

ORIGINAL

Decision No. 35270

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Supplemental Application)
of PACIFIC FREIGHT LINES and VALLEY MOTOR LINES,)
INC., for an amendment to their present certifi-)
cates of public convenience and necessity, to)
allow the alternate routing of vehicles between)
Los Angeles and San Francisco Bay points, via)
U. S. Highway 101. (1))
Supplemental
Application
No. 19266

WALLACE K. DOWNEY and W. S. JOHNSON, for
Pacific Freight Lines and Valley Motor
Lines, Inc., Applicants.

ANSEL WILLIAMS, JR., for Southern Pacific
Company and Pacific Motor Trucking
Company, Protestants.

EDWARD STERN, for Railway Express Agency,
Inc., Protestant.

DOUGLAS BROOKMAN and REGINALD L. VAUGHAN,
for Valley & Coast Transit Company, Coast
Line Express, California Motor Express
Company, Ltd.; and California Motor
Transport Co., Ltd., Protestants.

G. E. DUFFY and G. T. HURST, for The
Atchison, Topeka & Santa Fe Railway
Company, Protestant.

BAKER, Commissioner:

OPINION ON REHEARING

In this proceeding Pacific Freight Lines and Valley Motor

- (1) The application originally filed in this proceeding was entitled as follows:

In the Matter of the Application of VALLEY MOTOR LINES, INC., a corporation, and MOTOR FREIGHT TERMINAL COMPANY, a corporation, to interchange equipment at Fresno, California, in connection with the transportation of property between Fresno and Los Angeles, for VALLEY EXPRESS CO., an express corporation, without transferring loadings from the equipment of one applicant company to the equipment of the other applicant company.

Applicant Motor Freight Terminal has since changed its corporate name to Pacific Freight Lines.

Lines, Inc.,⁽²⁾ highway common carriers, seek authority to operate as underlying carriers for Valley Express Co., an express corporation, over the Coast Route via U. S. Highway No. 101 between San Francisco Bay points and Los Angeles as an alternative to the Valley Route over which they now operate. As a part of this plan, Valley seeks a certificate of public convenience and necessity authorizing operation as a highway common carrier between San Francisco Bay points and San Luis Obispo. Under the certificate sought, no point intermediate to San Francisco and East Bay cities, on the one hand, and San Luis Obispo, on the other, would be served; nor would traffic be handled other than that moving between San Francisco Bay points and Los Angeles. The granting of the application was protested by Valley & Coast, Coast Line, California Motor Express, Railway Express Agency, Inc., Southern Pacific Company, Pacific Motor Trucking Company, and The Atchison, Topeka & Santa Fe Railway Company.

Two hearings have been had in this matter and two decisions rendered. Following the first of these hearings, the Commission by Decision No. 33407, dated August 13, 1940, granted the application. This decision

(2) For brevity, applicants Pacific Freight Lines and Valley Motor Lines, Inc. will be referred to as Pacific and Valley, respectively; Valley Express Co. will be referred to as Valley Express; and the principal protestants, Valley & Coast Transit Company, Coast Line Express, California Motor Express, Ltd., and California Motor Transport Co., Ltd. will be referred to as Valley & Coast, Coast Line, California Motor Express, and California Motor Transport, respectively. The principal routes involved from Los Angeles to San Francisco and East Bay cities will be referred to as follows: the San Joaquin Valley Route (via U. S. Highway No. 99) will be designated as the Valley Route; the San Joaquin Valley-Pacheco Pass-Coast Route (via U. S. Highway No. 99, Los Angeles to Califa; State Highway No. 152 — Los Banos and Pacheco Pass — to Gilroy, and U. S. Highway No. 101 to San Francisco ((and alternate U. S. Highway No. 101 from San Jose to Oakland)) will be referred to as the Pacheco Route, and the Coast Route (via U. S. Highway No. 101 ((and alternate U. S. Highway No. 101 from San Jose to Oakland)) will be referred to as the Coast Route.

was stayed by a petition for rehearing upon which oral argument was had. Thereafter, by Decision No. 34294, rendered June 10, 1941 (43 C.R.C. 559), the application once more was approved. That decision, in turn, was stayed by a petition for rehearing, seasonably filed, which was granted by our order dated July 21, 1941. The latter petition was interposed by Valley & Coast, Coast Line, California Motor Express, and California Motor Transport, which carriers will be referred to hereafter, collectively, as protestants. At the rehearing, held at San Francisco on October 8th and 9th, and at Los Angeles on November 5, 1941, additional evidence was presented by both applicants and protestants. Thereafter, following oral argument at San Francisco, February 17, 1942, the said matter was submitted for decision.

