

Decision No. 25332.

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of GEORGE HARM and WILLIAM RITCHIE, copartners doing business under the firm name and style of HARVEY AVENUE-HAZELWOOD BUS LINE, for a certificate of public convenience and necessity authorizing the operation of a motor bus passenger service, as a common carrier, between the intersection of Maripose Street and Van Ness Avenue, in the City of Fresno, and the intersection of Palm Avenue and Dayton Avenue, in the County of Fresno, immediately north of and adjacent to said City of Fresno.

Application No. 22228

In the Matter of the Application of FRESNO TRACTION COMPANY

(a) For authority to abandon all of its street railway lines in the City of Fresno and in unincorporated territory in the vicinity thereof, all in Fresno County, California;

(b) For certificate of public convenience and necessity for the exercise of a general franchise from the City of Fresno for the operation of a comprehensive motor coach system in substitution for the street railway lines so to be abandoned; and

(c) For certificate of public convenience and necessity for the transportation of passengers by motor coach in the City of Fresno and in unincorporated territory in the vicinity thereof, all in Fresno County, California.

Application No. 22255

In the Matter of the Application of GEORGE HARM and WILLIAM RITCHIE, doing business under the firm name of Harvey Avenue-Hazelwood Bus Line, to sell, and of FRESNO TRACTION COMPANY to acquire, all operative rights with respect to the so-called Harvey Avenue-Hazelwood Bus Line, originally established under Decision No. 25332; and

In the Matter of the Application of GEORGE HARM AND WILLIAM RITCHIE, doing business under the firm name of Harvey Avenue-Hazelwood Bus Line, for authority to abandon its so-called Sierra Vista Line, established under Decision No. 31161, as modified.

Application No. 22570

WALLACE L. WARE and FRANK B. AUSTIN, for Applicant in Application No. 22228, and for Harvey Avenue-Hazelwood Bus Lines, George Harm and William Ritchie, copartners, Protestant in Application No. 22255.

E. J. FOULDS, for Applicant Fresno Traction Company in Application No. 22255, and Protestant in Application No. 22228.

C. M. OZIAS, City Attorney, for the City of Fresno.

O. A. ROWAN, for the Amalgamated Association of Street Electric Railway and Motor Coach Employees of America.

BY THE COMMISSION:

O P I N I O N

In Application No. 22228 George Harm and William Ritchie, copartners, doing business under the firm name and style of Harvey Avenue-Hazelwood Bus Line, request a certificate of public convenience and necessity authorizing the operation of motor coach passenger service between the intersection of Mariposa Street and Van Ness Avenue in the City of Fresno and the intersection of Palm Avenue and Dayton Avenue in the County of Fresno, and along Palm Avenue for most of the route.

In Application No. 22255 Fresno Traction Company seeks authority to abandon all of its street railway lines in the City of Fresno and in the unincorporated territory in the vicinity thereof, and for a certificate of public convenience and necessity for the operation of a motor coach system in substitution thereof, and to extend certain of these motor coach lines beyond the limits of the existing street car lines.

Public hearings in these matters were held before Examiner Hall in Fresno on December 20, 1938, and on January 17,^{and 18,} 1939, at which latter hearing these matters were to be submitted upon the filing of briefs.

On February 7, 1939, said Harm and Ritchie filed their Application No. 22570 asking authority to sell and in the same application Fresno Traction Company asked authority to acquire the operative rights of the so-called Harvey Avenue-Hazelwood Bus Line, the former further requesting authority to abandon its so-called Sierra Vista line.

On February 8, 1939, both Harm and Ritchie and the Fresno Traction Company advised the Commission, in writing, that they waived the filing of briefs in Applications Nos. 22228 and 22255, and requested immediate submission therein. These two matters can therefore be considered submitted.

Furthermore, on February 8, 1939, said Harm and Ritchie filed their petition with the Commission asking for the dismissal

of Application No. 22228, as amended, and it will be so ordered.

The only matters now before the Commission are the application of Fresno Traction Company to substitute busses for street car lines and that for the sale of the Harvey Avenue-Hazelwood Bus Line to Fresno Traction Company.

The City of Fresno and the Fresno Traction Company have had under consideration for a considerable time the removal of tracks from the city streets in Fresno and the substitution of bus service for the existing street car service. An agreement has been reached between these parties with respect to the elimination of street car lines, as evidenced by a franchise issued by the City of Fresno, a copy of which is filed with the Commission in this proceeding.

The routes over which it is proposed to operate motor coach service are shown in Appendix "A" attached hereto and made a part hereof. In most of the territory the motor coach service extends beyond the limits of the existing street car lines so as to better serve the travelling public.

In its amended Application No. 22255, filed December 13, 1938, Fresno Traction Company proposes to install an additional motor coach line generally along Palm Avenue to and beyond the northerly city limits of Fresno.

The City of Fresno supported the application of the Fresno Traction Company and requested an early determination in the matter as it was its desire to have the rails and appurtenances thereto removed from its city streets at as early a date as possible.

