

Decision No. 28798

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
PACIFIC GREYHOUND LINES, INC., a)
corporation, to remove certain)
restrictions prohibiting the trans-)
portation of passengers and baggage)
between Stockton and Martinez.)

Application No. 20241.

ORIGINAL

H. C. LUCAS, for applicant;
L. N. BRADSHAW, for Sacramento Northern Railway and
Wards Auto Stage, Protestants.

BY THE COMMISSION:

OPINION AND ORDER

In this application Pacific Greyhound Lines, Inc. seeks removal of a restriction imposed upon its operative rights between Martinez and Stockton by Decision No. 23244 on Application No. 19689, decided December 31, 1930 (35 C.R.C. 667), in the following language (35 C.R.C. p. 684):

"2. On the operation between Martinez and Stockton no express may be transported and no passengers or baggage shall be picked up or discharged between Martinez and Antioch, both points included, unless such passengers or baggage originated at or are destined to points east of Antioch;"

The original source of the restriction is Decision No. 19691 on Application No. 5928, et al, decided May 2, 1928 (31 C.R.C. 690), granting a passenger stage certificate between Martinez and Stockton to California Transit Company, this applicant's predecessor, subject, however, to the following proviso (31 C.R.C. at p. 709):

"That no local service for such route shall be rendered in the carriage of passengers between Martinez and Antioch, and points intermediate thereto, unless such passengers originate at or are destined to points on the route east of Antioch ..."

The reason for the restriction appears from the following discussion in the opinion (31 C.R.C. p. 705):

"The record in these proceedings as regards the through service between Stockton and Oakland, via Martinez, is conclusive that public convenience and necessity are adequately cared for by the service offered by existing transportation lines, rail and stage. The evidence does not support the contention that there is need for additional service between Oakland and Martinez, either locally or as a portion of a through route, Oakland to Stockton. Such portions of the applications will therefore be denied in the accompanying order.

"There appears, however, an affirmative showing of a need for the establishment of service between Martinez and Stockton, such service serving the intermediate points of Avon, Bay Point, Nichols, Pittsburg, Antioch, Oakley and Brentwood only when passengers originate at or are destined to points east of Antioch. The service of the Ward Auto Line between West Pittsburg and Antioch is, according to the record herein, generally satisfactory, such complaint as exists having to do with the annoyance incidental to the necessity for transfer to connecting carriers and sporadic delays at the transfer points. The service of the Bay Point-Martinez stage line has not been satisfactory but from the record herein, road conditions have been a material factor in such line's inability to render adequate service. Both these lines, by the order herein, will be protected as regards the local business for which they were established but the evidence herein justifies a through service between Martinez, the county seat of Contra Costa County, and Stockton, the county seat of San Joaquin County, as well as a better method of transportation between Martinez and the easterly portion of Contra Costa County which would be served by a through route between Martinez and Stockton. This service is not now available without the necessity for changes, and when available with changes, is not at convenient hours."

The restriction was partially removed by Decision No. 23917 on Application No. 14912, decided August 3, 1931 (36 C.R.C. 505), as amended by Decision No. 23942, decided August 10, 1931

(36 C.R.C. 530 at 531), wherein it was ordered that the application of Pacific Greyhound Lines, Inc. for an order -

"(a) Eliminating restriction on local service between Martinez and Antioch heretofore established by Decision No. 23244;

(b) Rerouting part of its service between Oakland and Martinez so as to permit service via Franklin Canyon; and

(c) Consolidating operating right between Martinez and Stockton, and re-routing via Franklin Canyon with main system, as established by Decisions Nos. 23244, 23301, and 25667, on application No. 16989, be and the same is hereby granted, subject to the following provision:

That the order removing restriction between Martinez and Antioch, and the consolidation authorized in paragraph (c) above, shall not be construed as authority to remove any restriction on the transportation of passengers, baggage and express established by Decision No. 23244, other than that affecting local service between Antioch and Martinez."