By Decision No. 34294, the Commission, as has been noted, granted the application. Here it was found that public convenience and necessity required: (a) the establishment by Valley and Pacific of an alternative route between San Francisco Bay points and Los Angeles, via the Coast Route, for the transportation of freight as underlying carriers for Valley Express; (b) the interchange of equipment by Valley and Pacific at San Luis Obispo in the performance of that service; and (c) the establishment of service by Valley as a highway common carrier between San Francisco Bay points and San Luis Obispo, limited, however, to the transportation of freight moving via Valley and Pacific between San Francisco Bay points and Los Angeles as underlying carriers for Valley Express. By its order, the Commission granted Valley a certificate authorizing the establishment of such a service between San Francisco Bay points and San Luis Obispo, conditioned as provided in the findings; it authorized Valley and Pacific to interchange equipment at San Luis Obispo in the performance of that service; and it denied the petition for rehearing which was directed to Decision No. 33407.

In the petition for rehearing now under consideration, protestants have challenged Decision No. 34294 upon several grounds. They assert that

certain findings were not supported by the evidence; that these findings were not true, as would be shown, so they alleged, by further evidence to be produced, disclosing the existence of changed conditions; that the existing carriers, particularly Valley & Coast, would be available to serve Valley Express as an underlying carrier between San Francisco Bay points and San Luis Obispo in connection with the transportation of through traffic between San Francisco Bay points and Los Angeles; and that, if, as asserted, the applicants were thus permitted to encroach upon protestants' field of operation, the latter would be damaged by the resulting competition.

Upon rehearing, the evidence offered dealt with the following matters, viz.:

- (a) The elapsed time consumed in transit over the Valley, the Pacheco, and the Coast Routes;
- (b) The road conditions affecting the movement of the traffic;
- (c) The efficiency of the motive power utilized by applicants;
- (d) The arrangements between applicants and the drivers' unions regarding the conditions under which the service would be performed;
- (e) The availability of Valley & Coast as an underlying carrier for Valley Express between San Francisco Bay points and San Luis Obispo;
- (f) The loss of traffic assertedly suffered by applicants because of late deliveries.

The evidence bearing upon these several questions will now be analyzed and discussed. In arriving at a conclusion, the entire record will be considered, including the evidence received at the original hearing as well as that produced upon the rehearing.

(a) Elapsed Time in Transit

On rehearing, protestants called the representatives of certain

highway contract carriers⁽³⁾ operating between Los Angeles, and San Francisco and East Bay points over one or more of the three routes mentioned.⁽⁴⁾ From their testimony it appears that the elapsed time required for the operation between San Francisco Bay points and Los Angeles ranged from 13 to 14½ hours, or an average of 13.75 hours, over the Valley Route; from 12½ to 15 hours, or an average of 13.75 hours, over the Pacheco Route; and from 12½ to 14 hours, or an average of 13.25 hours, over the Coast Route. The trucks used in this service were equipped with standard Diesel or gasoline engines.

On three consecutive days during September, 1941, operating officials of protestants observed the departure and arrival, at San Francisco and Los Angeles, of certain trucks operated by Valley and Pacific between those points. They testified that the trips were completed in from 12½ hours to 13 hours 55 minutes, or an average of 13.208 hours. In the course of this survey, it was stated, no attention was given to trucks that had failed to complete the one-way trip within 14 hours. The trucks observed were powered by Cummings supercharged Diesel motors. None was equipped with standard Diesel or gasoline engines. It does not appear that any supercharged equipment was operated over the Coast Route.

(3) Witnesses representing E. J. Willig Truck Transportation Company, Savage Transportation Company, and Charles P. Hart Transportation Company, highway contract carriers, described the schedules observed in conducting the operations between Los Angeles and San Francisco, and the highway conditions encountered.

