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Decision No. 81126

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
EMERALD CHARTER LINES, INC., a
California corporation, for a certi-
ficate of public convenience and
necessity to operate a passenger
stage service between the areas of
San Jose and Milpitas, California,
and United Air Lines Maintenance
Base, San Francisco International
Airport, San Mateo County,
California.

Application No. 53145
(Filed February 11, 1972)

Donald G. Roesch, Attorney at Law,
for applicant.

Robert M. Kaiser, Attorney at Law,
for West Valley Charter Lines,
protestant.

Kenneth K. Henderson, for the
Commission staff.

O P I N I O N

Applicant was incorporated in California on October 2, 1963 as a Class A charter-party carrier. The charter authority was sold to an affiliated corporation on May 4, 1972. Applicant has not functioned since May. All of its buses are leased to other passenger carriers. It has applied herein to transport employees of the United Air Lines Maintenance Base at the San Francisco International Airport who live in the San Jose-Milpitas area to and from work. A 24-hour service is proposed, with the passengers and driver of each bus employed on the same shift. A protest was filed by West Valley Charter Lines (West Valley) and hearings were held on April 10, 11, May 15, and October 16, 17, 18, and 19, 1972 in San Jose before Examiner Fraser. The matter was submitted on the last day of hearing.

The president of applicant testified as follows: He is a mechanic at the United Air Lines Maintenance Base and has transported fellow employees as a bus driver for many years. On July 1, 1969 applicant started providing the service it is seeking to reinstitute by this application. A formal complaint (Case No. 9223) was filed by the protestant herein and after a hearing the Commission ordered (Decision No. 79511 dated December 21, 1971) applicant to cease and desist operating as a passenger stage corporation by January 11, 1972. Applicant stopped operating as ordered, although its former patrons and their friends have since demanded that the service be revived. Applicant has the equipment, experience, personnel, and public support to efficiently provide the proposed service. As of October 1972 it owns two 1951 (39 passenger), one 1952 (39 passenger), two 1954 (41 and 45 passenger), one 1955 (37 passenger), and two 1960 (38 passenger) buses, which were purchased from Greyhound or Barrett and are in excellent condition. The vehicles are now leased to other operators for economic reasons. The lessees are providing the necessary insurance and maintenance on the vehicles. The proposed service would provide three routes on the day shift, three on the swing shift, and one on the graveyard shift. Each route would be covered by a single bus, which remains parked at the maintenance base while the driver and passengers work their shift. The seven routes will require seven buses. The extra vehicle may be retained as a replacement for breakdowns, although it is always possible to lease a vehicle whenever it is needed. Seven routes were selected on the basis of applicant's prior experience. Applicant was transporting more than 200 regular patrons by December of 1972. The proposed fare will be \$6.00 a week, or \$1.25 per day. The drivers will receive \$7.00 a day. Operating cost per mile has not been determined, although each bus must carry 20 to 22 passengers for a

profitable operation. United Air Lines has been hiring new employees and most prefer to ride to work by bus. Applicant should have no difficulty in filling its buses and operating costs should be minimal since labor costs are less than in any other type of passenger bus operation. Applicant's balance sheet dated September 30, 1972 shows fixed assets of \$45,250, which are the buses and \$250 worth of office equipment; current liabilities total \$150 and long term liabilities \$10,748.93. Applicant's president emphasized that neither the corporate officers nor its drivers are financially dependent on the proposed service. All work at the United Air Lines Maintenance Base in various capacities and will operate the buses as an additional source of income.

Forty-three witnesses testified for applicant. All are employed at the United Air Lines Maintenance Base and all reside in the San Jose-Milpitas area applicant has applied to serve. Day shift employees ride mostly in car pools, although some ride with either of the two passenger bus operators who have pickup points in the vicinity. Day shift employees complained that bus stops served by the protestant were too far from their homes. Distance to the bus stop varied from one-half mile to three miles; one mile was considered too far to walk. Swing shift (4:00 - 12:00) and midnight shift (12:00 - 8:00) employees were primarily concerned with the necessity of leaving their cars parked all night by a bus stop while they were at work. Those working swing or graveyard shift also advised that there is frequently no place to park close to where they board the bus. They either leave the car on the street and risk a citation or park too far away for convenience, especially in inclement weather. The men working the late shifts were impressed by the promise of applicant that no regular patron will walk more than a block for service. Several witnesses testified they tried the West Valley service but were forced to

discontinue when the buses became too crowded. One witness advised that on one ride he sat on a stool in the aisle while he was driven to work. Another complained that protestant charges \$6.00 a week and has no provision for making refunds to passengers who ride fewer than five days, after paying at the weekly rate. More than half of those who testified have used protestant's service less than three times; seven were former drivers of Emerald Charter Lines, Inc. or close friends of the corporate officer who testified for the applicant; five testified that protestant's service was adequate; at least four advised they will patronize any service that costs the least to ride.