In justification of the present application, applicant alleges that there are passengers destined to points between Martinez and Antioch, including Antioch, originating at points on applicant's system west of Antioch, and passengers destined to points west of Martinez originating at points between Martinez and Antioch, who, by reason of the restriction, are unable to avail themselves of applicant's service; and that there have been demands for transportation of express between such points which, because of the restriction, applicant has been unable to perform. Public hearing of the application was held before Examiner Elder on February 27th, 1936.

Applicant produced company ticket agents from Vallejo, San Francisco, and Oakland, who testified to inquiries from the public respecting passenger and express service by applicant from those points to Port Chicago, Pittsburg, and Antioch. At Vallejo,

San Francisco, and Oakland such inquiries occurred daily or oftener; at Napa, several times a week; and at Santa Rosa, about twenty times per year. Company agents located at Pittsburg and Antioch also were produced who testified to the daily occurrence of inquiries respecting passenger service, and numerous other inquiries respecting express service, from Pittsburg and Antioch to points west of Martinez, including Oakland, Richmond, San Francisco, Napa, and Vallejo, and to Stockton.

The application was protested by Sacramento Northern Railway Company and Wards Auto Stage in so far only as concerns removal of the restriction between Port Chicago, Pittsburg, and Antioch, on the one hand, and San Francisco, Oakland, Berkeley, and Sacramento, on the other. No protest was made by other carriers serving the territory involved, including the Atchison, Topeka and Santa Fe Railway Company, Southern Pacific Company, and Railway Express Agency.

Protestants, through H. A. Mitchell, President of Sacramento Northern Railway, produced evidence tending to show that the carriers at present in the territory already render frequent passenger, baggage, and express service between San Francisco and Oakland, on one hand, and the restricted territory, on the other; that their existing schedules supply more frequent and faster service at more convenient hours and at lower rates than applicant proposes; that there is more service available between those points now than there was at the time Decision No. 19691 was rendered, while the volume of traffic is the same; and that applicant's proposed service, if instituted, would cause loss to protestants.

It is concluded from the evidence that public convenience and necessity will be served by the removal of the restriction,

except between Port Chicago, Pittsburg, Antioch, and points between, on the one hand, and San Francisco, Oakland, Berkeley, and Sacramento (via Martinez), on the other, but that the restriction should remain in effect between those points for reasons similar to those above referred to which dictated its original imposition. As the application is tantamount to one for a certificate of public convenience and necessity, it will be so treated in the Order.

Pacific Greyhound Lines, Inc. 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

Public hearing having been held upon the above application, and the matter having been duly submitted, the Railroad Commission of the State of California hereby finds that public convenience and necessity require the operation by Pacific Greyhound Lines, Inc. of an automotive passenger stage service for the transportation of passengers, baggage, and express to and from Port Chicago, Pittsburg, and Antioch, and intermediate points, on the one hand, and other points on the lines of said Pacific Greyhound Lines, Inc., excepting San Francisco, Oakland, Berkeley, and Sacramento (via Martinez), on

the other.

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

1. No authority is granted applicant hereby, directly or indirectly through any arrangement or device, to transport passengers, baggage, or express from or to San Francisco, Oakland, Berkeley, or Sacramento (via Martinez), on the one hand, and Port Chicago, Pittsburg, and Antioch, and intermediate points, on the other;

2. Applicant shall file its written acceptance of the authority herein granted within a period of not to exceed fifteen (15) days from date hereof;

3. 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 ten days' 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 be identical with the rates and rules shown in the exhibit attached to the application in so far as they conform to the authority herein granted, or rates satisfactory to the Railroad Commission;

4. 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 the Railroad Commission.

5. 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.

6. 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.

Dated at San Francisco, California, this 11th day of May, 1936.

W. B. Davis

Leon Whitely

W. A. Carr

Malcolm

Frank R. Dwyer

Commissioners.