rendered between Marysville and Yuba City, and provided further that no through service shall be rendered between Sacramento and Yuba City or between Sacramento and Marysville * * *."

In Application No. 12412, Decision No. 15862, authority was given H. O. Varrrier to sell his rights, and H. E. Holmes and P. W. Holmes to purchase them.

It was stipulated that the records in Application No. 12938 be considered in evidence on the reopened proceedings. In said Application No. 12938, Decision No. 18443, H. E. and P. W. Holmes, co-partners doing business under the name of Garden Highway Truck Line were refused a certificate to operate a through freight truck service

between Sacramento and Yuba City and Sacramento and Marysville. In Decision No. 18559 applicant's petition for rehearing was denied.

Practically all the testimony in the reopened proceedings was that of the applicant carrier, introduced to further strengthen the application for through service. The protestants offered no further direct testimony.

After a careful consideration of this testimony in connection with that already of record in the former proceedings, I am of the opinion that had it been before the Commission in the previous records the decisions in Applications 10624 and 12938 would not have extended the rights of applicant beyond what they now are.

During the hearing in Application No. 12938 protestants raised the issue that applicants were, then, and had been operating in violation of the certificate granted under Application No. 10624, in that they were receiving and transporting through freight from Sacramento to Marysville and Yuba City. It was primarily for the purpose of investigating this question and taking such action as might be necessary that the instant proceedings were initiated. As to this matter the record discloses the following facts:

1. Shortly after receiving his certificate, H. O. Varrier established a station about a half mile outside of the city limits of Sacramento on the Auburn road near 16th Street.
2. A month and a half after taking over this line, H.E. and P.W. Holmes moved the station a quarter of a mile

nearer the City of Sacramento on the Auburn road.

3. After the decision on Application 12938 denying a through certificate, Holmes again moved this station still closer to the city limits of Sacramento.

4. The testimony shows the delivery of all freight to the station in question has been from within the City of Sacramento, or from points immediately adjacent to the city limits.

5. P. W. Holmes testified that a large percentage of his business was freight delivered to him at this station from Sacramento and hauled through to Marysville and Yuba City.

6. Business firms in Sacramento and in Marysville and Yuba City testified as to the shipment and receipt of such through freight.

7. The record also discloses that the intermediate business in this territory which was entirely without or lacked reasonable common carrier service, and to serve which this certificate was granted, lies wholly between points several miles north of the City of Sacramento within and adjacent to what is known as Reclamation District 1000, situated about three miles north of the northern limits of the City of Sacramento, and Bogue situated south of Yuba City.

From the record before me I can come to no other conclusion than this--that the station on Auburn road outside the City of Sacramento is not an intermediate point as defined and specified in the certificate of public convenience and necessity granted E. O. Varrier and purchased and now owned by E. E. and P. W. Holmes, but rather it is a means instituted by E. O. Varrier and continued by E. E. and P. W. Holmes to annul the restrictions placed by this Commission on the rights granted by Decision No. 15013 and thereby to enlarge said rights without lawful authority.

To prevent such unlawful enlargement of said operations and to more clearly define the certificated rights so that the wording of our order will follow more closely the proof of public convenience and necessity as shown in this record, I recommend an amendment to Decision No. 15013.

ORDER

The above proceedings having been reopened, public hearings having been held, briefs having been filed, the proceedings having been submitted and the Commission being advised as to the facts,--

IT IS HEREBY ORDERED that paragraph three in Decision No. 15013 of this Commission, decided June 6, 1925, be, and it is hereby amended to read as follows:

The Railroad Commission of the State of California hereby declares that public convenience and necessity require the operation by H. O. Varrier of an auto truck line, as a common carrier of freight as follows:

Said H. O. Varrier may transport freight originating in Sacramento and destined to points intermediate between the southwest corner of Reclamation District No. 1000 (about three (3) miles north of the northerly boundary line of the City of Sacramento), and Bogue, including Bogue, or vice versa; and freight originating in Marysville or Yuba City and destined to points intermediate between and including Bogue and said southwest corner of Reclamation District No. 1000, or vice versa; such operations to be over and along the Garden Highway via Elkhorn, Verona, Nicolaus, Tudor, Oswald and Bogue; provided, that no local service shall be rendered between Marysville and Yuba City, and provided further, that no through service shall be rendered between Sacramento and Yuba City or between Sacramento and Marysville, and the foregoing certificate is hereby granted with the understanding that the ownership of 17 miles of the foregoing route by the said Natomas Company of California is hereby recognized, which privately owned portion of said route is hereinabove particularly described, and the authority herein granted to operate an auto truck line as a common carrier of freight is made subject to all the rights of said Natomas Company, a corporation, as the owner of the private road hereinabove particularly described.

IT IS HEREBY ORDERED that applicants, H. E. and P. W. HOLMES shall file within twenty (20) days from the date hereof tariffs and time schedules which shall be identical with those now on file in their names with the Railroad Commission, save and except that they shall show service to no points other than those named herein and points located within the territory in which service may be given.

IT IS HEREBY FURTHER ORDERED that the order of the Commission transferring the so-called Varrier right to H. E. and P. W. Holmes be, and the same is, hereby affirmed, with the distinct understanding, however, that the right transferred shall be the right as defined by the order herein.

For all other purposes the effective date of this order shall be twenty (20) days from the date hereof.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 11th day of May, 1928.

Leon O'Connell
C. J. Seamy
Edmund West
Thos. J. Lewis
W. A. Linn
Commissioners.