Decision No. 32401.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of VALLEY MOTOR LINES, INC., a corporation, to consolidate operative rights and establish through service for the transportation of the traffic of Valley Express Co., an express corporation, between San Francisco, Oakland, Alameda, Berkeley, Emeryville and San Leandro, on the one hand, and Stockton, California, on the other hand.	Application No. 20101.

ORIGINAL

J. J. BROZ, for Applicant.
McCUTCHEN, OLNEY, MANNON AND GREENE, by F. W. MIELKE, for The River Lines, Protestant.
L. N. BRADSHAW, for The Western Pacific Railroad Company, Protestant.

BY THE COMMISSION:

O P I N I O N

By application filed August 10, 1935, as amended, the Valley Motor Lines, Inc., a California corporation, seeks an order authorizing the consolidation of certain operative rights heretofore granted to applicant for the purpose of establishing a joint through service to transport only the traffic offered by Valley Express Company, an express corporation, between San Francisco, Oakland, Alameda, Berkeley, Emeryville and San Leandro, California, on the one hand and Stockton, California, on the other hand.

Applicant has been authorized by the Commission to conduct operations as a highway common carrier of property over a number of regular routes. The highway common carrier operative rights here sought to be consolidated are (a) the right to operate a service between San Francisco, Oakland, Alameda, Berkeley, Emeryville and San Leandro (hereinafter called "San Francisco Bay points") on the one hand, and Manteca and points south thereof, to and including Fresno, on the

other hand;[1] and (b) the right to operate another service between Stockton and Merced, and intermediate points, via Manteca.[2]

These operative rights were separately granted and do not permit applicant to link up, join or consolidate them in any manner. This condition in the certificates of public convenience and necessity issued to applicant requires, among other things, that all traffic transported from a point on one operative right to a point on the other shall be physically transferred and change of equipment made at a common point on each right.

As an underlying common carrier, applicant performs a transportation service for shipments moving on the billing and in the custody of Valley Express Company between the points considered. Valley Express Company is an "express corporation" as that term is defined in Section 2(k) of the Public Utilities Act, and such operative rights as it possesses to conduct the present service over the lines of applicant were acquired prior to August 2, 1933, the effective date of Section 50(f) of the Act requiring certificates of public convenience and necessity. Applicant handles traffic offered to it by Valley Express Company under written contracts and the rates charged the public for transportation services rendered are those published in the tariffs of the latter currently in effect and on file with the Commission. Both applicant and Valley Express Company are owned and controlled by the same interests.

---

(1) This service was authorized by our decision in Re Valley Motor Lines, Inc., 36 C.R.C. 539 and 866 (Decision Nos. 23949 and 24289 on Application No. 16176), decided August 17 and December 7, 1931, respectively.

(2) This service was authorized by our Decision No. 23073 on Application No. 16957 of Valley Motor Lines, Inc., and B. O. Thomas, decided November 13, 1930.

No public hearing was had on the instant application, the applicant and parties protestant agreeing by stipulation to submit the matter for decision upon the record heretofore made in Application No. 19856, with the privilege of filing supplemental memoranda on said record. After briefs were filed, the matter was finally submitted and it is now ready for decision.

By Application No. 19856 (hereinafter called the "former application") the Valley Motor Lines, Inc., sought authority to interchange its motor vehicle equipment between the same two operative rights as are involved in the present application, when containing only property in-transit for the account of its overlying express corporation, the Valley Express Company, so as to permit through service from a point on one operative right to a point on the other operative right, without physical transfer of said property and change of equipment at Manteca and/or Modesto. A hearing was held before Examiner W. R. Williams at San Francisco on March 14, 1935, and the matter submitted upon the filing of briefs. At the request of applicant, the application was dismissed, without prejudice, by our Decision No. 28153, rendered August 5, 1935.

The Western Pacific Railroad Company and The River Lines opposed the granting of both the former and the present applications, but submitted no evidence in support of their protest.

The proposed consolidation of operative rights is to permit applicant to establish a through service between San Francisco Bay points and Stockton for the handling of shipments offered to it for transportation by the Valley Express Company, thus eliminating the physical transfer of those shipments and change of equipment at Manteca and/or Modesto from one operative right to the other. It is represented that the establishment of through service, as proposed, will result in increased efficiency of transportation facilities, reduced operating expenses, and the rendering of an improved and more

adequate service to the public.

