

Decision No. 25645.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application  
of The Alpha Hardware & Supply  
Company, a corporation, to sell  
and The Alpha Stores, Limited, a  
corporation, to purchase an  
automotive freight service  
between Nevada City, Forest City  
and Alleghany, California.

Application  
No. 18295.

Frank Davies, doing business under  
the name of Citizens Auto Stage  
Company,

Complainant,

vs.

Alpha Hardware & Supply Company,  
a corporation,

Defendant.

**ORIGINAL**

Case No. 3315.

Douglas Brookman for Complainant in  
Case 3315 and Protestant in  
Application No. 18295.

W. E. Wright for Defendant in Case 3315  
and Applicant in Application 18295.

BY THE COMMISSION:

O P I N I O N

By Application No. 18295, defendant in Case 3315 seeks authority to transfer to the Alpha Stores, Limited, the operative rights heretofore granted by the Commission on Application No. 10837, Decision No. 14610, dated February 26, 1925. Complainant in Case 3315 alleges that the Alpha Hardware and Supply Company has abandoned service between Nevada City, Alleghany and Forest City. An order revoking defendant's operative right is sought.

A public hearing was held before Examiner Johnson at Nevada City on November 10, 1932 and the proceedings submitted upon the filing of briefs on January 16, 1933.

The facts developed at the hearing may be briefly summarized as follows:

Authority was granted defendant by Decision No. 14610 on Application No. 10837 to acquire the operative rights of the Alpha Company<sup>1</sup> between Nevada City, Alleghany and Forest City. At the time the rights were transferred the time schedule of the Alpha Company required the maintenance of a daily schedule. This schedule was adopted by the Alpha Hardware & Supply Company. However, for many years the latter company has rendered an irregular service. On August 27, 1931, it filed with the Commission an "on call" time schedule which became effective September 1, 1931. Defendant claims that the on call schedule was filed at the request of the Commission but there is nothing in the record to substantiate this. On the contrary it appears that by a letter dated August 21, 1931, directed to the Secretary of the Commission, defendant asks for an interview with respect to his regular schedule which he admitted the Company did not attempt to maintain.

The record shows that for many months prior to the filing of the complaint herein defendant abandoned service for continuous periods of several weeks duration. Indeed, defendant admitted that it did not operate at all during the winter months even though the roads were open and only operated on call for more than a year last past. Sometimes it refused to operate at all.

The Alpha Hardware & Supply Company is engaged in a general merchandise business at Nevada City and operates a truck to carry its own merchandise to the points involved as well as to other points not included in its operative right. The public carrier service when rendered is very infrequent. The president of the company testified that while the common carrier business was negligible they desired to maintain the operative rights for future contingencies.

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<sup>1</sup> The Alpha Company possessed a prescriptive right.

The facts of record justify a finding that defendant in Case 3315 has in effect abandoned its common carrier service and that the certificate heretofore granted to it to perform this service should be revoked.

In view of the finding in the preceding paragraph there will be no operative right for the Alpha Hardware & Supply Company to transfer to the Alpha Stores, Limited; therefore, the application should be dismissed.

O R D E R

These proceedings having been duly heard and submitted, full investigation of the matters involved having been had and basing this order on the findings of fact and the conclusions contained in the opinion,

IT IS HEREBY ORDERED that the operative rights heretofore granted to the Alpha Hardware & Supply Company, a corporation, by Decision No. 14610 of February 26, 1925, on Application No. 10837 be and they are hereby revoked and annulled.

IT IS HEREBY FURTHER ORDERED that the Alpha Hardware & Supply Company, a corporation, be and it is hereby ordered to cease and desist from operating as a common carrier of property between Nevada City, Alleghany and Forest City.

IT IS HEREBY FURTHER ORDERED that Application No. 18295 be and it is hereby dismissed.

The effective date of this order shall be twenty (20) days from the date hereof.

Dated at San Francisco, California, this 26th day of February 1933.

C. L. Jones  
Sam. C. Whidell  
W. J. Lee  
M. B. Harris  
W. H. [unclear]  
COMMISSIONERS.