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Decision No. 9442

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

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ORIGINAL

In the Matter of the Application of )  
 W. D. GREER for certificate of )  
 public convenience and necessity to )  
 operate auto stage service between )  
 FELLOWS and McKITTRICK, via Santa Fe )  
 Camp, American Oil Fields and Shale. )  
 Application No. 6832

In the Matter of the Application of )  
 ROBERT C. DEAR and W. D. GREER for an )  
 order granting permission to sell and )  
 transfer each to the other a one-half )  
 interest in operating right and equip- )  
 ment of those certain auto stage lines )  
 now owned by applicants and for per- )  
 mission to consolidate and operate said )  
 lines thereafter as one system. )  
 Application No. 6897

HOMER RHYNE and C. L. RHYNE, doing )  
 business as a co-partnership under the )  
 name of Rhyne and Rhyne, )

Complainants

vs.

Case No. 1642

W. D. GREER, doing business under the )  
 name of W. D. Greer Stage Company, )

Defendant.

H. B. La Monte for Applicants Robert C. Dear  
 and W. D. Greer and Defendant W.D.Greer.

Douglas Brookman for Rhyne & Rhyne, Kern County  
 Transportation Company and Kitchen, Boyd  
 and Ingalls, complainants and protestants.

Irwin & Laird by Rollin Laird for Kern County  
 Transportation Company and Kitchen, Boyd  
 and Ingalls, protestants.

H. A. Loveland for William Giminiani, Protestant.

BY THE COMMISSION,

O P I N I O N

In Application No. 6832, W. D. Greer, operating what is  
 known as the W. D. Greer Stage Company, has made application to the  
 Railroad Commission in which he applies for permission to operate  
 his automobile passenger stages between Fellows and McKittrick via

Santa Fe Camp, American Oil Fields and Shale and to abandon his present route between Taft and McKittrick which runs via the Associated Oil Company Camp.

In Application No. 6897, Robert C. Dear, operating the Bakersfield-Buttonwillow and McKittrick Stage Line has applied to the Railroad Commission for permission to sell a one-half interest in his operative right and equipment, which includes two eight passenger Cadillac cars to W. D. Greer for the sum of \$4,500.00 and W. D. Greer applies for permission to transfer a one-half interest in his operative right between Taft, McKittrick, Lost Hills, Bakersfield, G. P. Camp, Associated Camp, San Luis Obispo and Pismo and intermediate points including a one-half interest in equipment consisting of two Twin-Six Packard cars to Robert C. Dear for a consideration of \$9,500.00, both of such applicants to consolidate their operative rights and thereafter operate both routes as a single system.

In Case No. 1642, Homer Rhyne and C. L. Rhyne, doing business as a co-partnership under the name of Rhyne and Rhyne, have filed a complaint against W. D. Greer, doing business under the fictitious name of W. D. Greer Stage Company in which they allege that defendant's operation through the town of Fellows is illegal and that defendant has no operative right permitting service to Fellows due to the fact that neither defendant himself nor his predecessor in interest, Western Auto Stage Company, had ever rendered service to the town of Fellows up until May 1921, always operating their stages along the highway approximately a mile east of Fellows.

A hearing upon the above entitled proceedings was held before Examiner Satterwhite on Tuesday, August 18, 1921, at Bakersfield, at which time the matters were submitted and they are now ready for decision. By stipulation of counsel the three proceedings were consolidated for hearing, the evidence submitted in each to be applicable to all.

Applicant W. D. Greer in support of his application for permission to change his present route between Fellows and McKittrick testified in effect that there are at the present time a considerable number of men employed at Santa Fe Camp, American Oil Fields and Shale, that at different times these men desire transportation from their places of employment to Fellows or Taft and that due to the fact that there is no authorized carrier operating between such points at the present time they are obliged to depend either upon private conveyances or to telephone to Fellows for rent cars, that the rates charged by the rent cars for transportation, Santa Fe Camp to Fellows is \$.25, that the rate charged by such cars from American Oil Fields and Shale to Fellows is considerably higher than the rate proposed by applicant between such points. Such testimony was substantiated by other witnesses residing in the territory in question.

