

Decision No. 85606

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Loren E. Pearson dba )  
 Pearson's Chevron for a permit to )  
 operate a charter party carrier of )  
 passengers service. )  
 (File No. TCP-43-B)

Application No. 55830  
 (Filed July 23, 1975)

Jared G. Carter, Attorney at Law, for  
 Loren E. Pearson, applicant.  
Richard M. Hannon, Attorney at Law, for  
Greyhound Lines, Inc.; Keith L. Grimm,  
 for K & G Bus Transportation Services,  
 Inc., dba Western Charter Tours; Kenneth  
Henricksen, for Poodle Bus Lines; and  
John Williams, for B & H Transportation  
 Company; protestants.

## O P I N I O N

Applicant, Loren E. Pearson, doing business as Pearson's Chevron, requests a Class B certificate to operate as a charter-party carrier of passengers out of his designated home terminal in Ukiah, California. Protests were filed and a public hearing was held before Examiner Gagnon in Ukiah on December 4, 1975. Evidence in support of the sought authority was presented by applicant and other interested parties. Greyhound Lines Inc., doing business as Greyhound Lines-Western Division (Greyhound), Western Charter Tours, and Poodle Bus Lines presented evidence in opposition to the granting of the proposed authority. Upon learning that applicant did not intend to serve the Fort Bragg area, B & H Transportation Company withdrew from the proceeding.

Antecedents

Application No. 55830 represents applicant's second effort to obtain a Class B certificate to operate as a charter-party carrier

out of his Ukiah home terminal. In Application No. 54423 filed October 30, 1973 applicant sought the same authority requested in this proceeding. The application was denied by Decision No. 82674 dated April 2, 1974. In denying applicant's initial request the Commission stated:

" . . . The proposal to transport passengers for less than rates charged by a statewide carrier is not a basis for the grant of a Class B charter certificate, where applicant has no prior experience in charter operation, would use a single bus on a part-time basis, and has not shown the existing service to be unsatisfactory or inadequate. . . . Applicant's contention that he would use less fuel on local charters than other operators who have no terminal in Ukiah, when weighed with other facts in this case, is not sufficient to show public convenience and necessity." (Emphasis supplied.)

Applicant's petition for rehearing of Decision No. 82674 was denied by Decision No. 83003 issued June 18, 1974. The decision stated:

"...applicant simply did not make the necessary showing to warrant grant of a certificate of public convenience and necessity. . . . It is also clear from the record that applicant has no experience in connection with charter operations and has not worked as a bus operator since 1953.

"We affirm our earlier decision... Petitioner is, of course, free to file a new application at any time that he believes he can make the necessary showing of public convenience and necessity." (Emphasis supplied.)

#### Applicant's Evidence

Applicant owns and operates a Chevron service station and truck stop located at 998 South State Street, Ukiah, California. He still owns and operates the 46-passenger 1963 GMC passenger bus referred to in Decision No. 82674. Applicant's service station,

garage facilities, and employed mechanical help are utilized to service and maintain his bus equipment.

Applicant submitted copies of two financial statements previously presented to the Bank of America for the purpose of establishing a line of credit. The first financial statement (Exhibit 1) is for applicant's Chevron service station. The statement shows that as of August 31, 1975 the net assets of the station amounted to \$50,827. For the first eight months ending August 31, 1975 the station experienced a net profit, before taxes, of approximately \$15,000. Exhibit 2 is the personal financial statement of applicant as of October 13, 1975. Applicant's total assets are shown to amount to \$117,500, together with a net cash income, after taxes, of \$18,000.

In order to obtain the operating experience referred to in Decisions Nos. 82674 and 83003 applicant on September 1, 1974 leased his passenger bus, without driver, to the Redwood Empire Lines (dba Eureka-Redding Stages, Inc.), a Class A charter-party carrier operating out of Eureka, California. Applicant was then hired as a bus driver and commenced operating his leased equipment under the direction and control of Redwood Empire Lines. A copy of the equipment rental agreement (Exhibit 8) was introduced in evidence.

Pursuant to the agreement applicant currently receives an equipment rental rate of 40 cents per mile. The rental rate includes all costs for fuel, oil, and maintenance. The lessee assumes all other expenses, fees, taxes, and insurance liability. As the bus driver for his leased equipment, applicant receives 15 cents per mile. Social Security taxes are withheld and paid for by the lessee.

In addition to gaining operating experience, applicant explained that he entered into the equipment lease agreement because the available service in the Ukiah service area is inadequate. The Redwood Empire Lines also wished to avoid the extensive round-trip

deadhead mileage required to service the Ukiah area from its Eureka terminal. Under the agreement some 27 charters were conducted with applicant's equipment. On six of the charters a relief driver was employed. This standby driver will also be available to assist applicant should the sought authority be granted. On about three occasions Redwood Empire Lines operated applicant's bus in the Eureka service area. Of the 27 charters approximately five were destined to the San Francisco area.

