

ORIGINAL

Decision 87-11-034 November 13, 1987

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 Convenience)
and Necessity to add two additional)
service points to augment their)
existing airport access service)
corridor between John Wayne Airport)
and Ontario International Airport)
and by the addition of three differ-)
ent service points in the Palm)
Springs area as well as the)
corporate limits of the City of)
Riverside as an additional service)
area to augment their existing Palm)
Springs service.)

Application 86-12-043
(Filed December 22, 1986)

John E. deBrauwere, Attorney at Law, for
Pinetree Service Corporation, Inc.,
applicant.

J. Terence Lyons, Attorney at Law, for
Airport Service, Inc. and Skyview
Limousine Service, Inc., protestants.

James R. Panella and Alok Kumar, for the
Transportation Division.

FINAL OPINION

The most significant issue in this proceeding concerns the relocation of applicant Pinetree Service Corporation's bus stops in Palm Springs/Palm Desert. Applicant's certificate specifies a hotel (the 7 Springs Hotel and the Granada Royale Hometel, respectively) as its stop in each community.

Each of those named hotels no longer permits applicant to use facility as a stop. Consequently, it can no longer provide the service required by its certificate.

Rather than abandon Palm Springs/Palm Desert service altogether, it now uses another hotel and a restaurant as stops. It concedes that its use of these substitute stops is technically a violation of its certificate. It proposes that the use of these new stops be ratified by a change to its certificate.

The proposal is controversial because both the hotel and the restaurant were already in use as consolidation points by a rival carrier, protestant Skyview Limousine Service, Inc. (Skyview). Rather than share these locations with a rival, Skyview moved its operations to other points¹ when applicant's unauthorized service began.

All parties are in agreement that applicant cannot be permitted to continue using stops other than those currently specified in its certificate. All parties are therefore agreed that disapproving the certificate changes proposed by applicant would effectively terminate its authority to operate between Los Angeles airport (LAX) and the Palm Springs/Palm Desert area.

The application also proposes adding a second stop in Palm Springs area; the location of the stop, the International Hotel Resort, is opposed by Skyview. It currently uses that hotel as a consolidation point.

The application also proposes to change the location of Pinetree's stop in San Bernardino from the San Bernardino Hilton Hotel to Kettle's Restaurant and to add Riverside as a service area. These changes are unopposed except that Staff wishes Riverside to be served at a designated point.

The application, as amended, also included proposals to add new Anaheim stops to other airport routes served by applicant. These changes were protested by Airport Service, Inc. Other

¹ Seasons Restaurant in Palm Desert and Billy Reed's Restaurant in Palm Springs.

changes in applicant's Anaheim service were the subject of Application (A.) 86-10-083, a related proceeding. As explained below, the Anaheim proposals have been disposed of by Decision (D.) 87-06-062 in this proceeding and D.87-03-018 in A.86-10-083.

Each of the relocations proposed in this application is needed because the proprietors of the hotels in question no longer permit applicant to use their facilities as stops. Applicant has previously filed a Route Revision Docket (RRD) request to ratify these relocations in August 23, 1985. Skyview Limousine, Inc. (protestant) protested the RRD. Assertedly, the Transportation Division Staff (Staff) then directed applicant to seek a hearing on the RRD matter. Applicant claims that it did so but that the hearing was never set.

A.86-10-083

That application was filed by Pinetree to provide "demand-response" service between the cities of Anaheim and Buena Park on one hand and John Wayne Airport, the Amtrak and the Orange County Transit District terminals in Anaheim. Such service, in conjunction with the Ontario/John Wayne Airport route modification sought in this proceeding, was intended to provide a single unified service with small vehicles to distribute passengers and large scheduled vehicles to provide over-the-road airport service. Pinetree sought to have A.86-10-083 consolidated with this application. The other protestant in this matter, Airport Service, Inc., attempted to protest A.86-10-083 as well as this application. The Commission notified the parties that both applications would be heard on a consolidated record. At about the same time, the Commission issued D.87-03-018 granting the authority sought in A.86-10-083.

Hearings and Submission

Hearings in this matter were held on March 12 and 13 before Administrative Law Judge Turkish. Additional hearings were held on April 6 and 7, 1987 before Administrative Law Judge Gilman:

the matter was taken under submission on May 28, 1987 with the filing of briefs by the Staff, applicant, and protestant Skyview.

Meanwhile, because of the withdrawal of Airport Service, Inc. as a protestant in this matter, Pinetree, on May 11, 1987 moved for partial ex parte relief which would grant that portion of the authority which was no longer opposed.

Staff responded with a formal filing, supporting the argument that the unprotested portion of the application should be treated as an ex parte matter.

The Commission issued an interim decision (D.87-06-062), adding the Anaheim stops to applicant's other routes. This decision, together with D.87-03-018 in A.86-10-083, resolved all pending requests relating to Anaheim service.

The remaining issues in this proceeding were submitted on June 9, 1987 upon filing of briefs.

Applicant Pinetree's Operation

Applicant conducts its ground transportation operation under the trade name "Airportcoach." It provides conventional scheduled service, pursuant to a filed and published timetable. Passengers are picked up and discharged directly at the LAX terminals, with the consent of LAX management. Applicant uses conventional full-size buses in its airport service.