Applicant also testified that there are at the present time very few local passengers to be secured along his present route between Fellows and McKittrick and that the abandonment of such route would not work a hardship upon those employed or residing along such route, particularly in view of the fact that such territory is also served by the stage line operated by Rhyne and Rhyne.

In Application No. 6897, being an application to consolidate the Deer and Greer Lines, applicants testified that the consolidation of these two routes and their operation as a unit would have a tendency to materially benefit the present service rendered to the traveling public between the points served by such routes and if such consolidation was permitted passengers traveling between Bakersfield and Taft, via McKittrick would not be obliged to change cars at McKittrick and that such consolidation would also permit one of the co-partners to remain at San Luis Obispo and the

other at Bakersfield, so that the supervision of their operation would be more efficient.

Such consolidation was strenuously protested by the Kern County Transportation Company and Kitchen, Boyd and Ingalls, operating stage lines between Bakersfield and Taft over what is known as the direct route, also by Rhyne and Rhyne who operate in connection with the two last named stage lines between Taft, Fellows and McKittrick.

The distance between Bakersfield and Taft over the route operated by the Kern County Transportation Company and Kitchen, Boyd and Ingalls is given as thirty-eight miles, while the distance between Bakersfield and Taft, via McKittrick is fifty-seven miles.

It would appear from the evidence herein submitted that the proposed consolidation of the Dear and Greer Lines is primarily for the purpose of establishing a through route, Bakersfield to Taft, via McKittrick, such route to be operated in competition with the present service rendered by the Kern County Transportation Company and Kitchen, Boyd and Ingalls, Bakersfield to Taft and Rhyne and Rhyne Line, Taft to Fellows and McKittrick.

Applicants in support of their petition for permission to consolidate submitted no testimony whatsoever to show that there is a public necessity for the establishment of an additional through route between Bakersfield and Taft, via McKittrick, but that in fact if such route were established, it would necessitate the traveling public using the same to travel an additional distance of approximately nineteen miles and would undoubtedly also inconvenience passengers at intermediate points who could not be transported should the stages of Dear and Greer be filled with through passengers upon leaving terminals.

At the time of filing their application for permission to consolidate their respective routes both applicants herein were instructed at the time that until such application had been acted

upon favorably by the Commission neither could operate his cars over the route served by the other. It would appear from the evidence herein that contrary to such instructions both applicants on July 4th, 1921, each began the operation of their respective cars over the route controlled under operative rights by the other applicant and that each continued to so operate until definitely instructed to discontinue such service by the Railroad Commission. It was further shown that subsequent to July 20th, 1921, on several occasions, through cars were operated, that such operation was claimed by applicants to be necessitated through the fact that cars had broken down and connection could not be made at McKittrick, which required one of such applicants to lease the car and employ a driver of the other applicant for the purpose of finishing such portion of the trip required over the operative right held by the other applicant. The frequency of these through trips alleged to be necessary by reason of mechanical failure of cars is looked upon by the Commission as a subterfuge and such methods of operation should not occur in the future.

The Commission usually permits, when no opposition is presented, the transfer of operative rights and equipment when such operative rights are transferred as a single unit, but upon an application to transfer and consolidate two connecting lines, applicants will be required to show, and to the satisfaction of the Commission, that a public necessity clearly exists for the through service which they propose to establish by such consolidation, particularly when the proposed through service will be in direct competition with existing lines which have been and are rendering a satisfactory service to the traveling public.

Applicants herein failed to make a showing which would justify the Railroad Commission in authorizing the consolidation as proposed, which consolidation would, in effect, result in the establishment of a through operative right from Bakersfield to Taft via McKittrick.

Complainants in Case No. 1642, petition the Railroad Commission for an order declaring that defendant has no right or authority to operate auto stages as a transportation company through the town of Fellows or any part thereof, or for local business to or from such town of Fellows, and that any operation so conducted by defendant at the present time be declared illegal, without authority, and in violation of the provisions of Chapter 213, Statutes of 1917, and amendments thereto.

