

LBM

Decision No. 20075.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
SAN JOAQUIN VALLEY TRANSPORTATION
COMPANY, a co-partnership, to trans-
fer its operative rights, business
and equipment to San Joaquin Valley
Transportation Company, a corporation,
and of San Joaquin Valley Transporta-
tion Company, a corporation, to issue
stock.

ORIGINAL

Application No. 15482

Douglas Brookman, for applicants.

BY THE COMMISSION:

O P I N I O N

In this proceeding the Railroad Commission is asked to make its order authorizing F. M. Hodge, John D. Kwis and H. A. Rose to transfer to San Joaquin Valley Transportation Company certain operative rights and properties, and authorizing San Joaquin Valley Transportation Company to issue in payment \$65,000.00 of its common capital stock.

The application shows that F. M. Hodge, John D. Kwis and H. A. Rose are co-partners doing business under the firm name and style of San Joaquin Valley Transportation Company and are engaged in the business of operating a motor freight transportation company generally between Fresno and Los Angeles and intermediate points, and that San Joaquin Valley Transportation Company, a corporation, was organized on or about May 27, 1925, for the purpose of acquiring the rights and properties of the co-partners and thereafter of conducting the operations.

It appears that the operative rights proposed to be transferred are those granted by the Commission by orders in Applications Nos. 6217, 9563, 10665 and 11901. By Decision No. 9460, dated September 3, 1921, in Application No. 6217, the Commission authorized F. M. Hodge, L. E. Mershon and E. A. Rose to operate an automobile freight /truck service between Los Angeles and that portion of the City of Bakersfield lying beyond a radius of twelve blocks from the present Bakersfield terminal of George W. Duntley, doing business under the fictitious name of Los Angeles and Bakersfield Fast Freight Truck Line; also between Los Angeles and Jewetta, Lerdo, Famosa, McFarland, Delano, Richgrove, Orris, Ducor, Terra Bella, Plano, Porterville, Strathmore, Lindsay, Exeter, Farmersville, Visalia, Tulare, Goshen, Traver, Kingsburg, Selma, Winedale, Fowler, Calwa City and Fresno, for the common carriage of property; and that such public convenience and necessity required said applicants to operate automobile freight truck service for the common carriage of property in truck loads at two thirds of the rates per hundred pounds quoted in Exhibit "A", attached to the above application, between Los Angeles and the territory above described, and also a zone extending five miles on each side of the highway traversed on the route by which the above named towns are served and five miles on each side of the said twelve block radius from the said Duntley terminal in Bakersfield. It was provided that public convenience and necessity did not require operation of either of said services between Los Angeles and that portion of Bakersfield within said twelve block radius from said Duntley's Bakersfield terminal, nor did they require any local service between Fresno and Fowler, Selma, Kingsburg, Traver, Goshen, Goshen Junction, Visalia or Tulare, or between any of said points. The transportation of property was permitted between points on said route between Fresno and Visalia or Tulare and points hereinabove named on said route lying southerly or easterly from Visalia or Tulare. By Decision No. 14336,

dated December 4, 1924, being the first supplemental order in Application No. 6217, the area in the City of Bakersfield in which the co-partners were prohibited and restricted from conducting the business of a common carrier of freight was specifically defined as being all territory within the City of Bakersfield located within a circle, the center of which is the former terminal of George W. Duntley, located at the intersection of 15th and K Streets, the outer units of which being twelve blocks from said central point, as follows:-

NORTE:	Intersection of E and 26th Streets.
NORTHEAST:	Center of block bounded by S, 23rd, T and 22nd streets.
EAST:	Intersection of Union Avenue and 15th Street produced.
SOUTHEAST:	Intersection of 6th Street and T Street produced.
SOUTH:	Intersection of Chester Place and K Street produced.
SOUTHWEST:	Intersection of C and Dracena Streets.
WEST:	Pine Street and 15th Street produced.
NORTHWEST:	Intersection of C and 22nd Streets.

By Decision No. 13855, dated July 28, 1924, in Application No. 9563, the Commission permitted the routing by F.M.Hodge, L. E. Mershon and H. A. Rose of loaded trucks between Fresno and Los Angeles over the state highway between Tulare and Delano, provided the same contain only dairy products and poultry originating or destined to Tulare or north of Tulare or Delano or south of Delano, and that no service be given to intermediate points along the state highway, or on either side thereof, between Tulare and Delano.