A subsidiary, California Charter Buses, holds charter authority (TCP-33A).

Applicant's first authority (PSC-1152) was issued in D.92763 in A.60094. Its authority to serve Palm Springs at the

7 Springs Hotel was granted in D.83-04-072 in A.60598.² Its Palm Desert authority was granted in D.84-08-112 in A.82-04-72; it specified the Granada Royale Homotel as the stop. When the owners of these properties decided that they should not be used as bus stops, applicant decided to conduct its Palm Desert operation at the nearby Denny's Restaurant; the Palm Springs stop was moved to the Hilton Riviera Hotel. There was a similar pattern of events in San Bernardino. There the certificate specified the San Bernardino Hilton; applicant moved its stop to Kettle's Restaurant.

Protestant Skyview Limousine Service

Protestant Skyview is authorized to conduct a service between the Palm Springs/Palm Desert area and the Los Angeles area, which includes Los Angeles Airport (LAX).³ Its certificate authorizes a service area with protestant picking passengers up at any location designated by the passenger within a designated service territory. It has developed a service pattern where several vehicles will be used to pick up Palm Springs/Palm Desert passengers and transport them to predesignated points in the area where they will be consolidated. A smaller number of vehicles will carry the consolidated passenger loads into Los Angeles. The same pattern is used on the return trip. Skyview encourages passengers to make their own way to consolidation points so that they may board the consolidation vehicles directly. Skyview does not have a

2 The original authority provided for two stops. One stop was later eliminated by Route Revision Docket (RRD) 192 by Resolution PE-489. The primary reason for the elimination was that the points were too close together and the stop eliminated did not provide free long term parking for passengers. Applicant's certificate was modified to specify the 7 Springs Hotel as the only stop in that city.

3 It uses a hotel just off LAX property as a terminal. Passengers move to and from the airport proper on the hotel shuttle bus.

formal timetable; however, it has a de facto schedule with three arrivals and three departures at the same time each day on the LAX-Palm Springs/Palm Desert Route.

When applicant received its Palm Springs/Palm Desert certificate, Skyview was using Denny's Restaurant as its Palm Desert consolidation point. In Palm Springs, Skyview used the Hilton Riviera Hotel and the International Hotel Resort as consolidation points.

When applicant Pinetree began using Denny's Restaurant as its Palm Desert service point, Skyview then moved to Seasons Restaurant which is nearby. After Pinetree began using the Hilton Riviera Hotel as its Palm Springs terminal, Skyview began to use Billy Reed's Restaurant which is close to the Hilton Riviera Hotel.

Despite its name and advertising, Skyview uses stretched Chevrolet Suburban vehicles. The vehicles are constructed on a full-size truck chassis; as originally constructed, they have four doors and two rows of permanent seats. The stretching process lengthens the chassis, adding two more doors on each side and two rows of seats.

Applicant's Contentions

Applicant asserts that this is not a normal application for a certificate of public convenience and necessity. It contends that the proceeding which granted its existing certificate demonstrated a need for scheduled airport service between points in Palm Springs/Palm Desert and LAX. It theorizes that a proposal to change from one terminal to another does not require it to re-prove public need for the service. It argues that the only reason that the ratification question has been presented in a formal certificate application is because of Skyview's obstructionism and the Staff's failure to set a hearing when the RRD seeking terminal changes was protested by Skyview.

Applicant claims that the two services are not competitive. It points out that its service is scheduled, operates

only from specific points in the Palm Springs/Palm Desert area and uses large conventional over-the-road buses. While applicant concedes that Skyview has developed a de facto schedule, it contends that protestant's basic operation is a door-to-door service with the passengers designating not only the pickup or delivery point in Palm Springs but the pickup or delivery point in the Los Angeles area.

Applicant contends that Skyview, unlike a scheduled carrier, is able to change its consolidation points at will. It only needs to give the passengers a different rendezvous location when they call in for a reservation. Applicant alleges that consequently protestant should have been able to change its consolidation points without loss of revenue. It scoffs at the notion that a reservation-only carrier can "develop" traffic at a specific point.

Applicant contends that "...the scheduled carrier [itself], through processes totally beyond its control have [sic] essentially had their terminal or station yanked out from under them. They have a scheduled service they are obliged to either operate or go out of business. They have a duty to serve the public on a scheduled basis." Applicant argues that it was better for it to operate unlawfully from a terminal other than that specified in its certificate than to go out of business altogether.

It contends that the true motive for Skyview's protest is to make it impossible for the public to enjoy scheduled service from and to the Palm Springs/Palm Desert area.

Applicant also notes that Skyview has not suffered a reduction in traffic as a result of Pinetree's entry into the market.

Even though it does not concede that the two operations are competitive, applicant also asserts that competition is

inherently in the public interest (American BusLines, Inc. (1980)
3 CPUC 2d 246).

Applicant also contends that Skyview service is not service to the Commission's satisfaction. It argues that its rival does not have specific authority to pick up passengers at LAX and that it does not pay the LAX airport tax. Rather, it consolidates at a hotel a substantial distance from the airport terminal. Passengers take the free hotel shuttle bus from LAX to the hotel.

