

ORIGINAL

Decision No. 35169

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 W. W.  
 BERREMAN, doing business under the firm  
 name and style of BERREMAN TRUCKING  
 COMPANY, to buy common carrier operative  
 rights by motor vehicle for the trans-  
 portation of property between Sacramento  
 and Oroville and intermediate points on  
 the one hand and Oroville and Portola and  
 intermediate points on the other hand,  
 and locally between Oroville and Portola  
 and intermediate points, etc., as set  
 forth in Decision No. 34806, dated December  
 2, 1941, on Application No. 23736.

In the Matter of the Supplemental  
 Application of W. W. BERREMAN, doing  
 business under the firm name and style of  
 Berreman Trucking Company, and of O. J.  
 Boedecker and A. T. Rawlins, co-partners  
 doing business under the firm name and  
 style of Sacramento Freight Lines, for  
 substitution of the latter in place of the  
 former as purchaser of common carrier  
 operative rights by motor vehicle owned by  
 El Dorado Motor Transportation Company, a  
 corporation, authorizing the transportation  
 of property between Sacramento and Oroville  
 and intermediate points on the one hand and  
 Oroville and Portola and intermediate points  
 on the other hand, and locally between  
 Oroville and Portola and intermediate points,  
 etc., as set forth in Decision No. 34806,  
 dated December 2, 1941, on Application No.  
 23736.

Application  
No. 24747

EDWARD M. BEROL and MARVIN HANDLER, by  
 Marvin Handler, for W. W. Berreman,  
 doing business as Berreman Trucking  
 Company and O. J. Boedecker and A.T.  
 Rawlins, co-partners, doing business  
 as Sacramento Freight Lines, applicants.

JOSEPH PALACE and LEWIS SPOSITO, for El  
 Dorado Motor Transportation Company,  
 applicant.

W. G. STONE, for Sacramento Chamber of  
 Commerce, intervener on behalf of  
 applicants.

BY THE COMMISSION:

O P I N I O N

By Decision No. 34806, rendered December 2, 1941, in  
Application No. 23736, El Dorado Motor Transportation Company,<sup>(1)</sup>  
a corporation, was granted a certificate of public convenience  
and necessity authorizing operation as a highway common carrier  
between Lincoln and Portola and intermediate points, with certain  
exceptions; and between the junction of State Highways Nos. 24  
and 69 (near Keddle) and Greenville, Crescent Mills, Taylorsville,  
and intermediate points, as an extension of, and consolidated  
with, a certificate then held by El Dorado under which it  
operated between Sacramento and Lincoln.

In this proceeding El Dorado proposes to transfer to  
applicant W. W. Berreman, doing business as Berreman Trucking  
Company, the certificate which has been described, and the latter  
in turn proposes to transfer it to applicants O. J. Boedeker and  
A. T. Rawlins, co-partners, doing business as Sacramento Freight  
Lines.<sup>(2)</sup> Through inadvertence, applicant Boedeker was erroneously  
named in the application as Bodeker. Pursuant to applicants'  
request, the application will be amended to show his true name.  
Since El Dorado desires to continue its service between Sacramento  
and Lincoln, it is proposed that the certificate granted by  
Decision No. 34806 be divided so that there shall be transferred  
to Sacramento Freight Lines only that part which authorizes

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(1) For brevity, El Dorado Motor Transportation Company will  
be referred to hereafter as El Dorado.

(2) For brevity, these applicants will be referred to as  
Berreman and as Sacramento Freight Lines, respectively.

service between Lincoln and Portola, El Dorado retaining the part between Sacramento and Lincoln, and that Sacramento Freight Lines shall be granted a new certificate, to be consolidated with the operative right transferred, permitting operation between Sacramento and Lincoln. The limitations imposed by Decision No. 34806 would be preserved, modified, however, to protect the local service of El Dorado between Sacramento and Lincoln.

A public hearing was had before Examiner Austin at San Francisco, on February 25, 1942, when evidence was offered and the matter submitted.

Between October 1939 and January 1941, Berreman served as president and general manager of El Dorado, and was thus in a position to dominate its business policy. During this period, under an agreement of purchase, he exercised control over the shares of El Dorado's stock held by Louis Sposito, and an understanding existed between him and Joseph Palace to purchase the latter's shares. Had this transaction been consummated, he would have become the owner of 16 of the 17 shares then outstanding.

The record discloses that early in 1941, differences of opinion arose between Palace, Sposito, and Berreman affecting matters of policy, which led ultimately to a complete break between them and to Berreman's withdrawal from the company.

During Berreman's regime as general manager, El Dorado undertook to expand its operations to points within the Feather River Canyon. In September, 1940, it acquired the transportation business conducted by Bud Bernardo as a highway contract carrier, and thereafter itself served this territory under a permit which

it held as a highway contract carrier. Subsequently, it filed and actively prosecuted the application for a certificate, which is the subject of this proceeding.

