

Decision No. 18717

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

In the Matter of the Application of FRED SUTHERLAND for certificate of public convenience and necessity to operate automobile passenger service between San Diego and La Mesa and intermediate points.

APPLICATION NO. 13617.

In the Matter of the Application of SAN DIEGO ELECTRIC RAILWAY COMPANY, a corporation, for certificate of public convenience and necessity to extend the operation of its bus service, as a common carrier, from 56th Street, in the city of San Diego, California, along El Cajon Avenue therein to and into La Mesa, outside of the city limits of said city of San Diego.

APPLICATION NO. 13783.

In the Matter of the Application of SAN DIEGO ELECTRIC RAILWAY COMPANY, a corporation, for certificate of public convenience and necessity to extend its bus operation and service, as common carrier, from the junction of Imperial Avenue and 34th Street in the city of San Diego, along Imperial Avenue to La Mesa, outside said city but within the county of San Diego.

APPLICATION NO. 13784.

Richard T. Eddy, for Fred Sutherland, Applicant in Application No. 13617 and Protestant in Applications Nos. 13783 and 13784.

Morrison, Hohfield, Foerster, Shuman & Clark, by Forrest A. Cobb, for San Diego Electric Railway Company, Applicant in Applications Nos. 13783 and 13784, and Protestant in Application No. 13617.

Warren E. Libby, for Hubert Adams' El Cajon Stage Line, Protestant in Application No. 13617.

Read G. Dilworth, for San Diego & Arizona Railway Company, Protestant in all Applications.

Elmer G. Blossom, for La Mesa Chamber of Commerce, Interested Party.

BY THE COMMISSION:

O P I N I O N

Fred Sutherland has made application to the Railroad Commission for a certificate of public convenience and necessity to operate automobile passenger service between San Diego and La Mesa via El Cajon Avenue and University Avenue, parallel streets, and also via Lemon Grove, as an extension of service now maintained by him between San Diego and Encanto via Imperial Avenue.

San Diego Electric Railway Company, a corporation, has made application to the Railroad Commission for authority to establish automobile service for the transportation of passengers between San Diego and La Mesa via El Cajon Avenue by extension of its existing bus line in the city of San Diego now terminating at 56th Street, and also by a bus line extending from its street car service terminating at Imperial Avenue and 34th Street, via Encanto, Beacon Hill and Lemon Grove.

Applicant San Diego Electric Railway offers free universal transfer from its proposed service to all its rail and bus lines in contact. Applicant Sutherland in his amended Exhibit "A" also provided for transfer to his lines within the city, but this offer was withdrawn and applicant stipulated that he would do no business between points within the city.

Public hearings herein were conducted by Examiner Williams at San Diego on May 23, 24 and 25, 1927. By stip-

ulation of all parties, the applications were consolidated for hearing and decision.

La Mesa is a residential, non-industrial community about four miles east of the city limits of San Diego, having a population of approximately 3,000 in the incorporated area, with an additional population of about 2,000 in its environs. Transportation between this community and San Diego is now provided by the San Diego & Arizona Railway, operating gasoline cars from Lakeside through Lemon Grove and Encanto, and also by the El Cajon Stage Line, Hubert Adams, owner, operating from El Cajon through La Mesa via El Cajon Avenue into the heart of the business district of San Diego. These services have been established for many years.

Applicants herein propose to operate service competitive with the existing services by the establishment of new lines covering practically the same routing, but offering different classes of service and different time schedules.

Applicant Sutherland proposes a rate of 30 cents one way between 3rd and Broadway, San Diego, and La Mesa, by either of the three routes proposed, with a round trip rate of 50 cents, and with proportionate intermediate rates broken on a 5-cent basis approximately each mile, and suitable commutation rates.

San Diego Electric Railway Company in its application provided for a rate considerably in excess of the rate proposed by applicant Sutherland or charged by existing services, but this was amended at the beginning of the hearing by an amended exhibit proposing a rate of 35 cents between 5th and Broadway, San Diego, and La Mesa, with a round trip

of 50 cents from its inner zone and 55 cents from its outer zone (established for rail service), and with a weekly pass rate of \$2.25, broken down to the various mile distances, until the weekly rate from 56th Street is \$1.25. All of these rates entitle the passenger to free universal transfer to all rail and bus lines of the San Diego Electric Railway.

