

**ORIGINAL**Decision No. 44960

## BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
 ELMER WORTHINGTON & CLAYTON ESLINGER )  
 for an amendment to their certificate )  
 of public convenience and necessity )  
 granted under Decisions Nos. 37687 and ) Application No. 28151  
 39182 to operate an automobile stage )  
 line and package and parcel service )  
 between San Diego, California, and )  
 Tecate, California, and Morena Lake, )  
 California )

In the Matter of the Application of )  
 SAN DIEGO ELECTRIC RAILWAY COMPANY, a )  
 corporation, for certificate of public )  
 convenience and necessity to establish )  
 common carrier passenger bus service )  
 between the intersection of Broadway ) Application No. 28229  
 and 65th Street and the intersection )  
 of Campo Road and Imperial Avenue, and )  
 to abandon such service between inter- )  
 section of Broadway and 65th Street and )  
 the intersection of Imperial Avenue and )  
 65th Street, all in the City and County )  
 of San Diego. )

Morrison, Hohfeld, Foerster, Shuman & Clark, by Forrest A. Cobb, for applicant in A. 28229; protestant in A. 28151. Ruel Liggett for applicant in A. 28151; protestant in A. 28229. V. J. Dorman for Lemon Grove Chamber of Commerce, Lemon Grove School District, and for certain residents, interested parties.

OPINION ON REHEARING

Application No. 28151 was filed January 16, 1947, and therein Elmer Worthington and Clayton Eslinger sought the removal of the following restriction from their certificate of public

convenience and necessity<sup>(1)</sup>:

"No passengers shall be transported having both origin and destination between applicant's terminus in the City of San Diego and a point one mile east of the intersection of Bancroft Drive and Campo Road."

These applicants do not propose to pick up and deliver passengers between points within the city limits of San Diego, with the exception of 1800 feet of city land along Federal Boulevard about a mile easterly of the intersection of Federal Boulevard and Euclid Avenue.

Application No. 23229 was filed February 19, 1947, and therein San Diego Electric Railway took the position that additional service, as proposed by Worthington and Eslinger, was not warranted, but that if any operating authority were granted, the San Diego Electric Railway should be the recipient.

A public hearing on these two applications was held by Examiner Syphers at San Diego on February 26 and 27, 1947. As a result, Decision No. 40305, dated May 27, 1947, was issued, authorizing the proposal of Worthington and Eslinger and denying the Application of San Diego Electric Railway. This last-named company filed a petition for rehearing on June 6, 1947, and the Commission issued its Order, dated June 28, 1947, granting rehearing.

The rehearing was held July 28 and 29, before the same examiner, at which time the case was submitted.

---

(1) Decision No. 37687, dated February 27, 1945, granted Alden L. Bridgham a certificate authorizing passenger stage operations between San Diego and Campo, California, and intermediate points. Worthington and Eslinger acquired this certificate by Decision No. 38367, dated November 6, 1945, and were granted extensions authorizing operations to Tecate and Morena Lake by Decision No. 39182, dated July 9, 1946.

On July 21, 1947, the San Diego Electric Railway had filed an amended application and at the rehearing this company made a further offer of service which was received in evidence as Exhibit No. 13.

As a result of the first hearing in this matter the Commission found "that public convenience and necessity require a more direct and more expedited service between San Diego and Lemon Grove, Spring Valley, Casa de Oro, and Homeland."<sup>(2)</sup> This conclusion was substantiated by the testimony and allegations made at the second hearing. Not only was additional testimony presented by public witnesses, but the San Diego Electric Railway, in its amended application, alleged that public convenience and necessity required the service it proposed. This company's proposal included the aforementioned communities.

In addition to this, various public witnesses testified as to the need for service between the community of Monterey Heights and San Diego. This testimony was not controverted.

Thus, from the evidence submitted, we reaffirm the finding previously announced in Decision No. 40305, dated May 27, 1947, as to the public convenience and necessity requiring a more direct and more expedited service between San Diego and Lemon Grove, Spring Valley, Casa de Oro, and Homeland. We make the further finding that public convenience and necessity require service between San Diego and Monterey Heights.

The San Diego Electric Railway is the only applicant offering to serve Monterey Heights and this is to be done by

---

(2) Decision No. 40305, dated May 27, 1947, Page 4.

extending its present "G" Line. This proposed extension will be granted. In addition, this company also proposes to maintain its present "U" Line. This proposal was supported by the testimony and we are in accord therewith.

The remaining question at issue, therefore, is which company shall provide the service between San Diego and Lemon Grove, Spring Valley, Casa de Oro, and Homeland. Both applicants now unqualifiedly offer such a service. The routes proposed by each are the same from Homeland to the intersection of Massachusetts Avenue and Broadway in Lemon Grove. From that intersection Worthington and Eslinger's route is via Federal Boulevard to San Diego while San Diego Electric Railway's route is via Massachusetts Avenue, Madera Street, Broadway, 60th, Kenwood, Iona, and Market Streets. A majority of the public witnesses preferred the Worthington and Eslinger proposal, although other witnesses preferred San Diego Electric Railway's proposal in this respect.

