

ORIGINAL

Decision No. 6081.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

In the Matter of the Application of
the UNITED STAGE COMPANY, a co-
partnership, for a certificate of
public convenience and necessity to
operate an auto stage line for the
transportation of persons and property
between Sacramento, California, and
Lake Tahoe, California, and inter-
mediate points.
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Application No. 4271.

Sanborn & Roehl, by A. B. Roehl, for Applicant.

W. A. Latta for Star Auto Stage Association and
A. L. Richardson, Protestants.

BY THE COMMISSION

O P I N I O N

Louis E. Smith, George Zurfluh and Gino Antichi, a co-partnership proposing to do business under the fictitious name of United Stage Company, have petitioned the Railroad Commission for an order declaring that public convenience and necessity require the operation by them of an automobile stage line as a common carrier of passengers and property between Sacramento and Lake Tahoe and intermediate points.

A public hearing was held by Examiner Handford at Placerville on January 3, 1919, the matter was duly submitted and is now ready for decision.

Applicants propose to charge fares in accordance with a schedule marked Exhibit "A" and filed with the application in this proceeding, and to operate a schedule of two round trips, daily except Sunday, between Sacramento and Placerville, serving the

intermediate communities at Orangevale, Folsom, Waterock, Clarksville, Shingle Springs and El Dorado. During the season from June to September, inclusive, of each year applicants propose to operate one round trip, daily except Sunday between Sacramento and Lake Tahoe, serving as intermediate points the communities at Placerville, Camino, Pacific House, Riverton, Whitchell, Kyburz, Strawberry, Phillips, Myers and Lake Tahoe, the points at Lake Tahoe to be served being Fallen Leaf Lodge, Tallac, The Grove, Al Tahoe, Camp Bell, Bijou and Lakeside Park.

The equipment proposed to be used is as follows:

One Pope-Hartford Automobile, 48 H. P., seven passenger capacity, licensed by State Motor Vehicle Department under license No. 130111.

One Pierce Arrow Automobile, 48 H. P., seven passenger capacity, licensed by State Motor Vehicle Department under license No. 375599.

One Pierce Arrow Automobile, 48 H. P., seven passenger capacity, licensed by State Motor Vehicle Department under license No. 305176.

One Studebaker Automobile, 40 H. P., seven passenger capacity, licensed by State Motor Vehicle Department under license No. 308664.

One Cadillac, 1915 model, seven passenger capacity.

Additional equipment is to be supplied if the demands of traffic warrant.

Applicants allege that the service rendered by the existing authorized line between Sacramento and Lake Tahoe, which serves the same route sought by applicants herein, has been inadequate during the past season; that the volume of traffic

between Sacramento, Placerville and Lake Tahoe will materially increase during the coming season due to the completion of the new state highway between Sacramento and Placerville; that resort owners desire additional transportation facilities and that arrangements have been made for a through ticketing arrangement with the Southern Pacific Company and the proposed line of applicants whereby tickets will be sold by the Southern Pacific Company to points reached by the line of applicants.

Applicants have secured permits from the governing bodies of the various political subdivisions through which the proposed route passes as required by the provisions of Section 3 of Chapter 213, Laws of 1917.

Witnesses for applicant testified that during the months of July and August the traffic handled by the authorized stage line was heavy and that cars were crowded. No evidence was presented that indicated that cars were loaded beyond the seating capacity, which loading would have been a violation of one of the Railroad Commission's operating rules and regulations. No evidence was presented by witnesses in favor of applicants which would indicate that the present authorized stage line was unable or unwilling to furnish such equipment and service as might be required by the public convenience, the attitude of resort owners apparently being that their business would be increased by a competitive service.

Complaint was made by witnesses for applicant that cars had been allowed to fill scheduled runs when brakes were in other than effective condition, and that drivers had been employed by the authorized line who were under the age of

twenty-one as required by the Commission's regulations.

These complaints were met by testimony of A. L. Richardson, witness for protestant, Star Auto Stage Association, who described the regulations under which operation was conducted and instructions that were given operators relative to cars being in proper operative condition before starting on scheduled trips.

Regarding the employment of drivers under the age of twenty-one, the evidence indicates that two such drivers had been used, but that both drivers had claimed to be of legal age at the time of their employment.

We are of the opinion that the alleged violations of operating rules and safety regulations as presented in this proceeding does not justify action by this Commission to the extent of permitting competitive service over a route already served with adequate transportation for the public need. The attention of protestant, Star Auto Stage Association, is directed to the necessity of strict compliance with each and every operating rule and regulation as established by this Commission for the government of motor transportation companies as defined by Chapter 215, Laws of 1917.

The granting of this application is opposed by the Star Auto Stage Association and A. L. Richardson. The Star Auto Stage Association holds the operative rights over the route between Sacramento and Lake Tahoe, same having been effective on and prior to May 1, 1917, which was the date recognized by the legislature as that upon which transportation companies as defined by Chapter 215, Laws of 1917, who were then operating in good faith, were not required to secure certificate of public convenience and necessity from this Commission nor permits from the governing bodies of the various political subdivisions through which the route passed. The operation of the line is under the charge of A. L. Richardson, a member of the Star Auto Stage Association, who formerly operated the line as the Pierce-Arrow Auto Stage but transferred the operative right to the Star Auto Stage Association prior to May 1, 1917. Tariffs and time schedules are legally filed with the Railroad Commission in the name of the Star Auto Stage Association covering this route. Mr. A. L. Richardson for the Star Auto Stage Association testified that thirteen Pierce Arrow and two Dodge automobiles were used in the operation of the line and that a schedule of two round trips between Placerville and Sacramento during the entire year and one round trip, daily except Sunday, was operated between Sacramento and Lake Tahoe during the summer season, and that as many as ten cars had been required to fill a scheduled run from Sacramento to Lake Tahoe resorts. In addition to the above passenger equipment six auto trucks are available for the handling of packages and baggage, and additional equipment in case of unexpected heavy traffic can be secured from other members of the Star Auto Stage Association. Arrangements have also been perfected, if heavy travel develops during the coming season, whereby additional cars

