

Decision No. 25694.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

In the Matter of the Application of
PENINSULAR RAILWAY COMPANY for a
certificate of public convenience
and necessity for the transporta-
tion of passengers by passenger
stage between Palo Alto and San Jose,
via Los Altos, Monta Vista and Cupert-
tino and intermediate points.

ORIGINAL

Application No. 18632.

E. J. Foulds, for Applicant.

Harry A. Smith, for Saratoga Men's
Club and Saratoga Grammar School District.

T. D. Landels and Arthur T. Wyman, for
Los Altos Men's Club.

BY THE COMMISSION:

O P I N I O N

In this proceeding the Peninsular Railway Company seeks a certificate of public convenience and necessity to operate a passenger stage between Palo Alto and San Jose, via Los Altos, Monta Vista, Cupertino and intermediate points.

A public hearing was conducted by Examiner Hunter at Palo Alto on February 28, 1933.

Applicant recently secured permission from the Interstate Commerce Commission (Finance Docket No. 9695), to discontinue operation on a number of its rail lines, which it proposes to effect March 11, 1933. The proposed passenger stage operation is a substitute form of transportation for one of the most important of these lines to be discontinued from a standpoint of volume of traffic carried. The total length of the proposed line

is 22.4 miles. Between Palo Alto and Monta Vista, a distance of 12.3 miles, this operation will traverse the same district as does Southern Pacific Company's line between Palo Alto and Los Gatos, passing through the residential sections of Mayfield and Los Altos. The east end of the line terminates in the business center of San Jose. Between San Jose and the intersection of Stevens Creek Road and Saratoga Avenue (Meridian Junction), a distance of 5.5 miles, the operation proposed herein follows the same line as does the proposed operation of the Peerless Stages, Inc., applied for in Supplemental Application No. 18033.

A considerable portion of this proposed duplication of service is along Stevens Creek Road. Applicant proposes to operate only one bus on this line, providing five round trips daily except Saturdays and Sundays, four on Saturdays and three on Sundays. The schedule of operation set forth in the application is to be considered as tentative, subject to change so as to best suit the patrons of the line. One determining factor on schedules is a connection with Southern Pacific Company's train at Palo Alto as the bus will honor tickets on Southern Pacific Company's lines. Applicant urged as a condition to establishing passenger stage operation over the route proposed herein that the operation be limited to one bus until business justifies additional service and that the Peerless Stages, Inc., in its Supplemental Application No. 18033 be restricted from performing local service on the proposed new parallel line along Stevens Creek Road, a distance of about two miles. Applicant estimates that with these restrictions the total annual earnings will be \$5,700 to Peninsular Railway Company and \$3,600 to Southern Pacific Company, or a total of \$9,300. The estimated cost of performing the service is \$9,500 per year.

The primary objection to applicant's proposed operations was directed to infrequent service and a suggested change in the route near the Palo Alto end. With one bus in operation the minimum headway is one hour and forty minutes as the scheduled time of operation over the line is 50 minutes. It is apparent that such an operation will work somewhat of a hardship on at least a portion of the traveling public who have heretofore enjoyed rail service along this line with thirty round trip operations per day. Commuters between San Francisco and the section between Palo Alto and Monte Vista are afforded direct rail service on Southern Pacific Company's lines and it is understood that additional stops will be provided on the steam line, if necessary, to accommodate commuters in this section. With respect to a modification in the route, it was urged that the line be changed to pass through a section known as Neal, located on the electric line approximately three miles southeast of Palo Alto. Applicant stated that consideration had been given to such a plan and it had been concluded that the small amount of business to be offered would not justify the additional mileage over roads less desirable to operate on than the route proposed herein.

After considering the evidence in this proceeding it is concluded that the application should be granted, as originally applied for, without restriction as to headway or restricting the Peerless Stages, Inc., from doing local business along its proposed new line on Stevens Creek Road, as requested in Supplemental Application No. 18033. If applicant accepts this permissible order it should operate such service as is reasonably required to meet public convenience and necessity, provided such service can be justified from an earning standpoint. The reason for not restricting Peerless Stages, Inc., from performing local

service on its proposed line along Stevens Creek Road is that the plans of the two carriers contemplate establishing a parallel service from the business center of San Jose west for a distance of about 5.5 miles, the westerly portion of which is along Stevens Creek Road. The Peerless Stages, Inc., now operates local service over the easterly 3.5 miles of this line and since both applicants are applying to operate a parallel service over this new section for a distance of two miles on approximately the same headway, each should enjoy the right to do local business through this well developed section. It is urged that the schedules of the two carriers be staggered so as to afford this district the best service.

Peninsular 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.

ORDER

A public hearing having been held and the matter having been submitted,

The Railroad Commission of the State of California
Hereby Declares that public convenience and necessity require the operation by Peninsular Railway Company, a corporation, of an automotive passenger stage service for the transportation of passengers, baggage and express between the Cities of San Jose and Palo Alto, via Los Altos, Monta Vista, Cupertino and all intermediate

points, except as herein specifically restricted and limited, over the following described route:

Commencing at Bassett and Market Street, City of San Jose; thence southerly along Market Street to San Carlos Street; thence westerly along San Carlos Street to the city limits of San Jose; thence continuing westerly along Stevens Creek Road to its intersection with Grant Road at Homestead Road; thence northerly along Grant Road to Fremont Road; thence northerly along Fremont Road to Santa Maria Road; thence along Santa Maria Road to First Street, Los Altos; thence northerly along First Street to Edith Avenue; thence easterly along Edith Avenue to San Antonio Avenue; thence northerly along San Antonio Avenue to the State Highway (El Camino Real); thence northwesterly along the State Highway to its intersection with University Avenue, Palo Alto; thence easterly along University Avenue to terminus at Southern Pacific Company's station, Palo Alto. The return trip is to be made over the same roads and streets with the exception that at Market and Julian Streets, San Jose, the route will be easterly along Julian Street to Little Market Street; thence southerly along Little Market Street to Bassett Street or the point of beginning.

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

- (1) No passengers, baggage or express shall be transported on said automotive passenger stage line between:
 - (a) Palo Alto and Los Altos Junction (El Camino Real and San Antonio Avenue), on the one hand, and the territory between a point immediately east of the intersection of San Carlos Street and Delmar Avenue, and the present Southern Pacific Company's main line station at San Jose, on the other hand;
 - (b) Between Palo Alto and Los Altos Junction, on the one hand, and Cupertino, on the other hand;
 - (c) South city limits of Palo Alto, on the one hand, and Los Altos Junction, on the other hand,

excepting, however, passengers holding Southern Pacific Company's railroad

tickets which may be honored on said
automotive stage line applying to or
from points beyond San Jose or Palo
Alto.

- (2) Applicant shall file its written acceptance of the certificate herein granted within a period of not to exceed fifteen (15) days.
- (3) 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 which, in volume and effect, shall be identical with the rates and rules shown in the exhibit attached to the application in so far as they conform to the certificate herein granted.
- (4) 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, in a form satisfactory to the Railroad Commission.
- (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 leased by it under a contract or agreement on a basis satisfactory to the Railroad Commission.
- (7) 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

(7) Continued)

as traffic regulations of the municipality
may require.

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

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

C. J. Sewell
Leon Overhill
M. A. Carr
W. B. Hanning
W. H. ...

Commissioners.