

Decision No. 40255

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

In the Matter of the Application of ROBERT F. MULLINS for a certificate of public convenience and necessity to operate a motor bus service as a common carrier of passengers and express between Jackson and West Point, California, and intermediate points; and between Jackson, Amador County, and Ray's Twin Lakes Resort, Alpine County, and intermediate points.

Application No. 27875

In the Matter of the Application of F. J. BIBB for a certificate of public convenience and necessity to operate as a passenger stage corporation.

Application No. 28025

In the Matter of the Application of A. EARL WION, doing business as KIT CARSON STAGE LINE, to sell, and ROBERT F. MULLINS, to purchase, an automobile stage line between Jackson, Amador County, and Ray's Twin Lakes Resort, Alpine County, and intermediate points.

Application No. 28168

- BEROL & HANDLER, by EDWARD M. BEROL, for applicant Robert F. Mullins in Application No. 27875 and Application No. 28168.
- FRANK LOUGHRAN, for applicant P. J. Bibb in Application No. 28025.
- RALPH W. DUVAL, for Pacific Gas and Electric Company, interested party.
- GARD CHISHOLM, for Kit Carson Stage Line in Application No. 28168.
- DOUGLAS BROOKMAN, for Amador Stage Line, Inc. and as intervenor in support of Application No. 28025 and protesting Applications 27875 and 28168.

O P I N I O N

Three matters are involved in this consolidated proceeding which may be briefly summarized as follows:

- (1) Application No. 27875, Robert F. Mullins, for a certificate authorizing the transportation of passengers and express between Jackson and West Point, via Mokelumne Hill over State Highway No. 49 and an unnumbered highway, and between Jackson and Ray's Twin Lakes Resort, and intermediate points, via State Highway No. 88 and county roads with the right to conduct service to and from points located in a zone extending five miles laterally along each side of the public highway over said route.

- (2) Application No. 28025, P. J. Bibb, for a certificate authorizing the transportation of passengers, baggage and shipments of express weighing 150 pounds or less between Jackson and Bartons via State Highway No. 88, and between Jackson and Electra, via State Highway No. 49, serving intermediate points, and also serving construction camps located on private or county roads tributary to State Highways Nos 88 and 49. These construction camps have been established in connection with a hydro-electric power construction project of the Pacific Gas and Electric Co. Applicant Bibb proposes to serve only the construction camps of the said company.
- (3) Application No. 28168, J. Earl Wion, doing business as Kit Carson Stage Line, requests an order from the Commission authorizing him to sell, and Robert F. Mullins to purchase, an operative right for the transportation of passengers, baggage and shipments of express weighing 100 pounds or less, between Jackson, Amador County, and Ray's Twin Lakes Resort, Alpine County, and intermediate points, which operative right was created by Decision No. 34323, dated June 17, 1941, in Application No. 24219.

A public hearing was held before Examiner Gannon at Jackson on February 14, 1947. With the consent of the parties the three applications were consolidated for hearing and decision. It will best serve the interests of orderly procedure and a clearer understanding of the issues involved to consider and dispose first of the application for transfer of the Wion application:

J. Earl Wion, doing business as Kit Carson Stage Line, was granted a certificate of public convenience and necessity authorizing the transportation of passengers, baggage and express between Jackson and Ray's Twin Lakes Resort and intermediate points, with the right to serve a lateral area extending five miles from each side of the highway. He held the mail contract over the route and proposed to carry passengers and express along with the mail, and this he did for

a period during the year 1942. Wion decided to join the Merchant Marine and entered into an agreement with one George B. Sausman, a garage owner in Jackson, to handle the business for which Wion had been certificated by the Commission, as well as the mail contract. Accordingly, on June 5, 1942, he wrote a letter to Sausman appointing him as his agent, such appointment to remain in effect "until revoked in writing." So far as the record shows, the appointment has never been revoked.

Sausman testified that the agency agreement was tacitly approved by the Commission, and this may be inferred, by implication at least, from a letter written to Sausman by the Commission on September 15, 1943. In any event, Sausman proceeded to operate under the agreement during 1942, 1943, 1944 and 1945, using his own equipment, and his wife acting as driver. Wion's mail contract expired in 1946 and was bid in by one Ed Wise, who co-operated with Wion in continuing the service theretofore rendered. Sausman testified at the hearing that he "gave the best service he could, and no one had to walk." There is no evidence in the record indicating even a temporary cessation of service except insofar as it was a seasonal operation⁽¹⁾ conducted during the summer vacation period, and no specific act of abandonment has been pointed out. From his testimony Wion had another motive in seeing that the service was performed, and that was the hope, since realized, that the Pacific Gas & Electric hydro-electric project would ultimately be carried

(1) Decision No. 34323 did not provide for a seasonal operation, but the time schedules indicate that the service was to be of that character.

to a conclusion by that utility, and that the establishment of that undertaking would be of advantage to Wion in his operation.