After a consideration of all of the record, both at the original hearing and the rehearing, we reaffirm our findings announced in Decision No. 40305, dated May 27, 1947, to the effect that both applicants are able to provide the service. The San Diego Electric Railway changed its position at the rehearing so that now it states it is unqualifiedly willing to provide the service. Worthington and Eslinger expressed such a willingness in both the original and rehearings.

Much has been said in the argument and briefs of the San Diego Electric Railway as to the right of an existing utility to be protected against competition. Where the existing utility is

adequately fulfilling its duty to the public, and other considerations are equal, such a contention is undoubtedly in line with the policy of this Commission (application of Louis E. Smith, et al, 1933, 33 CRC 421; Santa Clara Valley Auto Line, 1917, 14 CRC 112). We must observe, however, that both applicants are existing utilities. Worthington and Eslinger presently serve Casa de Oro, Homeland, and part of the Spring Valley area. Their route runs through the remainder of Spring Valley and Lemon Grove but they are restricted against transporting passengers within this last-mentioned area. San Diego Electric Railway serves Lemon Grove and part of Spring Valley by its present "U" Line. However, as previously found, this line does not provide satisfactory service to San Diego because of its circuitous routing.

It is true that the San Diego Electric Railway operates the main street railway and bus transportation system in and around San Diego, and that formerly they provided a direct service from Lemon Grove to San Diego. However, this service was discontinued more than fifteen years ago (Re San Diego Electric Railway, Decision No. 24297, dated November 16, 1931, 36 CRC 796). The record shows that this company has refused to consider the institution of new service in this area and only became interested in this service at all after Worthington and Eslinger had filed their application on January 16, 1947. Notices of the hearing to be held February 26, 1947, on this application were sent out on February 13, 1947. Six days after these notices were sent out, San Diego Electric Railway filed its application on February 19, 1947.

At the original hearing on February 26, 1947, the San Diego Electric Railway contended there was no need for a direct service from the Lemon Grove area to San Diego, but after the hearing was closed and decision rendered, then this company petitioned for, and was granted, a rehearing. Notices were sent out on July 2, 1947, setting the rehearing for July 16, 1947. However, at the request of San Diego Electric Railway, in order to permit them to submit some "new ideas", the rehearing was postponed to July 28, 1947. On July 21, 1947, this company filed an amended application wherein a new proposal was made and a changed contention, now alleging a need for service, was set forth. As a result of evidence presented during the morning of July 28, 1947, this company, during the noon recess, prepared a third and different proposal<sup>(3)</sup>.

The various amended proposals, and the manner and times in which they were filed, cannot but lead to the conclusion that the San Diego Electric Railway's present proposal was principally motivated by the application of Worthington and Eslinger.

We do not decide the question on this issue alone, however. The principal consideration is, and must be, the public convenience and necessity, and we have found that these justify the service herein. Therefore, in deciding between the two existing utilities, both qualified to render the service, we must give some weight to the alertness and willingness of Worthington and Eslinger. That they are also the utility favored by most of the public concerned is a factor to be considered (Re Park Water

---

(3) Transcript of record, pp. 303-304

Company, Decision No. 34373, dated July 1, 1941, 43 CRC 627, 631).

It is an established doctrine of this Commission that an application shall be judged upon the conditions existing at the time the application is filed (United Parcel Service, Decision No. 20003, dated July 9, 1928, 32 CRC 62, 101). "A protestant, who has not kept pace with the public needs and, who, long after an application is filed, offers to render to the public the service applied for, is not entitled to consideration" (United Parcel Service, *infra*, p. 101: In Re Oro Electric, Decision No. 616, dated April 29, 1913, 2 CRC 748, 758). Here the San Diego Electric Railway did not make an unqualified offer to serve until after a hearing and decision on Worthington and Eslinger's application had been had.

Therefore, because Worthington and Eslinger are an existing utility presently serving, among other points, Homeland, Casa de Oro, and part of Spring Valley; because they initiated the instant proposal, and because there is now no direct service between the Lemon Grove area and San Diego, and the public convenience and necessity justify such a service, we feel that the service they propose should be authorized.

The testimony presented in the rehearing further supports the conclusion we reached in Decision No. 40305, dated May 27, 1947, as to the financial ability of Worthington and Eslinger. While they are now operating on a close financial margin, nevertheless they are providing satisfactory service to the public and are entirely solvent. Removal of the restriction will, according to a fair view of the testimony, increase their net income.

So far as the financial effect on the San Diego Electric Railway is concerned, it should be pointed out that the "G" line extension which we authorize herein, will, according to the testimony, result in an estimated revenue of 24 cents per mile. The "D" line extension which we deny in favor of the Worthington and Eslinger proposal, would result in an estimated revenue of but 18 cents per mile (Transcript of Record, p. 337).