Applicant argues that if a Skyview passenger is late and misses the limousine, he must wait three or four hours for the next schedule.

Applicant also points out that Skyview's vehicles are not radio-dispatched. Finally, it points out that there were complaints about Skyview's conduct from employees of the International Resort Hotel.

To summarize its position, applicant argues that the public requires alternative forms of service in the Palm Springs/Palm Desert area. It argues that if the protestant's position is upheld, there will have been a de facto cancellation of its certificate without either significant misconduct or a change in the public need.

Protestant's Position

Protestant Skyview assails applicant's decision to move to these particular terminal points as "a predatory course of conduct" intended to "capture Skyview's established patronage for itself"; it also notes that Pinetree unilaterally made the changes without Commission authority and persisted despite a directive from the Staff to comply with its certificate.

It argues that if Pinetree had been willing to move its service location to other points not used by Skyview, "Skyview would likely have had no objection" to relocation.

Protestant relies heavily on language from D.85-02-022 in A.84-04-072. That was the proceeding in which applicant, over

Skyview's protest, was awarded the right to serve Palm Desert (D.84-08-112). The Commission did not, as the application proposed, grant it an area certificate; rather, the certificate authorized service to and from the Granada Royale Homotel. Applicant responded by filing a petition for modification, again proposing that it be granted an area certificate.

That petition was denied by D.85-02-022. In that decision the Commission stated: "The amended petition attempts to add facts not in evidence--e.g., a definition of the key phrase, and the map of this area described--to the record of this proceeding. Such addition is not a proper function of a petition for modification." The Commission went on to state "even if the information added by the amended petition had been a part of the original application we would not modify our decision since the proof elicited at the hearing was not sufficient to warrant authorization broader than which we granted."

From this, protestant concludes that the Commission's finding of public convenience and necessity was limited to service at particular points. It reasons therefore that moving a terminal point necessitates proof of public need and all of the other elements required by an application for new authority. It contends that applicant has not demonstrated public need for the "new" service and that the application should therefore be denied.

Protestant concedes that adopting its recommendations would effectively cancel applicant's certificate to serve Palm Springs and Palm Desert. However, it asserts that this is the appropriate consequence of applicant's failure to specify any alternative terminal points. It states "the only thing that can result in Pinetree's losing its authority to serve Palm Springs and Palm Desert is its greedy insistence [sp] upon selecting only Skyview [sic] terminal points in those communities. For Pinetree then to suggest that Skyview is to blame for the possible termination of Pinetree's service in this area is the height of

arrogance." Protestant argues that such an outcome would not injure the public since protestant is ready to serve all available LAX traffic.

Staff's Position

Staff emphasizes that the operations and vehicles of the two carriers are significantly different. It recognizes that denial of Pinetree's application would effectively terminate its service in the Palm Springs area. It argues that this would be against the present policy of the Commission and adverse to the public interest.

With regard to the Palm Springs/Palm Desert relocations Staff is convinced that the applicant had no choice but to move when it did. On the other hand, it criticizes Pinetree for making this change without Commission authority and recommends sanctions.

With regard to the addition of a new Palm Springs stop, the Staff believes that the protest should be disregarded. It raised the issue of the structural safety of stretched vehicles. It concludes protestant's operation should not be considered "service to the satisfaction of the Commission" (Section 1032 PU Code) and that therefore both carriers should be authorized to use the International Hotel as a stop.

It recognizes the possibility of predatory scheduling with one carrier bringing in vehicles in time to "poach" passengers waiting for the other. It recommends that this can be avoided by prohibiting applicant from operating a schedule one hour before or 15 minutes after Skyview's schedules. It has not explained the derivation of those particular time limits.

Finally, Staff notes that Pinetree plans to implement a "new, innovative idea in the Anaheim area which is, in essence, a combination of "On-call" and "Scheduled" service as a result of the combined authority granted in A.86-10-083 and that provided by our previous order in this proceeding." It cites testimony by the applicant that van service through a consolidation point at another

hotel (The Alicante Princess) is desirable for full implementation of this concept "although it was not applied for in A.86-10-083 or in A.86-12-043. The Staff opines that permission to serve between the Alicante Princess Hotel and Anaheim on an on-call basis is required and should be granted for the success of this concept."

In summary, Staff argues that: the Palm Springs/Palm Desert relocation should be granted and applicant should be authorized to establish a new terminal at the International Hotel Resort subject to schedule restrictions. It asserts that the San Bernardino relocation and the addition of the Alicante Princess Hotel should be granted. It supports the addition of Riverside as a service point; however, it contends that the carrier should be restricted to a specific terminal. Finally, it recommends that Pinetree should be penalized for disobeying Public Utilities Code Section 491.

Discussion

The Palm Springs/Palm Desert Relocations

All parties are in agreement that we must either accept the substitute service points selected by applicant or effectively suspend its service to the public in the Palm Springs/Palm Desert area.

