

ORIGINAL

Decision No. 24298

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)	
EL DORADO MOTOR TRANSPORTATION COMPANY,)	
a corporation, to sell, and WILLIS N.)	
CAPEN, to purchase, an automobile freight)	Application
line operated between Sacramento, on the)	No. 24298
one hand, and Pacific House and all points)	
easterly therefrom to State Line, Tallac,)	
and Fallen Leaf Lake, on the other hand.)	

BY THE COMMISSION:

O P I N I O N

By this application, as amended, El Dorado Motor Transportation Company, a corporation (referred to for brevity as El Dorado), now operating as a highway common carrier, seeks authority to transfer to Willis N. Capen, and the latter seeks permission to acquire from the former that portion of its operative right extending via U. S. Highway No. 50 from Pacific House to Fallen Leaf Lodge, via Riverton, Kyburz, Strawberry, Phillips, Meyers, Bijou, Al Tahoe, and Tallac (Camp Richardson) also via the highway from a point near Meyers to Tallac; Capen seeks a certificate of public convenience and necessity, to be consolidated with the operative right acquired from El Dorado, authorizing operation as a highway common carrier between Sacramento and Pacific House via U. S. Highway No. 50 serving no intermediate points; and both applicants request authority to publish joint through rates between points on the line of El Dorado intermediate to Sacramento and Placerville (excluding Sacramento and Placerville), on the one hand, and Pacific House and points east, to be served by Capen, on the other hand, the point of interchange to be at Placerville.

El Dorado now operates as a highway common carrier over three distinct routes which, though they converge at common points, never have been consolidated. This service is conducted between Sacramento and Jackson and intermediate points; ⁽¹⁾ between Sacramento and Lincoln via Roseville; ⁽²⁾ and between Sacramento and Fallen Leaf Lodge and Lake Tahoe points. ⁽³⁾ It is with the latter operative right alone that we are now concerned. Here El Dorado was certificated to operate between Sacramento and Fallen Leaf Lodge and intermediate points over U. S. Highway No. 50, via Folsom, Clarksville, Shingle Springs, El Dorado, by diversion to Diamond Springs, Placerville, Camino, Pacific House, Riverton,

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- (1) The operative right between Sacramento and Jackson was created by Decision No. 23748, in Application No. 17086, dated June 1, 1931, (36 C.R.C. 347), where a certificate was granted to Albert L. Schneider and Angelo Piccardo, co-partners, authorizing a highway common carrier service "...between Jackson and Sacramento and intermediate points, via Perkins, Slough House, Michigan Bar, Central House, Drytown, Amador City, Sutter Creek, and Martel..." Subsequently, by Decision No. 30709, rendered March 21, 1938, in Application No. 21809, Piccardo Bros., a copartnership composed of Angelo and Andrea Piccardo, doing business as Amador County Freight Lines (in whom the operative right had become vested pursuant to mesne transfers) were authorized to transfer the certificate to El Dorado Motor Transportation Company.
- (2) The operative right between Sacramento and Lincoln and intermediate points, via Roseville, which was created by Decision No. 6530, in Application No. 4580, dated July 30, 1919, was transferred to El Dorado Motor Transportation Company by J. L. Fithian and Louis Sposito, copartners doing business as Roseville-Lincoln Truck, pursuant to Decision No. 31694, rendered January 30, 1939, and Decision No. 32938 rendered March 26, 1940, in Application No. 22505.
- (3) The operative right with which we are now dealing was extended and defined by Decision No. 23125, rendered November 28, 1930, in Application No. 16956, where a certificate was granted to El Dorado Motor Transportation Company authorizing operation as a highway common carrier "...between Sacramento and Fallen Leaf Lodge and intermediate points via Folsom, Clarksville, Shingle Springs, El Dorado, by diversion to Diamond Springs, Placerville, Camino, Pacific House, Riverton, Kyburg, Strawberry, Phillips, Myers, State Line, Bijou, Al Tahoe, and Tallac, (Camp Richardson) also via the highway from point near Myers to Tallac,..."

Kyburz, Strawberry, Phillips, Meyers, State Line, Bijou, Al Tahoe, and Tallac (Camp Richardson), also via the highway from a point near Meyers to Tallac.

