

ORIGINAL

Decision No. 74116

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application)
of SIGHTSEEING SAN DIEGO, INC.,)
a California Corporation, For a)
Certificate of Public Convenience)
and Necessity to Operate as a)
Passenger Stage Corporation in)
Sightseeing Service.)

Application No. 49387
(Filed May 18, 1967)

Woolley, Collins & Ward, by
Frederick B. Holoboff, for
applicant.
Berol, Loughran & Geernaert, by
Bruce R. Geernaert, for
Gray Line Tours Company; and
Robert L. Rothschild and
Donald Jack Thorpe, for
Visitours, Inc.; protestants.
V. R. McClure, for Western Greyhound
Lines; and Edward T. Butler and
John W. Witt, by Curtis M.
Fitzpatrick, for the City of
San Diego; interested parties.
W. R. Kendall, for the Commission
staff.

O P I N I O N

By the above-entitled application, Sightseeing San Diego, Inc. (applicant) requests a certificate of public convenience and necessity as a passenger stage corporation authorizing it to provide scheduled sightseeing services and conducted tours between the El Cortez Hotel (El Cortez) in the city of San Diego (San Diego), on the one hand, and San Ysidro, on the other hand, via Beech Street, Sixth Avenue, Broadway, Pacific Coast Highway, San Diego-Coronado Ferry, and Orange Avenue in the city of Coronado to the Del Coronado Hotel (Del Coronado), picking up passengers thereat; thence via the

Silver Strand Highway (State Route 75) to San Ysidro. The return trip will be along the reverse of the going route or, in the alternative, along Interstate Highway 5, if the passengers so desire and there are no passengers to the Del Coronado.

Public hearings on the application were held before Examiner Rogers in San Diego on September 18 and 19, 1967, at the conclusion of which the parties were granted permission to file briefs. The briefs¹ were filed and the matter was submitted. The applicant stipulated that if the requested authority is granted, the service should be limited to round-trip passengers originating at the El Cortez or the Del Coronado. As a result of this stipulation, Western Greyhound Lines withdrew its protest.

Gray Line Tours Company (Gray Line) and Visitours, Inc. (Visitours) appeared as protestants. These companies operate tours between San Diego and Tijuana which are similar to those proposed by the applicant.

The applicant now has a permit or franchise from San Diego authorizing it to provide sightseeing service by various lines which run between points entirely therein. If applicant is granted a certificate of public convenience and necessity as requested, the services entirely within San Diego will become subject to the jurisdiction of this Commission (Asbury Rapid Transit System v. Railroad Commission, 18 Cal. 2d 105). The parties have raised the question of

¹ Due to an injury incurred by applicant's lawyer after the matter was submitted, several extensions of time for the filing of briefs were granted by the Commission.

whether or not, assuming the Commission grants the requested authority, the applicant is entitled to be granted a certificate for the existing San Diego operations, inasmuch as when San Diego granted the applicant authority therein, it required no showing of public convenience and necessity. The protestants herein and Western Greyhound Lines, each of which is subject to the jurisdiction of this Commission, were required to secure authority from this Commission for all of their operations, including any strictly intracity operations. For reasons hereinafter stated, we are denying the application. Accordingly, it is not necessary to determine whether or not, if the application were granted, the applicant would automatically receive a certificate for its San Diego operations or would lose its intracity authority until it showed that public convenience and necessity require such authorization.

On the record herein, we find the following facts to be true:

1. Applicant is a California corporation. Its principal place of business is the El Cortez, San Diego, California.
2. Since August, 1966, applicant has conducted sightseeing operations wholly within San Diego using two 23-passenger buses. This service is being operated pursuant to a franchise or permit issued by San Diego.
3. Applicant's gross revenues from its San Diego bus operations were \$32,147 for the period from August 17, 1966 to August 31, 1967. During this period its operating expenses were \$44,245. As of August 31, 1967, its net worth was \$38,784, including \$35,769 cash on hand (Exhibit 5).

