

ORIGINAL

Decision No. 40105

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of VALLEY MOTOR LINES, INC.)
to sell and MERCHANTS EXPRESS CORPORATION)
to purchase a highway common carrier)
certificate between San Francisco and)
San Jose.)

Application No. 28154

Application of VALLEY MOTOR LINES, INC.)
and VALLEY EXPRESS CO. to sell and)
MERCHANTS EXPRESS CORPORATION to purchase)
certain highway common carrier and)
express certificates between Oakland and)
San Jose and of MERCHANTS EXPRESS CORPO-)
RATION for a highway common carrier)
certificate between those points.)

Application No. 28176

DOUGLAS BROOKMAN and HAROLD FRASHER, for Valley Motor Lines,
Inc. and Valley Express Co.
DOUGLAS BROOKMAN for Merchants Express Corporation.
WILLIAM WEINHOLD for Southern Pacific Company and Pacific
Motor Trucking Company.
BEROL & HANDLER by Marvin Handler for Highway Transport Inc.
CLAIR W. MACLEOD for Peninsula Motor Express.
HAROLD M. HAYS and WILLIAM KESSLER for Pioneer Express Co.
and Intercity Transport Lines.

O P I N I O N

By Application No. 28154, Valley Motor Lines, Inc. seeks
authority to sell, and Merchants Express Corporation to purchase, a
certificate to operate a highway common carrier service between San
Francisco, San Jose and intermediate points. (1)

By Application No. 28176, Valley Motor Lines Inc. and
Valley Express Co. ask permission to sell, and Merchants Express
Corporation to purchase, all of Valley's highway common carrier and
express certificates authorizing service between Oakland, San Jose,

(1) That certificate was originally granted to Pioneer Express
Company (Dec. 6042, Dec. 30, 1918, App. 3925), and subsequently
transferred to Valley Motor. (Dec. 34349, June 24, 1941, App.
24194.)

(2)
Livermore and intermediate points. Merchants also requests that if acquisition of those rights be authorized it be granted in lieu thereof a new certificate to conduct a highway common carrier service only, via specified routes between the points named.

A public hearing was held at San Francisco on March 17, 1947, before Examiner Gregory, at which time evidence was received and the matters were submitted for decision. Testimony in support of the application was given by A. W. McTavish, vice president of Merchants, and by Harold M. Hays, a partner of Intercity Transport Lines, whose express traffic between San Francisco and San Jose is presently transported by Valley Motor but will be handled by Merchants following the transfer.

Merchants Express Corporation, the evidence shows, is engaged in extensive highway common carrier operations in the San Francisco Bay area, including a daily service between San Francisco and East Bay points. It maintains terminals in San Francisco and Oakland, and will have available at San Jose, on a rental basis, terminal facilities owned by its affiliate, Walkup Drayage and Warehouse Company. In addition to its own pickup and delivery trucks located at San Francisco and Oakland, and those to be maintained at San Jose, Merchants, it was stated, also has sufficient line-haul

(2) The highway common carrier certificates involved are: (1) that originally granted to H. Frasher (Dec. 28199, Sept. 3, 1935, App. 19976), subsequently transferred to Valley Motor Lines, Inc. (Dec. 33749, Dec. 21, 1940, App. 23816); (2) that authorizing Valley Motor to extend service to all points within a 7-mile radius of Livermore. (Dec. 35252, April 14, 1942, App. 24783.) The express certificate involved is that granted to Valley Express Co. (Dec. 34006, Mar. 11, 1941, App. 22264) to operate an express service between Berkeley, Emeryville, Oakland, Alameda, San Leandro, San Lorenzo, Hayward and San Jose, and points intermediate to San Jose, and including Dublin, Santa Rita, Livermore, Pleasanton, Sunol, Mt. Eden, Alvarado, Centerville, Newark, Irvington, Decoto, Niles, Mission San Jose, Warm Springs and Milpitas; also an extension of that certificate to include all points within 7 miles of Livermore. (Dec. 35252, April 14, 1942, App. 24783.)

equipment with which to handle all freight offered for transportation. Moreover, the evidence shows that Merchants will be in a position to utilize the services of Walkup, including equipment owned by that concern which, together with the vehicles owned by Merchants, totals some eleven hundred units. No intermediate terminals will be maintained, but freight originating at or destined to intermediate points will be handled on line-haul units. Daily service will be afforded in both directions between all authorized points. Rates to be charged will be minimum rates as established by the Commission. The agreed consideration for the purchase of the operative rights is \$50,000, of which \$30,000 will be paid for the San Francisco-San Jose certificate and \$20,000 for the Oakland-San Jose rights. No property other than the operative rights is proposed to be transferred.

We have heretofore noted that Valley Motor presently acts as underlying carrier for express traffic of Intercity Transport Lines between San Francisco, San Jose and intermediate points. The arrangements for handling that traffic, the evidence shows, had their inception in 1941 in a transaction between Valley and Pioneer Express Company (a highway common carrier affiliate of Intercity) whereby the two carriers exchanged certain operative rights, Pioneer taking over Valley's operation between San Francisco and Garberville, and Valley acquiring Pioneer's right to operate between San Francisco, San Jose and intermediate points. As part of that transaction, Valley Motor and Intercity on April 30, 1941, executed an express privilege agreement calling for the transportation by Valley of Intercity's express traffic between San Francisco, San Jose and intermediate points for as long a period as Intercity should desire to make use of Valley's facilities. Contemporaneously with the execution of that contract, Valley Motor and Pioneer entered into an agreement providing for the lease by Valley from Pioneer of such motor vehicle equipment

(3) The exchange of operative rights was authorized by Decision No. 34349 dated June 24, 1941, in Application No. 24194.

as might be necessary for the exclusive purpose of transporting the aforementioned express traffic of Intercity for the duration of the express privilege agreement. Those agreements were superseded by others dated February 5, 1942, which were later modified in writing so as to increase the amount of compensation (based on costs of operation) to be paid by Intercity to Valley under their contract and to fix responsibility for vehicle loss or damage as between Valley and Pioneer under their equipment lease agreement. (4)

Pursuant to the arrangements just described, Intercity tenders to Valley, on Intercity's billing, express shipments moving between the Peninsula points heretofore named, and Valley transports such shipments on equipment secured from Pioneer under its lease with that company. No traffic other than Intercity's express loadings is carried by Valley under the arrangement described, nor does Valley have anything to do with designation, loading, or dispatching of such shipments. Pickup and delivery service is accomplished by Intercity's pickup equipment at San Francisco, San Jose and certain intermediate cities, while at other points along the highway that service is performed by the line-haul trucks.

Following acquisition of Valley Motor's certificate between San Francisco and San Jose, Merchants proposes to continue to handle Intercity's express traffic between those points, as well as intermediate points, under agreements to be arrived at that will be mutually satisfactory to the parties. The underlying transportation, however, will be performed with Merchants' own equipment, according to the testimony of Merchants' vice president.

We have considered it appropriate to discuss somewhat fully

(4) Copies of the several agreements, as modified, were received as Exhibits 1 and 2 in Application No. 28154.

the arrangements concerning the handling of Intercity's express traffic by Valley and as proposed by Merchants for two reasons; first, to make clear that following the proposed transfer the public will be afforded adequate facilities for the transportation of such express matter as it may desire to have handled by Intercity, and second, because of the intense interest displayed at the hearing by several competing carriers as to the nature and scope of the transportation service conducted by Intercity and its contractual associates, as described above. The issues raised by those carriers, however, were such as might have been more appropriately presented in a complaint case, and since we do not deem the determination of those issues to be necessary to a decision of these proceedings they will not be further discussed. It should be noted, however, that nothing in this opinion, or in the order that follows, should be taken as evincing either our approval or disapproval of the agreements that Intercity now has, or in the future may have, respecting the transportation of its express traffic between San Francisco, San Jose and intermediate points.

With regard to the Oakland-San Jose operation, Merchants has requested, because of the different character of its proposed service, that in place of the certificates now outstanding in the hands of Valley Motor and Valley Express, a new certificate be issued to it permitting the establishment of a highway common carrier service only, in that territory. The quality of service proposed under such a certificate, the evidence shows, will be substantially the same as, if not an improvement upon, that now rendered by Valley, but, as stated, would be conducted only in the capacity of a highway common carrier. Merchants also intends, if granted the requested authority, to transport between authorized points on its line Valley Express traffic which originates at or is destined to points beyond Oakland or San Jose

served by Valley Express under other express operative rights it may have.

Counsel for Southern Pacific Company and its subsidiary, Pacific Motor Trucking Company, argued that such a proposal could not be lawfully carried out, since by cancellation of Valley's local express certificate between Oakland and San Jose, as here envisaged, that company would find itself in the position it occupied prior to 1938, at which time, counsel asserts, Valley did not possess an express right to serve the territory at all, let alone to serve it from or to outside points. ⁽⁵⁾ Needless to say, Valley's president did not share counsel's views.