The present rate charged by the El Cajon Stage Line between La Mesa and San Diego is 35 cents, without breaking down fares.

The rates of the San Diego & Arizona Railway Company between La Mesa and San Diego via the Imperial Avenue route through Spring Valley, Lemon Grove and Encanto, are 35 cents.

Applicant Sutherland offers hourly service from 6:00 a. m. to midnight on each route, alternating the service so that La Mesa will have one car leaving for San Diego, or vice versa, each half-hour. Applicant San Diego Electric Railway offers an hourly schedule, beginning at 6:00 a. m. from San Diego, and 6:30 a. m. from La Mesa, and operating until midnight over the El Cajon Avenue route. This schedule is reversed in the operation over the Imperial Avenue route.

Protestant El Cajon Stage Line operates four schedules daily, leaving La Mesa at 8:15, 10:45, 1:45 and 4:15, and leaving San Diego at 9:00, 12:00, 2:30 and 5:15. Special schedules leaving La Mesa at 7:15 p. m. and San Diego at 11:15 p. m. are operated on Saturdays and Sundays only, and on Wednesdays a special schedule approximately the same is operated.

The San Diego & Arizona Railway operates four gasoline train services daily, with an extra service leaving San Diego in the evening on Wednesdays, Saturdays and Sundays. At one time this carrier operated 12 daily schedules.

It thus appears that La Mesa is now served by direct service of two carriers, but has not the advantage of early morning or late evening service, which is a part of the continuous operations proposed by applicants herein. It would seem that two services of these types would be adequate for a community of 3,000 to 5,000 inhabitants, if properly coordinated. The record shows that for many months previous to the hearing, efforts were made by officers of the La Mesa Chamber of Commerce to bring about a readjustment of schedules by both carriers, in order to alternate them in such manner that the service would be improved. The record is equally plain that these endeavors met with no success and that each carrier declined to yield its schedules for the benefit of the other. The schedules of four times daily maintained by each carrier were very similar as to hours and resulted in divided patronage, most of which seems now to have gone to the stage line. Both carriers contended at the hearing that the use of the private automobile made additional schedules unnecessary, and that those now maintained are not profitable. Each produced statistics showing losses, the San Diego & Arizona Railway showing a net loss of \$5385 for the year 1926, not including depreciation, overhead or maintenance of way. Exhibits were filed by both carriers showing their operations in detail, protestant Adams reporting a loss, including all charges, of approximately \$1900. This protestant suffered

somewhat from competition within the city of San Diego subsequent to the annexation of large areas on the west, but there has been no competition as regards the service of the San Diego & Arizona Railway between La Mesa and Encanto.

A written protest was filed by the San Diego & Arizona Railway Company. This carrier states that it has maintained service between La Mesa and San Diego for forty years, and that if further competition is permitted, its passenger service ultimately will have to be discontinued.

The question of additional service was presented first in the application of Fred Sutherland, whose offer is to conduct hourly service between his terminal at 3rd and Broadway in the city of San Diego, and La Mesa, by way of 4th Street and University Avenue to La Mesa, and also by diverting from University Avenue at Normal Street to El Cajon Avenue. Both routes are paved and equally suitable for the operation proposed. The class of equipment to be used by applicant Sutherland (Fageol safety coaches) is the same as that used by him in his established service, under authority of this Commission, between San Diego and Tia Juana, Coronado and Tia Juana, San Diego and Chula Vista, San Diego and Encanto and San Diego and La Jolla, the latter service being now entirely within the city of San Diego.

Subsequent to the filing of the Sutherland application, the San Diego Electric Railway Company presented its application for authority to conduct similar service by way of El Cajon Avenue and Imperial Avenue via Encanto and Lemon Grove, but not via University Avenue. While the hearing of the applications was being conducted at San Diego, it was

disclosed by applicant San Diego Electric Railway Company that it had entered into an agreement to purchase the operation conducted by Hubert Adams under the name of El Cajon Stage Line, which serves La Mesa, and this transfer of interest was approved by this Commission in its Decision No. 18521, dated June 15, 1927, on Application No. 13832, subsequent, of course, to the submission of the matters herein involved. The acquisition of the Adams line by the San Diego Electric Railway eliminated this protestant and materially affected the situation as previously submitted, for if the application of the San Diego Electric Railway were granted, it would place this applicant in the position of establishing competing service with itself, both as to rail and stage. This carrier now uses the same kind of equipment as applicant Sutherland.

