

**ORIGINAL**

Decision No. 70482

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of Application of Kenneth James Kopecky for certificate of public convenience and necessity to operate passenger and baggage service between San Diego, California, and the Mammoth Lakes Recreation Area, California.

Application No. 47307  
(Filed February 1, 1965)  
(Amended January 13, 1966)

Hewitt, Klitgaard & McMahon, by Leslie M. Crouch,  
for applicant.  
McCutchen, Doyle, Brown, Trautman & Enersen, by  
Craig McAtee, for Greyhound Lines, Inc.,  
Western Greyhound Lines Division, and  
James C. Ruane, for Goodall's Charter Bus  
Service, Inc., protestants.  
E. J. Langhofer, for San Diego Chamber of Commerce,  
interested party.  
Fred G. Ballenger, for the Commission staff.

OPINION ON REHEARING

By the original application herein applicant sought authority to institute and conduct operations as a passenger stage corporation for the transportation of passengers and baggage between San Diego, California, the intermediate point of San Bernardino and the Mammoth Lakes Recreation Area, California, and return, providing weekend service only, during the skiing season which commences approximately the middle of November and terminates approximately the middle of the following May. A hearing of the original application was held in San Diego on April 8, 1965. On June 8, 1965, the Commission issued its Decision No. 69196 denying the application. On June 28, 1965, applicant filed a petition for rehearing. On August 10, 1965, the Commission made its Order Granting Rehearing.

On January 13, 1966, applicant filed his amended application herein by which he seeks authority as a passenger stage corporation to provide weekly seasonal service for the transportation of passengers and baggage between San Diego on the one hand and the Mammoth Lakes Recreation Area on the other hand, via U. S. Highway 395 between San Diego and Mammoth Junction and via Mammoth Mountain Road from the Junction to the vicinity of Mammoth Mountain Inn, serving no intermediate points between the Junction and San Diego. A public hearing on the amended application was held before Examiner Rogers in San Diego on January 18, 1966, and the matter was submitted. All parties who appeared at the original hearing were notified of the rehearing. Greyhound Lines, Inc., Western Greyhound Lines Division (Greyhound) and Goodall's Charter Bus Service, Inc., appeared as protestants.

Applicant testified as follows:

Applicant has been in the business of leasing trucks for 12 years. He is the half owner of such a business which has approximately 190 pieces of equipment, and had a net worth of \$948,489 on December 31, 1965. On December 31, 1965, applicant and his wife had total net assets which they valued at \$663,642.

Applicant was an aviator and transportation officer on active duty for 4-1/2 years in the United States Marine Corps and, as a result, became familiar with the maintenance of diesel engines and air brakes identical with those on new buses.

Applicant desires to render service as a passenger stage corporation between San Diego on the one hand and the Mammoth Lakes Recreation Area on the other hand, serving no intermediate points, on a seasonal basis during the skiing season which extends from approximately the third week in November until the second weekend

in May of the following year. Service is to be regularly scheduled, provided for one or more passengers and rendered on weekends only. Applicant proposes one schedule each week leaving San Diego at 6:00 p.m. on Friday and arriving at the Mammoth area, (a distance of approximately 409 miles from San Diego) at 2:30 a.m. Saturday. Passengers will be delivered to their inn or motel in the area. While the bus is in the area it will be used to transport the riders to and from the Mammoth ski lift. Applicant has made arrangements for a parking area thereat. The weekly return trip will leave the Mammoth area at approximately 4:00 p.m. Sunday and arrive in San Diego at approximately 12:55 a.m. Monday. The proposed fares are \$12.00 one way and \$19.00 for a round trip.

At the San Diego end, the trips will commence and terminate at the San Diego Ski Chalet, at which arrangements have been made for parking cars and loading and unloading passengers. The Chalet personnel will sell tickets for the trips and make reservations for the transportation although service will be on a first-come basis.