When Berreman retired, an understanding had been reached between him, and Palace and Sposito, for the adjustment of the obligations that had been created in furtherance of the plan to extend the service to the Feather River Canyon. Berreman relinquished all interest in the shares of stock he had agreed to purchase from Palace, the latter retaining some \$1500 which he had received on account of the purchase price of \$7500. Palace superseded Berreman as president and manager. Under the terms of an agreement executed by El Dorado and Berreman on June 12, 1941, Berreman assumed the payment of certain debts which had been incurred by El Dorado, aggregating approximately \$2850, and the payment of other sums not definitely specified. El Dorado in turn conveyed to Berreman the transportation business it had conducted between Sacramento and Feather River Canyon points as a highway contract carrier, and undertook to transfer to him any certificate that might be granted in Application No. 23736, then pending and awaiting decision. Of these obligations, Berreman has paid all but approximately \$580.

Upon resuming control of El Dorado, Palace and Sposito determined to curtail its operations, it being their purpose to limit the service, if possible, to the routes extending between Sacramento and Jackson, Sacramento and Placerville, and Sacramento and Lincoln. In fulfillment of this plan, El Dorado has transferred to Willis M. Capen the operative right between

Pacific House (a point near Placerville) and Lake Tahoe points,<sup>(3)</sup> and, as has been stated, it entered into the agreement with Berreman to transfer to him the certificate granted in Application No. 23736.

Though desirous of carrying on the Feather River Canyon service authorized by Decision No. 34806, Berreman has found it impossible to do so. For financial reasons, coupled with the difficulty of obtaining priority orders, under the present war emergency, he is in no position, so he testified, to secure equipment essential for this purpose.

In view of this situation, Berreman has entered into a contract with Sacramento Freight Lines under which the latter has agreed to acquire the operative right from him at a price of \$3500, payable \$1000 upon the consummation of the transfer, and the balance, amounting to \$2500, in monthly installments of \$150 each. Under this arrangement, Berreman, so he testified, would receive but little in excess of the obligations he has assumed.

From this record, it appears that Sacramento Freight Lines is qualified to provide an adequate service. Under permits issued by the Commission it has operated since 1937,

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(3) Authority for this transfer was granted by Decision No. 34429, rendered July 21, 1941, in Application No. 24298, as modified by Decision No. 34522, rendered August 19, 1941. There, El Dorado was authorized to transfer to Capen that portion of its operative right extending between Pacific House and Fallen Leaf Lodge and intermediate points, over U. S. Highway No. 50 and connecting highways; and Capen was granted a certificate, to be consolidated with the operative right transferred, authorizing service between Sacramento and Pacific House, via U. S. Highway No. 50.

as a highway contract carrier and as a radial highway common carrier, handling principally lumber and box shooks moving from lumber mills in the Feather River Canyon territory to points in the San Joaquin Valley and in Southern California. Its financial resources appear to be ample, and its equipment adequate, to insure a dependable service. One of the partners, O. J. Boedeker, testified that Sacramento Freight Lines would be willing to operate under the time schedules and the tariffs which have been filed by El Dorado.

From the testimony of W. G. Stone, manager of the Transportation and Industrial Department of the Sacramento Chamber of Commerce, it was shown that a need exists for the continuance of the highway common carrier service authorized by Decision No. 34806. The existing facilities, he stated, are not sufficient to meet the requirements of the Sacramento shippers. The present contract carrier service, he pointed out, is inadequate, since by its very nature, it discriminates against the shippers who cannot avail themselves of its facilities.

This proceeding, as has been stated, contemplates a double transfer of the operative right involved. Under the plan proposed, it would be conveyed, first from El Dorado to Berreman, and thereafter from Berreman to Sacramento Freight Lines. Ordinarily, we would not view with favor a proposal such as this, since it might lend encouragement to speculative dealings in operative rights. In granting a certificate of this nature, the Commission must consider the character of the grantee and his ability to provide a service sufficient to meet the public needs. We are justified in assuming that a certificate, when it has been granted, will be accepted by the grantee and that he will

immediately undertake the performance of the service authorized. We realize, however, that circumstances may arise which would justify the relaxation of this requirement. Such a situation, we believe, has been shown to exist here. Since no useful purpose would be served by a formal transfer from El Dorado to Berreman, and by another transfer from Berreman to Sacramento Freight Lines, we shall authorize El Dorado to transfer the operative right directly to Sacramento Freight Lines. Thus, unnecessary circuitousness would be avoided. This, we believe, would conform substantially to the agreements which have been executed by the parties, respectively.

To enable El Dorado to continue its operations between Sacramento and Lincoln, only that portion of its operative right between Lincoln and Portola will be transferred; and a new operative right will be granted Sacramento Freight Lines, as an extension of that transferred, authorizing operation between Sacramento and Lincoln. An order will be entered accordingly.