By a written agreement executed by the applicants during June, 1941, El Dorado undertook to sell and transfer to Capen and the latter agreed to purchase and acquire the operative right of El Dorado "...between Sacramento, California, on the one hand, and Pacific House and all points easterly therefrom to State Line, Tallac and Fallen Leaf Lake, on the other hand,..." including "...the right to pick up freight at any point along the route of said El Dorado Motor Transportation Company, provided, the delivery thereof shall be destined for a point easterly of Pollock Pines."⁽⁴⁾ Capen agreed not to engage, for a period of ten years, in any contract hauling between Sacramento and Pacific House, or intermediate points, either directly or indirectly. As the purchase price of the operative right and the good will of the transportation business to be conveyed, Capen undertook to pay El Dorado the sum of \$4,000, payable \$1,000 upon execution of the agreement and the balance of \$3,000 concurrently with our approval of the transfer.

Thus, El Dorado would retire from the operation beyond Pacific House, confining itself to the territory between Sacramento and Pacific House and intermediate points. Capen would provide a through service between Sacramento and points on U. S. Highway No. 50 extending from Pacific House to Lake Tahoe, serving no points intermediate to Sacramento and Pacific House. To avoid a longitudinal or vertical division of the operative right now

(4) Pollock Pines is situated on U. S. Highway No. 50 midway between Camino and Pacific House.

held by El Dorado between Sacramento and Pacific House which would result were the plan contemplated by the agreement accomplished through a transfer, it is proposed by the amended application that Capen be granted a new certificate authorizing operation between Sacramento and Pacific House, to be consolidated with the operation east of Pacific House acquired from El Dorado. And to accommodate the small volume of traffic moving from points intermediate to Sacramento and Placerville, on the one hand, to points east of Pacific House, on the other hand, applicants request authority to establish joint rates of the same volume as the local rates now maintained by El Dorado between the same points, subject to any minimum rates which may have been prescribed.

In justification of the proposed division of the operative right now held by El Dorado, applicants allege that east of Pacific House lies a summer recreational area where freight operations must necessarily be of a seasonal character because throughout the winter many resorts and summer homes are closed and the roads frequently are blocked by snow. West of Pacific House, however, continuous service must be maintained throughout the year to meet the demands of permanent residents and commercial establishments. Capen, it is alleged, because of his familiarity with the specialized requirements of shippers in the Lake Tahoe territory, which he has served for several years as a highway contract carrier, would be well qualified to conduct this operation.

Although we ordinarily view with disfavor the splitting of an operative right, particularly where this is sought to be accomplished through the medium of a lease, ⁽⁵⁾ we nevertheless have approved such a step where it would be sanctioned by the public

(5) Re United Motor Transport Lines, Inc. (Transfer to B. F. Snider and El Dorado Motor Transportation Company), Decision No. 33570, 43 C.R.C. 69, 76.

(6)
interest. Each case must be determined according to its peculiar facts. In the instant proceeding, it appears that public interest would be subserved by permitting the division of the operative right.

To provide an adequate service to Lake Tahoe points from Sacramento, the wholesale distributing center for that region, it is essential that an overnight service be conducted by a single operator. Under the facts shown this, in our judgment, would be superior to a service furnished through the medium of joint rates between two distinct carriers, which would be the case here were Capen required to connect with El Dorado at Pacific House. Public convenience and necessity, we are convinced, justify the granting of the certificate sought by Capen between Sacramento and Pacific House, and its consolidation with the operation beyond Pacific House acquired from El Dorado. For the reasons mentioned, the establishment of the proposed joint rates has likewise been justified.

In this proceeding no public hearing is necessary. There exists a clear need for the service proposed. No other common carrier serving the territory would be adversely affected. The application, therefore, will be granted.

O R D E R

Application having been made as above-entitled, the matter having been duly submitted, and the Commission being fully advised:

(6) Re Motor Transit Company (Transfer to Max H. Green), Decision No. 30091, Application No. 21334, dated September 7, 1937.

