

Decision No. 22640

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
VALLEY MOTOR LINES, INC., a corporation,
for a certificate of public convenience
and necessity to operate an auto truck
service for the transportation of property,
under contract, for Valley Express Company,
a corporation, between Stockton and
Sacramento, California.

ORIGINAL
Application
No. 19069

Sanborn & Roehl, by Harvey Sanborn, for Applicant.
Edward Stern, for Railway Express Agency, Protestant.
E. W. Hobbs, for Southern Pacific Company, and
Pacific Motor Transport Company, Protestants.
Robert Brennan and W. F. Brooks, for The Atchison,
Topeka & Santa Fe Railway Co., Modesto & Empire
Traction Company, and Sunset Railway Company,
Protestants.
L. N. Bradshaw and J. L. Amos, for The Western Pacific
Railroad Co., Sacramento Northern Ry. Company and
Tidewater Southern Railway Company, Protestants.
L. I. Mc Kim, for The River Lines, Protestant, and
Overland Transfer, as their interests may appear.
E. W. Hobbs, Wm. F. Brooks, and L. N. Bradshaw for
Central California Traction Company.
E. C. Lucas and Guy Hill, for Pacific Greyhound
Lines, Inc. Protestant.
Mc Cutchen, Olney, Mannon & Greene, by Carl I. Wheat,
for The River Lines.
W. G. Stone, for Sacramento Chamber of Commerce.
J. E. Munro, for Sacramento Motor Transport Co.

BY THE COMMISSION -

OPINION

Valley Motor Lines, Inc. has petitioned the Railroad Commission for an order declaring that public convenience and necessity require the operation by it of an auto truck service for the transportation of property as a common carrier for compensation over the public highways of this State between Stockton only and Sacramento only, via Lodi, Galt and Arno.

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

Applicant proposes to charge rates in accordance with Exhibit "A", attached to said application and to operate under time schedules in accordance with Exhibit "B", attached to said application. Applicant proposes to operate over said Highway U.S. 99 between Stockton and Sacramento, as shown on Exhibit "A", attached to the original application.

Southern Pacific Company, The Western Pacific Railroad Company, Central California Traction Company, Modesto & Empire Traction Company, Sunset Railway Company, The Atchison, Topeka & Santa Fe Railway Company, The River Lines, Pacific Motor Transport Company and Sacramento Motor Transport Company protested the granting of said application. The River Lines, operating steamers between San Francisco and Sacramento, and Sacramento Motor Transport Company, operating a truck line from Vallejo to Sacramento in connection with Southern Pacific-Golden Gate Ferries, Ltd., withdrew their protests by reason of a written stipulation of applicant agreeing to certain limitations and restrictions as to its service between San Francisco bay points and Sacramento, which will be contained in the order herein made.

Applicant relies upon the following conditions and circumstances as justification for the granting of the proposed service:

1. That at the present time Valley Express Company operates an express service, daily except Sundays and holidays, between Stockton and Sacramento, California, for the transportation of traffic moving to, from and beyond Stockton and Sacramento, utilizing for said service the facilities of Central California Traction Company, between Stockton and Sacramento.

2. That the service of said Central California Traction Company is unsatisfactory for the transportation of the traffic of Valley Express Company for the reason that said Central California Traction Company has failed and refused, and now fails and refuses, to cooperate with Valley Express Company in the

following particulars:

Valley Express Company, in transporting property for the public between Stockton and Sacramento, which originates at or is destined to Stockton, Sacramento, and beyond said points, is required to pay the local tariff rates of Central California Traction Company, which company has refused, and now refuses, to enter into an express contract with Valley Express Company.

That the train of Central California Traction Company leaving Sacramento each evening, and by which the traffic of Valley Express Company is transported, arrives at Stockton at midnight, but the agents and employees of Valley Express Company are not permitted by Central California Traction Company to take possession of said traffic until 8:00 a.m. the following morning, thus causing an unreasonable delay in handling traffic destined to points beyond Stockton.

That Valley Express Company is put to a similar inconvenience on traffic moving in the reverse direction.

That the failure and refusal of Central California Traction Company to cooperate with Valley Express Company, as above outlined, results in inconvenience and unnecessary expense to Valley Express Company and inconvenience to the shippers and consignees who patronize the service of Valley Express Company, and who desire to use said service.

