

Decision No. 18025-

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of COASTSIDE TRANSPORTATION COMPANY, a corporation, for an order declaring that public convenience and necessity require the linking, joining, uniting and consolidating of its operative rights and the operation as a common carrier of a unified and consolidated service over its several routes for the transportation of passengers and baggage for compensation over the public highways between San Francisco, Pescadero and Santa Cruz, California, and all intermediate points via the so-called Coast Route, and for the transportation of freight and express for compensation over the public highways between San Francisco, Pescadero, Santa Cruz and all intermediate points, San Mateo and Half Moon Bay, California, via said so-called Coast Route; also for authority to establish passenger fares, baggage, freight and express rates, charges, classifications, rules and regulations, and passenger, freight and express time tables applicable over the unified and consolidated operative rights; and for a certificate of public convenience and necessity in said matter.

ORIGINAL

(Second Supplemental)
Application No. 11801

Harry A. Encell and James A. Miller, by James A. Miller, and Chas. A. Beck, for Applicant.

J.E. Mc Curdy, for Peninsula Rapid Transit Company, Pacific Auto Stages, Azevedo Auto Stage Line and Auto Transit Company, Protestants.

Ivores R. Dains, for Market Street Railway Company, Protestant.

Gwyn H. Baker, for Highway Transport Company, Protestant,

C.E. Peterson and L. N. Bradshaw, by L.N. Bradshaw, for Southern Pacific Company, Protestant.

Edward Stern, for American Railway Express, Protestant.

BY THE COMMISSION -

OPINION

Applicant corporation originally sought a consolidation of its several rights heretofore granted by this Commission or acquired from operators who had established service prior to May 1, 1917. On November 16, 1925, applicant filed a supplemental application, which included all the original and set up

a claim of right to operate from San Francisco to Half Moon Bay via San Mateo, basing this claim upon a prescriptive right established by one Neil Forrest and subsequently acquired by applicant. On April 17, 1926, applicant filed a second supplemental application, in which it sought a certificate to serve certain additional points between Pescadero and Santa Cruz which apparently were not included in the rights acquired by applicant from C. M. Mc Crory for that service.

Public hearings herein were conducted by Examiner Austin at San Francisco, the matter was duly submitted and is now ready for determination.

Applicant proposes, by Exhibits "B", "C", "D" and "E", a new rate structure, classifications and rules and regulations, for the unified service as sought herein. Applicant's Exhibit No. 1, filed during the progress of the hearings, amends the local freight classification on commodities by adding thereto iron and steel articles under fourth classification, and by cancelling an item of iron and steel articles under second classification. The amendment was permitted. Applicant provides free pick-up and delivery zones in both San Francisco and Santa Cruz.

Extensive testimony was given by Thomas W. Springett, auditor of applicant corporation. Mr. Springett testified that the base rate on one-way passenger fares was 4.12¢ per passenger mile, with reductions for commutation service to as low as 2.5¢ per passenger mile on 60-ride books, and that this base had been preserved throughout the entire passenger fare structure. As to freight rates, witness testified that the structure is the same as now on file for applicant's existing operations, with the exception of some changes due to typographical errors. The rate structures, as presented at the hearing and as amended by Exhibit No. 1, are not open to any serious question.

Applicant now possesses, under authority of Decision No. 13023 on Application No. 9520, certain operating rights, comprising an

operation for passengers, freight and express between San Francisco and Pescadero via Colma and the Coast Route, an operation between San Mateo and Half Moon Bay for freight, and an operation for passengers and freight between Pescadero and Santa Cruz. In the instant proceeding applicant asks that all these operations be consolidated and merged into one unified operation. The reason advanced for this request is that, under the present arrangement, the operation of three separate lines necessitates the transfer of passengers and freight at Pescadero in either direction, and such transfers are injurious to fragile articles, perishable products, flowers, etc., with a general hazard of damage to all shipments involved; and further, that the elimination of transfers would save time and labor and permit economies in service ultimately accruing to the benefit of the shipping public.

Testimony in support of the consolidation of all rights possessed by applicant was given by Thomas W. Springett, auditor of applicant corporation, and by several shippers. Mr. Springett was examined extensively by applicant and by all the protestants as to the finances and operations of applicant corporation, with the result that the conclusion is inescapable that this applicant, operating as it does over poor roads and under the disadvantage of separate services, has not been able to earn a return on its investment, amounting to approximately \$147,000, and that it has suffered a net deficit of approximately \$46,500 in the entire period of its operation. Applicant's Exhibit No. 12, representing a period of operation between January 1, 1926, and April 30, 1926, discloses an apparent operating deficit of \$6054. It is not clear from the voluminous exhibits and tabulations filed herein that applicant has ever done much better than recover its out-of-pocket costs and some slight earnings available for depreciation. It is apparent, therefore, that reasonable adjustment of the services

provided by this applicant, with a view to bringing about economies of operation and putting the utility upon a better basis, is justified at this time.