Upon full consideration of this matter we are of the opinion and find that the removal of the restriction, as set out hereinbefore, is in the public interest and, therefore, Application No. 28151, of Worthington and Eslinger, will be granted. It has been decided to issue an in lieu certificate incorporating the existing rights of these applicants and the changes herein proposed.

We are further of the opinion and find, upon full consideration of the matter, that the proposal to extend the present "G" bus line is in the public interest and, therefore, Application No. 28229, of the San Diego Electric Railway Company, as amended, will be granted to that extent. In all other respects this application will be denied.

ORDER ON REHEARING

Elmer Worthington and Clayton Eslinger, copartners, having made application for a certificate of public convenience and necessity in the above-entitled matter, and the Commission being fully advised and finding that public convenience and necessity so require,



IT IS ORDERED:

(1) That a certificate of public convenience and necessity be, and it hereby is, granted to Elmer Worthington and Clayton Eslinger, authorizing the establishment and operation of a service as a "passenger stage corporation" as that term is defined in Section 2<sup>1</sup> of the Public Utilities Act, for the transportation of persons, baggage, and express incidental to transportation of passengers, between San Diego and Campo, California, and intermediate points, and between Campo and Morena Lake, and intermediate points; and between the junction of an unnumbered county road and California State Highway No. 94, approximately two miles northwesterly of the town of Tecate, and Tecate and intermediate points. This certificate is subject to the following restrictions:

- (a) Shipments of baggage and express shall be limited to fifty pounds each and shall be transported on passenger-carrying vehicles.
- (b) No passengers shall be transported having both origin and destination within the city limits of the City of San Diego, with the exception of 1800 feet of city land along Federal Boulevard, lying approximately a mile easterly from the intersection of Federal Boulevard and Euclid Avenue.

(2) That in providing service pursuant to the certificate herein granted, the following service regulations shall be complied with:

- (a) 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.
- (b) Applicant shall, within sixty (60) days from the effective date hereof and upon not less than one (1) day's notice to the Commission and the public, 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, tariffs and time schedules satisfactory to the Commission.

- (c) Subject to the authority of this Commission to change or modify such at any time, Elmer Worthington and Clayton Eslinger shall conduct said passenger stage operation over and along the following described routes:

Beginning at the intersection of 1st Avenue and Broadway in San Diego, thence along 1st Avenue, Market Street, 32nd Street, "F" Street (sometimes called the Broadway Extension), thence east along State Highway No. 94 to its terminus in Campo, California.

Overland along the county road between Tecate and the junction of such county road with California State Highway No. 94 beginning at Campo, thence along Campo-Buckman Springs road to Morena Lake, thence northeasterly for a distance of about two miles to a junction with Buckman Springs Road, thence along Buckman Springs Road to Campo.

Applicants are authorized to turn their motor vehicles at termini or intermediate points, either in the intersection of streets or by operating around a block in either direction, contiguous to such intersection.

IT IS FURTHER ORDERED that the operative rights granted by Decision No. 37667, dated February 27, 1945, Decision No. 38367, dated November 6, 1945, Decision No. 39182, dated July 9, 1946, and Decision No. 40305, dated May 27, 1947, be canceled and of no further force and effect.

IT IS FURTHER ORDERED:

(1) That a certificate of public convenience and necessity be, and it hereby is, granted to the San Diego Electric Railway Company, a corporation, authorizing the establishment and operation of a service as a "passenger stage corporation" as that term is defined in Section 2 $\frac{1}{2}$  of the Public Utilities Act, for the transportation of persons between San Diego and La Mesa, along the route hereinafter described as an extension and enlargement of

applicant's existing operative rights and to be consolidated therewith.

(2) That in providing service pursuant to the certificate herein granted, the following service regulations shall be complied with:

- (a) 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.
- (b) Applicant shall, within sixty (60) days from the effective date hereof and upon not less than one (1) day's notice to the Commission and the public, 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, tariffs and time schedules satisfactory to the Commission.
- (c) Subject to the authority of this Commission to change or modify such at any time, San Diego Electric Railway Company shall conduct said passenger stage operation over and along the following described route:

Commencing at the intersection of 69th Street and Imperial Avenue in the City of San Diego, thence via Lisbon Street, Jamacha Road, Glencoe Drive, Canton Drive, Englewood Drive, Alton Drive, Cypress Street, Imperial Avenue, Palm Avenue to La Mesa Boulevard in the City of La Mesa. Return via the same route.

Applicant is authorized to turn its motor vehicles at termini or intermediate points by operating around the block in either direction, or in accordance with local traffic rules.

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

Dated at San Francisco, California, this 12<sup>th</sup> day of November, 1947.

Harold A. Kula

Justin F. Gallen

Jack H. Russell

R. F. Johnson

COMMISSIONERS