

ORIGINAL

Decision No. 20706

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
VALLEY AND COAST TRANSIT COMPANY for) Application No. 20706
an extension of existing motor freight)
operative rights to East Bay points.)

DOUGLAS BROOKMAN, for applicant.

FRANK W. CHANDLER, for Richmond Chamber of Commerce,
interested party appearing on behalf of applicant.

T. G. DIFFERDING, for Oakland Chamber of Commerce,
interested party appearing on behalf of applicant.

H. W. HOBBS, F. X. VIERRA and ANSEL S. WILLIAMS, JR.,
for Southern Pacific Company, Pacific Motor Transport
Company, and Pacific Motor Trucking Company, protestants.

A. S. WILLIAMS, for Santa Maria Valley Railroad, protestant.

J. J. BROZ and E. G. McSWEENEY, for Valley Express Company,
E. Frasher Truck Line, and Valley Trucking Company,
protestants.

R. S. ELLIOTT and EDWARD STERN, for Railway Express Agency,
Incorporated, protestant.

J. L. AMOS, JR. and L. N. BRADSEAN, for Western Pacific
Railroad Company, protestant.

ERVIN S. BEST, for J. W. Silva, protestant.

C. S. McLanagan, for Intercity Transport Company, protestant.

H. C. GRUNDELL, for Pacific Coast Railway Co., protestant.

BY THE COMMISSION:

O P I N I O N

Applicant Valley and Coast Transit Company, a corporation,
is a highway common carrier as defined in section 2 3/4 of the Public
Utilities Act, operating by virtue of certificates granted by this
Commission, between San Francisco, on the one hand, and King City and
Lompoc and intermediate points via Paso Robles, San Luis Obispo,
Santa Maria, San Simeon (via San Luis Obispo), Pismo Beach, Arroyo

Grande (via Oceano), Santa Maria, Guadalupe, Betteravia and other points, on the other hand. The route used between San Francisco and San Luis Obispo is U. S. Highway No. 101 via San Jose, Gilroy and Salinas.

In this application authority is sought to operate as a highway common carrier between Richmond and Hayward and all intermediate points including Oakland, Berkeley, Emeryville, Alameda, Piedmont, Albany, El Cerrito and San Leandro, herein called the Oakland area, on the one hand, and all points south of Hayward, including San Jose, Gilroy, Salinas, and the points now served by applicant from San Francisco, on the other hand. The proposed route from the Oakland area is by way of Mt. Eden, Alvarado, Centerville, Warm Springs, and Milpitas to San Jose, and south from San Jose over the same route now traversed by applicant's trucks from San Francisco. Applicant does not propose any local service, i.e. service to and from points intermediate to Hayward and Salinas (not including Hayward and Salinas). Service is proposed, however, in such territory to or from other points now served by applicant and the other points involved herein.

Public hearings were held at San Francisco on September 11, 1936; at Oakland on October 8 and 9, 1936, and July 9, 1937; at Salinas on November 9 and 10, 1936; at San Luis Obispo on February 18 and 19, 1937; at Santa Maria on February 19, 1937. Oral argument was heard on August 20, 1937 at San Francisco at which time the matter was submitted.

Applicant's proposed time schedule provides for service as follows:

TIME SCHEDULE

<u>A</u>	<u>B</u>
7:00 P.M. Lv. Richmond	Ar. 12:20 A.M.
7:30 P.M. " Oakland	Lv. 11:40 P.M.
9:30 P.M. " San Jose	" 10:20 P.M.
11:50 P.M. " Salinas	" 8:00 P.M.
4:50 A.M. Ar. San Luis Obispo	" 2:30 P.M.

A Daily except Sunday and Holidays.

B Daily except Saturday and the day next preceding a holiday.

Pickup service will be available in Oakland until 5:00 P.M. and shipments will be accepted at applicant's terminal until 6:00 P.M. Early first morning delivery is proposed at all points involved.

