

Decision No. 40558

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)	
PAUL H. STEILING for certificate of)	
public convenience and necessity to)	Application No. 28284
operate passenger and express service))	
between Almaden, California, and San)	
Jose, California.)	

HERMAN J. MAGER, for applicant.
 CAMPBELL, HAYES & CUSTER by ROBERT E. HAYES, for
 protestant San Jose City Lines.

O P I N I O N

This is an amended application of Paul H. Steiling for a certificate of public convenience and necessity authorizing operation of an automotive service for the transportation of passengers and express between the City of San Jose and Almaden and intermediate points over and along Almaden Road, a distance of approximately 13 miles.

A public hearing was held by Examiner Cannon at San Jose on June 17, 1947, and the matter was duly submitted.

The application, in general, seeks to provide transportation for residents of Almaden and vicinity to and from San Jose, which area has presently no direct transportation, though it is a growing community. Applicant testified that he had completed arrangements for the purchase of two 1935 V-8 Ford buses, with seating capacity of 21 passengers each. The one-way and round trip fares proposed between terminals are 30 cents and 50 cents, respectively. Fares to, from and between intermediate points

will be in proportion. He had made a house-to-house survey along the entire distance on Almaden Road between San Jose and Almaden and estimated 700 families as residing in the area. The area lying between Monterey Road and Stone Avenue, a short distance east of the proposed route, has a number of industries either already built or in course of construction. The service as proposed, therefore, would attract passengers from both sides of the route who are now without public transportation. Three round trips daily are proposed.

The application is protested by San Jose City Lines, hereinafter called City Lines, which operates a passenger stage route westerly of Almaden Road between San Jose and Curtner Avenue, known as the Delmas-Malone Line. ⁽¹⁾ In the territory herein involved the distance between the route of City Lines and the route proposed by applicant is approximately one-half mile.

A witness for applicant testified that she lived on Almaden Road, midway between San Jose and Almaden, and that there were 500 people in her immediate community who require transportation service to and from San Jose. She had filed a petition with City Lines bearing several hundred signatures urging an extension of that carrier's service from Lincoln Avenue and Malone Road to connect with Almaden Road which would provide the desired service, but no action resulted.

(1) The route is defined as follows: West on San Carlos to Vine, south on Vine to Grant, west on Grant to Delmas, south on Delmas to Willow, southwest on Willow to Bird, south on Bird to Minnesota, west on Minnesota to Curtiss, south on Curtiss to Nevada, west on Nevada to Hill, south on Hill to Willow Glen Way, west on Willow Glen Way to Lincoln, south on Lincoln to Curtner, west on Curtner to Radio, north on Radio to Malone, east on Malone to Lincoln.

City Lines takes the position that it does not oppose the granting of the application but that applicant should be restricted to picking up passengers only at Foxworthy Avenue and points south thereof to and including Almaden. Foxworthy Avenue intersects Almaden Road about three miles south of the center of San Jose. Such a restriction would, in the words of the applicant "cut the heart out of the project", and would leave applicant with only the sparsely settled area between Foxworthy Avenue and Almaden Road.

The Superintendent of Transportation of City Lines testified that his company did not fear present competition, but was concerned with what might happen in the event applicant got a foot-hold in the territory and might eventually desire to extend his service. ⁽²⁾ This witness testified that a passenger in the vicinity of Foxworthy Avenue, in order to board the City Lines' bus, would be required to walk one mile on the highway.

Specifically, protestant urges that applicant be required to make his last stop at Foxworthy Avenue and Almaden Road coming into San Jose, and make no pick-ups in that area.

The position of protestant is inconsistent. In one breath it declares that the proposed operation of applicant in its entirety would not be financially successful and in the next it urges the granting of a certificate that would limit the applicant to picking up passengers only between Foxworthy Avenue and

(2) His quoted testimony: "I don't believe it would interfere with our revenue at all, but in the future when we wished to extend this territory and give these people 12, 15 or 20 minute service, we would be limited to servicing this area".

Almaden Road, which is admittedly the leanest portion of the route from a revenue-producing standpoint.

The Commission cannot close its eyes to the fact, as disclosed by the testimony, that protestant had its opportunity to provide transportation for a large number of people in the communities on both sides of Almaden Road, but failed to offer any relief. It would be manifestly unfair to deprive several hundred persons of necessary transportation in order to protect a competitor in its future plans, as they may develop. That principle is well established in the Commission's decisions.

In our opinion the record herein is sufficiently convincing that public convenience and necessity require the establishment and operation of the service as proposed and the application will be granted.

Paul H. Steiling 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 as above entitled having been made, a public hearing having been held thereon, the matter having been submitted, the Commission being fully advised in the premises and hereby finding that public convenience and necessity so require,

IT IS ORDERED:

(1) That a certificate of public convenience and necessity is hereby granted to Paul H. Steiling authorizing the establishment and operation of a service as a passenger stage corporation, as defined in Section 2½ of the Public Utilities Act, for the transportation of passengers and shipments of express weighing not to exceed 100 pounds each on passenger carrying vehicles only, between San Jose and Almaden and intermediate points.

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

- a. Applicant 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 shall establish the service herein authorized and 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, appropriate tariffs and time tables.
- c. Subject to the authority of this Commission to change or modify it by further order, applicant shall conduct operations pursuant to the certificate herein granted over and along the following route:

Leaving San Jose from Greyhound Depot, thence over Market Street, San Carlos Street, Almaden Avenue, Almaden Road, thence via Ebert's Garage, New Almaden, Robertsville, the intersection of Willow Glen Avenue and Almaden Road, and Almaden.

Applicant may turn his motor vehicles at termini or intermediate points either in the intersection of the street, or by operating around a block, in either direction, contiguous to such intersection.

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

Dated at San Francisco, California, this 22nd day of July, 1947.

Harold S. Kula
Justice J. Coakley
Dean H. Powell
A. J. [Signature]

COMMISSIONERS