to a maximum of sixty can be procured on short notice. Concurrences are filed with this Commission with the existing line, the Southern Pacific Company and the Oakland, Antioch and Eastern Railway, the concurrence with the Southern Pacific Company being executed by the Star Auto Stage Association and that with the Oakland, Antioch and Eastern Railway being executed by the Pierce-Arrow Stage, the change to Star Auto Stage Association not having been made at the time the transfer of operating right was made as hereinbefore mentioned. Protestant, Star Auto Stage Association, will be required to amend and properly file this concurrence before the commencement of the coming season's operation. While these concurrences refer only to Lake Tahoe points, and the concurrence with the Southern Pacific Company proposed to be secured by applicants herein was on the basis of serving all points not reached by the rails of the Southern Pacific Company, there was no showing that any public demand existed for transportation to intermediate points, and if such demand arises same may be cared for by the filing of joint rates and the necessary concurrence between the operating companies. Witness testified that he had endeavored to give the public satisfactory service and to care for all traffic that was offered; that he had deadheaded cars from terminals as late as midnight; that patrons might receive scheduled service; that frequent use of the telephone was made that the demands of traffic might be ascertained and be properly cared for. Mrs. W. E. Beck, one of the proprietors of the Hotel Placerville, testified that the office of the existing stage line was in the same building; that she had observed the operation of the line; had never heard a complaint from its patrons, and that in the absence of Mr. Richardson his bookkeeper and assistant gave the

dispatch of cars personal attention and that frequently cars were operated empty or with less than the rated seating capacity.

A careful analysis of the testimony in this proceeding does not indicate that the public necessity and convenience would be served by the issuance of a certificate of public convenience and necessity to the applicants herein, no showing was made by the applicants which would indicate that the existing stage line was not satisfactorily handling the traffic offering, nor that such line was not in position to increase its equipment and service to meet the demands of traffic. On the contrary, the evidence clearly shows that the existing line has ample equipment and has satisfactorily served the route in the past, has arrangements whereby additional equipment may be secured on short notice to care for unexpected travel and to secure ample equipment if the heavy travel anticipated by applicants to ensue during the coming season following the completion of the state highway between Sacramento and Placerville should be present. The inadequacy of service on the existing line as alleged by applicants in this proceeding was not substantiated by any evidence presented at the hearing. We are of the opinion that the service as rendered by the Star Auto Stage Association over the route sought by applicants herein is ample for the requirements of the public desiring stage transportation between Sacramento and Lake Tahoe, and that protestant's offer to provide additional equipment and service if the public demand warrants same should receive full consideration and be measured by the character of service which has been rendered during past seasons. The testimony on this point was conclusive and was uncontroverted.

The Commission has repeatedly stated in its decisions on applications of this nature that where it is shown that satisfactory service is being rendered by an authorized transportation company over a specific route, and where an established company is willing and financially able to increase service to meet the varying demands of traffic, as particularly existing in connection with service to a territory classed as a vacation and summer resort as in the route herein sought by applicants, that the existing company will be protected in its operative rights. Upon this theory an affirmative showing must be made that the public convenience and necessity require additional service, which for any reason cannot be or is not rendered by the established and authorized company. In this proceeding no showing of this nature has been made but the protestants have offered to furnish all the service that the demands of the traffic may require. The desire of applicants to enter the business of a transportation company as a common carrier is not a measure of public convenience and necessity unless substantiated by evidence that public convenience and necessity will be served.

The ruling decision of the Railroad Commission in the matter of applications for certificates of public convenience and necessity where the evidence indicated that a route was satisfactorily served by an existing authorized company is contained in Decision No. 4674 on Application No. 3159 as decided September 26, 1917, in the Matter of the Application of Santa Clara Valley Auto Line, C. R. C. Decisions Vol. 14, P. 118, 119, in which Commissioners Thelen and Gordon held as follows:

"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 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 cheap and efficient 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 provisions 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 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."

The principles governing the decision in the above quoted application are analogous to those presented by the evidence in this proceeding. After careful consideration of all the evidence in this proceeding, we are of the opinion and find as a fact that the service now rendered by the Star Auto Stage Association between Sacramento and Lake Tahoe is satisfactory and adequate for the public convenience and necessity, that said Star Auto Stage Association is in position to satisfactorily meet such additional demands for service as the public may require, and that this application should be denied.

O R D E R

Louis E. Smith, George Zurfluh and Gino Antichi, a co-partnership proposing to do business under the fictitious name of United Stage Company, having petitioned the Railroad Commission for an order declaring that public convenience and necessity require the operation by them of an automobile stage line as a common carrier of passengers and property between Sacramento and Lake Tahoe and intermediate points, a public hearing having been held and the Commission being fully advised and basing its order on the finding of fact as set forth in the opinion which precedes this order,

THE RAILROAD COMMISSION HEREBY DECLARES that public convenience and necessity do not require the operation by Louis E. Smith, George Zurfluh and Gino Antichi, co-partners proposing to do business under the name of United Stage Company, of an automobile stage line as a common carrier of passengers and property between Sacramento and Lake Tahoe and intermediate points, and

IT IS HEREBY ORDERED that this application be and the same hereby is denied.

Dated at San Francisco, California, this 27th day of January, 1919.

Edwin O. Egerton
Edwards
Frank
Edwards
Edwards
Edwards

Commissioners.