

Decision No. 31286

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
YOSEMITE PARK AND CURRY CO. for an
in lieu certificate of public con-
venience and necessity.

} Application No. 21861

JAMES S. MOORE, of Brobeck, Phleger and Harrison,
for applicant.

HARRY A. ENCELL, for W. H. Pimentel, doing business
as Pierce Arrow Stages, as his interest may appear.

BY THE COMMISSION:

O P I N I O N

Applicant Yosemite Park and Curry Co. possesses prescriptive operative rights and certificates of public convenience and necessity for the transportation of passengers, baggage and property over various routes in general between Merced and Yosemite National Park; between Fresno and Yosemite National Park; between Yosemite National Park and Tahoe City; and between Yosemite National Park (Yosemite Valley) and Hetch Hetchy.

The above rights have been established in part by operations by applicant's predecessors prior to May 1, 1917 and in part by various certificates issued by this Commission to applicant and to applicant's predecessors.

Applicant now seeks a certificate de novo in lieu of all of its present operative rights in order to clarify such rights and establish uniform rules and regulations over all routes.

A public hearing was held at San Francisco before Examiner Paul and the matter having been duly submitted is now ready for decision.

No protest was made to the granting of the certificate sought.

Under the in lieu certificate sought applicant will render a service but little different from that now provided and in most cases over the same routes. In the operations between Yosemite Park and Fresno and between Yosemite Park and Merced the applicant requests authority to operate over various alternate routes depending upon road and weather conditions. It also requests authority to use any reconstructed or relocated portions of the highways over which it operates provided that service to any intermediate points along such routes is not adversely affected thereby. A seasonal service will be continued over all of these routes with the exception of that between Yosemite National Park and Merced via state route No. 140 and commonly referred to as the "All-Year Highway". Over some of these routes applicant proposes to transport only passengers and baggage while over others it proposes to transport passengers, baggage and property, said property to be transported without any restrictions or limitations as to weight or vehicle of transportation. The transportation of property over portions of some routes is to be abandoned.

Route A. - Between Merced and Yosemite National Park over state route No. 140 via Mariposa and Briceburg, applicant will transport only passengers and baggage; between Merced and Briceburg, in addition to the transportation of passengers and baggage, newspapers will be carried without restriction as to weight or vehicle of transportation; between El Portal and Yosemite National Park applicant will transport property without any restrictions in addition to the transportation of passengers and baggage. As alternative routes in connection with route A, it is proposed to detour from said route near Mariposa proceeding

to Yosemite National Park via Mormon Bar and Wawona and/or Miami Lodge. Local and intermediate year round service will be provided along this route except that no passengers nor baggage will be picked up or discharged at any point intermediate to but not including Briceburg and El Portal.

Route B. - On this route applicant proposes a seasonal operation, when road and weather conditions permit, between the approximate dates of May 1 and October 1 of each calendar year, for the transportation of passengers and baggage between Fresno and Yosemite National Park and intermediate points only for such traffic that has its point of origin or destination at Yosemite National Park. The route is over and along state route No. 41 via Kelshaw Corners and Coarsegold and applicant requests authority to use alternate routes via Friant, Clovis, Auberry, North Fork and Wishon or any combination thereof, entering the Park near Mariposa Grove.

Route C. - On this route applicant proposes a seasonal operation between the approximate dates July 1 and September 1 of each calendar year, when road and weather conditions permit, for the transportation of passengers and baggage between Yosemite National Park and Lake Tahoe when the point of origin or point of destination of such traffic is Yosemite National Park. Between Yosemite Valley and Tuolumne Meadows Lodge on this route, it is proposed to carry property without limitations in addition to passengers and baggage. The route of operation is from the Park via the Big Oak Flat Road to Carl Inn, thence easterly over state route No. 120 to the westerly boundary of Yosemite National Park, thence across the Park passing through Tuolumne Meadows and continuing to a point where state route No. 120 connects with U. S.

Highway No. 395 near Mono Lake, thence northerly through Bridgeport and Coleville to U. S. Highway No. 50, following such highway to its connection with state route No. 89 along the westerly boundary of Lake Tahoe to Tahoe City.

Route D. - This route is between Yosemite Valley and Hetch Hetchy, both termini being within Yosemite National Park, but the route at the present time passes out of the Park over the Big Oak Flat Road, through Carl Inn and Mather, re-entering the Park just north of Mather. Only passengers and baggage will be carried over this route. Applicant proposes to abandon the transportation of property. Service will be provided seasonally between the approximate dates June 1 and September 1 of each calendar year when road and weather conditions permit.

A considerable portion of the territory in which applicant operates is not subject to the jurisdiction of this Commission because such operations are over routes within a National Park. In acting upon this application the Commission will grant a certificate of public convenience and necessity only in so far as it has jurisdiction. On the record it appears that to grant the certificate de novo, as herein sought, will be in the public interest. The order will so provide.

