

Decision No. 36947

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

In the Matter of the Application of JOSEPH )  
MILLER, doing business as BAY RAPID TRANSIT )  
COMPANY: for permission to extend his )  
passenger stage operations over the follow- )  
ing routes: Monterey to Fort Ord Village )  
via Del Monte Avenue and Monterey- )  
Castroville Highway; Monterey to Lakeside )  
(East Monterey) via Fremont Street and )  
Airport Road to Cypress Street; and to )  
suspend operation between Carmel and )  
Pacific Grove via Forest Road. )

Application  
No. 25763

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In the Matter of the Application of SEASIDE )  
BUS LINE, an association, for certificate )  
of public convenience and necessity to )  
operate a bus service, as a common carrier )  
between the city of Monterey, Seaside and )  
Ord Village, in the County of Monterey, )  
California. )

Application  
No. 25786

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In the Matter of the Application of BRYANT )  
GUERNSEY for a certificate of public con- )  
venience and necessity to operate bus line )  
as a common carrier between Alvarado St., )  
and Scott Street Extension, and Ocean View )  
Boulevard and David Avenue, Monterey, )  
California. )

Application  
No. 25330

WALLACE L. WARE , for Joseph Miller, doing business  
as Bay Rapid Transit Company, in Application  
No. 25763, and protestant in applications  
Nos. 25330 and 25786.

J. HAMPTON HOGE and RALPH O. MARRON, for Bryant  
Guernsey in Application No. 25330, and  
protestant in applications Nos. 25763  
and 25786.

FRANK SCHULTZBERG, for Seaside Bus Line, an  
association.

BY THE COMMISSION:

O P I N I O N

Application No. 25763

Joseph Miller, doing business as Bay Rapid Transit  
Company, hereinafter referred to as Miller, among his passenger

stage operations provides one between Monterey, Pacific Grove and Carmel and intermediate points. In Application No. 25763, he proposes to extend his operations from Monterey to Fort Ord Village, via Seaside and East Monterey, and to the United States Naval Auxiliary Air Base near Del Monte serving all intermediate points. Miller also requests authority to suspend, for one year, his passenger stage operation between Pacific Grove and Carmel via Forest Road and Pacific Grove-Carmel Highway. In addition, he requests a certificate de novo in lieu of all his operative rights in the Monterey territory. Miller's proposed extension to Fort Ord Village and the United States Naval Auxiliary Air Base would duplicate the present operation of Bryant Guernsey with very minor exceptions.

Application No. 25786

Seaside Bus Line is an association composed of William D. Cooke, D. C. Cooper, Herman S. Nielsen, Ramira R. Silva, George Cunningham and Henry Ragsdale. For brevity, it will be referred to as the Association. The Association by Application No. 25786 requested a certificate authorizing the establishment and operation of service as a passenger stage corporation between Monterey, Fort Ord Village, United States Naval Auxiliary Air Base near Del Monte, and intermediate points including Seaside, East Monterey and Del Monte Heights which would also duplicate the operation of Bryant Guernsey. During the course of the hearing and before it had offered any evidence in support thereof the Association requested that its application be dismissed.

Application No. 25330

Bryant Guernsey presently provides a passenger stage service in general between Monterey, Fort Ord Village, Seaside, East Monterey, Del Monte Heights and the United States Naval

Auxiliary Air Base near Del Monte and intermediate points, under certificates heretofore granted by the Railroad Commission. A restriction prohibits local operations within the corporate boundaries of the city of Monterey. In Application No. 25330 Guernsey sought the authority of the Commission to extend his operations in Monterey to serve what is commonly referred to as Fish Cannery Row. During the course of the hearing, this application was withdrawn by Guernsey and will be dismissed.

A public hearing of eight days was had in these proceedings before Commissioner Baker and Examiner Paul at Monterey at the conclusion of which the matters were submitted upon concurrent briefs since filed. The record was consolidated for hearing and decision. During the hearing, as above stated, Guernsey and the Association withdrew their applications for dismissal, leaving only the application of Miller for consideration.