Applicant has made arrangements to purchase a 41-passenger diesel bus at a cost of \$4,000. He proposes to install therein a toilet and this will reduce the passenger capacity to 38. This modification will cost an estimated \$599. Applicant has made arrangements for public liability insurance of \$100,000 per person or \$300,000 for each accident<sup>1/</sup> and \$50,000 of property damage insurance for each accident at an estimated cost of approximately \$110 per round trip (Exhibit 10) for experienced bus drivers (Exhibit 19). Applicant will drive the bus himself, if necessary. Each proposed driver, including applicant, has a commercial driver's license. Applicant estimated the cost of hired drivers to be \$60

---

<sup>1/</sup> Since this application was filed the public liability requirements established by the Commission have been raised effective July 1, 1966, and the \$300,000 insurance for each accident will not meet the new requirements. (Decision No. 70376 of February 23, 1966, in Case No. 8201.)

per round trip, and stated that, with such drivers, the break-even point will be 17 passengers per round trip (Exhibit 6).

Applicant has made arrangements for extra buses in the event of a breakdown, and, in the event that more passengers than one bus will hold apply for transportation, chartered buses are available.

The applicant said that Greyhound has two regular schedules which originate and terminate in San Diego and provide transportation to and from the Mammoth area. From San Diego the Greyhound bus goes to Los Angeles and from Los Angeles it proceeds via U. S. Highways 6 and 395 to Reno, passing Mammoth Junction, which is approximately nine miles from the Mammoth Mountain Inn, enroute. No regular service is available from the Junction to the Inn or ski area. Greyhound also provides "special operations" services for groups under which one person or agency other than Greyhound is responsible for selling the tickets on an individual fare basis. Applicant said Greyhound has not advertised such services in San Diego.

#### Public Witnesses for Applicant

Approximately 49 persons in the hearing room signed a statement that each would use the proposed service from one time to several times each ski season (Exhibit 21).

The president of the San Diego Ski Club testified that this club has approximately 161 family memberships and approximately 230 skiers; that this group has its own facility at Mammoth and she supports the application as she feels people will use bus service rather than private cars; that she is familiar with the scheduled service of Greyhound via Los Angeles, and this service is inadequate; and that the group chartered Greyhound buses but stopped two years ago as it had trouble getting buses. The witness

was not aware of the "special operations" service but felt it would be no more convenient than charter service.

A co-owner of the San Diego Ski Chalet testified that Chalet personnel receive numerous inquiries per season from non-organized skiers concerning passenger service to Mammoth; that Greyhound has not contacted the Chalet concerning passenger service to the ski area, and that the Chalet will cooperate with the applicant concerning nonorganized group ski service. He said Greyhound told him only about the regular scheduled service to Mammoth Junction.

A retired man who is a skier testified that in the month before the hearing, he received 20 to 25 calls from out-of-town skiers desiring transportation between San Diego and Mammoth and that there is a need for applicant's proposed service. He also testified that he is familiar with the regular and chartered services of Greyhound to Mammoth or Mammoth Junction, and that there is a need for the single fare service proposed by applicant.

The manager of the Ski Chalet in San Diego testified that he receives many calls concerning ski service to Mammoth; that he is familiar with the scheduled and chartered services of Greyhound; that he has contacted Greyhound as to the types of service available and Greyhound said nothing about any type of service other than regular scheduled and chartered service.

A member of the Board of Directors of the Far West Ski Association testified that he is aware of Greyhound's scheduled and charter operations but has never been advised of any "special operations" of Greyhound; that he receives many calls concerning ski service; that, in his opinion, the proposed scheduled service of applicant is necessary; and he would use it himself six to eight times a year.

The president of Aztec Ski Club of San Diego testified that there are 483 members in the club; that he knows of Greyhound's

charter and regular services; that, in his opinion, there is a demand for the proposed individual fare service; and that the club does not want to charter a bus, as it would be required to pay for empty seats.

#### The Chamber of Commerce

A representative of the San Diego Chamber of Commerce testified that the Chamber supports the application for the reasons that scheduled service by Greyhound takes too long; that the City of San Diego is large enough to support the proposed service; and that the proposed service will bring extra tourists into the area. The witness further testified that he has contacted Greyhound and that Greyhound has no plans to improve its regular service to Mammoth Junction. The witness stated that, in his opinion, the need is sufficient to make the operation by applicant profitable. He further stated that Greyhound's "special operations" services wherein one person is responsible and 32 adult fares must be sold, does not meet the need, as it is difficult to put together a group like that.