The record presented offers little difference in the character of the service to be given or the kind of equipment to be used by applicants, each proposing to use 25- to 29-passenger safety coaches and to conduct the service to practically the same terminals and over the same routes. The schedules of fares presented do not show any serious differences.

The distance between 1st and Broadway, San Diego, and El Cajon via El Cajon and University Avenues, is approximately 11½ miles. The distance from the same point via Imperial Avenue and Lemon Grove is approximately 12½ miles.

Applicant Sutherland, testifying in his own behalf, explained that his application had resulted from requests received from the Chamber of Commerce of La Mesa, Lemon Grove and La Mesa Heights probably a year previous to its filing.

Applicant testified that he made an investigation of the traffic situation and the other services conducted, and held many conferences with representatives of the communities interested in transportation, personally or through his representatives. He testified that, in addition, he had sent out circular letters to residents of all the communities, requesting their opinion as to the service proposed by him, and had received affirmative replies. He testified that he found that residents of La Mesa and its environs, including La Mesa Heights and Lemon Grove, could not reach San Diego earlier than 9:00 o'clock in the morning and had no means of getting back later than 5:15 in the afternoon, except on Sundays, when there was both stage and rail service leaving San Diego at 11:00 and 11:15 p. m. He further testified that he had made a careful estimate of the traffic available and thought it was sufficient to support the operation on its out-of-pocket cost, which would be \$70.00 per day. He estimated that the busses could be operated on a basis of 14 to 16 cents per mile, not including overhead, and stated that there would be practically no cost for overhead, as this is already maintained for his other operations and is ample to assimilate the proposed operation without increasing the cost. Applicant testified that in his operation of the line between San Diego and Chula Vista he had maintained a losing service for several years, but that since the abandonment of service by the San Diego Electric Railway Company he had brought this operation to a profitable basis, with daily receipts of approximately \$150.

On cross-examination applicant Sutherland testified that he had taken over from the Pickwick Stages the operation of a

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line between San Diego and La Jolla, originally an interurban service under the jurisdiction of this Commission, but now, due to annexation, entirely within the city of San Diego. He testified that when he took over this service the receipts were slightly over \$300.00 per month and the operation was being conducted at a loss. By putting on an hourly schedule, which a few months later was changed to a half-hourly schedule, he testified that the revenues had multiplied almost twelve times, and he cited the receipts of January, 1927, \$3776.70, and February, 1927, \$3628.50, in substantiation of his claim of increased business. In explaining this remarkable increase in less than a year, applicant testified that his policy in conducting business was to offer a service that would attract all classes of patrons. He stated that he did not regard the parallel operation of the San Diego Electric Railway to La Jolla as competitive with his stage service, but that his real competitor was the privately owned automobile, and that in establishing time schedules and rates he sought to make the service so attractive and at such a cost that the private automobile owner would prefer it to his own vehicle. In making this explanation applicant stated that the rail service given by the San Diego Electric Railway is an excellent service in all respects. The foregoing facts were cited by applicant as characteristic of what he expected to accomplish in giving the service proposed to La Mesa. The population of the La Jolla district is comparable with that of La Mesa, and Mr. Sutherland testified that he regarded the La Jolla and Chula Vista operation as typical of what could be done with the La Mesa operation.

