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ORIGINAL

Decision 84 OS 112

AUG 1 1984

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application
 of PINETREE SERVICE CORPORATION,
 INC., a California corporation,
 for a Certificate of Public Con-
 venience and Necessity to enlarge
 their airport access service by
 the inclusion of Palm Desert as
 a service point in their existing
 Palm Springs-Ontario-Los Angeles
 International Airport authority.

Application 83-11-29
 (Filed November 14, 1983;
 amended January 26, 1984)

John E. deBrauwere, Attorney at Law, for
 applicant.

James H. Lyons, Attorney at Law, for
 Skyview Limousine Service, Inc.,
 protestant.

O P I N I O NIntroduction

In Decision (D.) 83-04-072 dated April 20, 1984 we granted applicant, Pinetree Service Corporation, Inc., a certificate of public convenience and necessity authorizing it to expand its operations to carry passengers and small packages between Palm Springs Airport (PSP) and Los Angeles International Airport (LAX) with intermediate stops at the Spa Hotel in Palm Springs and at the Ontario International Airport (ONT). The 7 Springs Hotel was substituted for PSP by Resolution PE-489 dated April 4, 1984. The present application proposes to add a stop in Palm Desert at the Granada Royale Homotel.

This application, like its predecessor, was protested by Skyview Limousine Service, Inc. A hearing was held before Administrative Law Judge Colgan in the Commission's Courtroom in Los Angeles on March 30, 1984. The matter was submitted upon the filing of simultaneous briefs on April 27, 1984. Evidence was presented on behalf of applicant by its president, its attorney, and five other witnesses. Evidence on behalf of protestant was presented by its president.

Background

Pinetree Service Corporation, Inc. (Pinetree) is a California corporation with its principal place of business in Los Angeles County. It has a wholly owned subsidiary, California Charter Buses, and a school bus operating division, Pinetree Transportation. Pinetree holds passenger stage certificate (PSC) 1152.

Skyview Limousine Service, Inc. (Skyview) is also a California corporation. It holds PSC-884, which, among other things, authorizes passenger and baggage service between any points in the "Palm Springs territory" (Coachella Valley), on the one hand, and "Los Angeles territory and LAX", on the other hand. Skyview is limited to vehicles not exceeding 20 passengers on its routes between the two territories, but is not so limited on routes between Palm Springs and LAX (see D.82-07-112 in Application (A.) 82-04-72). Skyview offers door-to-door service.

Prior Decisions

Pinetree's A.60598 was filed May 28, 1981 and amended in August and September 1981. In it Pinetree asked for authority to provide passenger airport access service in

three areas. The application was consolidated for hearing with three others and a decision was issued in D.82-06-100 on June 15, 1982 and modified on September 8, 1982 by D.82-09-054. This decision only addressed two of Pinetree's three requests; the third, requesting service between LAX, ONT, and Palm Springs, was heard separately on July 20 and 21, 1982 and resulted in D.83-04-072 issued nine months later on April 20, 1983, which granted the present service.

Skyview was a protestant in that hearing. Initially Skyview was excluded from airport pickup service and was limited to limousine-type vehicles carrying not more than 11 passengers. However, 10 days before Pinetree's LAX/ONT/Palm Springs hearing commenced, Skyview's certificate was amended to its present form. In spite of this fact, we found, in D.83-04-072, that Public Utilities (PU) Code Section 1032, which restricts Commission certification to one carrier in a territory unless the existing carrier is not providing service satisfactory to the Commission, was not applicable because the two services are different in that:

1. Skyview's service is personalized (door to door), but Pinetree's is not;
2. Pinetree will use large, intercity luxury buses exclusively, while Skyview may use any size buses; and
3. Pinetree has an intermediate stop at ONT, but Skyview does not.

We also found that there was no evidence to show, as Skyview alleged, that the market was saturated and Skyview would be forced out of business by Pinetree. Further, we reiterated our determination in the application of American Business, Inc. (1980) 3 CPUC 2d 246 that even if Section 1032 is applicable,

service by a single carrier is monopoly service, and monopoly service is not service "to the satisfaction of the commission" as that term is used in Section 1032.

Applicant's Showing

Pinetree's president, Michael E. Morey, testified that when he applied for authority to serve the Palm Springs area in 1981, he thought he was requesting broad authority which included communities in the Coachella Valley. This application is to expand service to the Coachella Valley community of Palm Desert, which he believed he had authority for, and which his research indicates is needed.

