

Decision No. 85147

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Educational and Recreational Services, Inc., a corporation, for a certificate of public convenience and necessity for passenger stage service between points in West Valley and Los Angeles County on the one hand and places of employment in the City of Los Angeles on the other hand.

Application No. 55226
(Filed September 30, 1974;
amended December 10, 1974
and March 18, 1975)

Russell & Schureman, by Christopher Ashworth,
Attorney at Law, for applicant.
Stephen T. Parry, for Southern California
Rapid Transit District, protestant.
John deBrauwere, for the Commission staff.

O P I N I O N

Educational and Recreational Services, Inc. (ERS) is the parent company of California Sightseeing Tours, Inc. (Cal-Sight). By the first amendment to the application filed December 10, 1974, Cal-Sight was substituted for ERS as the applicant herein. (ERS was authorized by Decision No. 83257 dated August 6, 1974 in Application No. 54950 to acquire all of the passenger stage operating authority of Cal-Sight; however, there was a management decision to continue the passenger stage operations in Cal-Sight's name and the transfer was not made.) Pursuant to its present certificated authority, Cal-Sight operates generally in the Los Angeles metropolitan area and to San Ysidro. Its operations consist primarily of home-to-work service, taking the public to sporting and other public events, and sightseeing service. By this application, as amended, it seeks authority to provide a passenger stage service between points in

Ventura County and Los Angeles County, on the one hand, and places of employment in the city of Los Angeles, on the other hand.

Public hearing was held before Examiner Arthur M. Mooney in Los Angeles on December 10, 1974. The matter was submitted upon the filing of concurrent briefs on March 19, 1975.

Applicant

The specific authority sought by applicant is for a home-to-work passenger service. Passengers would be picked up in the morning in Ventura County in the city of Thousand Oaks and in Westlake Village and in Los Angeles County in Agoura and transported to Fifth and Flower Streets, and Sixth and Spring Streets in downtown Los Angeles. The return trip in the evening would be the reverse of this route. The morning trip would leave the initial point of origin at 6:15 a.m. and arrive at final destination at 7:23 a.m., and the evening return trip would leave the first pickup point at 4:45 p.m. and arrive at final destination at 6:10 p.m. The weekly charge for the service, which would be for five round trips, would be \$12.50. If there were a holiday recognized by applicant during the week, the weekly charge would be prorated accordingly. The service would be operated for a minimum of 30 passengers. The availability of a seat would depend upon an advance reservation. A minimum of one and a maximum of two buses would be used for the proposed service. The buses would be either a GMC 4106 or a Bus and Car Company "Eagle". The buses would be air-conditioned and radio equipped with a minimum of 41 and a maximum of 49 seats, in addition to other standard motor coach accessories.

Following is a summary of the evidence presented by a vice president of both ERS and Cal-Sight: In September 1974 applicant was requested by a representative of approximately 40 passengers who had been riders of Southern California Rapid Transit District (SCRTD) to provide the service in issue. SCRTD was on strike at the time, and

the strike lasted until October 1974. Applicant agreed to perform the service and has continued to do so since. The reason it did not initially request authority for this service from the Commission was that it did not initially know if it would be only a temporary service until the end of the SCRTD strike. When it became apparent that the passengers wished the service to be continued after the strike had been settled, the instant application was filed. The bus now used for this service has the name Associated Company on it which is a name under which Cal-Sight does business. Cal-Sight has sufficient equipment and back-up equipment to perform the service herein as well as all of its presently authorized certificated services. Although some of its equipment was found to be defective during a recent inspection by the Motor Carrier Investigation Section of the California Highway Patrol, all of the defects have either been corrected or are being corrected. Most of this equipment had just been returned to Cal-Sight by another company which had leased it. Cal-Sight and its parent company have a large maintenance facility and are constantly upgrading this equipment. They have a continual safety program for their drivers which is administered by a full-time safety director. The public interest requires the proposed service. If the authority is granted, Cal-Sight waives any rights it might have pursuant to the last sentence of Section 1032 of the Public Utilities Code regarding the establishment of a competitive service by SCRTD or any one else.^{1/}

1/ The last sentence of Section 1032 reads as follows:

"The commission may, after hearing, issue a certificate to operate in a territory already served by a certificate holder under this part only when the existing passenger stage corporation or corporations serving such territory will not provide such service to the satisfaction of the commission."

