Decision No. [illegible]

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of UNITED MOTOR TRANSPORT LINES, INC., a corporation, and B. F. SNIDER, an individual, for the approval of a lease of the operative rights now operated by said United Motor Transport Lines, Inc. under Decision No. 27033, on Application No. 19384. In the Matter of the Supplemental Application of UNITED MOTOR TRANSPORT LINES, INC., for authority to suspend service of the operations conducted pursuant to Decision No. 27033 on Application No. 19384.	Application No. 23461
In the Matter of the Application of UNITED MOTOR TRANSPORT LINES, INC., a corporation, and EL DORADO MOTOR TRANSPORTATION COMPANY, INC., a corporation, for the approval of a lease of the operative rights now operated by said United Motor Transport Lines, Inc. between Sacramento and Wheatland and certain intermediate points, as set forth in Decision No. 20934, on Application No. 15341; or, in the alternative, for the suspension of the operations between Sacramento and Wheatland for a period of one year.	Application No. 23559

WARE & BEROL, by MARVIN HANDLER for Applicants.

A. J. GAUDIO, for Southern Pacific Company, Protestant.

BY THE COMMISSION:

O P I N I O N

In these proceedings United Motor Transport Lines, Inc. proposes to lease to El Dorado Motor Transportation Company, Inc. and to B. F. Snider, respectively, certain parts of its consolidated operative right as a highway common carrier. To the former, United Motor Transport Lines, Inc. proposes, by Application No. 23559, to lease that portion of its operative right between Sacramento and Wheatland and intermediate points, except those between Sacramento and Lincoln; to the latter, it undertakes, by Application No. 23461, to lease that part of its operative right between Auburn and Georgetown and certain intermediate points. In addition, permission is sought to establish certain through and joint through rates. Southern Pacific Company protested the granting of both applications.

A public hearing was had before Examiner Austin at Sacramento on July 16, 1940, when evidence was offered, the matter submitted, and it is now ready for decision. At the hearing these proceedings were consolidated for the taking of evidence and for decision. Though distinct routes are involved, much of the evidence received is common to both applications, and certain objections raised by protestant apply to each with equal force. Therefore, they will be considered together.

The United Motor Transport Lines, Inc. (which, for brevity, will be referred to hereafter as the "United") now operates as a highway common carrier pursuant to certificates of public convenience and necessity granted by this Commission between Sacramento and Auburn and intermediate points, via Roseville, Rocklin, Loomis, Penryn and Newcastle; between Sacramento and Wheatland and intermediate points, except Lincoln, via Roseville and Sheridan; and between Auburn and Georgetown and certain intermediate points, viz., Cool and Greenwood. All have been consolidated into a single, unified operative right.(1)

By Application No. 23559, as amended, United seeks authority to lease to El Dorado Motor Transportation Company, Inc. (which, for brevity, will be referred to hereafter as "El Dorado") "all its operative rights" as a highway common carrier "between Sacramento and Wheatland and intermediate points, except those between Sacramento and Lincoln as granted by" Decision No. 20834, on Application No. 15341, dated March 4, 1929. In addition, El Dorado sought permission to establish between the leased operative right and its own operative right, extending

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(1) By Decision No. 20834, on Application No. 15341, dated March 4, 1929 (32 C.R.C. 718), Oscar Schneider, Walter Schneider and Frank Schneider, doing business as Schneider Brothers, were authorized to transfer to United Motor Transport Lines, Inc. (applicant herein) certain operative rights authorizing service as a highway common carrier between Sacramento and Auburn and intermediate points via Roseville, Rocklin, Loomis, Penyrn and Newcastle; and between Sacramento and Wheatland and intermediate points, except Lincoln, via Roseville and Sheridan. Previously, these operative rights had been consolidated by Decision No. 16407, on Application No. 11363, dated April 5, 1926, so as to permit "through service between all the termini and intermediate points, except Lincoln." (32 C.R.C. 720). The operative right between Auburn and Georgetown and certain intermediate points comprising Cool and Greenwood, was transferred by C. W. Ganow to United Motor Transport Lines, Inc. pursuant to Decision No. 26945, on Application No. 19384, dated April 16, 1934. By Decision No. 27033, rendered in the same proceeding May 7, 1934, Decision No. 26945 was modified so as to permit the right transferred to be consolidated and merged with the operative rights previously possessed by United, which had been granted by Decision No. 21373, on Application No. 15746 and by Decision No. 22575, on Application No. 16507. Though the operative right acquired by United under Decision No. 26945 contemplated the transportation of both freight and passengers, the passenger service subsequently was discontinued, at the instance of United, pursuant to Decision No. 28955, on Application No. 20624, rendered June 30, 1936.

from Sacramento to Lincoln, through rates to be maintained on the same level as the rates now published by United between Sacramento and Wheatland. United also prayed, in the alternative, that should approval of the lease be withheld, it be authorized to suspend for one year its operations "between Sacramento and Wheatland and intermediate points, except those on Highway U. S. 40."

