

ORIGINAL

Decision No. 7500.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

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J. E. PRICE,
Complainant.

vs.

PICKWICK STAGES, NORTHERN DIVISION,
a corporation,

Defendant.
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CASE NUMBER 1322.

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S. V. Wright for Complainant.

N. C. Folsom for Defendant.

BY THE COMMISSION:

O P I N I O N

J. E. Price, owning, operating and managing a stage line operating between the cities of San Luis Obispo and El Paso de Robles, has filed complaint against the Pickwick Stages, Northern Division, a corporation, alleging that the operation by said Pickwick Stages, Northern Division, of a local stage service between the cities above mentioned is unauthorized; that a reduction of rates by the defendant over the route between the cities of San Luis Obispo and El Paso de Robles will result in competition tending to eliminate and injure the business of complainant; that the continuance of the local service by defendant will result in the destruction of

efficient local service between the cities of San Luis Obispo and El Paso de Robles. Complainant prays for an order of the Railroad Commission restraining defendant from operating a local service between El Paso de Robles and San Luis Obispo, and requiring defendant to restore the schedule of tariff rates in effect prior to April 28, 1919, and requiring defendant to cease operating any stage service between the above mentioned cities other than that furnished by through stages operating between San Francisco and Los Angeles.

Defendant, Pickwick Stages, Northern Division, filed its answer denying the material allegations of the complaint, and alleging that its operation of local service was in accordance with its right so to do and that the reduction in fares complained of was made in connection with a general tariff readjustment, and not for the purpose of injuring the business of complainant or establishing unfair or ruinous competition.

A public hearing was conducted by Examiner Handford at San Luis Obispo, evidence was received from witnesses for complainant and defendant, the matter was duly submitted upon briefs of counsel and is now ready for decision.

J. E. Price, complainant, testified that he was operating a stage line between San Luis Obispo and El Paso de Robles, operation commencing in the month of July, 1915, consisting of three round trips per day until the early part of the year 1919, when four round trips per day were scheduled. Witness stated that, prior to the original application of the Pickwick Stages, Northern Division, a co-partnership, he had conversation with Mr. Charles F. Wren, one of the co-partners,

relative to the proposed application for certificate of public convenience and necessity, as requested from the Railroad Commission, and the proposed applications for permits from the local political subdivisions in the territory served by Mr. Price's line; and that it was his understanding from such conversation that the application of the Pickwick Stages was for the purpose of establishing through service between Los Angeles and San Francisco and that no local service, other than service which would be performed in the carriage of local passengers on through cars operating between Los Angeles and San Francisco, was contemplated and that, as a result of such understanding, no protest was made by Mr. Price against the granting of the application for certificate of public convenience and necessity by the Railroad Commission or the granting of the permits as then required by the statutory law from the governing bodies of the political subdivisions through which the line would operate. Shortly after the certificate of public convenience and necessity was granted by the Railroad Commission local service was established by the Pickwick Stages, Northern Division; a co-partnership, between El Paso de Robles and San Luis Obispo and such local service was thereafter continued and is at present in operation in competition with the line of complainant, Price. Witness also testified as to difficulties experienced with a Mr. Fulton, who was ticket agent of the Pickwick Stages at San Luis Obispo, Mr. Fulton having made certain representations and statements regarding the elimination of Mr. Price as a competitor in the operation of stages between San Luis Obispo and El Paso de Robles and the controversy arising from such statements.

finally resulting in Mr. Price discontinuing the joint ticket agency at San Luis Obispo formerly maintained by his line and that of the Pickwick Stages. Mr. F. C. Lloyd, a witness on behalf of complainant; testified as to road conditions between San Luis Obispo and El Paso de Robles in comparison with conditions existing on the road between San Luis Obispo and Santa Margarita and also as to conversation had with some representative of the Pickwick Stages prior to the filing of applications for certificate of public convenience and necessity and local permits, also as to conversations had with Mr. Fulton, as agent of the Pickwick Stages, as regards elimination of competition affecting such company.

Mr. Charles F. Wren, a witness on behalf of defendant, testified that he was the president and general manager of the Pickwick Stages, Northern Division, Inc.; that operation was commenced by the Pickwick Stages, Incorporated, on November 1, 1918; that, in the reduction of local fares between San Luis Obispo and El Paso de Robles; there was no intention of reducing the fares to injure the competitive line but that the readjustment of rates was made in connection with a general revision of rates covering the territory between Los Angeles and San Francisco and that some thirty-eight reductions resulted from such tariff revision, the specific reason for the reduction between San Luis Obispo and El Paso de Robles being that the rate of \$1.50 was considered unreasonable for the service rendered, the mileage being a trifle over thirty miles. The road over which operation was conducted is a paved highway and a competitive rate on the railroad exists of \$1.00.

