

Decision No. 42956

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 EMIL GUY SPADONI, dba Lakeshore Transit)
 Company for certificate of public con-)
 venience and necessity to operate a bus)
 service as a common carrier between) Application No. 28742
 Fallbrook, Camp Pendleton, Oceanside,) (First Supplemental)
 and return, all in the County of San)
 Diego, State of California; and to)
 operate an express nonstop bus service)
 between Camp Pendleton and Los Angeles,)
 California.)

In the Matter of the Application of)
 EMIL GUY SPADONI (Lakeshore Transit)
 Company) to transfer certificate to) Application No. 29676
 Lakeshore Lines, and the latter to)
 issue and sell stock.)

CITY OF OCEANSIDE, a Municipal Corporation,)
)
) Plaintiff)
 vs)
) Case No. 4956
)
 EMIL GUY SPADONI, dba LAKESHORE TRANSIT)
 COMPANY,)
) Defendant.)

CITY OF OCEANSIDE, a Municipal Corporation,)
)
) Plaintiff)
 vs)
) Case No. 4960
)
 EMIL GUY SPADONI, dba LAKESHORE TRANSIT)
 COMPANY, and BLACK & WHITE CORPORATION,)
 a corporation,)
) Defendants.)

Juliani and Daubney by William Henry Daubney and Harry O. Juliani
 for applicant in Application No. 28742, First Supplemental, and
 Application No. 29676, and for respondent in Case No. 4956 and Case
 No. 4960; City of Oceanside by James A. Moore, City Attorney, Glanz
and Russell by Arthur H. Glanz, for protestants in Application
 No. 28742, First Supplemental, and Application No. 29676, and com-
 plainants in Case No. 4956 and Case No. 4960; Douglas Brookman and
R. E. Thomas for Pacific Greyhound Lines; William F. Brooks for
Santa Fe Transportation Company, protestants in Application
 No. 28742, First Supplemental, interested parties in Application
 No. 29676, Case No. 4956, and Case No. 4960; Arthur H. Glanz for
F. C. Horn, R. P. Geddes and E. A. Pike, copartners, dba Palomar
Stages, protestants.

O P I N I O N

Emil Guy Spadoni is an individual who, under authority of this Commission, operates a passenger stage service between Elsinore and the intersection of Grand Avenue and Corydon Road in Riverside County, and intermediate points⁽¹⁾, and between Fallbrook, Camp Pendleton, Oceanside, and intermediate points⁽²⁾.

There are five matters to be determined in this proceeding. In Application No. 28742, First Supplemental, Spadoni seeks a certificate of public convenience and necessity to operate a passenger stage service between Fallbrook, Camp Pendleton, Oceanside, and intermediate points, as an extension and enlargement of, the rights granted this applicant in Decision No. 41575.

In Application No. 29676, Spadoni seeks authority to transfer his operative rights to the Lakeshore Lines, which last-named company is a California corporation. Also in this application authority is requested for the Lakeshore Lines to issue and sell 333 shares of common stock, each share having a par value of \$100. The proposal is to issue 133 shares to Spadoni in exchange for the operating authority presently held by him under Decision No. 41575, and also for a revocable permit from the United States Government to operate within the boundaries of Camp Pendleton, and, in exchange for \$20,000 in cash, to issue 139 shares to A. W. Merrifield, 40 shares to J. J. Bargsten, 20 shares to L. E. Bell, and one share to Walter W. Jordan.

(1) Dec. No. 40379, dated June 10, 1947, on Ap. No. 28391.
(2) Dec. No. 41575, dated May 11, 1948, on Ap. No. 28742.

Case No. 4956 is a complaint filed by the City of Oceanside alleging unauthorized operations by Spadoni, within the City of Oceanside, in that said Spadoni is alleged to have picked up passengers at unauthorized points and has conducted operations which are detrimental to a municipal bus line operated by the City of Oceanside.

Case No. 4960 is a complaint by the City of Oceanside against Spadoni alleging operations by him and by Black & White Corporation from within the City of Oceanside to places without the city, namely, places within Camp Pendleton, without the necessary authority of the Public Utilities Commission.

In addition to the two applications and the two cases listed above, the City of Oceanside has filed a petition requesting modification of Decision No. 41575, supra. In this petition, the issue is raised as to whether or not Spadoni can perform an intracity service within the City of Oceanside.

Public hearings on all these matters were held before Examiner Syphers on September 30 and October 11, 1948, in Oceanside, and on October 15, November 12, and November 29, 1948, at Los Angeles. On these dates, evidence was adduced and, on the last-named date, the matter was submitted and the parties granted permission to file concurrent briefs thirty (30) days after receipt of transcript. The briefs have been received and considered together with the evidence of record and the matter is now ready for decision.

In this decision, the various applications and cases will be discussed separately.

Petition for modification of Decision No. 41575. In Decision No. 41575, Spadoni was authorized to conduct operations as a passenger stage corporation "between Fallbrook, Camp Pendleton, Oceanside, and intermediate points," over the following route:

Commencing at Fallbrook, thence via U. S. Highway 395 and Bonsall Road to the San Luis Rey Gate Road, entering Camp Pendleton at that point, thence through Camp Pendleton to Gate No. 1 on the Coast Highway north of the City of Oceanside, thence via Coast Highway to Oceanside. Return via same route.

At the hearing, testimony was presented by a colonel of the U. S. Marine Corps, under whose jurisdiction falls the transportation of personnel at Camp Pendleton. This witness testified that there was a need for public transportation for the military personnel and their dependents. The Marine Corps does not operate buses for this transportation inasmuch as, under the law, drivers must be over 21 years of age, and it was pointed out that most enlisted marines available for this type of work are under 21. Accordingly, the commanding officer at Camp Pendleton prefers to have a private bus operator handle the transportation.

In the latter part of 1947, the commanding general at Camp Pendleton contacted various bus operators with a view to procuring commercial bus transportation to meet the needs of the camp. According to the testimony, no existing transportation company was willing to render service such as the camp required. Accordingly, arrangements were made with Spadoni to provide this

transportation. At the hearing on Application No. 28742, which was held on April 20, 1948, there was introduced into evidence (Exhibit No. 1) a copy of a permit issued to Spadoni, under the terms of which his buses are permitted to pass through Camp Pendleton and to take on and discharge passengers within the camp boundaries. This permit became effective February 20, 1948. Decision No. 41775 was dated May 11, 1948. Further testimony showed that the commanding officer at Camp Pendleton has issued instructions prohibiting the buses of the City of Oceanside from entering Camp Pendleton. In other words, at the present time the only civilian buses permitted to enter the camp are those operated by Spadoni.

The testimony in the instant hearing developed the fact that there are three housing areas within the vicinity of Camp Pendleton and the City of Oceanside occupied by marine personnel and civilian workers. These areas are the Homoja housing area, which is located about 200 yards inside the main gate of Camp Pendleton on U. S. Highway 101; Camp Del Mar, which is outside the camp and directly across the road from the main gate of Camp Pendleton on U. S. Highway 101; and the Sterling housing area, which is inside the City of Oceanside. There are approximately 650 families in Sterling, about the same number in Homoja, and at Camp Del Mar. There are 100 sets of quarters for service personnel and 125 sets of quarters for civilian personnel.

According to the testimony, the residents of each of these housing areas travel to and from Camp Pendleton, including points within the camp. It should be pointed out that Camp Pendleton is a large military area, having work and service areas

within the camp which are more than 15 miles from the main gate. Accordingly, the transportation desired by the Marine Corps is not only to the main gate, but also to various locations within the camp.

Each of the three foregoing housing projects is controlled and operated by the Marine Corps. The order previously referred to, restricting buses operated by the City of Oceanside from entering the properties of Camp Pendleton, applies with equal force to these housing projects, and, likewise, the permit held by Spadoni permits him to operate to houses within these properties, they being considered as part of Camp Pendleton.

In Decision No. 41575, supra, this Commission found that there was a need for transportation of military personnel and civilian workers to and from Camp Pendleton. We now reaffirm this finding, and, in the light of additional evidence herein, we further find that there is a need for transportation between these housing projects and Camp Pendleton. Therefore, in considering the petition of the City of Oceanside for modification of Decision No. 41575, these findings are controlling.

Specifically, the petition of the City of Oceanside contends that Spadoni should not be, and has not been, authorized to perform intracity service within the city of Oceanside. In the light of the evidence in the prior proceeding, Application No. 28742, held April 20, 1948, and coupled with the evidence in this proceeding, we are inclined to agree with this contention. There has been no testimony as to a need for intracity transportation, all the testimony tending to show a need for transportation between Camp Pendleton, the city of Oceanside, and the housing areas.

As a matter of fact, the record, as it now stands, only substantiates a need for transportation to and from a single terminus within the City of Oceanside, this terminus being on property leased by the United States Navy Department. Partly because the City of Oceanside withdrew its protest in the prior hearing on Application No. 28742, and Decision No. 41575, dated May 11, 1948, was issued without any opposition, the order therein did not restrict applicant to a single terminus in the City of Oceanside. However, in the light of the additional facts developed in this record, we feel the prior order should be modified.

Accordingly, we now find that Emil Guy Spadoni, doing business as Lakeshore Transit Company, should be authorized to transport passengers between his terminal in Oceanside and the three housing areas hereinabove discussed, on the one hand, and on the other, Camp Pendleton, and that he should not be authorized to perform intracity transportation within the City of Oceanside.

Complaints by the City of Oceanside alleging unauthorized operations on the part of Spadoni. Cases Nos. 4956 and 4960 are complaints filed by the City of Oceanside alleging unauthorized operations on the part of Spadoni, doing business as Lakeshore Transit Company, both within the City of Oceanside and between the City of Oceanside and outside points. At the hearing it was developed that the City of Oceanside intends to rely principally upon its petition hereinabove discussed, and, accordingly, to seek a clarification of the existing authority held by Spadoni. We have now disposed of this petition, and, so far as these complaints are concerned, respondent Spadoni is admonished to discontinue any

operations which are in violation of the authority he holds as construed hereinabove.

Application for certificate of public convenience and necessity. In Application No. 28742, First Supplemental, Spadoni seeks a certificate of public convenience and necessity to operate a passenger stage service between Fallbrook, Camp Pendleton, Oceanside, and intermediate points. Also, in this same application, authority is sought to operate between Carlsbad and Oceanside via U. S. Highway 101. At the hearing, a stipulation was entered into by the applicant to the effect that he would confine his proposal, so far as operations to Carlsbad are concerned, to one round trip per day, transporting workers from Carlsbad to Camp Pendleton in the morning and returning them from Camp Pendleton to Carlsbad in the afternoon, with no pickup or discharge of passengers at intermediate points. It was further stipulated that these rights, if granted, would not be consolidated with any existing rights of Spadoni. On the basis of this stipulation, the protest previously entered for Pacific Greyhound Lines was withdrawn.

Concerning the proposed operations between Carlsbad and Camp Pendleton, testimony was presented by a representative of the U. S. Marine Corps to the effect that there is a need for transportation of civilian personnel between Carlsbad and Camp Pendleton, but, at the present time, the Marine Corps is operating one bus to transport such personnel and this bus picks up the workers in Carlsbad in the morning and transports them to Camp Pendleton and then returns them to their homes in the afternoon.

It is the desire of the Marine Corps to have a civilian operator perform this transportation, and, inasmuch as Spadoni is possessed of the permit to enter Camp Pendleton, he is the civilian operator desired.

While there was testimony presented by the City of Oceanside to the effect that its buses could transport these persons from Carlsbad to the gates of Camp Pendleton, there was other testimony to the effect that the workers must be transported a considerable distance inside the gate, many of them being laundry workers, and the laundry being located several miles from the main gate.

In view of this testimony, and in view of the modified proposal of applicant in this respect, as set out in the stipulation previously referred to, we believe and hereby find that public convenience and necessity require the institution of the limited operation, above described, between Carlsbad and Camp Pendleton.

The remainder of Application No. 28742, First Supplemental, requests authority for Spadoni to operate between Fallbrook and Oceanside via two specified routes. In support of this application, there was testimony from the manager of the California State Employment Service, in Oceanside, to the effect that workers were recruited from the San Luis Rey area, and that it would be desirable to have public transportation between Oceanside and San Luis Rey for these workers. There was also testimony presented by a resident of San Luis Rey to the effect that children of that city desire transportation in Oceanside to attend the public schools; and, further, that San Luis Rey being an historical monument, it is a

tourist attraction. Likewise, testimony was presented indicating that residents of San Luis Rey might shop in Oceanside.

A further analysis of this testimony discloses that there are approximately forty families in the San Luis Rey district, but in San Luis Rey proper, there are only ten or twelve families, a filling station, restaurant, grocery store, and a novelty shop. At the present time, there is a passenger stage operator operating between Oceanside and Palomar Mountain with an alternate route through San Luis Rey Village. This operator is the Palomar Mountain Stages, operating under authority of Decision No. 33114, dated May 21, 1940, on Application No. 23316, and Decision No. 41352, dated March 23, 1948, on Application No. 29091. This passenger stage line presently transports school children between Oceanside and San Luis Rey School, and testimony was presented to the effect that there have been no requests for additional service.

In our opinion, this public-witness testimony fails to show the need for additional passenger stage service between San Luis Rey and Oceanside. There was no public-witness testimony as to the other parts of this application.

Accordingly, with the exception of the needs of Camp Pendleton, we must necessarily conclude that applicant has failed to establish that the public convenience and necessity require any additional passenger stage transportation service in the area. So far as Camp Pendleton is concerned, applicant is presently conducting operations thereto via U. S. Highway 101. However, as stated, the testimony developed that Camp Pendleton is a large military area, having installations at various parts of the camp which are several miles from each other. There is a gate to this camp, known

as the San Luis Rey Gate, and it was contended by applicant that permission to enter and leave the camp at this San Luis Rey Gate would prevent unnecessary mileage in backtracking through the camp, and would permit a loop operation between the two gates of Camp Pendleton and the City of Oceanside. We are in sympathy with this position. By permitting applicant to transport between Oceanside and the San Luis Rey Gate it would result in a saving in mileage as well as a saving in time for those passengers who travel between the area of the camp near San Luis Rey Gate and Oceanside.

We hereby find, therefore, that public convenience and necessity require the institution of a passenger stage service between applicant's terminal in the City of Oceanside, on the one hand, and the San Luis Rey Gate of Camp Pendleton, on the other, such service to be limited to passengers destined to or leaving from Camp Pendleton. In this connection, we find that the three housing areas, Sterling, Homoja, and Camp Del Mar, herein previously mentioned, are points from which there is a need for the transportation of passengers to Camp Pendleton.

Application for authority to transfer operative rights and issue stock. In Application No. 29676, Emil Guy Spadoni, doing business as Lakeshore Transit Company, seeks authority to transfer his operative rights to a corporation to be known as the Lakeshore Lines, and this corporation proposes to issue 333 shares of par value common stock, each share having a value of \$100.

The proposal contemplates that Spadoni shall receive 133 shares, having an aggregate par value of \$13,300, and, in exchange for these shares, he shall transfer to the corporation

the operating authority presently held by him under Decison No. 41575, supra, and, also, the rights he has in the permit from the Marine Corps to operate within Camp Pendleton and the housing areas. Another 200 shares are proposed to be issued in exchange for \$20,000 in cash as follows: A. W. Merrifield, 139 shares; J. J. Bargsten, 40 shares; L. E. Bell, 20 shares; and Walter W. Jordan, 1 share. The record shows that these individuals, or some of them, have advanced \$45,196.31 to provide equipment and working capital for the operations here under discussion, and that \$20,000 of this amount will be satisfied through the proposed issue of stock, the balance to be carried by the corporation as an open liability.

The Commission cannot authorize the issue of the \$13,300 of stock in payment for the operative rights. Section 52(b) of the Public Utilities Act provides that the Commission shall have no power to authorize the capitalization of any franchise or permit whatsoever or the right to own, operate or enjoy any such franchise or permit in excess of the amount (exclusive of any tax or annual charge) actually paid to the State or to a political subdivision as the consideration for the grant of such franchise, permit or right. As to the permit from the Marine Corps now held by Spadoni, the testimony showed that this permit is revocable at the pleasure of the Marine Corps, and it does not confer upon Spadoni any property rights. It is merely a permit for him to enter Camp Pendleton at the pleasure of the Marine Corps. In view of this situation, we cannot allow any valuation to be placed upon this permit for the proposed stock issue. The application does show organization expenses of \$250 which may be used as the basis for an order authorizing the issue of stock.

We conclude that applicant Spadoni should be permitted to transfer his assets to the proposed corporation, and that the corporation should be permitted to issue stock, but only in the amount of \$20,250. In authorizing the transfer we are making no finding of the value of the operative rights and wish to place the transferee upon notice that operative rights, as such, do not constitute a class of property which may be capitalized or used as an element of value in rate fixing for any amount of money in excess of that originally paid to the State as the consideration for the grant of such rights. Aside from their purely permissive aspect, they extend to the holder a full or partial monopoly of a class of business over a particular route. This monopoly feature may be changed or destroyed at any time by the State, which is not in any respect limited in the number of rights which may be given.

O R D E R

Application as above entitled having been made, a public hearing having been held thereon, the matters having been submitted, the Commission being fully advised in the premises and hereby 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 Emil Guy Spadoni, authorizing the establishment and operation of a service as a passenger stage corporation, as defined in Section 2 $\frac{1}{2}$ of the Public Utilities Act, for the transportation of persons between Carlsbad and Camp Pendleton, with the right to serve no intermediate points, and

between applicant's terminal in the City of Oceanside and the San Luis Rey Gate of Camp Pendleton, with the right to serve no intermediate points except the Sterling housing area, and between Fallbrook, Camp Pendleton, and applicant's terminal in the City of Oceanside and intermediate points. The authority hereinabove granted is subject to the following restriction:

With the exception of transportation between applicant's terminal in the City of Oceanside and the Sterling housing area, no passengers shall be transported having both origin and destination within the City of Oceanside.

(2) That in providing service pursuant to the certificate herein granted, there shall be compliance with 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 after the effective date hereof.
- b. Applicant shall, within 60 days after the effective date hereof and upon not less than 5 days' 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. Compliance with this regulation may be effected by the Lakeshore Lines, a corporation, as the transferee of Emil Guy Spadoni, doing business as Lakeshore Transit Company, as hereinafter set out.
- c. Subject to the authority of this Commission to change or modify such at any time, Emil Guy Spadoni shall conduct said passenger stage operations over and along the following described routes:

ROUTE 1

Commencing at Carlsbad, thence via U. S. Highway 101 to Camp Pendleton. Return via the same route.

ROUTE 2

Commencing at applicant's terminal in the City of Oceanside, thence via Second Street, Mission Road, and San Luis Rey Gate Road to Camp Pendleton. Return via the same route.

ROUTE 3

Commencing at Fallbrook, thence via U. S. Highway 395 and Bonsall Road to the San Luis Rey Gate Road, entering Camp Pendleton at that point, thence through Camp Pendleton to Gate No. 1 on the Coast Highway north of the City of Oceanside, thence via Coast Highway to Oceanside. Return via the same route.

IT IS FURTHER ORDERED that the operative rights granted by Decision No. 41575, dated May 11, 1948, on Application No. 28742, are hereby cancelled and are of no further force and effect.

IT IS FURTHER ORDERED that Emil Guy Spadoni cease and desist from any intracity operations within the City of Oceanside, except as specifically authorized hereinabove. In all other respects the complaints in Case No. 4956 and Case No. 4960 are hereby dismissed.

IT IS FURTHER ORDERED:

(1) That Emil Guy Spadoni, doing business as Lakeshore Transit Company, after the effective date hereof, may transfer to Lakeshore Lines, a corporation, the certificates of public convenience and necessity granted hereinabove, and that the Lakeshore Lines is hereby authorized to purchase and acquire said operative rights and thereafter operate thereunder, subject to the conditions hereinafter set out.

(2) That Lakeshore Lines, after the effective date hereof, and on or before September 1, 1949, may issue \$20,250 par value of its common stock at \$100 per share in payment of organization expenses and money advanced for equipment and working capital, it being the opinion of the Commission that the money, property or labor to be procured or paid for through such issue is reasonably required for the purposes indicated and that such

purposes are not, in whole or in part, reasonably chargeable to operating expenses or to income.

(3) That Lakeshore Lines, should this transfer be effected and the stock issued, shall 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 schedules within 60 days from the effective date hereof, and on not less than one day's notice to the Commission and the public.

(4) That Lakeshore Lines, within 30 days after the issuance of the stock herein authorized, shall file with the Commission a statement showing the journal entries used to record on its books the purchase of the property herein authorized to be transferred and a report of the issuance of the stock as required by the Commission in General Order No. 24-A, which order, in so far as applicable, is made a part of this order.

(5) That the authority herein granted is not to be construed as a finding of value of the properties herein authorized to be transferred.

(6) That the request to issue the remaining \$13,050 of stock is dismissed without prejudice.

IT IS FURTHER ORDERED that in all other respects Application No. 28742, First Supplemental, and Application No. 29676 be, and they hereby are, denied.

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

Dated at Los Angeles, California, this 1st day of June, 1949.

R. F. [Signature]

Earl Russell

Harold P. Hulse

Keimeth Patten
COMMISSIONERS