IT IS HEREBY ORDERED:

(a) That El Dorado Motor Transportation Company, a corporation, be and it hereby is authorized to transfer to Willis N. Capen that certain portion of its operative right (as a highway common carrier, as defined by section 2-3/4 of the Public Utilities Act) defined by Decision No. 23125, rendered November 28, 1930, in Application No. 16956, comprising operation as such carrier between the following points, viz.: between Pacific House and Fallen Leaf Lodge, and intermediate points, over U. S. Highway No. 50 and connecting highways, via Riverton, Kyburz, Strawberry, Phillips, Meyers, State Line, Bijou, Al Tahoe and Tallac (Camp Richardson), also via the highway from a point near Meyers to Tallac.

(b) That said Willis N. Capen be and he hereby is authorized to acquire from El Dorado Motor Transportation Company and thereafter operate thereunder the operative right described in Paragraph (a) hereof.

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA HEREBY DECLARES that public convenience and necessity require the establishment and operation by Willis N. Capen of a service as a highway common carrier, as defined by section 2-3/4 of the Public Utilities Act, between Sacramento and Pacific House, via U. S. Highway No. 50, as an extension of and to be consolidated with the operative right to be acquired by said Capen from El Dorado Motor Transportation Company between Pacific House and Fallen Leaf Lodge and Lake Tahoe points, as hereinabove authorized.

IT IS ORDERED that a certificate of public convenience and necessity for such a service be and it hereby is granted to said Willis N. Capen, subject to the following condition:

- (1) That no traffic may be transported by said Capen from or to any point or points, or between any points, intermediate to Sacramento and Pacific House.

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA
HEREBY DECLARES that public convenience and necessity require the establishment and maintenance by El Dorado Motor Transportation Company and Willis N. Capen of joint rates between points on their several lines, operated, or to be operated, by them respectively as highway common carriers, to wit: between points on the line of El Dorado Motor Transportation Company intermediate to Sacramento and Placerville (but excluding Sacramento and Placerville), on the one hand, and points on the line of said Capen extending easterly from and including Pacific House, on the other hand, such traffic to be interchanged at Placerville.

IT IS ORDERED that El Dorado Motor Transportation Company and Willis N. Capen be and they hereby are authorized to establish, publish and maintain joint rates applying between the points on their respective lines, hereinabove described, subject to the following condition:

- (1) Said El Dorado Motor Transportation Company and Willis N. Capen shall establish joint rates of the same volume as those now maintained locally by El Dorado Motor Transportation Company or other rates satisfactory to the Commission.

IT IS FURTHER ORDERED that, in the operation by Willis N. Capen of a highway common carrier service pursuant to the foregoing authority to transfer said portion of said operative right, the applicants herein shall severally comply with and observe the following service regulations:

1. Applicants shall severally comply with General Order No. 80 by filing, in triplicate, within sixty (60) days from the effective date of this order and upon not less than five (5) days' notice to the Commission withdrawal or adoption notice as required by said General Order.

2. Applicants shall severally comply with Part IV of General Order No. 93-A within sixty (60) days from the effective date of this order and upon not less than five (5) days' notice to the Commission and the public.

IT IS FURTHER ORDERED that, in the operation of said highway common carrier service authorized by the certificate herein granted, Willis N. Capen shall comply with and observe the following service regulations:

1. Applicant shall file a written acceptance of the certificate herein granted within thirty (30) days from the effective date of this order.

2. Applicant shall comply with the provisions of General Order No. 80 and Part IV of General Order No. 93-A by filing tariffs and time schedules in conformity therewith, in triplicate, within sixty (60) days from the effective date hereof and upon not less than five (5) days' notice to the Commission and the public.

3. Subject to the authority of the Commission at any time by further order to change or modify it, applicant shall conduct said operation as a highway common carrier over and along the following described route:

From Sacramento over U.S. Highway No. 50 via Folsom, Clarksville, Shingle Springs, El Dorado, Placerville, Camino, Pacific House, Riverton, Kyburz, Strawberry, Phillips, Meyers, State Line, Bijou, Al Tahoe, and Tallac (Camp Richardson) also via county highway connecting with U.S. Highway No. 50 approximately 1.5 miles north of Meyers, to Tallac; returning over the same route in the opposite direction.

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

Dated at San Francisco, California, this 21st day of July, 1941.

July

W. N. Capen

Walter F. Cameron
Francis S. Hayward
Richard Jackson
COMMISSIONERS