

Decision No. 37037

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
J. P. SPAENHOWER for a certificate of )  
public convenience and necessity for )  
the establishment and operation of a )  
highway common carrier service: (a) )  
between points presently served, on )  
the one hand, and West Point and inter- )  
mediate points, on the other hand; and )  
(b) points and places laterally within )  
one mile on either side of the route )  
traversed. )

Application No. 26081

**ORIGINAL**

BY THE COMMISSION:

O P I N I O N

J. P. Spaenhower, the applicant herein, requests a certificate of public convenience and necessity authorizing the transportation of property as a highway common carrier between Valley Springs and West Point and intermediate points, as an enlargement and extension of his present operative rights.

Spaenhower acquired from Calaveras Transit Company, Ltd. the operative right for the transportation of property between Stockton, Murphys and Lake Alpine and intermediate points, and is presently operating thereunder. Such intermediate points included Valley Springs, San Andreas and Angels Camp.

Subsequently a certificate was granted to Spaenhower authorizing operation of service as a highway common carrier between San Andreas and Kentucky House and intermediate points, and between all points presently served by applicant and all off-route

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(1) Decision No. 35679, in Application No. 25191, dated August 11, 1942.

points within one mile of applicant's route of operation between Stockton and Lake Alpine, via Valley Springs, San Andreas, Angels Camp and Murphys, which service is also being operated by applicant at the present time.

The extension is sought because of the fact that the lumber industry is being substantially developed at West Point and already two box factories are located there, employing a large number of workmen. The proposed service offers them common carrier facilities which they do not now have, and which will be required in view of the rapid growth of the community between West Point and Valley Springs.

Applicant states that it will not be necessary to add to his present equipment. He proposes to establish rates of a volume established as minima by the Commission. Scheduled service will be rendered one day a week and an "on-call" service on other days.

As we view the record herein the proposed service is a necessary one and the application will therefore be granted. Public hearing is not required.

J. P. Spaenhower is placed upon notice that "operative rights" as such do not constitute a class of property which may be capitalized or used as an element of value in rate fixing for any amount of money in excess of that originally paid to the State as the consideration for the grant of such rights. Aside from their purely permissive aspect, they extend to the holder a full or partial monopoly of a class of business over a particular route.

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(2) Decision No. 36359, in Application No. 25623, dated May 18, 1943.

This monopoly feature may be changed or destroyed at any time by the State which is not in any respect limited to the number of rights which may be given.

O R D E R

Application having been made in the above entitled matter and the Commission being duly advised, and hereby finding that public convenience and necessity so require,

IT IS ORDERED that a certificate of public convenience and necessity is hereby granted to J. P. Spaenhower authorizing the establishment and operation of service as a highway common carrier, as defined in Section 2-3/4 of the Public Utilities Act, between Valley Springs and West Point and intermediate points via Mokelumne Hill, and all points and places laterally within one mile on either side of the route traversed, as an extension and enlargement of the operative rights heretofore acquired under Decisions Nos. 35679 and 35359, provided that,

J. P. Spaenhower, his successors or assigns, shall never claim before this Commission, or any court or other public body, a value for said operative rights or claim as the cost thereof, an amount in excess of that paid to the State as the consideration for such rights.

IT IS FURTHER ORDERED that in providing service pursuant to the certificate herein granted, applicant shall comply with and observe the following service regulations:

1. Applicant shall file a written acceptance of the certificate herein granted within a period of not to exceed thirty (30) days from the effective date hereof.

- 2. Applicant shall comply with the provisions of General Order No. 80 and Part IV of General Order No. 93-A by filing, in triplicate, and concurrently making effective appropriate tariffs and time schedules within sixty (60) days from the effective date hereof and on not less than one (1) day's notice to the Commission and the public.
- 3. Subject to the authority of this Commission to change or modify them by further order, applicant shall conduct operations pursuant to the certificate herein granted, over and along the following routes:

(a) Between Valley Springs and Mokelumne Hill, via State Highway No. 8; between Mokelumne Hill and West Point, via unnumbered highway;

(b) As alternate routes to be used in conjunction with the above described routes, for carrier's convenience only, and not for the purpose of serving any points thereon:

Between Toyon and Junction State Highway No. 8, via unnumbered highway;

Between San Andreas and Mokelumne Hill, via State Highway No. 49.

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

Dated at San Francisco, California, this 2nd day of May, 1944.

Richard Lasker  
Justice J. Cameron  
Francis A. Haveman  
Frank Allen  
James J. Lawrence  
 COMMISSIONERS