The area involved is the suburban district lying easterly and northeasterly of Monterey commonly known as Seaside and Del Monte Heights, a portion of Fort Ord designated as Fort Ord Village and the United States Naval Auxiliary Air Base located at Monterey Airport near Del Monte. Miller proposes to serve this area by operating over two main routes, one of which is, in general, over Del Monte Avenue and Monterey-Castroville Highway terminating at Fort Ord Village, a distance of 4.7 miles from Miller's main terminal in Monterey. The other route, roughly paralleling the foregoing described route, is, in general, over Fremont Street and Fremont Extension serving the Airport by a short diversion and terminating at Cypress Street in Seaside. The length of this route is 4.6 miles.

A ten cent one-way cash fare is proposed between points on the proposed extensions outside the city limits of Monterey.

This fare would also apply between all points on the proposed extensions, on the one hand, and all points served in Monterey and Pacific Grove, on the other hand, with free transfers issued upon payment of the ten cent fare. It is also proposed to offer seven tokens for fifty cents, each good for a one-way trip between points on the proposed extensions outside the city limits of Monterey and the Monterey terminal. The existing one-way adult fare of five cents within the city limits of Monterey would remain in effect.

Service would be provided on a forty minute headway from about 6:00 A.M. until a short time past midnight.

Miller's showing in support of his application was based upon the alleged inadequacy of the present service provided by Guernsey between the points and over the routes involved. This showing was developed through the testimony of more than thirty-five witnesses consisting of military officers, civilian officials, merchants and others engaged in business or employed at Seaside, Monterey and Pacific Grove. Their criticism of Guernsey's service was directed primarily to the type and condition of the equipment, failure to maintain schedules, failure to follow certificated routes, unsafe operation, and objectionable practices and eccentricities of Guernsey.

It was shown that Guernsey, in conducting his present service, uses the following three pieces of second hand equipment:

- 2 23-passenger seating capacity, 1930 year model, ACF stages,
- 1 29-passenger seating capacity, 1925 year model Fageol stage.

The Fageol had been obtained by Guernsey shortly prior to June 1943. Although it is not clear in the record, it would appear that sometime shortly thereafter he acquired the two ACF stages.

One of the persistent complaints appearing in this record is that Guernsey failed to maintain his equipment in a serviceable condition. The majority of the delays in schedules were caused by the equipment being out of service while undergoing repairs. The complaints of witnesses in regard to the equipment concerned overcrowding, unrepaired broken windows, poor ventilation, insanitary conditions, servicing of equipment with gasoline and oil while loaded with passengers, erratic driving and conduct of Guernsey, and failure of operation for periods as long as one-half day. The record is replete with statements by witnesses that on occasions they have been required to wait over long periods of time, in some instances as much as three hours, before the arrival of Guernsey's schedules. These witnesses, becoming impatient at the delays, usually obtained rides from passing motorists or walked to their destinations. Others testified that they had been compelled to walk more than three miles from points in Seaside to Monterey because of the lack of service as scheduled. There is some testimony to the effect that passengers were compelled to hire taxi-cabs in getting to or from their work or home. There were complaints that Guernsey conversed unnecessarily with passengers, while driving, annoyed them and caused inconvenience and delay by stopping to eat his meals, by permitting his dog to ride on the stage, by allowing the stage to run off the highway, and by other eccentric practices.

Lieutenant Colonel John E. Geiser of Ford Ord testified, under instructions of his Commanding Officer, Colonel Roger S. Fitch, that the service provided by Guernsey to and from Fort Ord Village had not been satisfactory. Fort Ord Village is a public housing project consisting of 550 family units with a housing population of approximately 1400 people. This witness was directed to inform the Commission that Guernsey's service had been unsatisfactory for two principal reasons, namely, failure to maintain schedules and

unsatisfactory condition of equipment. A service operated on a 30 or 40 minute headway would be satisfactory to the Village.

