

Decision No. 27972

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

In the matter of the Application of
THE GRAY LINE, INC. to operate an all
expense sight-seeing tour from San
Francisco and return to San Francisco
via Yosemite Valley and Del Monte.

} Application No. 19825.

In the matter of the Application of
THE GRAY LINE, INC. to operate a
limousine and/or bus and limousine
service between Del Monte and Merced,
California.

} Application No. 19846.

In the matter of the Application of
CALIFORNIA PARLOR CAR TOURS COMPANY,
a corporation, for a certificate of
public convenience and necessity be-
tween San Francisco and Merced and
between Merced and Salinas to operate
in conjunction with the Yosemite Park
and Curry Company a tour service to
and from the Yosemite Valley.

} Application No. 19892.

Richard T. Eddy, for The Gray Line, Applicant in
Applications 19825 and 19846, and protestant
in Application 19892.

H. C. Lucas, for California Parlor Car Tours Co.,
Applicant in Application 19892 and protestant
in Applications 19825 and 19846.

R. S. Myers, for Southern Pacific Co., intervenor
in favor of Application 19892 and in opposition
to Applications 19825 and 19846.

H. C. Lucas, for Pacific Greyhound Lines, protestant
in Application 19825.

D. Moyer, for Moyer Stages, protestant in Applications
19825 and 19892.

Brobeck, Phleger & Harrison, by James S. Moore, for
Yosemite Park & Curry Co., in opposition to
invasion of its territory.

CARR, Commissioner:

OPINION

By Application No. 19825, filed on February 11, 1935,
together with amendments subsequently made, The Gray Line, Inc.
seeks certification for an all expense three-day triangular trip

between San Francisco, Yosemite and Del Monte. A \$50.00 fare is proposed when the trip is by parlor car, and \$57.50 when by limousine.

By Application No. 19846, filed on February 26, 1935, The Gray Line, Inc. seeks certification to perform a shuttle service between Yosemite and Del Monte to accord with certain stopover privileges extended railroad passengers.

By Application No. 19892, filed on March 29, 1935, California Parlor Car Tours Company seeks certification (1) for service over the triangular route San Francisco, Yosemite and Del Monte largely similar to that sought in Application 19825, and (2) for a deviation from trips between Los Angeles and San Francisco, now authorized, to permit the inclusion of Yosemite.

Public hearings on these three applications, which were consolidated, were had on May 14th and 15th.

The evidence tends to show that the tourist business, at a low ebb in 1933, increased substantially in 1934 and is still growing and with rather bright prospects for 1935. All expense parlor car service has been available at Del Monte for some time. California Parlor Car Tours Company renders, under appropriate certificate, both two and three day all expense trips between San Francisco and Los Angeles, with a stopover at Del Monte.

Early in 1934 travel agencies both within and without the State began urging a service of this general character which would embrace the Yosemite National Park. The Gray Line, Inc. and California Parlor Car Tours Company are both reputable operators engaged primarily in serving the tourist trade. The former operates in and out of San Francisco. It has a certificated service as far south as Del Monte. It also does an extensive charter car business.

Because of the character and privileges extended under railroad tickets a demand arose for a shuttle service between Yosemite and Del Monte. At the instance of the Del Monte Properties Company, The Gray Line, Inc., by Application No. 19846, sought authority for this service. In the meantime, Pacific Greyhound Lines, Inc. was authorized to perform the service (re Pacific Greyhound Lines, Inc., Decision No. 27956, of date May 13, 1935) and The Gray Line, Inc. has asked a dismissal of its Application No. 19846.

As the hearings in these applications went on the issues were greatly narrowed and simplified. Suffice it to say that the evidence warrants findings that public convenience and necessity demand

- (a) a parlor car all expense service over the triangle San Francisco, Yosemite and Del Monte, passengers for Yosemite to be handled between Merced and the Park and in the Park by Yosemite Transportation Stages of the transportation department of Yosemite Park & Curry Company, which Company enjoys the transportation concession within the Park and possesses a certificate for service between El Portal and Merced. The evidence, however, does not warrant certification of more than one such service, nor does it justify a limousine service at a higher fare in addition to the parlor car service, and
- (b) an extension of the existing service of the California Parlor Car Tours to include Yosemite.

The real and only substantial issue is the determination of which of these responsible operators should be certificated to render the so-called triangular trip service. The service and the fare in either case would be the same,⁽¹⁾ except that the California Parlor Car Tours Company offers the trip in either direction. The evidence, however, does not show any need for running the trip both ways. The Gray Line, Inc. was the first to apply for the service. The California Parlor Car Tours Company was inexplicably slow in responding to the demands of tourist travel for this service. On behalf of the California Parlor Car Tours Company it is urged that with its trip between Los Angeles and San Francisco extended to include Yosemite its stages would be running in any event and could carry whatever passengers there were for the triangular trip without added cost. Each concern, however, has a plentitude of equipment, each is eager to undertake the service, and the evidence does not justify the conclusion that one would serve the public any better than the other. Under these circumstances the controversy between these two operators may best be resolved by applying the rule that, other things being equal, the applicant first in time will be preferred.