Applicant estimates that his current operating costs, excluding driver costs, amounts to approximately 21 cents per mile. He explained the various factors underlying the charges assessed by Redwood Empire Lines for charters operated by applicant with his equipment. Basically, such charges reflect a rate of 80 cents per mile for a minimum tour group of 30 people. Should applicant be granted the proposed Class B certificate he explained that all his direct and indirect expenses will have to be reflected in his charges. However, applicant anticipates substantial cost savings since his existing service station and garage facilities will be employed to service and maintain his proposed charter-party operations.

Protestants' efforts to operate charters out of the Ukiah area involve rather extensive deadhead mileage operating costs. This places protestants at a competitive disadvantage with any competing carrier locally domiciled in Ukiah. Conversely, applicant, operating out of his Ukiah home terminal, would experience a similar competitive disadvantage if he were to solicit charters in protestants' Santa Rosa or Petaluma terminal area. Applicant states he does not intend to compete for charters in protestants' immediate service areas.

If applicant's Ukiah service area is to be restricted to something less than a radius of 40 air miles, as provided in Section 5371.2 of the Public Utilities Code, it is requested that the

restricted territory include the communities of Willits and Cloverdale. Such action would assertedly provide applicant with a compensatory home base of operations while at the same time preserve the economic advantages inherent in the geographical locations of protestants' terminals.

Copies of informal correspondence urging the favorable consideration of Application No. 55830 were introduced as Exhibits 3, 4, and 6. The correspondence was written by representatives for the Greater Ukiah Chamber of Commerce, University of California Agricultural Extension Service, Lake Mendocino Lions Club, Mendocino-Lake Appliance Dealers Association, and by a private party. The correspondence refers to an alleged current civic and recreational need for applicant's local Ukiah services. The parties also allude to a general attitude of uncertainty whenever Ukiah charters are performed on an equipment availability basis by carriers not locally domiciled at Ukiah. Concern was also expressed over the fact that when charges are assessed for charters originating at Ukiah by carriers domiciled elsewhere they include compensation for deadhead mileage costs. The resulting total charges are higher than those presently assessed for applicant's Ukiah charter service.

Three witnesses actively participating in the civic or recreational activities in the Ukiah area testified in support of the sought authority. They contend that protestants' charter services are generally unsatisfactory for the following reasons:

1. The Ukiah area is economically isolated from the immediate terminal areas of protestants.
2. Protestants' charges are not competitive and are too expensive for the service desired.
3. Employment of protestants' services entails an element of anxiety as to the actual time of arrival at Ukiah to pick up a charter and whether the chartered bus will actually be available on scheduled date for service.

Protestants' Evidence

Greyhound holds a Class A certificate to operate statewide as a charter-party carrier of passengers (Exhibit 10). It maintains an equipment point at Santa Rosa, a distance of approximately 64 miles from Ukiah. The director of traffic for Greyhound testified and presented a series of exhibits in opposition to the sought authority. Exhibit 9 is a map showing a Ukiah service area with a 40 air-mile radius from applicant's proposed home terminal. Exhibit 11 was introduced to show that Greyhound has 1,564 intercity buses licensed to operate in California. No buses are kept on standby at either Santa Rosa or Ukiah but are supplied on demand through an electronic computer distribution program located in Phoenix, Arizona. Greyhound's Exhibit 12 shows 21 charters originating within a radius of 40 air miles of Ukiah during the period October 1, 1974 through August 31, 1975. Eight of such charters originated at Ukiah, six of which were destined to the San Francisco or East Bay Area, a distance of some 120-135 miles. Six of the 21 charters originated at Willits and all were destined to the San Francisco Bay Area, a distance of approximately 140-150 miles. One charter originated at Cloverdale and was destined to San Francisco, a distance of approximately 93 miles.

The director of traffic explained that Greyhound's charters are subject to a minimum charge for charters of 300 miles. This minimum charge compensates for all deadhead mileage involved in charters for 300 miles or less. No deadhead mileage charge is assessed for charters over 300 miles. On short mileage charters, such as from Ukiah to the San Francisco and East Bay Areas, Greyhound's compensation for deadhead or nonrevenue mileages constitutes a significant portion of the total minimum charge for such service.

Greyhound's Exhibit 13 is a color brochure advertising its charter service. Advertisement is also placed in local telephone directories.

Western Charter Tours is a statewide Class A charter-party carrier. It maintains a terminal at Petaluma, a distance of some 81 miles from the Ukiah area. Its general manager presented testimony in opposition to applicant's sought authority. He explained that Western Charter Tours is able to provide service in the Ukiah area upon receipt of three to six weeks advance notice. Requests for charter service in applicant's home terminal area would require only three to four days advance notice when equipment is available.

Poodle Bus Lines is also a Class A charter-party carrier. Its home terminal is located in Santa Rosa. It is operated as an avocation by its owner who is retired and receives a "good pension". He explained that his operating revenues for 1974-1975 are about the same and is not aggressively seeking additional revenues. His opposition to Application No. 55830 is registered solely to support the position of the other protestants.

