

Decision No. _____

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

In the Matter of the Application
of SANTA CLARA VALLEY AUTO LINE
for an order declaring that pub-
lic convenience and necessity re-
quire the operation by Petitioner
of an automobile stage service be-
tween, San Francisco and Palo Alto.)

Application No. 3159.

Harry G. McKannay for Santa Clara Valley Auto Line.

J. E. McCurdy for Peninsula Rapid Transit Company,
protestant.

Bishop and Bahler, by H. M. Wade, for California
Stages Company, protestant.

O. M. Spangler for Union Line, protestant.

H. M. Wade for Otto Rinckert and Floyd Hanchett,
protestants.

THELEN and GORDON, Commissioners.

OPINION.

Petitioner, a partnership consisting of George A. Hensley and Alexander Russell, asks the Railroad Commission to make its order declaring that public convenience and necessity require the operation by Petitioner of an automobile stage service between San Francisco and Palo Alto, Santa Clara County.

Public hearings were held herein on September 7 and 21, 1917, in San Francisco.

The petition herein is filed under the provisions of Chapter 213, Laws of 1917, approved May 10, 1917, and effective August 27, 1917 (Sts. 1917, p. 330), providing for the supervision and regulation of the transportation of persons and property for compensation over any public highway by automobiles, jitney busses, auto trucks, stages and auto stages.

Section 1 of Chapter 213 defines the transportation companies which are subject to the Act, to include all corporations, associations and persons owning or operating any automo-

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bile, jitney bus, auto truck, stage or auto stage, used in the transportation of persons or property as a common carrier for compensation over any public highway in this State, between fixed termini, or over a regular route and not operating exclusively within the limits of an incorporated city or town or of a city and county.

The words "between fixed termini or over a regular route" are defined to mean the termini or route between or over which any transportation company usually or ordinarily operates any automobile, jitney bus, auto truck, stage or auto stage, even though there may be departures from said termini or route, whether such departures be periodic or irregular. Whether or not any automobile, jitney bus, auto truck, stage or auto stage is operating "between fixed termini or over a regular route" within the meaning of the Act, is made a question of fact on which the finding of the Railroad Commission is made final.

Section 2 provides that no automobile, jitney bus, auto truck, stage or auto stage for the transportation of persons or property for compensation on any public highway in this State shall be operated except in accordance with the provisions of the Act.

Section 3 provides that no automobile, jitney bus, auto truck, stage or auto stage shall be operated as a common carrier for compensation on any public highway in this State, whether operated exclusively within the limits of an incorporated city or town or otherwise, between any fixed termini between which or over ~~which~~ any route over which it was not being actually operated in good faith on May 1, 1917, unless a permit has been secured from each county and each incorporated city or town within or through which such operations are carried on. The section provides in detail the procedure which must be followed before such permit may be granted.

Section 4 vests the Railroad Commission with power and authority to supervise every "transportation company" in the State, as defined by the Act. The Railroad Commission is given power, by general order or otherwise, to prescribe rules and regulations applicable to any and all transportation companies. The orders, rules and regulations of the Railroad Commission shall take precedence over any ordinance or permit of any incorporated city or town, or county.

Section 5 provides for the granting by the Railroad Commission of certificates of public convenience and necessity and reads as follows:

Sec. 5. "No transportation company shall hereafter exercise any right or privilege under any franchise or permit hereafter granted by any incorporated city or town, city and county, or county, without having first obtained from the Railroad Commission a certificate declaring that public convenience and necessity require the exercise of such right or privilege, but no such certificate shall be required of any transportation company as to the fixed termini between which or the route over which it is actually operating in good faith on May 1, 1917. A transportation company may apply for a certificate of public convenience and necessity in advance of securing any franchise or permit for the use of the public highways constituting the proposed route. The Railroad Commission shall have power, with or without hearing, to issue said certificate as prayed for, or to refuse to issue the same, or to issue it for the partial exercise only of said privilege sought, and may attach to the exercise of the rights granted by said certificate such terms and conditions as, in its judgment, the public convenience and necessity may require.

"The Railroad Commission may at any time for a good cause suspend and upon notice to the grantee of any certificate and opportunity to be heard revoke, alter or amend any certificate issued under the provisions of this section."

Section 6 provides for the control by the Railroad Commission of the issue of capital stock, bonds, notes and other evidences of indebtedness of "transportation companies".

