

Decision No. 25692.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

In the Matter of the Application of PEERLESS STAGES, INC. to (1) reroute a portion of its service between San Jose and Los Gatos to enable it to handle passengers, baggage, and express to and from Saratoga and intermediate points; and (2) to readjust its fare structure through the elimination of certain fares and the addition of other fare points and other fares, and (3) to establish rules and regulations in relation thereto.

ORIGINAL

Application No. 18033.
(Supplemental)

Harry A. Encell, for Applicant Peerless Stages.
H. C. Lucas, L. G. Merkel, T. Finkbohner, for
Pacific Greyhound Lines, Protestants.
E. J. Foulds, for Peninsular Railway, Interested
Party.

BY THE COMMISSION:

O P I N I O N

In the above entitled proceeding Peerless Stages, Inc. seeks authority to make certain changes in its fare structure and method of operation affecting that portion of its system between San Jose and Los Gatos and intermediate points, both direct and via Saratoga.

A public hearing was conducted in this proceeding before Examiner Hunter at Palo Alto on February 28, 1933.

The Commission has heretofore issued its Preliminary Opinion and Order in this proceeding by ex parte Decision No. 24629, dated March 28, 1932, wherein applicant was granted authority to make certain readjustments in its routes and time schedules affecting the operation between San Jose and Los Gatos, via

Campbell. The proposed changes in fares, however, were withheld for determination after a public hearing. At the public hearing the fare changes proposed in the original application were considered, together with the request outlined in the supplemental application for a certificate of public convenience and necessity to operate a stage line between San Jose and Los Gatos, via Saratoga, and also to make a slight change in the route between San Jose and Campbell.

The Peninsular Railway Company has recently received permission from the Interstate Commerce Commission (Finance Docket No. 9695), to discontinue rail operation on a number of its lines, one of which is the line between San Jose and Los Gatos, via Saratoga, over which applicant proposes herein to establish a bus service to carry passengers and express. The record shows that the Peninsular Railway Company proposes to discontinue operation on this rail line March 11, 1933. When this service is discontinued there will be no direct service between Saratoga and San Jose, a distance of 10.8 miles. The record shows that with the abandonment of rail service, the district between Saratoga and the intersection of Stevens Creek Road and Saratoga Avenue (Meridian Junction), a distance of 5.8 miles, will be wholly without public transportation. This section is sparsely developed with homes and small ranches and many witnesses testified as to the need for public transportation for children attending schools in both Los Gatos and San Jose, also a need for transportation to reach the main trading center at San Jose. Applicant proposed to operate seven trips daily, except Sundays and holidays, between Los Gatos and San Jose, via Saratoga, and six in the reverse direction. On Sundays and holidays the plan provides for five trips in each direction on this line.

Only two objections were raised to the granting of the original application and the supplement thereto. One was registered by the Peninsular Railway Company urging that Peerless Stages, Inc., be restricted from doing local business on that

portion of its proposed new line between San Jose and Los Gatos, via Saratoga, for a distance of two miles along Stevens Creek Road to the east of Meridian Junction. This restriction was urged in connection with the application of the Peninsular Railway Company (Application No. 18632), seeking a certificate to operate a passenger bus line over this portion of the route along Stevens Creek Road. In view of the fact that these two applications are being considered at the same time and both applicants propose to operate over the same line, for a distance of about five miles through a well developed section, on approximately the same schedule, it would appear to be in public interest to permit both companies to perform local service on this portion of the line and it is urged that the schedules of the two carriers be staggered so as to afford the district the best service. The other objection was presented by the Pacific Greyhound Lines, Ltd., contending that applicant should not be permitted to do local passenger or express business on its proposed route between Los Gatos and Saratoga, a distance of 4.4 miles. In support of this objection Pacific Greyhound Lines, Ltd., points out that it is now performing such local service between these two points and plans to increase the operation from four to five round trips daily, to become effective upon the abandonment of rail service between these two points by the Peninsular Railway Company. Furthermore, Pacific Greyhound Lines, Ltd., alleges that it stands ready to further increase this service if traffic warrants. This offer carries with it adequate transportation for school children. The record shows that the Pacific Greyhound Lines, Ltd., does not object to applicant carrying passengers to and from points on the proposed line between Los Gatos and Saratoga, provided they originate at or are destined to points beyond this section of the line. It appears that the objection of Pacific Greyhound Lines, Ltd., to restrict applicant from doing local business between Los Gatos and Saratoga is reasonable and will

be provided for in the accompanying order.