The effect of consolidating the operative rights of applicant would be to provide a through passenger, freight and express service via the Coast Route between San Francisco and Santa Cruz and San Mateo and Santa Cruz. This was opposed by the Southern Pacific Company and American Railway Express Company on the ground that the service maintained by those carriers between terminals is adequate and efficient, although it proceeds by an entirely different route than that proposed by applicant.

Protestant Southern Pacific Company maintains seven passenger schedules daily in each direction between San Francisco and Santa Cruz, several going by way of Los Gatos and others by way of Watsonville Junction. Three passenger schedules daily are maintained between Santa Cruz and Davenport, one service in each direction serving Laguna and Gordola as intermediate points. Exhibit No.2 of this protestant shows that the round trip and one-way fares of protestant, as well as its commutation fares between San Francisco and Santa Cruz, are generally lower than those offered by applicant.

This protestant, by its Exhibit No.1, shows a comparison of the service proposed by applicant and protestant's existing service. Protestant has six services daily in each direction by different routes between San Francisco and Santa Cruz, the time of the journey varying from 3 hours and 20 minutes to 4 hours and 54 minutes, depending upon whether the trip is made via Los Gatos or via Watsonville Junction. Three services daily in each direction are maintained between Santa Cruz and Davenport. Applicant proposes one trip daily from San Francisco to Santa Cruz, with an elapsed time of 5 hours and 55 minutes. Service from Santa Cruz to San Francisco is daily except Sundays and holidays, and the schedule calls for an elapsed time of 6

hours and 50 minutes. This protestant's Exhibit No.2, comparing passenger fares, indicates that the one-way, round trip and commutation fares are lower than those proposed by applicant, particularly on the week-end round trip movements and on commutation. It is apparent, therefore, that in the matter of fares, frequency of service and speed of service, this protestant possesses advantages over applicant, whose service is necessarily by a devious route, traversing many roads that are unfavorable to rapid service, and that applicant is not in that respect a real competitor of this protestant as between terminals. However, it must be remembered that many persons for commercial reasons use applicant's service to visit a number of points not reached by this protestant, and that their ultimate destination may be either San Francisco or Santa Cruz, and there appears to be good reason to place applicant in a position to render such service.

Protestant American Railway Express Company operates five schedules daily to Santa Cruz, with one service daily to Davenport and intermediate points, in connection with the passenger service of the Southern Pacific Company. This protestant's Exhibit No.2 shows a comparison of rates upon commodities usually transported between San Francisco and Santa Cruz, and the table contained therein indicates that the rates proposed by applicant are considerably higher than those of protestant. Protestant maintains free pick-up and delivery zones in San Francisco and Santa Cruz. From the testimony and exhibits it appears that applicant's proposed rates on express are much higher than those of the American Railway Express Company, while its freight rates are considerably lower than the rates charged by the Southern Pacific Company. In addition, applicant maintains but two classifications and has a minimum charge of 50 cents greater than the minima of American Railway Express. By its Exhibit No.1, this protestant discloses that the elapsed time of its express service between San Francisco and Santa Cruz is much less than that of applicant. In view of this fact and the lower rates

on express matter, it would appear that this protestant is not in danger of active competition from applicant's service.

Applicant was also supported in its application by the testimony of W. G. Higgins of the Santa Cruz Portland Cement Company, who testified as to the desirability of through service to points north of HalfMoon Bay. This witness stated, however, that the proposed service to San Francisco, while it would be a convenience in the transportation of cement, was not a necessity.

From the voluminous record before us it appears that the service protested by the rail carriers is now being given by applicant, but with the impediment of transfer of all passengers and freight at Pescadero. The only point in dispute is whether applicant shall be relieved of the necessity for this transfer and be permitted to operate its vehicles over its entire system without transfer. It is apparent that applicant corporation, as well as the shipping public, and particularly that portion between Davenport and San Francisco, are being penalized, both in time and costs, by the existence of the transfer, and between those points protesting carriers provide no service and offer none. The service between Santa Cruz and Davenport provided by the protesting carriers is not likely to meet further competition from applicant's service if the elimination of transfer at Pescadero is authorized. From a consideration of all the facts in the record, we believe applicant has affirmatively shown the benefits to be derived, both by itself and by the public, through the removal of the transfer at Pescadero by the consolidation of all operative rights possessed by applicant, and the order following will provide for such removal.

