

Decision No. 17228

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
B.C.Tucker and A.J.Tucker, for Cer-)
tificate of Public Convenience and)
Necessity to Operate Auto Service)
for Passenger, Freight and Express)
between Etna and Gazelle, California.)

ORIGINAL

APPLICATION NO. 12865

James M. Allen, for Applicant.
Chas. A. Beck and J. P. McNamara, for C. W. Lewis,
Protestant.

BY THE COMMISSION:

O P I N I O N

The petitioners, a copartnership consisting of B.C.Tucker and A.J.Tucker, ask the Railroad Commission to make its order declaring that public convenience and necessity require the operation by them of an automobile service between Gazelle and Etna and the intermediate points.

A public hearing was held at Yreka July 21, 1926 by Examiner Geary and the application having been duly submitted is now ready for our opinion and order.

Petitioners propose to operate a daily round trip stage service for the transportation of passengers, freight, mail and express between Gazelle and Etna, serving all intermediate points, the most important communities being Callahan and Mountain House. The distance from Gazelle to Etna is 40

miles and the equipment proposed to be used will consist of two 1½ ton Dodge trucks. The passenger fares and the freight and express rates will be as set forth in the exhibit attached to and made a part of the application and are practically the same as those charged by C.W.Lewis, now operating between the same points.

This application was protested by C. W. Lewis, who since June 1, 1920 has operated an automobile service by authority of this Commission under the rights formerly held by Charles A. Tyler (Application No. 5716, Decision No. 7654). The route here under consideration was in operation prior to August 27, 1917, the date the Auto Stage and Truck Transportation Act became effective.

In justification for the certificate of public convenience and necessity the petition sets forth that applicants have secured the U.S. Government contract for hauling the mail and parcels post between Etna and Gazelle for the period July 1, 1926 to June 30, 1930.

The testimony of applicant was chiefly devoted to a description of the roads, the grades and the population of the community. There was no serious effort to estimate the probable passenger and freight traffic nor the necessity for the proposed service, the main contention being that having secured the mail contract the privilege to handle freight and passengers as a common carrier was necessary in order to make the operation a financial success.

With the exception of the town of Etna, having a population of approximately 500 people, and of Callahan, with a population of 50 people, the passenger traffic must come

from a few scattered farms and two lumber mills. The people traveling to and from Etna move principally through Yreka because of better train connections, while from the territory between Etna and Gazelle they employ, apparently, privately owned automobiles, the testimony showing that the total number of passengers transported for a year is less than one per day. All of witnesses for applicant frankly admitted, under cross examination, that they were receiving a satisfactory service from the existing line of C. W. Lewis, but believed that since in the past parties holding the mail contract handled freight and passengers the practice should continue.

Protestant, C. W. Lewis, testified he had an investment in automobile equipment and horses of approximately \$14,000.; that the roads are most difficult of operation, having many heavy grades, and that during the winter months horses were necessary to scrape the snow from the roads at certain points; also horses must be used occasionally, in the winter, for towing the automobiles over the grades. Protestant transports approximately 1,000,000 pounds of freight per year and maintains four trucks in continuous operation. These trucks are also equipped to take care of the few passengers offered. In addition to a number of witnesses taking the stand and testifying on behalf of protestant, three letters were presented from other shippers who furnished approximately one-half of the total tonnage; All these endorsed Lewis' operation and were not in favor of a second carrier entering into competition with the established service.

Section 5 of the Auto Stage and Truck Transportation Act, approved May 10, 1917, provides, in part, that no transportation company shall commence operation unless it has first

secured from the Railroad Commission a certificate declaring that public convenience and necessity require such operation, and under this provision of the statute the public is entitled to adequate service at reasonable rates. In the present situation the record clearly shows that the carrier occupying the territory, under legal authority, is capable of providing adequate service, and there has been no complaint against this service or the fares and rates assessed.

We find as a fact that public convenience and necessity do not require that the petitioner operate an automobile service as a common carrier of passengers and freight between Gazelle and Etna, as requested in the application herein, and find that the petition should be denied.

O R D E R

B. C. Tucker and A. J. Tucker, a copartnership, having filed herein their petition for an order declaring that public convenience and necessity require the operation by them of an automobile stage service between Gazelle and Etna and the intermediate points, a public hearing having been held thereon

and the matter having been submitted and being ready for a decision,

The Railroad Commission hereby finds as a fact that public convenience and necessity do not require the operation by petitioners of an automobile stage service as requested in the petition herein. Basing its order on the foregoing findings of fact and the other findings of fact which are contained in the opinion which precedes this order,

IT IS HEREBY ORDERED that the above entitled proceeding be and it is hereby denied.

Dated at San Francisco, California, this 17th day of August, 1926.

H. B. ...
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Leon ...
Thos. S. ...
Commissioners.