

ORIGINAL

Decision 84 06 166

JUN 20 1984

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application)
of THOMAS D. HAMILTON & MARK NESS,)
dba SAN DIEGO EXPRESS for a Class)
B charter bus certificate from)
home terminal in San Diego,)
California.)

Application 84-02-51
(Filed February 27, 1984)

O P I N I O N

Thomas D. Hamilton, Mark S. Ness, Donald P. Nowaskey, Jerrold A. Jones, and David B. Oberholtzer, a partnership, doing business as San Diego Express, have applied for a certificate of public convenience and necessity as a charter-party carrier of passengers (Public Utilities (PU) Code Sections 5371 to 5375).

Applicants Mark S. Ness and Thomas D. Hamilton, doing business as San Diego Express, were authorized to provide a passenger stage service under PSC-1213 between the City of El Centro and San Diego International Airport (Lindbergh Field) in San Diego. Applicants also provide permitted charter-party service under TCP 1952-P, airport limousine service under San Diego Jitney Permits 30 and 34, and a charter service under City of San Diego Vehicle For Hire Permits 141 and 143.

Applicants state that they intend to provide charter service and operate vehicles with capacities ranging from 10 to 21 passengers to fulfill the needs of groups desiring to charter a bus who do not have enough people or funds to warrant chartering a 41-passenger highway coach. Applicants allege that there is

a lack of charter service using smaller vehicles originating from San Diego; they do not propose to compete with charter-party certificate holders using full-size highway buses.

Applicants' total assets are \$73,896; \$60,100 of this is attributed to applicants' two mini buses and two vans. It is projected that a typical year's revenue mileage will be 680,000 miles for all of applicants' passenger operations producing charter revenues of \$42,000 and total revenues of \$140,660.

Hamilton, Ness, and Oberholtzer seek to reopen Application (A.) 82-03-19 filed March 4, 1982 which was dismissed without prejudice, at the request of Hamilton, in Decision 82-07-104 dated July 21, 1982. In A.82-03-19 Hamilton and Ness sought a Class B certificate from the same terminal requested in this proceeding.

Notice of the filing of this application appeared in the Commission's Daily Transportation Calendar of March 2, 1984. No protests have been received.

Discussion

In A.82-03-19 Hamilton and Ness sought the same authority being requested in this application except for a change in the composition of the partnership. Applicants have not provided any justification for the reopening of the earlier proceeding in which their application was dismissed. Therefore, their request to reopen will be denied. However, an ambiguity exists as to the identity of the partnership, since Hamilton and Ness who hold passenger stage authority from the Commission are using the same fictitious name proposed to be used by the expanded partnership of Hamilton, Ness, Nowaskey, Jones, and Oberholtzer. A passenger stage corporation, as defined in PU Code Section 226, is a public utility as defined in PU Code Section 216. Under PU Code Section 851 "n/o public utility...shall sell, lease, assign,

mortgage, or otherwise dispose of or encumber the whole or any part of its...line, plant, system, or other property necessary or useful in the performance of its duties to the public, ...without first having secured from the commission an order authorizing it so to do. Every such sale, lease, assignment, mortgage, disposition, encumbrance, merger, or consolidation made other than in accordance with the order of the commission authorizing it is void. . . ."

Applicants Hamilton, Ness, Nowaskey, Jones, and Oberholtzer should promptly file an application requesting authorization of the transfer of the passenger stage corporation partnership to the expanded partnership if such transfer has occurred or is planned.

Findings of Fact

1. Applicants have the ability, experience, equipment, and financial resources to perform the proposed service.

2. Public convenience and necessity require the service proposed by applicants.

3. Applicants should be authorized to pick up passengers within a radius of 40 air miles from their home terminal at 6302 Rancho Mission Road, San Diego.

4. No protest has been received and a public hearing is not necessary.

5. It can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.

6. Applicants Hamilton and Ness, a partnership, appear to have transferred their public utility passenger stage assets to the partnership of Hamilton, Ness, Nowaskey, Jones, and Oberholtzer.

