

Decision No. 40888

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own motion into the operations, schedules, and service of SAN BERNARDINO VALLEY TRANSIT COMPANY, a corporation.

Case No. 4908

and

In the Matter of the Application of SAN BERNARDINO VALLEY TRANSIT COMPANY, a corporation, for authority to purchase all issued and outstanding shares of the capital stock of Air Service Transit, Inc., a California corporation, engaged in a public utility business;

SAN BERNARDINO VALLEY TRANSIT COMPANY, and AIR SERVICE TRANSIT, INC., for approval of merger agreement and for authorization for merger into San Bernardino Valley Transit Company, and for transfer and consolidation of Certificates of Public Convenience;

Application No. 27512

SAN BERNARDINO VALLEY TRANSIT COMPANY for authority to borrow money and re-finance obligations by issuance of promissory note.

Charles C. Towle in propria persona. Guthrie, Lonergan, and Jordan, by John B. Lonergan, for San Bernardino Valley Transit Company.

O P I N I O N

Charles C. Towle, doing business as Highland-Patton Bus Line, petitioner herein, requests that this Commission reopen application No. 27512 and set aside Decision No. 39011, dated May 26, 1946, or rescind the authority granted therein to San

Bernardino Valley Transit Company to "consolidate and integrate" the operative rights acquired by the latter from Air Service Transit Inc., pursuant to Paragraph 3 of said decision, and that San Bernardino Valley Transit Company be forbidden to operate a through service, recently established, between downtown San Bernardino and Del Rosa Post Office, until it has obtained appropriate authorization therefor. (1)

Case No. 4908 is an investigation on the Commission's own motion into the operations, schedules, and service of San Bernardino Valley Transit Company, a corporation, and particularly into the operation, schedules, and service of its cross-town bus line along Base Line Street in San Bernardino, as authorized by Decisions Nos. 38665 and 38950, and its recently established operation of two new lines between downtown San Bernardino, on the one hand, and the Muscoy District and Del Rosa Post Office, on the other hand.

The matters having been consolidated for hearing and decision, and having been heard in San Bernardino, on July 24, and August 28, 1947, before Examiner Chiesa, are now ready for decision.

The record shows that by Decision No. 38665, dated February 5, 1946, Air Service (2) was authorized to establish and operate

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(1) On August 12, 1947, this Commission ordered Application No. 27512 reopened for further hearing for the purpose of determining whether Decision No. 39011 should be rescinded, altered, or amended.

(2) Hereinafter Air Service Transit Inc. will be referred to as Air Service, San Bernardino Valley Transit Company as Valley Transit, and Highland-Patton Bus Line as Highland-Patton.

a direct cross-town bus line "beginning at the intersection of Mt. Vernon Avenue and Base Line Street, thence along Base Line Street, Del Rosa Avenue to the Del Rosa post office", subject to a restriction against the transportation of local passengers along Base Line Street between Mountain View and Del Rosa Avenues as said portion of the route was then being served by Highland-Patton. Said decision did not authorize Air Service to consolidate its Base Line cross-town service with the line it was then operating along East 3rd Street in San Bernardino as the lines had no common meeting point. The Base Line cross-town service was authorized upon a showing of public convenience and necessity. At the hearing upon the application for said bus line, Air Service called many public witnesses to testify that there was a need for a direct service from Mt. Vernon Avenue and the Del Rosa area to the business district at Base Line and E Streets, and for a through cross-town service between Mt. Vernon Avenue and Del Rosa post office.

Said cross-town service was established on or about March 1, 1946, and was operated until July 9, 1947, when Valley Transit (successor to Air Service) split the line in two parts and began operating, in conjunction with its other operating rights, two new lines; one between downtown San Bernardino and the Del Rosa post office via E Street, Base Line Street and Del Rosa Avenue, and the other between downtown San Bernardino and Muscoy via E Street, Base Line Street, Mt. Vernon Avenue, Highland Avenue, and State Street.

Petitioner herein objects to the operation of Valley Transit's new Del Rosa line as said route closely parallels his

San Bernardino-Victoria Gardens route for a distance of approximately 4½ miles and is highly competitive therewith.

Valley Transit position is that said service has been authorized by the Commission.

By Decision No. 37279, dated August 16, 1944, on Application No. 26157, this Commission authorized Air Service and Valley Transit "to enter into the operating agreement as set forth in Exhibit H attached to said application, which agreement, among other things, provided that:

"WHEREAS, it is in the public interest and to the benefit of the San Bernardino Army Depot that both parties hereto consolidate and coordinate the operation of their respective passenger stage lines, to the end that service between San Bernardino and the San Bernardino Army Air Depot is, insofar as routing, fares, schedules, equipment and standards of service, the same as one passenger stage line, and that, in order to foster and promote accomplishment of such consolidation and coordination, \* \* \*

\* \* \*

"NOW, THEREFORE, in consideration of the mutual covenants of the parties, IT IS AGREED as follows:

- "(1) Each of the parties hereto hereby grants to the other party the right to operate its passenger stages over, along and upon all portions of the routes of the respective party held by it pursuant to Certificate of Public Convenience issued by the Railroad Commission of the State of California;"

Said agreement preceded the granting of the Base Line

cross-town certificate to Air Service by approximately 22 months. Shortly after the inauguration of the cross-town line, March 1, 1946, Valley Transit was authorized, by an ex parte order dated May 28, 1946, to acquire the properties and operating rights of Air Service, which operating rights it was permitted to "consolidate and integrate with those now owned and operated by it" (Decision No. 39011). Valley Transit thereafter continued to operate the Base Line cross-town service until July 9, 1947.

