

Decision No. 21844

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of FRED A. SUTHERLAND to sell, and SAN DIEGO ELECTRIC RAILWAY COMPANY to buy the operative rights of the former to his La Jolla, Encanto-Lemon Grove, and National City-Chula Vista Passenger Stage lines, in the County of San Diego, and the application of San Diego Electric Railway Company for certificate of public convenience and necessity covering said operations, and the application of San Diego Electric Railway Company for the consolidation of said operations into its general system on the zone fare basis applicable thereto, including certain changes in fares, schedules and zone lines, the abandonment of certain service and substitution of different character service therefor.

ORIGINAL

Application
No. 15993

Morrison, Hohfeld, Foerster, Shuman & Clark,
by Forrest A. Cobb, for Applicant, San Diego
Electric Railway Company.

E. P. Sample, for applicant, Fred A. Sutherland.

SEAVEY, Commissioner -

O P I N I O N

This is a joint application by Fred A. Sutherland and San Diego Electric Railway Company for an order of the Commission

- 1- Authorizing the transfer by Sutherland to San Diego Electric Railway Company of operating rights for an automotive passenger stage service over what is described as the National City-Chula Vista line and the Lemon Grove-Encanto line, both of which are operated under authority of the Railroad Commission.
- 2- Authorizing the abandonment by San Diego Electric Railway Company of street railway service between 32nd Street and National Avenue in the City of San Diego and 24th Street and 8th Avenue in National City, which service is operated over trackage leased from the San Diego and Arizona Railway Company.
- 3- Authorizing the substitution by San Diego Electric Railway Company for such abandoned street railway service of a co-ordinated bus service offering through transportation to the down town areas of San Diego to and from all the territory now served in Chula Vista and National City and intermediate points.

4- Extension of Sutherland right herein proposed to be transferred from Spring Valley Junction into La Mesa and consolidation of extended right with operating right of San Diego Electric Railway Company between San Diego and La Mesa via El Cajon Avenue.

5- Acquisition by San Diego Electric Railway Company of franchise granted by the City of San Diego to Fred A. Sutherland to operate bus service described as La Jolla line, an operation entirely within the limits of the City of San Diego and the issuance to San Diego Electric Railway Company of certificate to operate bus service between San Diego and La Jolla.

6- Abandonment of bus service between National Avenue and Division Street in National City and Highland Avenue and 8th Avenue in National City, via Division Street and Highland Avenue.

7- Publication of tariffs by San Diego Electric Railway Company covering service heretofore performed by Sutherland and service herein authorized to be performed by San Diego Electric Railway Company, which tariffs shall coincide with the general zone system of fares in effect on its system.

A public hearing on the above entitled matter was held at San Diego, evidence received and an order of submission made. It is now ready for decision. There were no protestants.

S. E. Mason, general manager of the San Diego Electric Railway, testified that the agreement entered into with Sutherland, attached to the application as Exhibit A, approval of which is sought from the Commission, was based on a desire on the part of both applicants to end costly and destructive competition between the Sutherland lines and the railway company in territory described as San Diego Metropolitan area which did not justify service by the two operators. Under the proposed plan Sutherland will withdraw from the territory, leaving the field entirely to the railway company, making possible the operation by the railway company of a co-ordinated system of rail and bus service more comprehensive in its extent and scope than is practical under the existing conditions and, therefore, a service of greater benefit to the traveling public. Greater economy in operating costs through the elimination of excess service resulting from duplication, witness claims, will result, and the

railway company will be free to develop a single, unified and coordinated transportation system throughout the metropolitan area now served by it, with resultant benefits to the public that will accrue following the elimination of ruinous competition.

Fred A. Sutherland testified that he wished to withdraw from the local and intracity field of transportation, which was not proving compensatory. Operating right restrictions, imposed because of operations by the railway company in territory both served, created a situation which made profitable operation by both operators impossible.

It would appear to me from the evidence offered in this proceeding that the requests of applicants should be granted. Such small rate increases as will result will be compensated for by transfer privileges and service betterments made possible by a unified, coordinated operation.

With respect to that portion of the application seeking permission to discontinue rail service between 32nd Street and National Avenue, in the City of San Diego, and 24th Street and 5th Avenue, in National City, and substitute therefor bus service, it appears that this request is reasonable, as the proposed change should result in an operating saving and, at the same time, afford reasonable service to this district. At the hearing, San Diego Electric Railway Company asked permission to modify its application so as to request authority to remove this section of track. It appears, however, that the track is owned by the San Diego and Arizona Railway Company and the electric company operates over it under an agreement; therefore, if it is desired to abandon this track, the San Diego and Arizona Railway Company is the proper party to make such an application.

San Diego Electric Railway Company 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.