El Dorado now operates as a highway common carrier between Sacramento and Lincoln and intermediate points, including Roseville; it also serves other points not material here. United, as we have stated, may not serve Lincoln as an intermediate point, but El Dorado is subject to no such limitation. El Dorado is well qualified, financially and by long experience, to provide an adequate service should the lease be approved.

By Application No. 23461, as amended, United requests permission to lease to B. F. Snider all of its operative rights "between Georgetown and Auburn and certain intermediate points," viz., Cool and Greenwood, granted by Decision No. 27033, on Application No. 19384, dated May 7, 1934.(2) In addition, both United and Snider sought to establish and maintain joint through rates

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(2) Though the application and the lease referred to Decision No. 27033, rendered May 7, 1934, in Application No. 19384 as constituting the source of United's title to this operative right, the record shows, as pointed out in note (1), supra, that this operative right was actually transferred to United by Decision No. 26945 rendered in that proceeding on April 16, 1934. Decision No. 27033 permitted the consolidation of this operative right with others held by United.

applying between points on the leased operative right, viz., between Auburn and Georgetown, and points on that part of United's operative right lying between Sacramento and Auburn, which would be identical to the rates now maintained by United between Sacramento and Georgetown. Should the Commission withhold its approval of the lease, United asks that as an alternative it then be permitted to suspend service for one year between Auburn and Georgetown.

At present, Snider is engaged in transporting the United States mail between Auburn and Placerville under a contract with the Federal Government which will expire July 1, 1942. He also holds a permit as a highway contract carrier issued by this Commission.(3) His experience in driving trucks, not only as an independent operator, but as an employee of others, has extended over a period of twelve years; during the past two years he has handled the mail, and has operated as a highway contract carrier in the region he now proposes to serve as a highway common carrier. He appears qualified to undertake this service.

The net result flowing from the approval of these leases would be, so the record shows, an extension of El Dorado's service from Lincoln to Wheatland; the establishment by El Dorado of through rates between points on its own and on the leased

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(3) Applicant B. F. Snider now holds highway contract carrier permit No. 31, 179, issued August 11, 1939.

operative rights, on a plane no higher than the rates now maintained by United between Sacramento and Wheatland and intermediate points; the inauguration of service by Snider between Auburn and Georgetown and the intermediate points of Cool and Greenwood; the establishment of joint through rates by United and Snider between Sacramento and Georgetown and intermediate points, on the same level as the rates now maintained by United between those points; and the withdrawal of service by United between Roseville and Wheatland, and between Auburn and Georgetown. United would continue, as in the past, to operate between Sacramento and Roseville in the performance of its Sacramento-Auburn service. Of its operative right there would remain what may be termed a main line service between Sacramento and Auburn; it would divest itself of the branch line operations.

By these leases and the establishment of the through rates, so applicants assert, losses in revenue now incurred by the lessor could be avoided, substantial economies could be effected, and a more adequate service would be provided. Lessees believe that eventually they can operate the lines profitably. The public, applicants claim, would continue to receive a service which otherwise might have to be abandoned and never restored. No other common carrier, it is said, would suffer any disadvantage. Protestant Southern Pacific Company contends, on the other hand, that the proposed leases contemplate a division or splitting of United's consolidated operative right, of a character not sanctioned by our previous decisions.

For the past seven years, it appears, United has conducted the Wheatland and the Georgetown operations at a loss. During a five months period from January to May, 1940, inclusive, it incurred a loss of $2,071.20 on its highway common carrier operations between

Sacramento and Auburn, Wheatland and Georgetown; of this, Georgetown contributed $400.36 and Wheatland $202.11. The details appear in the margin.[4] During the remainder of the yearly period, from May

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(4) Revenues and Expenses, January to May, 1940, inclusive, of entire Auburn Division,[a] with Georgetown and Wheatland apportions.[b]