While we are dissatisfied with applicant's failure to explain why it wants these particular stops and no others, we will not, as protestant recommends, express our dissatisfaction by restoring the monopoly to provide Palm Springs/Palm Desert-LAX service, which it enjoyed prior to the issuance of applicant's certificate.

We have found that applicant and protestant offer two different classes of airport service; the public should remain free to choose between them. Protestant's is a specialized service. Those who would prefer applicant's more conventional service and conventional vehicles should have freedom of choice. Moreover,

forcing patrons to rely on protestant alone would subject them to the inconvenience and delay of a transfer from a hotel's airport shuttle bus to protestant's vehicle at LAX.

We have also noted that protestant's certificate has twice been suspended for insurance lapses. The public should not be forced to exclusively rely upon a carrier with this history of suspensions.

Since we have concluded that it is better for the public to maintain both classes of service, we will reluctantly adopt the outcome proposed by applicant.

It is not necessary to decide whether applicant had any other options when hotel managements asked it to move. Nor is it necessary to determine if it had an improper motive in selecting these particular sites for service points. We can and should dispose of this proceeding by determining what the public interest requires; if sanctions are to be imposed, as Staff recommends, we should select one which does not injure the public.

Interpretation of D.85-02-022

We cannot adopt protestant's interpretation of that decision. On its face, it dealt with the type of proof needed to convert a point certificate to an area certificate, i.e., one such as the certificate protestant uses to offer door-to-door service. However, the decision offers no guidance for determining what proof is needed when applicant can no longer use a designated service point and must move to another.

We have, therefore, rejected protestant's argument; we have concluded that public need for an alternative service to the Palm Springs/Palm Desert area has already been established.

The Second Stop

Applicant relies on its interpretation of D.85-02-022 to support its contention that there should be no second Palm Springs stop. As explained above, we have rejected that interpretation.

Since we are merely restoring authority which applicant once had, we will find that the public needs a second Palm Springs stop.

The only other question is whether this new stop should be located at a hotel already in use as one of protestant's collection points. Applicant's brief apparently relies on evidence from the Staff of that hotel criticizing the dress and deportment of protestant's drivers. We have found otherwise.

There was also an incident where protestant refused to delay for a passenger who supposedly needed to visit the powder room. This latter contention was effectively refuted by protestant. Its driver did allow a reasonable delay for that purpose and another to find her glasses. Apparently, he refused to wait any longer only after he found the passenger enjoying a cup of coffee in the coffee shop.

We have consequently found that this incident does not show that protestant is offering unsatisfactory service.

Protestant's basis for objecting to sharing the stop at the International Hotel Resort is its fear of schedule abuses. As noted in the discussion labelled Schedule Regulation, we believe that the Staff proposal for schedule regulation effectively counters protestant's argument. We will, therefore, not require protestant to find another location for its second stop.

Schedule Regulation

Staff recommends that Pinetree should be required to adhere to a schedule which will accommodate Skyview Limousine's timetable. More precisely, Pinetree could not schedule a departure within one hour before and 15 minutes after a scheduled departure of Skyview. While Staff has proposed this arrangement for the service from the International Hotel, it presumably could be applied at any other location where applicant and Skyview share a stop.

Staff's recommendation may deter poaching whenever applicant and protestant share a stop. Since poaching is an unfair

method of competition which does not promote better service or lower fares, we will adopt the recommendation with minor modifications.

First, we can find no reason why schedule protection should be afforded to only one of the competitors. We will therefore authorize Staff to reject any timetable revision from either party which does not provide adequate schedule protection for its competitor at any shared stop in the Palm Springs/Palm Desert area. (This is our first experience with schedule regulation, and an *ad hoc* temporary procedure should be adopted to deal with unforeseen difficulties. Therefore, we will provide that either carrier may seek review of Staff action under this order, by means of a petition to reopen in this proceeding.)

Staff has not explained how it derived its recommendation that protection for each departure last for a total of an hour and a quarter. However, that does not seem to be a significant problem. We will provide the carriers may agree among themselves for shorter times. If no agreement is reached, the shortest time proposed by either will be applied to both.

In light of the potential administrative difficulties inherent in schedule regulation, we do not view its use as generally applicable in passenger carrier cases. We apply it here with reluctance and only because it may prove workable under the facts and circumstances of this particular case.

Safety Issues

The Staff's interest in passenger safety is of course commendable. If it has evidence that stretchout vehicles are unsafe, it should proceed with all deliberate speed to take measures to protect the public. However, this is not an appropriate proceeding in which to determine safety questions.

Limitations on the Riverside Service

We have adopted Staff's proposal that the Riverside service be confined to a service point rather than to an area. As in D.85-02-022 (*supra*) there was no proof that an area certificate is needed. However, since no specific terminal has been suggested,

we will issue a certificate which limits applicant to terminal service but which leaves the selection of the terminal point to the timetable filing and approval process.

Service to the Alicante Princess

Neither Staff nor applicant has pointed out any portion of the voluminous pleadings in this matter which constitutes an application to conduct such service. We cannot therefore grant applicant the authority proposed by Staff.

Sanctions

Staff recommends that we impose unspecified sanctions on applicant. We cannot adopt this position, since an application is not the appropriate type of proceeding in which to consider sanctions. This conclusion does not preclude Staff from initiating a proper proceeding, nor does this decision prejudge either its claims or likely defenses.