O R D E R

Application having been made as above-entitled, a public hearing having been had, evidence having been received, the matter having been duly submitted, and the Commission now finding that public convenience and necessity so require:

IT IS ORDERED:

(a) That the true name of Applicant Bodeker viz., O. J. Boedeker, be and it hereby is substituted in this proceeding, for the name by which he was erroneously and inadvertently designated

in the supplemental application filed herein, viz., O.J. Boedeker.

(b) That El Dorado Motor Transportation Company, a corporation, be and it hereby is authorized to transfer to O. J. Boedeker and A. T. Rawlins, co-partners doing business as Sacramento Freight Lines, that certain part of its operative right (as a highway common carrier, as defined by Section 2-3/4 of the Public Utilities Act) created by Decision No. 34806, rendered December 2, 1941, in Application No. 23736, authorizing operation between the following points, viz.:

Between Lincoln and Portola and intermediate points, except as hereinafter set forth; and between the junction of State Highways Nos. 24 and 89 (situated approximately two miles west of Keddie) and Crescent Mills, Greenville and Taylorsville and intermediate points; together with a lateral zone extending two miles on each side of the highway traversed.

(c) That said O. J. Boedeker and A. T. Rawlins, co-partners doing business as Sacramento Freight Lines, be and they hereby are authorized to acquire from El Dorado Motor Transportation Company the operative right described in paragraph (b) hereof, and thereafter to operate thereunder.

(d) That a certificate of public convenience and necessity be and it hereby is granted to O. J. Boedeker and A. T. Rawlins, co-partners doing business as Sacramento Freight Lines, authorizing the establishment and operation of a service as a highway common carrier, as defined by Section 2-3/4 of the Public Utilities Act, between Sacramento and Lincoln, as an extension and enlargement of the operative right between Lincoln and Portola and certain intermediate points, transferred to them by El Dorado Motor Transportation Company pursuant to the authority herein granted.



This certificate, and authority to transfer the operative right hereinabove described, are granted subject to the following conditions:

(1) No freight shall be transported between Sacramento, on the one hand, and points extending northerly from, and including, Lincoln, to and including Oroville; between Lincoln and Oroville; between Lincoln and Oroville, respectively, and intermediate points; nor locally between such intermediate points.

(2) O. J. Boedeker and A. T. Rawlins, co-partners doing business as Sacramento Freight Lines, their successors or assigns, shall never claim before this Commission, or any court or other public body, a value for the authority hereby granted in excess of the actual cost thereof.

(e) That in the operation by O. J. Boedeker and A. T. Rawlins, co-partners doing business as Sacramento Freight Lines, of a highway common carrier service pursuant to the foregoing authority to transfer said part of said certificate as herein provided, and pursuant to the certificate herein granted, applicants herein, so far as they respectively may be affected hereby, shall severally comply with and observe the following service regulations:

(1) In respect to said transfer of said operative right, applicants shall comply with General Order No. 80 by filing, in triplicate, within sixty (60) days from the effective date hereof and upon not less than one (1) day's notice to the Commission a withdrawal or adoption notice as therein required.

(2) In respect to said certificate, applicants O. J. Boedeker and A. T. Rawlins, co-partners doing business as Sacramento Freight Lines, shall file a written acceptance of the certificate herein granted within thirty (30) days from the effective date hereof.

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- (3) In respect to said certificate, said last named applicants shall comply with the provisions of General Order No. 80 by filing tariffs in conformity therewith, in triplicate, within sixty (60) days from the effective date hereof and upon not less than one (1) day's notice to the Commission and the public.
  - (4) In respect to said transfer and said certificate, applicants shall severally comply with Part IV of General Order 93-A within sixty (60) days from the effective date hereof, and upon not less than one (1) day's notice to the Commission and the public.
  - (5) O. J. Boedeker and A. T. Rawlins, co-partners doing business as Sacramento Freight Lines, shall conduct said operation as a highway common carrier, pursuant to said transfer herein authorized and to said certificate herein granted, over and along the following described routes, subject to the authority of the Commission to change or modify them at any time by further order:

From Sacramento to Marysville, via U.S. Highway No. 99E; from Marysville to Portola, via State Highway No. 24; from the junction of State Highways Nos. 24 and 89 (approximately two miles west of Keddie) via State Highway No. 89 to Greenville and via unnumbered highways diverging from State Highway No. 89 at Greenville and at or near Crescent Mills to Taylorsville, this being in the nature of a loop operation; returning over the same routes in the reverse direction.

(f) That the authority herein granted shall become effective when O. J. Boedeker and A. T. Rawlins, co-partners doing business as Sacramento Freight Lines, have paid the minimum fee required by Section 57 of the Public Utilities Act which minimum fee is twenty-five dollars (\$25).

Dated at San Francisco, California, this 24<sup>th</sup> day of  
March, 1942.

Justus J. Calles  
Ray H. Quincy  
H. H. Baker  
Francis L. Havenner  
Richard Jackson  
COMMISSIONERS