	Entire Auburn Division	Georgetown Apportion	Wheatland Apportion
REVENUES	$5742.76	$267.07	$ 97.05
EXPENSES			
Equipment, maintenance and garage expense	1846.56	177.27	81.25
Transportation Expense	3552.96	341.08	156.33
Other Expenses (c)	1615.84	112.35	48.01
Taxes	684.21	31.47	11.63
Operating Rents	114.39	5.26	1.94
Total Operating Expenses	7813.96	667.43	299.16
NET OPERATING INCOME	2071.20 (loss)	400.36 (loss)	202.11 (loss)
Expenses incurred regardless of Wheatland Operations(d)	- - -	35.61	13.49
Actual loss on Georgetown and Wheatland Operations	- - -	$364.75	$188.62

(a) The term "Auburn Division," as used in this statement is intended to define the intrastate operations conducted by United Motor Transport Lines, Inc., as a highway common carrier, between Sacramento and Auburn, between Roseville and Wheatland, and between Auburn and Georgetown. This statement does not include the returns from operations conducted by this company as a highway common carrier between other points, as a highway contract carrier, nor as an interstate carrier (Tr. pp. 16, 23, 35).

(b) Columns 2 and 3 show the apportionment of the revenues and expenses relating to the Georgetown and the Wheatland operations, respectively. The revenue figures are actual as shown by the books; expenses have been apportioned, upon a mileage basis (Tr. pp. 12, 13, 34, 35).

(c) There are included in "Other Expenses" the items of terminal, sales tariff and advertising, insurance and safety, administration and general, depreciation and authorization expenses, as shown in Exhibit No. 1.

(d) These items represent fixed costs which have no relation to the additional mileage involved in the Georgetown and Wheatland operations (Tr. p. 13).

to December, the Sacramento-Auburn operation, standing alone, yielded a profit which United attributes to the existence of a substantial back haul of deciduous fruits originating in the territory between Roseville and Auburn; this condition does not prevail, however, in the Wheatland and the Georgetown operations. In fact, the losses incurred in conducting the latter operations are relatively higher than those encountered in performing the Sacramento-Auburn service. United is convinced its financial condition would improve substantially were it relieved of the obligation to continue this unremunerative service.

Both the lessees, on the other hand, appear satisfied that these operations ultimately would be profitable. Though the loss now incurred in connection with the Wheatland service probably would continue for a time, El Dorado's operating officials believe that because of a more frequent service to be provided at more convenient hours (5) traffic would be stimulated. Moreover, by the use of smaller equipment than that now employed by United to handle this traffic, and because of savings in drivers' wages to be accomplished through the elimination of overtime now encountered by United, (6) El Dorado expects to effect substantial operating

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(5) El Dorado proposes to increase the present tri-weekly service to a daily service (except Sundays and holidays); also, it will operate under a faster schedule, providing earlier delivery at Lincoln and Wheatland.

(6) Wheatland and Georgetown, respectively, are served on alternate days by the same truck. This truck also operates daily between Roseville and Auburn. In the performance of the combined operation between Roseville and Georgetown and between Auburn and Wheatland, substantial expense for drivers' overtime wages has been incurred. Under the present proposal this will be eliminated, since trucks of United will no longer be required to serve Georgetown or Wheatland.

economies. As El Dorado would be required under the lease merely to operate its trucks beyond Lincoln, its present terminal, to Wheatland, a distance of only eleven miles, it is willing to assume the immediate loss which, it believes, would not be substantial. The expected profit supplies the reason for its willingness to undertake the obligation to provide this service.

Snider does not anticipate any substantial increase in the traffic between Auburn and Georgetown. He would handle as a highway common carrier the tonnage hauled by United, and also that which he now transports under his highway contract carrier permit. But this, together with the revenue he now receives under the mail contract, would make the plan attractive to him. Through the use of smaller equipment than that now employed by United some saving in operating costs could be accomplished. A daily service would replace the present tri-weekly schedule. Snider would incur no terminal expense except possibly at Georgetown; at Auburn, he would use the United's terminal facilities.

The traffic now handled by United over the lines proposed to be leased is not extensive. Between Auburn and Georgetown and intermediate points, it averages 1½ to 2 tons per trip, three times a week. At Wheatland it averages 1,000 pounds per trip under the present tri-weekly service. This, the record indicates, would increase to some degree with the establishment of more frequent service, as proposed.