The instant application is an outgrowth of Application No. 18237, filed by the Valley Motor Lines, Inc. on July 27, 1932. During the early hearings on that application it became apparent that because of the wide scope of the territory involved therein and the proposed consolidation of the various operative rights, a number of hearings thereon would be required, which necessarily would extend over a considerable period and for this reason applicant filed this application, at the urgent request of Sacramento jobbers and shippers in the interest of expedition.

Applicant operates an extensive auto truck service between San Francisco, East Bay cities and Stockton and a large part of the San Joaquin valley under certificates of public convenience and necessity issued by the Commission at various times. The Valley Express Company, a corporation, under tariffs on file with the Commission, transports property over the lines of numerous certificated operators, including the lines of the applicant herein. The operations of the Valley Express Company cover a wide expanse of territory including Los Angeles and Sacramento.

There is no certificated truck carrier operating between Stockton and Sacramento, and the Valley Express Company is compelled to use the service of the rail lines in moving traffic between Stockton and Sacramento which it handles beyond Stockton via the lines of applicant and other certificated carriers connecting with the applicant beyond its various termini.

Between Stockton and Sacramento the Valley Express Company has been using the rail lines of the Central California Traction Company, which company is jointly owned by the Southern Pacific Company, Western Pacific and Santa Fe railroads. The applicant offered evidence to the effect that the Valley Express Company operates a daily express service between Stockton and Sacramento for the transportation of property moving to, from and beyond Sacramento and Stockton and that the service of the Central California Traction Company is unsatisfactory.

The evidence shows that the Central California Traction Company refuses to co-operate with the Valley Express Company in a prompt and expeditious handling of traffic. The record shows that traffic of the Valley Express Company from Stockton to points in the San Joaquin valley arrives at Stockton about midnight, but that the Central California Traction Company refuses to make delivery of the freight until 8:00 a.m., with the result

that it misses connection with the trucks of the Valley Motor Lines, causing a delay of 24 hours. This delay prevents the overnight delivery of freight moving by Valley Express Company from Sacramento to points in the San Joaquin valley, which is required by the wholesalers and jobbers of Sacramento,, in order to compete upon equal terms with jobbers at San Francisco, East Bay cities and Los Angeles in the sale of the commodities they handle.

Applicant proposes to operate a service from Sacramento at 6:00 p.m., arriving at Stockton at 8:00 p.m., in ample time to connect with its southbound service in the San Joaquin valley, thus assuring an overnight service to all points in that territory served by it and its connections, over which the Valley Express Company operates, with the exception of Bakersfield. From Stockton a truck will leave at 5:00 a.m., after connecting with northbound service from the San Joaquin valley, and arrive at Sacramento at 7:00 a.m., making an early morning delivery at that point. In this connection applicant proposes to operate additional equipment in extra runs for truckload lots at any time the traffic offers.

Sacramento is an important jobbing point and center, one of the oldest in the state, and many of the leading and important jobbers and wholesalers in this community have traveling men covering the San Joaquin valley territory.

The evidence of applicant shows that the Valley Express Company handles traffic for 86 Sacramento business houses, aggregating 149,917 pounds from Sacramento, and 154,939 pounds to that point in the months of January, February and March of 1934. An exhibit offered by applicant in this connection shows that in each succeeding month there was a considerable increase in traffic and that in the month of March it had reached in excess of three tons per day in each direction.

The testimony of W. G. Stone, Manager of the Transportation department of the Sacramento Chamber of Commerce, one of the principal witnesses of applicant, showed that he has direct charge of

the handling of all transportation matters which are referred to the Chamber of Commerce by its members. For twenty years he was traffic manager for Thomson Diggs Company, a large wholesale hardware firm, located at Sacramento, which does an extensive business in Sacramento and San Joaquin valleys, Oregon, Nevada and the mountain mining and lumbering territories. Since 1932 he has been manager of the Transportation department of the Sacramento Chamber of Commerce and has wide knowledge of the transportation requirements of wholesale and jobbing interests of Sacramento in reaching competitive distributing areas. He testified at length as to the keen competition between the jobbers and shippers of Sacramento and those of Los Angeles, San Francisco and East Bay cities, in the distributive area served by the applicant and the Valley Express Company in the San Joaquin valley. He stated that all these competing jobbing centers have certificated service to the San Joaquin valley, and enjoy overnight deliveries, but Sacramento does not enjoy certificated truck service nor an overnight truck service to many points north of Fresno and to all points south of Fresno. Mr. Stone further testified that the jobbing and wholesale interests of Sacramento are entitled to every advantage of transportation which their competitors enjoy and that at the present time Sacramento shippers are at a decided disadvantage. He contended that this proposed truck service would fill a very definite public need on the basis that the rail service to points in the San Joaquin Valley beyond Fresno, and to various intermediate points north of Fresno is inadequate to meet the needs of the Sacramento shippers, and that the proposed service will place Sacramento jobbers in a position to compete on terms of equality with Los Angeles, San Francisco and East Bay shippers.

