

Decision No. 41690

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

GIBSON LINES, a corporation,)

Complainant,)

vs.)

NORTH SACRAMENTO TRANSIT LINES, a)
corporation, ERNEST TYHURST, LILA)
LEE TYHURST, FONTAINE JOHNSON,)
WILLIAM H. PIMENTAL, FIRST, SECOND)
AND THIRD DOES, FIRST, SECOND AND)
THIRD DOE CORPORATIONS,)

Defendants.)

ORIGINAL

Case No. 4900

Robert E. Gocke and Reginald L. Vaughan, for complainant;
Fontaine Johnson, in propria persona, and for Ernest
Tyhurst, Lila Lee Tyhurst and William H. Pimental;
James E. Harris, for Sacramento Chamber of Commerce,
and Walter C. Frane for West Sacramento Improvement Club,
Inc., intervenors on behalf of complainant; Raymond
McClure, City Attorney, for City of North Sacramento.

O P I N I O N

The amended complaint in this case seeks revocation of the operative rights of North Sacramento Transit Lines (hereafter called "Transit Lines"), between Sacramento and nearby communities north and west of the City, on the ground that on May 1, 1947, the carrier ceased operations without first securing authority from the Commission. In a separate cause of action it is alleged that following such cessation Gibson Lines commenced and has since been rendering adequate service, that the area will support but one local operator and that if Transit Lines' rights are not revoked Gibson Lines will be forced to operate under threat of resumption of service by some of the defendants who claim to own Transit Lines' rights by virtue of a mortgage foreclosure decree granted January 14, 1948, by the Sacramento County Superior Court. (Tyhurst, et al.

v. North Sac. T. L., et al., No. 75805.)

Transit Lines, by its answer, denies the material allegations of the complaint and, by reference to previous answers filed in connection with the original complaint as amended prior to the present pleading, affirmatively pleads a case of financial hardship and requests time to carry out a plan to rehabilitate the line. Objection is also made to bringing in the creditors who prevailed in the foreclosure suit on the ground that when the original complaint was filed herein in June, 1947, they had no proprietary interest in the rights then in litigation. There is no merit to this objection, since the additional parties were necessary for a complete determination of the controversy and the basis of the action was not changed by bringing them in.

A public hearing was held at Sacramento on May 6, 1948, before Examiner Gregory. Although the record shows that both Transit Lines and its counsel were formally notified of the time and place of the hearing no representative of that defendant appeared. The other defendants, predecessors and creditors of Transit Lines, were represented by their counsel, Fontaine Johnson. It was stipulated that a general denial to the amended complaint might be entered of record on behalf of Johnson and the remaining defendants. Johnson also stipulated on behalf of himself and his clients that Transit Lines ceased operations on May 1, 1947, without authority of the Commission.

The facts out of which this controversy arises have been set forth in detail in our former decision granting Gibson Lines a permanent certificate and dismissing an application by Tyhurst to have the West Sacramento rights retransferred to him. (Dec.

(1)
40469, Apps. 28389, 28415, 28416 - 47 Cal PUC 309.) A subsequent application by Tyhurst for a certificate over the West Sacramento route was denied after a hearing in which much the same ground was covered as in the previous case, including the facts concerning the foreclosure suit. It was stipulated that the records in the former applications might be considered as part of the record herein. Under the circumstances, no useful purpose would be served by again reviewing the past history of this controversy.

The evidence makes clear that Transit Lines ceased operations on May 1, 1947, without authority of the Commission, and that service has not since been resumed. It is likewise plain from documentary evidence and from the testimony of public witnesses that Gibson Lines, though operating at a financial loss, has been rendering satisfactory service in the area since May 2, 1947, when it commenced operations over most of Transit Lines' former routes. It is obvious that, under the conditions disclosed here, the entry of another carrier in the field would only result in destructive competition with ultimate injury both to the travelling public and to the carriers concerned.

The only explanation offered by defendants for their failure to take over the line under the court's order of May 6, 1947, appointing Pimentel receiver of the properties, was that Pimentel never qualified as receiver. A different case might have been presented had there been any substantial evidence during the course of these protracted proceedings indicating that a feasible

(1) Tyhurst's petition for review of this decision was denied by the Supreme Court of California on October 20, 1947.

plan was under way to rehabilitate the line. Under the circumstances, however, we have no alternative but to revoke Transit Lines' outstanding certificates.

O R D E R

Public hearing having been held in the above entitled and numbered proceeding, evidence having been received and considered the matter having been submitted for decision, the Commission now being fully advised and basing its order on the findings and conclusions contained in the foregoing opinion,

IT IS ORDERED:

That the certificates of public convenience and necessity hereinafter described, heretofore issued to North Sacramento Transit Lines and its predecessors, authorizing passenger stage service between Sacramento and the various points specified in said certificates, be and they are hereby revoked, and all tariffs and time tables filed in connection therewith are hereby cancelled.

The certificates referred to herein are those contained in the following decisions:

<u>Decision No.</u>	<u>Date</u>	<u>Application No.</u>
35675	8-11-42	25106
35778	9-15-42	25202
36091	1-5-43	25106 (1st Sup)
36094	1-5-43	25376
36628	9-28-43	25106 (2nd Sup)
36637	10-5-43	25690
36720	11-23-43	25820
36727	11-23-43	25106 (3rd & 4th S)
38545	12-21-45	26885
39407	9-10-46	27561
39665	11-26-46	27940
39978	2-15-47	25106 (7th Sup)

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

Dated at San Francisco, California, this 8th day of June, 1948.

R. E. Zimmerman
Arthur F. Gammee
James L. Linglee
Harold K. Kula
Berneth L. Lott
COMMISSIONERS