

Decision No. 20143

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
J. HILLS WYTHE, et al (Valley Truck )  
Line) to amend Decision 25632 so as )  
to permit applicant to establish ) Application No. 21161  
pick-up and delivery service in the )  
City of San Jose. )

In the Matter of the Application of )  
PACIFIC MOTOR TRUCKING COMPANY to )  
acquire, and VALLEY TRUCK LINE to )  
sell, the operative rights for motor ) Application No. 21438  
truck operation held by the latter )  
under Decision No. 20397 of the )  
Railroad Commission. )

Douglas Brookman, for Valley Truck Line,

E. J. Foulds, for Pacific Motor Trucking Company,  
in Application No. 21438,

James J. Broz, for Valley Express, Protestant,

Roy B. Thompson, for Truck Owners Association of  
California, Protestant in  
Application No. 21438,

J. F. Vizzard, for Highway Transport, Inc.,  
Protestant in Application No.  
21161, and as its interest may  
appear in Application No.  
21438.

BY THE COMMISSION:

O P I N I O N

Valley Truck Line, a co-partnership, was authorized by  
Decision No. 20397, dated October 29, 1928, on Application No. 15139,  
to acquire a highway common carrier certificate for the transportation

of freight between San Jose and Hollister and intermediate points, via Coyote, Madrone, Morgan Hill, San Martin, Gilroy and San Juan, and to pick up and deliver within an area of one mile of the route or of the main business center of all points served. Valley Truck Line also was authorized by Decision No. 25632, dated February 14, 1933, on Application No. 18689, to acquire another highway common carrier certificate for the transportation of freight between San Francisco, on the one hand, and Coyote, Hollister and intermediate points, on the other hand. Both certificates have ever since been and are now being operated by Valley Truck Line.

In Application No. 21161 herein, applicant Valley Truck Line seeks to enlarge its last mentioned certificate by adding thereto the identical rights now held by it under the first mentioned certificate. In Application No. 21438 herein, Valley Truck Line also seeks authority to sell and Pacific Motor Trucking Company to acquire the rights held by Valley Truck Line, under the first mentioned certificate, Decision No. 20397, to-wit: between San Jose and Hollister and intermediate points. Applicant Pacific Motor Trucking Company proposes to confine said right, if so authorized by the Commission, to the handling of rail and express traffic moving under the tariffs of Southern Pacific Company, Railway Express Agency, Inc., Pacific Motor Transport Company and any other carrier or carriers of the same class.

Both applicants make it plain that the application to transfer the San Jose-Hollister rights to Pacific Motor Trucking Company is dependent upon the granting of the application of Valley Truck Line to enlarge the San Francisco-Hollister right. It was further stated on behalf of Valley Truck Line that Application No. 21161 was similarly intended to be conditioned upon the granting of Application No. 21438. In other words, it is the desire of the applicants that both applications should stand or fall together.

Public hearing was held before Examiner Elder and the matter submitted. It is now ready for decision.

The essential nature of Application No. 21161 is somewhat obscure. As just stated, it is framed as an application to amend the San Francisco-Hollister certificate (acquired under Decision No. 25632) so as to add to it all of the rights held by the applicant under the San Jose-Hollister certificate (acquired under Decision No. 20397). But no new right is sought. No additional public convenience and necessity is relied on. On the contrary, the application makes it plain that the request is made on the ground:

"\* \* \* (2) That applicants (the partners) already possess the rights herein sought under decisions of the Commission set forth in paragraph V hereof, (referring to Decision No. 20397) and herein seek to have these same rights added to their rights as granted by the decisions in paragraph IV hereof (referring to Decision No. 25632) so that all of said rights will be on a parity and simplify the operation of the automotive service by applicants under all of the decisions of the Commission." (Application No. 21161, paragraph XIII);

and further:

"Since it would coordinate applicants' rights and place them on a parity, and since it would not be granting to applicants anything they are not already permitted to do under the rights set forth in paragraph V hereof (describing the rights under Decision No. 20397) \* \* \*." (Application No. 21161, Paragraph VII).

The testimony of applicant's witnesses confirms this interpretation of the application. No evidence was offered of any new or additional public convenience or necessity.

However, while thus attempting to consolidate the two rights in a single certificate, the Valley Truck Line also seeks to retain intact as a separately existing right the San Jose-Hollister certificate held by virtue of Decision No. 20397; for in Application No. 21438 it seeks authority to transfer that right to Pacific Motor Trucking Company.

It is difficult to conceive of any theory to support such a manipulation of certificates. It is plain that the result of the two applications would be to produce two operative rights where but one

exists at present, something that the Commission, in repeated decisions, has refused to permit. Application No. 21161 is purely one to consolidate operative rights. If granted, Valley Truck Line's certificates held under Decision No. 20397 and Decision No. 25632 would become a single right. The San Jose-Hollister certificate, which the applicants in Application No. 21432 seek to transfer, would no longer have any separate existence. If Valley Truck Line wishes to transfer the operative right, it might be permitted to do so upon a proper showing. But obviously it cannot retain the right and sell it too; and that is what these applications contemplate. It is immaterial that Pacific Motor Trucking Company proposes to restrict the right after acquiring it, as the parties intend first to transfer the entire right.

There appears to be no objection to the consolidation of the operative rights as sought in Application No. 21161, but the applicant states this is not desired unless the transfer also is approved. As it appears that approval should not be given, both applications will be denied.

O R D E R

Application No. 21161 and Application No. 21432 having been duly heard and submitted and the Commission now being fully advised in the matters,

IT IS HEREBY ORDERED that said applications be and they are hereby denied.

Dated at San Francisco, California, this 20<sup>th</sup> day of Sept, 1937.

Walter M. ...  
Leon ...  
...  
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...  
Commissioners.