4. Applicant seeks authority to extend scheduled passenger stage services between the El Cortez and San Ysidro, a portion of San Diego, via a route through the city of Coronado. This service is to be on a round-trip basis only and for passengers originating at and returning to either the El Cortez or the Del Coronado. Applicant will have three scheduled services via the proposed route. The first will leave the El Cortez at 9:00 A. M. and arrive at San Ysidro at 10:00 A. M. On the return trip this bus will leave San Ysidro at 12:30 P. M. and arrive at the El Cortez at 1:30 P. M. The second schedule will leave the El Cortez at 2:00 P. M., arrive at San Ysidro at 3:00 P. M., depart San Ysidro at 4:30 P. M. and arrive at the El Cortez at 6:00 P. M. The fare for each of these trips is to be \$7.95 for a round trip. The third schedule will leave the El Cortez at 7:00 P. M., arrive in San Ysidro at 8:00 P. M., depart San Ysidro at 12 midnight and arrive at the El Cortez at 1:00 A. M. The fare for this trip will be \$14.95. On all trips the applicant will pay the bus and passenger fares for the Coronado ferry trip. The applicant will pay for nothing else. In each instance the passenger will be responsible for his own transportation from the bus parking lot in San Ysidro over the border into Tijuana and for his return across the border into San Ysidro. Passengers who leave for Tijuana on the first bus in the morning may return by the second bus provided there is room thereon. Passengers on either of the first two schedules may not return by the third schedule. The reason for the increased fare for the third (7:00 P. M.) schedule is the longer layover time in San Ysidro. Each of applicant's proposed fares is a fare the applicant believes passengers will be willing to pay.

5. Since June 10, 1966, applicant has had exclusive rights to maintain a sightseeing bus desk in the El Cortez (Exhibit 3). Almost daily, people ask how to get to Tijuana and whether or not applicant provides service between San Diego and Tijuana. Between June 1, 1967 and August 31, 1967, applicant kept a record of the total number of persons for whom such transportation was requested. Such record shows that transportation was requested for 304 persons in June, 273 in July, and 254 in August, 1967. None of the inquiring parties asked about the price of the trip and some of the prospective passengers could have gone to Tijuana by Greyhound, Visitours, or Gray Lines. Some of the inquiring parties are referred to Visitours by El Cortez employees.

6. The applicant has arrangements with the El Cortez to make pickups at that hotel to the exclusion of all other bus companies. This arrangement will continue for four years (Exhibit 3).

7. Applicant will use 23-passenger Minibuses to perform the Tijuana service. These buses have speaker systems, air conditioning and straight seats. If more buses are needed, the applicant has the ability to acquire them. The buses are leased by the year.

8. Applicant will comply with all rules of the Commission and will file appropriate tariffs and timetables. If the applicant extends service between San Diego and San Ysidro, it estimates that it will receive approximately \$56,301 in annual revenues from such operations and that its added expenses due to such operations will total \$36,900 per year. These estimates are based on the assumption that applicant will operate the proposed three schedules 365 days per year and five passengers will be carried on each trip. On the consolidated operations, applicant estimates annual revenues of \$88,301 and annual expenses of \$81,145, giving net annual revenues after income taxes from the consolidated operations of \$5,191 (Exhibit 4).

9. During the calendar year 1966, \$270,894,000 was spent by out-of-county visitors in San Diego County; there were, on the average, 85,650 out-of-county visitors in San Diego County each day; these visitors spent an average of \$742,000 each day therein; there were 421 conventions in San Diego County, with a total attendance of 300,976 delegates who spent a total of \$44,685,906; and the average motel-hotel occupancy was 76 percent. Each of said categories reflects a substantial increase over the year 1965 (Exhibit 2).

10. For many years Gray Line and its predecessors have had authority from this Commission to provide sightseeing services between San Diego and various points in Southern California, including tours between points in San Diego, and tours between San Diego, on the one hand, and Disneyland, Los Angeles or San Ysidro (Exhibit 9), on the other hand.

11. Gray Line's San Diego to San Ysidro tours commence at the principal hotels and motels in San Diego, as requested (Exhibit 8), and proceed through Coronado to San Ysidro via the route proposed to be used by applicant.

12. Gray Line has two scheduled services between San Diego and San Ysidro. On each of these trips the transportation charge is \$3.45 for the round trip. On each trip Gray Line picks up the passengers at the hotel or motel where they are staying, in a 9-passenger vehicle, and brings them to the U. S. Grant Hotel in San Diego. At this location the passenger is transferred to an appropriate vehicle, according to the number of passengers making the tour, for the San Ysidro trip. If there are nine or more passengers on a trip, transportation to San Ysidro is by 41-passenger buses with air conditioning and reclining seats. If there are eight or less passengers on a trip, a 9-passenger vehicle is used.

13. After pickup, one Gray Line tour leaves the U. S. Grant Hotel at 1:30 P. M. and returns thereto at approximately 4:30 P. M. Any passenger on the trip desiring a guide in Tijuana pays a total of \$5.00 and is escorted to points of interest in Tijuana.

