

Decision No. 24650.**ORIGINAL**

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

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In the Matter of the Application
 (1) of R. MILLER for a certificate
 of public convenience and necessity to
 operate an auto-stage line for the
 transportation of passengers, baggage
 and express for compensation, and as a
 common carrier, between Martinez and
 Walnut Creek, in the County of Contra
 Costa, State of California, and inter-
 mediate points, via Concord, in con-
 junction with and as an extension and
 enlargement of transportation service
 now being rendered between Martinez
 and Concord and intermediate points,
 and (2) of R. MILLER and SACRAMENTO
 NORTHERN RAILWAY to establish through
 routes and joint fares and rates for
 the transportation of passengers,
 baggage and express between Martinez
 and Diablo in the County of Contra
 Costa, and intermediate points, via
 Walnut Creek, including the operation
 of through service between said termini.

Application No. 17959.

L. N. Bradshaw, for Sacramento Northern Railway,
 Applicant.

A. B. Tinning, for R. Miller, Applicant.

BY THE COMMISSION:

O P I N I O N

Applicant R. Miller herein seeks extension of his
 operating right between Martinez and Concord from Concord to and
 including Walnut Creek and to consolidate the same with his
 prior right. Applicants R. Miller and Sacramento Northern
 Railway seek to establish through route and joint fares and rates
 for the transportation of passengers, baggage and express between
 Martinez and Diablo and intermediate points via Walnut Creek in-
 cluding the operation of through service between termini.

A public hearing thereon was held by Examiner Kennedy at Walnut Creek at which time the matter was duly submitted and now is ready for decision.

Applicant Miller operates between Martinez and Concord by virtue of Decision No. 17103 on Application No. 10645 dated July 13, 1926. By the extension of the service thus established to Walnut Creek he will form a connection with the auto stage line operated by Sacramento Northern Railway between Walnut Creek and Diablo via Danville, serving also other intermediate points as granted by Decision No. 13223 on Application No. 9811 dated July 29, 1924. This operation resulted from the abandonment of rail service between termini by authority of this Commission. The patronage has declined and it is now used only as a feeder system to the electric line of Sacramento Northern Railway at Walnut Creek. By an agreement with Miller the operation of a through line will be made possible and thus meet a demand on the part of residents south of Walnut Creek in Contra Costa County who desire a direct connection without transfer between that area and the county seat at Martinez.

Applicant Miller testified that he had investigated the situation and felt that such a service if established would be sufficiently patronized to maintain it especially with the facility of through transportation. H. A. Mitchell, General Manager of the Sacramento Northern Railway, testified that for many months there had been a demand from the region at Danville and Diablo for through service via Walnut Creek to Martinez particularly from members of the Danville Grange; that the operation at present shows an out-of-pocket loss, that if the through service and rates are established the Railway will save approximately \$185.00 a month in operating expense. One of the particular desires of residents south of Walnut Creek is for schedules that will take them to and from the county seat for

attendance at court. He further testified that arrangements have been made to the end that when vehicles of applicant Miller appear at Walnut Creek on schedule they will be immediately operated under lease with the Railway through to Diablo and return, the agreement calling for a division of through fares, but each carrier to retain his local fares.

The schedule proposed by applicants calls for three schedules daily between Martinez and Diablo with extra schedules operating between Martinez and Concord, Martinez and Walnut Creek, Diablo and Walnut Creek, the non-through schedules make connections with the rail service of Sacramento Northern Railway at Walnut Creek or Concord. This service is to be daily on three through schedules.

Emory E. Smith, a resident of Alamo, master of the Grange Lodge at Danville testified on behalf of applicants that the present method of getting to and from the rather well settled area between Walnut Creek and Danville is unsatisfactory and that the Grange had voted to support a service providing access to Martinez morning and evening.

Southern Pacific maintains mixed train service between Martinez and Danville, but this service is from Martinez in the morning and returning in the afternoon. Southern Pacific did not appear to protest the application. Under the record as presented it appears that the granting of the certificate sought by applicant Miller and authority for him and Sacramento Northern Railway to operate through service between termini will be a great improvement to the transportation facilities throughout the San Ramon Valley and that the application should be granted.

R. Miller and Sacramento Northern Railway are hereby placed upon 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

R. Miller having made application for a certificate of public convenience and necessity to establish and maintain automobile service for the transportation of passengers, baggage and express between Martinez and Walnut Creek and intermediate points via Concord as an extension and enlargement and in lieu of service now maintained by him between Martinez and Concord and intermediate points, a public hearing having been held, the matter having been duly submitted and now being ready for decision,

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA HEREBY DECLARES that public convenience and necessity require the establishment of such service for the transportation of passengers, baggage and express between Martinez and Walnut Creek in lieu of rights previously granted to applicant for a service between Martinez and Concord by Decision No. 17103 on Application No. 10645 dated July 13, 1926 over and along the main county highway between Martinez and Concord and thence to Walnut Creek, subject to the following conditions:

1. Applicant shall file his written acceptance of the certificate herein granted within a period of not to exceed fifteen (15) days from date hereof.
2. Applicant shall file, in duplicate, and make effective within a period of not to exceed thirty (30) days from the date hereof, on not less than ten days' notice to the Commission and the public a tariff or tariffs constructed in accordance with the requirements of the Commission's General Orders and containing rates and rules which, in volume and effect, shall be identical with the rates and rules shown in the exhibit attached

to the application insofar as they conform to the certificate herein granted.

3. Applicant shall file, in duplicate, and make effective within a period of not to exceed thirty (30) days from date hereof, on not less than five (5) days' notice to the Commission and the public, time schedules, according to form provided in General Order No. 83, covering the service herein authorized, in a form satisfactory to the Railroad Commission.
4. The rights and privileges herein authorized may not be discontinued, sold, leased, transferred nor assigned unless the written consent of the Railroad Commission to such discontinuance, sale, lease, transfer or assignment has first been secured.
5. No vehicle may be operated by applicant herein unless such vehicle is owned by said applicant or is leased by him under a contract or agreement on a basis satisfactory to the Railroad Commission.

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

IT IS HEREBY FURTHER ORDERED that all rights heretofore granted by Decision No. 17103 on Application No. 10645 to R. Miller be and the same hereby are revoked and annulled.

R. Miller and Sacramento Northern Railway having made application to establish and maintain through service for the automotive transportation of passengers, baggage and express between Martinez and Diablo providing through fares and charges and through operation without change of vehicles.

IT IS HEREBY ORDERED that said authority be granted provided that applicants shall file joint fares and rates and rules and regulations and time schedules governing same identical in substance and in volume with the rates shown in Exhibit "B" and "C" attached to the application; and provided, further, that such service shall not be established until there has been filed with this Commission proper lease between the

parties, which lease shall be approved by the Commission.

Dated at San Francisco, California, this 4th day of
April, 1932.

W. J. Seavey
Leon A. White
W. J. Carr
M. B. Lewis
Fred G. Stewart
Commissioners.