With respect to Application No. 22570, it appears desirable that the operations of Harm and Ritchie be transferred to the Fresno Traction Company, through which the City of Fresno will be given a unified and coordinated local transportation system with universal transfers to all parts of the city and certain areas contiguous thereto.

It appears that it is not necessary to hold a hearing in this latter application and that it should be granted.

Fresno Traction Company has outstanding \$5,000,000, par value of common stock and \$445,000 of first mortgage 5% bonds due June 1, 1944, all held by Southern Pacific Company.

The payment of the bonds is secured by a mortgage or deed of trust dated July 1, 1904, to Wells Fargo Bank & Union Trust Company, as Trustee. It is now proposed, in order to preserve the security behind the bonds, to execute a supplemental indenture placing under the lien of the mortgage or deed of trust, Ordinance No. 2464, granted by the City of Fresno, (amended Exhibit C filed in this proceeding) together with the company's equity in the motor coach equipment it proposes to acquire.

The testimony shows that Fresno Traction Company, in order to conduct its proposed motor bus operations, proposes to purchase 26 new motor coaches. The general method of financing will be 10% of the purchase price down with the balance payable in 60 equal monthly installments with interest at the rate of 6% per annum. It is planned, in order to finance the costs of the equipment, to enter into the usual form of conditional sales contracts required by manufacturers and sellers of motor coaches.

At the hearings held in these matters, the company filed no copy of its proposed supplemental indenture nor of the proposed form of conditional sales contract. In general, the plan outlined by applicant is satisfactory to the Commission and when it has filed copies of the proposed instruments in satisfactory form the Commission will, by a supplemental order in this proceeding, authorize their execution. Fresno Traction Company shall also file with the Commission a copy of any and all agreements between it and the trustee for the release of the rail property from the lien of the indenture securing the payment of its bonds.

Upon the abandonment of the rail lines and the substitution of the motor coach operation, Fresno Traction Company proposes to charge the costs of the property to be abandoned to its corporate surplus account. The effect of such treatment, according to Exhibit 5, will result in a deficit appearing on the company's books in excess of \$6,000,000, whereas the company's property accounts will appear in an amount of approximately \$243,000. Considering the size of the company's investment in its properties following the conclusion of its present program and the comparatively large amount of outstanding stock and deficit, we suggest that the company undertake to make some arrangement to reduce its capitalization in order to bring it more into line with its investment in property and other assets.

A review of the entire record of the proceedings herein involved discloses that the City of Fresno and the territory adjacent thereto will be better served by a single local transportation system, with a universal transfer rather than by two systems operating independently of each other and with two different fare structures; and that public convenience and necessity require that Application No. 22255, as amended, and Application No. 22570 be granted and that Application No. 22228 be dismissed.

Fresno Traction Company 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 hearings having been held in Applications Nos. 22228 and 22255, and the matters having been duly submitted

IT IS HEREBY ORDERED that Fresno Traction Company is authorized to abandon all of its street car service in the City of Fresno and in certain portions of the County of Fresno adjacent to said city, and to remove its tracks and appurtenances thereto, subject to the following conditions:

- (1) Service on said lines shall be abandoned concurrently with the establishment of motor coach service as hereinafter authorized, and not otherwise.
- (2) Applicant shall, within thirty (30) days thereafter, notify this Commission, in writing, of the abandonment of the facilities authorized herein and of its compliance with the conditions hereof.
- (3) The authorization herein granted shall lapse and become void if not exercised within one (1) year from the date hereof unless further time is granted by subsequent order.

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA HEREBY DECLARES that public convenience and necessity require the establishment and operation by applicant, Fresno Traction Company, as a passenger stage corporation, as defined in Section 2 $\frac{1}{2}$ of the Public Utilities Act, of an automotive passenger service for the transportation of passengers upon and along the routes described in Appendix "A" attached hereto and made a part hereof, and applicant to exercise the municipal franchise hereinbefore referred to.

IT IS HEREBY FURTHER ORDERED that a certificate of public convenience and necessity therefor be and the same is hereby granted to Fresno Traction Company, 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 the date hereof.
- (2) Applicant shall commence the service herein authorized concurrently with the abandonment of service on the various street car lines hereinbefore authorized to be abandoned, but not to exceed ninety (90) days from the effective date hereof, unless further time is granted by subsequent order.

- (3) Fresno Traction Company shall file and make effective on not less than five (5) days' notice to the public and the Commission supplement to Local Passenger Tariff No. 5, C.R.C. No. 25, and Local Parcel Tariff No. 1, C.R.C. No. 9, to provide that rates, rules and regulations shown therein will apply for operation by motor coach.
- (4) Applicant shall file, in duplicate, and make effective within a period of not to exceed ninety (90) days after the effective date of this order, on not less than five (5) days' notice to the Commission and the public, time schedules covering the service herein authorized in a form satisfactory to the Commission.
- (5) Applicant is authorized to turn its motor vehicles at termini or intermediate points either in the intersection of the streets or by operating around a block contiguous thereto in either direction, and to carry passengers as traffic regulations of the public bodies affected may require.
- (6) 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.
- (7) 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 this Commission.