Thereafter, on December 8, 1924, F. M. Hodge, L. E. Mershon and H. A. Rose filed their Application No. 10665 for a certificate to extend their service into Riverdale, as hereinafter set forth. Before the Commission passed upon this request, however, it appears that L. E. Mershon disposed of his interest in the co-partnership to John D. Kwis. An application, No. 11901, was filed for permission to effect this transfer, which was granted by Decision No. 15642, dated November 14, 1925. The Commission was advised of the dissolution

of the co-partnership of F. M. Hodge, L. E. Mershon and H. A. Rose and the formation of the co-partnership of F. M. Hodge, John D. Kwis and H. A. Rose.

Following the change in the co-partnership, the Commission on March 4, 1926 entered its Decision No. 16079 on the said Application No. 10665 granting a certificate providing for the extension of the service theretofore authorized between Los Angeles and Fresno and intermediate points, from Goshen Junction to Riverdale, serving Riverdale only without intermediate points, for the transportation of milk and other creamery products only between Page and Tipton and Los Angeles, and for the routing of loaded trucks, regardless of commodity, between Tulare and Delano whenever such shipments originate in, or are destined to points north of Tulare or south of Delano, over and along the following route;-

Between Riverdale and Goshen Junction via Elm Avenue, south on Elm Avenue through Hub to the junction of the Hanford-Elm Avenue highway, thence east to Plaza Junction of State Highway connecting with main route of applicants.

Through inadvertence this certificate was granted to F. M. Hodge, L. E. Mershon and H. A. Rose, although it appeared that L. E. Mershon had been succeeded by John D. Kwis. It appears from the record in this proceeding that the present co-partnership accepted the certificate granted by Decision No. 16079 and since have been operating continuously in good faith thereunder. The order herein accordingly is designed to correct what irregularity might exist in this right.

The physical properties now proposed to be transferred to the corporation are described in Exhibit "B" as follows;-

Description	:Value after :Depreciation	Due on : Contract:	Actual cash equity
Packard roadster	: \$2,203.28:	\$ 892.86:	\$ 1,310.42
Ford roadster	: 631.81:	442.09:	189.72
Graham truck	: 2,449.71:	398.01:	2,051.70
Sterling truck	: 7,835.50:	4,279.65:	3,555.85
Sterling truck	: 8,581.78:	5,076.00:	3,505.78
Utility trailer	: 775.56:	- :	775.56
Utility trailer	: 2,048.84:	- :	2,048.84
Weber trailer	: 2,872.45:	- :	2,872.45
Stake bodies(2)	: 555.00:	- :	555.00
Refrigerator bodies (6)	: 2,198.38:	- :	2,198.38
Total.....	:\$30,152.31:	\$11,088.61:	\$ 19,063.70

It appears that the corporation will acquire current and other assets, in addition to the operative rights and physical properties, and will take over the present indebtedness. It proposes to issue \$65,000. of stock in effecting the transaction and in support of its request submits the following;-

Actual cash expenditures of co-partners in obtaining operating rights	\$19,275.15
Actual cash equity in equipment as shown above	19,063.70
Expenditure for experimental work	16,348.04
Development costs	8,861.85
Prepayments	984.35
Other assets(current items)	2,869.76
Total	\$67,402.85

The record clearly indicates that the co-partners actually expended at least \$19,275.15 in cash in acquiring the rights now proposed to be transferred to the corporation, and we believe that this amount might be used as a proper basis in determining the amount of stock to be issued. The physical property, it appears, consists almost entirely of new equipment and the value claimed will be recognized for the purpose of this proceeding.

Coming to the third item in the above tabulation, it appears this amount (\$16,348.04) represents expenditures "in certain experimental work with reference to the type of equipment, including refrigerator equipment, best adapted to the transportation service in which said co-partners had engaged, and in order to determine the most economical and efficient equipment to be used in said public service." It appears that the operators at the beginning of their business experienced some difficulties and expense in obtaining suitable equipment to transport perishable commodities. We regard the item as an operating loss which can^{not} and should not be capitalized through the issue of stock. The \$8,861.85 item said to represent development cost, but which in reality is interest not paid because of inadequate earnings, falls in the same category.

The items representing prepayments and other current accounts seem to be reasonable and proper.

