

ORIGINAL

Decision No. 41144

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)	
ERNEST TYHURST for a certificate to)	
operate a passenger stage service)	Application No. 28707
between West Sacramento, Broderick,)	
Bryte, West Gate and Sacramento.)	

Fontaine Johnson, for applicant; Reginald L. Vaughan and Robert E. Gocke, for Gibson Lines, protestant; Walter C. Frame, for West Sacramento Improvement Club, Inc., protestant.

O P I N I O N

By this application, Ernest Tyhurst seeks authority under Section 50 $\frac{1}{2}$ of the Public Utilities Act to operate a passenger stage service between West Sacramento and adjacent communities, on the one hand, and Sacramento, on the other hand. The application was submitted following a public hearing held December 12, 1947, at Sacramento, before Examiner Gregory.

Tyhurst formerly conducted a bus service between the points covered by the present application. He sold the line to F. O. Johnson in 1945. Johnson, in 1946, transferred the business to North Sacramento Transit Lines, a corporation organized by A. J. Chapin. As part of that transaction North Sacramento Transit Lines assumed obligations owed by Johnson to Tyhurst and by Tyhurst to Fontaine Johnson (Tyhurst's counsel), and executed a chattel mortgage in favor of those creditors. North Sacramento Transit Lines ceased operations on May 1, 1947. A few days later the mortgagees filed suit against North Sacramento Transit Lines and Chapin, seeking the appointment of a receiver to take charge of the hypothecated properties, and asking judgment for \$26,168.35, with interest from February 1, 1947, and \$10,000 counsel fees. (Tyhurst

et al. v. North Sacramento Transit Lines, et al., Sacramento County Superior Court, No. 75805.) The action was still pending on the date of hearing in this proceeding, but no receiver had been appointed up to that time.

When North Sacramento Transit Lines ceased operations, Gibson Lines, which for many years had been providing bus service in the general territory, applied for and was granted temporary authority to operate a suburban service between various points in the Sacramento area, including West Sacramento, Broderick, Bryte, and Sacramento. The West Sacramento route authorized was practically identical with that formerly covered by Tyhurst, and parallels the one proposed by him in this proceeding. Following a hearing in June, 1947, the Commission granted Gibson Lines a permanent certificate, and at the same time dismissed an application by Tyhurst for reacquisition of his former right.⁽¹⁾

Gibson Lines commenced service between Sacramento and West Sacramento on May 2, 1947, and continued until September 1st, when a strike was called by its employees. The strike lasted until November 6th. On September 10th Tyhurst filed the present application, reciting the interruption in Gibson Lines' service and requesting a temporary certificate. The major part of the pleading is devoted to a review of the financial transactions mentioned above, and of the facts surrounding the acquisition of a certificate by Gibson Lines. Before the application could be heard, however, Gibson Lines had resumed service to West Sacramento. Hence at the December hearing the physical situation confronting the Commission was not

(1)

Decision No. 40469, June 28, 1947, Applications Nos. 28389, 28416 (47 Cal. P.U.C. 309); rehearing denied, Decision No. 40578, July 29, 1947. Tyhurst's petition for review of the Commission's action was denied by the Supreme Court of California on October 20, 1947.

materially different from that presented by Tyhurst's former application, heard in June along with Gibson Lines' request for a permanent certificate.

At the opening of the hearing, counsel for Gibson Lines objected to further consideration of the application because of its failure to contain the data required by Rule 27 of the Rules of Procedure. ⁽²⁾ In addition, counsel moved to strike from the application, as irrelevant, the recital of antecedent events comprising the bulk of the pleading. (Appl. - page 1, line 14 to page 3, line 2.) Upon an offer by applicant's counsel to develop the pertinent facts by oral testimony, the examiner overruled the objection based on noncompliance with Rule 27. A ruling was reserved on the motion to strike.

In view of the disposition to be made of this proceeding, it will not be necessary to examine the objection and motion in detail. It is sufficient, we think, to point out that deviations from the Rules of Procedure may be permitted for good cause where compliance therewith is found to be impracticable. (Cal. Adm. Code, Title 20, Sec. 56.)

The motion to strike the alleged irrelevant matter from the pleading should be denied. Though not pointed directly at the issues involved in this type of application, the historical facts alleged, we think, are relevant to a full understanding of the underlying situation out of which this controversy arises. In

(2)

Cal. Adm. Code, Title 20, Sect. 27. The rule requires applicants for certificates under Sections 50(d), 50(f), 50 $\frac{1}{2}$ and 50-3/4 of the Public Utilities Act to submit, either in the application or in attached exhibits, a financial statement; proposed fares, rules and regulations; time schedules; description of operating equipment; sketch of the proposed route; names of competing carriers, and facts showing public need.

granting or denying certificates of public convenience and necessity, the Commission acts in an administrative capacity, and is entitled to be apprised of all relevant facts which may influence its determination as to whether or not public convenience and necessity require that the requested authority be granted.