#### The Protests

Greyhound and Goodall's Charter Bus Service, Inc. protested the application. Only Greyhound presented evidence in support of its protest.

The representative of Goodall's was not sworn in as a witness and did not explain Goodall's operations or how they could or would be affected by service on an individual fare basis.

The Director of Traffic for Greyhound testified as follows:

Greyhound has three types of service available between San Diego and Mammoth, namely the regular scheduled service, the charter service, and the "special operations" service.

The regular scheduled service is between San Diego and Los Angeles via U. S. Highway 101. At Los Angeles the passengers transfer to a bus which proceeds via U. S. Highway 99, California Highway 14 and U. S. Highways 6 and 395 through Mammoth Junction to Reno. This service is daily and the northbound buses leave San Diego at 3:00 p.m. and 3:30 a.m. daily, arriving at Los Angeles at approximately 6:30 p.m. and 8:45 a.m., respectively, and arriving at Mammoth Junction at 2:00 a.m. and 5:27 p.m., respectively, the total elapsed time being approximately 11 hours. In the reverse direction buses leave Mammoth Junction at 3:39 a.m. and 12:46 p.m. daily and after going through Los Angeles the buses from Los Angeles arrive in San Diego at 4:36 p.m. and at 12:30 a.m., respectively, giving approximately 12 hours elapsed time for the trip. The fares for this service are \$10.56 one way or \$19.01 for a round trip. Greyhound has extra seats available on the regular schedules. Its witness presented Exhibit 26 purporting to show that the Los Angeles to Reno through Mammoth Junction schedules operate at a loss in that the cost per mile is 54-1/2 cents and the average revenue on the Los Angeles to Reno run for the year 1964 and the first eleven months of 1965 was approximately 50 cents per mile. The witness gave no estimate of the number of passengers, if any, carried between Los Angeles and Mammoth Junction on this regular scheduled service.

The charter operations would go by the most direct route but require the use of a complete bus and the charges are on a time or mileage basis.

The special operations service is not now provided by Greyhound between San Diego and the Mammoth ski area, but it has the authority for such service. This service would be from San Diego via the regular route through Los Angeles to the Mammoth Mountain ski lift area. In this service some individual or group would contract for the entire bus and he or it would, in turn, sell fares on an individual fare basis. At present, Greyhound only renders this service for a minimum of 32 adult round-trip fares, but the witness stated it was possible this could be reduced to 27 round-trip adult fares. The witness testified that there is no demand for this type of service between the San Diego area and the Mammoth area.

Findings

Upon the evidence of record on the rehearing the Commission finds that:

1. Applicant has adequate finances with which to operate a weekend passenger stage service on a seasonal basis during the ski seasons between San Diego on the one hand and the Mammoth ski area on the other hand.
2. Applicant has made arrangements for proper equipment, adequate insurance, and competent drivers with which to render the proposed service.
3. Applicant is familiar with and has the ability to properly maintain the type of equipment to be used in the proposed service.
4. There is at present no individual fare basis service between San Diego on the one hand and the Mammoth ski area on the other hand other than Greyhound scheduled service which does not provide service within less than five miles of the motels in the ski lift area.



5. Many individuals not connected with any club or organization desire individual fare basis service between San Diego, on the one hand, and the public hotels and motels in the ski lift area of Mammoth Mountain, on the other hand.

6. Applicant is ready, able and willing to provide such service and neither Greyhound nor any other passenger stage corporation is ready or willing to provide such service to the satisfaction of the Commission.

7. Public convenience and necessity require that applicant be authorized to provide the service he proposes on an individual fare basis.

8. The proposed fares are just and reasonable.

Conclusion

The Commission concludes that the application should be granted.

Kenneth James Kopecky is hereby placed on 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, such rights extend to the holder a full or partial monopoly of a class of business over a particular route. This monopoly feature may be modified or canceled at any time by the State, which is not in any respect limited as to the number of rights which may be given.

ORDER ON REHEARING

IT IS ORDERED that:

1. A certificate of public convenience and necessity is granted to Kenneth James Kopecky, authorizing him to operate as a passenger stage corporation, as defined in Section 226 of the Public Utilities Code, between the points and over the routes particularly set forth in Appendix A attached hereto and made a part hereof, and subject to the conditions therein contained.