The owner-manager of West Valley testified as follows: Protestant holds a Class A charter-party authority and operates as a certificated passenger stage corporation (Decision No. 78195 dated January 19, 1971 in Application No. 52330) between the Santa Clara Valley and the United Air Lines Maintenance Base at the San Francisco International Airport. West Valley provides eight routes for day shift employees, four routes for the graveyard shift, and four for the swing shift. The areas of new construction provide only swing or graveyard employees due to lack of seniority. This application affects seven of the West Valley routes: two serve the day shift, two the swing shift, and three the graveyard shift. Protestant now transports from 550 to 600 passengers a week overall; about 200 are from the area applicant seeks to serve. Protestant estimates 250 patrons to be the maximum number of bus riders the area will provide. Riders form car pools and ride with each other. During periods of bad weather patrons drive their own cars. It is evident that the area cannot support two bus operators. Protestant charges \$2.00 a day or \$6.00 a week; all West Valley drivers are union men and are paid by the trip; they are only employed as bus drivers. The operating cost per bus is 50 cents a mile and protestant cannot afford to reduce its fares. Nor can the fares be increased because of competition from airline employees who drive large

passenger-carrying vehicles. Protestant has invested considerable money and time in developing its patronage in the area applicant has applied to serve. The latter's lower fares will prompt protestant's customers to ride applicant's buses if this application is granted and protestant may not survive the loss of a third of its passengers.

Discussion

Applicant's proposed service and protestant's present service are identical except for the former's promise to charge a lower fare and to pick up everyone near his home. Protestant is providing an adequate service and is entitled to the protection of Section 1032 of the Public Utilities Code. Protestant advised that West Valley buses seldom operate with every seat occupied. The record also reveals that a Paul Schneider provides transportation from the same area to the maintenance base. If applicant were certificated, three passenger carriers would be competing for a maximum potential of 200 passengers. Most of the witnesses who testified were riding in car pools. It is likely that many would continue in car pools, even if applicant were certificated.

Applicant has included a proposal to provide a bus stop near every regular rider. This has impressed prospective patrons, but it could become difficult to satisfy everyone using the service. Many who live far from the route may clamor for nearby stops. Others may be late or fail to appear when the bus is due. Some may use other forms of transportation and neglect to inform the bus driver to discontinue their stop. This type of service could disregard public convenience and necessity by catering to the unreasonable demands of a few riders. Applicant's proposed daily fare is 75 cents less than the fare charged by protestant. There is sufficient variance to prompt West Valley riders to seek the lower fare. Protestant is a

bus operator. Applicant's officers and employees would operate passenger-carrying vehicles in addition to holding other jobs. Protestant cannot reduce fares and continue to operate. If this application were granted, protestant could not compete and would be required to discontinue service.

Findings

1. Applicant seeks herein to institute a passenger bus service from the San Jose area to the United Air Lines Maintenance Base at the San Francisco International Airport.
2. Protestant and one other operator are already providing the service proposed by applicant.
3. Officers and drivers of applicant are full-time employees of United Air Lines.
4. Applicant has proposed a lower fare than protestant charges and has advised that passengers will be picked up and unloaded near their homes.
5. Protestant and her employees are employed full time in operating the passenger stage corporation.
6. Protestant would lose money if she reduced her fares to the level proposed by applicant.
7. Providing a bus stop near each passenger's residence is not practical.
8. About 250 riders use protestant's service, which is not making money. It is obvious that there are too few patrons to justify the certification of another operator.
9. West Valley is now providing adequate service and there is nothing in the record to indicate that protestant will not continue to provide service to the satisfaction of this Commission.

A. 53145 ei

10. Public convenience and necessity do not require the service proposed by the applicant.

The Commission concludes that the application should be denied.

O R D E R

IT IS ORDERED that Application No. 53145 is hereby denied.

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

Dated at San Francisco, California, this 13th day of MARCH, 1973.

Vernon L. Stinson
President
William Symons
Michael
Commissioners

Commissioner Thomas Moran, being necessarily absent, did not participate in the disposition of this proceeding.