We next turn to a consideration of the evidence in support of the application, to be followed by a discussion of the showing made by protestants.

Applicant has proposed, in effect, to duplicate the existing route and schedules of Gibson Lines between Sacramento, Broderick, Bryte, and West Sacramento. Starting at 5:30 a.m., buses would leave at half-hour intervals from the vicinity of 10th and I Streets, in Sacramento, and would operate over the route in alternate directions until 10:30 p.m., with two additional schedules at 11:30 p.m. and 12:30 a.m. Applicant does not own any buses at the present time. He stated, however, that he was in a position to procure five vehicles at a cost of \$4,000 each, on which he planned to make total down payments of \$2,000 and total monthly payments of \$500. One of the units would serve as a standby vehicle.

The cost of operating 36 schedules per day over the 11½ mile route, using four vehicles, was estimated at \$2,418 per month, or \$604.50 per vehicle. To the figure of \$2,418, applicant added the sum of \$150 per month to cover a rather wide assortment of miscellaneous costs, including pay roll taxes, roadside repairs, and miscellaneous office expenses. No provision was made for depot expenses. Reduced to a daily basis, and using the figure of 1414 scheduled route miles per day and operating costs of 23 cents per

mile, the daily expenses were estimated at \$95.22. Included in the cost estimate were wages for four drivers and one mechanic at \$10 per day each, and rental of a shop in West Sacramento, estimated at \$50 per month. Applicant stated he was not familiar with the union scale of wages for drivers or mechanics. He intended, he said, to devote his full time to supervision of the business, and would also serve as a relief driver and help with maintenance of equipment. His wife would act as bookkeeper.

On the basis of his previous experience in operating a bus line, and on the assumption that Gibson Lines would withdraw from the field if he were granted a certificate, applicant estimated that the proposed operation would bring in revenue amounting to \$30 per day per vehicle, or \$120 for the four buses to be regularly used. If both he and Gibson Lines were to operate competitively, he stated, each would have to receive revenue of at least \$100 per day in order to survive. ⁽³⁾ A 5-cent fare is proposed between Sacramento and Broderick, and a fare of 10 cents between Sacramento and Bryte or West Sacramento.

As evidence of his financial ability to conduct the proposed service, applicant referred to a statement (Ex. 3, Appl. 28416- incorporated in the present record by reference) purporting to contain a list of assets and liabilities as of June 1, 1947, and which, with two exceptions (noted below), was stated to

(3)

Applicant's cost and revenue figures were chiefly based on his operations between Woodland, Helvetia, West Sacramento, and McClellan Field during the period 1940 - 1944, as reflected by Exhibit 1 introduced at the hearing on his previous application, No. 28416. The exhibit was incorporated in the present record by reference.

reflect his position as of December 12, 1947. Summarized, the statement reveals the following figures:

ASSETS

Real property, improvements, livestock, and equipment located in Shasta County	\$47,125.00
2,000 acres leased grazing land, adjoining ranch	500.00
1937 3/4-ton International Truck	1,000.00
1941 Pontiac Club Coupe	1,400.00
Cash in bank	2,000.00 (a)
Household furniture	2,000.00
Balance due from West Sacramento Bus Line	<u>26,168.35</u>
TOTAL ASSETS	\$80,193.35

LIABILITIES

Due and unpaid on account of purchase of ranch, etc.	\$28,000.00 (b)
Due Fontaine Johnson, secured by mortgage on franchise	<u>11,600.00</u>
TOTAL LIABILITIES	<u>\$39,600.00</u>
NET WORTH	\$40,593.35

(a) Applicant testified that the cash in bank had been increased to \$8,000 by the sale of certain livestock for \$6,000 cash.

(b) Applicant testified that there was now due on the purchase price of the ranch the sum of \$23,000.

Eleven residents of Sacramento and the three communities across the river testified on behalf of applicant. Two of the witnesses were former drivers for Mr. Tyhurst, one had serviced his equipment, while another was the wife of the operator who purchased the West Sacramento Bus Line from Tyhurst in 1945. Three of the eleven no longer used bus transportation between the points here involved, although two stated they would use applicant's service if it were reestablished. The tenor of the testimony of applicant's

witnesses is that his former service was dependable and that his buses were kept in good condition. Of those who were using the Gibson Lines' buses to the West Sacramento area, one stated he thought Tyhurst's former operation compared favorably with that now conducted by Gibson Lines, while another said he had "nothing against" the present operator's service.