Staff Comments/Modifications of Proposed Decision

On November 5, the Staff filed comments challenging the proposed decision. Its comments are based on a supposed principle of law--that a carrier such as Skyview which holds itself out to embark non-reservation passengers at specified time at a named hotel or restaurant is nevertheless an on-call carrier which is not required to file its timetable under GO 98-A. It has not cited any support for this proposition either in the case law, in the order itself, or its administrative history. We will not adopt a conclusion of law to that effect.

The proposed decision describes a Skyview timetable, Timetable No. 4, as still being in effect. As of today, that timetable is not in the official timetable files. We will therefore eliminate the proposed decision's discussion of protestant's standing, Finding 7, and Conclusion 4. Substitute Finding 7 describes protestant's service. There will be no substitute for Conclusion 4; subsequent conclusions will be renumbered.

We should emphasize that this decision does not ratify the Staff practice which apparently requires a timetable filing

from an all-scheduled carrier, but not from another which offers both on-call service and a service such as described in Finding 7.

Staff concludes that protestant does not need to file a timetable to conduct a Finding 7 service at a stop shared by applicant. It therefore proposes that the schedule regulation described in the proposed decision should apply to applicant only. We are not persuaded that this conclusion correctly states the law. We have not modified the proposed decision on this point.

It seems highly unlikely that protestant Skyview would institute such a service without a timetable filing. (We note that Skyview has not challenged the proposed decision.) In the unlikely event that Skyview were to take such a step, Staff action would not be necessary; we would expect that applicant would file a protest to protect its own schedule.

Staff complains that the proposed decision is ambiguous concerning the minimum length of time separation between the two carriers' schedule. A hypothetical will remove any possible doubt as to the meaning of Ordering Paragraph 3. If, for example, one of the carriers proposes a run departing a shared stop 15 minutes before a scheduled departure by the other carrier, the latter has two options. It may adopt the 15-minute separation as reasonable and file its own timetable with a minimum 15-minute separation from the first carrier's departures. The 15-minute separation would become prima facie reasonable for both carriers' schedules. Alternatively, it may protest to seek a Commission finding that the public needs a longer minimum separation in both carriers' schedules. No change in the discussion, conclusions, or order is necessary.

We have also, on our own motion, made a nonsubstantive change to the description of applicant's contentions on mimeo. page 7.

Findings of Fact

1. The management of the hotels named as applicant's service points in Palm Springs, Palm Desert, and San Bernardino have denied applicant permission to use their properties.

2. Applicant now instead uses Denny's Restaurant in Palm Desert, the Riviera Hilton Hotel in Palm Springs, and Kettle's Restaurant in San Bernardino as substitute service points.

3. Applicant has not explained why it chose those points as substitute service points. It has not shown that these points are fully satisfactory to the public.

4. None of the parties has recommended any means of enabling applicant to continue service to Palm Springs/Palm Desert other than to change its certificate to substitute Denny's Restaurant in Palm Desert and the Hilton Riviera Hotel in Palm Springs for the existing service points. The substitution of Kettle's Restaurant for the Hilton Hotel in San Bernardino is unopposed.

5. Protestant has twice allowed its insurance to lapse. Its service is not reliable enough to be satisfactory to the Commission as the only service in the area if this application were to be denied.

6. Protestant has not filed a timetable which describes all of the actual operations conducted at its consolidation points in Palm Springs and Palm Desert.

7. Protestant Skyview will accept passengers without reservations if they arrive at any of its Palm Springs/Palm Desert consolidation points while a LAX-bound vehicle is loading. This occurs at three specified times each day. Skyview has published a document which specifies the points and times.

8. Protestant does not pick up or deliver passengers to LAX terminals. They must change from a hotel shuttle to protestant's vehicle or vice versa at a hotel near LAX.

9. Protestant uses stretched Suburban vehicles.

10. Applicant offers conventional scheduled service to specific service points, in the Palm Springs/Palm Desert using conventional over-the-road buses. Applicant picks up and delivers at LAX without vehicle changes.

11. Applicant and protestant offer different classes of ground transportation to the airport. Passengers who do not wish to travel in stretched vehicles or to make vehicle changes and who do not wish to pay for door-to-door service should have an alternative.

12. Protestant had good cause not to delay a trip to LAX for a passenger who asked for a delay and purchased coffee to drink in the coffee shop.

13. There is insufficient evidence to find that protestant's drivers are not dressed neatly or that their deportment is unsatisfactory.

14. Protestant's service as described in its timetable is a specialized service meeting a part of the public need. If conventional scheduled service is available to the public as an alternative, protestant's current service as described in the timetable is satisfactory to the Commission except as set forth in findings 4 and 5.

15. If applicant and protestant share a stop in the cities of Palm Spring or Palm Desert, control of both carrier's schedules will prevent either from poaching. The Staff recommendation to impose such control should be adopted with modifications.

16. Whenever both applicant and protestant share a stop, both carriers should be subject to schedule regulation. Rather than adopting the Staff proposed time limits, we should allow both carriers to cooperate in fixing time limits.

