

Decision No. 111187

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

C. A. SCHELGETER and C. C. SCHELGETER,  
doing business under the name of  
MARIPOSA AUTO STAGE COMPANY,

Complainants,

-vs-

MADERA-YOSEMITE BIG TREES AUTO  
COMPANY, a corporation, and EDWIN T.  
HUFFMAN, Manager of Madera-Yosemite  
Big Trees Auto Company,

Defendants.

Case No. 1790.

Devlin & Brookman, by Douglas Brookman, and  
L. A. Milburn, for Complainants.

Oliver Dibble for Defendants.

BY THE COMMISSION:

O-P-I-N-I-O-N

C. A. Schlageter and C. C. Schlageter, partners in  
business and operating under the fictitious name of Mariposa  
Auto Stage Company, complain of defendants and allege that on  
or about July 1, 1922, defendants commenced the operation of  
regular service in the carriage by motor stage of passengers  
and parcels between Merced and Mariposa over the route follow-  
ed by complainant between such communities; and also commenced  
service to and from the intermediate point of Mormon Bar on  
said route; that such operation is done under the direction of  
defendant, Huffman; that neither defendant, Madera-Yosemite  
Big Trees Auto Company, or defendant, Huffman, has any right  
to continue such operation and that by such operation being  
continued complainants are unlawfully deprived of business

to which they are entitled and which would be obtained except for the alleged unlawful operation of defendants. Complainants pray for an order of the Railroad Commission finding that defendants have no right to operate over the route referred to and directing the discontinuance of such alleged illegal operation.

Defendants filed their answer herein denying the material allegations of the complaint.

A public hearing on this complaint was conducted by Examiner Handford at Merced, the matter was duly submitted following brief filed by defendant's counsel, and is now ready for decision.

It appears from the undisputed testimony of witnesses for complainants that defendant, Madera-Yosemite Big Trees Auto Company, never established any service between Merced and Mariposa as a local service, prior to defendant having secured a United States mail contract and operation in connection with such contract having been commenced in the month of July, 1922. Mormon Bar is an intermediate point on the route between Merced and Yosemite, and all the stages of defendant company when operating during the seasonal schedule pass through the locality known as Mormon Bar. At one time, when the so-called Cathay Valley route was being followed, in the years 1915 or 1916, stages of defendant company operated through Mariposa, but upon the completion of a new road, Mariposa was eliminated as an intermediate point on the through route.

Complainants, operating under the authority conferred by a certificate of public convenience and necessity issued by the Railroad Commission on March 2, 1920 (Decision No. 7207 on Application No. 5052) have continuously operated a schedule, daily except Sunday, during the entire year. No complaint appears

against the character of service rendered or that any scheduled trips have been omitted.

Defendants since acquiring the mail contract have established a daily local service of one round trip per day, except Sundays, between Merced and Mariposa, carrying the United States mail and also such passengers as may offer.

It appears, and is so stipulated in this proceeding, that the operative rights claimed by the Madera-Yosemite-Big Trees Auto Company are those which were being operated in good faith on May 1, 1917, which was the date specified by the legislature in Chapter 213, Laws of 1917, as that upon which operators in good faith were not required to secure a certificate of public convenience and necessity from the Railroad Commission nor permits from the governing bodies of the various political subdivisions through which a route passed. The record shows that this defendant was operating a seasonal service, and that on May 1, 1917, Merced was the westerly terminus and the route followed was the highway as same then existed and was completed, through Cathay Valley, into and through Mariposa and thence on to the Yosemite Valley. Later, as the highway was completed or as other roads offered a better route, the route was changed and although stages of the defendant company have always passed through Mormon Bar and still continue to do so, on the route to Yosemite Valley, the town of Mariposa was not on the direct route of defendant after a change was made in the road followed by defendant in the year 1918.

