

Decision No. 14799.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application)
of PENNOYER'S DESCANSO & ALPINE)
STAGE LINE for certificate of)
public convenience and necessity)
to operate Passenger and Express)
through service between San)
Diego, California, and Resort,)
California.)

APPLICATION NO. 10666.

ORIGINAL

Herbert W. Kidd, for Applicant.
Warren E. Libby and Chas. A. Beck,
for Pickwick Stages, Inc.,
and Lloyd's El Cajon Stages,
Protestants.
E. J. Bischoff, for Oppenheimer Truck Line,
Protestant.

BY THE COMMISSION:

O P I N I O N

C. E. Penoyer, transacting business under the fictitious name of "Descanso & Alpine Stage Line," has made application to the Railroad Commission for a certificate of public convenience and necessity to operate an automobile service for the transportation of passengers and express between San Diego and Resort and intermediate points.

A public hearing herein was conducted by Examiner Williams at San Diego.

Applicant now conducts, under prescriptive right, an automobile service for the transportation of passengers, express and baggage between San Diego and Descanso via La Mesa, El Cajon, Flinn Springs, Alpine and Viejas, serving each point except La Mesa. Originally the service possessed freight privilege, but this

right was abandoned by applicant.

Applicant also operates a service from Descanso to Resort for passengers, freight and express, (which right was procured from G. L. Terry and was approved by this Commission by Decision No. 12513 on Application No. 9322) serving intermediately Guatay and Laguna Junction. Applicant now proposes the merging and consolidation of the two rights possessed by him, and, in addition, to serve Pine Valley, a mountain resort development adjacent to Laguna Junction.

At the outset applicant stipulated that any certificate to be granted under the application herein should be restricted to the carrying of passengers and express only, and waived all claim of right to, or request for authority for, the transportation of freight or other property. Upon this stipulation the protest of Oppenheimer Truck Line was withdrawn.

Applicant came into possession of the right to operate between San Diego and Descanso and intermediate points December 14, 1917, purchasing the service known as the "McCain Descanso Line," then operated by Homer Nicholson, but the transaction was not approved by the Railroad Commission. At that time the Auto Transportation Act did not provide for the transfer of operative rights. Applicant, however, has in good faith filed his tariffs with this Commission and has conducted the service continuously between termini, according to the testimony in the present proceeding. At the time he purchased the line, and subsequent thereto, he acquired the necessary local franchises, but seems not to have had proper advice as to his duty in perfecting the transfer after the law was amended by Chapter 280, Statutes of 1919, approved May 13, 1919.

Protestant Lloyd's El Cajon Stages, operating between San Diego and El Cajon over the same route traversed by applicant, protested the inclusion of El Cajon in any new right to be granted to applicant, on the ground that applicant was not giving service to this point and was rejecting passengers offering themselves for transportation at his San Diego terminal and also at El Cajon. Applicant admitted that he preferred not to receive El Cajon passengers and that he made a practice of referring them to protestant's line on the ground that it was a short haul at a higher rate than protestant charges, that he had transported only four passengers to El Cajon in over two months, and that he only cared to haul such passengers when there were empty seats. The attitude of applicant in regard to serving El Cajon is such that his offer of service is not commensurate with public convenience; and, in addition, it is unnecessary, as exhibits filed by protestant El Cajon Stages show that this protestant has abundant schedules and ample seating capacity now unoccupied to care for traffic between these termini.

Protestant Pickwick Stages, Inc., objected only to the enlargement of any operative right on that portion of applicant's service between Descanso and Resort. This protestant formerly maintained a local service between San Diego and Descanso, but it was abandoned about a year ago and protestant's only service at the present time is the through line between San Diego and El Centro and intermediate points. This protestant operates two services daily in each direction. Exhibits filed by it showing the number of passengers hauled between Pine Valley and San Diego and intermediate points indicate a very light traffic, but the exhibits are defective in that they do not show the actual

transportation between Pine Valley and San Diego, but include all points intermediate. Nor do the exhibits indicate the number of vacant seats at Pine Valley, but are based upon the number of empty seats leaving El Centro and San Diego.

Applicant has conducted service between Laguna Junction and Resort only between May 15 and October 15 each year. This service is conducted over a road ten miles long that rises 2,000 feet in the distance it traverses. Applicant now proposes to provide all-year service from San Diego to Laguna Junction and maintain the seasonal schedule to Resort, in addition to providing daily service to Pine Valley. The Pine Valley stop is approximately at Laguna Junction and applicant proposes no separate rate for this stop. Passengers would be required to pay the Laguna Junction rate. From all the testimony produced we see no reason why this applicant should not serve Pine Valley passengers by making a stop for their accommodation at the most convenient point between Guatay and Laguna Junction.

Applicant introduced several witnesses from Descanso, whose testimony in general was that the service of applicant in the past had been useful and efficient and that they wished a continuation of the service as heretofore given.

We are of the opinion that the service of applicant should be continued in the interest of the public, but that a merger is not the best way to correct errors and omissions of applicant in the past. Rather, applicant should be granted a new certificate in lieu of any and all existing rights, defining his operation. The good faith of applicant in all these trans-

actions is not questioned in the record, and the only protest against his continued operation is against any enlargement thereof. We feel that the evidence does not justify granting him a competitive right with El Cajon Stages, but we feel, also, that the addition of Pine Valley as an intermediate point will not be injurious to protestant Pickwick Stages, Inc.

We therefore find as a fact, upon the record herein, that public convenience and necessity require the operation proposed by applicant, under certain conditions, and the order will so provide.

ORDER

C. E. Pennoyer, transacting business under the fictitious name of "Descanso & Alpine Stage Line," having made application to the Railroad Commission for a certificate of public convenience and necessity to operate passenger and express service between San Diego and Resort, a public hearing having been held, the matter having been duly submitted and now being ready for decision,

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA
HEREBY DECLARES that public convenience and necessity require the operation proposed by applicant herein between San Diego and Resort and the intermediate points of Lakeview, Flinn Springs, Alpine, Viejas, Descanso, Pine Valley and Laguna Junction, and the transportation of passengers and express between La Mesa and El Cajon and Lakeview, and points beyond Lakeview, and vice versa, over and along the following route:

Via State highway to Laguna Junction, thence over county road to Resort; and

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

- I. Applicant shall, within twenty (20) days after the date hereof, file with this Commission his written acceptance of the certificate herein granted as in lieu of all previous certificates granted to applicant, or prescriptive rights had or claimed by applicant, and that applicant relinquish all claim to a survival of either such prescriptive or certificate rights.
- II. Applicant shall carry express matter only on his passenger vehicles, and in such manner, or in compartments, that it will not interfere with or discommode passengers, and only consignments not exceeding one hundred (100) pounds in weight.
- III. Applicant shall file time schedules and tariff of rates identical with those as set forth in Exhibit attached to the application herein within a period of not to exceed twenty (20) days from date hereof, and shall commence operation of the service herein authorized within a period of not to exceed thirty (30) days from date hereof.
- IV. The rights and privileges herein authorized may not be discontinued, sold, leased, transferred nor assigned unless the written consent of the Railroad Commission thereto has first been secured.
- V. No vehicle may be operated by applicant unless such vehicle is owned or is leased by applicant under a contract or agreement on a basis satisfactory to the Railroad Commission.

For all other purposes, the effective date of this order shall be twenty (20) days from and after the date hereof.

Dated at San Francisco, California, this 15th day of April 1925.

H. B. Burdige
A. Seauy

George D. Squires
Ernest
COMMISSIONERS.