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ORIGINAL

Decision No. 85347

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
DALY CITY TRANSIT SYSTEMS, INC. for
a Certificate of Public Convenience
and Necessity to operate passenger
stage service between Westlake,
Palisades, Stonestown, and South
San Francisco.

Application No. 55352
(Filed December 2, 1974)

CITY OF DALY CITY, a Municipal
corporation,

Complainant,

vs.

NORTHGATE TRANSIT COMPANY, INC.,
a California corporation,

Defendant.

Case No. 9907
(Filed April 28, 1975)

Mateo Mattheus and Mario Cutrufelli, for Daly City
Transit Systems, Inc., applicant.

Albert E. Polonsky, City Attorney, for City of
Daly City, complainant in C.9907 and interested
party in A.55352.

Silver, Rosen, Fischer & Stecher, by Michael J.
Stecher, Attorney at Law, for Northgate Transit
Company, Inc., defendant in C.9907 and protestant
in A.55352.

John Noonan, City Attorney, for City of South
San Francisco, intervenor in C.9907 and
protestant in A.55352.

Robert C. Chrisman, for Mary's Help Hospital Employees;
and Frances E. Milligan, Attorney at Law,
Nancy Crawford, Matthew Paul Zaleck, Thelma Kraljevich,
John Trousdale, Earl W. Wheeler, and Silvano G.
Gonzalez, for themselves; interested parties in
A.55352.

Elton H. Mattoon, for California Highway Patrol,
interested party in C.9907.

Lionel B. Wilson, Attorney at Law, Ora Phillips,
and Keith Helminiak, for the Commission staff.

INTERIM OPINION

In Application No. 55352 Daly City Transit Systems, Inc. (DCTS), a California corporation which has not issued any stock, requests a certificate to operate as a passenger stage corporation over routes being operated by Northgate Transit Company, Inc. (Northgate) which protested the application. A hearing was held on the application for four days starting on January 21, 1975 before Examiner Pilling. The evidence showed that Northgate was providing urban bus service primarily in Daly City with service extending into South San Francisco, San Francisco, Pacifica, Colma, and unincorporated territory in San Mateo County under an in lieu certificate issued in Decision No. 82666 dated April 2, 1974, which authorized operations over 10 routes. DCTS seeks authority which substantially duplicates these routes. Northgate was incorporated in 1955 but to date has issued no stock. Until November 1974 Northgate owned no buses but conducted operations with buses leased from its drivers. Both Northgate and its drivers considered the drivers to be independent contractors. On November 18, 1974, as a result of a dispute with Northgate's management 90 percent of Northgate's owner-drivers refused to submit to the control and management of Northgate and became affiliated with DCTS. These dissident owner-drivers continued to operate over Northgate's routes but conducted operations under the banner of DCTS, which possessed no passenger stage authority. The owner-driver exodus left Northgate's operations in a shambles. On December 2, 1974 DCTS filed the instant application. On December 10, 1974 in Decision No. 83851 in Case No. 9329 the Commission issued an interim order requiring DCTS to cease and desist conducting bus operations over Northgate's routes. DCTS ceased operations. At the time of the hearing on the application only a few of the dissident drivers had returned to the Northgate fold, Northgate had purchased or leased 19 buses, and Northgate was attempting to assemble and train

a competent and reliable team of new drivers. However, Northgate's service had not recovered from the shock of the owner-driver pullout of approximately two months before. Public witnesses presented by DCTS testified that the service of Northgate was grossly unsatisfactory from the standpoint of (1) the competency and reliability of Northgate's drivers, (2) the mechanical condition of its equipment, and (3) the reliability of its schedules. The deficiencies in Northgate's service brought out at the hearing are the same as found to exist by the staff witness as a result of his investigation relating to Case No. 9907 and enumerated below, except that the level of competency and reliability of Northgate's drivers appears to have risen to a satisfactory level since the hearing on Application No. 55352.

In Case No. 9907 Daly City, complainant, requests the Commission to cancel the passenger stage corporation certificate issued to defendant Northgate for failure of Northgate to (1) maintain continuous insurance coverage, (2) properly maintain and repair its vehicles, (3) provide an adequate number of vehicles to service its routes, (4) maintain records, (5) properly train its personnel, (6) maintain schedules, (7) service all its routes, and (8) render reasonable and adequate service to the public. Northgate generally denies these allegations. A Petition of Intervention filed by the city of South San Francisco was granted. That petition requested that the Commission cancel Northgate's routes 7 and 8 for failure of Northgate to operate over them. A hearing was held on the matter in San Francisco on August 6, 1975 before Examiner Pilling.

Evidence adduced at the hearing was contained in Exhibit 1 in Case No. 9907 submitted by a witness from the Surface Passenger Engineering Section of the Passenger Operations Branch of the Commission's Transportation Division who had conducted a recent investigation of Northgate's operations.

The witness testified that on March 3-5 and March 16, 1975 the Motor Carrier Safety Unit of the California Highway Patrol performed an inspection of the buses operated in Northgate's service resulting in the following tabulations:

| | <u>March 3-5, 1975</u> | <u>March 16, 1975</u> |
|------------------------------|------------------------|-----------------------|
| Number of vehicles inspected | 10 | 19 |
| Number placed out of service | 7 | 7 |
| Violations found were for: | | |
| (a) Brakes | 20 | 26 |
| (b) Lamps - signals | 3 | 24 |
| (c) Steering and suspension | 16 | 9 |
| (d) Tires and wheels | 4 | 4 |
| (e) Equipment requirements | 29 | 81 |

The shortage of equipment caused by vehicles being placed out of service rendered Northgate unable to meet any but a few of its schedules until equipment could be adequately repaired again to provide full service. On March 7, 1975 the Commission received notice from Northgate's insurance carrier that Northgate's insurance was to be cancelled on April 10, 1975 and the Commission so notified Northgate. On April 10, 1975 Northgate was notified by the Commission that Northgate's insurance was to expire at midnight and not to operate until a certificate of insurance had been received by the Commission. Northgate ceased operations on April 11, 1975 and did not revive its operations until May 2, 1975 at which time a certificate of insurance covering Northgate's operations had been filed. Many of the dissident owner-drivers and their buses which left Northgate in the November 1974 exodus had returned to Northgate. The staff witness found that Northgate was not operating over four of its authorized routes: Routes 3-A, 5-A, 7, and 8. A spot check of Northgate's schedules at the BART Daly City station conducted for a varying span of hours in the morning on nine separate days between May 5, 1975 and July 14, 1975 revealed that a total of 36 outbound and inbound schedules did not show,

and of the 508 schedules checked which did show, 69 were more than five minutes late in either arriving or departing. Northgate, which was incorporated in 1955, has never issued any stock or other evidence of ownership and it is therefore difficult to tell who the owners of the corporation are. The staff witness further found as follows:

1. Northgate, through the owner-operator bus arrangement:
 - a. Does not have adequate control over the repair and maintenance of the vehicles.
 - b. Does not have adequate control over the performance of the drivers.
 - c. Is often unwilling to provide a stand-by bus and driver for service when route assignments are not fulfilled.
 - d. At times does not have sufficient operable vehicles to provide the service specified in the public timetables.
2. The buses often do not maintain the schedules during the peak traffic periods, i.e., they leave Mission Street and Templeton Avenue on time but are late in returning to that point.
3. When an insufficient number of buses and drivers are available, service on the Palisades Route is reduced. If the shortage is more than two buses and drivers, service on the Broadmoor Route is next to be reduced.
4. Northgate is not operating over Route 3-A, Palisades Alternate Route; Route 5-A, Stonestown/Westlake via BART Station; Route 7, South San Francisco/Cabot Park Route and Route 8, South San Francisco/Tanforan Park Route.
5. The Highway Patrol safety compliance reports indicate that the carrier's preventive maintenance program is inadequate.

