

Decision No. 19518

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 PICKWICK STAGES SYSTEM, a corporation,)
 for an order authorizing the issuance)
 and sale of capital stock of the par) Application No. 14,121
 value of three hundred and twenty-five)
 thousand (\$325,000) dollars.)

In the Matter of the Application of)
 PICKWICK STAGES SYSTEM, a corporation,)
 for an order permitting it to issue)
 three hundred thousand (\$300,000) dol-) Application No. 14,122
 lars of equipment trust certificates.)

Warren E. Libby, for Applicant.

John Francis Neylan, Grove J. Fink
and John D. Costello, by
Grove J. Fink, Interested
Parties.

SEAVEY, Commissioner:

OPINION AND ORDER

SETTING ASIDE SUBMISSION AND REOPENING MATTERS

FOR FURTHER HEARING

By and under Decision No. 19,105, dated December 6,
 1927, as amended by Decision No. 19,142, the Commission auth-
 orized Pickwick Stages System, among other things, to issue
 and sell at not less than par \$325,000 of its common capital
 stock, and to execute and enter into an equipment trust agree-
 ment and a lease agreement, and to assume and guarantee the
 payment of not less than \$300,000 of 6½ per cent serial equip-
 ment trust certificates, the issue and sale of which certifi-
 cates was authorized at not less than 95 per cent face value.
 The order contains a proviso that the proceeds of the sale of

stock and certificates be deposited in a specific bank account, to be used by the company for the purpose of financing the construction cost of equipment, but only upon being authorized so to do by supplemental orders of the Commission. In this connection Condition No. 1 of the order reads:

"To obtain supplemental orders authorizing the use of proceeds from the sale of the stock and certificates applicant shall first file with the Commission supplemental petitions containing certified statements showing in detail the actual cost of constructing the equipment to be financed through the use of said proceeds, and justify said cost."

On December 14, 1927, applicant filed a supplemental petition, asking permission to use \$66,500 of the proceeds from the sale of the stock and certificates to finance in part the cost of four 27-passenger stages of the alleged value of \$13,500, and one 26-passenger parlor stage of the alleged value of \$12,500. This equipment proposed to be purchased was constructed by the Pickwick Corporation, the company which owns or controls all of the outstanding stock of the applicant, Pickwick Stages System. The prices proposed to be paid for the stages are approximately 15 per cent higher than the actual costs reported in the supplemental application. The actual cost of the construction for five coaches totals \$57,589.69, covering plant, labor and material costs. The difference between this figure and the \$66,500 represents the amount which the Pickwick Corporation would receive if applicant's request were granted.

In ex parte Decision No. 19,232, dated January 10, 1928, the Commission authorized the use of only \$57,589.69, and in that opinion stated:

"* * * Further, Condition '1', of the order in Decision No. 19,105, quoted above, provides that before the company can obtain supplemental orders permitting the withdrawal of stock and certificate proceeds to finance the cost of equipment, it shall, among other things, justify said

cost, and we do not believe that sufficient showing has been made in this supplemental petition in justification of the use of the entire \$66,500."

A petition for rehearing of the above two mentioned decisions, No. 19,105. as amended, and No. 19,232, was filed by the Pickwick Stages System, alleging, in the main, that the Commission erred in not allowing the full \$66,500, and requesting, in some respects, modification of the conditions contained in Decision No. 19,105, as amended. A rehearing was had before me in San Francisco, the matters were duly submitted, and are now ready for decision.

At the hearing applicant, among other things, introduced in evidence an exhibit, which was filed with the supplemental application, setting forth the cost to applicant of the busses in question, but not showing the details of the 15 per cent profit claimed by the Pickwick Corporation. It was established that this exhibit was prepared from the books of the Pickwick Corporation, and objection was made to its introduction upon the ground that these books, and not the exhibit, constituted the best evidence. A like objection was made to the introduction of a letter of transmittal forwarded to this Commission with the said supplemental application and exhibit. The exhibit and letter were allowed in evidence subject to these objections. Applicant attempted to justify the figure of \$66,500 by stating that the exhibit and letter were sufficient in this regard, and then submitted the matter.

Upon the grounds specified in this objection a motion was thereupon made to strike the exhibits and letter from evidence unless the books of the Pickwick Corporation were made accessible to the staff of the Commission for purposes of inspection and check. In reply to this motion, applicant stated that the Commission was not entitled to an examination of the books for the purpose of

obtaining underlying data, and in response to a specific request, refused to produce these books for examination. This motion was taken under advisement, whereupon the matter was submitted by all parties.

While it is my opinion that this motion was well taken and should be granted, nevertheless it has now become unnecessary to make a specific ruling for the reason that since the submission of these matters the Commission has received from the applicant a communication offering to open the books of the Pickwick Corporation so that an inspection and check could be made to determine the reasonableness of the cost of the above mentioned busses.

Since applicant has thus changed its position, it seems advisable that the submission heretofore made be set aside and that both matters be reopened for further hearing, and I recommend accordingly.

ORDER

Good cause appearing,

IT IS HEREBY ORDERED that the submission heretofore made in these two matters on rehearing be, and the same is hereby set aside.

IT IS HEREBY FURTHER ORDERED that the applications as above numbered and entitled be, and the same are hereby reopened for further hearing; and

IT IS HEREBY FURTHER ORDERED that the said hearing be had before Commissioner Seavey on Wednesday, the 11th day

of April, 1928, at 10:00 a.m. in the Court Room of the
Commission, 520 State Building, San Francisco, California.

The foregoing opinion and order are hereby approved
and ordered filed as the opinion and order of the Railroad
Commission of the State of California.

Dated at San Francisco, California, this 23rd day
of March, 1928.

Leon Whitwell
C. Seaver
Emmanuel P.
David L. ...
M. J. ...
Commissioners.