

reopening of Decision No. 19579 so far as it concerned the application of California Transit Co., and also the reopening of decision on a prior application by Eichbaum (Application No. 11823), and directed argument upon the question of whether Owens Valley should be opened up to stage service and, if so, to whom certification should be granted. In this order the records in the various proceedings referred to in the caption were ordered consolidated.

On June 29, pursuant to this order, full argument was had before Commissioner Carr. The matter is now ready for disposition.

A consideration of the records in the several applications leads to the following conclusions:

First: Public convenience and necessity require the opening of Owens Valley to stage service, the existing rail service by the Southern Pacific Company not being adequate to the needs and necessities of this Valley.

Second: Both California Transit Co. and H. W. Eichbaum are substantial and reliable operators but public convenience and necessity do not demand that each be certificated. It is not easy to decide between the two. Suffice^{it} to say, that the lower fares offered by California Transit Co. and the fact that such company is primarily a transportation company, while Eichbaum, if certificated, would be interested both in his resort business in Death Valley, as well as his transportation service into Owens Valley, turns the scale in favor of California Transit Co.

Third: Both applicants conceded, and the record establishes, that a complete and adequate service for Owens Valley calls for service between Lone Pine and Bishop as performed under the operative right of Owens Valley Transportation, Storage and Packing Company. California Transit Co. should be given permission to acquire this right as applied for and to consolidate operations thereunder with its operations under existing certificates and the certificate herein granted.

The Commission deems it proper at this time to suggest that some plan of cooperation between these applicants in rendering their respective services may well prove of value not only in their several interests, but also in the interest of the public which they hold themselves out to serve. It may even prove to be possible to eliminate certain duplication in long distance transportation over routes as to which local service is not authorized.

California Transit Co. is hereby placed upon notice that "operative rights" do not constitute a class of property which should be capitalized or used as an element of value in determining reasonable rates. Aside from their purely permissive aspect, they extend to the holder a full or partial monopoly of a class of business over a particular route. This monopoly feature may be changed or destroyed at any time by the state which is not in any respect limited to the number of rights which may be given.

ORDER

Argument in the above entitled matters having been heard in accordance with the Commission's order of June 20, 1928, all the matters having been consolidated and submitted and the Commission being fully advised,

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA HEREBY DECLARES that public convenience and necessity require the operation by California Transit Co., a corporation, of an automobile passenger and express service, as a common carrier, between Mojave and Lone Pine and all intermediate points, and

IT IS HEREBY ORDERED that a certificate of public convenience and necessity for such a service be, and the same is hereby granted to California Transit Co., a corporation, 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.

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 identical with those attached to Application No. 12402, or rates and time schedules satisfactory to the Railroad Commission, and shall commence operation of said service within a period of not to exceed thirty (30) 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.

IT IS HEREBY FURTHER ORDERED that the application of California Transit Co., a corporation, for an order of the Railroad Commission approving the lease and purchase by it of the operating rights of the Owens Valley Transportation, Storage and Packing Co., a corporation, as such rights are shown by the records of the Railroad Commission, be, and the same is hereby granted, subject to the following conditions:

1- The consideration to be paid for the property herein authorized to be transferred shall never be urged before this Commission or any other rate fixing body as a measure of value of said property for rate fixing, or any purpose other than the transfer herein authorized.

2- Applicant California Transit Co. shall immediately unite with applicant Owens Valley Transportation, Storage & Packing Co., in common supplement to the tariffs on file with the Commission, applicant Owens Valley Transportation, Storage & Packing Co. on the one hand withdrawing, and applicant California Transit Co. on the other hand accepting and establishing such tariffs and all effective supplements thereto.

3- Applicant Owens Valley Transportation, Storage & Packing Co. shall immediately withdraw time schedules filed in its name with the Railroad Commission and applicant California Transit Co. shall immediately file, in duplicate, in its own name time schedules covering service heretofore given by applicant Owens Valley Transportation, Storage & Packing Co., which time schedules shall be identical with the time schedules now on file with the Railroad Commission in the name of applicant Owens Valley Transportation, Storage & Packing Co., or time schedules satisfactory to the Railroad Commission.

4- The rights and privileges herein authorized may not be sold, leased, transferred nor 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.

5- No vehicle may be operated by applicant California Transit Co. 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.

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA HEREBY
DECLARES that public convenience and necessity do not require
the operation by H. W. Eichbaum of an automotive stage service
as applied for in Application No.14529, and

IT IS HEREBY ORDERED that Application No.14529 be, and the
same hereby is denied.

IT IS HEREBY FURTHER ORDERED that Decision No.15860 on
Application No.11823, dated January 15, 1926, be and it hereby
is affirmed.

IT IS HEREBY FURTHER ORDERED that Decision No.19579,
insofar as it refers to the denial of Application No.12402,
which is the application of California Transit Co. to operate
between Mojave and Lone Pine and intermediate points, and to
acquire the rights of Owens Valley Transportation, Storage and
Packing Co., be and the same is hereby set aside, the decision
in all other respects to remain unchanged.

IT IS HEREBY FURTHER ORDERED that the operating right
herein authorized to be acquired by California Transit Co. from
Owens Valley Transportation, Storage & Packing Co. may be
consolidated with the right herein granted and said consolidated
right consolidated with the existing rights of California Transit
Co.

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 11th day of

July, 1928.

El Seavie
Emmert
W. D. Gould
W. J. C.
COMMISSIONERS.