For the reasons indicated herein we will authorize the corporation in acquiring the business and properties of the co-partnership to issue not exceeding \$42,000.00. In authorizing the transfer of operative rights the purchasing corporation is hereby placed on notice that "operative rights" do not constitute a class of property which should be capitalized or used as an element of value in determining reasonable rates. Aside from their purely permissive aspect they extend to the holder a full or partial monopoly of a class of business over a particular route. This monopoly feature may be changed or destroyed at any time by the state which is not in any respect limited to the number of rights which may be given.

ORDER

F. M. Hodge, John D. Kwis and H. A. Rose and San Joaquin Valley Transportation Company, a corporation, having applied to the Railroad Commission for an order authorizing the transfer of operative rights and properties and the issue of stock, a public hearing having

been held before Examiner Fankhauser and the Railroad Commission being of the opinion that the application should be granted, as herein provided, and that the issue of \$42,000.00 of stock is reasonably required for the purpose specified herein, which purpose is not, in whole or in part, reasonably chargeable to operating expense or to income, and that the request to issue \$23,000.00 of stock should be denied without prejudice,

IT IS HEREBY ORDERED that the order in Decision No. 16079, dated March 4, 1926, in Application No. 10665, be, and it hereby is, modified so as to substitute the name of John D. Kwis for L. E. Mershon.

IT IS HEREBY FURTHER ORDERED that F. M. Hodge, John D. Kwis and H. A. Rose, co-partners doing business under the firm name and style of San Joaquin Valley Transportation Company, be, and they hereby are, authorized to transfer to San Joaquin Valley Transportation Company, a corporation, the operative rights and properties referred to in the foregoing opinion, subject to outstanding indebtedness of \$11,088.61, and San Joaquin Valley Transportation Company, a corporation, be, and it hereby is, authorized to acquire such rights and properties, subject to outstanding indebtedness of \$11,088.61, and in part payment therefor to issue not exceeding \$42,000.00 of common stock.

IT IS HEREBY FURTHER ORDERED that the request herein to issue the remaining \$23,000.00 of stock be, and it hereby is, denied without prejudice.

The authority herein granted is subject to the following conditions:-

1. The consideration to be paid for the properties herein authorized to be transferred shall never be urged before this Commission or any other rate fixing body as a measure of value of said

property for rate fixing or any purpose other than the transfer herein authorized.

2. Applicants F. M. Hodge, John D. Kwis and H.A. Rose shall unite immediately with applicant San Joaquin Valley Transportation Company in common supplement to the tariffs on file with the Commission, applicants F.M.Hodge, John D. Kwis and H.A. Rose on the one hand withdrawing and applicant San Joaquin Valley Transportation Company on the other hand accepting and establishing such tariffs and all effective supplements thereto.

3. Applicants F. M. Hodge, John D. Kwis and H.A. Rose shall withdraw immediately time schedules filed in their name with the Railroad Commission and applicant San Joaquin Valley Transportation Company shall file, in duplicate, in its own name, time schedules covering service heretofore given by applicants F. M. Hodge, John D. Kwis and H. A. Rose, which time schedules shall be identical with those now on file in the name of applicants, F. M. Hodge, John D. Kwis and H.A. Rose or time schedules satisfactory to the Commission.

4. The rights and privileges herein authorized to be transferred may not thereafter be sold, leased, transferred nor assigned, nor service thereunder discontinued by San Joaquin Valley Transportation Company unless the written consent of the Railroad Commission has first been secured.

5. No vehicle may be operated by applicant, San Joaquin Valley Transportation Company under the authority herein granted unless such vehicle is owned by said applicant or is leased by it under a contract or agreement as a basis satisfactory to the Railroad Commission.

6. No authority is herein granted to San Joaquin Valley Transportation Company to enlarge the operative rights it is herein

authorized to acquire nor to remove any restriction therefrom.

7. San Joaquin Valley Transportation Company shall keep such record of the issue of the stock herein authorized as will enable it to file, within thirty days thereafter, a verified report, as required by the Railroad Commission's General Order No. 24, which order, insofar as applicable, is made a part of this order.

8. The authority herein granted shall become effective twenty days after the date hereof.

DATED at San Francisco, California, this 17th day of April, 1929.

Thos. D. Lockett

Al. Sweeney

Emm. Scott

Leon Whitehall

W. A. Lee

Commissioners.