The publication of through rates by El Dorado and of joint rates by United and Snider would, it is asserted, perpetuate the existing rate structure. Refusal of such authority, applicants state, would in each instance result in somewhat higher rates based on a combination of locals. This would be true as to the joint through rates proposed to be established by United and Snider between Sacramento and Georgetown. Public interest, we believe, requires the approval of this request should that lease be authorized. However, a different situation is presented by the request of El Dorado to establish through rates between the operative right it now owns and that which it proposes to lease from United. To a substantial degree these operative rights are co-extensive. El Dorado is now authorized to operate between Sacramento and Lincoln via Roseville; the operative right it proposes to lease from United would authorize operations between Sacramento and Wheatland, a point eleven miles north of Lincoln. It would not be practicable, we are convinced, to sanction the establishment of through rates over those parts of the two operative rights which overlap, i.e., between Sacramento and Lincoln. Public interest would be served adequately were we to permit through rates to be published, should the proposed lease be approved, between Lincoln and Wheatland, on the one hand, and Sacramento and Lincoln, on the other.

The leases which United proposes to deliver to El Dorado and to Snider are substantially identical in form. Essentially, each provides that United thereby leases to the lessee the operative right described therein for a term of one year at an annual rental of one dollar; that the lessee shall assume the burden of paying all taxes resulting from the operation of the demised operative right; that upon the expiration of the term provided, the lease shall remain effective until cancelled by either party upon thirty days written notice to the other. Both of the lessees, El Dorado and Snider, expressed approval of the form of the lease; each of them, as well as United, promised to accept any reasonable restriction which the Commission might impose.

The continuation of service by the lessees, respectively, definitely depends upon the profits to be realized. Unless the loss now resulting from the Wheatland operation is transformed into a profit when the initial one year term expires, El Dorado would terminate the lease. Snider would continue the Georgetown service throughout the two year term of his mail contract; then, unless the highway common carrier service itself shows a profit, he would cancel the lease. No understanding has been reached nor have any negotiations been conducted with either of the lessees looking toward their ultimate purchase and acquisition of the leased operative rights. If the lines continue to show a loss, United, it appears, probably would permit their operation by lessees so long as they would be willing to shoulder this burden. Should either lease be cancelled at the instance of the lessee because of the lessee's inability to operate profitably, United, so the record discloses, would then seek a suspension of the operative right. Whether United itself would resume the service following the expiration of either lease should operations thereunder be profitable, was not disclosed by the record.

Were this an application by United to abandon the Wheatland and the Georgetown operations, the facts developed by the present record, might well be sufficient to warrant our sanction of such a step. The gross revenues derived from the operation of these lines are insignificant; the ensuing losses are relatively higher than those flowing from the Sacramento-Auburn service.

To remedy this situation should United be permitted to lease these lines? It is true this would insure the survival of service for a time, but only at the risk of the lessees; the lessor would not share this burden.

These leases, moreover, would necessitate the division of lessor's consolidated operative right. As we have pointed out, United's operations between Sacramento and Auburn, Roseville and Wheatland, and Auburn and Georgetown, rest upon a single, unified operative right. Should we sanction the leases proposed, both the Auburn-Georgetown and the Sacramento-Wheatland lines would be severed from this operative right. Moreover, that part of the operative right between Sacramento and Roseville would be divided longitudinally, so to speak; from it would stem El Dorado's authority to operate between Sacramento and Roseville under its lease, and it would also be the source of United's authority to continue operations between those points in the performance of its Sacramento-Auburn service. The two operative rights so derived would be coextensive between Sacramento and Roseville; in the place of one now existing, two would emerge. It is true that El Dorado's authority to operate between Sacramento and Roseville would not be ascribed to the proposed lease alone; for that carrier now owns such an operative right. But since the proposed lease actually includes these points, it contemplates a division of United's operative right.

In the past we have condemned such a splitting of operative rights; under our rulings a privilege of this character must be regarded as indivisible. In pursuance of this policy, we have declined to sanction proposed transfers,[7] as well as leases,[8] covering but part of a consolidated operative right.

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(7) Re C. M. Blabon, 22 CRC 482, 484; re Pickwick Stages System, 33 CRC 443; re Motor Transit Co., 36 CRC 85, 87; re J. H. Wythe, 40 CRC 758.

(8) Re Pickwick Stages System, 31 CRC, 260; re Pickwick Stages System, 31 CRC 410, 413; re California Transit Co., 32 CRC 567; re Pacific Freight Lines, Decision No. 33270, on Application No. 23011, dated July 3, 1940.

Since such an operative right, presumptively, rests upon a showing that public convenience and necessity require the continuance of the service in its entirety, the holder should not be permitted, in the absence of convincing reasons, to carve up the operative right and distribute it among others.(9) Two will not be allowed to flourish where but one existed before.(10)

Our condemnation of such transactions has not been levelled at the mere technical division or splitting of an operative right. Throughout the cases, like an unbroken thread, runs the principle that an operator, weary of the burden of performing an unprofitable service, may not shift that obligation to another, either permanently or temporarily. If he desires no longer to continue the service, he should apply for permission to withdraw.