In support of the Sutherland application, applicant presented the testimony of Elmer G. Blossom, former president of the La Mesa Chamber of Commerce; Reuben M. Levy, William T. Owen, J. D. O'Brien, Frank C. Lewis, Harry Park, K. M. Ladewig, president of the La Mesa Chamber of Commerce; Pearl M. O'Brien, Raymond B. Whitcomb, Emery M. Westbrook, Irving C. Veall, Mrs. B. B. Pohlman, Mrs. Lily K. Hunter, Margaret B. Webster, Miss Faith Scudder, Caroline M. Gatecliff, Mrs. Evangeline Graham, Edward C. Upp, Ira C. Robinson, Joseph M. Vandenberg, H. A. Lavezzi and Chas. F. Gates, all residents of La Mesa or La Mesa Heights. In addition, it was stipulated that the testimony of fifteen other witnesses who were present in the court room but were not called to the stand, would be substantially the same as that of the witnesses who were examined. These witnesses were all supporting the service via the El Cajon - University Avenue route.

In support of the service via the Imperial Avenue route, applicant Sutherland presented the following witnesses, all residing at Lemon Grove, Spring Valley or other points between Encanto and La Mesa: C. V. Rhoades, Mrs. Lily Abbott, Mary H. Tanner, Amanda E. Karsten, Frances M. Tait, William H. Sperry, postmaster at Spring Valley; Ronald Smith, Dedrik Hofgaard, John H. Halley, Sherman G. Ray, C. F. Neyer, J. C. Colquhoun, Mrs. Ann Tanner, Mrs. H. V. Parfitt, W. A. Braden, Joseph Wisneyer, George Evans and Miss Seaford. The testimony of some of these witnesses was received by stipulation.

In substance the testimony was that the service now available between La Mesa and San Diego is inadequate because

of the growth of the region served in and about La Mesa, and the desire of many persons to live in this attractive region and at the same time have proper facilities for reaching their business or employment in San Diego. The stage service, it was shown, is provided by the El Cajon Stage Line, which operates four schedules daily and does not operate special service into La Mesa. The schedules of the San Diego & Arizona Railway, according to the witnesses, do not fit in with the needs of the community, and frequent conferences between public bodies and these carriers have not brought the desired changes. The service of both these carriers is a through service to points beyond La Mesa, but the schedules of neither, witnesses complained, permit of early or late transportation between the terminals, nor do they provide sufficiently frequent service during the day. It was disclosed by their testimony that for several months the La Mesa Chamber of Commerce has been conferring with the carriers in an effort to obtain increased service, without result, each carrier maintaining that its service was the best that could be given, considering the patronage offered. Upon the failure of negotiations with these carriers, witnesses - particularly Elmer G. Blossom, Reuben M. Levy and K. M. Ladewig, all officers of the La Mesa Chamber of Commerce - testified that efforts were made to induce applicant Sutherland to establish a direct separate service, and he was aided in every way in his investigation of the traffic probabilities. Admittedly the service is required almost exclusively for those communities east of the San Diego city limits and in the belt beginning along El Cajon Road in La Mesa Heights and extending in a southerly curve south to the community of Beacon Hill, including La Mesa, Lemon Grove and Spring Valley.

A review of the testimony of these witnesses as to the lack of adequate facilities for reaching or returning from their places of employment in the city of San Diego, or for other purposes, shows conclusively, we believe, a need of better service than is now provided by either carrier protesting the applications herein, neither of whom has presented any offer of better schedules than are now in operation. True, the San Diego & Arizona Railway, through the testimony of F. B. Dorsey, its passenger traffic manager, offered to adopt and put into effect any schedules which the Railroad Commission might see fit to propose, conditioned on testing them by a trial period of operation. This carrier has served this region for forty years and this Commission cannot find in the experience of this carrier any basis by schedule-making for meeting the constant decline in passenger patronage. The public seems to have chosen other methods of transportation, including the privately owned automobile, in preference to that offered by this protestant.

The question to be determined in the instant proceeding, therefore, appears to be which of the two applicants before us is in the better position to give the service necessary for the La Mesa region. We believe the record justifies the conclusion that additional service could be provided adequately and efficiently by either of the applicants, but we do not think there is justification for the granting of additional competitive rights as between them. The applications presented by the San Diego Electric Railway Company are frankly stated to represent an effort on the part of this carrier to occupy the entire transportation field in the city of San Diego and its environs. This Company has maintained

electric operation for many years and has made many extensions into newly developed and newly annexed territory. In addition, under the orders of this Commission this applicant has established many auxiliary bus services where it was not expedient or financially feasible to make electric line extensions.

