

Decision No. 12474

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
BAY RAPID TRANSIT COMPANY, a corpo-
ration, for permission to extend
its operations as a passenger stage
corporation.

Application No. 27955

In the Matter of the Application of
THE GRAY LINE, INC., for a certifi-
cate of public convenience and
necessity to extend its operations
as a passenger stage corporation to
operate on and adjacent to the
Monterey Peninsula.

Application No. 28182

WALLACE L. WARE, for applicant in Application No. 27955
and protestant in Application No. 28182.
PILLSBURY, MADISON & SUTRO, by HUGH FULLERTON, for appli-
cant in Application No. 28182 and protestant in
Application No. 27955.

O P I N I O N

Bay Rapid Transit Company, hereinafter sometimes referred to as Bay Rapid, filed an application on October 23, 1946, for a certificate of public convenience and necessity authorizing the operation of a sight-seeing service on the Monterey Peninsula, including the 17 Mile Drive and other scenic points in Monterey, Pacific Grove, Carmel and Carmel Mission. The application was amended on May 6, 1947, as to route only. On January 31, 1947, The Gray Line, Inc., also filed its application seeking a certificate to operate a sight-seeing service in the same area.

Both applicants are presently operating as passenger stage corporations by virtue of certificates granted by this Commission under Section 504 of the Public Utilities Act. The Gray Line operations are primarily sight-seeing in character, while Bay Rapid conducts an urban and interurban transit service in Monterey.

Each applicant protested the application of the other. Hearings were held on a consolidated record before Examiner Gannon in Monterey on May 12, 13 and 14, and June 2 and 3, 1948, at the conclusion of which the matters were submitted on concurrent briefs. Thirty-two witnesses testified on behalf of Bay Rapid, 19 of whom were public witnesses, and 6 witnesses testified for Gray Line, 4 of them being public witnesses.

Each applicant has rendered a non-certificated chartered sight-seeing service over the route for which a certificate is now sought. Both applicants are agreed, and the record is convincing on this point, that one or the other service is necessary but that there is no warrant for the certificating of more than one service. The Commission's duty in the premises is to decide from the record which of the two applicants is better qualified to render the service proposed.

The predecessor of Bay Rapid initiated an urban bus transit line in Monterey. In 1947, Bay Rapid became the sole owner of this operation and presently conducts an interurban service between Monterey, Pacific Grove, Carmel, Fort Ord Village and the Del Monte Naval School. The public witnesses called in behalf of Bay Rapid were most enthusiastic regarding the service rendered by that company, stating it is efficient and adequate, and that Mr. Harper, Manager and Superintendent of Bay Rapid, is highly esteemed in the locality both as to character and ability.

The route proposed by Bay Rapid would originate at its terminal in Monterey and would proceed along certain streets, designated as the "Path of History", thence via Pacific Grove and along the 17 Mile Drive, which is a privately owned road, through

Carmel with a stop at Carmel Mission, and returning to point of origin. The entire tour is approximately 27 miles in length. Bay Rapid proposes two trips daily, leaving at 10 a.m. and 2 p.m., respectively. The tour is of two hours' duration and the fares are \$2.75 for adults and \$1.40 for children under 12 years of age. A fee of 50 cents will be collected from Bay Rapid for all adults as a toll for admission to the 17 Mile Drive and 25 cents for a personalized tour at Carmel Mission which will be borne by the applicant.

Bay Rapid will operate its buses when five or more tickets are sold for any given schedule. In the event that less than five tickets are sold a limousine service will be provided over the same route at a basic fare of \$7.50 for one or two passengers, and an additional \$1 for each passenger exceeding two. The 50 cent toll charge per person to enter the 17 Mile Drive will be included in the limousine fare.

As to equipment, this applicant proposes to dedicate to its sight-seeing service five 1946 Twin Coaches, two of 34-passenger capacity and three of 40-passenger capacity. It also proposes to use one 1947 Flexible type bus of 29-passenger capacity. Applicant further proposes to supplement these buses with a new type of sight-seeing bus referred to as the "Astraview" which is constructed with a glass top so as to afford overhead as well as side vision.