The record shows that at the present time there is no overnight rail service from Sacramento to points south of Fresno, and to many points north thereof, although such service is available by truck from competing jobbing centers. To a number of

points in the San Joaquin Valley, Sacramento has only a tri-weekly rail service. It was shown further by this witness that for many years the rail carriers have been importuned to improve their services to the San Joaquin valley, but that they have never taken steps to obviate the delay of 24 hours at Fresno on traffic destined to points south thereof.

With reference to the fact that Sacramento shippers use non-certificated or contract truck carriers, Mr. Stone explained that this was done because of the failure of the railroads to improve their services after years of effort trying to persuade them to do so, but that if the proposed truck certificate is issued the Sacramento shippers will avail themselves of the certificated service of the applicant. Several other witnesses corroborated the testimony of Mr. Stone.

Mr. B. J. Lee, doing business as the Capitol City Casket Company, has been manufacturing and distributing caskets from Sacramento for twenty years. It appears by his evidence that his principal competitors are located in San Francisco, Oakland and Los Angeles and he formerly shipped about 1200 caskets annually to points in the San Joaquin valley, but that his business had dwindled about 300 per annum, due to better service from Los Angeles, San Francisco and Oakland. He testified that the nature of his business is such that when a casket is ordered by the small funeral director it is for immediate use and no delay in shipment will be countenanced. He attributed his loss of business to inadequate and slow service in Sacramento and to the superior service enjoyed by his competitors.

Mr. F. F. Thomson, its Vice President, and Harry G. Rowe, its Traffic Manager, appeared at the hearing in behalf of Thomson-Diggs Company of Sacramento, large jobbers and wholesalers in hardware and farming implements. Mr. Thomson testified that in addition to his traveling men covering the San Joaquin valley, he personally made trips through the territory, consulting his customers, and was familiar with the requirements of the trade. He stated that as

a member of the traffic committee of the Chamber of Commerce, he was familiar with the efforts that had been made for years to secure an overnight service on a daily schedule from Sacramento, but without success. Mr. Rowe testified that it was absolutely essential to have daily overnight service into the San Joaquin valley in order to meet the competition of Los Angeles and San Francisco jobbers. He stated that his company was using contract trucks to Fresno and points north and distributed out of Fresno by existing certificated carriers. This was done in order to secure prompt service. The witness testified that his company would prefer to use certificated carriers. Mr. Rowe further testified that Thomson Diggs Company shipped approximately 5000 pounds daily in the San Joaquin valley; and that to such points north of Fresno as Atwater, Ripon, Keyes, Ceres, Salida, Chowchilla, Merced, Berenda and Madera, there is no daily overnight service by rail from Sacramento, and the record also shows that there is only a tri-weekly service to Merced, Chowchilla, Berenda and Madera from Sacramento.

It appears that Thomson Diggs Company use certificated carriers wherever possible and only use contract carriers when necessary to secure proper services and otherwise to protect their interests in this highly competitive territory.

Mr. N. R. Blair, a distributor of butcher and dairy supplies and emergency shipments of refrigerator and machinery parts, testified similarly as the foregoing witness, and indicated that his shipments range from small packages up to two or three thousand pounds and move by contract carriers to points in the San Joaquin valley. He stated that some of his customers at Modesto and Merced had complained of delay in getting shipments from Sacramento.

Mr. J. P. Keating, a candy manufacturer, also handles confectionery and fountain supplies which he distributes from Sacramento to points in the San Joaquin valley. He testified that candy cannot be shipped by rail during the heat of summer, because of damage due to melting, and prefers the night truck service.

This witness attributed the small amount of business now done to inadequate transportation and general business conditions. Because of the perishable nature of candy shipments he would use applicant's proposed service throughout the San Joaquin valley.