While Pinetree's initial authority was granted on April 20, 1983, service began six months later on October 19, 1983. In the interim, Morey explained, the company prepared the market for institution of the service by billboard advertising, timetable distribution, and radio, newspaper, and travel agent publication advertising.

Morey testified that Pinetree projects a cumulative loss of approximately \$239,000 between October 19, 1983 and September 1985, breaking even in October 1985 and realizing a profit after that. He stated that the company is willing to accept a start-up loss as high as \$300,000, if necessary, at which point the potential for profitability would be evaluated to determine whether to continue operating.

Morey explained that the proposed new pickup point, the Granada Royale Hotel, is a new facility 12 miles from Palm Springs in Palm Desert. He stated that Pinetree conducted a survey of present customers in March 1984 to determine how many of them would be better served by a stop in Palm Desert.

A questionnaire was handed out to 141 passengers. Forty were returned and 24 of these said they would be better served if there were a stop in Palm Desert. (See Exhibit 8.)

When asked why he thought business would increase in June, July, and August, as his projections indicate (Exhibit 1), even though that is the off-season with the lowest hotel occupancy rate, Morey responded that he believed Pinetree would not be affected by this seasonality because the service is only serving a very small percentage of the market, apparently implying that Pinetree's market share would increase enough to offset the effects of a decreasing total hotel guest market during this season. He further explained that the majority of Pinetree's clientele is comprised of local residents rather than hotel guests--a factor which makes ridership less related to hotel seasonality.

The executive director of the Coachella Valley Association of Governments (CVAG) testified that the executive committee of CVAG still supports the contents of the letter it sent to the Commission's executive director dated July 27, 1983 and attached to Pinetree's application as Exhibit F. That letter requests the Commission to modify D.83-04-072 to extend Pinetree's service to the Palm Desert/Rancho Mirage area, which CVAG describes as "the population center of the Coachella Valley".

A representative of the Annenberg Center for Health Sciences, a part of the Eisenhower Medical Center, testified that year-round conferences are held at these facilities which are located in the Coachella Valley, approximately five miles from the proposed stop in Palm Desert. He claimed that it would be advantageous for attendees to be able to fly into LAX and be

transported to the Coachella Valley rather than flying into Palm Springs (which is more expensive and is less accessible), or being bused into Palm Springs which is about 17 miles from the conference site.

A witness, who is manager of the Palm Desert office of a travel agency and executive secretary of the Palm Desert Chamber of Commerce, testified on behalf of both these agencies. She stated that she was familiar with Pinetree's present service, having ridden the buses and found the service "superb". She stated that it was "mandatory" that the service be extended to the Palm Desert area, claiming that there was presently no reliable service to and from LAX which she felt she could recommend to her clients. In this regard she mentioned several complaints which she had heard or personally observed regarding Skyview's service from the Palm Desert area to LAX.

The director of sales and marketing for the Granada Royale Conference Center and Resort testified that that facility is scheduled to open on July 1, 1984, is in a "rapid growth community", "people mover conveyances" are needed to serve the facility, and that Pinetree's proposed fares and equipment would be satisfactory to Granada Royale clientele.

Finally, the executive director of a senior citizens center serving three Coachella Valley communities, including Palm Desert, testified that he supported Pinetree's proposal in the area, that he often had occasion to recommend transportation to LAX to seniors in the community, and that the only service presently available (Skyview) had been criticized by many of the seniors who had used it because of the amount of time it took to get to the airport and other unidentified

complaints. As a result, the center's board of directors had voted to remove Skyview literature from the center. On cross-examination, he testified that he was aware that some of these seniors travel to locations in western Los Angeles other than the airport, but has heard nothing of their feelings about the service to these areas (which Skyview apparently conducts).

Protestant's Showing

Ben Kalmuk, president of Skyview, testified in opposition to Pinetree's application. He explained that Skyview is a door-to-door transportation service using 14-passenger "custom built Chevrolet stretchout vehicles" and operating primarily between the western portion of Los Angeles and the Palm Springs area. Passengers are picked up at their homes, taken to transfer points where they are transferred to another vehicle and taken to their destination. He stated that the pickup procedure generally takes about 45 minutes, followed by a trip of about two hours to either Los Angeles or the Palm Springs area. Pickup at the eastern end of the route begins in Indian Wells in the Palm Desert area and proceeds into Palm Springs and then departs for Los Angeles. Kalmuk explained that he tries to put all those destined for LAX in one vehicle so they can all go directly to the airport. He said they generally arrive at LAX within 2 hours and 45 minutes.