(4) The distances between San Francisco and Los Angeles, over these three routes, are as follows: via the Coast Route, 442 miles; via the Pacheco Route, 417 miles; and via the Valley Route, 407 miles.

At the original hearing, the evidence disclosed that applicants required from 17 to 18 hours to complete the trip over the Valley Route. As to vehicles powered by standard motors, this showing has not been contradicted by the testimony given on rehearing.

(b) Road Conditions

The evidence offered on rehearing regarding highway and weather conditions prevailing over the Valley, the Coast, and the Pacheco Routes, is largely corroborative of that produced at the original hearing. From the record it appears that summer temperatures existing in the Valley are consistently higher than those that obtain along the Coast. Though fog is encountered on the Coast, it does not interfere with highway operations to the same degree as the winter tule fogs which envelop the Valley. Valley traffic has at times been impeded and blockaded by flooded streams. Longer and heavier grades are encountered on the Valley Route than along the Coast. On the other hand, to a greater degree than the Valley Route, the Coast Highway, it seems, is somewhat congested occasionally by military traffic.

During the winter, snow and ice obstruct the Valley Route, but this situation does not prevail along the Coast. Winter conditions in the Tehachapi mountains were described by a state highway maintenance engineer produced by protestants. He testified, in substance, that during rain and snow storms, traffic moves more slowly than at other times. Ice forming on the highway delays and obstructs traffic. Blockades, caused by heavy snow, occur each season. During the winter of 1940-1941, two storms of sufficient severity to cause such a blockade occurred; during 1939-1940, there were six; and during 1938-1939, there were three. On each occasion, traffic was delayed for three hours on the average. During the winter of 1936-1937, this highway was closed for a week. Of frequent occurrence are slides which impede traffic, though not to the same extent as heavy snow.

(c) Efficiency of Motive Power

Pacific, it appears, has pioneered in the development of the Cummings supercharged diesel motor. Fourteen units, so powered, operate between Los Angeles, on the one hand, and Fresno, Oakland, and San Francisco, on the other. The majority of the tractive units moving north of Fresno to San Francisco are said to be thus equipped. As stated, the trucks observed by the protestants were propelled by supercharged motors. This type of motor, so an official of Pacific testified, ⁽⁵⁾ has not proved satisfactory. And the traffic manager of a highway contract carrier, called by protestants, testified that his experience had shown the motor to be impracticable.

(d) Wage Agreement between Carriers and Drivers' Unions

Upon rehearing, protestants produced a contract between the carriers and the drivers' unions, executed August 1, 1940, which provided the basis for determining wages. Under this agreement, a driver employed to handle the type of equipment used by applicants in their line-haul Valley operations would be compensated at the rate of 3-3/4 cents per mile, while on duty, subject to an average minimum wage per trip of \$1 per hour. In this service, drivers are relieved at Fresno. For the operation between Los Angeles and Fresno over the Valley Route, a distance of 221 miles, a driver would therefore receive not less than \$8.29 per trip, on a mileage basis, and even more should the driving time exceed 8.3 hours.

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- (5) The extent to which Pacific has used supercharged motors and the results obtained were described by Mr. C. G. Anthony, vice president and general manager of that company, and also a civil engineer. Although this motor yields greater power and more speed, particularly on the hills, it readily overheats, thus causing it to freeze and lock. Successful operation depends upon the ability of the driver to properly gauge his speed. The poor results obtained have been due largely to the human equation.

(e) Availability of Valley & Coast to Serve Valley Express as Underlying Carrier

On behalf of Valley & Coast, its vice president testified that that carrier would be willing to enter into an arrangement with Valley Express to serve it as an underlying carrier between San Francisco Bay points and San Luis Obispo — a territory it is duly authorized to serve — in connection with the movement of through traffic between the former points and Los Angeles over the lines of Valley & Coast and Pacific. Valley & Coast, he said, would be willing to interchange equipment with Pacific at San Luis Obispo, and to agree upon time schedules affording convenient connections. The Los Angeles manager of Valley & Coast stated that equipment adequate for the purpose was available.

