

Decision No. 42389

*ORIGINAL*

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
 WILLIS M. KLEINENBROICH (MODESTO )  
 MOTOR BUS SERVICE) for a certificate )  
 to operate passenger stage service ) Application No. 29350  
 over new routes in and near Modesto. )  
 (Routes Nos. 3 and 4). )

In the Matter of the Application of )  
 MARY MARITZEN and E. B. OSTHUES )  
 (MODESTO TRANSIT COMPANY) to restore )  
 passenger stage service over a modified ) Application No. 29504  
 route between 12th and I Streets in )  
 Modesto and Modesto State Hospital. )

Hoover and Lacy, by Edward M. Lacy, for  
Willis M. Kleinenbroich, Applicant in No.  
29350 and protestant in No. 29504; Frank  
C. Damrell, for Mary Maritzen and E. B.  
Osthues, applicants in No. 29504 and pro-  
testants in No. 29350.

O P I N I O N

By Application No. 29350, as amended, Willis M. Kleinenbroich seeks authority to establish two new passenger stage routes between downtown Modesto and county territory southwest and northwest of the city, including Modesto State Hospital located west of U. S. Highway 99. Mary Maritzen and E. B. Osthues, by Application No. 29504, request permission to reestablish passenger stage service, suspended early in 1946, over a modified route between Modesto and the State Hospital.

The applications were submitted on a joint record at a public hearing held December 8, 1948, before Examiner Gregory at Modesto.

Kleinenbroich, doing business as Modesto Motor Bus Service, presently operates two loop routes, with a 7-cent basic fare, between the center of town and contiguous county areas southwest and north of

the city. (Routes 1 and 2.) He also conducts a passenger, express and mail service between Modesto and Oakdale via Riverbank, under the name of Modesto-Riverbank-Oakdale Stage Line, with local passenger service, at a 10-cent fare, along McHenry Avenue in the northern part of Modesto and adjacent county territory.

The new routes proposed by this applicant are designed to supplement his existing operations in the same general area he is already serving southwest of the city (Route 3) and to provide service in the northwest section through established and developing residential tracts to the Modesto State Hospital, now fully activated (Route 4). The new southwest route, which will be integrated with that to the northwest, involves a shortened outbound transit for patrons living in the area west of Washington Street, between Maze Boulevard on the north and California Avenue on the south, who now must travel over an extended loop via Robertson Road to California Avenue and Franklin Street and then walk six or eight blocks, in some cases, to reach their homes. The proposed line to the northwest, in addition to providing transportation for hospital employees and visitors, will tap the well built-up Wilen, Woodman, Franck and College Avenue Tracts north of Orangeburg Avenue and the populous College Gardens Tracts west of Tully Road south of Roseburg Avenue. The inbound operation on this line will traverse Sycamore Street, providing more direct and convenient access to downtown Modesto for residents of the closely-built section south of Roseburg and west of McHenry than is presently available on applicant's circuitous Eastside route.

Applicant proposes to charge a cash fare of 10 cents, with 7 rides for 50 cents, for a continuous ride in one direction over both routes, with transfer privileges between the new and existing lines. <sup>(1)</sup> Bus schedules on the two new routes will be integrated; that

(1) The basic fare on Routes 1 and 2 is now 7 cents. Applicant intends to apply to the Commission for authority to increase that fare to 10 cents, with 7 rides for 50 cents.

is, the bus leaving the outermost point on Route 3 will proceed inbound to the Modesto business district and then out on Route 4 to the Wilen, Woodman and Francek Tracts. Hospital schedules will be timed to meet shift changes at 7 a.m., 3 p.m. and 11 p.m. and visiting hours on Tuesdays, Saturdays and Sundays from 9 to 11 a.m. and from 2 to 4 p.m. Normal schedules, not serving the hospital, will run half hourly during the morning and afternoon peak periods and hourly during the rest of the day. Route 3 is about 3 miles long and takes 20 minutes to cover. Route 4 is about 6 miles long and requires 40 minutes to travel.