The record shows that applicant now operates about twenty pieces of motor vehicle equipment, and needs no additional capital outlay to perform the proposed service, but has funds available should more equipment be required.

E. L. McConnell, President and General Manager of applicant, also, as an individual, operates an express corporation service under the fictitious name of Coast Line Express between the Oakland area, on the one hand, and King City and points south thereof along applicant's route, on the other hand. The underlying carriage is performed by Pacific Motor Trucking Company between Oakland and San Jose and by applicant south of San Jose.

The chief protestants are J. W. Silva, Railway Express Agency, Incorporated, Valley Express Company, and Southern Pacific Company and its subsidiaries Pacific Motor Transport Company and

(1)
Pacific Motor Trucking Company.

Southern Pacific Company operates over the entire area proposed to be served by applicant under the proposed extension of service. Pacific Motor Trucking Company operates between Oakland and San Jose and intermediate points. ⁽²⁾ Valley Express Company is an express corporation serving the area between San Jose and Salinas generally speaking, on the one hand, and the Oakland area, on the other hand. Thus applicant's proposed service would compete with Valley Express Company only at Salinas and points north thereof. Railway Express Agency, Incorporated, is also an express corporation, and serves all the territory involved.

Approximately forty public witnesses who were either shippers or receivers of freight traffic at numerous points testified on behalf of applicant as well as representatives of the Chambers of Commerce of Richmond and Oakland.

Mr. Frank M. Chandler representing the Richmond Chamber of Commerce testified in effect that Richmond needed an overnight highway common carrier service to Salinas and all points south thereof now served by applicant; that in order to receive an adequate overnight service to such points the shippers at Richmond are now compelled to ship their goods to San Francisco to connect with highway common carriers operating from San Francisco to points south thereof to and including Salinas, King City, San Luis Obispo and other points.

-
- (1) Since the submission of this proceeding Pacific Motor Transport Company has abandoned all operations for the transportation of property as an express corporation. The services which it formerly provided over the facilities of Southern Pacific Railroad Company and Pacific Motor Trucking Company are now being provided by the railroad company. 11/5/41
- (2) Pacific Motor Trucking Company has also been authorized to acquire the highway common carrier operative rights of Vanderhurst and Duda between King City and Salinas and intermediate points although such acquisition had not been consummated at the date of submission of this proceeding.

Likewise evidence was adduced from witnesses at Oakland that an adequate overnight through highway common carrier service was needed by them between Oakland and points to and including Lompoc, San Luis Obispo, King City, Salinas, Gilroy and San Jose; that in many cases shipments to such points are routed via San Francisco to connect with carriers at San Francisco in the same manner or for the same reasons as Richmond shippers. This practice necessarily results in loss of time, added expense and some inconvenience to the shippers.

Mr. J. C. Hunter of the Caterpillar Tractor Company at San Leandro testified that his company has need for a dependable overnight service to all points south of Hayward, including San Jose, Gilroy, Hollister, Salinas and other points. His firm ships between twenty-five and thirty tons monthly to such points. Hunter testified that the existing overnight services are not dependable.

A. E. Donahue, Vice President of the George R. Borrmann Steel Co. of Oakland, complained particularly in regard to the poor and inadequate service between Oakland and points south of Salinas. His firm has had some trouble with service between Oakland and San Jose. The service from Oakland to Salinas has been satisfactory although shipments sometimes arrive at Salinas in a damaged condition. His shipments to Salinas average about twenty-five tons annually. The service to San Luis Obispo is much better from San Francisco than from Oakland. The monthly tonnage average is about twenty-five tons to all points south of San Jose. He must meet the severe competition of Los Angeles and San Francisco to the territory involved and therefore needs an improved overnight service.

Most of the witnesses testified that they use Railway Express for small rush shipments, but for the large, bulky or heavy

shipments other carriers are used because of the relatively high rates of Railway Express on such traffic. There is nothing in this record to indicate the volume of traffic that would be diverted from Railway Express to applicant should the application be granted.