I recommend the following form or order:

O R D E R

A public hearing having been held in the above entitled proceedings, the matter being submitted and the Commission being fully advised,

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA HEREBY DECLARES that public convenience and necessity require the sale and transfer by Fred A. Sutherland to San Diego Electric Railway Company and their consolidation with the operating rights now owned by San Diego Electric Railway Company in part of the same territory of the following operating rights:

A right to transport passengers between San Diego and Encanto, via Imperial Avenue, serving as intermediate points the communities of Beverly and Hollywood, acquired by F. A. Sutherland under authority of Decision No.17203, issued on Application No.13052, which right was subsequently extended (Decision No.18717, on Application No.13617) from Beacon Hill, (a point in the city of San Diego adjacent to Encanto, which is also within the limits of San Diego), to Spring Valley over and along Imperial Avenue. By Decision No.19120, issued on Application No.14148, the Commission authorized Sutherland to transport passengers between San Diego and Spring Valley over and along the following route or routes, to be operated as part of existing right:

From Lemon Grove to Spring Valley, alternating via Palm Street (sometimes known as Troy Street), Sweetwater Street and or Bancroft Drive to Spring Valley Station.

It was still further extended by Decision No.20454, issued on Application No.14483, which authorized Sutherland to operate on Market Street and its extension between San Diego and Lemon Grove over and along the following routes:

Market Street and its extension by way of Bach Street, Madera Avenue, Massachusetts Street, and Central Avenue to the junction of

Imperial Avenue and Golden Street in the city of Lemon Grove, with certain restrictions as to service along Market Street.

A right to transport passengers over the following route (Decision No.21118 on Application No.15495):

Beginning at the intersection of Division Street and National Avenue in the City of National City, thence easterly along Division Street to Highland Avenue, thence southerly along Highland Avenue to Eighth Street in the city of National City.

IT IS HEREBY ORDERED that said operating rights be and they are hereby transferred to San Diego Electric Railway Company, a corporation, and consolidated with the rights now owned by said San Diego Electric Railway Company in the same territory, provided that the order herein authorizing the transfer of the rights herein described affecting the National City-Chula Vista line operated by Sutherland shall not be construed as impairing Sutherland's right (established through operation prior to May 1, 1917, and as subsequently enlarged by certificates granted by this Commission) to operate between San Diego and San Ysidro (Mexican border), and intermediate points except to the extent that no local service may be performed by Sutherland on such through service within the present city limits of the city of San Diego, the city of National City and the city of Chula Vista; he may, however, do local transportation business south of 19th Street on National Avenue in National City, and may pick up or discharge persons between Nineteenth Street in National City on National Avenue and his San Diego Terminal when such passengers are destined to or coming from points south of Nineteenth Street in National City; and may pick up and discharge persons between the City Limits of Chula Vista on Third Street at K Street in Chula Vista and his San Diego Terminal when such passengers are destined to or coming from points south of Chula Vista City Limits.

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 as an extension of the Spring Valley Junction-San Diego right described above of an automotive service for the transportation of passengers between Spring Valley and La Mesa and intermediate points and the consolidation of said extended right with the operating right between San Diego and La Mesa and other points via El Cajon Avenue, heretofore acquired by San Diego Electric Railway Company.

IT IS HEREBY FURTHER ORDERED that a certificate of public convenience and necessity for such extension and consolidation be and it is hereby granted to San Diego Electric Railway Company .

IT IS HEREBY FURTHER ORDERED that San Diego Electric Railway Company be and it is hereby authorized to abandon automotive passenger stage service between National Avenue and Division Street in National City and Highland Avenue and 8th Avenue in National City via Division Street and Highland Avenue, which service is described in the application herein as a "shuttle car service."

IT IS HEREBY FURTHER ORDERED that San Diego Electric Railway Company be and it is hereby authorized to abandon street railway service between 32nd Street and National Avenue in the City of San Diego and 24th Street and 8th Avenue in National City, said service being operated over trackage leased from the San Diego and Arizona Railway Company.

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 the points and over the route now served by what is described in the application herein as Sutherland's La Jolla Stage line; also between San Diego and National City and intermediate points, said routes

to be as shown in Exhibits I and Q, attached to the application herein and made a part thereof, and the consolidation of said operating rights with the rights heretofore and herein granted to said San Diego Electric Railway Company.

IT IS HEREBY ORDERED that a certificate of public convenience and necessity for such service, and consolidation as above described, be and the same is hereby granted to San Diego Electric Railway Company, 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- 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.
- 3- 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 San Diego Electric Railway Company be and it is hereby authorized to file with the Railroad Commission tariffs and time schedules covering service herein authorized to be performed by said San Diego Electric Railway Company, which tariffs and time schedules shall be identical with the tariffs and time schedules attached to the application herein or tariffs and time schedules satisfactory to the Railroad Commission.

IT IS HEREBY FURTHER ORDERED that Fred A. Sutherland shall make such tariff and time schedules filings as are necessary to cover changes in his services authorized by the order herein.

Approval of the agreement on which the application herein is based, which agreement provided for the payment to Sutherland of the sum of \$40,000, is hereby granted with the understanding that San Diego Electric Railway Company may not charge to its plant and equipment accounts any greater sum than the amount actually expended by Fred A. Sutherland in acquiring the certificates herein authorized to be transferred, and Fred A. Sutherland and San Diego Electric Railway Company are hereby ordered to file with the Railroad Commission a statement setting forth such costs. Any sum paid in excess of said sum for the aforementioned properties must be charged to Account No.317, "Miscellaneous Debits to Profit and Loss."

For all other purposes the effective date of this order shall be twenty (20) days from the date hereof.

The opinion and order herein are hereby declared to be the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 30th day of November, 1929.

Thomas D. Lott
Chairman
Francis J. ...
Leon ...
W. F. ...
COMMISSIONERS.