As of August 31, 1974, ERS and its subsidiaries, including Cal-Sight, had assets of \$25,475,016, liabilities of \$21,075,020, and a stockholders' equity of \$4,399,996. The parent company and its subsidiaries had a net income after federal and state income taxes of \$798,623 for the 11-month period ending August 31, 1974.

Following is a summary of the testimony presented by eight public witnesses who appeared in support of the application: All are employed in downtown Los Angeles. Five board applicant's bus at Thousand Oaks, one at Westlake Village, and two at Agoura. The distance from Thousand Oaks to downtown Los Angeles is approximately 46 miles one way. For most, the stops on applicant's route are much closer to their homes than the SCRTD stops, and many save from 7 to 14 miles per day driving between their homes and the stop. Applicant's fares are less than those of SCRTD, and it makes allowances in its weekly charge for holidays which SCRTD does not do. None used the SCRTD pass which entitled them to free transportation on its buses in Los Angeles when they used its commute service. Four who are employees of the Atlantic Richfield Company stated that their employer would subsidize part of their commute fare if they rode SCRTD but that they prefer applicant's service. Some pointed out that applicant's equipment has stereo, venetian blinds, and reclining seats; that it is air-conditioned, well maintained, and clean; and that although SCRTD's equipment is kept up well it is not as comfortable or as desirable to ride in as applicant's equipment. Several stated that it is too congested to drive one's own automobile into downtown Los Angeles and that an average of 30 to 35 passengers ride applicant's bus each day.

Protestant

The following evidence was presented by the Assistant Transportation Planner of SCRTD: Applicant's service generally duplicates Route 504 of SCRTD. One round trip is operated Monday through Friday on this line. It picks up passengers at two locations in Westlake Village at the intersection of Agoura Road and Lindero Canyon Road, which is in Los Angeles County, at 6:40 a.m. and at the intersection of Westlake Boulevard and Agoura Road, which is in Ventura County, at 6:43 a.m. and operates directly to downtown Los Angeles arriving at the intersection of Flower and Third Streets at 7:42 a.m. and the intersection of Flower and Fifth Streets at 7:44 a.m. The return trip leaves at 4:43 p.m. and arrives at final destination at 6:01 p.m. A 1974 GMC Coach TDH 5309 A is operated on this line. It is a 53-passenger transit type coach with six seats removed. It is air-conditioned and radio equipped and has contoured seats and indirect wall lighting. The district was approached by the Atlantic Richfield Company to operate the service. The fare is \$60 per month and the ticket entitles the holder to free transportation on all SCRTD lines in Los Angeles except the downtown minibus. The Atlantic Richfield Company employees who ride this line receive a \$15 per month subsidy from their employer and the fares are collected through a payroll deduction plan. For other riders the fares are collected by a bus host who receives 3 percent of the gross earned by the bus each month which generally equals the cost of the host's fare. Any suggestions by the passengers regarding the service are made through the bus host. The 504 bus carries a full load of 47 passengers. There are 7 or 10 additional passengers at Westlake Village who are picked up by the express bus on Route 505 which serves Woodland Hills. With these additional passengers, the bus carries about 35 passengers per day, which is the minimum number of passengers a bus in this type of subscription service must carry to pay for itself. SCRTD's legal

operating area is wholly within Los Angeles County. However, it can operate outside this area as long as tax money is not used to subsidize such service. Applicant's service has caused a decrease in the number of riders originating on Route 504. This route could be extended to include the same pickup and destination points served by applicant. It is only 3.7 miles between the point served by applicant in Thousand Oaks and the closest point in Westlake Village served by SCRTD. SCRTD has adequate back-up equipment to provide the service applicant is performing. Public convenience and necessity do not require that applicant be authorized to perform the service in issue. Although applicant is using more luxurious equipment than SCRTD, the degree of difference between the buses used by each is not substantial. Even though SCRTD's fare may be a bit higher than applicant's fare, it has pioneered and has been providing service for the area in question since 1973, and a private company should not now be allowed to come into the area and compete with it.