This defendant came under the jurisdiction of this Commission by reason of the statutory law, as an operator entitled to operate over a regular route and between fixed termini by reason of having been operating in good faith, as of May 1, 1917, the defendant being classed as a seasonal operator between

April and October 15th of each year. According to tariffs filed with the Railroad Commission Mariposa was a point served on the route to Yosemite, the first reference to such tariff point being found in Local Passenger Tariff No.1 filed by Yosemite Stage and Turnpike Co. in connection with Madera-Yosemite-Big Tree Auto Company issued April 30, 1917 and effective May 1, 1917; Mariposa again appears as a tariff point in Local Passenger Tariff 1-A issued by Madera-Yosemite-Big Tree Auto Co. in connection with Yosemite Stage and Turnpike Co., issued March 30, 1918 and effective May 1, 1918 (C.R.C.No.4, cancelling C.R.C. Nos. 1, 2 and 3); also in Local Passenger Tariff No. 2-A issued by Madera-Yosemite-Big Tree Auto Co. in connection with Yosemite Stage and Turnpike Co., issued April 29, 1919 and effective May 1, 1919; (C.R.C. No.5, cancelling C.R.C. No.4); also in Local Passenger Tariff No. 5-A issued by Madera-Yosemite-Big Tree Auto Co. in connection with Yosemite Stage and Turnpike Co. issued April 15, 1922 and effective May 1, 1922 (C.R.C. No.8 cancelling C.R.C. No.7) and in this tariff Mormon Bar appears as an intermediate point carrying the same rate as shown for Mariposa. No time schedules heretofore filed with this Commission have shown either Mariposa or Mormon Bar as intermediate points.

It is clear from the testimony that the operative rights of defendant, Madera-Yosemite-Big Tree Auto Company, comprise nothing more than were possessed when this company was required to place itself under the jurisdiction of the Commission by the statutory enactment (Chapter 213, Statutes of 1917) and such operative rights were seasonal in character covering the term between April and October of each year. To expand such rights it would be necessary for <sup>the Company</sup> to secure a certificate of public convenience and necessity and make the requisite showing enabling

the Commission to issue such declaration by its order. The rights further covered the exact route then followed by the defendant's operation, and it is apparent that defendant has, practically at its own option, changed its route each season, or in the midst of a season, if roads were opened or completed offering a better mode of travel. By such action, and without the authorization of the Commission as to road diversions, the service formerly given through the town of Mariposa direct, became an intermittent and sporadic service, given on telephone call or otherwise, but the direct route was through Mormon Bar, and such route is now operated. Defendant has no authority to serve the community at Mariposa, by reason of unauthorized suspension of service to and through such point, and the fact of the possession by defendant of a contract for the carriage of United States mail does not authorize defendant to conduct in connection with such contract an all-year passenger, express or parcel service, which is an additional and unauthorized service and not being conducted by defendant in good faith, or at all, on May 1, 1917.

Defendant, Madera-Yosemite-Big Tree Auto Company, should promptly, by appropriate application, clear up the present cloud on its operative rights resulting from arbitrary and unauthorized changes in the "regular route" as same was being operated when this defendant was required by statutory enactment to submit its operation to the jurisdiction of the Railroad Commission.

O-R-D-E-R

A public hearing having been held on the above entitled proceeding, the matter having been duly submitted following brief of defendant's counsel, and the Commission now being fully advised,

IT IS HEREBY ORDERED that defendant, Madera-Yosemite-Big Trees Auto Company, a corporation, immediately cease the operation of an auto stage line as a common carrier of passengers, express, packages or freight, locally between Merced and Mariposa and points intermediate thereto. That local service between Merced and Mariposa, on the through stages of applicant is hereby prohibited, the requirements of the public being satisfactorily served by the existing authorized stage line between these points, and defendant having forfeited its right to serve Mariposa as an intermediate point in connection with its through service between Merced and Yosemite Valley by reason of unauthorized diversion from the regular route existing as of May 1, 1917. The right to serve Mormon Bar as an intermediate point by through stages operated between Merced and the Yosemite Valley has been established by the evidence herein, and such point may continue to be served by the defendant in connection with its through stages and during the seasonal operation between April and October of each year.

IT IS HEREBY FURTHER ORDERED that this complaint insofar as it refers to defendant, Edwin T. Huffman, be and the same hereby is dismissed.

Dated at San Francisco, California, this 9<sup>th</sup> day of January, 1923.

H. B. Brundage  
James Martin  
C. Deaver

J. T. Whittey  
Commissioners.