Amador Stage Line, Inc. operates a passenger stage service between Sacramento and Jackson, and between Stockton and Jackson, serving Martell, which is the headquarters of the Pacific Gas & Electric project. This carrier appeared as intervenor in support of the Bibb application and protesting the Mullins application as well as the transfer of the Wion rights. Their position is that the application to transfer the Wion certificate should be denied on the ground that the right has been abandoned.

Viewed in the light of the testimony, we do not reach that conclusion. Wion exercised his operating right until he entered the Merchant Marine. Before leaving Jackson, he arranged with Sausman to take over the operation, as his agent, and this relation of principal and agent has never been abrogated. At all times either Wion himself, Sausman, or Wise, Sausman's sub-agent, were willing and able to perform the service, and did so. There was no wilful violation which resulted in actual cessation of operation, either periodic or permanent. Both agent and sub-agent endeavored to keep the certificate alive and to render such service as was necessary to satisfy the needs of the public. The entire conduct of Wion and his agents was such as to confirm the belief that he proposed to render service in accordance with the obligations of his certificate. The record herein does not justify a finding of abandonment by this Commission and the application to transfer will be granted.

Attached to the Wion application is an agreement between the parties by which Wion, the seller, agrees to transfer to Mallins, the buyer, the operative rights for the transportation of passengers, baggage and express between Jackson and Ray's Twin Lakes Resort, and intermediate points, heretofore authorized under Decision No. 34323, for a consideration of \$1,000. The application provides that, in the event of authorization of the transfer, the purchaser will provide a daily service, including Sundays, for as much of the year as weather and road conditions will permit over the route for which authority was originally granted.

Application No. 28025 was filed by P. J. Bibb on November 22, 1946, and seeks authority to serve the Pacific Gas & Electric Co. camps exclusively. The engineer in charge of the construction project testified that the principal feature of the project is an eleven-mile tunnel which is to be constructed from four principal working points. At each of the working points there will be a camp of between 120 and 150 men. In order to reach these camps, the Pacific Gas & Electric Co. is now constructing roads from State Highways Nos. 88 and 49 and county roads to these sites. These roads will be over private land and a special type of equipment is required to negotiate the grades. Somewhere between 600 and 1,000 men will be employed on all the projects. The men will live at the camps, and will desire to go back and forth between Jackson and other points at week-ends and will require a means of transportation. The men will be hired at various points in California and will be transported to Jackson by Amador Stage Lines

From there they will be taken to the hiring hall at Martell, two miles west of Jackson, from which point they will be sent to the various projects for assignment to their respective jobs. The company intends to build private roads leading from State Highways Nos. 88 and 49 and county roads to all the camp locations.

Applicant Bibb does not propose to serve any points on State Highway No. 88 east of Bartons, which is a point on said Highway No. 88 approximately 26 miles east of Jackson. Neither does Bibb propose to serve West Point as does applicant Mullins. The Bibb operations will be confined exclusively to serving the construction camps of the Pacific Gas & Electric Co. within the territory above mentioned. He has a terminal station available in Jackson and will be able to use surplus equipment now owned by Amador Stage Line, in which company Bibb owns a one-half interest.

While the Pacific Gas & Electric Co. had previously endorsed the application of Bibb, a representative of that company testified at the hearing that it had no preference as to any applicant and would afford any qualified applicant the facilities of its private roads for operation purposes.

It appears from the record herein, and we so find, that the service proposed by applicant Bibb is a specialized service especially designed to meet a peculiar and temporary transportation need which will continue only during such period as the Pacific Gas & Electric Co. is engaged in its construction project; that the applicant Bibb is best qualified to render such service;

that he has the equipment and experience necessary to conduct the operation proposed; that he is prepared to inaugurate the service without delay, and that public convenience and necessity will best be served by the granting of the application of Bibb.

Application No. 27875 by Robert F. Mullins, requests a certificate for the transportation of passengers and express between Jackson and West Point over State Highway No. 49 and an unnumbered county highway, and between Jackson and Ray's Twin Lakes Resort and intermediate points along State Highway No. 88. Ray's Twin Lakes Resort is approximately 60 miles east of Jackson.