(f) Loss of Traffic by Applicants

At the San Francisco hearing, applicants called representatives of eight business establishments which distribute their products in the Los Angeles area, or transport them between San Francisco Bay points and Los Angeles.⁽⁶⁾ All have used Valley Express in the past, some exclusively for many years, and some still use it for part of their shipments. Most of them testified its service was not satisfactory because of late deliveries, particularly during the winter season. This, they stated, had resulted in many complaints from their customers. As some of the traffic was of an emergency nature, most of these shippers had diverted a substantial part of their business to other carriers, such as California Motor Express, Pacific Motor

(6) These witnesses comprised representatives of Callenkamp Stores Co., retail shoe distributor; Buckingham and Hecht, manufacturer and wholesaler distributor of shoes; Wm. Volker & Co., wholesale furniture and rug distributor; American Fire Equipment Co., distributor of fire extinguishing apparatus; S. Gumpert Co., Inc., wholesale food dealer, Eastman Kodak Co., dealer in photographic supplies; The Johnson-Locke Mercantile Co., manufacturers' representative and food broker; and Seagram-Distillers Corporation, Calvert Distillers Corporation, and Browne Vitners, Co., Inc. wholesale liquor distributors.

Trucking Company, or the rail lines, which, they asserted, could provide earlier deliveries. All stated that they again would patronize Valley Express were it able to furnish a more expeditious service.

On behalf of Pacific, Mr. Anthony described the efforts to improve and speed up service to enable it more effectively to compete with the railroads and the highway contract carriers. These, he stated, offered an expedited overnight service affording early morning delivery. Due to the character of the traffic which Pacific handles, consisting of many small shipments which must be picked up, brought to the terminal, and loaded in line-haul trucks, its service was slower than that furnished by the highway contract carriers. These carriers, he pointed out, because of the character of their traffic, which consists largely of full truck loads moving directly from the shippers to the consignees, are immune from the delays to which Pacific is subject. Notwithstanding efforts to improve and speed up the service, Valley Express has steadily lost business because of its relatively slower schedules. The supercharged motor, he said, had not enabled Pacific and Valley to overcome these disadvantages.

Conclusion

Essentially, this application should be viewed as an effort by Valley and Pacific to improve their through service between San Francisco Bay points and Los Angeles, so as to enable them more effectively to compete with other carriers who can provide a more expeditious service. To accomplish this purpose, they propose to establish an alternative route via the Coast, where operating conditions, they assert, are more favorable. These contentions, in the opinion of the Commission, are sustained by the record.

From the viewpoint of elapsed time in transit, it appears that the advantage lies with the Coast. By using that route, it was shown, the highway contract carriers could save half an hour, the average time via the

Coast being 13.25 hours, and via the Valley and the Pacheco routes, 13.75 hours. Though Valley and Pacific could complete the trip, over the Valley Route, in less than fourteen hours by using supercharged motors, no reason appears why that schedule could not be improved were they to operate the same class of equipment over the Coast. However, as will be noted, that type of motor has not yet been shown to be practicable. And it was not established that the operations of a highway contract carrier could fairly be compared with those of a highway common carrier.

From this record, it appears that highway and weather conditions found along the Coast Route are more favorable to the uninterrupted movement of traffic than those prevailing in the Valley. The Coast offers easier and shorter grades, traffic is less subject to obstruction or delay by storms, fogs, and floods, and the generally prevailing summer temperatures are lower.

The Commission is not convinced that, by utilizing improved motive power, Valley and Pacific could substantially reduce the elapsed time in transit now required to complete the trip over the Valley Route. The supercharged Diesel motor is still in the experimental stage, so the record discloses; consequently, operating schedules attainable through its use alone should not be accepted as the measure of the schedules which applicants could now be reasonably expected to observe. It does not appear that trucks equipped with standard motive power move more expeditiously now than at the time of the original hearing. And for the reasons mentioned,

recourse to the use of the supercharged motor would not operate to change the situation.