Conclusions of Law

1. Public convenience and necessity have been demonstrated and a certificate should be granted.
2. Any transfer of passenger stage authority or assets from Hamilton and Ness to Hamilton, Ness, Nowaskey, Jones, and Oberholtzer is void absent Commission authorization. Hamilton and Ness should file an application under PU Code Section 851, et seq. requesting authorization of the transfer to the larger partnership within 30 days after the effective date of this decision if such transfer has occurred or is planned.
3. This order should become effective immediately as public convenience and necessity have been demonstrated.
4. The request to reopen A.82-03-19 should be denied.

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 Thomas D. Hamilton and Mark Ness authorizing them to operate as a Class B charter-party carrier of passengers, as defined in PU Code Section 5383, from a service area with a radius of 40 air miles from applicants' home terminal at 6302 Rancho Mission Road, San Diego.
2. Applicants shall:
 - a. Obtain California Highway Patrol (CHP) clearance for each vehicle to be used in this Class B charter-party operation.
 - b. Notify the Commission and CHP of any addition or deletion of vehicles used in the service prior to use.

- c. Establish the authorized service within 360 days after this order is effective.
- d. Remit to the Commission the Transportation Reimbursement Fee required by PU Code § 403 when notified by mail to do so.

3. The Passenger Operations Branch will issue the annual renewable certificate on Form PE-695 as authorized by Resolution PE-303 when it receives CXP clearances and evidence of liability protection in compliance with General Order Series 115.

4. In providing service under the certificate, applicants shall comply with General Orders Series 98 and 115 and the CXP safety rules.

5. Prior to initiating service to any airport, applicants shall notify the airport authority involved. This certificate does not authorize the holders to conduct any operations on the property of or into any airport unless such operation is authorized by both this Commission and the airport authority involved. ✓

6. The Class B certificate of public convenience and necessity granted by this order does not authorize round-trip sightseeing-tour service, which is not subject to regulation by this Commission. It does, however, permit applicants to offer charter service to a sightseeing-tour operator.

7. Thomas D. Hamilton and Mark S. Ness, a partnership, shall file an application under PU Code Section 851, et seq. requesting authorization to transfer the passenger stage corporation partnership assets under PSC 1213 to Thomas D. Hamilton, Mark S. Ness, Donald P. Nowaskey, Jerrold A. Jones, and David B. Oberholtzer, a partnership, within 30 days after the effective date of this decision if such transfer has occurred or is planned.

8. A.84-02-51 is granted as set forth above.
9. The request to reopen A.82-03-19 is denied.

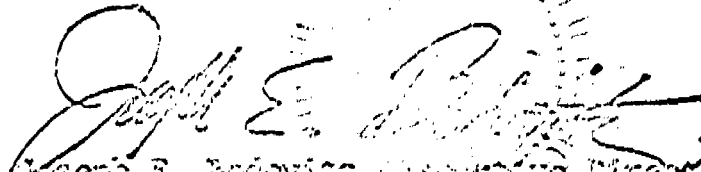
This order is effective today.

Dated JUN 20 1984, at San Francisco, California.

LEONARD M. GRIMES, JR.
President

VICTOR CALVO
FRISCILLA C. CREW
DONALD VIAL
WILLIAM T. BACLEY
Commissioners

I CERTIFY THAT THIS DECISION
WAS APPROVED BY THE ABOVE
COMMISSIONERS TODAY.


Joseph E. Bodovick, Executive Director

- c. Establish the authorized service within 360 days after this order is effective.

3. The Passenger Operations Branch will issue the annual renewable certificate on Form PE-695 as authorized by Resolution PE-303 when it receives CHP clearances and evidence of liability protection in compliance with General Order Series 115.

4. In providing service under the certificate, applicants shall comply with General Orders Series 98 and 115 and the CHP safety rules.

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