In behalf of this applicant, its counsel during proceedings made the following statement:

"..... The San Diego Electric Corporation is permanently in the transportation business in this community, with a large investment exceeding many times over the investment of any other applicant in this proceeding, and permanently committed to serve the transportation needs of this community. That position necessarily carries with it a complete willingness, as the community develops and its needs expand, to extend its lines and increase its service and facilities to meet these different situations as they arise. The territory included within the proposed application now before the Commission is territory that lies within the direct path of development of this community, and that is the precise territory towards which the San Diego Electric Railway Company's large investment and facilities are directed."

Further discussing its offer of service, counsel for the San Diego Electric Railway Company said:

"..... If the Railroad Commission of California should disagree with us as to the adequacy of a service of that sort to La Mesa, then we will match with those people out there in order to preserve our priority, we will match for them everything that Mr. Sutherland will offer to do for them; we will give them the identical schedule, the identical service, and we will give them through service; in other words, we will assume whatever loss in the operation of that service out there the Railroad Commission thinks that anyone should bear, in order to preserve our priorities in that field."

This statement was subsequently amplified by the testimony of Mr. S. E. Mason, general manager of the San Diego Electric Railway Company. By his testimony it was shown that the San Diego Electric Railway Company now operates a bus extension on El Cajon Avenue to 56th Street, within 3.81 miles of the

center of La Mesa. He further testified that this applicant now has an investment of \$8,700,000 in operative property; also that it maintains a bus line in extension of its Imperial Avenue rail line from 34th to 40th Streets as auxiliary service.

On behalf of Mr. Sutherland it was urged that he, too, is in the transportation business in the city of San Diego and had only sought operating rights to La Mesa after failure of any other carrier to meet its responsibilities, particularly the San Diego Electric Railway Company.

As before stated, the San Diego Electric Railway Company is now owner of the El Cajon Stage Line, which operates over one of the routes sought herein, and which, properly operated, will, in our opinion, give adequate service by this route to the people of La Mesa and those residing along El Cajon Avenue, into and out of the city of San Diego. It may permit the reduction of the auxiliary bus service by the San Diego Electric Railway now maintained on El Cajon Avenue to 56th Street, and, by proper co-ordination with the electric lines, become a very important facility in the service of the public. We think the testimony is clear that the University Avenue route does not possess tributary population beyond the city limits (eight miles from Third and Broadway) and could only be used as a through route from La Mesa to the center of San Diego, and is not a route that justifies another competitive service such as applicant Sutherland proposes. Nor does it appear that any more than one frequent and rapid bus service is required by the public. According to Exhibit No. 4 filed in behalf of El Cajon Stage Line, 19,518 passengers were transported between La Mesa and San Diego during the year 1926,

with receipts of \$6,343, or \$17.38 per day. These figures were based on gross business and 50 per cent of the gross revenue was assumed as approximate for La Mesa traffic after a 41-day traffic count, from April 5 to May 15, 1927. This check showed an average of 4.6 passengers per trip eastbound and 5.6 per trip westbound. The average of all business of this line from El Cajon, including La Mesa and all intermediates, was 7.8 eastbound and 8.9 westbound. On each trip a vehicle having 28 seats was used. Eighteen-hour daily service by one carrier on an hourly schedule would, therefore, require a large augmentation of business to support it. Certainly there is nothing in this showing to justify the half-hourly service proposed by applicant Sutherland over three routes, one of which parallels the line of protestant San Diego & Arizona Railway, whose gasoline cars seat 28 and whose maximum average on any trip in 1926 was 29.5, and that average on the only trip that approximated a profit, according to the testimony of F. B. Dorsey; and this average included all traffic between Lakeside and San Diego and intermediates, including La Mesa. In addition, protestant Adams, operating El Cajon Stage line, testified that he had put on additional schedules for a period of ninety days, advertised the fact in his stations and busses and in a newspaper, but at the end of the period had not gained in traffic volume. These facts are convincing that this Commission should not authorize imprudent operations, no matter how alluring they may appear to applicants.