Kalmuk stated that there is a season in Palm Springs from January to Memorial Day, after which there is a "mass exit out of the area". He added that people gradually begin returning about Thanksgiving, with the greatest upturn in January.

He stated that Skyview operates at a loss of between \$8,000 and \$10,000 during summer months, but it continues to operate year-round because of community dependence on it.

Kalmuk testified that Skyview made a net profit of over \$14,000 in 1982 but suffered a net loss of over \$7,400 in 1983. He attributed the loss to Pinetree's operation (which began on October 19, 1983) and stated that he believes it will "just lose a certain amount of money and then pull out", but in the meantime Skyview may have lost so many customers and so much money that it will not be able to continue operation. Further, based on his 15 years of experience in the area, he believes Pinetree's summer passenger projections should show a decrease rather than the increase indicated on Exhibit 1.

On cross-examination Kalmuk testified that Skyview caters to both residents and tourists. He also agreed that his 1983 sales totals were higher than his 1982 sales totals, but expenses, such as insurance, in 1983 were larger than in 1982. He further agreed, as his Exhibit 10 shows, that the number of passengers Skyview carried in November 1983 (Pinetree's first full month of service) was greater than the number carried in November 1982.

Discussion

The testimony presented at this hearing persuades us that our rationale in D.83-04-072 is still sound. Public convenience and necessity for the proposed expanded service were plainly illustrated by the testimony of witnesses from the Coachella Valley. Pinetree claims that while the service will initially lose money, it will become profitable by late 1985.

Pinetree's president Morey believes this to be an acceptable business risk and nothing in the record provides us with reason to doubt his judgment..

Further, we continue to believe that PU Code Section 1032 does not apply to the facts of this case because the two carriers serving the area, Pinetree and Skyview, offer such different types of services. And, even if Section 1032 is applicable, we still hold that monopoly service by one carrier is not satisfactory. Nor are we convinced that the market is saturated and that Pinetree's service will cause Skyview to lose money and be forced to discontinue its business. The data relied on by Skyview to illustrate this claim are unconvincing. In fact, they show an increase in sales after Pinetree commenced service in Palm Springs. For all of these reasons, we will grant Pinetree's application and deny Skyview's protest.

Findings of Fact

1. Pinetree holds a passenger stage corporation certificate authorizing various services between Palm Springs and LAX with an intermediate stop at ONT.
2. Pinetree seeks authority to provide an additional intermediate stop at the Granada Royale Homotel in Palm Desert.
3. Pinetree has the experience, financial resources, ability, and fitness to provide the proposed additional service.
4. Skyview protests Pinetree's application to provide additional service.
5. Skyview holds a passenger stage corporation operating certificate authorizing various services between the Palm Springs area, including Palm Desert, and the Los Angeles area, including LAX. It does not hold authority to serve ONT.

6. Skyview's service is door-to-door by advance reservation utilizing 14-passenger stretched Chevrolet vehicles.

7. Pinetree's service operates only between designated points at designated times using luxury highway buses with bathroom facilities.

8. Skyview is the only passenger stage operator presently providing direct service between the Palm Desert area and the Los Angeles area. Thus, Skyview has monopoly service of this route.

9. Monopoly passenger stage service by Skyview between the Palm Desert area and the Los Angeles area is not service to the satisfaction of this Commission.

10. Competition between Skyview and Pinetree on the Palm Desert area-Los Angeles area route will allow consumers a choice of differing types of service.

11. It can be seen with certainty that there is no possibility that the additional activity proposed by Pinetree may have a significant effect on the environment.

Conclusions of Law

1. Public convenience and necessity require expansion of Pinetree's present operations to include service to and from Palm Desert.

2. This order should be made effective on the date signed since there is a present need for the proposed service.

Only the amount paid to the State for operative rights may be used in rate fixing. The State may grant any number of rights and may cancel or modify the monopoly feature of these rights at any time.

O R D E R

IT IS ORDERED that:

1. A certificate of public convenience and necessity is granted to Pinetree Service Corporation, Inc., a corporation, authorizing it to expand its operations as a passenger stage corporation, as defined in PU Code Section 226, between the points and over the routes set forth in Sixth Revised Page 1 and Third Revised Page 2-A of Appendix A of D.92763, attached, to transport persons, baggage, and/or express.