The operative rights possessed by applicant and its affiliated express corporation, the Valley Express Company, the services they have conducted, and the methods of operation were described by Harold B. Frasher, Secretary and Manager of both carriers, the only witness called. He testified that a check had been made to determine only the cost of labor employed on the depot platform at Manteca to perform the physical transfer of freight and it was found to average 74 cents per ton handled. An exhibit was submitted of all movements of traffic transported for Valley Express Company from and to Stockton during December, 1934, and January, 1935, which required physical transfer at Manteca or Modesto. It indicates that 958 tons were transferred during the two-month period. Of this tonnage, the witness estimated that 398 tons originated at San Francisco Bay points and 180 tons were destined to San Francisco Bay points. If these tonnage figures should be used as a base, the traffic handled for Valley Express Company between the points involved would aggregate 3,468 tons annually. Thus, if applicant is permitted to operate as proposed, a net saving in the labor expense of handling this traffic of approximately $2,566 per year would be realized.

An improved and more satisfactory service will be afforded patrons of Valley Express Company under the proposed operations, in the opinion of the witness, as delays to shipments being carried beyond the transfer point and over, short and damage claims incidental to physically transferring shipments can be eliminated. In that connection an exhibit shows that for November and December, 1934, the average number of claims on a movement of 1,001 tons of traffic handled for Valley Express Company to and from Stockton was 0.15 per ton, while the average number of claims on a movement of 938 tons of like traffic to and from Modesto is shown to be only 0.041 per ton. The much greater number of claims per ton on Stockton traffic is attributed to the fact that it is

presently subjected to one more transfer while in-transit than the Modesto traffic.

Applicant submits that the proposed service will in no sense result in any competition with existing carriers; that it does not propose to invade any new territory and does not expect to adversely affect other transportation agencies, but simply proposes to arrange for the improvement of a common carrier service which has served the points involved for a number of years; that based upon the degree of efficiency, economy and adequacy the proposed service would attain, the existing service is inadequate and unsatisfactory to properly handle traffic offered to it for transportation by Valley Express Company; and that the proposed service will meet a public demand and need.

In support of its contention that other transportation agencies will not be adversely affected, applicant points out that the traffic proposed to be handled in the through service is now and will continue to be those shipments moving under the through rates and billing of Valley Express Company which has had the right to conduct transportation service between the points considered as an express corporation since the year 1932. Applicant further argues that its present operative rights will not be enlarged should the authority sought be granted as all transportation services it renders direct to the public will remain the same as at present, that is, the local traffic handled under its own rates and billing as a highway common carrier will continue to be physically transferred and change of equipment made between the two operative rights involved herein. It is suggested that the Valley Express Company could not be expected, and would not be willing, to turn over its traffic at any point on the routes described to other common carriers in the field, since they are all direct competitors.

The primary and basic question for determination is whether the interchange of equipment from one operative right to the other when containing only shipments transported under contract for Valley

Express Company between the points considered is necessary or desirable in the public interest. The evidence shows that the proposed through service will be much less expensive and at the same time more expeditious and generally satisfactory to the public served by the Valley Express Company. That these results can be achieved is clear from the record. We have long held in substance that economies in operation and reduction in transportation cost and increased efficiency of service by existing common carriers inure to the benefit of the general public and should be encouraged. Here it is not only proposed to serve the public interest by economy and efficiency in operation, but to afford an improved service on a substantial volume of traffic as well. The existing services of competing common carriers will not be endangered contrary to the public interest as the traffic involved does not now move over their lines, nor does it appear that applicant, by reason of any superiority in service or operation, might divert traffic from other transportation agencies. The through service, as proposed, is similar in character to that considered in Re Valley Motor Lines, Inc., and Motor Freight Terminal Company, Decision No. 26942 on Application No. 19266 (decided April 16, 1934), and leads to the same conclusions reached in that case. We there stated:

> Valley Express Company validly offers through service of freight between points on the two operations under its contracts with the carrier corporations. The express rates and the contracts are on file with this Commission. ***
>
> It appears, however, that this through service may not be conducted except by transferring cargoes from truck to platform and from platform to truck at Fresno. Such physical necessity requires considerable cost, ***. It also entails increased breakage and astrays resulting in damage claims. ***
>
> *** Applicants request authority to eliminate the transfer as to the express shipping indicated. ***
>
> Protestants urge that this is a mere subterfuge to avoid seeking a certificate of necessity and convenience, which they also urge is a necessary prerequisite to eliminating transfer of cargo between trucks. This contention is untenable for the reason that through service, validly offered by Valley Express Company, now exists. This service, however, is beset with the impediment sought to

be removed and such removal will inure to the benefit of the transportation companies in eliminating cost of transfer and damage in-transit. Benefits likewise will be enjoyed by the shipping public in resultant expedition and safety.

It is our conclusion that the application should be granted. It appears that such action will benefit alike the shipping public and the regulated transportation companies.