6. Public convenience and necessity demand that service over the routes currently being operated by Northgate be provided on an uninterrupted basis.
7. The only other known party willing to provide such service is Daly City Transit Systems, Inc. in Application No. 55352, now pending with the Commission. This service would be provided by substantially the same equipment and the same drivers over the same routes, as now presently being offered by Northgate.
8. Northgate is regularly lax in responding to various directives of the Public Utilities Commission, and its staff.
9. Northgate's current "lease agreement" for the owner-driver arrangement appears insufficient and inadequate.
10. Northgate's management is practically impossible to contact and does not respond to many staff letters.
11. Northgate's present management appears to be either incapable or unwilling to properly manage the operation.
12. There are no timetables on file with the Commission which meet the criteria of General Order No. 98-A.
13. None of Northgate's buses comply with paragraph 10.02 of General Order No. 98-A, which requires that the company name be displayed on both sides and the rear of the vehicle.
14. Northgate has sufficient driver personnel.

Based upon its investigation of Northgate's operation the staff recommends that the Commission issue its order providing that:

1. The certificate of public convenience and necessity heretofore granted to Northgate should be reissued with the provision that it will be revoked after six months of a probationary period if the carrier fails to meet the following requirements:

- a. Within 20 days after the effective date of the Commission order, Northgate should notify the Commission that it will either:

- (1) Acquire all vehicles necessary to provide an adequate service, and conduct its entire operations as a corporation, employing only its officers and employees to conduct the business.

OR

- (2) Continue to function as an "owner-driver" type operation.

- b. If Northgate elects option (a)(1), it should have up to 90 days from the order effective date to place this employer-employee system into effect.

- c. If Northgate elects option (a)(2), it should have up to 40 days from the order effective date to file a plan for Commission approval which will adequately and completely provide for Northgate to have the following capabilities:

- (1) To immediately make available a bus and driver as replacement on each occasion when there has been an equipment failure during revenue service, so that there is little public service interruption.

(2) To set forth the details of a revenue collection and disbursement plan under which each of the owner-drivers will be provided with an equitable amount of money for his service as provided, and which shows that no more than a reasonable and adequate amount of money will be set aside for overhead.

- d. If Northgate elects option (a)(2), it should have up to 40 days from the effective date to file an agreement for Commission approval, the agreement to be henceforth presented to each owner-driver for signature under such an operation arrangement. Any future revisions in agreement terms would require Commission approval.
- e. Immediately, Northgate must comply with the requirements in previous decisions to provide adequate maintenance, management, and insurance. We refer to Decisions Nos. 72661, 73148, and 82875.
- f. Immediately, Northgate should install the driver sign-in record that has been requested by the staff verbally on several occasions, as well as in a letter of April 28, 1975.
- g. Within 60 days after the effective date of the order, establish a functioning preventive maintenance program, which meets the satisfaction of the Highway Patrol.
- h. Each week Northgate should file reports to both the Commission and the Highway Patrol, in writing, indicating the improvement of vehicles and company practices made as a result of vehicle inspections that week.

- i. Within 24 hours Northgate should report to the Commission staff by telephone each mechanical failure or any occurrence which may happen in any of its operations that results in the inability of any vehicle to properly perform when in revenue service; the report shall be confirmed in writing within three working days.
 - j. Within 30 days after the effective date of a Commission order, Northgate should file a written acceptance of the reissued certificate. At that time Northgate should again be placed on notice that in accepting a Commission 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 Orders Nos. 98-Series and 79-Series and the insurance requirements of the Commission's General Order No. 101-Series.
 - k. Within 20 days after the effective date of a Commission order, Northgate should file appropriate tariffs, public timetables, and notices (including an urban exemption request under General Order No. 98-A) in triplicate, in the Commission's office, covering the reissued authority.
- 2. The reissued certificate granted in the above paragraph 1 should be amended to eliminate Routes 3-A, 5-A, 7, and 8.
 - 3. Should Northgate not be able to comply with the various requirements and the recommendations herein, any other carrier that may receive similar authority from the Commission should be required to comply with similar requirements and recommendations.

Daly City agreed with the findings and recommendations of the staff witness. Defendant Northgate presented no evidence, offered no objection to the staff witness' findings, and agreed to accept the staff witness' recommendations as a condition to the continued operation of Northgate.