17. Since there is no opposition, application should be authorized to relocate its San Bernardino service point.

18. Applicant should be once again authorized two stops in Palm Springs.

19. No party has proposed a site for the second site other than the International Hotel Resort.

20. The International Hotel Resort is in use as a consolidation point by protestant. It also offers a service at this point for non-reservation, non door-to-door customers.

21. Public convenience and necessity requires that applicant institute service to a service point in the city of Riverside on its Palm Springs/Palm Desert route.

22. Applicant has not alleged or shown any fact justifying grant of an area certificate in Riverside. It should be authorized to serve the public need for LAX-Riverside transportation at a point to be specified in its timetable.

Conclusions of Law

1. Because none of the parties offered alternatives, the only means available to protect the public's opportunity to choose between classes of service in the Palm Springs/Palm Desert area is to grant applicant the relief it seeks.

2. The Commission has determined that public convenience and necessity require applicant's service on its route between Palm Springs/Palm Desert, and LAX. No additional finding of public convenience and necessity is needed to order a relocation of stops in those communities. No additional finding of public convenience and necessity is required to restore the second stop.

3. The Commission should not consider safety of all stretched vehicles in a certificate application in which the only user of such vehicles is a protestant.

4. Without a pleading requesting such additional authority, the Commission cannot in this proceeding authorize applicant to add the Alicante Princess as a stop on its Anaheim shuttle. ✓

5. The Commission does not ordinarily consider sanctions in application proceedings. Nothing in this order prohibits Staff from initiating sanction proceedings against either carrier party. Nothing in this order should be construed as limiting the issues to be considered in such proceeding. ✓

6. The applicant's certificate for Palm Springs/Palm Desert service should be amended to authorize the relocation of service points in Palm Springs, Palm Desert, and San Bernardino; an unspecified service point should be added in Riverside. In Palm Springs, applicant should be authorized a second service point at the International Hotel Resort. ✓

7. Staff should be authorized to reject any timetable filing from either party for service to Palm Springs/Palm Desert-LAX service if there is shared stop, and the filing does not provide reasonable schedule separation. The length of protection proposed should be deemed reasonable if agreed to by both carriers. If there is disagreement over time periods, both carriers should be permitted to file using the shortest time proposed by either carrier. ✓

FINAL ORDER

IT IS ORDERED that:

1. Applicant Pinetree Service Corporation, Inc.'s certificate of public convenience and necessity, Appendix PSC-1152, is amended by substituting First Revised Page 6 for Original Page 6.

2. Applicant shall:

- a. File a written acceptance of this revision of certificate within 30 days after this order is effective.
- b. Establish the revised 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.

3. Staff is authorized to reject any timetable filing from either party for service to Palm Springs/Palm Desert-LAX service if there is a shared stop, and the filing does not provide reasonable schedule separation at that stop. The length of protection proposed is deemed reasonable if agreed to by both carriers. If there is disagreement over time periods, Staff shall accept a filing using the shortest time proposed by either carrier.

This order becomes effective 30 days from today.

Dated NOV 13 1987, at San Francisco, California.

STANLEY W. FOLETT
President
FREDERICK R. DUDA
G. MITCHELL WILK
JOHN B. OHANIAN
Commissioners

Commissioner Donald Vial, being necessarily absent, did not participate.

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

Victor Weiss
Victor Weiss, Executive Director

ph

Appendix PSC-1152

PINETREE SERVICE
CORPORATION, INC.

First Revised Page 6
Cancels
Original Page 6

(PROPOSED)

*Route 6. Palm Desert/Palm Springs to LAX

Commencing at Denny's Restaurant, Highway 111, Palm Springs thence over the most convenient streets and highways to the following service points: The Palm Springs Hilton Riviera Hotel, Desert Avenue, and International Hotel Resort, East Palm Canyon Drive, both in Palm Springs, Kettle's Restaurant, 219 E. Hospitality Way, San Bernardino, a point in the City of Riverside to be specified in carrier's timetable, Ontario International Airport (ONT) and Los Angeles Airport (LAX).

Route 7. Deleted

Route 8. Deleted

Route 9. Camp San Onofre, Horno, San Mateo, Talega, or Christianitos - Disneyland (Anaheim)

Commencing at gates to Camps San Onofre, Horno, San Mateo, Talega, or Christianitos; then via Interstate Highway 5 (San Diego Freeway and Santa Ana Freeway), Katella Avenue, Anaheim, and West Street to Disneyland.

Issued by California Public Utilities Commission.

*Changed by Decision 87 11 034, Application 86-12-043.

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area to augment their existing Palm)
Springs service.)

Application 86-12-043
(Filed December 22, 1987)

John E. deBrauwere, Attorney at Law, for
Pinetree Service Corporation, Inc.,
applicant.
J. Terence Lyons, Attorney at Law, for
Airport Service, Inc. and Skyview
Limousine Service, Inc., protestants.
James R. Panella and Alok Kumar, for the
Transportation Division.