We believe, therefore, that the applications of both Sutherland and the San Diego Electric Railway Company for ad-

ditional operative rights between San Diego and La Mesa via the University Avenue and El Cajon Avenue route should be denied. The San Diego Electric Railway, under its offer as previously quoted herein, should use the El Cajon Stage Line for frequent service over this route to and from La Mesa; in any event, not less than hourly service, with universal transfer to its rail and bus services.

A review of the testimony concerning the southern route presents an inverse situation. Applicant Sutherland now maintains efficient service under authority of this Commission between San Diego and Beacon Hill, a community about one mile beyond Encanto, and $7\frac{1}{2}$ miles distant from San Diego. The San Diego Electric Railway maintains a rail service on Imperial Avenue to 34th Street and has auxiliary bus service to 40th Street, a total distance of 4 miles. Both of these carriers propose to extend their present service through Lemon Grove to La Mesa. The extension offered by applicant Sutherland would be a through bus service. As to whether or not this service should be extended to La Mesa, we are of the opinion that it should not extend that far at the present time. The San Diego Electric Railway, operating over the northern route, is occupying a field which it has declared its intention to occupy, and this is a region in which applicant Sutherland has no established operation. He has, however, a service now within five miles of La Mesa, which by extension could very rapidly give service to this community, but we do not believe another carrier should enter this terminal in competition with the El Cajon Stage Line and the San Diego & Arizona Railway. For this reason applicant Sutherland at this time will be authorized to extend his Encanto-Beacon Hill stage service only to

Spring Valley Junction, a distance of about one mile from La Mesa, and thus meet the demand for service from this point and Lemon Grove and intermediate points, which the record shows to be necessary. An order will be entered accordingly.

O R D E R

Fred Sutherland having made application to the Railroad Commission for a certificate of public convenience and necessity to operate automobile passenger service between San Diego and La Mesa and intermediate points, public hearings having been held, the matter having been duly submitted and now being ready for decision,

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA HEREBY DECLARES that public convenience and necessity require the operation by applicant Fred Sutherland of automobile stage service for the transportation of passengers between Beacon Hill and Spring Valley, as an extension of applicant's present operation into Beacon Hill, and for no other service, over and along the following route:

Via Imperial Avenue; and

IT IS HEREBY ORDERED that a certificate of public convenience and necessity for such service be and the same hereby is granted to applicant Fred Sutherland, subject to the following conditions:

- I. Applicant shall file with this Commission, within a period of not to exceed ten (10) days from date hereof, his written acceptance of the certificate herein granted as an extension and enlargement of his present operative rights, and not as a new or separate operative right.

- II. Applicant shall file, in duplicate, within a period of not to exceed twenty (20) days from date hereof, tariff of rates and time schedules, such tariff of rates and time schedules to be identical with those attached to the application herein, or rates and time schedules satisfactory to the Railroad Commission, and shall commence operation of the service herein authorized within a period of not to exceed sixty (60) days from date hereof.
- III. The rights and privileges herein authorized may not be sold, leased, transferred or assigned, nor service thereunder discontinued, unless the written consent of the Railroad Commission to such sale, lease, transfer, assignment or discontinuance has first been secured.
- IV. No vehicle may be operated by applicant herein under the authority hereby granted unless such vehicle is owned by applicant or is leased by him under a contract or agreement on a basis satisfactory to the Railroad Commission.

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

San Diego Electric Railway Company, a corporation, having made application to the Railroad Commission for a certificate of public convenience and necessity to extend the operation of its bus service, as a common carrier, from 56th Street in the city of San Diego, along El Cajon Avenue to La Mesa, and also for authority to extend its bus operation, as a common carrier, from the junction of Imperial Avenue and 34th Street in the city of San Diego, along Imperial Avenue to La Mesa, public hearings having been held, the matter having been duly submitted and now being ready for decision,

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA HEREBY DECLARES that public convenience and necessity do not require the operation by applicant San Diego Electric Railway Company, a corporation, of the services as proposed by applicant, and

IT IS HEREBY ORDERED that the applications and each of them be and the same hereby are denied.

For all purposes except as hereinbefore stated, the effective date of this order shall be twenty (20) days from and after the date hereof.

Dated at San Francisco, California, this 16th
day of August 1927.

Chas. W. ...

Leon ...

Thos. ...

M. A. ...
Commissioners.