Air Service and Valley Transit having merged pursuant to the authority granted by Decision No. 39011, the operating agreement between said companies was thereafter ineffective and, therefore, it is unnecessary to consider said agreement in connection with the recent changes in the manner of operating said cross-town bus line as the change did not occur until July 9, 1947, which was approximately 13 months after the companies had merged. Valley Transit's operating rights along Base Line Street are derived from the certificate of public convenience and necessity granted by Decision No. 38665, and the ex parte Order consenting to the merger of the two companies in Decision No. 39011.

Valley Transit contends that by reason of said operating agreement and ex parte order, it has the right to operate its recently established Del Rosa and Muscoy lines between downtown San Bernardino, on the one hand, and Del Rosa post office and

Muscoy District, on the other hand, and that this Commission has no authority or jurisdiction to interfere with said operation.

The operating agreement, having been superseded by the subsequent merger of the two companies, requires no further comment. As to the ex parte order (Decision No. 39011) which authorized the consolidation and integration of the operating rights of said companies, this Commission, by virtue of the provisions of Section 64 of the Public Utilities Act, has continuing authority and may, at any time, upon notice to the public utility affected, and after opportunity to be heard, rescind, alter, or amend said order or decision.

The evidence in this proceeding justifies the relief sought by petitioner. The record shows, and we find, that the passenger stage operation as authorized by Part I of the Order in Decision No. 38665 was established for the convenience of persons requiring a direct cross-town bus service on Base Line Street; that Valley Transit discontinued said cross-town service on July 9, 1947; that cross-town passengers now are required to transfer on Base Line at E Street; that the schedules of the new Del Rosa and Muscoy lines cause long delays for cross-town passengers; that Valley Transit has been operating its buses on its new Del Rosa line immediately ahead of petitioner's buses, affording no added convenience to the public; that Valley Transit's new Del Rosa line is directly competitive with petitioner's Victoria Gardens line and portions of his Highland-Patton line; that

revenue on petitioner's Victoria Gardens line has continuously decreased from July 9, to August 26, 1947<sup>(3)</sup>; that it may be necessary for petitioner to curtail his service or abandon same if Valley Transit is not required to discontinue operation of its Del Rosa line as the area through which the two competing lines now operate will not support both services; that Decision No. 39011, on Application No. 27512, was granted ex parte and petitioner's predecessor, F. M. Snell, was not served with a copy of said application nor was he otherwise given notice and, therefore, did not have an opportunity to protest the consolidation of the operating rights which were authorized to be transferred.

(3) Exhibit No. 4, page 2, shows passenger revenue on Charles C. Towle's Victoria Gardens line before and after establishment of Valley Transit's Del Rosa line (July 9, 1947) as follows:

HIGHLAND-PATTON BUS LINE  
PASSENGER REVENUE  
VICTORIA GARDENS ROUTE

<u>PERIOD</u>	<u>REVENUE</u>	<u>REVENUE PER MILE</u>	<u>RATIO TO FIRST PERIOD</u>
July 1, 2, 3, 5, 6, 7, 8, 1947	\$627.40	26.7¢	100.0%
Seven days ending July 15, "	590.30	25.1	94.1
" " " " 22, "	571.50	24.3	91.1
" " " " 29, "	565.70	24.0	90.2
" " " Aug. 5, "	573.50	24.3	91.4
" " " " 12, "	555.10	23.6	88.5
" " " " 19, "	556.60	23.6	88.7
" " " " 26, "	542.20	23.0	86.3

OPERATING EXPENSE

Drivers' Wages	10.1¢ per mile
Depreciation	3.8¢ " "
All other Expense and taxes	11.6¢ " "
Total operating expense	25.5¢ " "

No evidence was offered by Valley Transit to show that a through Base Line cross-town service is no longer required.

Valley Transit's president testified that the recently established service between downtown San Bernardino and Del Rosa has not been compensatory; that gross daily revenue on said line for the period of July 9-16, 1947, averaged \$16.17 and for the week ending August 16, 1947, the daily average was \$17.78; that revenue per bus mile on said line was 13.6 cents compared with the company's operating cost per bus mile of approximately 30 cents. Revenue and expense data for the Muscoy line was not presented. The latter line is not competitive with lines of other carriers. The evidence also shows that Valley-Transit could operate a direct service between downtown San Bernardino and the Muscoy District along other certificated routes.

The evidence of record having been fully considered we are of the opinion that the following order is in the public interest.

O R D E R

Public hearing having been held in the above-entitled proceedings, evidence having been received, the matters being duly submitted, and the Commission being fully advised,

IT IS ORDERED:

- (1) That San Bernardino Valley Transit Company shall re-establish and continue to operate the cross-town passenger stage service as authorized in Part I of the Order in Decision No. 38665 and First Supplemental Order in Decision No. 38950.
- (2) That San Bernardino Valley Transit Company cease and

desist from operating a direct passenger stage service between downtown San Bernardino and Del Rosa post office (the Del Rosa line), unless and until said San Bernardino Valley Transit Company shall have obtained from the Public Utilities Commission a certificate of public convenience and necessity therefor.

(3) That in operating its service between San Bernardino and Muscoy, San Bernardino Valley Transit Company shall not operate over and along Base Line Street, between "I" Street and "E" Street, unless and until it shall have obtained from the Public Utilities Commission a certificate of public convenience and necessity therefor.

(4) That except as modified hereinabove Decision No. 39011 shall remain in full force and effect.

IT IS FURTHER ORDERED that the Secretary of the Commission cause service of this Order to be made upon San Bernardino Valley Transit Company, a corporation.

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

Dated at Los Angeles, California, this 10<sup>th</sup> day of September, 1947.

Harold P. Kula

Justus J. Calver  
Justus J. Calver

R. F. [Signature]

COMMISSIONERS