14. After pickup, a second Gray Line tour leaves the U. S. Grant Hotel at 5:45 P. M. and returns at approximately 11:00 P. M. Any passenger on this trip so desiring may pay a total of \$15.00 for which, in addition to transportation, he will receive a dinner, a cocktail, and admission to a jai alai game in Tijuana.

15. Gray Line advertises its San Diego-San Ysidro trips in various news media, and literature placed in hotel and motel rooms, in and around San Diego. It will run the tours with one passenger if that is all desiring the tour.

16. Gray Line, on its scheduled tours, on the occasions in 1966 when it carried nine or more passengers and used the 41-passenger buses, carried 9,147 passengers and had 7,722 vacant seats. In the first eight months of 1967 when it used the 41-passenger buses, Gray Line carried 9,809 passengers and had 4,989 vacant seats (Exhibit 7). During these same periods, on the occasions when Gray Line made the tour with 9-passenger vehicles, it could have carried approximately 1400 additional passengers in the empty seats therein. Gray Line has additional vehicles available if needed to carry passengers on the San Ysidro tours.

17. Visitours provides passenger tours (Exhibit 10) between San Diego and San Ysidro, including Coronado, using 9-passenger vehicles. In San Diego, passengers are picked up at the hotels or motels in which they are staying.

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18. One Visitours trip leaves the San Diego area at 9:00 A.M. and returns the passengers to their point or points of origin at 12:30 P.M. The bus fare is \$5.50 but for \$7.50 the Visitours driver will escort the passenger into Tijuana and point out sights.

19. A second Visitours trip leaves the hotel or motel in San Diego at 7:00 P. M. and returns at 1:00 A.M. The transportation charge is \$5.50 but for a total of \$15.00 the passenger is escorted to and from Tijuana, is furnished dinner and three drinks and is taken to a dog race and the jai alai games.

20. We find that Western Greyhound Lines furnishes transportation by bus between San Diego and San Ysidro; that the one-way fare is 60 cents; that said company schedules approximately 26 express round trips per day between San Diego and San Ysidro and approximately 48 round trips per day between San Diego and San Ysidro via Chula Vista.

21. The passenger stage service between San Diego and San Ysidro operating pursuant to authority from the Commission is adequate and is being provided to the satisfaction of the Commission. Section 1032 of the Public Utilities Code therefore requires that the application be denied.

Conclusion

We conclude that the application should be denied.

ORDER

IT IS ORDERED that the herein-considered application is denied.

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

Dated at San Francisco, California, this 14th day of MAY 4, 1968.

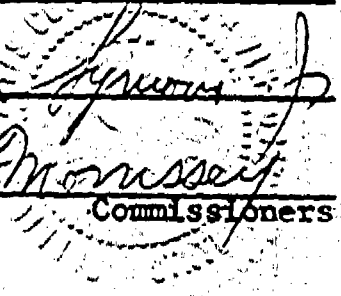
*I will file a dissent
Peter E. Mitchell*

President

Augusta

William J. ...

Fred P. ...

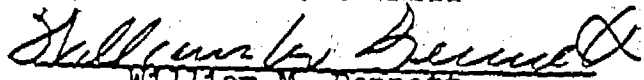


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WILLIAM M. BENNETT, COMMISSIONER, DISSENTING

I dissent. I do not think that it was ever intended that this Commission in a growing economy and a growing state exist to preserve a monopoly as to a given service. Accordingly I would grant the application knowing from experience that the public would thereby benefit from the competition created.

/s/ WILLIAM M. BENNETT


William M. Bennett
Commissioner

DATED: San Francisco, California
May 14, 1968

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COMMISSIONER PETER E. MITCHELL DISSENTING:

I cannot agree with the decision signed by the majority for the reasons indicated hereinafter.

Decision No. 72329, effective July 4, 1967, adopted Rules of Practice and Procedure which apply to formal proceedings before the Commission. Rule No. 54, which is pertinent and apropos to the protestants, reads as follows:

"(Rule 54) Participation Without Intervention. In an investigation or application proceeding, or in such a proceeding when heard on a consolidated record with a complaint proceeding, an appearance may be entered at the hearing without filing a pleading, if no affirmative relief is sought, if there is full disclosure of the persons or entities in whose behalf the appearance is to be entered, if the interest of such persons or entities in the proceeding and the position intended to be taken are stated fairly,^{1/} and if the contentions will be reasonably pertinent to the issues already presented and any right to broaden them unduly is disclaimed.