Discussion

The unsatisfactory nature of Northgate's service brought out in public witness testimony at the hearing on Application No. 55352 may well have been caused principally by the mass exodus of Northgate's owner-drivers just a little over two months before the hearing on that application. It would therefore be unfair to decide that case alone on the quality of Northgate's service performed between November 18, 1974 and January 21, 1975 without giving Northgate an opportunity to show that it has instituted satisfactory service. Section 1032 of the Public Utilities Code provides that the Commission may issue a passenger stage certificate to operate in a territory already served by a certificated holder only when the existing service is not being performed to the satisfaction of the Commission. We are therefore placing Northgate on notice that the Commission considers Northgate's passenger stage service to be unsatisfactory and we will give Northgate until no later than the six months after the effective date of this order to institute satisfactory service. We will gauge the quality of Northgate's future service in the light of the deficiencies found by the staff in its investigation of Northgate's service in Case No. 9907.

Findings

In Case No. 9907 the Commission finds that the facts set out by the staff witness are correct and adopts the staff witness' recommendation of the issuance of a probationary certificate subject to the conditions set out in his recommendation.

In Application No. 55352 the Commission finds that the mass exodus of Northgate's owner-drivers on November 18, 1974 caused a disruption of Northgate's service from which Northgate had not recovered at the time of hearing on the application; that Northgate should be placed on notice that its service is not satisfactory to the Commission; that Northgate has abandoned its Routes 3-A, 5-A, 7, and 8; that Northgate should be given no later than six months after the effective date of this order to upgrade its service to the satisfaction of the Commission; that the deficiencies in Northgate's operation as found by the staff witness and enumerated in Case No. 9907 are the same deficiencies which generally existed in Northgate's operations between November 18, 1974 and January 21, 1975; that the correction of those deficiencies by Northgate will raise its service to a satisfactory level. The Commission concludes that the submission of Application No. 55352 should be set aside and the application reopened for the purpose of receiving evidence relative to the improvement or lack of improvement of Northgate's service between the date of hearing of Case No. 9907 (August 6, 1975) and six months after the effective date of this order and that Northgate's Routes 3-A, 5-A, 7, and 8 be deleted from its certificate.

A decision on the certification of DCTS should be deferred until further hearings are completed on Northgate's attempt to improve its service. Similar requirements to those herein would apply to any other carrier certificated to operate in this market.

INTERIM ORDER

IT IS ORDERED that:

1. The certificate of public convenience and necessity to operate as a passenger stage corporation issued to Northgate Transit Company, Inc. in Decision No. 82666 is canceled and in lieu thereof there is issued to Northgate Transit Company, Inc. a probationary certificate to operate as a passenger stage corporation as set out in Appendix A of this decision.

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2. The submission of Application No. 55352 is set aside and the application is reopened for the purpose of receiving evidence on the improvement in the service of Northgate Transit Company, Inc. between August 6, 1975 and six months after the effective date of the order herein.

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

Dated at San Francisco, California, this 13th day of JANUARY, 1976.

William J. Harrison President
James L. Sturgeon
Alon
Robert B. ... Commissioners

Appendix A

NORTGATE TRANSIT CO., INC.
(a corporation)

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PROBATIONARY

CERTIFICATE

OF

PUBLIC CONVENIENCE AND NECESSITY

EXPIRES AUGUST 31, 1976

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

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.

The certificate issued herein supersedes all previous certificates issued to this
carrier to operate under a certificate of public convenience and necessity as a
passenger stage corporation.

Issued under authority of Decision No. 85347,
dated JAN. 13 1976, of the Public Utilities Commission of the
State of California, in Case No. 9907.

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

Northgate Transit Co., Inc., by the probationary certificate of public convenience and necessity granted by the decision noted in the margin, is authorized to transport passengers between points in the Cities of Daly City, South San Francisco, Colma, San Bruno, Pacifica, City and County of San Francisco, and adjacent areas over the routes described in Section 2, and subject to the following conditions:

1. 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.
2. No passenger shall be transported having both point of origin and point of destination within the City and County of San Francisco.
3. The Probationary Certificate of Public Convenience and Necessity shall expire on August 31, 1976 unless extended or made permanent by further order of the Commission.

