



The statements and allegations made by defendants in Case No.2015 as justification for the granting of a rehearing need not be here set forth as will be later evident. The prayer of defendants is that a rehearing be granted; that the complaint be dismissed; and that pending a decision on the application for a rehearing, the effective date in Decision No.14481 be suspended.

At the hearing applicants filed an amended application which application alleged that Wheeler's Hot Springs Stage Line had operated an automobile stage line for the transportation of passengers and express matter between Los Angeles, Ventura, Ojai, Wheeler's Hot Springs and all intermediate points for many years and in accordance with tariffs on file with the Railroad Commission; that said operations were begun in 1915 by Murray D. Bayless and had been so continuously operated from May to October of each year, inclusive; that the original application filed in this matter was in the name of a co-partnership consisting of W. W. Wilcox and Murray D. Bayless and that such statement was erroneous; that in 1920 an agreement was entered into under and by the terms of which W. W. Wilcox furnished the necessary equipment for the operation of the stage line and paid all expenses in connection therewith, Murray D. Bayless being paid a monthly salary and the net proceeds after all expenses were paid being equally divided between W. W. Wilcox and Murray D. Bayless and the certificate or franchise to be retained as the property of Murray D. Bayless; that applicant has in good faith operated and has a right to so operate from May 1st to November 1st of each year; that operations have not been carried on from November 1st to May 1st of the succeeding year due to impassable roads but that it has been applicant's intention to so continuously operate as soon as road conditions would permit; that a road has now been placed in service permitting continuous

operation and the public convenience and necessity now require such operation continuously. Applicant prays for an order of the Commission determining and adjudicating the rights of applicant to carry on operations from November 1st to May 1st of the following year, and if it be determined that applicant has no right to carry on operations during those months or any part of the year that a certificate of public convenience and necessity be granted to Murray D. Bayless permitting operation of a stage line in accordance with the schedules now on file with this Commission and such other and further relief as may be warranted.

At the rehearing the statement was made that the petitions for a rehearing had been granted for the reason that the Commission was not convinced that the operative rights of Murray D. Bayless, and incidentally those of W. W. Wilcox had been sufficiently considered in the order and that there appeared no finding or determination as to whether Murray D. Bayless as an individual had abandoned his operating right in conjunction with W. W. Wilcox in the application for the whole season's operation or whether or not he still retained operating rights covering the season from May to November of each year. The Commission further expressed itself as being in accord with the findings regarding the applicants who were then before the Commission.

The opinion in Decision No. 14481 described the operations of W. W. Wilcox and Murray D. Bayless prior to and subsequent to May 1, 1917. The tariffs on file with the Commission show that Webb W. Wilcox, as Manager of Wheeler's Hot Springs, filed Passenger Tariff No. 1, effective May 4, 1917, between Ojai and Wheeler's Hot Springs. M. D. Bayless, as Agent, filed Local Passenger and Package Tariff No. 1, effective May 10, 1917, for the Wheeler Hot Springs Transportation Department - Ojai Valley Special, and named rates between Los Angeles and Wheeler's Hot Springs and the intermediate points of Calabassas, Newberry Park

Camarillo, Ventura and Ojai. The time schedule carried the following explanatory note:

"Between Nordhoff (Ojai) and Wheeler's Hot Springs, we operate a Stanley Steamer so as to negotiate the mountain grades. Between Los Angeles and Nordhoff (Ojai) and return, we use seven passenger gas car."

Further filings by W. W. Wilcox were not found and it appears that operative rights, if any, held by him due to operations prior to May 1, 1917, were permitted to lapse, but Murray D. Bayless made filing in subsequent years covering service between Los Angeles and Wheeler's Hot Springs.

Murray D. Bayless, in his testimony, stated that it was his intention to always "operate the stage line from Los Angeles to Wheeler's Hot Springs, and incidentally to use the smaller places for pick-ups or local passengers." The smaller places referred to were Calabassas, Newberry Park, Camarillo, El Rio, Montalvo, Ventura and Ojai. Service as described was and has been from May 1st to November 1st of each year. It was maintained that seasonal operations could only be carried on due to the impassable canyon road from Ojai to Wheeler's Hot Springs and in 1917, it was necessary to transfer passengers at Ojai to a Stanley Steam car as the gas car operated by Bayless between Los Angeles and Ojai could not negotiate the canyon road beyond Ojai. In 1918 the road had been improved and Bayless operated through to Wheeler's Hot Springs and has so continued up to the present time, using an eight passenger car. This witness further testified that, when road conditions permitted, he expected and it had been his intention to operate the entire year. It is to be noted that the portion of the road impassable at any time was that from Ojai to Wheeler's Hot Springs, a distance of about 8 miles. Previous to the filing of the application in this matter, which was subsequent to the filing of the complaint, no apparent disposition seems to have been shown by

applicant to render service between Los Angeles and Ojai except from May first to November first of each year, although a good road was available even when service by Bayless was originally started in 1915.