In a decision which may be regarded as typical, we said:

> "We are of the opinion that ordinarily the public interest will not be served by permitting a lease of an operative right when the owner obviously desires to divest himself of the burden thereof, yet seeks to preserve his certificate because of possible future value. If the public need requires that the service be continued and another is ready to render such service, his interest therein should not be limited to that of a mere lease."

In re Pickwick Stages System, 31 CRC 410, 413.

Under similar circumstances, the Commission held:

> "The Commission has heretofore, by its decisions herein referred to, definitely established a policy of regarding an operating right as indivisible and has expressed the opinion that not only does it look with disfavor on efforts to 'split' or divide an operative right, either

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(9) Re C. M. Blabon, 22 CRC 482, 483, re Rielhofer, 23 CRC 114; re Motor Transit Co., 36 CRC 85.

(10) Re J. H. Wythe, 40 CRC 758, 760.

by sale or lease, but will not tolerate attempts to pass to another burdens which may be found by a carrier to be irksome or unprofitable. Relief may be had, and is properly to be sought through the medium of an application to abandon the service which a carrier no longer desires to perform."

In re Pickwick Stages System, 33 CRC 443, 447.

Other rulings to the same effect are cited in the margin.(11)

In some instances we have permitted the division of an operative right, but only when the peculiar facts and circumstances impelled such action in the public interest.(12) This authority has been exercised sparingly. Such a showing, we are satisfied, has not been made here.

The rule forbidding the splitting of an operative right is founded upon the consideration that one should not be permitted to speculate in certificates authorizing the conduct of a public service. A certificate of public convenience and necessity is granted upon a showing of need for the service in its entirety. By the grant of such a privilege, the Commission has expressed its confidence in the ability of the applicant to carry on the service authorized. The grantee, therefore, rests under an obligation personally to continue the performance of this service. If the holder of such a certificate is unwilling to shoulder the burdens

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(11) Re California Transit Co., supra; re Pacific Freight Lines, Decision No. 33270, supra.

(12) Re L. M. Estes, 34 CRC 251; re Benjamin Walters, Decision No. 30062, on Application No. 21076, dated August 23, 1927; re Motor Transit Co., Decision No. 33091, on Application No. 21334, dated September 7, 1937; re Southern California Freight Lines, Decision No. 30241, on Application No. 21304, dated October 18, 1937; re William Kyser, Decision No. 30551, on Application No. 21523, dated February 7, 1938.

incidental to the fulfillment of this obligation, he should not be permitted to shift them to some one else. Rather, he should make way for others who may be willing to assume these risks.

To permit the leases here proposed, would run counter to this well-established policy. The lessees would assume all risk of loss; the lessor would be relieved of all obligations. There is no assurance that the lessees ever would be permitted to reap the fruits of their industry should the operations ultimately become profitable. When that time arrives, the lessor, if the term of the lease has then expired, may reclaim the operative rights upon thirty days notice.

Though we are not willing to sanction the leases proposed, the applicants may be able to develop facts which would justify the sale and transfer of these portions of United's operative right. Our order in this proceeding, therefore, will be made without prejudice to the filing of a supplemental or amended application for authority to do so should the applicants find it feasible and desirable to take such a step.

Also, the United, should it deem such a course advisable, may apply to the Commission for permission to abandon its service to Wheatland and to Georgetown. Such a course, in our view, is preferable to suspension.(13) Contemporaneously, El Dorado and Snider may apply for certificates authorizing service over these routes, should they be so advised. Such authority may be sought herein by a supplemental or amended application.

Accordingly, the applications will be denied.

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(13) Re Pacific Greyhound Lines, Inc., 37 CRC 7.

O R D E R

A public hearing having been had in the above-entitled matter, evidence having been received, the matter having been duly submitted, and the Commission being now fully advised:

IT IS HEREBY ORDERED that the above-entitled applications be and they are, and each of them is, hereby denied, without prejudice, however, to the filing of supplemental or amended applications for authority to sell and transfer those portions of the operative right of United Motor Transport Lines, Inc. sought to be leased herein, or to the filing of supplemental or amended applications seeking authority to abandon service over said portions of said operative right; provided, such an application shall be filed within sixty (60) days after the effective date of this order.

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

Dated at San Francisco, California, this 1st day of October, 1940.

Ray L. Riley

Franck R. Havenner

Justus F. Craemer

COMMISSIONERS