Section 7 provides that the procedure before the Railroad Commission and on the review of the Railroad Commission's decisions, as prescribed by the Public Utilities Act, shall be applicable to the provisions of said Chapter 213.

Section 8 prescribes the penalties which shall accrue for failure to comply with the requirements of the Act or of any order, decision, rule, direction, demand or regulation of the Railroad Commission made under the Act.

The Act contains other provisions to which it is not necessary here to refer.

Petitioner proposes to operate an automobile stage service for the transportation of passengers and express packages between San Francisco and Palo Alto and intermediate points. Petitioner's route is to extend from San Francisco south, through the cities or towns of Visitacion, South San Francisco, San Bruno, Burlingame, San Mateo, Belmont, San Carlos, Redwood City and Menlo Park to Palo Alto. Petitioner intends to operate from San Francisco via the Bay Shore Route through Visitacion Valley to the State Highway, at a point north of San Mateo, coming into the State Highway at a point immediately south of San Bruno, and thence along the State Highway to Palo Alto. Petitioner's northern terminus is to be on Fifth Street, between Market and Mission Streets, San Francisco, and the southern terminus at the Larkin Hotel, in Palo Alto.

The equipment proposed to be used consists of six automobiles of various makes, as follows:

Name	Seating Capacity	Body Type	Horse Power	State License Number
White	27	Limousine Bus	30	155525
Cadillac	10	"	40	190479
Renault	27	"	35-45	95118
Ford	8	"	20	190023
Oldsmobile	8	"	40	68962
Ford	10	Stage Body	20	263704

The time schedule on which Petitioner proposes to operate is a daily schedule, including Sundays, leaving San Francisco for Palo Alto every hour from 8:15 A. M., to 6:15 P.M., and leaving Palo Alto for San Francisco every hour from 8:15 A.M.

to 6:15 P.M. Petitioner expects to make the run of 31 or 32 miles between San Francisco and Palo Alto in approximately one and one-half hours.

The fares to be charged by Petitioner are as follows:

Between Stations	:San Francisco	:Visita-cion	:South San Francisco	:San Bruno	:Bur-lingame	:San Mateo	:Belmont	:San Carlos	:Redwood City	:Menlo Park	:Palo Alto
San Francisco											
Visitation	\$.10										
South San Francisco	.15	.10									
San Bruno	.15	.10	.05								
Burlingame	.20	.15	.10	.10							
San Mateo	.25	.20	.15	.15	.05						
Belmont	.30	.25	.20	.20	.15	.10					
San Carlos	.35	.30	.25	.25	.20	.15	.05				
Redwood City	.40	.35	.30	.30	.25	.20	.10	.05			
Menlo Park	.45	.40	.35	.35	.30	.25	.15	.10	.05		
Palo Alto	.50	.45	.40	.40	.35	.30	.20	.15	.10	.05	

No reduction for round trip.
No commutation fares.

Mr. George A. Hensley, appearing for Petitioner, testified that Petitioner desires to enter into the business of operating between San Francisco and Palo Alto, entirely irrespective of the business of Camp Fremont at Menlo Park. He testified that petitioner proposes to make a stop on the State Highway at Camp Fremont but that no attempt will be made to run up into the camp.

Protests against the granting of the petition herein were filed by Peninsula Rapid Transit Company, California Stages Company, The Union Line and a number of small operators.

Peninsula Rapid Transit Company has operated an automobile stage service for the transportation of passengers and express packages between San Francisco and Palo Alto since November 1, 1915. Prior to the burning of its equipment, hereinafter referred to , the Peninsula Company operated twelve one and one-half ton motor busses on White chassis with specially constructed coach bodies,

each bus seating twenty-six passengers and the driver. The seats in the busses were heavily upholstered with leather, the windows were all plate glass and each bus contained a special smoking compartment.

The Peninsula Company pioneered in the automobile stage business from San Francisco down the San Mateo peninsula and enjoyed considerable financial prosperity until July 21, 1917, on which day all the Company's busses except one were burned. Within twenty-four hours, the Company had made arrangements to lease temporarily enough automobiles to maintain its service and had placed orders for thirteen new White chassis to replace those which had been destroyed. Four of these chassis have arrived, have had bodies built thereon and are now in service. The Company expects to have the remaining number in service within two months.

