

Decision No. 11763

## BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

**ORIGINAL**

In the matter of the Application of C. A. SCHLAGETER and C. C. SCHLAGETER, co-partners, doing business under the name of MARIPOSA AUTO STAGE COMPANY for a certificate of public convenience and necessity to operate auto stage passenger service between Merced, Yosemite Valley and intermediate points.

Application No. 8349

In the matter of the Application of MADERA YOSEMITE BIG TREE AUTO COMPANY, for a certificate of public convenience and necessity (if necessary) to operate an auto stage, passenger and baggage service between Merced and Yosemite Valley and intermediate points.

Application No. 8492

Devlin & Brookman, by Douglas Brookman, for Applicant in Application No. 8349 and for Protestants to Application No. 8492.  
 Oliver Dibble for Applicant in Application No. 8492 and for Protestants in Application No. 8349.  
 H. K. Landram for Yosemite Valley Railroad Company, Protestants to both Applications.  
 W. C. Ring, representing T. J. Cronin, for Madera-Raymond-Wawona Stage.

BY THE COMMISSION:

O P I N I O N

These two matters heard by Examiner Eddy were consolidated for hearing and will be disposed of in one report.

In the Schlageter application, filed on October 23, 1922, a certificate of public convenience and necessity is sought to operate automobile passenger stages between Merced and the Yosemite Valley over a route between these points which is now, and for several years past has been, traversed by the stages of the Madera-Yosemite Big Tree Auto Stage Company. The latter company will be

hereinafter referred to as the "Madera company," and the line now operated by the Schlageters between Merced and Mariposa as the "Mariposa company." The application sets forth that the Madera company is operating over the route in question between Merced and the Yosemite National Park boundary without authority from us and therefore in violation of the statutes. This allegation was made as the result of developments at the hearing on October 17, 1922, in Case No. 1790. It there appeared that for some time prior to July 1, 1922, the Schlageters held the contract for carrying the mails between Merced and Mariposa, the latter being situated some two miles off the main highway from Mormon Bar, an intermediate point on the through route of the Madera company between Merced and Yosemite Valley, and on March 2, 1920, were granted a certificate of public convenience and necessity (Decision No. 7207) to operate an automobile stage line between those points. When the mail contract was lost by them on July 1, 1922, to the Madera company, the former, nevertheless, continued to conduct a passenger service over the route, serving also intermediate points, including Mormon Bar. The latter settlement, however, was not served daily but only when passengers or freight traffic were to be had, and upon call. On July 28, 1922, the Mariposa company brought before us a formal complaint in which it was alleged that the Madera company since taking over the mail contract on July 1, had been transporting passengers between Merced and Mariposa over the route traversed by the Mariposa company without having secured from us a certificate of public convenience and necessity. The case above referred to was heard on October 17, 1922, and decided on January 9, 1923, Decision No. 11487. In that decision, which should be referred to for a more complete history of the situation now before us, the Madera company was ordered to discontinue its local operations between Merced and Mariposa, but was permitted to serve Mormon Bar as a part of its through service between Merced and Yosemite Valley.

It appears, as later explained, that the Madera company, during the latter part of 1916 and beginning about May 10, 1917, was operating a service from May to November between Merced and Yosemite Valley. A new highway between these points by way of Mormon Bar was under construction, and some time in 1916 was completed to a point in the vicinity of Cathay postoffice about 26 miles from Merced and 12 miles from Mormon Bar. The entire road as constructed could not then be used, and in order to reach Mormon Bar, a detour to the left was made at a point about 24 miles from Merced. The so-called Cathay Valley road was then followed to Mt. Bullion where a right-hand turn was made through Mariposa, the projected highway again being reached at or near Mormon Bar, about two miles from Mariposa. Upon the completion of the highway to the latter point in 1918 the route was again changed so as to follow the course of the highway between Cathay and Mormon Bar, instead of the road vis Mt. Bullion and Mariposa. These changes in route were unauthorized by us and our order in Case No. 1790 directed the Madera company by proper application to "clear up the present cloud upon its operative rights," resulting from these arbitrary and unauthorized changes in its regular route. Prior to the date of that order, and on December 12, 1922, the Madera company, because of doubts expressed at that hearing as to its operative rights and because of the filing of the Schlageter application on October 23, itself filed an application with us for a certificate of public convenience and necessity, "if necessary," to operate between Merced and the boundary of Yosemite National Park the service which it had been conducting for some years. The two applications were set for hearing on the same date, two hearings were had and the matters were argued orally before the presiding examiner.

At the outset we are called upon to determine whether the Madera company was, prior to May 1, 1917, actually engaged in operating in good faith an automobile stage passenger service between Merced and Yosemite Valley over the routes in question. Seldom are we confronted with testimony of such a contradictory nature as is here found. Certain witnesses testified that the Madera company was not operating a regular schedule between Merced and Yosemite via Mariposa prior to May 1, 1917; other witnesses, equally reliable and no less positive, testified that the Madera company was so operating. A careful analysis of all the testimony leads to the conclusion that the Madera company operated into Yosemite Valley from Fresno until some time in July 1916, when the condition of the highway heretofore referred to made it possible for the stage company to transfer its operations from Fresno to Merced. It seems clear that during the latter part of the 1916 season some, if not all, the stages of the Madera company operated into Yosemite Park, via Merced, the Cathay Valley Road, Mt. Bullion and Mariposa, detouring from the new highway at a point about 24 miles from Merced, as previously explained. The record further shows that it was the intention of the company to operate its cars over this route during the 1917 season, beginning on May 1 of that year, but that the condition of the road due to snow blockades did not permit the actual operation of the stages to commence until May 10. Prior to May 1, however, employees of the Madera company were engaged in clearing the road of snow so as to make it passable for the stages.