Several witnesses residing at points along Highway No. 88 between Jackson and Ray's Twin Lakes Resort testified that the service rendered by Kit Carson Stages was convenient and in fact necessary for them in their business and for recreational purposes. This area, located in the heart of the Sierra Nevada, has become a recreational center, with resorts, cabins and camping sites. Mining and lumbering are the important industries.

While the order in Decision No. 34323 authorized service to and from points located in a zone extending five miles laterally along each side of the public highway on the route between Jackson and Ray's Twin Lakes Resort, there is no testimony in the record that such lateral operation was ever engaged in. The order will therefore exclude such operation in the transfer of the Wion right to Mullins. However, the "on-call" service between Jackson on the one hand and Volcano on the other hand, by diversion from the main highway at Pine Grove is retained.

From the record before us we find that Application No. 27875 should be denied except that portion of the route between West Point and Jackson. The record shows that West Point is a growing community with a number of lumber mills in operation and others in course of construction. There appears to be a need for transportation between Jackson and West Point, since many of the residents of West Point transact their business at Jackson. That portion of the Mullins' application will therefore be granted. By the acquisition of the Wion operating right the purchaser Mullins will be enabled to provide seasonal transportation for the residents of the area between Jackson and Ray's Twin Lakes Resort, where are located the winter resorts and recreational facilities where a need for such service has been established by testimony of several witnesses.

ORDER

A public hearing having been held in the above-entitled proceedings, the matters submitted, and it having been found that public convenience and necessity so require,

IT IS ORDERED:

I. That a certificate of public convenience and necessity is hereby granted to P. J. Bibb authorizing the establishment and operation of service as a passenger stage corporation, as defined in Section 2-1/4 of the Public Utilities Act, for the transportation of passengers and baggage, and shipments of express weighing 150 pounds or less, on passenger-carrying vehicles between Jackson and Partons and intermediate points along Stage Highway No. 88, and between Jackson and Electra Development Project of the Pacific Gas and Electric Company on Mokelumme River, and intermediate points, along State Highway No. 49

and an unnamed county road.

II. That a certificate of public convenience and necessity is hereby granted to Robert F. Mullins authorizing the establishment and operation of a service as a passenger stage corporation as defined in Section 2-1/4 of the Public Utilities Act for the transportation of passengers, baggage and shipments of express weighing 150 pounds or less on passenger carrying vehicles between Jackson and West Point over Highway No. 49 and an unnamed county road. In all other respects Application No. 27875 is hereby denied.

III. That A. Earl Wion, after the effective date hereof and on or before August 31, 1947, may sell and transfer to Robert F. Mullins, who may acquire the operative right granted by Decision No. 34323 as referred to in the foregoing opinion, with the restriction that no service is to be rendered laterally along the route prescribed except to and from Volcano as an "on-call" service.

IV. The authority granted in Section III hereof is not to be construed to be a finding of value of the properties herein authorized to be transferred.

V. That in providing service pursuant to the certificates herein granted, P. J. Bibb and R. F. Mullins shall comply with and observe the following service regulations:

- a. Applicant shall file a written acceptance of the certificate wherein 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, P. J. Bibb shall establish the service herein authorized and 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.
- c. Subject to the authority of this Commission to change or modify them by further order, P. J. Bibb shall conduct operations pursuant to the certificate wherein granted over and along the following routes:

" . . . points on California State Highway No. 88 between Jackson and Bartons; points on a county road known as West Point road from the intersection of said road with California State Highway No. 88 at or near Pioneer Station Approximately 15.6 miles northeast of Jackson to the intersection of said county road with the Mokelumme River; points on California State Highway No. 49 between Jackson and the intersection of said State Highway No. 49 with a county road approximately 3.6 miles south of Jackson; points along said last mentioned county road from its said intersection with State Highway No. 49, to the power house of the Pacific Gas & Electric Company at Elcetra; points along State Highway No. 88 and No. 49 and a county road located approximately 2.2 miles from Jackson and intersecting State Highway No. 49 for the distance from Jackson to the Pacific Gas & Electric Company headquarters at Martel."

The effective date of this Order shall be 20 days from the date hereof.

Dated at San Francisco, California, this 6th day of May, 1947.

Harold Hills
Frank J. Lawrence
R. J. [unclear]
Penelope Totten
 COMMISSIONERS