Kleinenbroich estimated his operating costs on the two routes at 27 cents per mile, or about \$70 per day, and a passenger potential of between 200 and 900 per day on both routes, based on a house and population count in the areas proposed to be served. He believes that he possesses sufficient equipment at present to inaugurate the service, but is contemplating the purchase of an additional 27-passenger Ford Transit Bus at a cost of about \$3,500. His annual report for 1947, covering all operations, shows the following data:

Operating Revenues	\$ 56,299.88
Total Expenses	49,364.75
Net Carrier Operating Income	6,935.13
Interest Deductions	339.00
Net Income Transferred to Earned Surplus	6,596.13

Twenty-one public witnesses testified to the convenience and necessity of the proposed service, including residents of both areas, the Director of Veterans' Housing for Stanislaus County, three subdivision representatives (speaking for the Wilen, Woodman, College Avenue, James, Monaco and Mensinger Tracts) and the medical superintendent in charge of Modesto State Hospital. The hospital is now in full operation, with 650 employees (since July, 1948) and 2,500 patients, and more employees and patients are expected.

soon. Many employees, both those living at the hospital and in Modesto, have no cars and must use taxicabs to go to or from town. About 200 employees reside at the hospital.

The application of the other operator, Modesto Transit Company, presents a somewhat unusual problem. This carrier operates three local passenger stage routes between downtown Modesto and county areas to the east and south<sup>(2)</sup>. Its operations are roughly comparable in volume to those of Kleinenbroich north and southwest of the city. The routes used, however, are not so markedly of the loop type as are those employed by Kleinenbroich.

It has been proposed, in the present application, to extend the Airport routes from their present downtown terminal at 11th and I Streets out 11th via Needham Street, Tully Road, Rosburg Avenue and Carver Road to the Wilen Tract and the Modesto State Hospital and return via the same general route. The application alleges that such an extension would afford a "complete, continuous and direct service" from the Airport District to the westerly extremity of the city through the central business district for one fare, and that it "in no way involves competition with any service in that area but has been requested because of the public need and demand on the part of the people who are residents in this heavily populated area through which the proposed service is routed". Hourly service between 6:30 a.m. and 11 p.m. is offered at existing fares of 10 cents, with 7 rides for 50 cents.

For reasons not disclosed on the record Modesto Transit Company made no showing in support of its proposal, other than to adopt the testimony of Dr. Gladen, superintendent of the Modesto State Hospital. Aside from that, and from brief cross examination of some of Kleinenbroich's witnesses, this applicant elected to

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(2) Modesto Municipal Airport, via (a) 12th Street and (b) La Loma Avenue; South Modesto Acres.

rest its case on the statement of its counsel that in his opinion Kleinenbroich had not justified the establishment of additional service in the northwestern area. (3)

The position taken by Modesto Transit Company requires some explanation. This carrier formerly operated from the business district to the hospital (then known as Hammond General Hospital) via Virginia and Coldwell Avenues and U. S. Highway 99. (Dec. 35800, 4/29/42, App. 25232, as amended by Decs. 36486 and 36963.) On April 2, 1946, the operator was authorized to suspend its hospital line for a period of six months, following closing of the institution as an army installation on December 21, 1945. The hospital remained out of service until about a year ago when it was reactivated. On March 22, 1947, prior to such reactivation, Modesto Transit Company filed an application to restore the line over the same general route proposed here. However, upon reconsideration of the traffic potentialities of the route in the absence of an active hospital, the carrier decided to withdraw its application and on June 3, 1947, the proceeding was dismissed without prejudice. (Dec. 40359, App. 28298.) By that time a newcomer in the Modesto transportation picture, one E. M. Lester, had made application to serve between the business district and residential tracts north of the city over a route largely competitive, in close-in territory, with Kleinenbroich's Eastside Route No. 2. The application was granted over the protest of both Kleinenbroich and Modesto Transit Company inasmuch as neither of those operators had indicated willingness to serve the northern area proposed to be accommodated by Lester. (Dec. 41510, 4/27/48, Apps. 25874 (2nd Supp); 28342.) Lester was not successful in his venture and abandoned the operation

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(3) Modesto Transit Company, at the opening of the hearing, objected to both routes proposed by Kleinenbroich but withdrew its protest against Route No. 3 (southwest) during the hearing.

in September of this year. His certificate has since been revoked. (Dec. 42240, 11/16/48.)

Modesto Transit Company has maintained, in this and the earlier proceeding, that it has a prior claim on the right to provide service to the northwestern area outside Modesto, including the hospital, by virtue of its former operation and also because the Commission, in dismissing its previous application (No. 28298), stated that such action was "without prejudice".

It is difficult to perceive the ground upon which such a claim might rest. The original suspension order was for six months only and has not been extended either at applicant's request or otherwise. It is highly questionable whether there is any such operative right now in existence. Even if there were, and taking the present application as one to lift the suspension and restore the hospital service over a new route (as it purports to be),

applicant's failure to make a substantial showing compels us, aside from any question of abandonment, to deny the request on its merits.

