

Decision No. 19384

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

In the Matter of the Application and
Complaint of G. L. MORRISON, as owner
and lessor of the Dunsmuir-Mt. Shasta-
Weed Stage, to modify and alter the
Commission's order and Decision No.
15215 on Application No. 11189, so as
to prohibit the Pickwick Stages, a cor-
poration, from carrying passengers
locally between the towns of Dunsmuir,
Mt. Shasta and Weed, California, and
in which application Mrs. M. K. Davis,
as lessee of Dunsmuir-Mt. Shasta-Weed
Stage, joins.)

) Case No. 2267.

) Application No. 11189.

ORIGINAL

Otto L. Haese and Allen & McNamara,
by Mr. McNamara, for Applicants.

Warren E. Libby and Frank B. Austin,
for Respondents.

BY THE COMMISSION:

O P I N I O N

G. L. Morrison, as owner and lessor, and Mrs. M. K. Davis, as lessee of the Dunsmuir-Mt. Shasta-Weed Stage, applicants in the above entitled proceeding, allege that said applicant F. L. Morrison is the owner and operator of that certain passenger stage operative right between Dunsmuir and Weed by virtue of this Commission's Decision No. 13528 on Application No. 10030, and that Mrs. Davis is now the lessee thereof and has been ever since June 25, 1926, pursuant to Decision No. 16995 on Application No. 12955; that Pickwick Stages System, a corporation, pursuant to this Commission's Decision No. 7209, on Application No. 5081, operates an auto stage line as a common carrier of passengers and express between San Francisco and the California-Oregon State line north of Cole with the following restrictions as to local service:

"That no local passengers are to be carried between Woodland and the California-Oregon line unless vacant seats are available in the equipment operated by applicant and such vacant seats are not required for the accommodation of through passengers between points in the State of California and points in the State of Oregon."

That Pickwick Stages System, on June 3, 1925, filed with this Commission its Application No. 11189 for authority to operate a local service for the transportation of passengers and express between Redding and the California-Oregon line north of Cole and alleged and asserted therein particularly as justification for said local service:

"That the following conditions exist which are relied upon by applicant as justification for the granting of a certificate of public convenience and necessity, to wit: That applicant already has the right to transport local passengers on through cars when seats are available under Decision No. 14464 on Application No. 8067; that conditions now exist such as are stated in said Decision No. 14652, made upon Application No. 10112 which require additional local service between Redding and the California-Oregon line north of Cole; that the applicant is the ONLY STAGE OPERATOR operating under a certificate from the Railroad Commission of the State of California over the territory and route covered by the present operations of applicant between Redding and the California-Oregon line north of Cole, California; that at times its through cars operated over said route are loaded to capacity and it is unable to care for local passengers within said territory between Redding and the California-Oregon line; that the only other carrier over said territory is the Southern Pacific Company, and that the restrictions contained in the present operative rights of applicant should be removed by the granting of an additional certificate as herein sought."

Applicants further allege that Pickwick Stages System willfully and deliberately suppressed and withheld the fact with full knowledge thereof that said G. L. Morrison was an authorized carrier of passengers between Dunsmuir and Weed and intermediate points at the time of filing of its application aforesaid and had been such for a long period of time, and that the Commission was misled by the allegation in said application that the only other carrier over said territory was the Southern Pacific Company.

It is further alleged that by reason of said suppression of and mis-statement of facts, said G. L. Morrison was deprived of his right to be heard in protest; that no notice of the pendency and hearing of said application No. 11189 was ever served upon him and that he had no information thereof of any kind and was thereby deprived of a substantial right and prevented from protecting his rights in the premises. Applicant G. L. Morrison further alleges, in conclusion, that he has always rendered a satisfactory and adequate passenger service between Dunsmuir and Weed and intermediate points and prays for an order of this Commission altering and amending its Decision No. 15215 on Application No. 11189 as follows:

"Provided, that said Pickwick Stages System, a corporation, shall not engage under the terms and conditions of this certificate in carrying passengers and express packages locally between the towns of Dunsmuir, Mt. Shasta and Weed in Siskiyou County, California, but is hereby authorized to carry passengers to or from either of said towns from or to points on its route of operations."

Pickwick Stages System, by written response filed herein, denied generally and specifically all the material allegations of said application.

