

Decision No. 29831.

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 RAILROAD COMMISSION

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

In the Matter of the Application of SAN DIEGO ELECTRIC RAILWAY COMPANY, a corporation, for certificate of public convenience and necessity to operate automobile stage line between the down town section of the City of San Diego and the intersection of Euclid and Broadway, in said city.

App. No. 14246.

In the Matter of the Application of SAN DIEGO ELECTRIC RAILWAY COMPANY, a corporation, for certificate of public convenience and necessity, to operate automobile stage line between La Mesa and Lemon Grove, and intermediate points.

App. No. 14443.

In the Matter of the Application of FRED A. SUTHERLAND for a certificate of public convenience and necessity; (1) To extend his present operations from Spring Valley Junction to La Mesa, and to consolidate them with his present operations between San Diego and Spring Valley via Encanto and Lemon Grove over Imperial Avenue; (2) To re-route a portion of his present service between San Diego and Lemon Grove via Market Street Extension, serving all intermediate points beyond Twenty-fifth Street in San Diego, and to consolidate the same with his present operations between San Diego and Spring Valley via Encanto and Lemon Grove over Imperial Avenue.

App. No. 14483.

In the Matter of the Application of SAN DIEGO ELECTRIC RAILWAY COMPANY, a corporation, for certificate of public convenience and necessity to operate automobile stage line between the downtown section of the City of San Diego and the intersection of Euclid and Market Streets, in said city.

App. No. 14548.

Morrison, Hohfeld, Foerster, Shuman & Clark, by
 Forrest A. Cobb, for applicant San Diego Electric Ry. Co.
 Warren E. Libby and Richard T. Eddy for applicant
 Fred A. Sutherland.

BY THE COMMISSION:

O P I N I O N.

The above entitled applications of the San Diego Electric Railway Company and Fred A. Sutherland involve suburban motor bus transportation service in an area lying east of the city of San Diego, including the towns of La Mesa, Spring Valley and Lemon Grove. These communities are approximately ten miles from the central part of the city of San Diego. Though the San Diego city limits extend eastward nearly the whole distance, only a limited part of the territory involved can be considered, except in a legal sense, a part of the city of San Diego proper.

La Mesa, a city of three to four thousand inhabitants, is in a way the local business center for the communities near by. Residents in such communities, particularly in the Spring Valley section, have some need for transportation to La Mesa as well as to San Diego. In the main, however, the transportation problem presented is one suburban to the city of San Diego, in which place the majority of the residents in the whole area are employed or have their business interests.

Both applicants, the San Diego Electric Railway Company and Fred A. Sutherland, now partially serve by motor busses the area involved. The San Diego Electric Railway Company has an operative right from San Diego to La Mesa along El Cajon Avenue, a road leading from the northerly part of the city of San Diego directly to La Mesa. The Sutherland stages run to Spring Valley Junction, only nine-tenths of a mile from the center of La Mesa, over Imperial Avenue, a road leading easterly from the sautherly part of San Diego.

Between these two roads there have recently been constructed new highways opening up new areas for residential subdivision as well as affording the La Mesa, Spring Valley and Lemon Grove communities additional highways into San Diego. It is upon these new highways that the applicants desire to operate, the proposed services of each in part duplicating the other, and each, in so far as there is a duplication, protesting the application of the other. The San Diego Electric Railway Company is particularly insistent that it should be protected by the Commission in its sphere of operations, which, it contends, is not only the city of San Diego proper, which it serves by its street railway and bus lines, but also, as the city expands, areas contiguous thereto. Both utilities should, of course, be protected in their respective fields of operation, as long as they live up to their public duty. The problem here is not the principle itself, but its application. Transportation in this thinly settled suburban area must, for a number of years hence, be conducted on a very small margin of profit to the utilities. Each applicant, then, should be permitted to extend its service only where such extension is justified by the public need and when the utility is logically and economically justified in entering the field.

Two problems are presented, one involving the need for local transportation between La Mesa and its

own suburban communities directly to the south, and the other involving the need for a service along parts of Market Street extension to and from San Diego. The two problems, however, though they may not be entirely distinct, we believe should be considered separately. We will, therefore, look first at the proposals of the two applicants to establish service upon Broadway Extension and Market Street Extension to the districts easterly and immediately adjacent to the city of San Diego.

