

Decision No. 223369.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

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In the Matter of the Application of
E. M. WOODARD for certificate of
public convenience and necessity to
operate passenger and express service,
as a common carrier, between San Diego
and Julian, excepting La Mesa and
El Cajon.

Application No. 16990

ORIGINAL

In the Matter of the Application of
BEARDSLEY AND OAKS for a certificate
of public conveyance and necessity to
operate stage line service as a
common carrier between Julian and
San Diego.

Application No. 16995

Libby and Sherwin and E. L. Seavey, by W. E. Libby for
applicant in Application No. 16990 and protesting
Application No. 16995.

Fitzgerald and Selleck by C. G. Selleck for applicant
in Application No. 16995, and protesting
Application No. 16990.

H. S. Dixon for San Diego Electric Railway, Interested
Party.

A. M. Thompson and H. J. Bischoff, by A. M. Thompson
for Bisher's Truck Line, protesting both applications.

Wright and McKee, by Richmond Jackson, for San Diego
County Water Company, Interested Party.

Harold W. Dill, for Oppenheimer Truck Line and Warner-
Julian and Cuyamaca Truck Line, protesting both
applications.

BY THE COMMISSION:

O P I N I O N

E. M. Woodard, by his amended Application, No. 16990,
asks authority to operate an automotive stage service for the
transportation of passengers, baggage and express between
San Diego and Julian and intermediate points, with certain

exceptions, which exceptions are embraced within the terms of a stipulation agreed upon at the hearing.

James S. Beardsley and Claude W. Oaks, co-partners, by Application No. 16995, also amended at the hearing, seek authority to operate a similar service, and in addition to serve between Santa Ysabel and Warner's Hot Springs and between Julian and Pine Hills.

A public hearing was held in San Diego before Examiner Gannon, the matters were consolidated for the taking of testimony and decision, and an order of submission made.

The territory herein involved was for many years served by Pacific Greyhound Lines, Inc., (Pickwick), which was authorized by the Commission to discontinue its service after a proper showing that such service was not compensatory. A number of witnesses residing in the territory were called by both applicants and all testified that there was urgent need for the establishment of some service between Julian and San Diego and points between. Each applicant testified that the operation would be a profitable one.

Applicant Woodard, it appears, has been operating a service for the transportation of school children over a portion of the route, and also has a contract for the carrying of newspapers in bundles from San Diego to Julian and points in between. He could, and would, retain this business in the event a certificate were granted him under his application. The evidence does not disclose much of a demand for service to Warner's Hot Springs and none so far as Pine Hills is concerned. Bisher's Truck Line, operating between San Diego and Ramona, and the Warner-Julian and Guyamaca Truck Line operating between San Diego and Julian, and other points, protested the granting of authority to transport

express matter, contending that the territory is adequately served in this regard. We believe the testimony sufficiently sustains such protest as to the territory between San Diego and Ramona.

The testimony in this proceeding indicates, and it is hereby found as a fact, that public convenience and necessity require the service proposed between San Diego and Julian and intermediate points with certain restrictions which will be fully set forth in the order herein. The record does not justify a finding that the proposed service is required in so far as it applies to Warner's Hot Springs and Pine Hills.

There remains to be determined which applicant is best fitted to perform the proposed service. Few of the witnesses had any choice, all being of the opinion that each applicant was capable and trustworthy, and that the much-desired service would be satisfactorily rendered by either applicant.

The application of Woodard was filed on November 3, 1930, and that of Beardsley and Oaks three days later. Whatever weight the Commission may give, therefore, to priority in filing must be resolved in favor of Woodard. This applicant, by reason of his experience and service as a private carrier has undoubtedly acquired sufficient knowledge of the transportation business to at least offset the experience of applicant Oaks who had operated a stage line in Utah for several years. While Woodard does not appear to have the resources at hand which Beardsley and Oaks have, nevertheless his testimony shows that he practically owns one car, has \$600 in bank, and will start the service for which he seeks authority with an assured monthly

revenue of \$193 from the same sources now using his private service. These considerations, it seems to us, turn the scale in favor of Woodard. The application of Beardsley and Oaks will be denied.

E. M. Woodard 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

A public hearing having been held in the above entitled applications, the matters having been 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 of an automotive stage service for the transportation of passengers, baggage and express between San Diego and Julian and intermediate points via La Mesa, El Cajon, Santee, Lakeside, Foster, Fernbrook, Ramona, Ballena, Witch Creek, Santa Ysabel and Wynola, and

IT IS HEREBY ORDERED that a certificate of public convenience and necessity for such service be and it hereby is granted to E. M. Woodard, subject to the following conditions:

