

ORIGINAL

Decision No. 18618

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

G. F. MARSH,

Complainant,

vs.

JAMES A. WALKER, and the OWENS VALLEY  
TRANSPORTATION CO., a corporation,

Defendants.

Case No. 1817

Frank C. Scherrer, for Complainant,  
Jas. A. Walker, in propria persona, Defendant,  
Earl A. Bagby, for Owens Valley Transportation Co.,  
Defendant.

BY THE COMMISSION -

O P I N I O N

G. F. Marsh, operating an automobile stage line as a common carrier of passengers, baggage and freight between Lone Pine Station and Keeler, serving Lone Pine as an intermediate point, complains of James A. Walker and Owens Valley Transportation, a corporation, alleging

(a) That James A. Walker as a contract carrier with the United States Government is carrying the United States mail between Lone Pine and Keeler and has also carried passengers, baggage and freight between said points without any authority from the Railroad Commission, is operating unlawfully, and is interfering with the lawful rights and business of the complainant.

(b) That Owens Valley Transportation Co. obtained from the Railroad Commission a franchise to operate a passenger, baggage and freight service between Lone Pine Station, Lone Pine and Keeler; that said franchise was granted without the knowledge of complainant and without complainant being given opportunity to oppose the granting upon the ground that public convenience and necessity did not warrant the proposed operation and that the service rendered to the public by complainant was adequate and sufficient. Complainant further alleges that if a certificate was granted to said

defendant, same has been given up, forfeited and abandoned by the failure of said defendant for a period of two years immediately prior to the filing of the complaint to carry and transport passengers, baggage and freight to and between Lone Pine Station, Lone Pine and Keeler.

(c) That defendants James A. Walker and Owens Valley Transportation Co. are now negotiating to enter into an agreement whereby said Transportation Co. will lease an automobile from said James A. Walker, and said Walker will then operate said automobile for said Transportation Co. in the carriage and transportation of passengers, baggage and freight between the places herein mentioned thereby interfering with, hindering and damaging the rights and privileges of complainant; not being required by the public convenience and necessity; in opposition to adequate and sufficient service rendered to the public by complainant; and based on an operative right alleged to have been forfeited and abandoned.

Complainant prays for an order of the Commission denying the right to defendants to carry on transport passengers, baggage and freight for compensation between Lone Pine Station, Lone Pine and Keeler; revoking and annulling the operative right of Owens Valley Transportation Co. to carry passengers, baggage and freight between the aforesaid points; and declaring that public convenience and necessity does not warrant or require any transportation service beyond that now furnished by complainant between the aforesaid points and that the service of complainant is adequate and sufficient.

Defendants, James A. Walker and Owens Valley Transportation Company, a corporation, duly filed their answers herein, said answers being a general denial of the material allegations of the complaint. Defendant Owens Valley Transportation Company as a portion of its answer filed a cross-complaint alleging that G. F. Marsh in the operation of his transportation service between Lone Pine Station and Lone Pine was charging the sum of fifty cents per passenger for a distance not exceeding two miles; that defendant charged but twenty-five cents for the transportation

of passengers between said points; that the fifty cent charge was exorbitant, unreasonable and unjust; and that an order be made by the Commission reducing the rate for the carriage of passengers by G. F. Marsh between Lone Pine Station and Lone Pine from fifty cents to twenty-five cents. Cross-defendant, G. F. Marsh, filed his answer to the cross-complaint alleging that the fares charged for the transportation of passengers between Lone Pine and Lone Pine Station were just and reasonable.

A public hearing on this complaint was conducted by Examiner Handford at Lone Pine, the matter was duly submitted and is now ready for decision.

G. F. Marsh, complainant, testified that he had operated stage service between Lone Pine and Keeler for 25 years; that he had filed rates and schedules with the Railroad Commission, said rates naming a one-way fare between Lone Pine Station and Lone Pine of fifty cents; that defendant Owens Valley Transportation Co. had hauled passengers from Lone Pine Station to Lone Pine at a one-way rate of twenty-five cents thereby interfering with the authorized line of witness. This witness now carries the United States Mail under contract, now operates over the same route as followed on May 1, 1917, and, as justification for the fare of fifty cents as charged between Lone Pine and Lone Pine Station, states that there is not sufficient business to justify a reduction in fare, the total number of passengers transported between these points being 457 during the year 1926 and 31 during the month of June, 1927.

Mrs. Roberta Dalen, Secretary of Owens Valley Transportation Co., and familiar with its operation since 1923, testified that the line was operated from Bishop to Lone Pine and thence to a terminus at Lone Pine Station, the operation in the reverse direction being over the same route. This defendant relies

upon the authorization as contained in certificates of public convenience and necessity as heretofore issued by this Commission covering the operation between Lone Pine and Lone Pine Station and tariffs and time schedules issued pursuant to such certificate authorization, and by stipulation the records of the Commission were to be considered as evidence in this proceeding.

On July 28, 1919, Owens Valley Transportation, Storage & Packing Co., a corporation, filed with the Railroad Commission its application to operate an automobile service for the transportation of freight and passengers between Lone Pine Station, Inyo County, and Bishop, Inyo County, and intermediate points, said intermediate points as appearing on the proposed tariffs and time schedules as attached to and forming a part of the application being Big Pine and Independence. This application was assigned No.4783 on the docket of the Commission and on September 15, 1919, following public hearing at Independence, the Commission issued its Decision No.6666 declaring:

"that public convenience and necessity require the operation by Owens Valley Transportation, Storage & Packing Company, a corporation, of an automobile stage and truck line as a common carrier of passengers, express and freight between Lone Pine Station and Bishop and intermediate points, also feeder lines from the direct route serving the communities at Round Valley, Sunland and Otis Ranch; \*\*\*\*\*."