An order of consolidation, however, must include only the undeniably valid rights of the applicant. Protestants did not dispute the validity of any of the rights set up by applicant, nor do they appear disputable, except the right set up in the first supplementary amendment to the application, wherein

applicant asks recognition of an asserted right to operate passenger and freight service between San Francisco and Half Moon Bay via San Mateo. Applicant asserts that this right is based upon the acquisition of all the rights of one Neil Forrest established prior to May 1, 1917. Forrest operated under the name of Red Star Stage Line between San Francisco and Pescadero via Colma, and applicant asserts that he also operated in good faith prior to May 1, 1917, between San Francisco and Half Moon Bay via the peninsula highway and San Mateo. No claim is set up that prior operation included any service intermediate to San Francisco and San Mateo; in fact, applicant expressly waived this claim (Transcript, page 214). Applicant affirms that it was aware of this right, which Forrest transferred to the Coastside corporation under approval granted in Decision No. 13023 on Application No. 9320, and that subsequent to May 1, 1917, and until June 18, 1923, this operation was conducted. On the last named date applicant was notified by this Commission that the transportation of passengers between San Mateo and Half Moon Bay was unlawful and should be discontinued. This notice was heeded by the applicant and all service, including service between San Francisco and Half Moon Bay via San Mateo, was discontinued, except the transportation of freight and express between San Mateo and Half Moon Bay. It is now contended by applicant that the abandonment of this service for passengers and express between San Francisco and Half Moon Bay via San Mateo was in error, that such service was part of the prior right vesting in Neil Forrest because of operation in good faith prior to May 1, 1917, and that applicant is entitled to revive the service as formerly conducted in good faith. Necessarily this claim on the part of applicant stands or falls upon the affirmative proof that Neil Forrest, its predecessor, conducted such service prior to May 1, 1917, and the subsequent acts of the parties and their purported transfer of interests cannot validate any operation established since

that date. Applicant specifically elected to stand upon such prior rights (transcript, page 150), and unless the proof is clear that this right was exercised by applicant's predecessor, this Commission cannot now permit a revival of the service unless it is shown that a substantial injustice has been done applicant by an order of this Commission.

It is significant that applicant did not produce the testimony of its predecessor, Neil Forrest, in support of this operation. It did, however, produce a number of witnesses in support of the passenger operation conducted prior to May 1, 1917. F. S. Duarte of Pescadero testified that he made a number of trips in Forrest's vehicles between Pescadero and San Mateo during the first six months of 1917. Walter E. Frey testified that he drove a stage for Forrest from May 1, 1920, to June, 1923, over the Coast Route, and about once a month drove his stage via San Mateo. E. L. Mc Cornick testified that he drove for Forrest during several months of 1917, going via San Mateo and carrying small packages. Wilbur E. Frey testified that he drove for Forrest from 1916 to 1918, and that a scheduled operation was maintained by Forrest between San Francisco and Half Moon Bay via San Mateo. His recollection of the operation was not definite as to what service was performed or upon what schedule. H. R. Zealand testified that he drove for Forrest in 1916 and 1917, going via San Mateo and carrying passengers, freight and express, also that at times a truck had been used on this operation. Laura L. Fisher, agent for applicant corporation at Half Moon Bay between 1919 and 1923, testified that tickets had been sold to San Mateo and that stages had been rerouted by way of San Mateo at all times, also that passengers and freight had been transported. In the earlier days, according to this witness, two-wheel trailers had been attached to the passenger vehicles to transport freight. Subsequently trucks were put on. Ira E. Roney of Pescadero testified that prior to 1918 he frequently

rode on the Forrest stages via San Mateo, Crystal Lake and Pedro Mountain, but had not done so since that time.

E. Michel, Secretary of applicant corporation, testified that the corporation took over the Forrest service from the witness (who had previously acquired it) in April, 1923, and that a schedule between Half Moon Bay and San Francisco was observed by a trip on Saturday afternoons and Sunday mornings. He testified that this operation had been discontinued when the Commission, by letter, notified the Coastside Transportation Company (then a partnership) that such operation was without authority. The witness testified that this operation was not being conducted when the corporation took over the business from the partnership in 1924, and has not been conducted since.