Clarence A. Steinmetz, administrative assistant and manager at Fort Ord Village, stated that Guernsey's service to and from the Village has progressively deteriorated. He stated that many times he had observed Guernsey's equipment standing along the side of the road out of service. As a result of the many complaints received by him he made numerous attempts to communicate with Guernsey in order to bring about an improvement in the service. He was told that schedules were not operating on time because the equipment was out of service for repairs. From his office at the Village the witness observed that the headway of Guernsey's schedules varied from ten minutes to two hours and occasionally two cars would arrive at the same time.

Sergeant A. W. Martin of the California Highway Patrol testified that in recent years he had had occasion to arrest Guernsey for the illegal manner in which he operated his buses. Exhibit No. <sup>(1)</sup> 6 is

(1) IN THE JUSTICE'S COURT OF MONTEREY TOWNSHIP,  
COUNTY OF MONTEREY, STATE OF CALIFORNIA

PEOPLE OF THE STATE OF CALIFORNIA  
Plaintiff  
vs.  
HENRY BRYANT GUERNSEY Defendant.

<u>VIOLATION</u>	<u>DATE</u>	<u>SENTENCE</u>
Sec. 140 (No 1939 reg.)	April 26, 1939	\$25.00 fine paid 12-2-40
Sec. 552 (Viol. right of way)	October 25, 1940	Dismissed
Sec. 577 (fail. to obs. Stop Sign)	May 14, 1941	\$ 5.00 fine paid 8-18-41
Sec. 140 (No. 1942 reg.)	March 11, 1942	\$10.00 fine paid 3-16-42
Sec. 577	February 8, 1943	\$ 2.00 fine paid 2-8-43
Sec. 679-582-592 (un-safe equip. Parking on highway, overcrowding)	July 14, 1943	\$50.00 fine paid 7-19-43
Sec. 679	July 12, 1943	\$50.00 fine paid 7-19-43
Sec. 577	April 16, 1943	\$ 2.00 fine paid 4-16-43

I hereby certify that the foregoing is a true and correct statement of violations of the California Motor Vehicle Code in which the above-named was defendant.

Dated at Monterey, California, this 2nd day of September, 1943,

(Signed)

Ray Baugh  
Justice of the Peace  
Monterey Township  
County of Monterey  
State of California

a statement of violations of the Vehicle Code, in which Guernsey was defendant.

This record contains further and abundant evidence of the failure of Guernsey to provide even fair service to the public which he is authorized to serve. The public is subjected to long waits for stages, delays due to mechanical difficulties and various other practices on the part of this carrier, all of which tend to render his service unreliable, unsatisfactory and most annoying to his patrons and the public generally. We can see no point in setting forth additional excerpts from the voluminous testimony, all of which leads to the inescapable conclusion that Guernsey has failed to render an adequate or satisfactory service.

Guernsey testified in defense of the adequacy and sufficiency of his service and produced testimony from twenty-seven public witnesses. He admitted that his service could be improved and contended that during the preceding eighteen months he had made four attempts to acquire new equipment. By reason of conditions existing at that time approval of such acquisition was refused by the Office of Defense Transportation. The basis for such refusal was not shown. Guernsey had, however, obtained certain used equipment to replace that which he had been using. He contends, in brief, that if the application of Joseph Miller were denied then his application for new equipment which is now on file would be approved. No proof of this was offered at the hearing.

Guernsey's public witnesses were uniformly sympathetic and for the most part indicated that his service was satisfactory although some had insufficient knowledge on which to base such conclusion.

Guernsey also contends, in brief, that under the provisions of Section 50 $\frac{1}{2}$  of the Public Utilities Act, as amended by the

Statutes of 1931, a certificate to operate in any territory already served by a certificate holder under said Act can be granted only when the existing passenger stage corporation serving the territory will not provide the same to the satisfaction of the Railroad Commission. No useful purpose can be served in discussing this contention. Suffice it to say that Guernsey has not shown in this record that he can or will provide a service satisfactory to the Commission. The record clearly displays Guernsey's inability to manage, operate and provide satisfactory service.

There was no opposition to Miller's application to suspend for a period of one year his operation between Pacific Grove and Carmel via Forest Road and Pacific Grove-Carmel highway. Service between these points over the main highway would continue. It was shown that during the period January 15 to August 31, 1943, inclusive, the average number of passengers transported on each of the schedules over this route was 3.56, that the total cost of operation was \$2.2257 a mile, which resulted in a loss of \$1042.89 for the period of 195 days.