We find the establishment and operation of the passenger stage service proposed herein by Willis M. Kleinenbroich to be required by present and future public convenience and necessity. Application No. 29350 will accordingly be granted.

This appears to be an appropriate time to collect Kleinenbroich's ~~===~~ operative authority and route descriptions, now lodged in several Commission orders, in one decision and to cancel the former orders. The order to follow will so provide.

ORDER

Public hearing having been held in the above entitled and numbered proceedings, evidence having been received and considered, the matters having been submitted for decision, the Commission now being fully advised and basing its order upon the findings and

conclusions contained in the foregoing opinion,

IT IS ORDERED:

1. That Willis M. Kleinenbroich, doing business as Modesto Motor Bus Service, be and he is hereby granted a certificate of public convenience and necessity authorizing the establishment and operation of service as a passenger stage corporation, as defined in Section 2½ of the Public Utilities Act, for the transportation of passengers and their baggage -

- (a) Between 10th and J Streets, in the City of Modesto, and the intersection of Robertson Road and Vernon Avenue, in adjacent county territory southwest of the present city limits of the City of Modesto, to be designated Route No. 1.
- (b) Between 10th and J Streets, in the City of Modesto, and the intersection of McHenry and Roseburg Avenues, in adjacent county territory north of the present city limits of the City of Modesto, to be designated Route No. 2.
- (c) Between 10th and H Streets, in the City of Modesto, and the intersection of California and Spencer Avenues, in adjacent county territory west of the present city limits of the City of Modesto, to be designated Route No. 3.
- (d) Between 10th and I Streets, in the City of Modesto, and the intersection of Granger and Stetson Avenues, in adjacent county territory northwest of the present city limits of the City of Modesto, to be designated Route No. 4.

2. That the certificate herein granted, in addition to conferring the authority sought in Application No. 29350, shall be in the place and stead of existing operative rights within and in the vicinity of the City of Modesto possessed by Willis M. Kleinenbroich, doing business as Modesto Motor Bus Service, pursuant to Decision No. 36997, issued April 11, 1944, in Application No. 25874, and the certificate granted by said Decision No. 36997 is hereby cancelled together with amendatory orders respecting description of routes, contained in Decisions Nos. 38059, 41262 (interim order) and 41510.

3. 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 them by further order, applicant shall conduct operations pursuant to the certificate herein granted over and along the following routes:

Route No. 1

Commencing at the intersection of 10th and J Streets, in the City of Modesto, thence via 10th, H and First Streets, Roselawn Avenue, Western Way, Colorado and Pelton Avenues, South Franklin Street, Robertson Road, Vernon Avenue, Waverly, Normandy and Beverly Drives, Vernon and Chicago Avenues, Paradise Road, Franklin Street, California Avenue and H Street to First Street, thence via H and 10th Streets to J Street.

Route No. 2

Commencing at the intersection of 10th and J Streets, in the City of Modesto, thence via J Street, Downey Avenue, H Street, Scenic Drive, Coffee Road, Lucern, Sunrise, Roseburg, McHenry, Fairmont, Virginia, Coldwell and College Avenues and 10th Street to J Street.

Route No. 3

Commencing at the intersection of 10th and H Streets, in the City of Modesto, thence via H Street, California and Spencer Avenues, Maze Boulevard and 5th Street to H Street; thence via H and 10th Streets to I Street.

Route No. 4

Commencing at the intersection of 10th and I Streets, in the City of Modesto, thence via 10th Street, College and Roseburg Avenues, Carver Road, Clayton Avenue, U. S. Highway 99, Blue Gum Avenue (Modesto State Hospital Gate), U. S. Highway 99, Clayton Avenue, Carver Road, Teresa Street, Kearney and Orangeburg Avenues, Tully Road, Granger and Stetson Avenues, an unnamed Street between Granger and Orangeburg Avenues, Tully Road, Roseburg and Sycamore Avenues, 15th, J, 11th and H Streets to 10th Street.



Applicant may turn his 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.

4. That Application No. 29504 of Mary Maritzen and E. B. Osthus, doing business as Modesto Transit Company, be and it is hereby denied.

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

Dated at San Francisco, California, this 29<sup>th</sup> day of December, 1948

R. F. Indurain  
Justice F. Cooney  
Samuel P. Potter  
Commissioners