Protestants urge that we deny the application on the grounds (1) that applicant is in reality seeking a certificate of public convenience and necessity to transport property between San Francisco Bay points and Stockton; (2) that in no respect were the services of other common carriers operating between those points shown to be inadequate or unsatisfactory which is necessary to justify the issuance of a certificate; and (3) that the service of applicant and Valley Express Company between San Francisco Bay points and Stockton was at its inception, and still is, unlawful and cannot be rendered valid by granting the authority sought. In the former application the same grounds for denial were asserted by these protestants.

The public benefits and advantages that would be afforded by the proposed through service are sufficient to justify our approving the interchange of equipment between the operative rights involved, subject to the limitations hereinafter imposed. For the same reason we stated in the Valley Motor Lines case, supra, which is equally applicable herein, namely: "that through service, validly offered by Valley Express Company, now exists," authority to interchange equipment to avoid physical transfer of the traffic involved does not require the issuance of a certificate of public

convenience and necessity.(2) Compare Re John W. Anderson, 42 C.R.C. 15.

It is true that no showing was made by applicant in respect to any inadequacy of services rendered by other carriers. While adequate service by existing carriers under certain circumstances and conditions may well be sufficient grounds to deny an application, other considerations shown of record are controlling here. As has been stated, the authority which will be granted herein will afford an improved and more economical service without changing applicant's present scope of operation.

The third argument is also untenable because the uncontradicted evidence of record in this proceeding shows (1) that all traffic handled by applicant, including that of the Valley Express Company, moving between points on the two operative rights is presently physically transferred from one to the other at Manteca and/or Modesto and change of equipment made thereat; and it has further been

---

(2) This has been the rule in later cases where highway common carriers have been authorized to interchange equipment between separate operative rights when transporting through traffic of express corporations. See Re Redwood Motor Freight, et al, Decision Nos. 27545, 27662, and 32565 on Application No. 19666; and Re Pacific Motor Trucking Company and McCloud R.R. Company, Decision No. 29976 on Application No. 21342.

Authority to change the transfer point between separate operative rights of traffic transported for express corporations has also been granted to highway common carriers without the issuance of a certificate of public convenience and necessity. In Re Valley Motor Lines, Inc., and Highway Transport Company, Decision No. 27385 on Application No. 19580, we there stated:

> *** Southern Pacific Company and Pacific Motor Transport Company, while not formally protesting nor requesting a public hearing, have urged that granting the request would, indirectly, permit Valley Motor Lines, Inc., through its contract with Valley Express Co., (ownership of each is identical), to serve San Jose without first procuring certificate of public (convenience and) necessity therefor. However, such service is now rendered by the round-about delivery at San Francisco to the delay of express shipments. The present request is only for the volume of express and does not contemplate freight service by Valley Motor Lines, Inc. Analogy is found in many of the operations of Pacific Motor Transport Company for which authority has been granted.

CORRECTION

THIS DOCUMENT

HAS BEEN REPHOTOGRAPHED

TO ASSURE LEGIBILITY

convenience and necessity.(2) Compare Re John W. Anderson, 42 C.R.C. 15.

It is true that no showing was made by applicant in respect to any inadequacy of services rendered by other carriers. While adequate service by existing carriers under certain circumstances and conditions may well be sufficient grounds to deny an application, other considerations shown of record are controlling here. As has been stated, the authority which will be granted herein will afford an improved and more economical service without changing applicant's present scope of operation.

The third argument is also untenable because the uncontradicted evidence of record in this proceeding shows (1) that all traffic handled by applicant, including that of the Valley Express Company, moving between points on the two operative rights is presently physically transferred from one to the other at Manteca and/or Modesto and change of equipment made thereat; and it has further been

---

(2) This has been the rule in later cases where highway common carriers have been authorized to interchange equipment between separate operative rights when transporting through traffic of express corporations. See Re Redwood Motor Freight, et al, Decision Nos. 27545, 27662, and 32565 on Application No. 19666; and Re Pacific Motor Trucking Company and McCloud R.R. Company, Decision No. 29976 on Application No. 21342.

Authority to change the transfer point between separate operative rights of traffic transported for express corporations has also been granted to highway common carriers without the issuance of a certificate of public convenience and necessity. In Re Valley Motor Lines, Inc., and Highway Transport Company, Decision No. 27385 on Application No. 19580, we there stated:

> *** Southern Pacific Company and Pacific Motor Transport Company, while not formally protesting nor requesting a public hearing, have urged that granting the request would, indirectly, permit Valley Motor Lines, Inc., through its contract with Valley Express Co., (ownership of each is identical), to serve San Jose without first procuring certificate of public (convenience and) necessity therefor. However, such service is now rendered by the round-about delivery at San Francisco to the delay of express shipments. The present request is only for the volume of express and does not contemplate freight service by Valley Motor Lines, Inc. Analogy is found in many of the operations of Pacific Motor Transport Company for which authority has been granted.

shown (2) that Valley Express Company has offered a through service over the lines of applicant between San Francisco Bay points and Stockton since the year 1932 under appropriate tariff on file with this Commission. The arrangements entered into between applicant and Valley Express Company are set forth in written contracts and are also on file with the Commission.