Briefs

In its closing brief, applicant asserted that the evidence, including the testimony of the public witnesses, clearly demonstrates a need for the service in issue; that the majority of the passengers applicant transports are from the two stops in Ventura County which is beyond the Los Angeles County statutory territory of SCRTD; that applicant's service is vastly superior to that provided by SCRTD; that the only point at which applicant's service is competitive with SCRTD's service is in the Ventura County portion of Westlake Village; that in this connection, the bus on Route 504 is operating to capacity, and the Woodland Hills Route 505 bus must go out of its way to pick up the 7 to 10 overflow passengers here each day; that the last sentence of Section 1032 of the Public Utilities Code which protects an existing passenger stage corporation in a territory it serves is not applicable since SCRTD is not a certificated passenger stage corporation; that applicant

has the necessary financial ability to provide the service in question; and that the granting of the application would create no detriment to SCRTD.

SCRTD presented the following argument in its closing brief: Applicant has not established that public convenience and necessity require the service it has been performing. By providing a substitute service during the SCRTD's strike and continuing to provide this service after the strike ended, applicant has skimmed off customers of SCRTD and now asserts that this justifies the granting of a certificate of public convenience and necessity to it. To grant this authority would be tantamount to penalizing SCRTD for a legal strike against it. While Ventura County is not within the prescribed territory of the SCRTD, Section 30631 of the Public Utilities Code provides that SCRTD may acquire, construct, operate, and use facilities within or partly without its prescribed district. Although SCRTD is not a certificated passenger stage corporation and does not come within the purview of the last sentence of Section 1032 of the Public Utilities Code, the Commission is certainly entitled to weigh the effect such new service would have upon the SCRTD's operations. In this connection, the Supreme Court of California in its decision in a case brought by SCRTD's predecessor against the Public Utilities Commission stated as follows:

"It must be assumed that the commission will give heed to that legislative objective and not authorize privately-owned carriers to provide services that the Authority is willing and able to provide and that the commission will not thereby impede the growth of the Authority's system." (Los Angeles Met. Transit Authority v Public Utilities Com. (1959) 52 C 2d 655, 665.)

The Commission staff participated in the proceeding but did not file a brief or take a position in the matter.

Discussion

We are of the opinion that the application should be granted. The statutory district of SCRTD created by Section 30100 of the Public Utilities Code includes Los Angeles County only. Ventura County has not been annexed to the district. Two of applicant's origin points, Thousand Oaks and Westlake Village, are in Ventura County. Most of applicant's passengers board its bus at Thousand Oaks which is not now being served by SCRTD's Route 504. Both applicant and SCRTD have nearby pickup points in the Ventura County portion of Westlake Village. SCRTD's Route 504 bus is operating at capacity from this location, and it is necessary to have a bus from another location come by to pick up overflow passengers. The fact that applicant is picking up some passengers here certainly is not adversely affecting the bus SCRTD has assigned to its Route 504. The competitive threat of this service, if any in fact does exist, to SCRTD in this area of Westlake Village is too negligible and remote to be considered. The third pickup point applicant serves is in Los Angeles County at the intersection of Kanan Road and the on ramp to the Ventura Freeway. SCRTD does not serve this location but asserts that it is willing to extend its service to include this and any other pickup points served by applicant. However, no evidence was presented by SCRTD as to how soon it proposes to establish such service. We are aware of the provisions of Section 30637 of the Public Utilities Code which provide in part that SCRTD shall not establish any service which would compete with the patronage or revenue of an existing system of a publicly or privately owned public utility without the consent of the utility. This provision does not create a problem for SCRTD since applicant has agreed to consent now and for the future to the establishment of any service by SCRTD or any passenger stage corporation which might compete with any service applicant may offer under the authority sought herein. A sufficient showing of public need has been made to support the sought certificate.

