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Decision No. 84370

**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of  
FRANCISCAN LINES, INC., a California  
corporation, for a certificate of  
public convenience and necessity to  
operate as a passenger stage  
corporation.

Application No. 55390  
(Filed December 18, 1974;  
amended January 6, 1975)

William E. Lee and James A. Drucker, for  
Franciscan Lines, Inc., applicant.  
John R. Vickland, Attorney at Law, for San  
Francisco Bay Area Rapid Transit District;  
Paul E. Kilkenny, for Contra Costa County;  
and Donald T. Morgan, for Metropolitan  
Transportation Commission; interested parties.  
Ora A. Phillips, for the Commission staff.

### O P I N I O N

Applicant Franciscan Lines, Inc., a corporation, requests a certificate to operate as a passenger stage corporation to perform commuter service between the unincorporated communities of Alamo and Danville, on the one hand, and, on the other hand, the Transbay Transit Terminal in San Francisco. A hearing was held before Examiner Pilling at San Francisco on February 10, 1975. Appearances as interested parties were entered by the San Francisco Bay Area Rapid Transit District (BART), the Metropolitan Transportation Commission (MTC), the County of Contra Costa (County), and the Commission's staff. Interim authority was granted applicant to perform the proposed service by Decision No. 84014 on January 21, 1975.

The witness for applicant testified that applicant presently derives 80 percent of its revenue from charter-party carrier operations, and the remaining 20 percent from passenger stage operations and the lease of bus equipment; that applicant owns and operates 14 buses with a seating capacity between 39 and 53 passengers; that all its buses are air-conditioned; that applicant performs all maintenance on its buses except major electrical work; that as of December 31, 1974 applicant had a net worth of \$120,716 and for the twelve months ending on that date had a net profit from operations of \$45,835; and that applicant will perform the proposed service with the buses it now owns and will not have to acquire additional buses. The witness stated that since receiving interim authority applicant had established and was operating four schedules in the morning from the Alamo-Danville area to San Francisco and four schedules in the late afternoon from San Francisco to the Alamo-Danville area. Morning schedules leave at 6:30, 6:40, 6:50, and 7:00 a.m. Afternoon schedules leave at 4:40, 4:50, 5:10, and 5:20 p.m. Scheduled travel time is 1 hour and 5 minutes. Only 20-ride tickets are sold. Fare is \$30. The witness stated that it had 184 20-ride tickets outstanding and that it was carrying an average 140 persons each morning and each afternoon.

Eight persons from the Alamo-Danville area who ride the bus appeared in support of the application. They testified variously that prior to the advent of the BART shuttle bus service and Greyhound's discontinuance of bus service they had used Greyhound's commuter bus service between the Alamo-Danville area and the Transbay Transit Terminal in San Francisco; that when BART's shuttle service was instituted they attempted to use it for connections with the BART rail line at Walnut Creek; that the shuttle service was unsatisfactory in that they had to wait for the bus in the rain,

experienced erratic schedule leavings in the morning, had to arise 1/2 to 3/4 hours earlier in the morning than they did in using Greyhound, and could not make satisfactory connections with BART's trains; that some ignored the shuttle and drove to the BART Walnut Creek station; that in their use of BART's rail service they rarely got a seat on the train and had to stand the full 50 minutes it took the train to go between BART's Walnut Creek and Montgomery Street stations; that the overall travel time via the shuttle and rail line added a full hour's travel time each day; that they are using applicant's service and have found it satisfactory; that applicant's transit time is between 55 to 65 minutes; that some of them would go back to driving their own car to and from San Francisco if applicant is not granted permanent authority; and that they will use applicant's service if a permanent grant is given.

The witness for BART testified that BART offered 24 scheduled shuttles between the Alamo-Danville area and the Walnut Creek BART station and that the schedules are operated throughout the day from approximately 6:00 a.m. to 9:00 p.m. The BART witness and the witness for MTC both expressed concern about the legal and monetary problems which the proposed operation could very conceivably pose for BART in the future. BART intends to ask for federal funding under the Urban Mass Transportation Act (UMTA) of 1964, as amended through November 26, 1974 to assist BART in upgrading its various services, including the subject shuttle service. Section 3(e) of UMTA prohibits the use of any monies furnished thereunder for providing facilities in competition with a privately owned existing mass transportation company. BART and MTC fear BART may be precluded from or delayed in obtaining this funding because the proposed operation will be in direct competition with its shuttle service and with its combined shuttle-rail service. BART and MTC also point out

