

Decision No. 84824**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of:

FALCON CHARTER SERVICE, INC.
A California Corporationfor an increase in commuter fares
between San Francisco and Foster
City, to off-set wage and fuel
cost increases.Application No. 55391
(Filed December 18, 1974;
amended May 14, 1975)Eldon M. Johnson, Attorney at Law, for applicant.Dennis W. Monson and Larry Tomsie, for themselves,
Interested parties.James T. Quinn, Attorney at Law, for the Commission staff.O P I N I O N

Falcon Charter Service, Inc. (Falcon), operates as a passenger stage corporation and as a charter-party carrier. As a passenger stage corporation, Falcon provides a commuter bus service between Foster City and San Francisco. Falcon here seeks authority to increase the fares for such service to offset wage and fuel cost increases and to recapture past increased costs. The gross revenue request is \$54,586. The increased fares proposed by Falcon are as follows:

	<u>Present Fare</u>	<u>Proposed Fare To Offset Future Costs</u>	<u>Twelve-Month Surcharge On Proposed Fare To Recapture Past Increased Costs</u>	<u>Total Proposed Fare</u>
Ten one-way ride ticket	\$11.00	\$12.58	\$1.30	\$13.75
Calendar month ticket	40.00	45.76	4.71	50.00

Public hearing was held before Examiner O'Leary at San Francisco on June 2, 1975 at which time the matter was submitted.

Falcon's present fares were authorized by Decision No. 83451 dated September 17, 1974 in Application No. 54439.

Evidence in support of the application was presented by applicant's president. A witness from the Commission's Transportation Division also presented evidence in the form of an estimated results of operation study Exhibit 7. The staff does not oppose applicant's proposal to increase its present fares to offset wage and fuel cost increases, but does oppose the proposed twelve-month surcharge to recapture past increased costs.

Since Falcon's present fares were authorized it has experienced increased costs with respect to wages, tires, fuel, and employee benefits.

In Decision No. 83451 the Commission adopted the following results of operations for the test year ended June 30, 1975.

TABLE 1
Results of Operations Adopted
By Decision No. 83451

	<u>Total</u>	<u>Charter</u>	<u>Transit</u>
Bus Miles	575,305	424,393	150,912
Revenue			
Passenger	\$646,400	\$466,800	\$179,600
Other	7,000	7,000	-
Total	<u>653,400</u>	<u>473,800</u>	<u>179,600</u>
Operating Exp.	561,660	401,660	160,000
Operating Income	91,740	72,140	19,600
Income Taxes	15,450	12,150	3,300
Net Operating Inc.	76,290	59,990	16,300
Operating Ratio	88.3%	87.3%	90.9%
Rate of Return	26.4%	35.3%	13.7%
Rate Base	\$289,140	\$170,180	\$118,960

The evidence presented by Falcon and the staff as to increased costs is similar. The staff and Falcon are in close agreement with respect to the fares necessary to offset future costs. The staff study shows the increased costs in relation to the results of operation adopted by Decision No. 83451 whereas Falcon's study does

not, therefore, the staff's evidence will be discussed herein with respect to the requested increase to offset future costs.

Utilizing the same allocation method adopted in Decision No. 83451 the staff study shows that effective August 1, 1975 Falcon's annual expenses will increase as follows: maintenance labor \$6,450, tires and tubes \$100, drivers wages \$6,840, fuel \$5,220, employee welfare \$4,720, and payroll tax \$370, a total increase in expenses of \$23,700. To offset the increased expenses the staff estimates Falcon will generate additional annual revenue of \$24,305 with alternate fares of \$12.50 for ten one-way rides and \$45.00 for a calendar monthly ticket assuming no decrease in patronage.

The increase in maintenance labor takes into account the services of an additional journeyman mechanic since Falcon is now utilizing nine buses in its commute service whereas the results of operation adopted in Decision No. 83451 was based on the use of seven buses.

One of the interested parties questioned the allocation of certain expenses. This proceeding is an application to increase revenues to offset certain increases in costs since the last decision authorizing increased fares. An offset proceeding is basically a proceeding to increase revenues to offset specific increased costs occurring since a general rate case. To be valid a recently adopted results of operations should be used as the foundation on which to base the offset. The results of operations and allocations found to be reasonable in Decision No. 83451 is a proper foundation for this offset proceeding.

Falcon's request for a twelve-month surcharge on its proposed fares to recapture past increased costs is clearly a form of retroactive ratemaking. The Supreme Court in City of Los Angeles v PUC (1972) 7 Cal 3d 311, at 356 and 357 expressed itself thusly on the subject of retroactive ratemaking:

"We were confronted with a similar question in Pacific Tel. & Tel. v. Public Util. Com., supra, 62 Cal.2d 634, 649-656. In that case the commission determined that Pacific should reduce its rates by more than \$40 million annually. The commission also ordered that Pacific refund to its customers amounts collected from its customers in excess of the new rates during the nearly two years while the rate investigation had been pending before the commission. The amount of the refund ordered was approximately \$80 million. Although we affirmed the decision of the commission insofar as it reduced future rates, we annulled the portion of the decision which required the refund. We concluded after an extended review of the relevant statutes that the Legislature had given the commission power to establish rates prospectively and has not given it power to order refunds of amounts collected by a public utility pursuant to an approved order which has become final.