Without reciting in detail the applications of both parties and their several amendments thereto, it is sufficient to state the proposals as finally presented by each applicant. Sutherland, who now operates seventeen schedules daily from San Diego to Spring Valley over Imperial Avenue, proposes hereafter to operate only twelve on Imperial and to give eleven new schedules each way on Market Street extension from San Diego to Lemon Grove where Market Street converges with Imperial Avenue. The San Diego Electric Railway Company proposes six schedules each way daily from the down town district of San Diego out Market Street extension as far as Euclid Avenue, or 51st Street, a cross street about half way between San Diego and Lemon Grove. It offers no objection to the Sutherland proposal except to his operation on Market Street west of Euclid. Euclid Avenue is within the city limits of San Diego and is perhaps a logical division street marking the limits

to which the city generally may be considered to extend, though along Market Street the built up area terminates at about Fairmount Avenue, or 47th Street.

The San Diego Electric Railway now operates busses on Imperial Avenue in competition with Sutherland as far as 41st Street. Market Street parallels Imperial at a distance of not more than five or six average city blocks, and a service thereon would to some extent compete with that on Imperial. However, because of natural conditions, a line on Market Street will better serve much of this area than that on Imperial now does, besides affording transportation to those residents farther removed from Imperial who are now without adequate transportation. We are of the opinion that a service on Market Street as far as Euclid Avenue should be rendered by the San Diego Electric Railway Company. The territory which will be served is immediately contiguous to the city of San Diego, and its residents would no doubt be best served by the utility serving generally the whole city.

The service offered by the San Diego Electric Railway is a through bus service direct to the business district at Broadway and 3d Streets. The question as to whether such an operation is preferable to a shorter bus haul to connect with the street car line at 25th Street is one of local management largely, but it appears that the shorter bus operation would on the whole afford just as satisfactory service at reduced cost to the utility. Six schedules only

each way daily, however, appear to be insufficient. We recommend at least twelve schedules and that these connect with the car line instead of continuing parallel thereto to the down town district.

If the San Diego Electric Railway is granted permission to operate busses on Market Street Extension as far as Euclid Avenue, competition along such route should not be permitted. Sutherland's present operation is an interurban service rather than local. Their respective fields of operation, therefore, can be and should be kept distinct. Beyond the line to which the city of San Diego is fairly densely populated and within which the San Diego Electric Railway should logically be given an exclusive field, Sutherland is entitled to all natural accretions to his existing operation. There would appear to be no valid objection to an operation by Sutherland on Market Street as well as Imperial, if such operation were limited so as to exclude local stops on Market west of Euclid, to which point the San Diego ^{Electric} will be permitted to extend its bus service. Such an operation would afford all the communities which he now serves an improved transportation service into San Diego, as well as serving several areas now entirely without transportation. Because a Market Street line will be partially competitive with that on Imperial as far as Lemon Grove, he should reduce the number of his present schedules on Imperial and substitute therefore a number of schedules on Market Street, but not necessarily an equal number.

By Application No. 14246 the San Diego Electric Railway Company proposed a service on Broadway extension

similar to that above mentioned on Market Street extension. It admitted and it is apparent that public necessity and convenience do not demand a service on Broadway. Accordingly, that application will be denied.

Passing now to the proposals of the two applicants to establish service between La Mesa and Lemon Grove, their consideration demands a brief review of the history of their respective operative rights. By Decision No. 18717 dated August 16, 1927, the Commission denied the application of Sutherland to extend his line as far as La Mesa, he being limited to a point on Imperial Avenue known as Spring Valley Junction nine-tenths of a mile from the center of the town of La Mesa. Just prior to that decision the San Diego Electric Railway had acquired by purchase its operative right to La Mesa on El Cajon Avenue. In that decision the Commission expressed its belief that an additional service in La Mesa was not demanded. Sutherland has since (Dec. No. 19120) been granted an extension into the Spring Valley area east of Lemon Grove and south of Spring Valley Junction, but has not been granted the right to serve the town of La Mesa. Sutherland now requests permission to extend his line from Spring Valley Junction on into La Mesa, and the San Diego Electric Railway Company applies to extend its line from La Mesa southward through Spring Valley Junction and Spring Valley to Lemon Grove.

The public need expressed by both applicants for inaugurating a bus service between these points was that, since the recent abandonment of daily passenger service by the San Diego

and Arizona Railway, there is now no transportation service connecting the two communities. A study of the traffic records of the San Diego & Arizona Railway indicates that its traffic between these points was almost negligible. Nevertheless, as the testimony shows, there is some need for a service to fill the existing gap. The actual distance between the two bus lines is now less than three-fourths of a mile. Except for a very slight need perhaps for a through service from La Mesa to San Diego via the Sutherland route, ~~the immediate public need for transportation can be met by merely filling this gap.~~ Either applicant, by extending its existing line that distance, can render the service at a very small out of pocket cost. If this is done by the San Diego Electric Railway, a transfer at Spring Valley Junction will be necessary for passengers going to or from Lemon Grove and Spring Valley. It will not, however, place the San Diego Electric Railway in competition with Sutherland for through business to San Diego, or affect the general balance between the two utilities in any way. Sutherland, on the other hand, admittedly seeks entrance into La Mesa in order to obtain a better terminus for his line and expects to divert a portion of the patronage now going to the San Diego Electric Railway line to his own. He made some attempt to show that La Mesa is in need of another through service to San Diego. The record, however, does not sustain his contention. To permit Sutherland to enter La Mesa would result in disastrous competition between the two applicants and ultimately result in deterioration of service by each to the public. We are of the firm conviction that the respective termini of the two applicants should remain distinct.

