

Decision No. 31978

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.)

ORIGINAL

DOUGLAS BROCKMAN, for applicant.

FRANK M. 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.

WARE & BEROL, for Valley Express Co., Frasher Truck Co., Inc.,
and Valley Trucking Company, protestants.

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

J. L. AMOS, JR. and L. N. BRADSHAW, for Western Pacific Rail-
road Company, protestant.

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

C. S. MC LENEGAN, for Intercity Transport Company, interested
party.

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

BY THE COMMISSION:

OPINION ON REHEARING

The Commission by Decision No. 31978, dated May 2, 1939,
in this proceeding, granted to Valley and Coast Transit Company a
certificate of public convenience and necessity for the establish-
ment and operation of a highway common carrier service, in general,
between Richmond and King City and intermediate points, via Berkeley,

Hayward, Niles, San Jose and Salinas, 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.

Frasher Truck Co., Inc., a highway common carrier, and Valley Express Co., an express corporation, on May 12, 1939, which was ten days before the effective date of Decision No. 31978, filed a petition requesting a rehearing, or to be afforded the privilege of an argument before the Commission on banc, in respect to the matters decided by said decision.

The petition for rehearing was granted permitting oral argument to be made before the Commission on banc. Said argument was had on June 5, 1939, and the matter resubmitted.

The petition for rehearing, having been filed ten days before the effective date of Decision No. 31978, suspended the order thereof and no service thereunder has been established.

Petitioners argued in chief that no evidence had been adduced to support the granting of authority to provide service between East Bay points and San Jose, and that the preponderance of the evidence did not indicate a need for the proposed service between East Bay points and Salinas. Petitioners further argued that the granting of the certificate as an extension and enlargement of applicant's present operative rights will permit applicant to establish a service between East Bay points and San Joaquin Valley points, between Fresno and Bakersfield, in competition with protestant Valley Express Co. It was also argued by petitioners that an unjustified preference was shown to applicant by the Commission's

failure to adjudicate an alleged prior filing by petitioners (Application No. 20504 and amendments thereto).

In regard to petitioners' argument that insufficient evidence was adduced to show a need for service to and from San Jose and Salinas, we are of the opinion, and so find, that an ample showing was made to support the authority granted to serve such points.

With respect to petitioners' contention that applicant has been authorized to establish a service between East Bay points and San Joaquin Valley points it should be observed that applicant's present operative right to and from San Joaquin Valley points, as created by Decision No. 19651, dated April 21, 1928, on Application No. 12258, authorized an on-call or on-demand service only, separate and distinct from the scheduled service therein authorized. The rights granted by Decision No. 31978, in the instant application, were not consolidated with applicant's on-call or on-demand operative right but with applicant's scheduled operative rights only, as in operation on the date of the issuance of Decision No. 31978, (May 2, 1939). It should be further observed that said Decision No. 19651 contained a condition with respect to the on-call service to and from San Joaquin Valley points reading as follows:

1. Applicant shall transport no freight between any point or points upon its lines in the San Joaquin Valley, herein authorized to be established, on the one hand, and any point or points upon its coast lines, north of and including King City, herein authorized to be established, on the other hand,

Such condition has never been changed nor modified and shall be construed as having the same force and effect with respect to the authority conferred by Decision No. 31978 as to the authority granted by Decision No. 19651.

Petitioners raised the question of the alleged priority of filing of Application No. 20504 which was filed on April 24, 1936, and amended on May 12, 1936, and October 8, 1936. (The application herein was filed August 8, 1936). We believe that such question is not relevant to the instant proceeding and that whatever consideration it should have accorded it should be in the disposition of Application No. 20504.

In this proceeding applicant requests that Decision No. 31978 be amended in three particulars, viz: to include service within two miles from the center of Richmond, to include authority to serve Santa Clara, and to include Oakland by specific reference.

From the record it appears that a showing was made as to the need for a service to or from Richmond, as heretofore granted by said Decision No. 31978. Particular reference was made to the industrial community thereof. The record does not indicate that the extent of such industrial community is any different than the corporate limits of the city of Richmond. Therefore applicant's request herein for an amendment to Decision No. 31978 authorizing service within two miles from the center of Richmond can not be granted.

In regard to applicant's request for an amendment to Decision No. 31978 authorizing service to or from Santa Clara, a careful examination of the entire record herein does not disclose that sufficient evidence was adduced to support a declaration that there is a public need for such service. Likewise the request for authority to serve such point can not be granted.

With respect to the inclusion of Oakland by specific reference it appears that no amendment therefor is needed. Oakland

is located on the route intermediate to Richmond, Berkeley, Emeryville, San Leandro and Hayward and under the language of the order of Decision No. 31978 is included as an intermediate point. Said order is so construed.

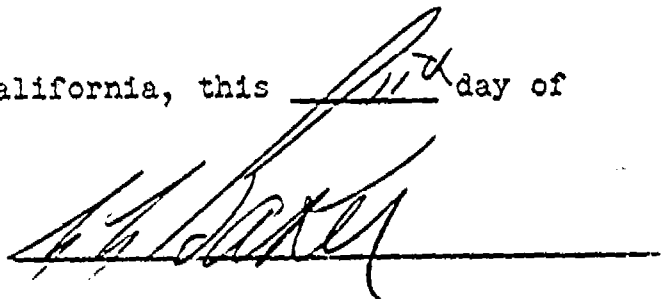
ORDER ON REHEARING

Oral argument having been had herein, the matter having been resubmitted, and the Commission now being fully advised:

IT IS ORDERED that said Decision No. 31978 is hereby affirmed and continued in full force and effect and that, as construed herein, the order of said Decision No. 31978 is hereby adopted in all respects as the order of the Commission herein.

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

Dated at San Francisco, California, this 17th day of March, 1941.



Ray L. Riey

Justin J. Calmes

Francis R. Haven

COMMISSIONERS