We now turn to the evidence adduced by West Sacramento Improvement Club and Gibson Lines, protestants to the application.

The showing on behalf of West Sacramento Improvement Club, an organization of residents and property owners of that community, was limited to the introduction of a resolution stating that "it did not approve the application of Ernest Tyhurst . . . to operate a public bus service between Sacramento and West Sacramento." Counsel for the organization, in addition, testified that he formerly used the Tyhurst service, that the buses were frequently late, and that if it could be shown that resumption of operations by applicant would impair Gibson Lines' service he personally would not recommend granting the instant application.

Nine residents of the West Sacramento area testified on behalf of Gibson Lines. The purport of their testimony is that present service by that operator is sufficient for the needs of the communities involved, that the buses run on time, and that the carrier's terminal facilities in Sacramento are both convenient and comfortable. A number of these witnesses stated that they were opposed to the grant of new operative rights if as a result of such action the present service of Gibson Lines might be curtailed. In addition to the statements made by these witnesses, it was stipulated between counsel that sixteen other named persons living

in the area, if called by Gibson Lines, would testify with substantially the same effect, on both direct and cross-examination, as did those who took the stand.

The service rendered by Gibson Lines was described by the carrier's vice-president and general manager. In addition to its local service in areas adjacent to Sacramento, Gibson Lines also conducts extensive interurban operations generally between San Francisco, Stockton, and Chico, and between Sacramento and Reno, Nevada. Its Sacramento terminal, located at 11th and I Streets, is available for use by both suburban and interurban passengers. Schedules on the West Sacramento line operate from this terminal weekdays on a 30-minute headway between 5:30 and 11:00 p.m., with an additional trip at 12:30 a.m. On Sundays and holidays an hourly headway is maintained between 6:00 a.m. and 11:00 p.m., with the final trip at 12:30 a.m. After leaving the terminal, the buses proceed across the I Street bridge to 3rd Street and State Highway 16 and 24, in Broderick, at which point they operate alternately in both directions around a loop passing through West Sacramento and Bryte, and return via Broderick to the terminal. ⁽⁴⁾ The evidence shows that during the week of August 17 - 23, 1947, Gibson Lines completed 94% of 241 scheduled trips over the route on time. During the week of November 16 - 22, 1947, 98% of 241 scheduled runs were made on time.

Gibson Lines also presented exhibits illustrating its experience, during representative periods, in rendering service to

(4)

Applicant proposes to operate over the same route. He stated he thought this route was best suited to give service to the West Sacramento area.

the West Sacramento area. (Exhibits 6, 8, and 9.) A tabulation was also introduced to show a comparison of miles operated, revenues and expenses, in 1946, between Gibson Lines and eight other passenger stage lines operating in either urban or interurban service in California. ⁽⁵⁾ The bases used by protestant for allocating the expense of operating the West Sacramento service were described as being the same as those regularly employed throughout the system and uniform with those used by other bus operators.

Summarized, the results of operation of the West Sacramento line for the periods indicated are as follows:

	(Exhibit 6 - Revenues and Expenses)		1947
		<u>June</u>	<u>August</u>
Revenues		\$3,429.28	\$3,771.22
Expenses		<u>4,475.67</u>	<u>4,937.32</u>
Net Loss		\$1,046.39	\$1,166.10
	Miles operated	11,655	12,331
	Revenue per mile	.2942	.3058
	Expense per mile	.3840	.4003

(Exhibit 8 - Comparison of Passengers and Revenue)

	<u>August</u> (average week)		<u>November 16 - 22</u>	
	<u>Passengers</u>	<u>Revenue</u>	<u>Passengers</u>	<u>Revenue</u>
Total	9,539	\$858.51	7,966	\$691.25
Ratio	100.00	100.00	83.51	80.51

Exhibit 9 consists of a diagram which indicates that during August, 1947, the average cost of operation of the West Sacramento

(5)

Exhibit 7. The other operators shown are - Pacific Greyhound Lines, Peerless Stages, Santa Fe Transportation Company, Asbury Rapid Transit System, and Fresno, San Jose, Stockton and Glendale City Lines. Gibson Lines' revenue per mile, system wide, was shown as .3162, which was somewhat less than that enjoyed by the other lines. The expense per mile was .2967, which was less, with one exception, than the figures indicated for the other carriers. Costs have risen since this exhibit was prepared, it was stated.

line was exceeded by revenues only through the afternoon peak period from 4:00 p.m. to 7:00 p.m.