On rehearing, Valley & Coast offered to serve as an underlying carrier, in conjunction with Pacific, for Valley Express in the handling of through traffic between San Francisco Bay points and Los Angeles over the Coast Route. Operating between San Francisco Bay points and San Luis Obispo, where it connects with Pacific, Valley & Coast now serves as an underlying carrier for Coast Line Express, with which it is closely affiliated, and which competes with Valley Express for the through traffic. Under the facts of record, Valley Express should not be compelled to rely upon the facilities of a competitor whose interests conflict so essentially.

The competitors of Valley Express, it was shown, have made substantial inroads upon its traffic because of their ability to offer a faster service. Only by meeting their schedules can Valley Express hope to recapture any substantial part of its lost traffic. The alternative service, which Valley and Pacific propose to operate over the Coast Route, would permit shortening of the elapsed operating time and earlier delivery at the terminals. This, in the opinion of the Commission, would result in a substantial improvement in the service, which the carriers should now be permitted to institute.

Protestant, California Motor Transport, which originally was certificated to operate as a highway common carrier over the Coast Route, as an underlying carrier for California Motor Express, an express corporation, later sought and obtained authority to operate via the Valley as an alternative route. Although the carriers last mentioned, as well as the other protesting carriers, contended and sought to show that, from an operating standpoint, the Valley Route is superior to the Coast Route, yet the record discloses that they have made but little use of the Valley Route. Even so, Valley Express, under the present proposal, merely would be placed upon an equal footing with California Motor Express.

The application, accordingly, will be granted.

O R D E R

Application having been made as above entitled, a rehearing having been had, evidence having been received, the matter having been submitted, and the Commission being now fully advised, now, therefore, upon consideration of the entire record herein:

IT IS ORDERED:

(1) That, except as hereinafter otherwise provided, the said Decision No. 34294, together with the order therein set forth and contained, made and entered in the above entitled proceeding on the 10th day of June, 1941, be, and it hereby is, ratified and confirmed, and, by this express reference, is hereby made a part of this decision to all intents and purposes as if incorporated herein in full.

(2) That the periods within which Service Regulations Nos. (1), (3), and (4), of said order, as therein prescribed, may be observed, shall severally commence to run from and after the effective date of this decision, as hereinafter prescribed.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

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

Dated at *Los Angeles* California, this *14th* day of *April*, 1942.

Justus F. Cameron

Ray A. Riley

J. J. Baker

Commissioners.

DISSENT IN DECISION NO. 35270,

SUPPLEMENTAL APPL. 19266

Applicants operate under a certificate over a specified route, the Valley route, between San Francisco Bay points and Los Angeles, doing both local and through, terminal to terminal, business. They now seek the Commission's authority, as an amendment to their present certificates, to operate through service only, terminal to terminal, over a different route, the Coast route. They apply for this amended or additional certificate under the plea of an "alternate route." The record shows that the use of the so-called alternate route is not to be confined to periods when the presently certified route (the Valley route) is not available to applicants, but that the "alternate route" (the Coast route) may be used at any time within applicants' discretion.

To my way of thinking such operation goes beyond the concept of "alternate route" and amounts to the establishment of a new through, terminal to terminal, service, over a new route, not heretofore rendered by these applicants. The granting, or the denial, of an application of this nature should therefore be based solely on a consideration of public convenience and necessity and a complete record on that issue should be before the Commission. No such comprehensive record was made in this case.

Public policy and public convenience and necessity are not served, in my opinion, by throwing open, indiscriminately, the state's highways under the guise of "alternate routes" to common carrier trucks and busses in all cases where more than one feasible highway route connects two terminal points. Yet if we freely grant this privilege of "alternate route" to one carrier we cannot well

withhold it from other carriers should they find it to their interest to ask for that privilege. The granting of such applications without a complete showing of public convenience and necessity is not, I believe, consistent with the intent and spirit of the certificate provisions of the Public Utilities Act.


RICHARD SACESE,
Commissioner.

I concur in the foregoing dissent. It would appear to be the intention of applicants to use the Coast route exclusively for their through runs between San Francisco and Los Angeles, while, under normal conditions, the Valley route would be used only by trucks which render local service between those terminals. If this is true, the Coast route cannot properly be regarded as an "alternate route." It will, in fact, be one of two main routes which will be regularly used by applicants for two different classes of service.


FRANCK R. HAVENNER,
Commissioner.