#### Discussion

Applicant has established that he possesses the fitness and financial responsibility to initiate and conduct the proposed transportation service required by Section 5374 and 5375 of the Public Utilities Code. To obtain a Class B certificate it must also be established that:

1. Public convenience and necessity require the proposed service (Section 5375 of the Code).
2. Charter-party carriers authorized to pickup charters in the Ukiah service area are not providing services which are satisfactory and adequate (Section 5375.1 of the Code).

The Redwood Empire Lines is a statewide Class A charter-party carrier with a terminal located in Eureka, California, a

distance of some 158 miles north of Ukiah. While not a party to this proceeding it represents a significant factor in the material issues involved. By employing applicant as a bus driver and leasing his equipment to operate charters out of the Ukiah service area, Redwood Empire Lines avoids the extensive round-trip deadhead operating mileage costs it would experience if the Ukiah charters were performed with equipment stationed at Eureka. The resulting cost savings are, in turn, reflected in the charges assessed by Redwood Empire Lines for Ukiah charters operated on its behalf by applicant. Protestants' charges for similar Ukiah charters, performed with equipment operated out of Santa Rosa or Petaluma, reflect deadhead mileage operating costs and are generally higher than those assessed for applicant's like services.

Applicant estimates that he has operated about 27 charters. This exceeds the 21 Greyhound charters out of the same area for a like period of time. It is evident that the public interest in the Ukiah area also shares the view that protestants' services are not adequate or otherwise satisfactory. Protestants could, if they so choose, domicile bus equipment in the Ukiah area and substantially reduce their deadhead mileage and/or other minimum charges when performing Ukiah charters. For reasons known only to protestants they desire to remain non-competitive.

Protestants' testimony suggests the opinion that their authority to operate as charter-party carriers constitutes an exclusive privilege to serve the public within any area of their choice and the right to assess charges higher than they would otherwise obtain under more competitive circumstances. In rendering a decision to grant or deny a certificate of public convenience and necessity the Commission must consider the economic benefits to the public.



Granting the sought Class B certificate will enable a local Ukiah resident and businessman to offer charter-party service in the Ukiah area on his own behalf rather than as an employee of another carrier domiciled in Eureka. Further economic benefits are potentially available to the public under applicant's proposed operations than are now realized when he performs similar charters as an employee for another carrier.

Applicant has demonstrated that within a restricted service area encompassing his designated Ukiah home terminal the services and charges assessed by existing charter-party carriers serving the territory do not reflect the desired equality of competitive opportunity essential to the economic welfare of the public served. Consequently, such existing service is unsatisfactory and inadequate. Applicant's second request for a Class B certificate should be granted. However, the service area encompassing his Ukiah home terminal should be restricted as specified in the ensuing order.

#### Findings

1. Applicant seeks authority to operate as a Class B charter-party carrier of passengers. The proposed home terminal would be located at 998 South State Street, Ukiah, California.

2. Applicant's initial request for a Class B charter-party certificate was denied by Decision No. 82674 dated April 2, 1974 in Application No. 54423. Petition for rehearing of Decision No. 82674 was also denied by Commission order in Decision No. 83003 issued June 18, 1974. In denying the initial request for a Class B certificate the Commission advised that a second request for the sought authority could be filed whenever applicant believed he could make the necessary showing of public convenience and necessity.

3. Applicant has demonstrated reasonable fitness and financial responsibility to initiate and conduct the proposed Class B charter-party service.

4. The evidence establishes that the services of charter-party carriers presently authorized to serve the Ukiah service area do not reflect adequately the economic benefits that would accrue to the public if an equality of competitive opportunity to perform such services existed.

5. The existing charter-party carriers serving the Ukiah area are not providing services which are economically satisfactory or adequate as required pursuant to Section 5375.1 of the California Public Utilities Code.

6. Public convenience and necessity require that the service proposed by applicant be authorized.

7. The proposed service area should be restricted to a radius of 20 air miles from applicant's designated Ukiah home terminal, including the communities of Willits and Cloverdale, California.

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

The Commission concludes that the proposed authority should be issued as provided in the following order.

O R D E R

IT IS ORDERED that:

1. A certificate of public convenience and necessity, to be renewed each year, is granted to Loren E. Pearson, doing business as Pearson's Chevron, authorizing him to operate as a Class B charter-party carrier of passengers, as defined in Section 5383 of the California Public Utilities Code, from his home terminal located at 998 South State Street, Ukiah, California. His service area (1) is restricted to a radius of 20 air miles from the home terminal, and (2) includes the communities of Willits and Cloverdale.

2. In providing service pursuant to the certificate herein granted applicant shall comply with and observe the following regulations. Failure so to do may result in a cancellation of the operating authority.

Applicant will be required, among other things, to comply with and observe the safety rules administered by the California Highway Patrol, the rules and other regulations of the Commission's General Order No. 98-A Series, and the insurance requirements of the Commission's General Order No. 115-Series.

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

Dated at Los Angeles, California, this 23rd  
day of MARCH, 1976.

[Signature] President  
William Lyons  
Vernon Stinson  
[Signature]  
[Signature] Commissioners