Findings

1. Cal-Sight has been substituted as the applicant herein for ERS, its parent company.

2. Cal-Sight operates as a passenger stage corporation generally in the Los Angeles area pursuant to certificates of public convenience and necessity issued by the Commission. It provides mainly home-to-work service, the transportation of the public to sporting and other public events, and sightseeing service.

3. Applicant was requested by a representative of 40 people during the SCRTD strike in September 1974 to provide a commute service from the Thousand Oaks - Westlake Village area to their places of employment in downtown Los Angeles. Pursuant to this request, applicant commenced and has continued the service for which it now requests a certificate of public convenience and necessity.

4. SCRTD is not now providing service to two of the three pickup points applicant seeks authority to serve, the one in Thousand Oaks in Ventura County and the one in Agoura in Los Angeles County. SCRTD does provide service near the remaining pickup point in Westlake Village. SCRTD's Route 504 bus which serves this area is operating at capacity, and it is necessary to send a bus from another area here to pick up overflow passengers.

5. Public convenience and necessity require that the application be granted.

6. Applicant has the experience, equipment, personnel, and financial resources to institute and maintain the proposed service.

7. We find with reasonable certainty that the project involved in this proceeding will not have a significant effect on the environment.

8. Applicant waives now and for the future any rights it has pursuant to Sections 1032 and 30637 of the Public Utilities Code which may prevent SCRTD or any passenger stage corporation from establishing a competitive service in the territory it seeks authority to serve if the application is granted.

Conclusion

The Commission concludes that the application should be granted as set forth in the ensuing order.

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. Subject to the following condition, a certificate of public convenience and necessity is granted to California Sightseeing Tours, Inc., a corporation, authorizing it to operate as a passenger stage corporation, as defined in Section 226 of the Public Utilities Code, between Thousand Oaks - Westlake Village - Agoura and downtown Los Angeles, and over the route as more specifically set forth in Appendix A of Decision No. 76608 as amended by the revised pages attached hereto.

CONDITION: Applicant waives now and for the future any rights it has pursuant to Sections 1032 and 30637 of the Public Utilities Code which may prevent any other passenger stage corporation or the Southern California Rapid Transit District from establishing a competitive service in the territory applicant is authorized to serve by this order.

2. Appendix A of Decision No. 76608 is amended by incorporating Second Revised Page 4, Fourth Revised Page 9, and First Revised Page 18, attached hereto, in revision of First Revised Page 4, Third Revised Page 9, and Original Page 18, respectively.

3. 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 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 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.

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

Dated at San Francisco, California, this 18th day of NOVEMBER, 1975.

William F. Sullivan President
William F. Sullivan
William F. Sullivan
William F. Sullivan
William F. Sullivan Commissioners

Appendix A
(Dec. 76608)

CALIFORNIA SIGHTSEEING TOURS,
INC.
(a corporation)

Second Revised Page 4
Cancels
First Revised Page 4

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

- (c) Westchester, El Segundo, Manhattan Beach, Hermosa Beach, Redondo Beach, Torrance, Harbor City, San Pedro, Wilmington, Leisure World (Seal Beach) and Leisure World (Laguna Hills), on the one hand, and San Ysidro, on the other hand.
- (d) Lawndale, Hawthorne, Inglewood, South Gate, Huntington Park, Bell, Downey and Norwalk, on the one hand, and San Ysidro, on the other hand.
- (e) San Pedro, on the one hand, and the Los Angeles Memorial Coliseum, on the other hand.
- (f) Canoga Park, Van Nuys, North Hollywood, Burbank and Glendale, on the one hand, and San Ysidro, on the other hand.
- (g) Pacific Palisades, Santa Monica, Culver City and El Segundo, on the one hand, and McDonnell Douglas Plant in Long Beach, on the other hand.
- (h) Pacific Palisades, Santa Monica, Culver City and El Segundo, on the one hand, and McDonnell Douglas Plant in Huntington Beach, on the other hand.
- (i) Arcadia, El Monte and Pico Rivera, on the one hand, and San Ysidro, on the other hand.
- *(j) Thousand Oaks, Westlake Village and Agoura, on the one hand, and downtown Los Angeles, on the other hand. No intermediate points or territories shall be served by the carrier. Applicant waives now and for the future any rights it has pursuant to Sections 1032 and 30637 of the Public Utilities Code which may prevent any other passenger stage corporation or the Southern California Rapid Transit District from establishing a competitive service in the territory applicant is authorized to serve as stated in this subparagraph.

and certain territories intermediate thereto, over and along the routes hereinafter described subject to the conditions and restrictions hereinafter set forth:

Issued by California Public Utilities Commission.