Defendant herein was authorized to purchase the operative rights of the Western Auto Stage Company between Taft, McKittrick, San Luis Obispo and Pismo and intermediate points, such operative rights having been acquired by the Western Auto Stage Company by reason of operation in good faith prior to May 1st, 1917, and continuously thereafter. The tariffs and time schedules heretofore filed with this Commission by the Western Auto Stage Company showed Fellows as an intermediate point served in connection with its operation between Taft and San Luis Obispo and the tariffs and time schedules of W. D. Greer Company, successor to the Western Auto Stage Company, also quoted rates to Fellows and included such town as an intermediate point served by such route.

Witnesses for complainant testified in effect that the stages of the Western Auto Stage Company and also of the W. D. Greer Stage Company had never stopped at Fellows to pick up or discharge passengers, but that in fact complainants, Rhyne and Rhyne, had a verbal understanding with the General Manager of the Western Auto Stage Company, which was also renewed with W. D. Greer of

the W. D. Greer Stage Company, to the effect that all passengers originating at Fellows who desired transportation to points along the Taft-San Luis Obispo route, would be transported by Rhyne and Rhyne from Fellows to Taft where a connection would be made with the San Luis Obispo Stages.

Witnesses for defendant, including former drivers, testified that they had always called at Fellows, both east and west bound, with the exception of such times as the stage leaving Taft carried a capacity load or upon the return trip when there were no passengers for discharge at Fellows.

The evidence as regards the service of defendant to Fellows was extremely conflicting and in view of the fact that no positive showing was made that defendant has not been continuously rendering service to Fellows as an intermediate point and in view of the additional fact that the tariffs and time schedules of the Western Auto Stage Company, predecessor in interest to defendant, and also the tariffs and time schedules of defendant now on file with the Railroad Commission, have always shown Fellows as an intermediate point served by defendant, we are of the opinion and find as a fact that defendant herein has an operative right permitting service to Fellows. The complaint herein will, therefore, be dismissed.

After full consideration of the evidence herein submitted, it is the opinion of the Commission that the application of W. D. Greer to change his route between Fellows and McKittrick, routing his stages via Santa Fe Camp, American Oil Fields and Shale should be granted, and that the application of Dear and Greer to consolidate their respective routes should be denied.

O R D E R

A public hearing having been held upon the above entitled proceedings, the matters having been duly submitted and the Commission being fully advised,

THE RAILROAD COMMISSION HEREBY DECLARES that public convenience and necessity require the operation by W.D.Greer of an automobile stage line as a common carrier of passengers between Fellows and McKittrick, serving as intermediate points, the communities at Santa Fe Camp, American Oil Fields and Shale and a certificate of public convenience and necessity be, and the same hereby is granted subject to the following conditions:

1. That applicant W.D.Greer shall abandon his present route now operated between Fellows and McKittrick and shall file within ten (10) days from date hereof, his written acceptance of the certificate herein granted and shall file within not less than twenty (20) days from date hereof tariffs of rates and time schedules substantially the same as the tariffs of rates and time schedules included as Exhibits "A" and "B" in Application No. 6832 and shall begin operation within a period of not less than twenty (20) days from date hereof. In all other respects the effective date of this order shall be twenty (20) days from date hereof.

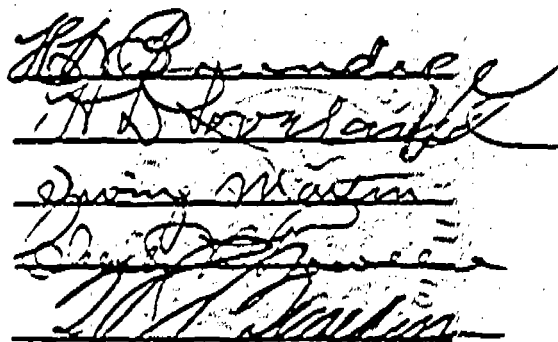
2. That the rights and privileges hereby authorized may not be discontinued, sold, leased, transferred nor assigned unless the written consent of the Railroad Commission to such discontinuance, sale, lease, transfer or assignment has first been secured.

3. That no vehicle may be operated by the applicant W. D. Greer, 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 Case No. 1642 be, and the same hereby is dismissed, and

IT IS HEREBY FURTHER ORDERED that Application No. 6897 be, and the same hereby is denied.

Dated at San Francisco, California, this 31<sup>st</sup> day of August, 1921.

  
Commissioners