FINAL OPINION

The most significant issue in this proceeding concerns the relocation of applicant Pinetree Service Corporation's bus stops in Palm Springs/Palm Desert. Applicant's certificate specifies a hotel (the 7 Springs Hotel and the Granada Royale Homotel, respectively) as its stop in each community.

Each of those named hotels no longer permits applicant to use facility as a stop. Consequently, it can no longer provide the service required by its certificate.

7 Springs Hotel was granted in D.83-04-072 in A.60598.² Its Palm Desert authority was granted in D.84-08-112 in A.82-04-72; it specified the Granada Royale Homotel as the stop. When the owners of these properties decided that they should not be used as bus stops, applicant decided to conduct its Palm Desert operation at the nearby Denny's Restaurant; the Palm Springs stop was moved to the Hilton Riviera Hotel. There was a similar pattern of events in San Bernardino. There the certificate specified the San Bernardino Hilton; applicant moved its stop to Kettle's Restaurant.

Protestant Skyview Limousine Service

Protestant Skyview is authorized to conduct a service between the Palm Springs/Palm Desert area and the Los Angeles area, which includes Los Angeles Airport (LAX).³ Its certificate authorizes a service area with protestant picking passengers up at any location designated by the passenger within a designated service territory. It has developed a service pattern where several vehicles will be used to pick up Palm Springs/Palm Desert passengers and transport them to predesignated points in the area where they will be consolidated. A smaller number of vehicles will carry the consolidated passenger loads into Los Angeles. The same pattern is used on the return trip. Skyview encourages passengers to make their own way to consolidation points so that they may board the consolidation vehicles directly. Skyview does not have a

2 The original authority provided for two stops. One stop was later eliminated by Route Revision Docket (RRD) 192 by Resolution PE-489. The primary reason for the elimination was that the points were too close together and the stop eliminated did not provide free long term parking for passengers. Applicant's certificate was modified to specify the 7 Springs Hotel as the only stop in that city.

3 It uses a hotel just off LAX property as a terminal. Passengers move to and from the airport proper on the hotel shuttle bus.

only from specific points in the Palm Springs/Palm Desert area and uses large conventional over-the-road buses. While applicant concedes that Skyview has developed a de facto schedule, it contends that protestant's basic operation is a door-to-door service with the passengers designating not only the pickup or delivery point in Palm Springs but the pickup or delivery point in the Los Angeles area.

Applicant contends that Skyview, unlike a scheduled carrier, is able to change its consolidation points at will. It only needs to give the passengers a different rendezvous location when they call in for a reservation. Applicant alleges that protestant was able to change its consolidation points without adverse affect; it would only need to give the reservation passenger a different rendezvous point. It scoffs at the notion that a reservation-only carrier can "develop" traffic at a specific point.

Applicant contends that "...the scheduled carrier [itself], through processes totally beyond its control have [sic] essentially had their terminal or station yanked out from under them. They have a scheduled service they are obliged to either operate or go out of business. They have a duty to serve the public on a scheduled basis." Applicant argues that it was better for it to operate unlawfully from a terminal other than that specified in its certificate than to go out of business altogether.

It contends that the true motive for Skyview's protest is to make it impossible for the public to enjoy scheduled service from and to the Palm Springs/Palm Desert area.

Applicant also notes that Skyview has not suffered a reduction in traffic as a result of Pinetree's entry into the market.

Even though it does not concede that the two operations are competitive, applicant also asserts that competition is

Skyview's protest, was awarded the right to serve Palm Desert (D.84-08-112). The Commission did not, as the application proposed, grant it an area certificate; rather, the certificate authorized service to and from the Granada Royale Homotel. Applicant responded by filing a petition for modification, again proposing that it be granted an area certificate.

That petition was denied by D.85-02-022. In that decision the Commission stated: "The amended petition attempts to add facts not in evidence--e.g., a definition of the key phrase, and the map of this area described--to the record of this proceeding. Such addition is not a proper function of a petition for modification." The Commission went on to state "even if the information added by the amended petition had been a part of the original application we would not modify our decision since the proof elicited at the hearing was not sufficient to warrant authorization broader than which we granted."

From this, protestant concludes that the Commission's finding of public convenience and necessity was limited to service at particular points. It reasons therefore that moving a terminal point necessitates proof of public need and all of the other elements required by an application for new authority. It contends that applicant has not demonstrated public need for the "new" service and that the application should therefore be denied.

Protestant concedes that adopting its recommendations would effectively cancel applicant's certificate to serve Palm Springs and Palm Desert. However, it asserts that this is the appropriate consequence of applicant's failure to specify any alternative terminal points. It states "the only thing that can result in Pinetree's losing its authority to serve Palm Springs and Palm Desert is its greedy insistence [sp] upon selecting only Skyview [sic] terminal points in those communities. For Pinetree then to suggest that Skyview is to blame for the possible termination of Pinetree's service in this area is the height of

forcing patrons to rely on protestant alone would subject them to the inconvenience and delay of a transfer from a hotel's airport shuttle bus to protestant's vehicle at LAX.

We have also noted that protestant's certificate has twice been suspended for insurance lapses. The public should not be forced to exclusively rely upon a carrier with this history of suspensions.

