

Decision No. 23275

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BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
ELMER C. GARDNER for a certificate )  
of public convenience and necessity ) Application No. 23275  
between South Fork and Ferndale and )  
intermediate points. )

BY THE COMMISSION:

O P I N I O N

In this application Elmer C. Gardner, doing business as Petrolia Stage, requests a certificate of public convenience and necessity for the establishment and operation of an automotive service for the transportation of property as a highway common carrier and for the transportation of passengers and baggage as a passenger stage corporation, between Ferndale and South Fork and intermediate points, via Capetown, Petrolia and Upper Mattole, all in Humboldt County.

Applicant proposes one round trip daily except Sunday between Upper Mattole and Ferndale. Between Upper Mattole and South Fork a round trip service will be provided Tuesdays, Thursdays and Saturdays.

As justification for the authority sought applicant alleges substantially as follows:

That there exists a present public need for a highway common carrier and passenger stage service between the points proposed to be served; that the territory between Ferndale and Upper Mattole is a farming, dairying and cattle raising territory, and that there is no common carrier service now available to provide service to and from such territory; that

there are numerous farms between Upper Mattole and South Fork and much of the freight destined to such territory is delivered at South Fork from points beyond and there is no common carrier service available to handle such traffic; that a large amount of produce raised in the Mattole Valley is transhipped from South Fork railroad station of the Northwestern Pacific Railroad, and there is no common carrier service available to transport such traffic to South Fork for which there is a present need.

The Commission's records substantiate applicant's allegation that at this time there is no common carrier service operating between South Fork and Ferndale over the route proposed by this applicant. However, there is a combination rail (Northwestern Pacific Railroad) and truck service (American Stage Line) through a joint rate arrangement, between South Fork and Ferndale, connecting at Fernbridge. In view of these circumstances it appears that there is a public need for the service proposed by applicant, except between the termini, South Fork and Ferndale.

A public hearing in this matter does not appear to be necessary. The application will be granted.

Elmer C. Gardner 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 establishment and operation by Elmer C. Gardner of an automotive service for the transportation of property as a highway common carrier, as defined in section 2-3/4 of the Public Utilities Act, and as a passenger stage corporation, as defined in section 2-1/4 of the Public Utilities Act, for the transportation of passengers, baggage and freight, between South Fork and Upper Mattole and intermediate points, via Capetown, Petrolia and Upper Mattole, provided, however, that no through service may be provided between South Fork and Ferndale, and

IT IS ORDERED that a certificate of public convenience and necessity therefor is hereby granted to Elmer C. Gardner, subject to the following conditions:

1. The authority herein granted shall lapse and become void if applicant shall not have complied with all of the conditions within the periods of time fixed herein unless, for good cause shown, the time shall be extended by further order of the Commission.
2. Applicant shall file a written acceptance of the certificate herein granted within a period of not to exceed sixty (60) days from the effective date of this order.
3. Applicant shall commence the service herein authorized within a period of not to exceed sixty (60) 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 the fares, rates and rules shown in the exhibit attached to the application in so far as they conform to the certificate herein granted, except where such rates and rules covering the transportation of property are lower in volume and effect than those established as a minimum by Decision No. 31606, as amended, in Case No. 4246, and Decision No. 31924, as amended, in Case No. 4293. In such instances applicant's tariff shall contain rates, rules and regulations no lower in volume and effect than those established as minimum except on shipments weighing one hundred (100) pounds or less.

4. Applicant shall file in duplicate, and make effective within a period of not to exceed sixty (60) 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.

5. 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.

6. 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.

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

Dated at San Francisco, California, this 20<sup>th</sup> day of February, 1940.

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*James H. ...*  
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*Raymond ...*  
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*H. ...*  
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*Justice J. ...*  
COMMISSIONERS