Interpreting the views of protestants, the thought seems to be that it was unlawful for the owners and officers of applicant, through the formation and operation of Valley Express Company as an express corporation, to link up or consolidate separate operative rights so as to render a through service in any manner and thus by indirection do that which cannot be lawfully done directly.

It may be, as contended, that Valley Express Company was organized for the purpose of operating through service between points located on the various separate and distinct operative rights of the applicant and other highway common carriers either owned or controlled by officers of applicant. However, there was nothing in the law at the time Valley Express Company began operations between the ultimate termini of the proposed through route to prevent a highway common carrier or its officers, if they otherwise met the requirements of the law and this Commission, from forming and operating an express corporation to be used for this purpose without a certificate of public convenience and necessity, and it appears that such requirements were met from the evidence submitted in this proceeding. Assuming it were a fact that the only purpose of the operations conducted by the Valley Express Company was to escape the necessity of securing a certificate of public convenience and necessity to consolidate and enlarge the existing operative rights possessed by applicant and its affiliated truck lines, such avoidance does not make invalid the present or proposed service of either applicant or Valley Express Company. Mr. Justice Holmes well stated this principle in Superior Oil Co. v. State

of Mississippi Ex Rel. Rush H. Knox, 280 U.S. 390, at pages 395 and 396 in the following language:

> The fact that it desired to evade the law, as it is called, is immaterial, because the very meaning of a line in the law is that you intentionally may go as close to it as you can; if you do not pass it. Bullen v. Wisconsin, 240 U.S. 625, 630, 631; 60 L. ed. 830, 835; 36 Sup. Ct. Rep. 473.

Protestants rely upon Motor Service Express, et al v. Cowan, et al, 32 C.R.C. 544, as the leading case in support of their contention that the present service accorded traffic transported by applicant for Valley Express Co. is unlawful. There we found the pretended utilization of an express company resulting in unification of operative rights was clearly a subterfuge and device to evade regulation. It is apparent that the facts as found in that case, upon which the Commission based its action, differs materially from the facts presented by the present application. Here the record does not disclose any pretense or artifices on the part of applicant or the creation of a fictitious express corporation to evade regulation. On the contrary, it indicates that applicant and Valley Express Company openly and without concealment, and in obedience to legal requirements, instituted and have continued to conduct the present operation.

Nor have we overlooked the other authorities cited by respondents, but we think the principles announced in them are not in conflict, the facts considered, with the conclusions we have reached herein. Most of them deal with the principle that a highway common carrier may not, by consolidation, establishment of joint or proportional rates, or by other means, expand or extend operative rights beyond the boundary fixed by the terms of the original authorization.

As we have seen, the conclusion is warranted that the interchange of equipment for the purposes intended would benefit the shipping public, as well as the applicant carrier, and that it would not tend to defeat any of the objects declared in the Anderson case, supra, and other cases there cited.

We find that the interchange of motor vehicle equipment by the Valley Motor Lines, Inc., at any common point from one to the other of the previously described operative rights, when said motor vehicle equipment exclusively contains at the time of interchange only those shipments transported under written contracts with Valley Express Company and in-transit between San Francisco, Oakland, Alameda, Berkeley, Emeryville, and San Leandro on the one hand and Stockton on the other hand, is in the public interest and should be approved and authorization granted. In all other respects the application should be denied.

O R D E R

Valley Motor Lines, Inc., a corporation, having made application as above-entitled, the matter duly submitted, and the Commission being now fully advised:

IT IS HEREBY ORDERED that Valley Motor Lines, Inc., be and it is hereby authorized to interchange motor vehicle equipment at any common point located on the separate operative rights heretofore granted by Decision Nos. 23949 and 24289 on Application No. 16176 and Decision No. 23073 on Application No. 16957, when said motor vehicle equipment exclusively contains at time of interchange only those shipments transported under written contracts with Valley Express Company, an express corporation, and in-transit between San Francisco, Oakland, Alameda, Berkeley, Emeryville and San Leandro on the one hand and Stockton on the other hand.

IT IS HEREBY FURTHER ORDERED that in all other respects the application be and the same is hereby denied.

The effective date of this order shall be ten (10) days from the date hereof.

Dated at San Francisco, California, this 6th day of August, 1940.

Commissioners.