

ORIGINAL *copy*

Decision No. 10973

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

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In the Matter of the Application of )  
 VIC PONCELET for certificate of pub- )  
 lic convenience and necessity to op- : Application No. 7990  
 erate passenger and express service )  
 between Gilroy and Gilroy Hot Springs. )

In the Matter of the Application of )  
 GILROY GARAGE for a certificate of )  
 public convenience and necessity to : Application No. 8002  
 operate passenger service between )  
 Gilroy and Gilroy Hot Springs. )

Devlin and Brookman by Douglas Brookman  
for Applicant in No. 7990.

O. H. Jamm for Applicant in No. 8002

Devlin and Brookman by Douglas Brookman  
for Protestant Vic Poncelet,  
in No. 8002.

BY THE COMMISSION,

O P I N I O N

In the above entitled proceedings Vic Poncelet and the Gilroy Garage, a corporation, have made applications for certificates of public convenience and necessity authorizing the operation of automobile stage service between Gilroy and Gilroy Hot Springs and intermediate points.

A public hearing on the above entitled proceedings was held before Examiner Rddy on August 18th, 1922, at Gilroy at which time the matters were submitted and are now ready for decision.

Both applicants herein operate garages in the City of Gilroy. Applicant Vic Poncelet on June 28th, 1922, filed an application for a certificate of public convenience and necessity authorizing him to transport passengers and express matter between Gilroy and Gilroy Hot Springs, stating in effect that he had secured the contract for the transportation of United States Mail between the two points hereinabove mentioned and in connection therewith was obliged to operate passenger stage service daily, except Sundays between April 1st and November 1st of each year, and to also operate two round trips per week during the winter months.

Gilroy Garage, a corporation, it appears has been operating a passenger stage service over the route covered by the applications herein for sometime last past in violation of the provisions of Chapter 213, Statutes of 1917, as amended. The latter named applicant heretofore held the contract for the transportation of mail over this route, which contract expired on June 30th, 1922, at which time it was awarded to applicant Poncelet.

It appears that some years ago the Railroad Commission granted a certificate of public convenience and necessity to a co-partnership to operate passenger stage service between Gilroy and Gilroy Hot Springs. This certificate provided that it could not be transferred nor assigned, nor service discontinued without the written authorization of the Railroad Commission. However, it appears that the co-partnership sold their garage business in Gilroy and in connection with such sale also purported to transfer their certificate of public convenience and necessity, but no application was ever made to the Railroad Commission for an order authorizing said

transfer nor inquiries made as to the necessities for such an order.

It appears from the evidence submitted in this proceeding that there are seven or eight ranches intermediate to Gilroy and the Springs, the Springs being fourteen miles distant from Gilroy, that very little, if any, service is rendered to such ranches as practically all of them own their own machines. The principal service consists of transporting guests to or from the Springs, which are open from April 1st or 15th to November 1st of each year.

The only evidence submitted other than the testimony presented by applicants was by Mr. W. J. McDonald, owner and operator of the Gilroy Hot Springs. He testified that he had operated such resort for a period of eighteen years and that there was unquestionably a necessity for the establishment of the automobile stage line to care for guests who do not operate their own automobile as there are no other means of public transportation between the Southern Pacific station at Gilroy and his resort.

The Gilroy Garage does not intend to give service the year around, but only during such period as the Springs are open. Mr. McDonald testified that there was no necessity insofar as he was concerned for service during any period of time which the Springs were not open to accommodate guests. As the evidence shows, however, there are a number of ranches located intermediate to Gilroy and the Springs and although their traffic requirements are small, nevertheless, such service is patronized during the winter months.

Both applicants propose to charge a round trip rate, which is the same, for passengers, although the rate for transportation

of baggage as proposed by Gilroy Garage is higher than that proposed by applicant Poncelat. Both applicants have unquestionably sufficient equipment to adequately care for traffic requirements, and while the Commission has consistently held that the possession of United States Mail contract is not in itself sufficient justification for the granting of a certificate authorizing the transportation of passengers or freight over the route covered by said mail contract, we are of the opinion, in view of the fact that the Poncelat application was filed first; that the Gilroy Garage, a corporation, had been for sometime last past operating illegally over this route; and in further view of the fact that both applicants offer practically identical rates, although applicant Poncelat does offer a more extended service, that a certificate should be granted to applicant Vic Poncelat as there is absolutely no showing that public necessity requires the operation of two separate stage lines over this route.

#### ORDER

A public hearing having been held in the above entitled proceedings, evidence 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 by Vic Poncelat of an automobile stage line as a common carrier of passengers and express between Gilroy and Gilroy Hot Springs, and intermediate points, and a certificate of public convenience and necessity be, and the same hereby is granted, subject to the following conditions:

4.

1. That applicant Vic Poncelat shall file within a period of not to exceed ten (10) days from date hereof his written acceptance of the certificate herein granted; shall file, in duplicate, within a period of not to exceed twenty (20) days from date hereof, tariff of rates and time schedules, such tariff of rates and time schedules to be identical with those filed as Exhibits "A" and "B" attached to the application herein; and shall commence operation of the service herein authorized within a period of not to exceed thirty days from date hereof.

2. That 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 Poncelat 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.

IT IS HEREBY ORDERED that application No. 8002 be, and the same hereby is denied.

Dated at San Francisco, California, this 7<sup>th</sup> day  
~~of August,~~ <sup>September</sup> 1922.

*H. B. Burdige*

*Dwight Martin*

*J. F. Teneau*

Commissioners