On March 26, 1920, Owens Valley Transportation, Storage and Packing Co. filed with the Railroad Commission its Local Passenger Tariff No.1 naming one-way and round-trip fares, and rules and regulations governing same, between Bishop and Lone Pine Railroad Station, (C.R.C. No.1, issued April 1, 1920, effective May 1, 1920), naming as intermediate points Big Pine, Independence, Manzanar and Lone Pine, a rate of twenty-five cents being shown between Lone Pine and Lone Pine Railroad Station.

On May 1, 1920, Owens Valley Transportation, Storage & Packing Co., a corporation, filed its application with the Railroad Commission for an extension of its authorized line from Lone Pine to Keeler, said application being accorded No.5648 on the docket of the Commission and Decision No.7628, dated May 26, 1920, was issued by the Commission declaring

"that public convenience and necessity require the Owens Valley Transportation, Storage & Packing Company to establish an automotive passenger service between Owenyo and Keeler and intermediate points, to be operated in connection with the service which it now renders between Bishop and Lone Pine Station, all of which are in Inyo County, California, and that a certificate of public convenience and necessity should be and the same hereby is granted, subject to the following conditions:

1- That applicant, Owens Valley Transportation, Storage & Packing Company, will, within twenty (20) days from the date hereof, file with the Railroad Commission a written acceptance of this order subject to the conditions imposed therein and will within ninety (90) days from the date hereof, commence service between the points proposed.

2- That applicant, Owens Valley Transportation, Storage & Packing Company, will immediately file tariff of rates and charges and a time schedule, in accordance with Article V of Application in this proceeding, such rates and charges to be filed in accordance with the requirements of General Order No.51 and other regulations of the Railroad Commission.

The order above referred to contained two other conditions which are not material to the issue herein.

No acceptance of the certificate rights for operation between Lone Pine and Keeler as granted on May 26, 1920, by Decision No.7628 on Application No.5648 was filed by Owens Valley Transportation, Storage & Packing Co. although under date July 11, 1922, Owens Valley Transportation Co. filed its Local Passenger and Express Tariff showing rates between Bishop and Keeler and intermediate points (C.R.C. No.2, superseding C.R.C. No.1, issued July 10, 1922, effective July 14, 1922.)

From the testimony of the Secretary of the Owens Valley Transportation, Storage & Packing Co. in the instant proceeding it appears that the service between Lone Pine Station and Keeler, as authorized by Decision No.7628, has been abandoned.

An inspection of the annual report filed with this Commission covering results from operation by Geo. F. Marsh between Lone Pine and Keeler during the calendar year of 1926, shows a gross revenue of \$3922.90, an operating expense including depreciation and taxes of \$4771.74, resulting in a deficit of \$848.84.

By stipulation at the hearing it was agreed that the complaint against defendant James A. Walker should be dismissed, said defendant being no longer engaged in the transportation business over any route served by complainant.

We have given careful consideration to all the evidence and record in this proceeding. Two issues require determination, (1) has the Owens Valley Transportation, Storage & Packing Co. the right to serve Lone Pine as an intermediate station on its route between Bishop and Lone Pine Station, and (2) is the rate of fifty cents per passenger as assessed by Geo. F. Marsh for transportation between Lone Pine and Lone Pine Station a just and reasonable rate.

Regarding the serving of the intermediate point of Lone Pine by the Owens Valley Transportation, Storage and Packing Co. on its route between Bishop and Lone Pine Station, it appears that defendant when filing passenger tariff on March 26, 1920, covering the route for which certificate was issued by Decision No.6666 included Lone Pine as an intermediate point on its route and that it has shown such intermediate point in all reissues of the original tariff and has continuously served such point since the establishment of the service by the Commission's authorization.

Regarding the complaint that the passenger fare of fifty cents for one-way trips as charged by Geo. F. Marsh between Lone Pine and Lone Pine Station is excessive, unjust and unreasonable, the record shows that the operations of such carrier are and have been conducted at a deficit which deficit, due to the limited volume of traffic available, would be further increased if a reduction in the fare were to be made and there being no evidence justifying such reduction.

After full consideration of the evidence and record herein we hereby find the following facts: (a) that the serving of Lone Pine as an intermediate point on the route of the Owens Valley Transportation, Storage and Packing Co. is authorized under the provisions of this Commission's Decision No.6666 on Application No.4783 and subsequent tariff filings; and (b) that the cross-complaint as to alleged unreasonable, excessive and unjust passenger fare charged by Geo. F. Marsh between Lone Pine and Lone Pine Station is not supported by the record herein and that such cross-complaint should be dismissed.

O R D E R

A public hearing having been held on the above entitled complaint, the matter having been duly submitted, the Commission being now fully advised and basing its order on the conclusions and findings of fact as appearing in the opinion which precedes this order,

IT IS HEREBY ORDERED that, based on the conclusions and findings of fact appearing in the preceding opinion, this complaint insofar as it refers to defendant Owens Valley Transportation, Storage & Packing Co., a corporation, (herein complained of as Owens Valley Transportation Co.), be and the same hereby is dismissed, and

IT IS HEREBY FURTHER ORDERED that this complaint insofar as same refers to defendant James A. Walker, be and the same hereby is dismissed, and

IT IS HEREBY FURTHER ORDERED that the cross-complaint of Owens Valley Transportation Company against G.F. Marsh be and the same hereby is dismissed.

Dated at San Francisco, California, this 13<sup>th</sup> day of

July, 1927.

Frank West

Chas. A. Healey

Leon S. Dill

COMMISSIONERS: