

Decision No. 17080

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application )  
of PAUL DERKUM for certificate of )  
public convenience and necessity )  
to operate an auto stage line for )  
transporting passengers, baggage )  
and express between Buttonwillow, )  
McKittrick and Reward. )

Application No. 12421.

**ORIGINAL**

Irwin & Laird, by Rollin Laird, for  
Applicant.

R. C. Dear, for Dear Stage Line,  
Protestant.

H. W. Hobbs, for Southern Pacific Co.,  
Protestant.

BY THE COMMISSION:

O P I N I O N

In this proceeding Paul Derkum seeks a certificate of public convenience and necessity authorizing the establishment of an automobile stage service for the transportation of passengers, baggage and express between Buttonwillow and Reward via McKittrick, as an extension of his present stage line between Bakersfield and Buttonwillow. Applicant's proposed tariff and a description of his equipment accompany the application.

A public hearing was held before Examiner Austin at Bakersfield on March 24, 1926, when evidence was offered, the matter was submitted and it is now ready for decision.

At present applicant is operating a stage line between Bakersfield and Buttonwillow, a distance of 27 miles, which he proposes to extend to Reward, an additional distance of 16 miles. Bakersfield is the shopping and business center for the towns along this route; Buttonwillow is a settlement consisting entirely of employes of Miller & Lux, having a population of about 100 and situated upon the property of that company; McKittrick has a population of about 75; and Reward is more in the nature of a thinly settled district rather than a town, being a postoffice center serving an area about three miles square consisting principally of oil fields. There are now about thirtyfive oil companies operating in this district, employing approximately 300 men.

Applicant has been financially interested in the present line to Buttonwillow for about two years and has been operating it for about one year. The record indicates that he has the means to conduct the proposed service and to furnish additional equipment, if needed. Two round trips daily are proposed which, in applicant's opinion, will stimulate and increase business by enabling passengers to transact business at Bakersfield and return the same day, and also by permitting convenient connections at Bakersfield for north and southbound trains. A free baggage allowance of 150 pounds per passenger will be established, and express, consisting principally of perishable goods, will be handled at the rate of one cent per pound.

At present the Southern Pacific Company operate a branch line from Olig to Bakersfield, via McKittrick and Buttonwillow. This line does not extend to Reward, but serves the other towns mentioned in the application. A mixed train is operated daily

over the line, handling both freight and passengers, but due to the necessity of switching en route, it is generally from three to five hours late in arriving at Bakersfield.

Protestant R. C. Dear operates a stage line between McKittrick and Bakersfield, affording one round trip daily. Complaint was made of his service, in that it permits but five minutes stop-over at Bakersfield, thus preventing passengers from transacting business there and returning on the same day. Residents of Reward desiring to connect with this protestant's line are obliged to hire private conveyances to McKittrick. Complaint was also made of the inadequacy of his depot facilities, which were said to be inconveniently located.

Applicant testified that he had personally investigated the need for the service he seeks to establish, having interviewed many of the residents of McKittrick and Reward. He also offered, in support of his application, a petition bearing the signatures of 27 residents of the various towns proposed to be served. He called five witnesses, three of whom were residents of Reward, one of McKittrick and one of Buttonwillow, and, in addition, it was stipulated that the testimony of five other residents of Reward would be similar to that given by the witnesses called. In general, the testimony indicated that the service to Bakersfield, as maintained by protestant Dear, is inadequate, due to the short stopover, and that he cannot accommodate the passengers since <sup>he reduced</sup> ~~his~~ schedule from two round trips daily to one round trip; also, that the rail service is uncertain and unreliable. Residents of Reward are obliged to use their

own cars, although preferring to patronize a stage service. Frequent inquiries also have been made by strangers as to stage service. Testimony of similar character was given by witnesses residing in McKittrick. An employe of the Miller & Lux store at Buttonwillow testified that many of the residents of that town would find the stage service a convenience, and that, in addition, it would be patronized by the company for the transportation of express. This witness, however, together with others engaged in business at Reward and McKittrick, intimated that applicant's proposed rate of one cent per pound was too high, and that the service would be used only for handling emergency shipments. Dear's Stage Line now operates past Buttonwillow, but is not permitted to enter the property of Miller & Lux, consequently the service has not been convenient. This, however, is apparently not the fault of protestant, nor can Miller & Lux well complain of lack of service, when protestant's stages are excluded from their property.

The granting of the application was protested by the Dear Stage Line and the Southern Pacific Company. Mr. Dear testified that he is now operating a stage line between Bakersfield and McKittrick, and between McKittrick and Taft, and formerly had served Reward, but had discontinued this service because it was unprofitable (Decision No. 11704, Application No. 8678, dated February 21, 1923). Formerly he operated two daily schedules, but finding this unprofitable, reduced the service to one round trip daily, in April, 1925, and since that time has operated at a profit. At present he handles an average of three to five passengers daily, the traffic being much lighter now than ever before. He stated

that since the strike in the oil fields during 1921, the population of McKittrick and Reward had steadily decreased, the operating companies having greatly curtailed their development. He testified that he is willing to serve both McKittrick and Reward if the traffic will justify it, having sufficient equipment to do so, and that he will also serve Buttonwillow if permitted by Miller & Lux to perform this service. He called a witness formerly employed by him as a stage driver, who described the light traffic originating at McKittrick and Reward, and the steady decrease in patronage during a period of about two years. Although the service to Reward was discontinued in February, 1923, Dear picked up passengers there when requested by telephone to call for them at that point, but during the course of this witness' employment only three or four such trips were made to Reward. He corroborated Dear's testimony as to the decrease in the population of these communities since the strike.

Protestant Southern Pacific Company introduced evidence describing its operations. This protestant now operates one round trip daily between Olig and Bakersfield, consisting of a mixed train. During July, 1925, it handled but two passengers over the entire route, both of whom traveled between Bakersfield and Buttonwillow, and in December, 1925, it handled nine passengers, who were fairly distributed over the points served. A mixed train is operated, handling both freight and passengers, the latter traveling in a combination baggage and passenger coach.

The record indicates that there is some demand for an improvement in the service between Bakersfield, and McKittrick and Reward. On the other hand, it appears that the population of these communities has decreased since 1921, and that there has been but little improvement during the past two years. Protestant Dear was permitted to discontinue his service to Reward, upon a showing that he could no longer operate at a profit, and subsequently he has made occasional trips to Reward to accommodate a few prospective passengers. The traffic from other points diminished to such an extent that he was obliged to reduce his operations to one round trip daily, since which time his service has been profitable. The community of Buttonwillow cannot complain of lack of service, since he has not been permitted by the proprietors of the town to enter their property. No complaints have been brought against Dear's service. It is also apparent that there is not room for two competing carriers in this territory; due to the sparse population and light traffic, it is clear that only one of them can survive.

In administering the Auto Stage and Truck Transportation Act, it has been the Commission's policy to protect certificated carriers against undue competition, so long as their service has been adequate. Should a carrier's service be inadequate or unsatisfactory, the proper remedy is by way of complaint to the Commission, which will require proper service by such carrier, or will permit additional service by a competing line. In re Mitchell Auto Stage Co. (Dec. No. 5828)  
16 R. R. C. 109.

Since no complaint has been filed against Dear's operations, we believe that, in fairness to an existing operator, he should be given an opportunity to improve his service to the extent sufficient to meet the public demand apparently shown by the record in this case. We believe that a period of three (3) months will be adequate for this purpose, and if it is shown that there then exists a need for public transportation in this territory which has not been satisfied by protestant, the Commission will entertain an application for a competitive service. In the meantime the present application will be denied without prejudice.

Upon full consideration of the evidence, we are of the opinion and hereby find as a fact that public convenience and necessity do not require the establishment and operation by Paul Derkum, as a common carrier, of an automobile stage service for the transportation of passengers, baggage and express between Buttonwillow, McKittrick and Reward.

An order will be entered accordingly.

#### O R D E R

A public hearing having been held in the above entitled application, the matter having been duly submitted, the Commission being now fully advised, and basing its order on the finding of fact which appears in the opinion preceding this order,

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA HEREBY DECLARES that public convenience and necessity do not require the establishment and operation by Paul Derkum, as a common carrier,

of an automobile stage service, as proposed by applicant, for the transportation of passengers, baggage and express between Buttonwillow, McKittrick and Reward; and

IT IS HEREBY ORDERED that the application of said Paul Derkum for a certificate of public convenience and necessity to operate the transportation service hereinabove described be and the same hereby is denied, without prejudice, provided that upon the expiration of three (3) months from date hereof, applicant may renew his application by the filing of a supplemental application herein, should it then appear that protestant R. C. Dear has failed and neglected to improve his stage service between the points now served by him, to an extent sufficiently adequate to meet the public requirements.

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

Dated at San Francisco, California, this 3d day of July, 1926.

W. C. Brundage

C. C. Brundage

Leon Whitehall

Commissioners.