The record shows that the seasonal operations as carried on did not provide for service to the intermediate points previously mentioned if the car was filled with through passengers between Los Angeles and Wheeler's Hot Springs. When no vacant seats were available, Murray D. Bayless stated that he had instructed, or would have so instructed, prospective passengers at the intermediate points that he could not transport them and it would be necessary for them to make use of other stage lines or train service. He claimed to have had in reserve another car, though this was only used in case of a breakdown of the car driven by himself. At no time had there been a second driver.

I am not convinced that Murray D. Bayless, in good faith, held himself out to render passenger and express service to points intermediate between Los Angeles and Wheeler's Hot Springs even for the periods of time that he did operate, it rather appears that such service as was afforded the public at these intermediate points was that which suited his private convenience and which he considered as financially aiding the through service between Los Angeles and Wheeler's Hot Springs.

From the record herein it is apparent and I hereby find as a fact that Murray D. Bayless has operated an automotive stage service for the common carriage of passengers and express matter between Los Angeles and Wheeler's Hot Springs from May 1st to November 1st of each year prior to May 1, 1917, and continuously thereafter, but has not in good faith rendered service to points intermediate thereto.

The opinion in Decision No. 14481 discusses at considerable length the ample and sufficient service available to the public

by other carriers than Wheeler's Hot Springs Stage Line. That opinion and the record give no indication whatsoever that it was the intention of W. W. Wilcox and Murray D. Bayless as individuals, or as co-partners, to continue the seasonal operation as previously carried on in addition to any operative rights that might issue as a result of the application and the evidence warrants the opinion that the certificate of public convenience and necessity finally granted to the then alleged co-partnership was in lieu of any operative rights theretofore held by W. W. Wilcox and Murray D. Bayless as individuals or as a co-partnership.

I am convinced that such was the intent and purpose of the order in Decision No. 14481. In view, however, of the lack of a definite finding and order in the matter, the order in the present amended application will contain a provision that the operative rights heretofore held by Murray D. Bayless as found in this opinion shall be relinquished and cease to be in effect, upon the acceptance by applicant Murray D. Bayless of the certificate of public convenience and necessity to be herein granted.

The Commission has previously stated its accord with the findings and order as made in Decision No. 14481 and as nothing has been developed upon rehearing that necessitates any departure therefrom, except the foregoing provision, I recommend that the order made in said Decision No. 14481, granting a certificate to "W. W. Wilcox and Murray D. Bayless, co-partners" be vacated and in lieu thereof the granting of a certificate to Murray D. Bayless.

#### ORDER ON REHEARING

A public hearing having been held in the above entitled proceedings, the matters having been consolidated for the purpose of receiving evidence and decision, and having been duly

submitted, the Commission being now fully advised and basing its order on the findings and conclusions as appearing in the opinion which precedes this order,

IT IS HEREBY ORDERED that the portion of the Commission's decision on Case No.2015, and Application No.10585 (Decision No.14481, decided January 27, 1925), reading as follows:

"The Railroad Commission of the State of California hereby declares that public convenience and necessity require the operation by W. W. Wilcox and Murray D. Bayless, co-partners, doing business under the fictitious name and style of Wheeler's Hot Springs Stage Line, of an automotive stage line for the transportation of passengers and express matter between Los Angeles and Wheeler's Hot Springs and intermediate points, provided, however, that public convenience and necessity do not require the operation by said copartnership of automotive passenger and express service either by the operation of local stages or upon through stages, between Los Angeles, Ojai and intermediate points, inclusive, except such passengers or express packages that are picked up or discharged in said territory when originating at or destined to points north of Ojai to and including Wheeler's Hot Springs.

Applicants shall file within a period of fifteen (15) days from date hereof written acceptance of the certificate herein granted which written acceptance shall contain a statement to the effect that such co-partnership understands the restrictions as contained in said certificate and that said restrictions will be fully complied with."

be and the same is hereby vacated and set aside, and in lieu thereof there shall be substituted as follows:

"The Railroad Commission of the State of California hereby declares that public convenience and necessity require the operation by Murray D. Bayless of an automotive stage line for the transportation of passengers and express matter between Los Angeles and Wheeler's Hot Springs and intermediate points, provided, however, that public convenience and necessity do not require the operation by said applicant of automotive passenger and express service either by the operation of local stages or upon through stages, between Los Angeles, Ojai and intermediate points, inclusive, except such passengers or express packages that are picked up or discharged in said territory when originating at or destined to points north of Ojai to and including Wheeler's Hot Springs.

