

Decision No. 31418

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
GLEN SCHOLL, doing business as MARIPOSA
EXPRESS for authority to establish a
truck service for the transportation
of freight between Merced, California
and Mid Pines, California, via Tuttle,
Planada, Cathay and Mariposa.

ORIGINAL

Application No. 22092

JAMES D. GARIBALDI for applicant

BROBECK, PELEGER and HARRISON by James E. Moore
for Yosemite Park and Curry Company, interested
parties

WHITSELL, COMMISSIONER:

O P I N I O N

By this application Glen Scholl, an individual, operating under the fictitious name and style of Mariposa Express seeks authority from this Commission to establish and operate an auto-motive service as a highway common carrier between Merced and Mid Pines and intermediate points.

(1)
A public hearing was had in this proceeding on Wednesday September 21, 1938 in Merced where testimony was received, the matter submitted and it is now ready for decision.

No protests to the granting of this application were received, but Yosemite Park and Curry Company entered an appearance as an interested party.

Applicant presented no public witness testimony but did take the stand and testified in his own behalf.

1. Conducted by Examiner McGettigan

Briefly he testified that he had been engaged in the automotive transportation business for approximately five years, was the possessor of a highway contract carriers permit (24-145) and served some 50 to 75 customers along his route under oral contracts. At its inception, his service took care of from 35 to 50 parties and over the period of his operation these have been increased to the 50 or 75 referred to. Additionally, he testified, he has a mail contract but it was his opinion that he could continue to operate even though he might at some future date be an unsuccessful bidder.

From his testimony it appears that this applicant enjoys the patronage of a goodly number of the merchants in Merced and Mariposa and is engaged in the transportation of general merchandise including groceries, vegetables, liquors, meats, automotive parts, theatrical supplies, milk, cream, ice cream, newspapers, bakery supplies, etc., to judge from the type of establishments referred to therein. Some mining supplies were also transported. Scholl also testified that he was worth from \$8,000 to \$10,000, was a property owner in Merced, was operating at the present time a 1938 Chevrolet 1½ ton flat truck with van and trailer, and was able and willing to add equipment should conditions so require.

Applicant further testified that at the present time he was transporting approximately 1½ tons of freight daily over this 90 mile round trip route; that the average weight of shipments was between 50 and 100 pounds. Also, he stated, the movement was preponderantly one way, ie, from Merced with a negligible return movement.

A daily schedule, Monday through Saturday leaving Merced at 8:45 A.M. and arriving at Mid Pines at 12:45 P.M. with a return trip leaving Mid Pines at 1:30 P.M. and arriving at Merced at

4:00 P.M., is proposed by applicant. Terminals will be established at 726 "H" Street, Merced and at Al Rippen's General Store at Mid Pines. Rates to be assessed will be brought into conformity with the Commission's Decision No. 30370 and supplements thereto and applicant has given assurance that he will also handle newspapers. Pickup and delivery service will also be given.

No common carrier service except that of Yosemite Park and Curry Company ⁽²⁾ exists between the termini included herein and that company under authority of the Commission has suspended its freight and express operations (except newspapers) until October 1, 1938 and there is pending before the Commission Application No. 21861 in its name for an in lieu certificate, requesting also, authority for the abandonment of said freight and express service.

Applicant's proposal embraces an operation over State Route No. 140 between Merced and Mid Pines via Mariposa and other intermediate points with a return route via State Highway No. 140 from Mid Pines to Mariposa to Mormon Bar and thence via County Road via Bridgeport, Stone House and Cathay Post Office to its intersection with State Route No. 140 and thence to Merced.

While the record in this proceeding is not particularly indicative of any great demand in the past for service between the termini it has been shown that some 9,000 people (at peak seasons) inhabit this region of farms, ranches, resorts and small communities dependent to a great degree on trucking service for necessary supplies.

Further, while both contract and proprietary trucks have been used in the past they have not proven satisfactory and it appears evident that an opportunity exists for a regular certificated service to serve this area. This proposed service becomes

2. Passengers, baggage, express and freight.

rather vital in view of the request of Yosemite Park and Curry Company to be relieved of its obligation to transport property in this territory, which, if granted would leave unserved, by common carrier, a considerable portion thereof.

The applicant herein appears to be a substantial and capable operator of considerable experience apparently favorably known to and patronized by many shippers. He has evidenced an ableness and willingness to establish and operate an automotive service in this region which will serve a definite though limited public need. Favorable action by the Commission on the pending application of Yosemite Park and Curry Company plus applicant's offer to handle newspapers will, it was asserted by counsel therefor, satisfy that company and remove any contemplated protest it might have. Under the circumstances it is apparent that, in the public interest, the application be granted.

Glen Scholl 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

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA HEREBY
DECLARES that public convenience and necessity require the

3. Granted by Dec. 31396 dated October 31, 1938 on Application 21861.

establishment and operation by Glen Scholl, operating under the name and style of Mariposa Express, of an automotive service as a highway common carrier as such is defined in section 2 3/4 of the Public Utilities Act between Merced and Mid Pines and all intermediate points over and along the following route:

Between Merced and Mid Pines over State Route No. 140 via Mariposa and between Mid Pines and Merced over State Route No. 140 to Mariposa thence to Mormon Bar and thence over County Road via Bridgeport, Stone House and Cathay Post Office to its intersection with State Route No. 140 and thence over State Route No. 140 to Merced.

IT IS HEREBY ORDERED that a certificate of public convenience and necessity therefor be, and the same hereby is, granted to Glen Scholl, subject to the following conditions:

1. Applicant shall file a written acceptance of the certificate herein granted within a period of not to exceed fifteen (15) days from date hereof.
2. Applicant 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 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. 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 Railroad Commission and the public, a time schedule or 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 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.

6. Applicant 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.

The foregoing opinion and order is hereby ordered filed as the opinion and order of the Railroad Commission of the State of California.

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

Dated at San Francisco, California, this 5th day of November, 1938.

Ralph W. Anderson

Frank E. Nelson

Ray L. Kelley

COMMISSIONERS