After a careful review of the record herein it is our judgment that the preponderance of the evidence clearly and unequivocally supports Miller's contention that the service provided by Guernsey between the points involved now is, and for a long time has been, wholly inadequate, insufficient and unsatisfactory to meet properly, public convenience and necessity. It is unquestionably clear from this record that the service provided by Guernsey falls far below a reasonable standard and cannot be condoned by the Railroad Commission. It is our further judgment that Miller has incontestably shown a public need for the establishment and operation of the service proposed by him, and his application will be granted. He is an operator of long and successful experience and there is no



question in this record of his ability to provide such service.

On December 4, 1943, Bryant Guernsey filed a petition requesting the Commission to set aside the Order of Submission in these proceedings and to reopen said matters for the introduction of further testimony. The Commission has carefully considered this petition and each and every allegation contained therein and is of the opinion that no good cause for the granting thereof is made to appear. Therefore, the petition will be denied.

Joseph Miller is placed upon notice that "operative rights" as such do not constitute a class of property which may be capitalized or used as an element of value in rate fixing for any amount of money in excess of that originally paid to the State as the consideration for the grant of such rights. 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 had, the matters submitted, briefs duly filed, the Commission now being fully informed therein and it being found that public convenience and necessity so require,

#### IT IS ORDERED:

(1) That a certificate of public convenience and necessity is hereby granted to Joseph Miller authorizing the establishment and operation of service as a passenger stage corporation, as defined in Section 24, Public Utilities Act, for the transportation of passengers and baggage between Monterey, Fort Ord Village, East Monterey, United States Naval Auxiliary Air Base, Seaside and intermediate points as an extension and enlargement of

the operative right heretofore granted by the Commission's Decision No. 35584, rendered July 14, 1942, subject to the following condition:

The authority herein granted is subject to the provisions of Section 52(b) of the Public Utilities Act and further to the condition that Joseph Miller, his successors or assigns, shall never claim before this Commission, or any court or other public body, a value for said operative rights or claim as the cost thereof, an amount in excess of that paid to the State as the consideration for such rights.

(2) That Joseph Miller is hereby authorized temporarily to suspend until May 31, 1945, passenger stage operations between Pacific Grove and Carmel via Forest Road and Pacific Grove-Carmel Highway.

(3) That the Petition for Order Vacating Order of Submission and for Re-Opening of Case for the Taking of Further Testimony, filed December 4, 1943, is hereby denied.

(4) That in providing service pursuant to the certificate herein granted, applicant shall comply with and observe the following service regulations:

1. Applicant shall file a written acceptance of the certificate herein granted within a period of not to exceed thirty (30) days from the effective date hereof.
2. Applicant shall comply with the provisions of General Order No. 79 and Part IV of General Order No. 93-A by filing, in triplicate, and concurrently making effective, tariffs and time schedules satisfactory to the Commission within sixty (60) days from the effective date hereof and on not less than one (1) day's notice to the Commission and the public.
3. Subject to the authority of this Commission to change or modify them by further order, applicant shall conduct operations, pursuant to the certificate herein granted, over and along the following routes:

Beginning at the intersection of Ocean Avenue and Del Monte Avenue thence easterly along Del Monte Avenue, and Monterey-Castroville Highway to Fort Ord Village.

Beginning at the intersection of Pearl Street and Munras Avenue, Monterey, thence southeasterly along Munras Street to Fremont Street, thence along Fremont Street and Fremont Extension to Airport Road, thence along Airport Road to the United States Naval Auxiliary Air Base, thence return over Airport Road to Fremont Extension, thence along Fremont Extension to its intersection with Cypress Avenue in East Monterey.

(5) That Application No. 25330 and Application No. 25786 are hereby dismissed.

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

Dated at San Francisco, California, this 21<sup>st</sup> day of March, 1944.

Richard Lachse  
Justin J. Casmen  
Frank R. Havenner  
Thomas E. Low  
Leslie H. Powell  
COMMISSIONERS