2. Applicant shall:

- a. File a written acceptance of this certificate within 30 days after this order is effective.
- b. Establish the authorized service and file tariffs and timetables within 120 days after this order is effective.
- c. State in its tariffs and timetables when service will start; allow at least 10 days' notice to the Commission; and make timetables and tariffs effective 10 or more days after this order is effective.
- d. Comply with General Orders Series 79, 98, 101, and 104, and the California Highway Patrol safety rules.
- e. Maintain accounting records in conformity with the Uniform System of Accounts.
- f. Remit to the Commission the Transportation Reimbursement Fee required by PU Code Section 403 when notified by mail to do so.

3. Prior to initiating service to any airport, applicant shall notify the airport authority involved. This certificate does not authorize the holder 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.

4. Applicant is authorized to begin operations on the date that the Executive Director mails a notice to applicant that it has evidence of insurance on file with the Commission and that the California Highway Patrol has approved the use of applicant's vehicles for service.

5. The application is granted as set forth above.

This order is effective today.

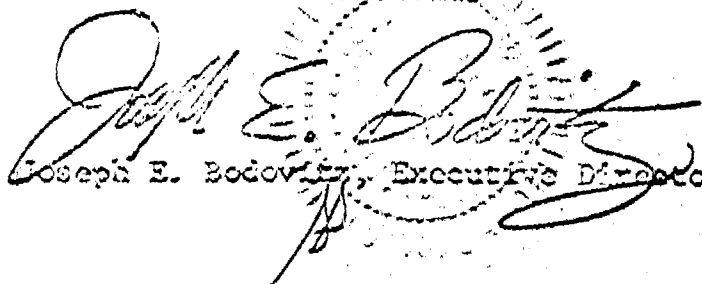
Dated AUG 1 1984, at San Francisco, California.

Commissioner Priscilla C. Grew,
being necessarily absent, did
not participate

Commissioner William T. Bagley
being necessarily absent, did
not participate.

LEONARD M. GRIMES, JR.
President
VICTOR CALVO
DONALD VIAL
Commissioners

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


Joseph E. Bodovitz, Executive Director

Appendix A
(D.92763)

PINETREE
SERVICE CORPORATION, INC.
(PSC-1152)

Sixth Revised Page 1
Cancels
Fifth Revised Page 1

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

Pinetree Service Corporation, Inc., by the certificate of public convenience and necessity granted by the decision noted in the margin, is authorized to operate on-call passenger transportation service between points in Los Angeles and Orange Counties, on the one hand, and Santa Anita Race Track, Hollywood Park, and Dodger Stadium, on the other hand, and daily scheduled passenger service and shipment of small packages, not to exceed 50 pounds in weight each, between San Diego International Airport (SAN) and Los Angeles International Airport (LAX), and between Bakersfield and LAX, and between Palm Desert*/ Palm Springs and LAX, over and along the routes described, subject, however, to the authority of this Commission to change or modify these routes at any time and subject to the following provisions:

- a. All "on-call" services authorized shall be limited to the transportation of round-trip passengers only.
- b. The term on-call as used refers to service which is authorized to be rendered dependent on the demands of passengers. The tariffs and timetables shall show the conditions under which each authorized on-call service will be rendered.
- c. When route descriptions are given in one direction, they apply to operation in either direction unless otherwise indicated.
- *d. This certificate does not authorize the holder to conduct any operations on the property of or into any airport unless such operation is authorized by the airport authority involved.

Issued by California Public Utilities Commission.

*Added by Decision 84 OS 112, Application 83-11-29.

Appendix A
(D.92763)

PINETREE
SERVICE CORPORATION, INC.
(PSC-1152)

Third Revised Page 2-A
Cancels
Second Revised Page 2-A

SECTION 2. AUTHORIZED POINTS OF ORIGIN/TERMINATION (Continued)

BAKERSFIELD TO LAX

Service will originate at the Bakersfield Inn, 1101 Union Avenue, Bakersfield, then via the most convenient and appropriate routes and highways to LAX.

PALM DESERT/PALM SPRINGS TO LAX*

Service will originate and terminate at the Granada Royale Homotel on Highway 111 in Palm Desert and LAX with intermediate en route stops in Palm Springs at the Spa Hotel, Indian Avenue and the 7 Springs Hotel, East Palm Canyon Drive, and at the Ontario International Airport (ONT).

Issued by California Public Utilities Commission.

*Revised by Decision S4 OS 112, Application 83-11-29.