Pickwick Stages further allege -

"That previous to the filing of said application No. 11189 on June 3, 1925, it filed a supplemental petition in Application No. 5081, seeking the granting of the same relief asked for in the prayer of said application No. 11189; that said supplemental petition was filed with said Commission on March 20, 1925, and that notice of the hearing of said supplemental petition was given by said Commission to said Dunsmuir-Mt. Shasta-Weed Stage and to the owner thereof, G. L. Morrison, for a hearing thereon on said 3d day of June, 1925, and that the hearing thereon was set for ten o'clock A.M. on said June 3, 1925, and that said Morrison and said Stage Line did not enter any protest to the granting of said supplemental petition, nor appear to make any objections thereto, and that for such reason, owing to said supplemental petition being dismissed for technical reasons, and all parties interested being present at the time, said Commission consented to hear a new application seeking the same relief, at two o'clock P.M. on said June 3, 1925, and gave notice to all parties present; that for such

reasons said owner of said Dunsmuir-Mt. Shasta-Weed Stage has not been deprived of any right from lack of notice, or for any other reason."

Respondent also alleges that immediately after the granting of the certificate under said Application No. 11189 on July 27, 1925, it commenced the rendition of local service between Redding and the California-Oregon line pursuant thereto, and has at all times subsequent thereto maintained such local service for over one year prior to the filing of the above named application and that said corporation has always rendered an adequate local service over said route and that said service has not been rendered for competitive reasons or to destroy the service of applicants herein, but solely to meet the public demand.

Respondent further alleges -

"That the relief sought therein cannot be had nor granted by reason of a complaint against this corporation, but can be had solely by a petition for further hearing in said application No. 11189 seeking a modification of the terms of said Decision No. 15215, pursuant to the provisions of said Automobile Stage and Truck Transportation Act and the Public Utilities Act of the State of California, and that under the complaint filed in the above entitled cause said Commission is without jurisdiction to act or to grant the relief sought by said complaint, and that said complaint should be dismissed for want of jurisdiction."

A public hearing in the above named matter was held before Examiner Satterwhite at Dunsmuir, the matter was duly submitted upon briefs and is now ready for decision.

The record in this proceeding shows that Pickwick Stages System, pursuant to a suggestion made by this Commission in its Decision No. 14652 on Application No. 10112, filed a supplemental petition in Application No. 5081, for the purpose of having its local passenger service between Redding and the California State line enlarged and certain restrictions therein removed, such restrictions appearing in Decision No. 7209, being as follows:

"Provided, however, that the authority herein conveyed does not authorize the carriage of any local passengers between Oakland and Davis; that no local passengers are to be carried between Woodland and the California-Oregon line unless vacant seats are available in the equipment operated by applicant and such vacant seats are not required for the accommodation of through passengers between points in the State of California and points in the State of Oregon; and provided, further, that no authority is herein conveyed for the establishment of any local line between any of the intermediate points on the through route herein authorized.*****"

On June 3, 1925, this supplemental petition, in Application No. 5081, came on regularly to be heard at San Francisco before Examiner Handford and on June 6, 1925 the Commission rendered its decision therein, dismissing said supplemental petition on the ground that it had no jurisdiction to hear it, for the reason,

"*****that the certificate heretofore granted by Decision No. 7209 on Application No. 5081 has been superseded by the certificate heretofore granted by the Commission's Decision No. 14484 on Application No. 8067 as decided January 17, 1925, such latter certificate being in lieu of the certificate contained in Decision No. 7209,*****"

The documentary evidence in this proceeding shows that in the interests of expedition and by stipulation of all parties present made during the proceeding on said supplemental petition, Pickwick Stages System immediately prepared and filed a new and original application, being No. 11189, which was filed and heard on the afternoon of June 3, 1927, the same day on which the invalid supplemental petition was submitted to be dismissed. Thereafter, on July 27, 1927, the Commission granted to Pickwick Stages System the desired certificate as sought in Application No. 11189 and annulled all restrictions as to local service between Redding and the California-Oregon State line north of Cole.

The record shows that notice of hearing of the supplemental petition in Application No. 5081 was mailed to the Dunsmuir, Mt. Shasta Weed Stage, as required by the rules of this Commission, but no notice of the pendency or hearing of the new and original Application No. 11189 covering the same subject matter was ever

given said applicant, G. L. Morrison.

The testimony of G. L. Morrison at the hearing of the instant proceeding shows that he never received any notice of the pendency or hearing of either the said supplemental petition in Application No. 5081 or the new and original Application No. 11189.

It appears that Pickwick Stages System, before it filed either of the above named applications for the removal of its local restrictions as hereinabove set out, possessed full knowledge of the authorized stage operative rights of applicant G. L. Morrison between Dunsmuir and Weed and intermediate points, but omitted entirely to make in either, as required by the rules of this Commission, any reference to such operative rights of G. L. Morrison. This omission is explained by Pickwick Stages System, respondent, to the effect that both applications dealt exclusively with the territory between Redding and the California Oregon State line considered solely as a unit and that it was correct when it was alleged that the Southern Pacific Company was the only common carrier operating over and along this territory and that moreover there was no intention, purpose or design on the part of the respondent, Pickwick Stages System, to mislead or deceive this Commission with respect to the operative rights of G. L. Morrison between Dunsmuir and Weed.