that Section 13(c) of UMTA would require BART, should BART receive federal funding to upgrade its shuttle service and thereby draw substantial patronage from applicant causing applicant to eliminate schedules and layoff drivers and others, to hire and retain the drivers and others so laid off. Applicant argues that its drivers in the Alamo-Danville service are regular drivers in its charter-party operations and for that reason would not lay off any of the drivers should applicant cease, in whole or in part, the proposed service. BART and MTC request that any certificate issuing out of this proceeding contain a requirement that acceptance of the certificate is conditioned on applicant agreeing not to oppose any application by BART for federal funds filed pursuant to UMTA. Applicant does not object to this. They also request that we require as a condition to issuance of a certificate that applicant and BART first enter into a written agreement whereby applicant agrees to indemnify BART should any employees of applicant attempt to enforce their rights under either Section 13(c) or 3(e) of UMTA to which applicant does object. BART and MTC also express concern with the possible diversion of future revenues from BART when BART's service reaches its optimum.

The witness for County stated that the County shares the concerns expressed by BART and MTC and also pointed out that having two bus services in the Alamo-Danville area was beginning to create problems with the commuters parking their automobiles all day long in residential areas around the bus stops. The witness stated that the County does not take a position one way or the other in terms of the proposed service but is only interested in having as much service as can be efficiently and economically provided.

Findings

1. Applicant proposes to operate as a passenger stage corporation between the communities of Alamo and Danville, on the one hand, and the Transbay Transit Terminal in San Francisco, on the other hand, in the performance of commuter service during the morning and late afternoon rush hours.

2. Applicant has the experience, equipment, financial standing, readiness, and ability to conduct the proposed operation.

3. Present service by BART between the involved points through the use of a shuttle bus between the BART train station at Walnut Creek and the Alamo and Danville areas, and the BART train between Walnut Creek and San Francisco, is not adequate or satisfactory for many commuters who live in the Alamo-Danville area.

4. BART intends to continually upgrade the quality of its service until its service reaches at least the planned optimum. For that purpose it expects to apply for funds from UMTA.

5. Applicant represents that it will not object to the granting of any funds from UMTA to BART which may be used to upgrade or institute a service which will directly or indirectly compete with applicant's proposed service and will not raise any claims or objections to such assistance based on Section 3(e) of UMTA. Applicant has agreed to the inclusion of an appropriate condition in any certificate issued herein to protect BART in the above connection.

6. It would be against the public interest for the Commission to require applicant to agree to hold BART harmless and to indemnify BART against claims made by present, future, or former employees of applicant based on Subsection 3(e)(4) or Section 13(c) of UMTA, since the potential liabilities are unknown in amount and duration and may be far out of proportion to the monetary benefits applicant may derive from the proposed operation.

7. Public convenience and necessity require the granting of the application.

8. The project involved in the application will not with reasonable certainty have a significant effect on the environment.

Conclusions

1. The certificate issuing out of this proceeding shall have in it the following condition:

"Applicant agrees not to oppose any application by the San Francisco Bay Area Rapid Transit District for federal funds pursuant to the Federal Mass Transportation Act of 1964, as amended, the use of which funds may directly or indirectly affect applicant's business under the operating authority granted by this certificate. Failure to comply with this restriction may result in cancellation of the Route 2 Danville, Alamo-San Francisco certificate upon motion of the San Francisco Bay Area Rapid Transit District."

2. For convenience a new certificate of public convenience and necessity to operate as a passenger stage corporation as set out in the ensuing order should be issued to applicant, and its existing authorities revoked.

Applicant is 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. 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.

O R D E R

IT IS ORDERED that:

1. A certificate of public convenience and necessity is granted to Franciscan Lines, Inc., a corporation, authorizing it to operate as a passenger stage corporation, as defined in Section 226 of the Public Utilities Code, between the points and over the routes set forth in Appendix A of this decision.

2. In providing service pursuant to the authority granted by this order, applicant shall comply with the following service regulations. Failure so to do may result in a cancellation of the authority.

- (a) Within thirty days after the effective date of this order, applicant shall file a written acceptance of the certificate granted. Applicant is placed on notice that if it accepts the certificate it will be required, among other things, to comply with the safety rules administered by the California Highway Patrol, the rules and other regulations of the Commission's General Order No. 98-Series, and the insurance requirements of the Commission's General Order No. 101-Series.
- (b) Within one hundred twenty days after the effective date of this order, applicant shall establish the authorized service 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 ten days after the effective date of this order on not less than ten 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 authorized service.