The foregoing contention, like those heretofore made in connection with the San Francisco-San Jose phase of this proceeding, relates to issues which we think might be more appropriately raised in a complaint case, should the occasion ever arise. We therefore believe that a further discussion of such issues would serve no useful purpose here.

We conclude from the evidence of record herein that applicant's proposal to transfer Valley's certificate to Merchants to conduct a highway common carrier service between San Francisco, San Jose and intermediate points, and Merchant's proposal to operate thereunder, are consistent with the public interest. We also find from the evidence that public convenience and necessity will be subserved by the issuance to Merchants of a certificate to conduct operations as a highway common carrier between Oakland, San Jose, Livermore and intermediate points. The order to follow will provide for the issuance of such a certificate in place of the certificates now held by Valley Motor and Valley Express authorizing service

(5) By Dec. 31185, issued Aug. 8, 1938, in Case 4184, a complaint proceeding brought by Southern Pacific Company and its trucking affiliates, Valley Express was directed to cease rendering express service between Oakland, San Jose and intermediate points without the required certificate, which was subsequently granted. (Dec. 34006, Mar. 11, 1941, App. 22264) Valley's express operations, other than those between Oakland, San Jose, and intermediate points, were not in issue in either of these proceedings.

between those points, and will also provide for the cancellation of Valley's said certificates concurrently with the establishment of Merchants' service between the specified points.

Merchants Express Corporation is hereby placed on 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. 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

Applications therefor having been filed, a public hearing having been had, evidence having been taken, the matters having been submitted, and it having been found to be consistent with the public interest and that public convenience and necessity so require, and the Commission being fully advised,

IT IS ORDERED:

(1) That Valley Motor Lines, Inc. be and it is hereby authorized, on or before May 1, 1947, to transfer to Merchants Express Corporation the certificate authorizing operations as a highway common carrier between San Francisco, San Jose and intermediate points formerly held by Pioneer Express Company and subsequently acquired by Valley Motor Lines, Inc. pursuant to Decision No. 34349, dated June 24, 1941, in Application No. 24194, and

Merchants Express Corporation is hereby authorized to acquire said operative right and thereafter to operate under and commensurate with said right.

(2) That in the event such authority to transfer is exercised, Merchants Express Corporation shall advise the Commission thereof in writing within 10 days after the actual date of such transfer, and within 30 days after the consummation of said transfer shall file with the Commission a copy of any bill of sale or other instrument of transfer executed under the authority herein granted, and a copy of the book entries made to record the transaction.

(3) That a certificate of public convenience and necessity be and it is hereby granted to Merchants Express Corporation authorizing the establishment and operation of service as a highway common carrier, as defined by Section 2-3/4 of the Public Utilities Act, between Oakland, San Jose, Livermore and all intermediate points, including all points within a radius of 7 miles of Livermore.

(4) That concurrently with the establishment by Merchants Express Corporation of the highway common carrier service authorized in paragraph (3) hereinabove, the certificates of public convenience and necessity held by Valley Motor Lines, Inc. and Valley Express Co. pursuant to orders of the Commission contained in the following decisions shall be cancelled:

I. Valley Motor Lines, Inc.

- a. Decision No. 28199, dated September 3, 1935, in Application No. 19976.
- b. Decision No. 33749, dated December 21, 1940, in Application No. 23816.
- c. Decision No. 35252, dated April 14, 1942, in Application No. 24783.

II. Valley Express Co.

- a. Decision No. 34006, dated March 11, 1941, in Application No. 22264.
- b. Decision No. 35252, dated April 14, 1942, in Application No. 24783.

(5) That in providing service pursuant to the transfer herein authorized and the certificate herein granted, applicants shall comply with and observe the following service regulations:

- a. Merchants Express Corporation shall file a written acceptance of the certificate herein granted within a period of not to exceed 30 days from the effective date hereof.
- b. Within 60 days from the effective date hereof and on not less than 5 days' notice to the Commission and the public, Merchants Express Corporation shall establish the service herein authorized and applicants 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 tables relating to the service established pursuant to the transfer of the operative right, and to the issuance of the certificate, herein authorized.
- c. Subject to the authority of this Commission to change or modify them by further order, Merchants Express Corporation shall conduct operations pursuant to the certificate granted in paragraph (3) of this order over and along the following routes:

Between Oakland and San Jose, via State Highway No. 17; between Oakland and Livermore, via U. S. Highway No. 50; between Livermore and San Jose, via State Highway No. 21; and via all routes connecting said highways between said points.

The effective date of this order shall be 20 days after the date hereof.

Dated at Los Angeles, California, this 25th day of March, 1947.

Harold P. Gills
Justin F. Wallace
R. J. Morrison
Reynolds P. Atter