"A person or entity in whose behalf an appearance is entered in this manner becomes a party to and may participate in the proceeding to the degree indicated by the presiding officer."

A review of the transcripts and the official file of this proceeding indicates that the position of Visitours, Inc., a protestant to the application, was not stated fairly. This was brought to the attention of the Commission by counsel for the applicant during

^{1/} (Emphasis added)

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the hearing and the Commission itself can take judicial notice that Visitours, Inc. has not been certificated by the Commission as alleged.

Visitours, Inc. participated actively in the two days of hearing; cross-examining witnesses of the applicant and placing its own sworn testimony in the record. The declarations of its representative (RT 277) were that it had a tariff on file with the California Public Utilities Commission for its tour from San Diego to Tijuana with a \$4.50 charge to the border. Again, further on (RT 284), the representative of Visitours, Inc. reiterated that the protestant operated under authority from the California Public Utilities Commission.

Counsel for the applicant, in his brief, refers to Decision No. 70250, dated January 18, 1966, wherein the Commission denied Visitours, Inc. authority to operate between San Diego and San Ysidro, let alone crossing the border. As applicant's counsel suggests, the words and acts of Visitours, Inc. clearly show that its operations have been in violation of its operating authority from the Commission.

That the majority of the Commission relied on the presentation of Visitours, Inc. is apparent from findings Nos. 17, 18, 19, and 21 of the decision. The Supreme Court in Greyhound Lines, Inc. v. P.U.C. S.F. 22561

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(March 29, 1968) emphasizes that findings should not only be correct but lawful. Aside from the lack of operating authority of Visitours, Inc. the findings of fact Nos. 17, 18, and 19 are not correct per se. Visitours, Inc. operated between San Diego and Tijuana, not San Diego and San Ysidro. This is very material.

The Commission has also been advised that subsequent to the submission of this application the status of Visitours, Inc. has been changed. An agreement has been entered into between Visitours, Inc. and Sightseeing San Diego, Inc. for the sale and purchase of operative rights and equipment. As a result, the evidence received in connection with Application No. 49387 does not reflect the present position of the parties to the proceedings.

I would also comment parenthetically that it has not been demonstrated that Visitours, Inc. is or was operating under the authority of the Interstate Commerce Commission, between San Diego and Tijuana. The record is otherwise.

On the facts as related above, the Commission should, at the very least, reopen the hearing in order to set the record straight.

After reviewing the circumstances surrounding sightseeing operations in the State of California, logic would direct this Commission to grant certificates to all applicants that can show a need and demand for the use of their

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proposed service. Counsel for applicant, in an exhaustive and well-reasoned review of Commission decisions on sightseeing operations, illustrates that the Commission has historically distinguished between regular point-to-point passenger stage operations and sightseeing operations. He notes, "The Commission said that sightseeing operations, being a luxury type service, did not necessarily embrace elements of necessity indispensable in public transportation". Thus, unless we adopt the contentions of applicant's counsel, we will foster a monopolistic stranglehold on sightseeing operations in California. The holder of a certificate can and does charge whatever amounts the tourist traffic will bear. Under our present procedure, a passenger stage corporation in sightseeing service need only file with the Commission its estimate of the fare covering the transportation authorized. But the passenger stage corporation may then charge the tourist three times that amount under the guise of fare and other services,^{2/} nor is the passenger informed of that fact. He is led to believe that he must pay this triple charge if he is to take the tour at all.

The Commission does not now regulate the complete charges which passenger stage corporations in sightseeing service elicit from passengers. The authorization by

^{2/} It is true the "other services" may be of considerable value.

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the Commission in the sightseeing field of only one passenger stage corporation under these conditions, fails to enforce the basic purpose of certification. Regulation assures the furnishing of adequate service to all without discrimination and at the lowest reasonable rates, consistent with the public interest. This really is the formula by which the Commission should control the channel of sightseeing service. Thus, failing to achieve the purpose of regulation through restricted entry in the field, the only alternative available to the Commission is to certificate all applicants who manifest a need for their services. Competition will assist then in the protection of the public interest. It is clear that counsel for the applicant has demonstrated that there is additional need for the applicant's sightseeing service. I would therefore grant the application of Sightseeing San Diego, Inc. as requested.


Peter E. Mitchell, President

San Francisco, California

May 17, 1962