Issued by California Public Utilities Commission.

Decision No. 85347, in Case No. 9907.

SECTION 2. ROUTE DESCRIPTIONS.

Route 1 - Westlake/Serramonte/Junipero Serra Loop

Commencing at the intersection of Mission Street and Templeton Avenue in Daly City, then via Mission Street, John Daly Blvd., and De Long to the BARTD Station, then John Daly Blvd., and Lake Merced Blvd. to the Westlake Shopping Center, then via Lake Merced Blvd., Southgate Avenue, Lakeshire Drive, Clarinada Drive, St. Francis Blvd., and Serramonte Blvd. to the Serramonte Shopping Center.

Then via Callan Blvd., Southgate Avenue, St. Francis Blvd., San Fernando Way, Buena Vista, St. Francis Blvd., Eastmoore Avenue, San Pedro Road, Washington Street, Junipero Serra Blvd., and John Daly Blvd., to the BARTD Station, then via De Long, John Daly Blvd., Mission Street, Evergreen Avenue, Irvington Street, and Templeton Avenue to its intersection with Mission Street.

Return via the reverse of the same route.

Route 2 - Broadmoor/Hillside Loop

Commencing at the Daly City BARTD Station, then via John Daly Blvd., Mission Street, Templeton Avenue, Irvington Street, Evergreen Avenue, Mission Street, Hillside Blvd., Market Street, Orange Street, Chester Street, "A" Street, 2nd Avenue, Market Street, San Pedro Street, Washington Street, 87th Street, Maddux Drive, Southgate Avenue and Lake Merced Blvd., to the Westlake Shopping Center, then via South Mayfair Avenue, Park Plaza Drive, Southgate Avenue, Maddux Drive, 87th Street, Washington Street, San Pedro Street, Market Street, 2nd Avenue, "A" Street, Chester Street, Orange Street, Market Street, Hillside Blvd., John Daly Blvd., and De Long to the BARTD Station.

Issued by California Public Utilities Commission.

Decision No. 85347, in Case No. 9907.

Route 3 - Palisades Route

Commencing at the intersection of Mission Street and Templeton Avenue in Daly City, then via, Templeton Avenue, Irvington Street, Evergreen Avenue, Mission Street, John Daly Blvd., and De Long to the BART Station, then via John Daly Blvd., Park Plaza Drive, Southgate Avenue, and Lake Merced Boulevard to the Westlake Shopping Center, then via Lake Merced Boulevard, South Mayfair Avenue, Westridge Drive, Skyline Drive, Longview Drive, Belcrest Avenue, Skyline Drive, Gateway Drive, Hickey Boulevard, Gellert Blvd., and Serramonte Boulevard to the Serramonte Shopping Center.

Return via the reverse of the same route except delete the underlined.

Route 4 - Skyline College/Serramonte Route

Commencing at the Serramonte Shopping Center, then via Serramonte Boulevard, Gellert Boulevard, King Drive, Callan Boulevard, Oakmont Drive, Berkshire Drive, and College Drive to Skyline College.

Return via the reverse of the same route.

Route 5 - Stonestown/Westlake Route

Commencing at the Westlake Shopping Center at the intersection of Lake Merced Boulevard and South Mayfair Avenue in Daly City, then via South Mayfair Avenue, Park Plaza Drive, Southgate Avenue, Lake Merced Boulevard, Winston Drive, and 20th Avenue to the Stonestown Shopping Center in San Francisco.

Return via the reverse of the same route.

Route 6 - Daly City/South San Francisco Route

Commencing at the Daly City BART Station, then via De Long, John Daly Boulevard, Mission Street, San Jose Avenue, Flornoy Street, Mission Street, Evergreen Drive, Miller Avenue, Gardenside Drive, Birch Avenue, Holly Avenue, Miller Avenue, Forest View Drive, and Grand Avenue, Cypress Avenue, Baden Avenue, Airport Boulevard, and Grand Avenue to its intersection with Cypress Avenue in South San Francisco.

Return via the reverse of the same route.

Issued by California Public Utilities Commission.

Decision No. 85347, in Case No. 9907.