The Peninsula Company maintains a regular schedule, busses leaving the terminus at Fifth and Market Streets in San Francisco each day at 6:25 A.M. and half hourly thereafter, until 1:25 A.M. of the next day, and Palo Alto from the terminus at the Hotel Larkin from 7:55 A.M. each day, half hourly until 10:25 P.M. on week days and 11:15 P.M. on Saturdays and Sundays. The Company expects, within the next two months, to establish and maintain a twenty minute service in lieu of the present thirty minute service. The Peninsula Company transports all local passengers who offer themselves for carriage, in addition to through passengers.

In August, 1917, the Peninsula Company carried approximately 50,193 passengers at an average of $33 \frac{1}{3}$ cents per passenger. The Company's busses have a capacity to handle 1700 through passengers daily.

The Peninsula Company has developed its business in competition with the Southern Pacific Company, operating fifty-two trains daily from San Francisco down the San Mateo peninsula, and

the United Railroads of San Francisco, operating a fifteen and twenty minute electric interurban service down the peninsula. The Company carries accident insurance policies of \$5000.00 with a maximum of \$50,000 on each bus.

The Peninsula Company urges that it has educated the public of the San Mateo peninsula to the use of the auto bus as a vehicle of common carrier transportation and that it should now be permitted to enjoy the benefit of the business which it has developed.

California Auto Stages is an association of automobile owners who operate twenty-three or twenty-four touring cars daily between San Francisco and San Jose. Stages leave from No.3 Fifth Street, between Market and Mission Streets, San Francisco, daily twenty minutes after the hour from 8:20 A.M. to 8:20 P.M., for San Jose and return and each fifty minutes after the hour for Palo Alto and return.

The Union Line is an association of automobile owners who operate fourteen touring cars daily between San Mateo and Palo Alto, leaving San Mateo for Palo Alto at 6:55 A.M. and 7:25 A.M., and then every twenty minutes until 6:05 P.M.; after 6:05 P.M. until 9:05 P.M. every hour; and between Palo Alto and San Mateo, leaving Palo Alto at 8 A.M. and every twenty minutes thereafter until 6:55 P.M. and every hour thereafter until 9:45 P.M.

A number of smaller operators operate one or two touring cars each over portions of the route between San Francisco and Palo Alto.

Protestants all urge that the present operators are equipped to handle all the business, that they are giving good service at reasonable rates and that newcomers should not now be permitted to invade the territory in which they have built up the business.

As has been noted, Section 5 of the Act of May 10, 1917 provides in part that no transportation company shall commence operations unless it has first secured from the Railroad Commission a certificate declaring "that public convenience and necessity" require such operation. This is the only test prescribed by the statute. Accordingly, when application is made to the Railroad Commission for an order authorizing automobile stages to operate, the sole test which the Railroad Commission may apply is whether or not the convenience and necessity of the public require that the service as contemplated by petitioner shall be rendered. This is not a question as to whether the public authorities shall extend a favor to existing operators by refusing to permit newcomers to enter the field or whether they ^{shall} extend a favor to the newcomer by permitting him to compete with existing companies. No person has a vested right to engage in a public utility service. The law looks not to the operator but to the convenience and necessity of the public and clearly contemplates that applications of this character shall be decided on the basis of this test alone and not on the basis of the desires or necessities of the operators. Operators may be permitted to enter the field only at such times and in such places and under such conditions as will best subserve the convenience and necessity of the public.

In cases involving the ~~XXXX~~ classes of utilities specified in Section 50 of the Public Utilities Act, the Railroad Commission has consistently held that if the existing utility in a certain territory is giving good service at rates as low as may reasonably be expected and is meeting all the requirements of the public in such territory for additional service, the Railroad Commission will be slow to permit a competitor to enter the field unless the competitor by reason of superior natural advantages or patented processes or other means can give to the public either a service materially

better or rates materially lower. This conclusion is based on the self-evident proposition that a utility which secures all the business in a certain territory is much better able to give good service at reasonable rates and to make the necessary extensions than though its revenues are diminished through competition. It is a well understood maxim that in cases of competition in public utility service, the public, in the long run, generally pays the bills, including the cost of all duplication and other economic waste.

In Pacific Gas and Electric Company vs. Great Western Power Company, Case No. 269, decided on June 18, 1912 (Vol. 1, Opinions and Orders of the Railroad Commission of California, p. 203), the Railroad Commission, at page 209, said:

"It certainly is true that where a territory is served by a utility which has pioneered in the field, and is rendering efficient and cheap service and is fulfilling adequately the duty which, as a public utility, it owes to the public, and the territory is so generally served that it may be said to have reached the point of saturation as regards the particular commodity in which such utility deals, then certainly the design of the law is that the utility shall be protected within such field; but when any one of these conditions is lacking, the public convenience may often be served by allowing competition to come in."