H. L. Hansen, its Vice President, appeared as a witness in behalf of Mc Kesson-Kirk-Geary Company, wholesale distributors of drugs and sundry supplies. This company distributes its commodities from Sacramento to Fresno and intermediate points and to Dinuba and other points. It was shown that competitors of this firm in San Francisco enjoy overnight service to points in the San Joaquin valley which is not enjoyed by Sacramento. Mr. Hansen testified that he was regularly receiving complaints about the Pacific Motor Transport service, and that his company would use the service of the Valley Express Company from Sacramento to points in the San Joaquin valley, which would place his company on an equity with its competitors.

The record shows that there is a large volume of unmilled rice shipped to the Rice Growers Association of California at Sacramento from points in the San Joaquin valley. Mr. R.C. Ralston, sales manager of this Rice Association, testified that of 20,000 tons produced in the valley, a large percentage moves to Sacramento, somewhere between 35 to 60 percent, and that generally truck transportation is used. Milled and finished rice is shipped in large quantities to points in the San Joaquin valley, which aggregates 70 to 90 tons per month, all of which now moves by contract truck operators in the absence of a certificated truck service.

Mr. Ralston, who directs these shipments, indicated a preference for certificated truck operations and testified that he would use the services of applicant if authorized by the Commission.

The protesting rail lines introduced considerable oral and documentary evidence in support of their protests.

The rail protestants offered in evidence a map, Exhibit No.6, which shows the territory in the San Joaquin valley to which overnight rail freight service is now rendered from Sacramento, or proposed, save and except points on the Santa Fe Railway. This map indicates daily service to various well known communities between Manteca and Fresno and a considerable number of well known communities on the east and west side south of Fresno for a distance of 50 or 60 miles more or less. A tri-weekly service is available only to Merced, Chowchilla, Berenda and Madera. These freight services are rendered by the Southern Pacific Company and Pacific Motor Transport Company. The Santa Fe Railway gives southbound overnight service daily, except Sunday, from Sacramento to Merced and Fresno.

Witnesses for protestants, doing business in various communities in the San Joaquin valley, who make purchases at Sacramento, testified to the satisfactory nature of the rail service. The record shows that these receivers of freight do not handle any appreciable amount of merchandise from Sacramento, nor were they located at points where tri-weekly rail service exists, or where there is a 24 hours delay at Fresno.

Several large shippers of freight and produce called by the rail lines, testified to the satisfactory rail service, but it developed upon both direct and cross examination that they shipped their freight either in their own trucks or those of contract carriers.

Protestants contend that the necessity of the Valley Express Company for a more satisfactory service between Sacramento and Stockton is not of a public character which would justify the issuance of the certificate herein prayed for. They urge that as the applicant seeks a certificate between Sacramento only and Stockton only, its showing of public convenience and necessity should be considered only from the standpoint of traffic moving locally between those points. We are not in accord with this

contention. The Valley Express Company has its tariffs on file with the Commission covering the transportation of freight throughout a large part of California. Its traffic is handled via the lines of the applicant as far as Stockton, and between Stockton and Sacramento it must, in the absence of a certificated truck carrier, use the facilities of the Central California Traction Company, a protestant to the proposed service, and controlled by three other railroad protestants.

The service of the Central California Traction Company is such that the Valley Express Company cannot use it and give to the Sacramento shippers the overnight delivery which those shippers earnestly contend they must have to successfully compete with the jobbers of Los Angeles, San Francisco and East Bay cities.

It is not reasonable to assume that the rail lines between Sacramento and Stockton are going to give the Valley Express Company a service which will permit that company to render an overnight service. The record shows that they have not and have no intention of doing so.

Both propositions have been definitely settled by the decisions of the Commission in Application No.18699, in Decision No.26261, August 21, 1933, of the Pacific Motor Trucking Company to operate a truck service in the San Joaquin valley, and in Application No.18727, in Decision No.26262, Pacific Motor Trucking Company to operate between Sacramento and Placerville. In those and many other similar cases the rail carriers sought and were granted authority to operate trucks in lieu of freight trains, because of the inadequacy and cost of freight train service. The applicant in those cases urged, and the Commission held, that needs of the Southern Pacific Company for a substituted service amounted to a public need because the Southern Pacific was handling traffic for the general public.

We are of the opinion that no different situation is here presented. The Valley Express Company is handling traffic for the

public and desires to substitute a truck for a rail service, which latter service prevents the express company from giving that expedited service which its patrons demand and that they are entitled to receive.