IT IS HEREBY FURTHER ORDERED that George Harm and William Ritchie, doing business as Harvey Avonue-Hazelwood Bus Line, are hereby authorized to sell and transfer to Fresno Traction Company, and Fresno Traction Company is hereby authorized to purchase and acquire, and hereafter operate thereunder as an extension and enlargement of the operative rights hereinbefore created, the operative right heretofore acquired by said Harm and Ritchie by virtue of the authority granted by Decision No. 30166, dated September 27, 1937, on Application No. 21473, subject to the following conditions:

- (1) The consideration to be paid for the property herein authorized to be transferred shall never be urged before this 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 transfer herein authorized.

- (2) Applicants George Harm and William Ritchie shall, within ninety (90) days after the effective date of this order, unite with applicant Fresno Traction Company in common supplement to the tariffs on file with the Commission covering service authorized to be transferred, applicants Harm and Ritchie withdrawing and applicant Fresno Traction Company accepting and establishing such tariffs and all effective supplements thereto.
- (3) Applicants Harm and Ritchie shall, within ninety (90) days after the effective date of this order, withdraw all time schedules filed in their name with the Railroad Commission, and applicant Fresno Traction Company shall, within ninety (90) days after the effective date of this order, file, in duplicate, in its name, time schedules covering service heretofore given by applicants Harm and Ritchie, which time schedules shall be identical with the time schedules now on file with the Railroad Commission, in the name of applicants Harm and Ritchie, or time schedules satisfactory to the Railroad Commission.

IT IS HEREBY FURTHER ORDERED that applicants Harm and Ritchie are authorized to abandon their so-called Sierra Vista Bus Line, in the City of Fresno, and in unincorporated territory of the County of Fresno and adjacent to said City of Fresno, and described in this Commission's Decision No. 31161, as amended by Decision No. 31219, subject to the following conditions:

- (1) Said line shall not be abandoned before sixty (60) days after the effective date of this Order and upon not less than five (5) days' notice to the Commission and the public.
- (2) The authorization herein granted shall lapse and become void if not exercised within one (1) year from the date hereof, unless further time is granted by subsequent order.

IT IS HEREBY FURTHER ORDERED that Application No. 22228, as amended, is dismissed without prejudice.

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 14th day of February, 1939.

Robert W. Simpson
Robert W. Simpson
Robert W. Simpson
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Robert W. Simpson
 Commissioners

APPENDIX "A"

DESCRIPTION OF ROUTES

WISHON-FULTON-VAN NESS LINE:

Between the intersection of Wishon Avenue and Fountain Way, on the north, and a loop around the block bounded by Kern Street, Inyo Street, Fulton Street and Van Ness Avenue, on the south, via Wishon Avenue, Shields Avenue, Van Ness Avenue, Princeton Avenue, Wishon Avenue, Olive Avenue, North Fulton Street and Fulton Street.

OLIVE AND FULTON STREET LINE:

Between a loop around the block bounded by Shields Avenue, Simpson Avenue, Wilson Avenue and Palm Avenue, on the north, and a loop around the block bounded by Hamilton Avenue, Mary Street, Braly Avenue and Sarah Street on the south, via Palm Avenue, McKinley Avenue, Safford Avenue, West Hedges Avenue, Arthur Avenue, Olive Avenue, Palm Avenue, Belmont Avenue, North Fulton Street, Fulton Street and Hamilton Avenue, with an alternate route around the block bounded by Palm Avenue, Safford Avenue, West Hedges Avenue and Olive Street.

RECREATION AND BLACKSTONE LINE:

Between a loop around the blocks bounded by Home Avenue, Olive Avenue, San Pablo Avenue and Blackstone Avenue on the north, and a loop bounded by Huntington Boulevard, Ventura Avenue, Barton Avenue and Whitney Avenue on the east, via Blackstone Avenue, Stanislaus Street, Fulton Street, Mariposa Street, Southern Pacific Depot, Tulare Street, East Tulare Street, South First Street and Huntington Boulevard.

MCKENZIE AVENUE AND FULTON STREET LINE:

Between a loop around the blocks bounded by Twelfth Street, Grant Avenue, Illinois Avenue and Backer Avenue, on the east, and a loop around the block bounded by Kern Street, Inyo Street, Van Ness Avenue and Fulton Street, on the south or west, via McKenzie Avenue, North Fresno Street, Fresno Street and Fulton Street.

EAST AND WEST FRESNO STREET LINE:

Between a loop around the block bounded by North Fresno Street, Hedges Street, Hammond Street and Thesta Street, on the north, and a loop around the blocks bounded by California Avenue, F Street, Monterey Street, on the south, via North Fresno Street, Fresno Street, Pottle Avenue, Hawes Avenue, Modoc Street, Merced Street, Irwin Street, Fresno Street, Waterman Avenue, California Avenue and returning to Fresno Street via C Street.