

ORIGINAL

Decision No. 37438

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of JAMES R. PROPER, doing business as LOS ANGELES-TRONA STAGES, for authority to reroute and extend his motor coach line; to transport express shipments; and for an in lieu certificate.)	Application No. 25294 3rd Supplemental
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In the Matter of the Application of TANNER MOTOR TOURS, LTD., a corporation for a certificate of public convenience and necessity to operate, as a common carrier for hire, etc.)	Application No. 25984
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In the Matter of the Application of VERNON HARLOW and CLARENCE HARLOW, a copartnership, doing business as MISSION LIMOUSINE SERVICE, for a certificate of public convenience and necessity to conduct a transportation service as a passenger stage corporation, etc.)	Application No. 26025
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In the Matter of the Application of HARRY STELLAR and RAY HUNTER, doing business as MUROC-LOS ANGELES CHARTER SERVICE, for certificate of public convenience and necessity, etc.)	Application No. 26035
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HERBERT CAMERON, for applicant in Application No. 26025 for petitioners.

AMOS FRIEDMAN, for applicant in Application No. 26035.

GIBSON, DUNN & CRUTCHER, by WOODWARD M. TAYLOR for applicant in Application No. 25294.

TUDOR GAIRDNER, for applicant in Application No. 25984.

CAPT. GEORGE RAWLINS and MAJOR L. R. VODDEN, representing Muroc Army Air Base, proponents.

LEE C. BOALS, representing Protherhood of Railroad Trainmen, interested party.

JOHN F. McNEILL for Antelope Valley Transit Company, interested party.

M. C. YAHNE, doing business as Inland Stages, interested party.

BY THE COMMISSION:

OPINION ON REHEARING

Following a hearing on the above entitled applications, the Commission in Decision No. 37000 made its order denying the application of Vernon and Clarence Harlow, doing business as Mission Limousine Service, for a certificate of public convenience and necessity to operate a transportation service as a passenger stage corporation between Bakersfield and Los Angeles, on the one hand, and Muroc Army Air Base and other military installations located in the Mojave Desert, on the other hand. (Application No. 26025) A certificate of public convenience and necessity was, however, granted to Harry Stellar authorizing passenger stage service between the points named.

Applicants Harlow and Harlow petitioned the Commission for a rehearing which was granted. By the terms of the order, such rehearing was limited to oral argument on the record as made at the original hearing. The rehearing was held at Los Angeles on July 19, 1944, and the matter was again submitted.

The resolution of the issue herein presented is one that rests in the sound discretion of this Commission based upon the evidence.

Petitioners allege that in equipment, financial ability and experience they are in a more favorable position than Stellar. It is further alleged that applicant Stellar had heretofore been apprehended for illegal operation and that he had no assurance of securing Certificates of War Necessity from the Office of Defense Transportation. Furthermore, petitioners allege that Stellar had filed an amendment to his application whereby he was substituted in

place of the partnership of Stellar and Hunter and that such substitution was illegal.

The argument of petitioners sums up to a declaration that the Commission exceeded its authority in granting a certificate to Stellar in that the evidence does not support the findings and that such findings were arbitrary, capricious and baseless.

A careful review of the argument made on rehearing does not lead us to that conclusion. The record made at the original hearing discloses that Stellar had a certificate from the Office of Defense Transportation, and that he had no reason to believe he could not secure additional certificates. The Harlows had an Office of Defense Transportation certificate for their Riverside-San Bernardino operation but there is nothing in the record to indicate that such certificate could have been used in the Muroc operation.

The testimony of applicant Stellar is that he had ten pieces of equipment and one certificate from the Office of Defense Transportation; that he had been operating an on-call service between Muroc and Los Angeles from October 1943, to February 1944, upon the advice of his counsel that a certificate of public convenience and necessity was not required for that type of service; that upon notice from the Commission's Division of Investigation he immediately ceased such operation and filed his application; that he owned five pieces of equipment at that time; that the testimony of several officers at Muroc was to the effect that the service rendered by Stellar during the period October 1943, to February 1944, was entirely satisfactory; and that his financial condition was adequate to maintain that service.

We are not much impressed with petitioners' contention that the Commission exceeded its authority in granting a certificate to Stellar because he himself had not posted a filing fee but that such fee had been paid by the partnership of Stellar and Hunter. The fact is that Stellar amended his application several days before the original hearing, eliminating Hunter out of the copartnership. There is no doubt that an application may be amended in any respect prior to the hearing and all parties in this instance were placed on notice. In any event, that matter had been disposed of at the hearing in which Commissioner Clark ruled that from a practical standpoint there could be no objection to an individual succeeding in interest to a copartnership which had filed a joint application.

There is some evidence in the record that the Harlows contemplated operating their equipment at Muroc during the daytime and transferring it to their Riverside-San Bernardino area at night. In other words, the equipment would be shifted between Riverside and Muroc, wherever it was required, which would necessitate dead-head mileage that would constitute an unwarranted waste of gas and equipment.

It is not necessary for us to discuss the entire record herein as made at the original hearing. The arguments on rehearing convince us that the original record will not support a finding that public convenience and necessity require the service proposed by Harlow and Harlow. Further than that, Harry Stellar, by virtue of Decision No. 37000, has been granted a certificate authorizing service between Los Angeles and Muroc and the record will not support a finding that an additional service is required.

We have given careful consideration to the argument of petitioners on rehearing in the above entitled application, No. 26025, and are of the opinion that no good cause appears for altering or modifying the conclusion of the Commission as set forth in Decision No. 37000 and that the original decision should be affirmed. It will be so ordered.

ORDER ON REHEARING

A petition for a rehearing having been filed by Vernon Harlow and Clarence Harlow, doing business as Mission Limousine Service; said rehearing having been granted and held, the matter resubmitted and the Commission having fully considered the same and being fully informed therein,

IT IS ORDERED that Decision No. 37000 be and it hereby is affirmed in all respects.

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

Dated at San Francisco, California, this 31st day of October, 1944.

Richard L. ...
Justus J. ...
Francis L. ...
Frank ...
Charles ...
COMMISSIONERS