Protectants Peninsula Rapid Transit Company, Pacific Auto Stages, Azevedo Auto Stage Line and Auto Transit Company presented the testimony of two drivers for Neil Forrest, namely, Jack Beck and Clarence Bettencourt, to show that the Forrest stages had never traversed the route between Half Moon Bay and San Francisco via San Mateo except with full loads of passengers, and that no passengers were accepted between these points. George E. Dunn, who for a year or thereabouts made trips two or three times a week between Daly City and Half Moon Bay, testified that he had found no service available at any time via San Mateo.

Applicant made no showing that either the route or the rates for such service were filed with the Railroad Commission prior to April 28, 1919. The Red Star Line's official time table No. 10, a copy of which was made applicant's Exhibit No. 17 in this proceeding, shows that on and after April 28, 1919, two schedules were offered from San Francisco, one leaving at 11 A.M. and the other at 4 P.M., and one schedule returning from Pescadero operating via Colma, Rockaway, Half Moon Bay, San Gregorio and Pescadero. However, the evidence shows that any operation performed by Red Star Stage Line to or from San Francisco via San

Mateo was irregular and spasmodic and does not support applicant's allegation of the existence of a prior right.

A fair interpretation of the testimony given by witnesses in support of this prior right discloses only that within their knowledge, at various times, applicant's vehicles were operated between Half Moon Bay and San Francisco via San Mateo. Drivers who were familiar with the operation over a long period had only the vaguest recollection of the details of this service, and only two witnesses attempted to place any service prior to May 1, 1917. It cannot be found from the indefinite testimony offered that this right did exist or that it was an operation on which applicant relied at that time, no routing to cover the service having been filed with this Commission; and if such schedules were observed subsequent to May 1, 1917, they were, of course, without proper authorization. Applicant has not affirmatively shown the existence of such prior right, or continuity of operation, or filing of tariffs with this Commission - matters regarded as essential in the premises. There is no question but that the rights were not asserted by this applicant or its predecessor in 1923, when certain portions of the operation were ordered discontinued by this Commission; and not until October, 1925, was any effort made to revive such operation, this effort being in the form of a resolution adopted by the applicant corporation's Board of Directors declaring the corporation entitled to the right and directing that application to revive the service be made to the Railroad Commission. Applicant seeks a certificate de novo for this service, which, of course, must be denied, as there is no proof of the establishment of the service and applicant has placed reliance entirely upon its prescriptive right.

A certificate of consolidation must also regard the second supplementary application, which calls for additional service at certain points between Santa Cruz and Pescadero, particularly

Gazos Creek, Cascade Ranch, White House Ranch, Coastways Ranch, Belvedere Ranch, County Line, Waddell Creek, Laguna and Gordola. Applicant acquired the operating right between Santa Cruz and Pescadero from one G. A. Mc Croxy in November, 1925, and the tariff adopted from the Mc Croxy service did not include specifically the intermediate points named.

In support of its application for authority to serve these points, applicant produced as witnesses E. D. Rogers of Waddell Ranch, and E. del Cielo, Mike Roberti and David Caribaldi, all ranchers between Davenport and Pescadero. The products of their ranches are artichokes, bulbs and nursery stock, and their need, according to their testimony, is for a direct northward service, without change, to the San Francisco market. They testified that the service proposed by applicant would be valuable to them in marketing their products. At present these commodities in a large measure move by truck or otherwise to Davenport or Santa Cruz for rail transportation, and are subject to one or two rehandlings, together with the delay incident to an indirect routing. So far as this operation of applicant is concerned, we feel satisfied that a reasonable showing has been made as to its necessity, and protestants are not interested, except the rail lines, from which there might be a slight diversion of shipments to the truck service. However, the witnesses established the need for a choice of services, and the record justifies the granting of the application with respect to this portion of the operation.

It is our conclusion, therefore, that applicant corporation has affirmatively shown public necessity for a consolidation of all its existing rights into one unified service, with the addition of certain points between Santa Cruz and Pescadero, and for this a certificate should be granted.

As to the revival of any operating rights between San Francisco and Half Moon Bay via San Mateo, we must find that the evidence does not support such claim of right, and that, there-

fore a certificate authorizing such revival must be denied.

Much testimony was received relating to the chain of title to the various operations conducted by applicant and which applicant now seeks to consolidate. After full consideration of all the testimony relating to this matter, we must find the following facts:

That applicant possesses a valid right to operate an automotive service for the transportation of passengers, freight and express between San Francisco and Pescadero and Pigeon Point via the Coast Route.

That applicant possesses a valid right to operate freight and express service between San Mateo and Half Moon Bay.

That applicant possesses a valid right to operate passenger, freight and baggage service between Santa Cruz and Pescadero.

