

Decision No. \_\_\_\_\_

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
JOSEPH A. HENARD AND HOMER H. HENARD, )  
(doing business as San Jose and Los )  
Gatos Express) to sell, and of )  
PIONEER EXPRESS COMPANY to purchase ) Application No. 21922  
an Automobile Freight Line, operated )  
between San Jose and Los Gatos, etc., )  
California. )

BY THE COMMISSION:

**ORIGINAL**

O P I N I O N

Joseph A. Henard and Homer H. Henard, doing business as San Jose and Los Gatos Express, have petitioned the Railroad Commission for an order approving the sale and transfer by them to Pioneer Express Company, a corporation, of an operating right for the automotive transportation as a highway common carrier of property between San Jose, Saratoga and Los Gatos; and Pioneer Express Company has petitioned for authority to purchase and acquire said operating right and to hereafter operate thereunder, the sale and transfer to be in accordance with an agreement, a copy of which, marked Exhibit "A", is attached to the application herein and made a part thereof.

The consideration to be paid for the property herein proposed to be transferred is given as \$100 which is alleged to be the value of the intangibles. No equipment is to be transferred.

The operating right herein proposed to be transferred was created by Decision No. 27746, dated February 11, 1934, on Application No. 19810.

Pioneer Express Company 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.

O R D E R

IT IS HEREBY ORDERED that the above entitled application be, and the same is hereby granted, subject to the following conditions:

1. The consideration to be paid for the property 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 for any purpose other than the transfer herein authorized.
2. Applicants Joseph A. Henard and Homer H. Henard shall within twenty (20) days after the effective date of the order herein unite with applicant Pioneer Express Company in common supplement to the tariffs on file with the Commission, covering service given under the certificate herein authorized to be transferred, applicants J.A. Henard and Homer H. Henard withdrawing and applicant Pioneer Express Company accepting and establishing such tariffs and all effective supplements thereto.
3. Applicants J. A. Henard and Homer H. Henard shall within twenty (20) days after the effective date of the order herein withdraw all time schedules filed in their name with the Railroad Commission and applicant Pioneer Express Company shall within twenty (20) days after the effective date of the order herein file, in duplicate, in its own name time schedules covering service heretofore given by applicants J. A. Henard and H. H. Henard which time schedules shall be identical with the time schedules now on file with the Railroad Commission, in the name of applicants J. A. Henard and H. H. Henard or time schedules satisfactory to the Railroad Commission.
4. The rights and privileges herein authorized may not be sold, leased, transferred nor assigned, nor service thereunder discontinued, unless the written consent of the Railroad Commission to such sale, lease, transfer, assignment or discontinuance has first been obtained.

5. No vehicle may be operated by applicant Pioneer Express Company 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.

6. The authority herein granted to sell and transfer the right and/or property shall lapse and be void if the parties hereto shall not have complied with all the conditions within the periods of time fixed herein unless, for good cause shown, the time shall be extended by further order of the Commission.

7. Applicant shall, prior to the commencement of service authorized herein and continuously thereafter, comply with all the provisions of this Commission's General Order No. 91.

The effective date of this order shall be the date hereof.

Dated at San Francisco, California, this 16<sup>th</sup> day of  
May, 1938.

[Signature]  
[Signature]  
[Signature]  
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COMMISSIONERS