In its decision in the Oro Electric case rendered on April 29, 1913, in Application No. 347 (Vol. 2, Opinions and Orders of the Railroad Commission of California, p. 748), the Railroad Commission, at page 755, said:

"A wise public policy demands that utilities which are doing their full duty to the public shall be treated with fairness and justice and liberality, and that they shall receive such protection to their investments as they may deserve, subject always to the contingency that if another utility can, by reason of superior natural advantages or patented processes or other means, give to the public a service as good as the existing utility, at rates materially less, the interests of the public must be deemed paramount and the new utility must be given an opportunity to serve the public. Under this new state policy, competition between public utilities is not of itself necessarily a good thing. Whether or not it is a good thing depends upon the results which flow from it in each particular case."

The foregoing decisions were rendered under the provisions of Section 50 of the Public Utilities Act containing pro-

visions with reference to certificates of public convenience and necessity almost identical with the provisions of Section 5 of the Act of May 10, 1917.

We see no good reason which would justify a failure to apply to the present situation and to similar situations the principles announced in the Great Western Power Company case and the Oro Electric case, subject, of course, to such qualifications and modifications as may be necessary because of the nature of the business of automobile stages and the conditions under which such business is conducted.

The burden of proof if a petitioner ~~now~~ asks for an order declaring that public convenience and necessity require that he shall commence operations in a territory which is served by an existing utility is upon the petitioner. He must show, affirmatively, that public convenience and necessity require that he shall enter the field. Pacific Gas and Electric Company vs. Great Western Power Company, supra, page 213.

The evidence presented by Petitioner herein to show that public convenience and necessity require that he be permitted to operate between San Francisco and Palo Alto in competition with the existing operators is not persuasive. This evidence consisted principally of testimony showing the number of passengers carried by the busses of Peninsula Rapid Transit Company at the point of loading at Fifth and Market Streets, in San Francisco, and also at a point some sixteen miles south thereof. The testimony shows that at times there are not enough seats to accommodate all the passengers at the San Francisco terminus of the Company, but that at the other points at which observations were made, all the passengers were seated. The testimony, however, shows that the conditions at the present time are abnormal, due partly to the strike on the United Railroads of San Francisco and partly to the

necessity for transporting soldiers temporarily to and from Tanforan. On the other hand, the testimony shows that the service of the existing transportation companies is adequate to handle the entire business which is offered with the exception occasionally of a few passengers during the "rush hours", even under the existing abnormal conditions and that the existing companies are willing and able to provide additional service on their respective lines with the growth of the business.

The situation resulting from the establishment of the military camp at Camp Fremont is not involved in this proceeding, for the reason that Petitioner desires to enter into the business entirely irrespective of this situation and not in reliance thereon.

No complaints against the rates of the existing transportation companies appear in the record herein.

We have no doubt that the traveling public will receive more reliable, safe and comfortable service, at more reasonable rates, from established, responsible companies who are permitted to earn a reasonable return on their investment than by permitting indiscriminate competition which will weaken the financial situation of each of the competitors and which may prevent any of them from growing sound and stable.

We find as a fact from the record herein that public convenience and necessity do not require that ~~pet~~ Petitioner operate an automobile stage service between San Francisco and Palo Alto, as requested in the petition herein, and recommend that the petition be denied.

We submit the following form of order:

O R D E R .

SANTA CLARA VALLEY AUTO LINE having filed herein its petition for an order declaring that public convenience and necessity require the operation by it of an automobile stage service between San Francisco and Palo Alto, public hearings having been held thereon, the matter having been submitted and being now ready for decision,

THE RAILROAD COMMISSION HEREBY FINDS AS A FACT that public convenience and necessity do not require the operation by Petitioner of an automobile stage service, as requested in the petition herein,

Basing its order on the foregoing finding of fact and on the other findings of fact which are contained in the opinion which precedes this order,

IT IS HEREBY ORDERED that the above entitled proceeding be and the same is hereby ~~dismissed~~.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 26th day of September, 1917.

Max Thelen
H. H. Woodland
Alex. Gordon
Edwin O. Edgerton
Frank P. Palmer

Commissioners.