In Applications Nos. 18699 and 18727, above referred to, the rail carrier urged before this Commission that the public benefit would flow to all the traffic handled by rail from or to points beyond the termini of the proposed truck operations. Those applications did not cover only traffic originating at the termini of the trucks. It was not contended that the great benefits would flow to the shippers from San Francisco, Los Angeles and all points served by the rail lines on shipments destined to points directly served by the proposed truck service. Thus, a shipper in Los Angeles or San Francisco, shipping by the Pacific Motor Transport Company, (an express company), over the lines of the Southern Pacific, would have the benefit of expedited truck service of Pacific Motor Trucking Company instead of rail service from Fresno to Coalinga or Sacramento to Placerville. No different question is presented in the instant case.

In its application Valley Motor Lines, Inc. alleges, and the record shows, that because of the inadequate and unsatisfactory service given traffic of Valley Express Company by the Central California Traction Company, which is handled for the express company by Valley Motor Lines to, from and beyond Stockton and Sacramento, it is in the public interest that applicant be permitted to operate trucks between Sacramento and Stockton to handle this traffic. For the same reasons that the Commission found that the needs of the Southern Pacific required truck service from Fresno to Coalinga and from Sacramento to Placerville to furnish expedited service on traffic originating at Los Angeles, San Francisco, East Bay cities and all other points, we must hold that the applicant requires a truck service between Sacramento and Stockton to make available to Sacramento shippers an expedited service to and from

points in the San Joaquin valley.

The Commission is here presented with practically an unanimous request of the wholesale and jobbing interests of Sacramento that the application be granted in order that they may compete on terms of equality with jobbers of the cities of San Francisco, Los Angeles and the East Bay cities. The shippers of Sacramento, a recognized shipping center, clearly represent an important part of the public and their request for the opportunity to ship by certificated truck service such as their competitors enjoy should not be ignored. They should not be compelled to resort to uncertificated carriers, with the instability of service and rates, in order to meet their competitors. The applicant, in addition to its proposed regular scheduled service, proposes additional service at any time for truck load lots which will provide a flexible and expeditious service not available under any service now rendered by protestants.

After a careful consideration of all the evidence in this proceeding, we are of the opinion that the application should be granted.

Valley Motor Lines, Inc. is 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

Public hearings having been held in the above entitled proceeding, the matter having been duly submitted upon briefs, and being now ready for decision,

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA DECLARES that public convenience and necessity require the operation by

Valley Motor Lines, Inc. of an auto truck service for the transportation of property between Sacramento and Stockton only, via Lodi, Galt and Arno, California.

IT IS HEREBY ORDERED that a certificate of public convenience and necessity for such service be and the same is hereby granted to Valley Motor Lines, Inc. subject to the following conditions:

1. That no service whatever shall be performed between Sacramento and Stockton, on the one hand, and on the other hand, intermediate points between Sacramento and Stockton or between any of said intermediate points.
2. That Valley Motor Lines, Inc. shall not make or enter into any contract, agreement or understanding, directly or indirectly, with Valley Express Company or any other express or motor truck company for the transportation between Stockton and Sacramento of any traffic which originates at said San Francisco bay points and is destined to Sacramento, or which originates at Sacramento, and is destined to said San Francisco Bay points, at rates to the general public lower than the combination of local rates over Stockton.
3. That the order herein shall not be construed as authorizing to link up, join or consolidate the operating rights owned or controlled by applicant, except as herein specifically authorized.
4. Applicant shall file its written acceptance of the certificate herein granted within a period of not to exceed fifteen (15) days from date hereof.
5. Applicant shall file, in triplicate, and make effective within a period of not to exceed thirty (30) days after the effective date of this order, 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 exhibits attached to the application in so far as they conform to the certificate herein granted, or rates satisfactory to the Railroad Commission.
6. Applicant shall file, in duplicate, and make effective within a period of not to exceed thirty (30) days after the effective date of this order, on not less than five (5) days' notice to the Commission and the public, time schedules covering the service herein authorized, in a form satisfactory to the Railroad Commission.

7. 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.

8. No vehicle may be operated by applicant herein unless such vehicle is owned by said applicant or is leased by it 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.

Dated at San Francisco, California, this 7th day of January, 1935.

Leon Whiteley

M. H. Lee

W. B. Lewis

W. H. ...

Frank ...

COMMISSIONERS.