After giving careful consideration to all the evidence, we have arrived at the conclusion that the only practical solution of the problem is for the San Diego Electric Railway to extend its service in Zone No. 7, which includes the city of La Mesa generally, as far south as Spring Valley Junction, thus making possible a connected service with the Sutherland stages at that point. Passengers destined to or from Lemon Grove or Spring Valley will then pay a total fare of ten cents, five cents to each carrier. Though a transfer will be involved, a co-ordination of schedules can easily be arranged, and there need be no great inconvenience to passengers. We believe that in this manner alone can the comparatively slight need for local service between La Mesa and the communities to the south be met. San Diego Electric Railway Company and Fred A. Sutherland are 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.

O R D E R

Public hearings having been held on the above entitled applications, the matters having been duly submitted, the Commission being now fully advised and basing its order

on the finding of facts as appearing in the opinion preceding this order,

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA HEREBY DECLARES that public convenience and necessity require the operation by San Diego Electric Railway Company of an automotive passenger stage service along Market Street in the city of San Diego between 25th Street and Euclid Avenue (51st St.) and intermediate points, and

IT IS HEREBY ORDERED that a certificate of public convenience and necessity for such a service be and it is hereby granted to San Diego Electric Railway Company, subject to the following conditions:

1. That no less than 12 schedules daily shall be operated, these to make proper and adequate connection with applicant's street car service at 25th Street,
2. That the fares charged shall be those applicable to Zone No. 2 as shown in Loc/Passenger Tariff No 6 of San Diego Electric Railway Company on file with the Commission.
3. Applicant shall file its written acceptance of the certificate herein granted within a period of not to exceed ten (10) days from date hereof.
4. 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 in accordance with the order herein, 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.
5. 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.
6. 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 Application No. 14246 be and the same is hereby denied.

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA HEREBY FURTHER DECLARES that public convenience and necessity require the operation by San Diego Electric Railway Company of an automotive passenger stage service between La Mesa and Spring Valley Junction and intermediate points, and

IT IS HEREBY FURTHER ORDERED that a certificate of public convenience and necessity for such a service be and it is hereby granted to San Diego Electric Railway Company, subject to the following conditions:

1. That the certificate herein granted shall not be considered as a separate operating right but as an extension of the right now owned by applicant covering service between San Diego and La Mesa, via El Cajon Avenue.
2. That the fares to be charged for such extended service shall be those applicable to Zone 7, as shown in Local Passenger Tariff No. 6 of San Diego Electric Railway Company.
3. Applicant shall file its written acceptance of the certificate herein granted within a period of not to exceed ten (10) days from date hereof.
4. 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 tariff of rates to be in accordance with the order herein, 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.
5. 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.
6. 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.

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA
HEREBY FURTHER DECLARES that public convenience and necessity
require the operation by Fred A. Sutherland of an automotive
passenger stage service on Market Street and its extension
between San Diego and Lemon Grove over and along the follow-
ing route:

Market Street and its extension by way of Beach
Street, Madera Avenue, Massachusetts Street
and Central Avenue to the junction of
Imperial Avenue and Golden Street in the
city of Lemon Grove, subject to the fol-
lowing conditions:

1. That the operating right herein granted shall not be considered as a separate operating right but as a part of the right over Market Street and Imperial Avenue, now owned by Sutherland covering service between San Diego and Spring Valley Junction, via Lemon Grove.
2. That applicant shall not pick up or discharge passengers along the Market Street route herein authorized between Euclid Avenue (51st St.) and the San Diego terminus of applicant, except when such passengers are destined to or coming from points east of Euclid Avenue (51st St.).
3. Applicant shall file his written acceptance of the certificate herein granted within a period of not to exceed ten (10) days from date hereof.
4. Applicant shall file, in duplicate, within a period of not to exceed twenty (20) days from the date hereof, tariff of rates, such tariff of rates to be identical with those attached to the application herein 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.
5. 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.
6. No vehicle may be operated by applicant herein unless such vehicle is owned by said applicant or is leased by him under a contract or agreement on a basis satisfactory to the Railroad Commission.