As a further incident of service Bay Rapid proposes to employ hostess lecturers one of whom will accompany each tour, with the exception of chartered and limousine tours, and will give specially prepared lectures on the various points of interest. These lecturers will be selected from the local schools and will

undergo a training course during a probationary period. The buses to be used are not wired for a loud speaker system but applicant contemplates the use of a portable system which will be used by the hostess-lecturer outside of the bus at stopping points of interest as well as inside the bus while in motion.

To those sight-seers who purchase tickets on scheduled tours applicant will offer free transportation on its transit lines to and from its terminal. Drivers on the local transit lines will also be engaged, by rotation, on the sight-seeing tours.

Bay Rapid has applied for membership in the American Sight-Seeing Association, Inc. and its admission into that organization is conditioned upon Bay Rapid's application being granted. The American Sight-Seeing Association was established in 1937 with an initial membership of ten members. Its purpose is to conduct a year-round solicitation campaign for its various members through the medium of its National Tariff which is distributed to the travel and tourist agents throughout the United States, to railroads and transportation agencies.

Applicant Gray Line, Inc. has been engaged in the sight-seeing business for a number of years and as part of such service has operated Tours Nos. 8 and 15, both originating in San Francisco and including an overnight stop on the Monterey Peninsula. Gray Line is an affiliate of two operating companies, namely Fialer's Limousines, Inc., which operates a certificated service restricted to the transportation of passengers and their baggage to and from San Francisco public airports, and Airport Limousine Company, which is engaged in the rental of limousines, with or without drivers, and automobiles in what is commonly known as a U-Drive

service. Gray Line owns and maintains a garage in San Francisco, and at the time of this hearing owned 101 pieces of motor vehicle equipment. Since 1935, Gray Line has operated a general limousine service on the Monterey Peninsula. Should they be granted a certificate as herein requested this applicant proposes to establish a terminal in downtown Monterey.

Two tours daily are proposed by this applicant, at 10 a.m. and 2 p.m. In the event that less than two tickets are sold, applicant reserves the right to cancel the tour. The route to be followed is substantially the same as that offered by Bay Rapid, with the exception of a visit to Carmel Point and the Del Monte Hotel grounds, which are now operated as a Naval School. The United States Naval Line School at Del Monte is an extensive project now in course of development. The magnitude of the undertaking is indicated by the fact that a teaching staff of 500 civilian instructors is attached to the school. The United States Government is presently engaged in the construction of numerous residences, for officers and their families, office buildings, hotel and shopping district. The tour through the Naval School is conditioned upon securing the permission of the appropriate authority. The duration of the tours, and fares to be charged, are identical with those proposed by applicant Bay Rapid. Gray Line will also absorb the 25 cent fee for the Carmel Mission tour, and will also collect the 50 cent toll per person for admission to the 17 Mile Drive.

The equipment to be dedicated to this service will include two 37-passenger buses, one 10-passenger "stretched out" limousine, three 7-passenger regular limousines, and fifteen U-Drive automobiles. The Traffic Manager of Gray Line testified that this applicant is considering the purchase of two 37-passenger glass-top Flexible type

buses, one of which would be put in operation on the Monterey Peninsula. To maintain this operation the personnel will include a full-time manager, three full time drivers, and an office force. This applicant does not propose to employ hostess-lecturers, but will provide appropriate lectures by drivers who are also trained as lecturers.

Gray Line is a member of the Gray Line Sight-Seeing Association of North America. This Association has a membership of 83 and its purpose is to stimulate and solicit sight-seeing business for its various members. Through the combined efforts of the Association, and the individual efforts of applicant Gray Line, an extensive advertising campaign is contemplated. The promotional campaign to advertise the Monterey Peninsula will include the printing and distribution of descriptive folders, advertising in newspapers and periodicals, printing and distributing biennially applicant's local tariff, and engaging in continuous solicitation throughout the United States. As distinguished from Bay Rapid, which expects an annual net income of \$19,623.16 before Federal income tax, Gray Line expects to show a loss of \$7,765 for the first year of operation. The second year of operation, however, is expected to result in a profit of \$5,000 to \$6,000.

