

Decision No. 28795

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

PETROLIA STAGE COMPANY,
a Co-Partnership,

Complainant,

-vs-

O. W. CLARK and F. A. Gardner,
Defendants.

Case No. 4058.

In the Matter of the Application of
O. W. CLARK and F. A. GARDNER, Co-
partners, for a certificate of pub-
lic convenience and necessity to
operate an automobile passenger, bag-
gage and freight service as a com-
mon carrier for compensation, be-
tween Ferndale and South Fork,
California, and all intermediate
points, via Petrolia and Upper Mat-
tole, California.

Application
No. 20153.

E. S. Mitchell for Complainant and Protestant
in Application No. 20153;
Blaine McGowan for Defendant and Applicant
in Application No. 20153;
W. J. Cummings for Northwestern Pacific Rail-
road, interested party;
A. W. Way for Eureka-Ferndale Stage Line,
Protestant.

BY THE COMMISSION:

O P I N I O N

Complainant, E. C. Gardner, operating under the fictitious name of Petrolia Stage Company, alleges that defendants O.W.Clark and F.A. Gardner are conducting an automotive stage operation for the transportation of persons and property between Ferndale and South Fork via Petrolia and Upper Mattole as a common carrier for

compensation without first having obtained from this Commission a certificate of public convenience and necessity therefor. Defendants deny that they are operating as common carriers.

O. W. Clark and F. A. Gardner by their application seek a certificate of public convenience and necessity authorizing them to conduct daily transportation service for passengers and property between Ferndale and Upper Mattole and twice weekly service between Upper Mattole and South Fork.

By stipulation the two matters were consolidated for hearing and decision upon one record. Public hearings thereon were conducted by Examiner Williams at Ferndale and the matter was duly submitted for decision.

Elmer C. Gardner operates an automotive transportation service for persons and property under a certificate, held in the name of himself and his father, between Ferndale and South Fork, via Petrolia and Upper Mattole. This service was established in 1922 and originally operated only between Ferndale and Upper Mattole succeeding the long established horse drawn stage operations of George M. Brice. Later E. C. Gardner acquired from John C. Albee a certificated right between Petrolia and South Fork. Until July, 1934, this carrier also transported United States mail between all points on its route. The mail contract was then awarded to O. W. Clark and F. A. Gardner and has been conducted by them since that date. The present proceedings result from conflict between the two operations. The testimony in support of the complaint establishes

the fact that occasionally defendants Clark and Gardner have transported small packages for a nominal charge. For short periods, as an accommodation, they have transported milk and cream from the region of Upper Mattole and Petrolia to Ferndale creameries. It is also true that persons were permitted to ride on the mail stage but there is no evidence that compensation generally was received for such passengers. There is little evidence that they held themselves out to conduct common carrier service. The service that has been performed has been an accommodation.

Reason for this accommodation service is found in the fact that after July, 1934, when the Petrolia Stage Company lost the mail contract, its proprietor E. C. Gardner reduced the operating schedule from a daily basis, except Sundays and holidays, to three times weekly, as far as Upper Mattole and once weekly between Upper Mattole and South Fork. As the Mattole region is interested principally in dairying, and ships its products to the creameries at Ferndale, it appears that this industry was dissatisfied with every other day service, particularly a service that required retaining cream from Friday until Monday without refrigeration. A. C. Schmidt, foreman of the Golden State Creamery Plant at Ferndale, testified that this dairying region shipped to the plant 133,000 pounds of cream annually of a value of about \$16,000. He also testified that cream, to preserve its butterfat high grade rating, should not be kept from Friday to Monday except under mechanical refrigeration. The record further establishes that the milk transported by defendants Clark and Gardner was from the dissatisfied customers, many of whom shipped daily for short periods by the defendants' mail stage in preference to keeping

their milk and risking degrading when delivered by the regular service. There is also evidence that Petrolia Stage Company transported cream for one customer, daily while refusing such service to others. The record also indicates that the service of Petrolia Stage Company was somewhat irregular and that the only provision made for passengers was room for two passengers in the seat of the truck used in transporting freight. The record clearly indicates that the service rendered by Petrolia Stage Company has been inadequate for those living between Upper Mattole and Ferndale. The once a week service between South Fork and Upper Mattole was not adequate for this area.

