

Decision No. 28548

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
O. W. CLARK and F. A. GARDNER, Co-partners,
for a certificate of public convenience
and necessity to operate an automobile
passenger, baggage and freight service as
a common carrier for compensation, between
Ferndale and South Fork, California, and
all intermediate points, via Petrolia and
Upper Mattole, California.

ORIGINAL

Application No. 20153

In the Matter of the Investigation on the
Commission's own motion into the rates,
rules, regulations, charges, classifica-
tions, practices, contracts, operations and
schedules, or any of them, of Elmer C.
Gardner, operating under the name and style
of Petrolia Stage Co., automotive service
between points in the State of California.

Case No. 4167.

E. S. Mitchell, for Complainant and Protestant
in Application No. 20153; and for Respondent
in Case 4167.

Blaine McGowan, for Defendant and Applicant
in Application No. 20153;

W. J. Cummings, for Northwestern Pacific
Railroad, interested party;

A. W. Way, for Eureka-Ferndale Stage Line,
Protestant.

BY THE COMMISSION:

O P I N I O N

By Decision No. 28795, dated May 4, 1935, in the above
entitled matter, the Commission issued the following order, in
part:

"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."

Respondent, in writing, accepted this order. The purpose of the order, fully explained in the opinion, was a final effort to bring the operations of E. C. Gardner in all respects to lawful and efficient methods, and to provide service adequate to the needs of the points authorized to be served. The period "sixty days * * * or thereafter" was provided for the purpose of enabling E. C. Gardner to establish and maintain adequate and efficient lawful service, as an indication to the Commission and the public that he would meet fully the duty of a carrier. Reported failure to meet these requirements caused the Commission, on September 14, 1936, to issue its order setting aside submission of Application No. 20153, and ordering further hearing before Examiner W. R. Williams at Ferndale. On August 31, 1936, Case 4167 was instituted on the Commission's own motion to investigate the complete operations of E. C. Gardner, operating under the name of Petrolia Stage Company. Gardner was ordered to show cause why the certificate should not be revoked. Hearing was held at Ferndale, the matter was duly submitted, and is now ready for decision.

The testimony at this hearing disclosed that respondent had for a period of sixty days established daily service between Ferndale and Upper Mattole, and twice weekly between South Fork and Upper Mattole. Exhibit 5 discloses that respondent was advised by the Commission either to make the time schedule permanent or apply under General Order 83 for whatever changes he might have in mind. The evidence showed that after the sixty-day period respondent reduced the service to thrice weekly from Ferndale, and weekly from South Fork. He asserted that this complied with the Commission's order, and that he still is maintaining adequate service. The testimony shows that no corrected schedules were filed with the Commission after the sixty-day period. The record also shows that the schedules operated were irregular, the equipment old and more or less dangerous, and the passenger accommodations still confined to a seat in the cab of the truck, except for the weekly trip between South Fork and Upper Mattole, for which a touring car fourteen years' old was used for both passengers and property. The equipment, according to the record, is antiquated and, to say the least, not inviting to passenger traffic.

As to this equipment and its adequacy, respondent furnished a statement (Exhibit No. 7) covering the period from January to September, inclusive, 1936, showing his finances. In this it is disclosed that during the nine months applicant expended \$623.94, or \$69.38 per month, for repairs, parts, and tires for these obsolete vehicles, while he spent \$741.73 for labor in operation, or \$83.08 each month.

Exhibits Nos. 7 and 8 disclose that applicant has not operated in accordance with law, in that he does not collect the rates and charges filed by him with the Commission. In Decision

No. 28795 respondent Gardner was directed to cease this practice, but seems to have ignored the instruction. Exhibit No. 7 discloses that for the nine months' period covered, respondent earned a revenue of \$1,813.93; that he collected in cash \$235.69, and charged \$1,578.35. Expenses of operation for the same period were \$2,400.27, representing a nine months' loss of \$586.34, or more than twice the cash received. Respondent sought to show by Exhibit No. 8 that he was collecting past due accounts. This exhibit reveals that "cash collections" for the same nine months were \$1,476.39, practically all old accounts. But adding these "collections" to the "cash" received during the same period (\$235.69 in Exhibit No. 7) yields a total of only \$1,712.07, or a deficit in cash received of \$678.20 as compared with operating outlay of \$2,400.27.

Deprecation of this practice was voiced in Decision No. 28795, and respondent was offered the chance to reform his methods of operation. While it is true that respondent has made some effort along the lines suggested, he had not complied with the order of the Commission. He is operating a freight truck for passengers between Ferndale and Upper Mattole, and a passenger vehicle for property between South Fork and Upper Mattole. The equipment used is antiquated and repellent to traffic. According to the repair bills, it should have been retired long ago. The schedules are inadequate and cause shippers to seek other means of transportation, including some not legally operating. Rate discrimination is continued, as indicated. The only answer to this showing is the revocation of respondent's operative rights. An order to this effect will be entered.

On the other hand, O. W. Clark and F. A. Gardner properly

have sought authority to conduct transportation between Ferndale and South Fork, and all intermediate points, via Petrolia and Upper Mattole, with new and efficient equipment. They offer daily schedules between Ferndale and Upper Mattole and three days each week between South Fork and Upper Mattole. Twice daily train service of Northwestern Pacific serves South Fork, and Ferndale and western points are served from Fernbridge, 32 miles north of South Fork. The entire territory west of Northwestern Pacific depends on adequate highway common carrier service. As it has not such service now, and applicants Clark and Gardner offer such service, their application will be granted.

O. W. Clark and F. A. Gardner 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 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

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA hereby declares that public convenience and necessity require the operation by O. W. Clark and F. A. Gardner, doing business as Clark & Gardner, of an automotive service as a common carrier of passengers, baggage, and freight between Ferndale and South Fork, and all intermediate points, via Petrolia and Upper Mattole.

IT IS HEREBY ORDERED that a certificate of public convenience and necessity therefor be, and the same is, hereby granted

to O. W. Clark and F. A. Gardner, a co-partnership, subject to the following conditions:

1. Applicants shall file a written acceptance of the certificate herein granted within a period of not to exceed fifteen (15) days from date hereof.

2. Applicants shall commence the service herein authorized within a period of not to exceed thirty (30) days from the effective date hereof, and shall file in triplicate and concurrently make effective on not less than ten (10) days' notice to the Railroad 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 certificate herein granted, or rates and rules satisfactory to the Railroad Commission.

3. Applicants 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 (5) days' notice to the Railroad 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 obtained.

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

6. Applicants shall, prior to the commencement of service authorized herein and continuously thereafter, comply with all of the provisions of this Commission's General Order No. 91.

IT IS HEREBY FURTHER ORDERED that the certificates of public convenience and necessity heretofore granted Elmer C. Gardner, doing business as Petrolia Stage Co., by Decisions Nos. 10554 and 24976, and any other rights, prescriptive or otherwise, possessed by said Elmer C. Gardner, for any highway common carrier operation between Ferndale and South Fork, via Petrolia and Upper Mattole, be and the same are hereby revoked, cancelled, and set aside, and

all the time schedules and tariffs heretofore filed by said Elmer C. Gardner, doing business as Petrolia Stage Co., be and they are hereby cancelled.

The effective date of this order shall be twenty (20) days from the date hereof.

Dated at San Francisco, California, this 19th day of February, 1937.

Walter H. Hare
Leon Whitwell
Green B. Smith
Raymond H. Hare

Commissioners.