Yosemite Park and Curry Co. 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 Commission now being fully advised,

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA HEREBY DECLARES that public convenience and necessity require the establishment and operation by Yosemite Park and Curry Co., a corporation, of an automotive service as a passenger stage corporation as defined in section 2 $\frac{1}{4}$ of the Public Utilities Act for the transportation of passengers and baggage and as a highway common carrier as defined in section 2 $\frac{3}{4}$ of the Public Utilities Act for the transportation of property between the termini and intermediate points and over and along the routes as hereinafter set forth, to-wit:

- Route A Passengers, baggage and property between Merced and Yosemite National Park and intermediate points over and along state route No. 140 via Mariposa and Briceburg detouring from said route near Mariposa, proceeding to Yosemite National Park via Mormon Bar and Wawona and/or Miami Lodge.
- Route B Passengers and baggage between Fresno and Yosemite National Park and intermediate points over and along state route No. 41 via Kelshaw Corners and Coarsegold and alternate routes via Friant, Clovis, Auberry, North Fork and Wishon or any combination thereof entering Yosemite National Park near Mariposa Grove.
- Route C Passengers, baggage and property between Yosemite National Park and Lake Tahoe and intermediate points over and along the Big Oak Flat Road to Carl Inn, thence easterly over state route No. 120 to westerly boundary of Yosemite National Park, thence across said park through Tuolumne Meadows to the intersection of state route No. 120 with U. S. Highway No. 395 near Mono Lake, thence northerly through Bridgeport and Coleville to U. S. Highway No. 50, thence along said highway No. 50 to its intersection with state route No. 89, thence to Tahoe City; An optional diversion from U. S. Highway No. 50, east of Lake Tahoe, thence northerly around the north end of said lake to Tahoe City.
- Route D Passengers and baggage between Yosemite Valley and Hetch Hetchy over and along Big Oak Flat Road through Carl Inn and Mather.

IT IS ORDERED that a certificate de novo therefor is hereby granted to Yosemite Park and Curry Co., not in addition to, but in lieu of all operative rights now held by said Yosemite Park and Curry Co., which operative rights are hereby revoked and annulled, said certificate being granted subject to the following restrictions and conditions:

1. (a) Along route A no property may be transported except between El Portal and Yosemite National Park providing, however, that between Merced and Briceburg newspapers may be transported.

(b) No passengers nor baggage may be picked up or discharged at any point intermediate to but not including Briceburg and El Portal.
2. (a) Service over route B will be provided only for traffic having either point of origin or destination at Yosemite National Park.

(b) Service over route B shall be a seasonal service between the approximate dates of May 1 and October 1 of each calendar year when road and weather conditions permit.
3. (a) Service over route C will be provided only for traffic having either point of origin or destination at Yosemite National Park.

(b) Service over route C shall be a seasonal service between the approximate dates of July 1 and September 1 of each calendar year when road and weather conditions permit.

(c) No property may be transported over route C except between Yosemite Valley and Tuolumne Meadows Lodge.
4. (a) Service over route D will be provided only for traffic having either point of origin or destination at Yosemite National Park.

(b) Service over route D shall be a seasonal service between the approximate dates of June 1 and September 1 of each calendar year when road and weather conditions permit.
5. In the general operation of its system applicant upon reconstruction or relocation of the highways comprising its routes and in cases not affecting intermediate points served by it, may use such reconstructed or relocated highways provided that prior to such use the Commission be notified thereof, said notice to be accompanied by a sketch or map clearly showing the changes involved.

6. Applicant shall file a written acceptance of the certificate herein granted within a period of not to exceed fifteen (15) days from the date hereof, specifying therein that such certificate is accepted in lieu of, and not in addition to any and all operative rights heretofore owned by said applicant.
7. Within forty-five (45) days from the effective date hereof applicant shall file in triplicate and make effective on not less than ten 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, or amendments to or reissues of its current tariffs to appropriately reflect any changes in its operations which may be brought about by reason of the certificate herein granted.
8. Applicant shall file in duplicate and make effective within a period of not to exceed forty-five (45) days after the effective date of this order on not less than five days' notice to the Railroad Commission and the public a time schedule or time schedules to appropriately reflect any changes in its operations which may be brought about by reason of the certificate herein granted.
9. 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.
10. No vehicle may be operated by applicant herein unless such vehicle is owned by said applicant or is leased by applicant under a contract or agreement on a basis satisfactory to the Railroad Commission.

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

Dated at San Francisco, California this 3/4 day of October, 1938.

Robertson
W. A. Kelly
Frank R. Kelly
W. A. Kelly

COMMISSIONERS