2. In providing service pursuant to the certificate herein granted, applicant shall comply with and observe the following service regulations:

- (a) Within thirty days after the effective date hereof, applicant shall file a written acceptance of the certificate herein granted. By accepting the certificate of public convenience and necessity herein granted, applicant is placed on notice that he will be required, among other things, to comply with and observe the safety rules of the California Highway Patrol, the rules and other regulations of the Commission's General Order No. 98-A and insurance requirements of the Commission's General Order No. 101-A until July 1, 1966, and 101-B on and after July 1, 1966. Failure to comply with and observe the safety rules, or the provisions of General Orders Nos. 98-A or 101-A, may result in a cancellation of the operating authority granted by this decision.
- (b) Within one hundred twenty days after the effective date hereof, applicant shall establish the service herein authorized and file tariffs and timetables, in triplicate, in the Commission's office.
- (c) The tariff and timetable filings shall be made effective not earlier than five days after the effective date of this order on not less than five days' notice to the Commission and the public, and the effective date of the tariff and timetable filings shall be concurrent with the establishment of the service herein authorized.

- (d) The tariff and timetable filings made pursuant to this order shall comply with the regulations governing the construction and filing of tariffs and timetables set forth in the Commission's General Orders Nos. 79 and 98-A.
- (e) Applicant shall maintain his accounting records on a calendar year basis in conformance with the applicable Uniform System of Accounts or Chart of Accounts as prescribed or adopted by this Commission and shall file with the Commission, on or before March 31 of each year, an annual report of his operations in such form, content, and number of copies as the Commission, from time to time, shall prescribe.

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

Dated at San Francisco, California, this 22<sup>nd</sup> day of MARCH, 1966.

Frederic B. Halloff  
President

John E. Mitchell

George E. Hoover

Augustus

William L. Samuel  
Commissioners

KENNETH JAMES KOPECKY  
(an individual)

Appendix A

Original Page 1

CERTIFICATE  
OF  
PUBLIC CONVENIENCE AND NECESSITY

---

Showing passenger stage operative rights, restrictions,  
limitations, exceptions, and privileges applicable thereto.

---

All changes and amendments as authorized by  
the Public Utilities Commission of the State of California  
will be made as revised pages or added original pages.

---

Issued under authority of Decision No. 70482  
dated March 22, 1966, of the Public Utilities  
Commission of the State of California, in Application  
No. 47307.

KENNETH JAMES KOPECKY  
(an individual)

Appendix A

Original Page 2

SECTION 1. GENERAL AUTHORIZATIONS, RESTRICTIONS,  
LIMITATIONS, AND SPECIFICATIONS.

Kenneth James Kopecky, by the certificate of public convenience and necessity granted by the decision noted in the margin, is authorized to transport passengers and their baggage between the San Diego Ski Chalet located at 4004 Midway Drive in the City of San Diego on the one hand, and the Mammoth Mountain Recreation Area on the other hand, over and along the route hereinafter described, subject to the following provisions:

- (a) Service shall be limited to the transportation of passengers destined to or originating at points in the Mammoth Lakes Recreation Area located on Mammoth Mountain Road commencing at approximately four miles west of Mammoth Junction and extending to the Mammoth Mountain Inn.
- (b) When route descriptions are given in one direction, they apply to operation in either direction, unless otherwise indicated.
- (c) Motor vehicles may be turned at termini or intermediate points, in either direction, at intersections of streets or by operating around a block contiguous to such intersections, in accordance with local traffic regulations.
- (d) Service shall be operated on weekends only from approximately November 15 to May 15 of the following year.

Issued by California Public Utilities Commission.

Decision No. 70482, Application No. 47307.

KENNETH JAMES KOPECKY  
(an individual)

Appendix A

Original Page 3

SECTION 2. ROUTE DESCRIPTION

San Diego - Mammoth Mountain Inn

Commencing at the San Diego Ski Chalet located at 4004 Midway Drive in the City of San Diego, thence via city streets to U. S. Highway 395, thence via U. S. Highway 395 to Mammoth Junction, thence via Mammoth Mountain Road to the Mammoth Mountain Inn.

Issued by California Public Utilities Commission.

Decision No. 70482, Application No. 47307.