"We pointed out that the fixing of a rate is prospective in its application and legislative in its character, that under section 728 of the Public Utilities Code, as well as other sections of the code, the commission is given power to prescribe rates prospectively only, and that the commission could not, even on grounds of unreasonableness, require refunds of charges fixed by formal finding which had become final. (62 Cal.2d at pp.650-655.) We recognized that there may be policy arguments for giving power to the commission to order refunds retroactively where rates are found to be unreasonable or to prevent unjust enrichment, but we concluded that such "arguments should be addressed to the Legislature, from whence the commission's authority derives, rather than to this court." (62 Cal.2d at p. 655.) The Legislature has not changed any of the relevant statutory provisions.

"We pointed out that the conclusion that the Legislature has not authorized retroactive rate making was supported by section 734 of the Public Utilities Code. (62 Cal. 2d at pp. 654-655.) That section provides that when a rate has been formally found reasonable by the commission, the commission shall not order the payment of reparation upon the ground of unreasonableness. Of course, the rates existing prior to the present proceeding have been found reasonable by a final commission decision.

"When the rates set in the decision before us are annulled, the only lawful rates are those which were in existence prior to the instant decision. We are satisfied that to permit the commission to fix new rates for the purpose of refunds, as requested by Pacific, would involve retroactive rate making in violation of the principles recognized in Pacific Tel. & Tel. Co. v. Public Util. Com., supra, 62 Cal.2d 634, 649-656. The basic conclusion that the rates existing prior to this proceeding are unreasonable as well as the conclusion that increases in rates are justified are both based on the same defective findings. To permit the commission to redetermine whether the preexisting rates were unreasonable as of the date of its order and to establish new rates for the purpose of refunds would mean that the commission is establishing rates retroactively rather than prospectively. As we have seen, the Legislature has expressly prohibited the granting of reparations on the basis of unreasonableness where, as here, there is an approved rate, and the Legislature has authorized only prospective rate making.

"Although there may be substantial policy reasons to permit retroactive rate making, there are also substantial reasons to the contrary, and it is for the Legislature to determine whether California should abandon its policy against retroactive rate making."

While the case cited above concerns refunds the principles enumerated therein also apply to the situation in the instant proceeding as applicant is attempting to justify a fare increase to recoup past expenses.

Findings

1. Applicant's present level of fares for its service between Foster City and San Francisco was established pursuant to Decision No. 83451, dated September 17, 1974 in Application No. 54439.
2. Since applicant's fares were last adjusted it has experienced increased fuel and labor costs which are not reflected in the current level of fares.
3. The Commission staff's alternate fares to offset future costs ✓ will provide applicant with additional revenues of approximately \$24,305 which will be sufficient to offset increases in fuel and labor costs.

4. The staff's alternate fares to offset future costs have been shown to be justified.

Conclusions

1. Applicant should be authorized to establish the following increased fares: Ten one-way ride ticket \$12.50 and calendar monthly ticket \$45.00.

2. Applicant's proposed twelve-month surcharge to recapture past increased costs is a form of retroactive ratemaking.

3. To the extent not granted herein the application should be denied.

O R D E R

IT IS ORDERED that:

1. Falcon Charter Service, Inc. is authorized to establish increased fares as follows:

Ten one-way ride ticket - \$12.50
Calendar monthly ticket - \$45.00.

Tariff publications authorized to be made as a result of this order may 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 to the public.


2. The authority shall expire unless exercised within ninety days after the effective date of this order.

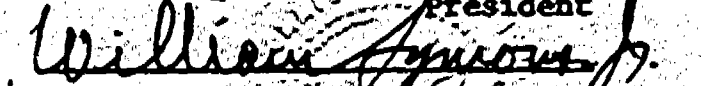
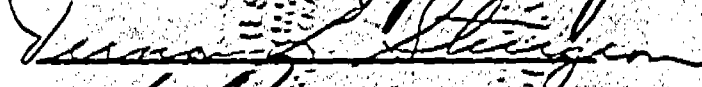
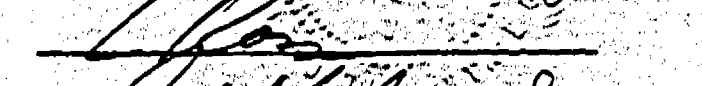
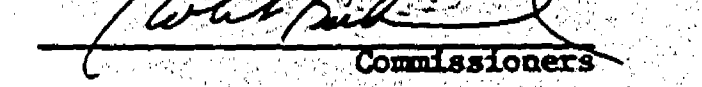
3. In addition to the required posting and filing of tariffs, applicant shall give notice to the public by posting in its buses and terminals a printed explanation of its fares. Such notice shall be posted not less than five days before the effective date of the fare changes and shall remain posted for a period of not less than thirty days.

4. To the extent not granted herein Application No. 55391 is denied.

The effective date of this order is the date hereof.

Dated at San Francisco, California, this 26th
day of AUGUST, 1975.



President




Commissioners