We are therefore confronted with this situation: The Madera company has for years been engaged in handling passengers into Yosemite Valley, at first by horse-drawn vehicles from Raymond, and later by automobile stages out of Madera and Fresno. It has operated over the entire route in controversy since the late summer of 1916, except for the detours mentioned. The

road leading from Wawona to the valley by way of Inspiration Point, all but six miles of which lies within the park boundaries, was built by its affiliated company, the Yosemite Stage and Turnpike Company, at a cost of \$100,000 and later taken over by the government. The two companies own equipment valued at \$160,000; the Madera company alone owns 20 Pierce Arrow cars. In 1922 about 8200 passengers were handled by it to and from the park and about 800 more to Miami, Wawona and other intermediate points. Large sums of money have been spent in advertising the service and route, contracts entered into with tourist agencies, through ticketing arrangements have been made with the railroads, hotels and lunch stations provided and permission secured from the government to operate into the park proper from Wawona. The service has been conducted without serious accident of any kind and without complaint from the public. The service is seasonal and the large majority of passengers are tourists with a limited time at their disposal. The facilities of a stage company engaged in this business must therefore be at all times adequate to handle all passengers who present themselves and the character of the traffic is such as to demand high class equipment, properly maintained, and an organization accustomed to and familiar with the work. These requirements are met by the company now operating over the route. Shall we therefore, merely because of a possible technicality in its operative rights - a matter not brought into question at all until a few months ago - wipe out this investment and turn over to another the fruits of years of labor and the expenditure of vast sums of money in providing facilities for handling the passenger travel via this route into the park? The determining factor with us is public convenience and necessity - the mere desire of an applicant to operate a particular service, even though coupled with the financial and business ability to operate it - is not controlling.

The Mariposa company owns no equipment suitable for this service and now has not authority from the National Park service to operate from the park boundary, about six miles beyond Wawona, into the park proper. If granted the certificate, it would, therefore, be required, so far as this record indicates, to turn its passengers over to the Yosemite Stage and Turnpike Company at some point at or near the park boundary for transportation beyond. Manifestly this arrangement could but result in great inconvenience to the public. Had the Madera company since 1917 conducted its operations in such a manner as to warrant the assumption that it was acting in disregard of the law and our orders we would be justified under the circumstances here shown to exist now to withhold from it permission to operate over the desired route. There is, however, no such showing. Neither the equities of the situation nor the requirements of the Public Utilities Act require us under the circumstances to take any such drastic action. If all the testimony with respect to operations of the Madera company prior to May 1, 1917, be disregarded, upon which testimony that company relies for a finding as to its operative rights and its application be considered as of the date of filing, substantial justice and the evidence of record clearly warrant a finding in its favor. That company is able adequately to handle the passenger traffic now moving over this route and public convenience and necessity are not shown to require the operation of another line by the Mariposa company.

The application of the Mariposa company will be denied, and a certificate of public convenience and necessity to operate an automobile stage line between May 1 and November 15 of each year for the transportation of passengers, baggage and express between Merced and the boundary of Yosemite National Park via Mormon Bar, Wawona direct or via Miami Lodge and the Mariposa Big Trees will be granted to the Madera-Yosemite Big Tree Auto Company.

No authority is hereby granted to transport baggage, express or local passengers between Merced and the point on the highway known as Mormon Bar or between Merced and Mariposa.

ORDER

A public hearing having been held on the above entitled applications, evidence submitted and the Commission being fully advised,

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA HEREBY DECLARES that public convenience and necessity require the operation by Madera Yosemite Big Tree Auto Stage Company of an automobile stage line between May 1st and November 15th of each year, as a common carrier of passengers, baggage and express between Merced and the boundary of Yosemite National Park, via Mormon Bar, Wawona direct or via Miami Lodge and the Mariposa Big Trees, and

IT IS HEREBY ORDERED that a certificate of public convenience and necessity be, and the same hereby is granted, subject to the following conditions:

1. No passengers, baggage or express, whatsoever, shall be carried locally between Merced and the point on the highway known as Mormon Bar or between Merced and Mariposa.
2. Applicant Madera Yosemite Big Tree Auto Stage Company shall file within a period of not to exceed thirty (30) days from date hereof its written acceptance of the certificate herein granted; shall file, in duplicate, tariff of rates and time schedules, within a period of not to exceed forty (40) days from date hereof, such tariff of rates and time schedules to be identical with those filed as Exhibits "A" and "B" attached to its application herein; and shall commence operation of the service herein authorized within a period of not to exceed sixty (60) days from date hereof.
3. The rights and privileges herein authorized may not be discontinued, sold, leased, transferred nor assigned unless the written consent of the Railroad Com-

mission to such discontinuance, sale, lease, transfer or assignment has first been secured.

4. No vehicle may be operated by applicant Madera Yosemite Big Tree Stage Company unless such vehicle is owned by said applicant or is leased by it under a contract or agreement on a basis satisfactory to the Railroad Commission.

IT IS HEREBY FURTHER ORDERED that application No. 8349 be, and the same hereby is denied.

Dated at San Francisco, California, this 6<sup>th</sup> day of March, 1923.

C. S. Seaver

James Martin

J. L. Whitney  
Commissioners