Witness also testified that the representations of Mr. Fulton, when employed as agent by the Pickwick Stages, were not authorized by the company and that said Fulton, as agent, had no authority to determine any policy of the company or to act in any other capacity than that of an agent in doing such work as might be assigned to him in connection with his duties as agent and local representative of the Pickwick Stages at San Luis Obispo; that no authorization was ever given such agent to state that the Pickwick Stages were intending to put the complainant out of business and that, when the matter was brought to the attention of the witness by the complainant, the complainant was so informed.

Pickwick Stages, Northern Division, was a fictitious name under which Charles F. Wren, Stella T. Wren, and Edith A. Wren, as co-partners, operated between Atascadero and San Francisco and intermediate points by reason of purchase from the Western Auto Stage Company, who formerly operated between Atascadero and San Francisco, and such co-partnership filed its tariff C. R. C. No. 5, issued October 1, 1918, effective October 5, 1918, naming the following rates covering the territory between San Luis Obispo and Paso Robles.

<u>Between</u>	<u>One Way</u>	<u>Round Trip</u>
San Luis Obispo and Santa Margarita	.75	1.25
San Luis Obispo and Atascadero	1.00	1.75
San Luis Obispo and Templeton	1.25	2.00
San Luis Obispo and Paso Robles	1.50	2.50
Atascadero and Santa Margarita	.50	-
Templeton and Santa Margarita	.75	-
Paso Robles and Santa Margarita	1.00	-
Atascadero and Templeton	.50	-
Paso Robles and Santa Margarita	1.00	-
Atascadero and Paso Robles	.75	-
Templeton and Paso Robles	.50	-

Time schedule No. 5 issued on April 15, 1918, to become effective April 22, 1918, scheduled one round trip daily between San Luis Obispo and Paso Robles. Supplement No. 2 to time schedule No. 5, issued May 27, 1918, and effective June 1, 1918, scheduled three round trips daily between San Luis Obispo and Paso Robles. Supplement No. 2 to time schedule No. 7, issued July 8, 1919, and effective July 15, 1919, scheduled four round trips daily between San Luis Obispo and Paso Robles and such number of trips are those being operated at the present time. Local Passenger Tariff No. 6, issued on April 23, 1919, and effective April 28, 1919, reduced fares from the territory between San Luis Obispo and Paso Robles as follows:

<u>Between</u>	<u>One Way</u>
San Luis Obispo and Santa Margarita	.50
San Luis Obispo and Atascadero	.75
San Luis Obispo and Templeton	.85
San Luis Obispo and Paso Robles	1.00
Atascadero and Santa Margarita	.35
Santa Margarita and Templeton	.50
Santa Margarita and Paso Robles	.75
Atascadero and Templeton	.35
Atascadero and Paso Robles	.50
Templeton and Paso Robles	.35

All round trip rates between these points were eliminated by this tariff issuance.

On December 31, 1917, Pickwick Stages, Northern Division, a co-partnership, filed its application with the Railroad Commission for a certificate of public convenience and necessity to operate passenger and express service between Atascadero and San Francisco and intermediate points; such application being filed to protect the operative rights acquired

from the Western Auto Stage Company, Chapter 213, Laws of 1917, containing no provisions whereby a transfer of operative rights could be made unless a certificate of public convenience and necessity was issued by the Railroad Commission and permits from the governing bodies of all political subdivisions through which a route operated. This application was withdrawn and an application on behalf of the Pickwick Stages, Northern Division, a corporation, was substituted therefor and filed with the Railroad Commission on January 30, 1918, the latter application being filed by reason of the condition contained in Decision Number 5070 on Application Number 3436 of the Pickwick Stages, Northern Division, a corporation, for an order authorizing the issue and sale of stock (Opinions and Orders of the Railroad Commission, Volume No. 15, Page 79), the order in such proceeding not becoming effective until the said Pickwick Stages, Northern Division, a corporation, should have secured a certificate of public convenience and necessity and all necessary permits from public authorities, as provided for in Chapter 213, Laws of 1917. Decision Number 5107 on Application Number 3421 was approved by the Railroad Commission under date of February 5, 1918, such decision granting the application of Pickwick Stages, Northern Division, a corporation, for a certificate of public convenience and necessity to operate stage service between Los Angeles and San Francisco and intermediate points; provided that the certificate should not become effective until therehad been filed with the Railroad Commission certified copies of permits from the governing bodies of all political subdivisions through which the proposed line was to operate and Decision Number 5861, dated October 21, 1918, was

issued by the Railroad Commission certifying as to the filing of such certified copies of permits.