The record further discloses the operations conducted by Petrolia Stage Company have some characteristics that this Commission has not found in any other utility operation under its jurisdiction. Under the management of E. C. Gardner little effort is made to collect that amount due for transportation except when the amount is tendered to the carrier. Exhibit No. 2 filed by this carrier in Application No. 20153 discloses transactions for August, September and October, 1935. During this three months' period the actual cash received by the carrier for his services was \$81.11. The tariff charges uncollected amounted to \$582.13 making a gross operating earning of \$663.24. During the same period the cost of operation as shown in detail on the exhibit, exclusive of proprietor's account, salary or depreciation, was \$1,279.20, resulting in an operating loss for the three months' period of \$625.46. Witnesses testified that they were not presented with any statement of transportation charges due for a period as long as two years. Often when such

accounts were presented they were subject to dispute and in some instances resulted in suits brought by the carrier against the shipper. Such business methods resulted in the alienation of good-will on the part of many shippers and left the carrier with only those patrons not involved in some kind of dispute.

Analysis of the annual reports for 1934 and 1935 discloses accounts receivable each year far in excess of the reported gross revenues and many other items that are irreconcilable.

A. W. Way, operating the Eureka-Loleta Ferndale Stage Line, testified that this operation is conducted under a prescriptive right and has been conducted since 1914; that, in addition to the regular service between Eureka and Ferndale, his right to transport property between Ferndale and Upper Mattole survives. Way testified that service between Ferndale and Upper Mattole was maintained by him until it developed that neither he nor Gardner could conduct such service profitably in competition. Way, by arrangement with Gardner, delivered freight for this part of the route to Gardner for several years at Ferndale. Way further testified that after several years of co-operation Gardner began picking up the traffic of Way's patrons at Eureka and transporting it to Ferndale and points Southwest thereof at Way's Ferndale rate, thus depriving Way of the carriage. He testified that he intended to resume service between Ferndale and Upper Mattole in order to protect his rights between Eureka and Ferndale. This statement of Way was met by ^{E. C.} Gardner with the reply that he was charging his full rate between Ferndale and Upper Mattole and intermediate points and by contract hauling at a lower rate from Eureka to Ferndale.

Testimony in support of the applicants Clark and Gardner was mainly based upon the inadequacy of the existing service of Petrolia Stage Company. Witnesses testified a daily service is required as far as Upper Mattole while those between Upper Mattole and South Fork indicated that three days a week would be adequate for this area. This is the service proposed by applicants. It is not apparent from the record that there is sufficient volume of traffic to support two operators over this area. It is apparent, however, that one daily service might find sufficient support as far as Upper Mattole and possibly twice weekly between Upper Mattole and South Fork. Should A. W. Way attempt to reestablish daily service between Ferndale and Upper Mattole the meagre tonnage would be further divided and perhaps result in both carriers sustaining peribous losses. Investigation of the operating rights of Way construed in connection with his testimony of having ceased this operation for a number of years makes a revival of the service questionable. In this proceeding neither the operative rights of Way nor of E. C. Gardner are challenged as to their legality nor is it a proceeding in which the Commission may consider or act upon the propriety of revocation of rights.

The perspective before the Commission is rather complicated and seems to call for a disciplinary action rather than for multiplying the number of carriers. We believe the shippers and receivers of freight between Ferndale and South Fork will be better served if the certificated carrier conducting a stage line is ordered for a period of sixty days to establish adequate service as indicated above and render same at the rates established

therefor and with the direct instruction that all amounts be collected in cash to avoid discrimination among patrons; that Petrolia Stage Company be required to establish daily service as far as Upper Mattole and twice weekly service between South Fork and Upper Mattole and that pending the establishment of such service the application of Clark and Gardner be held in suspense. By this method of fixing responsibility we believe the trial period during the season when the volume of traffic usually is heaviest may result beneficially to all.

In view of our finding that the defendants Clark and Gardner were not holding themselves out to the public as common carriers for either passengers or property, the complaint will be dismissed.

O R D E R

The above entitled matters having been duly heard and submitted and the Commission being fully advised in the premises,

IT IS HEREBY ORDERED that further consideration of Application No. 20153 be continued for a period of sixty (60) days from date hereof, or thereafter; provided that during said period of continuance Petrolia Stage Company (E. C. Gardner) shall establish and maintain adequate automotive transportation service, for the transportation of passengers and property, between Ferndale and Upper Mattole, and between Upper Mattole and South Fork, in consistency with the finding in the foregoing opinion, said adequate service to be established within ten (10) days after date hereof, said service to be operated and maintained strictly in accord with the General Orders, rules and regulations

of this Commission therefor; and, further, that said Petrolia Stage Company shall, within ten (10) days after date hereof accept or reject the order herein, in writing to be filed with the Commission.

IT IS HEREBY FURTHER ORDERED that Case No 4058 be and the same hereby is dismissed.

IT IS HEREBY FURTHER ORDERED that the Commission retain its full jurisdiction over said Application No. 20153 herein.

Dated at San Francisco, California, this 4th day of May, 1936.

M B Davis
John Whittell
W J Carr
Walter L. Ware
Frank R. Nelson
Commissioners.