

ORIGINAL

Decision No. 28452.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

In the Matter of Application of  
SAN JOSE RAILROADS for authority  
to extend its San Jose-Willow Glen  
motor coach line to Willow Glen  
Way in the City of Willow Glen.

Application No. 20161.

E. J. Foulds, for Applicant.

Arthur J. Saxe, for Burt W. Smith, Protestant.

BY THE COMMISSION:

O P I N I O N

In this application San Jose Railroads requests authority to make a short extension on its San Jose-Willow Glen Motor Coach Line in Willow Glen.

A public hearing was held on December 14, 1935, by Examiner Hunter, at which time the matter was taken under submission.

San Jose Railroads now operates, as part of its local street transportation system, a motor coach line from the business section of the City of San Jose to Willow Glen, over various streets in the two cities, under authority granted by the Commission in Decision No. 28085, dated June 28, 1935, in Application No. 20010. Previous to the inauguration of this service in July of this year, San Jose Railroads served this community by a rail line terminating at Lincoln and Minnesota Avenues, Willow Glen. Service on this rail line

was discontinued under authority granted in the above referred to decision. For convenience, in turning its coaches at the Willow Glen terminal, applicant operates around the block bounded by Minnesota, Settle, Michigan and Lincoln Avenues.

The district lying to the south of Michigan Avenue is well developed as a residential section and applicant has been petitioned by numerous residents to extend its terminal loop about a quarter of a mile southerly to Willow Glen Way. The City of Willow Glen has also requested this extension, as evidenced by Resolution No. 74, a copy of which is attached to the application, and has amended the company's franchise to include the streets over which operation is herein proposed. Applicant now provides a 12 to 15 minute headway on its Willow Glen bus line throughout the day and estimates that it can operate over the proposed extended line without disturbing these headways or adding additional equipment.

In Decision No. 27250, dated August 7, 1934, in Application No. 19454, the Commission granted a certificate of public convenience and necessity to Burt W. Smith, operating under the name of Almaden Stages, for a restricted motor bus service between San Jose and Almaden, passing through the easterly portion of the City of Willow Glen. In his application Mr. Smith proposed that his route in Willow Glen be by way of Minnesota Avenue, Northern Road, Willow Glen Way and Lincoln Avenue. San Jose Railroads, however, objected to Almaden Stages operating through the intersection of Willow Glen Way and Lincoln Avenues, and the certificate, as granted, routes the Almaden Stages by way of

Pine Avenues, which is some 900 feet to the south of Willow Glen Way. Other restrictions prohibiting Almaden Stages from performing certain local services which would conflict with the operation of San Jose Railroads were also included in the certificate on protest of San Jose Railroads.

Mr. Smith now objects to the granting of the instant application of San Jose Railroads on the ground that by extending its operations one quarter of a mile southward to Willow Glen Way it will invade territory now served by his stage line and thereby attract some of the business he has heretofore enjoyed, since San Jose Railroads will be in a position to offer a much more frequent service as well as grant transfers to its other lines in the cities of San Jose and Santa Clara. Mr. Smith's service provides but one schedule an hour from 6:00 A.M. to 7:00 P.M., and has no transfer privileges along its line or beyond its terminus in the business district of San Jose.

The nearest point to which the operation of this line of the San Jose Railroads will come to that of Almaden Stages is at the intersection of Willow Glen Way and Hill Avenue. The Almaden Stages operates over Willow Glen Way to Junata Avenue, which is some 400 feet to the east of Hill Avenue. A second point at which the proposed line of San Jose Railroads might attract patrons from the Almaden Stages is at Lincoln Avenue and Willow Glen Way, this point being about 900 feet north of the intersection of Pine Avenue with Lincoln Avenue where Mr. Smith's bus turns to proceed south along Lincoln Avenue.

It appears that the proposed extension would, to a limited extent, attract traffic from the Almaden Stages on

that portion of its line between Minnesota Avenue and Northern Road on the north, and Lincoln Avenue and Pine Avenue on the south.<sup>(1)</sup> There may also be some diversion from the district to the south of Pine Avenue, which is a newly developed residential section of Willow Glen.

In 1929, at the request of the subdividers south of Pine Avenue, San Jose Railroads operated a subsidized bus for a period of one year from the terminus of its rail line at Lincoln and Minnesota Avenues southerly to the city limits of Willow Glen. Certificate for this line was granted by Decision No. 15168 and by supplemental order in that proceeding, upon representation that the line would not pay operating expenses, authority to discontinue the service was granted.

A review of this record shows there is a public demand and need for an improved local transportation service between the developed portion of Willow Glen and San Jose. The extension of applicant's line, as proposed herein, will provide such an improved service, with transfer privileges to the other lines of applicant's system. While it is true that this extension will undoubtedly attract some traffic from the line of the Almaden Stages, the Commission could not reasonably deny Willow Glen this improved local street transportation service on the ground that the portion of the city most benefited by applicant's proposed extension is now

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(1) Exhibit No. 1 shows the result of a traffic check taken of passengers loading and alighting from the Almaden Stages bus between Minnesota Avenue and Northern Road, and Lincoln Avenue and Pine Avenue, during a five-day count between November 20th and December 5th 1935. This count shows the total number of passengers handled per day ranged from 12 to 30, averaging 22.

offered transportation by the Almaden Stages operating on an hourly schedule without transfer privileges in San Jose and without any plan to reduce the headway of this operation. Therefore, applicant will be authorized to operate over this larger loop extending its service southerly to Willow Glen Way, a distance of one quarter of a mile.

San Jose Railroads is 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 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.

#### O R D E R

A public hearing having been held and the matter being under submission,

The Railroad Commission of the State of California hereby declares that public convenience and necessity require San Jose Railroads to extend its San Jose-Willow Glen Motor Coach Line in the City of Willow Glen, as follows:

Commencing at the intersection of Lincoln Avenue and Minnesota Avenue, thence around a loop in either direction via Lincoln Avenue, Willow Glen Way, Hill Avenue, California Avenue, Settle Avenue and Minnesota Avenue to Lincoln Avenue, the point of commencement.

IT IS HEREBY ORDERED that a certificate of public convenience and necessity for such a service be and the same is hereby granted to San Jose Railroads, 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 the date hereof.
- (2) Rates of fare in volume and effect shall be identical with the rates and rules now in effect on said San Jose-Willow Glen Motor Coach Line of applicant.
- (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 five days' notice to the Commission and the public, time schedules covering the service herein authorized in a form satisfactory to this Commission.
- (4) The rights and privileges herein authorized may not be discontinued, sold, leased, transferred not 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 effective date of this order shall be ten (10) days from the date hereof.

Dated at San Francisco, California, this 21<sup>st</sup> day of December, 1935.

Leon Whitney  
M. D. Linn  
M. B. Davis  
Walter Brown  
Frank R. Brown  
Commissioners.