

ORIGINAL

Decision No. 31436

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)	
EDWARD S. HEYEN for authority to lease)	
from FEATHER RIVER STAGE COMPANY, a)	
corporation, those certain operating)	Application No. 22003
rights issued to said corporation and)	
created by Decision No. 28766 on)	
Application No. 20059.)	

BY THE COMMISSION:

O P I N I O N

Feather River Stage Company, a corporation, one of the applicants herein, among its operative rights, some of which are interstate, owns a certificated right granted by the Commission in Decision No. 28766, on Application No. 20059, for the transportation of passengers, baggage and express between Oroville and Quincy and intermediate points via Bidwell Bar, Merrimac and Buck's Lodge.

Edward S. Heyen, since July 1, 1938, is the holder of a star route contract for the transportation of U. S. mail between Oroville and Merrimac.

In this application Feather River Stage Company is requesting authority, as lessor, to lease to Edward S. Heyen, as lessee, the operative right granted in said Decision No. 28766 for a period of time beginning with the effective date of the approval by this Commission of said lease to and including the 30th day of June, 1939, with an option to renew said lease for a period of three years from July 1, 1939 to June 30, 1942, subject to the terms and conditions of a lease, a copy of which is attached hereto marked Exhibit A. The annual rental to be paid by the lessee to the lessor is three hundred dollars (\$300).

As justification for the authority sought, applicants allege in effect that the portion of Feather River Stage Company's operative rights which it is proposed to lease is operated over a mountain road, a portion of which is open only during the summertime and, in addition thereto, said road since the creation of the all-year Feather River Canyon Highway, has reverted to the county for maintenance; that applicant Heyen possesses the star route mail contract between Oroville and Merrimac and is desirous of combining this star mail route with an automotive common carriers service to the end that the territory may be adequately served on a profitable basis to the carrier.

Applicant Feather River Stage Company further alleges that during the period June 10, 1937, to October 31, 1937, inclusive, its gross revenue from the transportation of passengers and property between Oroville and Quincy and intermediate points amounted to \$1138.09 and its total cost of operation during this period amounted to \$1229 resulting in a net loss of \$90.91; that applicant Heyen proposes to use equipment lighter in weight than that used by applicant Feather River Stage Company thereby reducing the operating cost; it is estimated that the revenues to be derived by applicant Heyen from his star route mail contract, together with the revenue from the common carrier operations, will enable said applicant to conduct the operation at a profit.

This is not a matter requiring a public hearing and the plan proposed herein, appearing to be in the public interest, will be granted.

Edward S. Heyen 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

IT IS ORDERED that Feather River Stage Company, a corporation, is hereby authorized to lease to Edward S. Heyen the operative right created by Decision No. 28766, on Application No. 20059, which authorized the transportation of passengers, baggage and express between Oroville and Quincy and intermediate points, via Bidwell Bar, Merrimac and Buck's Lodge, over the county highway between the termini in accordance with the terms and conditions of Exhibit A attached to and made a part of the application herein, subject to the following conditions:

1. The consideration to be paid for the property herein authorized to be leased should never be urged before the Commission or any other rate-fixing body, as a measure of value of said property for rate fixing or for any purpose other than the lease herein authorized.
2. Applicant Heyen shall commence the service herein authorized within a period of not to exceed thirty (30) days after the date hereof, and shall prepare and file in triplicate in his name, 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 fares, charges, rates, rules and regulations identical with those set forth in Local Passenger and Baggage Tariff No. 3, C.R.C. No. 4, and Local Express Tariff No. 3, C.R.C. No. 3, and Local Express Tariff No. 4, C.R.C. No. 4 of applicant Feather River Stage Company in so far as such described tariffs set forth fares, charges, rates, rules and regulations between points herein authorized to be leased.

Applicant Feather River Stage Company shall prepare and file in triplicate with the Railroad Commission and make effective concurrently with tariff filings made by applicant Heyen amendments to its Local Passenger and Baggage Tariff No. 3, C.R.C. No. 4, Local Express Tariff No. 3, C.R.C. No. 4 and Local Express Tariff No. 4,

C.R.C. No. 4 cancelling all fares, charges, rates, rules and regulations between the points herein authorized to be leased.

3. Applicant shall file in duplicate, and made 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.

For all other purposes 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.

Kay Bouchard

Frank R. Dumm

Ray & Riley

COMMISSIONERS