The Commission has endeavored, in the above opinion, to set forth with considerable particularity the essential elements of each application. We search the record in vain for any material evidence of superiority of one proposal over the other. It is true there are certain differences between the two proposals, as our analysis will show, but these differences in and of themselves would not be a deciding factor whereby the Commission could award or deny a certificate. The route to be followed allows for little,

if any, deviation. As we have above noted Gray Line intends to include Carmel Point and the Naval School. Bay Rapid does not intend to visit Carmel Point because the road is alleged to be dangerous and inaccessible for a bus. During the course of the hearing the chief operating witness of Bay Rapid testified that it was the intention of that applicant to include a visit to the Naval School as part of its tour should permission be granted by the proper authority.

There is no doubt that Bay Rapid presently furnishes a service that is unqualifiedly satisfactory in every way to its patrons. One of its public witnesses, formerly president of the Monterey Chamber of Commerce, testified that he knew of no complaint in fifty years. The application of Bay Rapid is officially endorsed by the Monterey Chamber of Commerce, Pacific Grove Chamber of Commerce, Carmel Business Association, Pacific Grove City Council, and the Monterey City Council.

On the other hand Gray Line proposes to supply a service which, in every important aspect, matches that proposed by Bay Rapid. It is experienced in the sight-seeing business, though that may not be a necessary qualification to insure successful operation. Both applicants are financially able to establish and operate the type of service which they propose to render. There is no material variation in routes, fares, equipment, time schedules or points to be visited. Each applicant will hold membership in a national sight-seeing organization. The evidence does not justify a conclusion that one applicant would serve the public any better than the other. Under the circumstances, the Commission may properly give consideration to the fact that Bay Rapid now

operates a general transportation service in this area, and also was the first in time in the filing of an application to render a sight-seeing service. Bay Rapid filed its application with the Commission more than three months in advance of the filing by Gray (1) Line. The latter applicant attempts to meet this contention by asserting that it had been studying the feasibility of a certificated sight-seeing service on the Monterey Peninsula but did not reach a conclusion until three months and eight days after the filing by Bay Rapid.

We find from the record herein that public convenience and necessity require the establishment and operation of a sight-seeing service along the 17 Mile Drive, through Monterey, Pacific Grove, Carmel and vicinity. It is further found that there exists no need for more than one service and that Application No. 27955 should be granted and that Application No. 28182 should be denied.

ORDER

A public hearing having been held in the above entitled proceedings, the matters having been submitted on briefs, and the Commission being fully advised,

IT IS ORDERED:

(1) That a certificate of public convenience and necessity be and it hereby is granted to Bay Rapid Transit Company, authorizing

(1) As was stated in the Beverly Gibson case (26 C.R.C. 892):

"The Commission does not believe that mere priority of filing, other things being different, must or should govern the granting of a certificate to operate auto stages or trucks, but all other things being equal, the applicant first to the docket should receive the reward due to his diligence, even though in the race he is only eight days ahead of his competitor."

the establishment and operation of a sight-seeing service as a passenger stage corporation, as defined in Section 24 of the Public Utilities Act, for the transportation of passengers over a route beginning and terminating in Monterey, which shall pass by or through the following points en route: Monterey, Pacific Grove, Asilomar, 17 Mile Drive, Carmel, Carmel Mission, Carmel and Monterey.

(2) That in providing service pursuant to the certificate herein granted, applicant Bay Rapid Transit Company 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. Applicant shall conduct such passenger stage service over and along the most appropriate streets, roads or highways between the points it is authorized to serve.

(3) That Application No. 28182 of The Gray Line, Inc. is hereby denied.

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

Dated at San Francisco, California, this 1st day of February, 1949.

R. J. [Signature]
Justin J. Baller
Walter H. [Signature]
Harold A. [Signature]
Kenneth [Signature]
 COMMISSIONERS.