- (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-Series and 98-Series.
- (e) Applicant shall maintain its 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 its operations in such form, content, and number of copies as the Commission, from time to time, shall prescribe.

3. The certificate of public convenience and necessity granted in paragraph 1 of this order shall supersede the certificates of public convenience and necessity granted by Decisions Nos. 80980 and 84014 which certificates are revoked effective concurrently with the effective date of the tariff filings required by paragraph 2(c).

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

Dated at San Francisco, California, this 29<sup>th</sup> day of APRIL, 1975.

Verma L. Steyer  
President  
William J. Stewart  
Donald E. [unclear]  
Leonard Ross  
John [unclear]  
Commissioners



CERTIFICATE  
OF  
PUBLIC CONVENIENCE AND NECESSITY

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

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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.

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<u>Route</u>	<u>Route Name</u>
1	Livermore, Pleasanton, Dublin, Oakland and San Francisco
2	Danville, Alamo-San Francisco

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

The certificate hereinafter noted supersedes all operative authority heretofore granted to Franciscan Lines, Inc.

Franciscan Lines, Inc., by the certificate of public convenience and necessity granted by the decision noted in the margin, is authorized to transport passengers between Livermore, Pleasanton, and Dublin, on the one hand, and Oakland and San Francisco, on the other hand, and between Danville and Alamo, on the one hand, and San Francisco, on the other hand, along the routes hereinafter described, subject, however, to the authority of this Commission to change or modify said routes at any time subject to the following provisions:

- (a) Motor vehicles may be turned at termini and 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.
- (b) When route descriptions are given in one direction they apply to operation in either direction or in the case of one-way streets on an adjacent one-way street in the opposite direction unless otherwise indicated.
- (c) All service herein shall be limited to the transportation of passengers using twenty-ride tickets only.
- (d) On Route 1 authority is limited to the transportation of traffic which has point of origin or destination within the Cities of Livermore, Pleasanton, or Dublin, on the one hand, and Oakland or San Francisco, on the other hand.
- (e) On Route 2 applicant shall pick up or discharge passengers only at specified bus stops in Alamo and Danville, and in San Francisco only at the Transbay Transit Terminal.

Issued by California Public Utilities Commission.

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SECTION 1. GENERAL AUTHORIZATIONS, RESTRICTIONS, LIMITATIONS, AND SPECIFICATIONS. (Continued)

- (f) Authority to conduct operations on Route 1 may be canceled on motion of Greyhound Lines-West, the Bay Area Rapid Transit District, Alameda-Contra Costa Transit District, or the Metropolitan Transportation Commission, after either Alameda-Contra Costa Transit District or the Bay Area Rapid Transit District extends bus or rail passenger service to Dublin, Pleasanton, and Livermore from both Oakland and San Francisco.
- (g) Authority to conduct operations on Route 2 shall be contingent on the following: Applicant agrees not to oppose any application by the San Francisco Bay Area Rapid Transit District for federal funds pursuant to the Federal Mass Transportation Act of 1964, as amended, the use of which funds may directly or indirectly affect applicant's business under the operating authority granted by this certificate. Failure to comply with this restriction may result in cancellation of Route 2, Danville, Alamo-San Francisco upon motion of the Bay Area Rapid Transit District.

Issued by California Public Utilities Commission.

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## SECTION 2. ROUTE DESCRIPTIONS.

Route No. 1 - Livermore, Pleasanton, Dublin-Oakland, San Francisco

Commencing from the City of Livermore over appropriate streets via Stanley Boulevard, to Pleasanton, continuing over appropriate streets via Hopyard Road, to Dublin, proceeding over appropriate streets and Interstate 580, Grand Avenue in Oakland, Lakeside Drive, 20th Street, Franklin Street, Broadway, West Grand Avenue, Interstate 80 across the Bay Bridge, Fremont Street in San Francisco, Market Street, Front Street, Pine Street, Van Ness Avenue, Golden Gate Avenue, Polk Street, Hayes Street, Fell Street, and Van Ness Avenue to Market Street.

Route No. 2 - Danville, Alamo-San Francisco

Commencing at the intersection of Greenbrook Drive and San Ramon Valley Boulevard, Danville, Contra Costa County, over the most appropriate streets in Danville and Alamo, continuing over the most appropriate streets and freeways to the Transbay Transit Terminal in San Francisco.