That it does not possess an operating right for a passenger or freight service between San Francisco and Half Moon Bay via San Mateo.

That public convenience and necessity require the operation by applicant Coastside Transportation Company of an automotive service for the transportation of passengers, freight, baggage and express between Gazos Creek, Cascade Ranch, White House Ranch, Coastways Ranch, Belvedere Ranch, County Line, Waddell Creek, Laguna and Gordola as a part of and in conjunction with applicant's unified and consolidated service as herein authorized.

That public convenience and necessity require the consolidation and unification of the above described rights and the operating right hereinabove granted between Gazos Creek, Cascade Ranch, White House Ranch, Coastways Ranch, Belvedere Ranch, County Line, Waddell Creek, Laguna and Gordola.

O R D E R

Public hearings having been held on the above entitled application, the matter having been duly submitted and the Commission being now fully advised, and basing its order on the findings of fact as appearing in the opinion which precedes

this order,

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA HEREBY DECLARES that public convenience and necessity require the operation by Coastside Transportation Company, a corporation, of an automotive service for the transportation of passengers, baggage, freight and express between all the termini and intermediate points of applicant's present routes and the operative right herein granted, and also require the consolidation and unification of applicant's said transportation service and the operation thereof as one unified service over and along the following routes:

1- Between San Francisco and Pescadero via the Coast Route and serving the following intermediate points, to wit:

Salada, Brighton, Vallomar, Rockaway, Pedro, Montara, Moss Beach, Princeton, El Granada, Miramar, Half Moon Bay, Purisima, Lobitos, Tunitas, San Gregorio, Pomponio and Pescadero.

2- Between Pescadero and Santa Cruz and the following intermediate points, to wit:

Pigeon Point, Gazos Creek, White House Ranch, Cascade Ranch, Coastways Ranch, County Line, Waddell Creek, Belvedere Ranch, Swanton, Davenport, Laguna and Cordola, and

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA HEREBY FURTHER DECLARES that public convenience and necessity require the operation by said Coastside Transportation Company of an automotive service for the transportation of passengers, baggage, freight and express between the following points intermediate to Santa Cruz and Pescadero, to wit:

Gazos Creek, Cascade Ranch, White House Ranch, Coastways Ranch, Belvedere Ranch, County Line, Waddell Creek, Laguna and Cordola,

not as a separate operating right but in conjunction with and as a part of applicant's unified and consolidated operations as herein authorized.

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA HEREBY FURTHER /DECLARES that public convenience and necessity require the operation by said Coastside Transportation Company of an automotive service for the transportation of freight and express only between Half Moon Bay and San Mateo and all the termini and intermediate points served by applicant, said operation to be conducted as part of the consolidated service herein authorized; provided, however, that there shall be no service between San Francisco and San Mateo.

IT IS HEREBY ORDERED that a certificate of public convenience and necessity be and the same is hereby granted to said Coastside Transportation Company, a corporation, to enable it to operate a consolidated transportation service and for the unification and consolidation of its several routes as herein above specified.

IT IS HEREBY FURTHER ORDERED that said application, insofar as it seeks the confirmation of or authority to conduct any automobile service for the transportation of passengers, baggage, freight or express as a common carrier between San Francisco and Half Moon Bay via San Mateo (other than as herein expressly authorized for the transportation of freight and express only between Half Moon Bay and San Mateo,) be and the same is hereby denied.

IT IS HEREBY FURTHER ORDERED that in all other respects said application be and the same hereby is denied.

The authority as herein granted is subject to the following conditions:

1- Applicant shall file its written acceptance of the certificate herein granted within a period of not to exceed ten (10) days from date hereof. Said acceptance shall contain the declaration that applicant accepts certificate herein authorized with the distinct understanding that the operating rights herein authorized are in lieu of and not in addition to existing rights.

2- Applicant shall file, in duplicate, within a period of not to exceed twenty (20) days from the date hereof, tariff of rates and time schedules, such tariffs of rates and time schedules to be similar to those attached to the application herein with such eliminations and changes as are necessary to meet the requirements of the order herein, or rates and time schedules satisfactory to the Railroad Commission, and shall commence operation of said service within a period of not to exceed twenty (20) days from the 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 Commission to such discontinuance, sale, lease, transfer or assignment has first been secured.

4- No vehicle may be operated by applicant herein 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.

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

Dated at San Francisco, California, this 24th day of February, 1927.

Ernest W. Wood
H. B. Brundage
W. H. Sawyer
Leon T. Atwell
Thos. D. Powell
COMMISSIONERS.