The specific permits issued by the governing bodies of local political subdivisions and applicable to the portion of the line of the Pickwick Stages, Northern Division, a corporation, herein referred to, were those issued by the Board of Supervisors of the County of San Luis Obispo, issued under date of May 3, 1918, in accordance with resolution of the Board of Supervisors adopted April 1, 1918, and covering, among other routes, operation between the termini of Los Angeles and San Francisco and intermediate points; permit issued by the city clerk of the City of San Luis Obispo in May, 1918, based on resolution of the City Council of the City of San Luis Obispo, approved February 18, 1918, and covering, among other routes, operation between the termini of Los Angeles and San Francisco; permit issued by the city clerk of the City of El Paso de Robles under date of May 18, 1918, based on resolution of the Board of Trustees of the City of El Paso de Robles passed on March 4, 1918, covering, among other routes, operation between Los Angeles and San Francisco.

The decisions of the Railroad Commission hereinabove referred to contained no restriction as to the establishment of intermediate or local business between points on the route between Los Angeles and San Francisco with the exception that the opinion in Decision Number 5107 on Application Number 3421 recites a condition developed at one of the public hearings held at San Francisco on this application in the following language:

"Applicant does not desire to compete

for local traffic between San Francisco and San Jose, or between San Jose and Gilroy, but desires to secure only through passengers to and from these points."

The permits and resolutions of the Board of Supervisors of the County of San Luis Obispo, of the Board of Trustees of the City of El Paso de Robles and of the City Council of the City of San Luis Obispo contained no prohibition as to the establishment of local service over any portion of the through route and in fact the jurisdiction of the local political subdivisions could not have extended beyond the corporate boundaries of such political subdivisions. The conditions in this proceeding, as regards the establishment of local service over portions of a through route, are comparable with those heretofore considered in Case Number 1206 - White Bus Line, a corporation, complainant, vs., A. R. G. Bus Company, a corporation, defendant - decided July 10, 1918, Decision Number 5565. In such proceeding it was decided that a company having operative rights over a certain route was entitled to carry passengers between intermediate points on the same route by the establishment of local service. As a matter of practical operation the right of an operative company to establish local service over portions of a through route will be recognized by the Railroad Commission as furnishing additional service for the convenience of the public and, unless operative companies are restricted from establishing such local service by reason of a qualification in a decision granting operative rights, such local service may be established if, in the opinion of the operative company, the public need requires such additional service. If operative

companies were not permitted to establish local service over portions of their through route, as outlined above, a condition would be created which would, in many instances, be against public policy as, if a company was required to establish new schedules covering their entire operative route, such additional schedules might require to be conducted at a financial loss in that the traffic between certain intermediate local points might not justify the operation of through cars serving the entire route and the establishment by the defendant of additional schedules covering local service between San Luis Obispo and Paso Robles is not prohibited either by the order of the Railroad Commission nor by the conditions of the permits granted by the local political subdivisions over the portion of the route between San Luis Obispo and Paso Robles.

As to the portion of the complaint referring to the reduction in fares between San Luis Obispo and Paso Robles:

The testimony in this proceeding does not justify the allegation of complainant that the reduction in these fares was for the purpose of eliminating by competition the stage line conducted by complainant. The testimony of defendant's witness was to the effect that these rates were reduced in connection with a general equalization of rates in defendant's tariffs and on the basis that the reduction resulted in a rate that was adequate for the carrier and reasonable for the public. The Railroad Commission has heretofore held that rates voluntarily established by a utility can not but be deemed just and reasonable under the conditions existing at the time such reduced rates were established. Complainant contends that the establishment of such reduced rates has materially

affected his business but such contention is not borne out by the evidence in this proceeding which indicates that the business of complainant has increased notwithstanding the increased schedules and the lower rates as established by defendant herein.

After careful consideration of all the evidence and exhibits in this proceeding and of the briefs filed by interested counsel, we are of the opinion and find as a fact that the establishment of local service by defendant over a portion of the through route operated between Los Angeles and San Francisco is not in violation of the decisions of the Railroad Commission approving the application for certificate of public convenience and necessity nor in violation of any conditions contained in permits issued by the governing bodies of local political subdivisions on the portion of the route between Paso Robles and San Luis Obispo. There is no evidence in this proceeding justifying the contention of complainant that the reduction in rates between San Luis Obispo and Paso Robles was made for the purpose of eliminating the competition of complainant in his operation of a stage line between such points.

O R D E R

Public hearing having been held on the above entitled proceeding, the matter having been duly submitted and the Commission being fully advised and basing its order on the finding of fact as contained in the foregoing opinion and,

IT IS HEREBY ORDERED that this complaint be and the same hereby is 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 30th day of April, 1920.

E. C. Edgerly

H. D. Lyland

Frank Horton

H. P. Brundage

Erving Martin

Commissioners.

IT IS HEREBY ORDERED that this complaint be and the same hereby is 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 30th day of April, 1920.

Edwin C. Edgerly
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Commissioners.