*Added by Decision No. 85147, Application No. 55226.

Appendix A
(Dec. 76608)

CALIFORNIA SIGHTSEEING TOURS,
INC.
(a corporation)

Fourth Revised Page 9
Cancels
Third Revised Page 9

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

ROUTE 17 - Inglewood-Santa Anita Race Track

Within the city limits of Inglewood.

- (g) Service on Routes 7, 7-A, 7-B, 7-C, 8, 8-A, and 8-B may be rendered to points within $\frac{1}{4}$ mile on either side thereof upon five days' notice to the Commission by filing appropriate timetable and tariff changes.

ROUTE 19 - Palos Verdes Peninsula Unified School District

Any point within the authorized service area.

ROUTE 20 - Mission Viejo - El Segundo Plants

At the following locations:

OSO Parkway and Goleta Drive (Golf Club), Mission Viejo; Culver Boulevard and San Diego Freeway (University Plaza), Irvine; Brookhurst and Adams, Huntington Beach; Westminster and San Diego Freeway (Albertson's Shopping Center), Westminster; Northrop Aircraft Corp., corner of Crenshaw and Broadway, Hawthorne; Pacific Telephone & Telegraph, DCASR, and Kresge, corner of La Cienega and Imperial, Los Angeles County; North American Rockwell, corner of Douglas and Imperial, Los Angeles County; and Northrop Aircraft Corp., corner of Nash and Mariposa, El Segundo.

*ROUTE 21 - Thousand Oaks, Westlake Village, Agoura - Los Angeles

At the following locations:

DuPars Restaurant, Moorpark Road and Thousand Oaks Blvd., Thousand Oaks; rear entrance, Westlake Plaza Shopping Mall, Westlake Blvd. & Townsgate Road, Westlake Village; Intersection of Kanan and Agoura Roads, Agoura; Intersection of 5th and Flower Streets, Los Angeles; 6th Street between Flower and Grand Streets, Los Angeles; Intersection of 6th and Spring Streets, Los Angeles.

Issued by California Public Utilities Commission.

*Added by Decision No. 85147, Application No. 55226.

Appendix A
(Dec. 76608)

CALIFORNIA SIGHTSEEING TOURS,
INC.
(a corporation)

First Revised Page 18
Cancels
Original Page 18

SECTION 2 - ROUTE DESCRIPTIONS.

ROUTE 20 - Mission Viejo - El Segundo Plants

Commencing at OSO Parkway and Goleta Drive (Golf Club), Mission Viejo, thence west on OSO Parkway, San Diego Freeway, Culver Blvd. (University Plaza), Irvine, continue on San Diego Freeway, Brookhurst Street, Warner Avenue, San Diego Freeway, Harbor Freeway, El Segundo Blvd., Crenshaw Blvd., Broadway, Prairie, Imperial, Nash Street and to Mariposa.

*ROUTE 21 - Thousand Oaks, Westlake Village, Agoura - Los Angeles

Commencing from DuPars Restaurant, Moorpark Road and Thousand Oaks Blvd. in Thousand Oaks, thence on Moorpark Road, Ventura Freeway, Westlake Blvd., Townsgate Road to Westlake Plaza Shopping Mall in Westlake Village, return to and along Townsgate Road, Agoura Road to Kanan Road at Agoura, thence along Kanan Road, Ventura Freeway, Hollywood Freeway, Temple Street (Flower Street) in Los Angeles, Flower Street, 6th Street and to Spring Street.

Issued by California Public Utilities Commission.

*Added by Decision No. 85147, Application No. 55226.