The Commission is of the opinion, after a careful study of the evidence in this proceeding, that there is nothing in the record to justify the conclusion that the Pickwick Stages System willfully or deliberately suppressed the fact or withheld its knowledge from the Commission that applicant G. L. Morrison was an authorized stage operator between Dunsmuir and Weed and way points.

While it is true, as pointed out by respondent Pickwick Stages System, that under Section 5 of the Auto Stage Truck and Transportation Act this Commission shall have power to issue or refuse certificates as prayed for and may attach such conditions and restrictions as public necessity may require, it has been the constant practice and policy of this Commission, whenever the facts and circumstances justify it, to require every applicant seeking a certificate of public convenience and necessity to divulge the names of every stage or truck line, steam railroad or electric railway operating between the points proposed to be served. The reason for this requirement is quite obvious and the instant proceeding affords an excellent illustration of the purpose and need of the rule.

The record shows that G. L. Morrison, as the owner of the local passenger operative rights between Dunsmuir and Weed, was denied the opportunity to be heard in protest against the proposed additional local service sought by Pickwick Stages System, by reason of the fact that he had received no notice and thereby had no opportunity to present the merits of his protest against such an additional service as sought and obtained by Pickwick Stages System.

The Pickwick Stages System contends that the notice mailed to G. L. Morrison by this Commission of the hearing of the supplemental petition in Application No. 5081 was sufficient notice and binding upon said applicant, G. L. Morrison, with respect to any right of notice he may have been entitled to as regards the hearing on Application No. 11189. We are not in accord with such contention, for the reason that said supplemental petition was dismissed for lack of jurisdiction by the Commission and it follows that it was therefore ineffectual for any purpose whatsoever.

This Commission, in passing upon the nature and character of any proceeding before it, looks always to the substance and purpose of, and not to the form of such proceeding.

It clearly appears by the allegations, contents and prayer thereof that the instant application, or so-called complaint, is in reality a supplemental petition by said C. L. Morrison to have this Commission specifically alter and amend Decision No. 15215 in Application No. 11189 as to a certain portion thereof and requests a hearing thereon, and for such other and further relief as may be just and meet.

The mere fact that this proceeding at the time it was filed with the Commission was given, through inadvertence or otherwise, a case or complaint number in no wise affects its real character or purpose.

We are of the opinion, therefore, that the motion of Pickwick Stages System made at the first hearing of the instant proceeding to dismiss the application herein on the ground that the Commission is without jurisdiction to hear it for the reason that it is an indirect and collateral attack upon said Decision No. 15215 is not well taken and the motion will be denied.

Section 5 of the Automobile Stage and Transportation Act provides in part as follows:

"The Railroad Commission may at any time for a good cause suspend and upon notice to the grantee of any certificate and opportunity to be heard, revoke, alter and amend any certificate issued under the provisions of this section."

This provision is very broad in its terms and no doubt contemplates that the Commission in the exercise of a sound discretion in any given case where the facts and circumstances justify it, or any good or sufficient cause is shown, may entertain and hear any supplemental petition by an interested or aggrieved party to revoke, alter or amend any certificate, irrespective of whether the decision granting the same has become

final or otherwise.

The evidence at the first hearing of this proceeding indicates that G. L. Morrison was clearly denied his desired opportunity to be heard upon his protest to the enlargement of the local operative rights of Pickwick Stages System, at least between Dunsmuir and Weed, and has alleged and shown sufficient facts at the first hearing of this proceeding to entitle him to be heard fully upon the merits of his supplemental petition.

O R D E R

A public hearing having been held in the above entitled proceeding and the Commission now being fully advised in the premises and good cause appearing therefor,

IT IS HEREBY ORDERED that the motion of Pickwick Stages System for a dismissal of this proceeding be and the same is hereby denied.

IT IS FURTHER ORDERED that the number of this proceeding, to-wit, Case No. 2267, be and the same is hereby changed to Application No. 11189 and that all further proceedings upon this petition shall be had and entitled under said Application No. 11189.

IT IS FURTHER ORDERED that the above entitled application of G. L. Morrison be and the same is hereby reopened for further hearing and for the taking of evidence upon the merits of his protest to said Application No. 11189 and the question of the alteration or amendment of said Decision No. 15215 therein.

IT IS HEREBY FURTHER ORDERED that a hearing upon said reopened proceeding be had before Examiner Satterwhite at 10:00 a.m. on Friday, the 2nd day of March, 1928, in the City Hall at Dunsmuir, California.

Dated at San Francisco, California, this ^{20th} ~~5th~~ day of
February, 1928.

E. Deane
Wm. S. Keith
George S. Keith
M. A. Lee
Commissioners.