The Gray Line, Inc. and California Parlor Car Tours Company are hereby placed upon notice that "operative rights" do not constitute a class of property which should be capitalized or used as an element of value in determining reasonable rates. Aside from their purely permissive aspect, they extend to the

1. The Gray Line, Inc. indicated its willingness to accept a certificate for a \$50.00 parlor car all expense service, passengers to and from Merced to be handled by the existing service, stop-over privileges would be accorded and limousines might be substituted for parlor cars for operating reasons but at the parlor car fare.

holder a full or partial monopoly of a class of business over a particular route. This monopoly feature may be changed or destroyed at any time by the state which is not in any respect limited to the number of rights which may be given.

I recommend the following form of order:

ORDER

The above entitled applications having been heard and duly submitted and now being ready for decision,

The Railroad Commission of the State of California hereby declares that public convenience and necessity require the establishment and operation of a parlor car sight-seeing three-day all expense tour between San Francisco and Merced and Del Monte for the transportation of passengers and their hand baggage, with a night stop-over at Yosemite and at Del Monte (transportation between Merced and Yosemite Park and transportation and accommodations in and at Yosemite to be provided for through Yosemite Park and Curry Company by connection at Merced and with through and/or joint rates, which are hereby authorized), and with the right to substitute limousines for parlor cars when desirable for operating reasons, over and along the following route:

Via Ferry to Oakland, thence via state and county highways via Tracy, Manteca, Merced, Los Banos, Gilroy, Salinas, Del Monte, Carmel, Seventeen Mile Drive, Santa Cruz, Boulder Creek and Palo Alto, and terminating at San Francisco, and

IT IS HEREBY ORDERED that a certificate of public convenience and necessity therefor be and the same hereby is granted to The Gray Lines, Inc., subject to the following conditions:

1. Applicant shall file its written acceptance of the certificate herein granted within a period of not to exceed fifteen (15) days from date hereof.
2. Applicant shall file, in triplicate, and make effective within a period of not to exceed thirty (30) days after the effective date of this order, on not less than one day's notice to the Commission and the public a tariff or tariffs constructed in

accordance with the requirements of the Commission's General Orders and containing rates and rules which, in volume and effect shall correspond to the applicant's proposal as herein limited, or rates and rules satisfactory to the Railroad Commission. Rules may be filed herein to provide for further and additional stop-over privileges and rates therefor, based on pro rata increase, are hereby authorized.

3. Applicant shall file, in duplicate, and make effective within a period of not to exceed thirty (30) days after the effective date of this order, on not less than one day's notice to the Commission and the public, time schedules covering the service herein authorized in a form satisfactory to the Railroad Commission.

4. The rights and privileges herein 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.

5. No vehicle may be operated by applicant herein unless such vehicle is owned by said applicant or is leased by it under a contract or agreement on a basis satisfactory to the Railroad Commission.

The Railroad Commission of the State of California hereby further declares that public convenience and necessity require the extension and enlargement of the applicant's rights as granted by Decision No.23348, on Application No.17095, and decisions amendatory thereto and consolidated therewith, to permit the establishment and operation of a parlor car or limousine sight-seeing four day all expense tour between Los Angeles and San Francisco, with night stop-overs at Santa Barbara, Del Monte and Yosemite (transportation between Merced and Yosemite Park and transportation and accommodations in and at Yosemite to be provided for through Yosemite Park and Curry Company by connection at Merced and with through and/or joint rates, which hereby are authorized), and in order to furnish such enlarged service for the said applicant to operate:

Via state and county highways between Del Monte and Merced via Los Banos, and between Merced and San Francisco via Manteca, Tracy and Oakland.

IT IS HEREBY ORDERED that a certificate of public convenience and necessity therefor be and the same hereby is granted California ParlorCar Tours, Inc. (such certificate not to authorize the service for the performance of which a certificate is herein granted The Gray Lines, Inc.), subject to the following conditions:

1. Applicant shall file its written acceptance of the certificate herein granted within a period of not to exceed fifteen (15) days from date hereof.
2. Applicant shall file, in triplicate, and make effective within a period of not to exceed thirty (30) days after the effective date of this order, on not less than one day's notice to the Commission and the public a tariff or tariffs constructed in accordance with the requirements of the Commission's General Orders and containing rates and rules which, in volume and effect shall correspond to the applicant's proposal as herein limited, or rates and rules satisfactory to the Railroad Commission. Rules may be filed herein to provide for further and additional stop-over privileges and rates therefor, based on pro rata increase, are hereby authorized.
3. Applicant shall file, in duplicate, and make effective within a period of not to exceed thirty (30) days after the effective date of this order, on not less than one day's notice to the Commission and the public, time schedules covering the service herein authorized in a form satisfactory to the Railroad Commission.
4. The rights and privileges herein 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.
5. No vehicle may be operated by applicant herein unless such vehicle is owned by said applicant or is leased by it under a contract or agreement on a basis satisfactory to the Railroad Commission.

IT IS HEREBY FURTHER ORDERED that, except as herein specially set forth and granted, the applications and each of them be and they hereby are denied.

IT IS HEREBY FURTHER ORDERED that Application No. 19846 of The Gray Lines, Inc. be and the same hereby is dismissed.

For all other purposes the effective date of this order shall be twenty (20) days from the date hereof.

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 20th day of May, 1935.

Leon Whitely
M. J. Rice
M. B. Harris
W. H. ...
Frank ...
Commissioners.