In amplification of the documentary evidence, protestant's general manager stated that the West Sacramento line had not proved profitable in any month during which it had been operated. The daily revenue in the test week of November 16 - 22 averaged approximately \$98, and during August, said to be the month of highest revenue, averaged \$121.70. Since the close of World War II, it was stated, costs have risen and patronage has declined, with results to protestant's financial picture that are becoming increasingly apparent. The witness took sharp issue with applicant's cost estimates and with his expectations of patronage, pointing out that conditions today were materially different from those obtaining during the period of applicant's past operations in the area, on which his estimates were largely predicated. He expressed the opinion that authorization of a new parallel service would divert traffic from protestant's line, and would bring about a condition of ruinous competition for both operators as well as ultimate deterioration of over-all service to the public. Gibson Lines, he stated, has no intention of withdrawing from the field in the event applicant is granted a certificate.

In rebuttal, applicant testified that he believed there was sufficient revenue to be expected from his proposed operation to make it worth while, in view of the increased activity developing in the West Sacramento area. He did not expect, he said, to operate as elaborate a service as that of Gibson Lines, and consequently would not be under the necessity of incurring as great an expense.

Summary and Conclusions

The rather involved conflict of interests underlying this proceeding, as indicated by the historical facts related in the application, has led us to set forth the evidence in somewhat more detail than would normally be warranted in disposing of cases of this kind, and has also moved us, at this point, to give a brief account of earlier events.

The transportation activities of A. J. Chapin have figured extensively in the background not only of the instant application but also of other matters recently determined or now pending before the Commission. Though not of record here, it is a fact that early in 1947 Mr. Chapin was involved in an unfortunate automobile accident in which his wife was fatally injured and he himself suffered serious hurt, with the result that until about the middle of the year he was unable to attend to his business interests. By that time both North Sacramento Transit Lines and another Chapin enterprise in Salinas - Caltransit Lines, Inc. - had reached and passed the points of financial crisis and cessation of operations, and the responsibility for continuing the respective services had shifted to other hands under Commission authorization granted in the emergencies thus created.

In the inevitable confusion surrounding such precipitous events it was no more than natural that those concerned would take steps to protect their various interests. In the case of North Sacramento Transit Lines, as we have seen, two lines of action were pursued by Tyhurst and his counsel. The first, a suit against Chapin and North Sacramento Transit Lines for the appointment of a receiver and for a money judgment, is still in the courts. The

other plan, designed to secure operative rights for Mr. Tyhurst himself, is here seen in its second phase following the abortive proceeding in June of 1947 which resulted in the dismissal of his previous application.

Our primary duty in a case of this kind, as we conceive it, is to determine whether public convenience and necessity require a proposed service, and if so, whether the prospective operator has the requisite ability to carry out his plan. In order to protect both the public and carriers from the ravages of unwarranted competition in a given locality, we must also, where that factor appears, give due consideration to the quantity as well as the quality of existing service, and appraise carefully the possible effect of multiple facilities. This is especially important in a case, such as this one, in which the applicant for a new certificate proposes to duplicate both the route and the schedules of an existing operator who himself appears to be undergoing financial difficulties in rendering service in the territory involved.

If we apply the foregoing principles to the facts of record in the instant case, we are compelled to conclude that applicant has not met the burden of showing that public convenience and necessity require the establishment of a new bus service, at this time, in the locality in which he proposes to operate. Indeed, had it not been for the compulsive effect exerted on applicant by

the pressure of antecedent events, including the temporary vacuum created by the Gibson Lines' strike, it is perhaps not too farfetched to surmise that the present application would never have materialized. While speculation of this kind has no place in determining real issues of fact or law, it may not be inappropriate to state here that compelling personal necessities may not be substituted for the public interest by one seeking authority to render a public service.

As we find from the evidence of record in this proceeding that applicant has failed to make the required showing, it follows that his request for the issuance of a certificate must be denied.

O R D E R

Public hearing having been had on the application of Ernest Tyhurst for a certificate of public convenience and necessity to establish and operate a service as a passenger stage corporation, as defined by Section 2-1/4 of the Public Utilities Act, as amended, between West Sacramento, Broderick, Bryte, West Gate, and Sacramento; the application having been submitted for decision, and basing our order herein upon the findings and conclusions contained in the foregoing opinion,

IT IS ORDERED that said application be and it is hereby denied.

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

Dated at San Francisco, California, this 19th day of January, 1948.

R. J. [Signature]
Justus J. [Signature]
[Signature]
Harold P. [Signature]
[Signature]
Commissioners