

Decision No. 39789

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of HUMBOLDT MOTOR STAGES, INC., a corporation and WALTER EARL MENDENEALL for the approval of the purchase of operative rights and equipment used in connection with the carrying of passengers, baggage and freight as a common carrier for compensation between Fortuna and Ruth via Bridgeville and Mad River and intermediate points.

ORIGINAL

Application No. 27990

In the Matter of the Application of WALTER EARL MENDENEALL for a certificate of public convenience and necessity for the carrying of passengers, baggage and freight between Eureka on the one hand and points beyond Fortuna to Ruth via Bridgeville and Mad River on the other hand.

O P I N I O N

In this proceeding Humboldt Motor Stages, Inc. a corporation (referred to hereafter as Humboldt), seeks authority to transfer to Walter Earl Mendenhall, and the latter proposes to acquire from the former, an operative right both as a passenger stage corporation and as a highway common carrier and also certain equipment used in the performance of the service. Under this operative right Humboldt is authorized to transport passengers, baggage and general commodities between Fortuna and Ruth, and intermediate points via Bridgeville and Mad River, in Humboldt and Trinity Counties. Mendenhall seeks, in addition, a certificate sanctioning the extension of this operation from Fortuna to Eureka, under which through service would be provided between Eureka, on the one hand, and points between Fortuna and Ruth, on the other hand, but not including Fortuna.

Pursuant to certificates previously granted, Humboldt conducts a passenger stage and a highway common carrier service between certain points in Humboldt and Trinity Counties, serving, among other communities, Scotia, Fortuna, Eureka, Trinidad, Somes Bar, Forks of Salmon, Bridgeville, Douglas City and Weaverville. These operations have been consolidated into a unified system, of which the operative right sought to be transferred forms a part. (1)

In addition to the operative right described, Mendenhall also proposes to purchase from Humboldt certain equipment consisting of one 1939 1½ ton Chevrolet combination passenger and freight bus, and one 1941 one-ton Ford truck with van body. These would be used to provide the service.

Mendenhall, who previously was employed as a driver by Humboldt, has resided in Humboldt County for many years and is well acquainted with the territory. He appears to be qualified financially and by experience to provide the service.

The territory traversed by this route is mountainous in character and sparsely settled. Originally the operative right was part of a projected through operation to Weaverville - a plan later abandoned because of changes in highway routes. At present it is considered by Humboldt as an off-route operation. The business available, applicants assert, could be developed to better advantage by an individual operator familiar with the territory and well acquainted with the residents, than by a larger organization such as Humboldt.

(1) By Decision No. 32119, rendered June 27, 1939, in Application No. 22805, an in lieu certificate was issued to Humboldt authorizing the transportation of passengers, baggage and freight over an extensive net work, including an operation between Fortuna and the junction of the Peanut-Hayfork Road, over State Highway No. 36 via Rohnerville, Hydesville, Carlotta, Bridgeville, Dinsmore, and Forest Glen, "with diversion at Mad River to and including Ruth." This certificate replaced earlier certificates upon which the operative right originally was based.

Service, it is stated, has been conducted continuously over this route. During the past five years the gross revenues, it was shown were as follows: 1942, \$5,957.55; 1943, \$6,042.93; 1944, \$6,471.47; 1945, \$6,332.26 and 1946 (January to September, inclusive) \$5,576.22.

Under the arrangement between the parties, Mendenhall has agreed to pay Humboldt, in consideration for the transfer of the operative right and equipment, the total purchase price of \$3,750 payable in cash upon the Commission's approval of the transfer. Of this sum, \$1250 represents the value of the operative right, business and good will, the remainder being allocated to the equipment. Purchaser shall record the purchase price in the manner set forth in the uniform system of accounts prescribed by the Commission.

The proposed extension from Fortuna to Eureka is essential, Mendenhall alleges, to permit the performance of an adequate service. Assertedly, the greater share of both passengers and freight would originate at Eureka, the largest community and the business center of this area. In the absence of such an extension, both freight and passengers must be transferred at Fortuna with resulting delay, additional cost and loss of traffic. Humboldt, the carrier primarily affected, has consented to such an arrangement.

The carriers serving this territory have advised the Commission that they have no objection to applicants' proposal. They comprise Northwestern Pacific Railroad Company, Pacific Motor Trucking Company, Pacific Greyhound Lines and Intercity Transport Lines. The latter has conditioned its consent upon the continuance of the joint rates previously maintained between that carrier and Humboldt - an obligation which Mendenhall, it appears, is willing to assume.

The transfer, it is true, would involve the division of an operative right. Notwithstanding that circumstance, such a transfer will be permitted where, as here, the public interest would be served. Accordingly, the transfer will be authorized and the certificate sought will be issued. This is not a matter requiring a public hearing.

Walter Earl Mendenhall is hereby 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

Application having been made as above entitled, the Commission having considered the matter, and it having been found that public convenience and necessity so require,

IT IS ORDERED as follows:

(1) That Humboldt Motor Stages, Inc., a corporation, be and it is hereby authorized, on or before March 31, 1947, to transfer to Walter Earl Mendenhall an operative right both as a passenger stage corporation and as a highway common carrier as defined by Sections 2 $\frac{1}{2}$ and 2-3/4, respectively, of the Public Utilities Act, described in the foregoing opinion, and also the equipment described in said opinion; and Walter Earl Mendenhall is hereby authorized to acquire from

Humboldt Motor Stages, Inc.: said operative right and property and thereafter to operate under said operative right.

(2) That in the event such authority to transfer is exercised, said Mendenhall shall advise the Commission thereof within 10 days after the actual date of such transfer; and within 30 days after the consummation of such transfer he shall file with the Commission a copy of any bill of sale or other instrument of transfer executed under the authority herein granted and a copy of the book entries made to record the transaction.

(3) That a certificate of public convenience and necessity be and it is hereby granted to Walter Earl Mendenhall authorizing the operation of a passenger stage service, and also the operation of a highway common carrier service, pursuant to Sections 50 $\frac{1}{2}$ and 50-3/4, respectively, of the Public Utilities Act, under which said Mendenhall may engage in the transportation of passengers, baggage and general commodities between Fortuna and Eureka, as an extension of the operative right hereinabove authorized to be acquired by said Mendenhall. No service, however, may be rendered to or from Fortuna.

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

- a. Applicant Mendenhall shall file a written acceptance of the certificate herein granted within a period of not to exceed 30 days from the effective date hereof.
- b. Within 60 days from the effective date hereof and on not less than 5 days' notice to the Commission and the public, applicant Mendenhall shall establish the service herein authorized and applicants shall comply with the provisions of General Orders Nos. 79 and 80, and Part IV of General Order No. 93-A, by filing in triplicate and concurrently making effective appropriate tariffs and time tables relating to the service established pursuant to the transfer of the operative right, and to the issuance of the certificate, herein authorized.

c. Subject to the authority of this Commission to change or modify it by further order, applicant Mendenhall shall conduct operations pursuant to the certificate herein granted over and along the following route:

From Fortuna to Eureka via U. S. Highway No. 101.

The effective date of this order shall be the date hereof.

Dated at San Francisco, California, this 23rd day of December, 1946.

Harold P. Kuba
Justus F. Calver
Frederic D. ...
James H. ...
A. I. ...
 COMMISSIONERS