With respect to fare changes, applicant proposes to increase the minimum fare from 5¢ to 10¢, as well as other direct increases. The proposed change in fare structure also provides for certain restrictions which result in a further increase. Applicant presented statements showing results of operation during the past two years which indicate that the company suffered an annual net operating loss of approximately \$25,000. No objection was raised to these proposed increases in fares or applicant's request to make certain changes in its method of operation as applied for herein.

After carefully considering the record in this proceeding it is concluded that this application and the supplement thereto should be granted with the restriction as to local operation between Los Gatos and Saratoga as set forth above.

Peerless Stages, Inc., 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.

O R D E R

A public hearing having been held and the matter being under submission, the Railroad Commission of the State of California hereby declares that public convenience and necessity require the operation by Peerless Stages, Inc., of an automotive passenger stage service for the transportation of passengers, baggage and express between Los Gatos and San Jose, via Saratoga, Meridian Junction and intermediate points, except as hereinafter specifically restricted and limited, over the following described routes:

ROUTE A:

Operating between San Jose and Los Gatos, Santa Clara County, and operating along the following route. From the rear of the San Jose Depot, located at 25 South Market Street, near Santa Clara Street, thence north to Santa Clara Street, thence easterly along Santa Clara Street to Market Street, thence southerly along Market Street to San Carlos, thence westerly along San Carlos Street and Stevens Creek Road to Saratoga Avenue (Meridian Corner) thence southwesterly along Saratoga Avenue to the Town of Saratoga, thence southerly along Saratoga-Los Gatos Road to Main Street, City of Los Gatos. Busses completing loop movement will continue easterly along Main Street to San Jose-Los Gatos Highway and return to San Jose via existing routes and as shown in green on Exhibit No. 1 attached to and made a part of supplemental application.

ROUTE B:

Operating between San Jose and Los Gatos, Santa Clara County, and operating along the following route. From the rear of the San Jose Depot at 25 South Market Street to the intersection of Willow Street and Lincoln Street, over existing route, thence west on Willow Street to Meridian Road, thence south on Meridian Road, thence west on Hamilton Avenue and thence continue over present route to Los Gatos.

ROUTE C:

Operating between San Jose and Los Gatos over existing route from the rear of 25 South Market Street to the intersection of Willow Street and Lincoln Street, thence southerly along Lincoln Street to Minnesota Street, thence west on Minnesota Street to Hicks Street, thence south on Hicks Street to Hamilton Avenue and thence along present route to Los Gatos and as shown in lavender on Exhibit No. 1 attached to and made a part of the supplemental application.

ROUTE D:

Alternate route in the vicinity of Campbell, Santa Clara County. Between the intersection of Campbell Avenue and Union Avenue, Town of Campbell and the intersection of Union Avenue and San Jose-Los Gatos Highway, operating along Union Avenue and as shown in brick red on Exhibit No. 1 attached to and made a part of the supplemental application.

IT IS HEREBY ORDERED that a certificate of public convenience and necessity for such service be and the same is hereby granted to Peerless Stages, Inc., subject to the following conditions:

- (1) No passenger, baggage or express shall be transported locally between Los Gatos and Saratoga or intermediate points.
- (2) Applicant shall operate over Routes C and D hereinbefore described only when traffic conditions warrant such operation.

- (3) Applicant shall file its written acceptance of the certificate herein granted within a period of not to exceed fifteen (15) days from the date hereof.
- (4) Applicant shall file, in triplicate, and make effective within a period of not to exceed thirty (30) days from the date hereof, on not less than five (5) days' notice to the Commission and the public, a tariff or tariffs constructed in accordance with the requirements of the Commission's General Orders and containing rates and rules shown in the exhibits filed at the hearing in said matter in so far as they conform to the certificate herein granted.
- (5) Applicant shall file, in duplicate, and make effective within a period of not to exceed thirty (30) days from the date hereof, on not less than five (5) days' notice to the Commission and the public, time schedules covering the service herein authorized substantially in conformity with the time schedules attached to the supplemental application as Exhibit No. 3 and in a form satisfactory to the Commission.
- (6) 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.
- (7) No vehicles 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.
- (8) Applicant is authorized to turn its motor vehicles at termini, either in the intersection of the streets or by operating around a block contiguous to such intersection in either direction and to carry passengers, as traffic regulations of the municipality may require.

IT IS HEREBY FURTHER ORDERED that Peerless Stages, Inc., be and it is hereby authorized to publish the rates, rules and regulations as shown in Exhibits Nos. 1, 2, 3 and 4, filed at the hearing, in accordance with the Commission's rules on not less than five (5) days' notice to the Commission and the public.

The authority herein granted shall become effective on the date hereof.

Dated at San Francisco, California, this 7th day of March, 1933.

C. Cleaver
Leon C. Whiteley
W. A. Carr
W. B. Higgins
W. H. ...
 Commissioners.