Other witnesses testified as to the necessity for applicant's proposed service. These witnesses included shippers of freight at Oakland and receivers at Salinas, King City, Paso Robles, San Luis Obispo, Santa Maria, and proximate points. There is a sharp conflict of testimony as to Salinas. Some of the shipper witnesses in Oakland testified that they had often received complaints from consignees at Salinas that too much time was consumed in making deliveries.

Consignees at Salinas who had used the service of Pacific Motor Transport testified that the service from the Oakland area was inadequate and not comparable to the service from San Francisco. Two Salinas business men who frequently order rush shipments of tractor parts from the Oakland area testified that they are unable to assure their customers of delivery at any particular time, since the shipments are likely to be delivered at any time up to three or four o'clock of the afternoon instead of early in the morning, as is proposed by applicant. Such delays often result in the discontinuance of work, since the parts are needed for repairs. Both witnesses urged a dependable early morning delivery. Mr. R. S. Hyde, special representative of the Pacific Motor Transport Company and Pacific Motor Trucking Company, testified on behalf of protestants that prior to February 23, 1937, a local drayman in Salinas performed the pickup and delivery service for his companies, but that on that date, because of complaints of delays in delivery, the Pacific Motor Trucking Company installed its own pickup and delivery service.

The witness stated as follows:

"There had been a progressive deterioration of the pick-up and delivery service by the contract drayman and I believe we had considered dispensing with his services for some 2 years prior to the time we actually took the delivery over." (Tr. of July 9, 1937, p. 26)

The Salinas area and points south thereof now served by applicant is served from the Oakland area by Coast Line Express, Southern Pacific Company, Pacific Motor Transport Company and Railway Express Agency, Incorporated.

Coast Line Express uses the underlying facilities of Pacific Motor Trucking from Oakland to San Jose and south therefrom over the facilities of applicant. While the services of Coast Line Express have been termed satisfactory in the sense that it makes deliveries early in the morning, some of the shippers and receivers are dissatisfied because on occasions shipments have been delayed a day or more at San Jose through a failure to make a scheduled transfer at that point from Pacific Motor Trucking equipment to that of applicant. The record shows numerous such delays on rush shipments. Delays also have resulted because some shipments, instead of being placed on Pacific Motor Trucking Company trucks at Oakland for transportation to San Jose, have been placed on Southern Pacific rail cars at Oakland and carried through to destination, or to the Southern Pacific agency station nearest to said destination. In such instances the consignee, not expecting the shipment to be carried by rail, has to be notified of its arrival and then is required to arrange for delivery from the Southern Pacific depot to his place of business.

The services of Pacific Motor Transport and Southern Pacific have been described as too slow and uncertain by receivers of freight at Soledad, King City, Templeton, Paso Robles, Atascadero, San Luis Obispo, Santa Maria, Orcutt, Arroyo Grande and San Simeon. The

testimony of other witnesses with respect to such points was much the same and need not be discussed in detail. It may be summarized by stating that it shows that these witnesses do not have any through highway common carrier service from the Oakland area; that delays are experienced whether the shipment is routed via Coast Line Express, Pacific Motor Transport, or Southern Pacific; that applicant affords them adequate service both as to speed and dependability on shipments from San Francisco; and that they need and will utilize applicant's proposed service from the Oakland area.

Several witnesses who regularly receive freight at Salinas from the Oakland area testified that the existing service from Oakland provided by Pacific Motor Transport was ample to meet their needs and that they were regularly given early morning delivery. Two consignees at Salinas, hereinbefore referred to, who testified that the existing services are inadequate, also stated that they had not used Valley Express Company for shipments from Oakland and that if Valley Express Company could provide them first morning delivery by 9:00 or 9:30 A.M. they would consider that service adequate.

The service of Pacific Motor Transport at Salinas was improved after February 23, 1937, according to witness Hyde, hereinbefore mentioned, by the installation of pickup and delivery service by Pacific Motor Trucking Company trucks. This improvement, however, was made subsequent to the filing of the application herein.

Although the evidence is conflicting, we feel that by a preponderance of the evidence, the record in this case discloses that transportation facilities between Oakland and Salinas are inadequate. The entrance of applicant into this area would provide a more complete service which would place the Oakland shippers who ship to Salinas on a better competitive basis with San Francisco.

There is also substantial evidence in the record showing that shippers in the Oakland area, in order to assure prompt delivery, sometimes have their shipments taken to San Francisco or to San Jose and shipped to destination from such points over the lines of applicant or some other carrier. During the month of August, 1936, five tons of freight from Oakland were diverted in this manner and tendered to applicant in San Francisco, and four tons more in San Jose, for delivery to points south of Salinas. Such procedure is both expensive and inconvenient, and is not even available unless the order is received by the Oakland shippers before noon or early afternoon on the day preceding the desired delivery date.

The record shows that there is a need for applicant's proposed service between Richmond and Hayward and intermediate points, on the one hand, and points south of Hayward, including points now served by applicant from San Francisco, on the other hand, and the authority requested will be granted.

Valley and Coast Transit 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

Public hearings having been held on the above application, the matter having been duly submitted, and the Commission now being fully advised,

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA HEREBY
DECLARES that public convenience and necessity require the estab-
lishment and operation by Valley and Coast Transit Company, a cor-
poration, of an automotive service as a highway common carrier, as
defined in section 2 3/4 of the Public Utilities Act between Richmond
and King City and intermediate points via El Cerrito, Albany,
Berkeley, Emeryville, Piedmont, Alameda, San Leandro, San Lorenzo,
Alvarado, Centerville, Newark, by diversion, Hayward, Niles, San Jose,
Gilroy and Salinas as an extension and enlargement of applicant's
present operative rights now operated on schedule in general between
Lompoc, San Luis Obispo, King City and San Francisco, as created by
Decision No. 23643, dated May 4, 1931, on Application No. 16704,
Decision No. 19262, dated January 18, 1928, on Application No. 14339,
and Decision No. 20115, dated August 15, 1928, on Application No.
14887, over and along U. S. Highways 40, 50 and 101, and State Routes
17 and 21, subject to the following restrictions:

1. No local service may be given to and from
Richmond and Hayward and intermediate points.
2. No local service may be given to and from
Hayward and Salinas and intermediate points,
excluding Hayward.

IT IS ORDERED that a certificate of public convenience and
necessity therefor be, and it is hereby, granted to Valley and Coast
Transit Company, a corporation, subject to the following conditions:

1. The authority herein granted shall lapse and be void
if applicant shall not have complied with all of 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.
2. Applicant shall file a written acceptance of the
certificate granted herein within fifteen (15) days from
the effective date of this order.

3. Applicant shall commence the service authorized herein within thirty (30) days from the effective date of this order, and shall file in triplicate with the Railroad Commission, and concurrently make effective on not less than ten (10) days' notice to the Railroad Commission and to the public, a tariff or tariffs constructed in accordance with the requirements of the Railroad Commission's General Orders, and containing rates and rules satisfactory to the Railroad Commission.

4. Applicant shall file in duplicate with the Railroad Commission, and make effective within thirty (30) days from the effective date of this order, on not less than five (5) days' notice to the Railroad Commission and to the public, time schedules covering the service authorized herein, in a form satisfactory to the Railroad Commission.

5. The rights and privileges granted and authorized herein 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 obtained.

6. No vehicle may be operated by applicant unless such vehicle is owned by applicant or is leased by applicant under a contract or agreement on a basis satisfactory to the Railroad Commission.

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

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

Los Angeles
Dated at ~~San Francisco~~, California, this 2nd day of

May
~~1939~~, 1939.

Robert W. ...
Frank ...
Carl ...
W. ...
Justin J. ...
COMMISSIONERS