Since we have concluded that it is better for the public to maintain both classes of service, we will reluctantly adopt the outcome proposed by applicant.

It is not necessary to decide whether applicant had any other options when hotel managements asked it to move. Nor is it necessary to determine if it had an improper motive in selecting these particular sites for service points. We can and should dispose of this proceeding by determining what the public interest requires; if sanctions are to be imposed, as Staff recommends, we should select one which does not injure the public.

Protestant's Standing

Under the General Order (GO) 98-A passenger stages must file a timetable. Protestant's filed timetable has not been amended since it was first authorized to serve Palm Springs/Palm Desert. The timetable indicates that it conducted only door-to-door service. It did not amend the filing when it began to board and disembark non-door-to-door passengers at its consolidation points.

Because of this added service, protestant now claims to be a scheduled carrier in direct competition with applicant. As such it claims the right to challenge what it regards as unfair competition. We should, however, not allow it to protest irregularities in an alleged competitor's scheduling when it has itself not complied with GO 98-A. We should not recognize its standing to protest a competitor's proposal to make service changes

until its own competitive service is in compliance with the General Order.

While its introduction of a de facto schedule without amending the timetable has almost certainly not injured the public, nevertheless, we should warn that it should either amend its timetable to describe its complete service or perform only the service described in its timetable.

Interpretation of D.85-02-022

We cannot adopt protestant's interpretation of that decision. On its face, it dealt with the type of proof needed to convert a point certificate to an area certificate, i.e., one such as the certificate protestant uses to offer door-to-door service. However, the decision offers no guidance for determining what proof is needed when applicant can no longer use a designated service point and must move to another.

We have, therefore, rejected protestant's argument; we have concluded that public need for an alternative service to the Palm Springs/Palm Desert area has already been established.

The Second Stop

Applicant relies on its interpretation of D.85-02-022 to support its contention that there should be no second Palm Springs stop. As explained above, we have rejected that interpretation. Since we are merely restoring authority which applicant once had, we will find that the public needs a second Palm Springs stop.

The only other question is whether this new stop should be located at a hotel already in use as one of protestant's collection points. Applicant's brief apparently relies on evidence from the staff of that hotel criticizing the dress and deportment of protestant's drivers. We have found otherwise.

There was also an incident where protestant refused to delay for a passenger who supposedly needed to visit the powder room. This latter contention was effectively refuted by protestant. Its driver did allow a reasonable delay for that

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We have consequently found that this incident does not show that protestant is offering unsatisfactory service.

Protestant's basis for objecting to sharing the stop at the International Hotel Resort is its fear of schedule abuses. As noted in the discussion labelled Schedule Regulation, we believe that the Staff proposal for schedule regulation effectively counters protestant's argument. We will, therefore, not require protestant to find another location for its second stop.

Schedule Regulation

Staff recommends that Pinetree should be required to adhere to a schedule which will accommodate Skyview Limousine's timetable. More precisely, Pinetree could not schedule a departure within one hour before and 15 minutes after a scheduled departure of Skyview. While Staff has proposed this arrangement for the service from the International Hotel, it presumably could be applied at any other location where applicant and Skyview share a stop.

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Generally speaking, Staff's recommendation is an appropriate way to deter poaching whenever applicant and protestant share a stop. Since poaching is an unfair method of competition which does not promote better service or lower fares, we will adopt the recommendation with minor modifications.

First, we can find no reason why schedule protection should be afforded to only one of the competitors. We will therefore authorize Staff to reject any timetable revision from either party which does not provide adequate schedule protection for its competitor at any shared stop in the Palm Springs/Palm Desert area. (This is our first experience with schedule regulation, and an ad hoc temporary procedure should be adopted to deal with unforeseen difficulties. Therefore, we will provide that

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Staff has not explained how it derived its recommendation that protection for each departure last for a total of an hour and a quarter. However, that does not seem to be a significant problem. We will provide the carriers may agree among themselves for shorter times. If no agreement is reached, the shortest time proposed by either will be applied to both.

Safety Issues

The Staff's interest in passenger safety is of course commendable. If it has evidence that stretchout vehicles are unsafe, it should proceed with all deliberate speed to take measures to protect the public. However, this is not an appropriate proceeding in which to determine safety questions.

Limitations on the Riverside Service

We have adopted Staff's proposal that the Riverside service be confined to a service point rather than to an area. As in D.85-02-022 (supra) there was no proof that an area certificate is needed. However, since no specific terminal has been suggested, we will issue a certificate which limits applicant to terminal service but which leaves the selection of the terminal point to the timetable filing and approval process.

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Service to the Alicante Princess

Neither Staff nor applicant has pointed out any portion of the voluminous pleadings in this matter which constitutes an application to conduct such service. We cannot therefore grant applicant the authority proposed by Staff.

Sanctions

Staff recommends that we impose unspecified sanctions on applicant. We cannot adopt this position, since an application is not the appropriate type of proceeding in which to consider sanctions. This conclusion does not preclude Staff from initiating

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Staff Comments/Modifications of Proposed Decision

On November 5, the Staff filed comments challenging the proposed decision. Its comments are based on a supposed principle of law--that a carrier such as Skyview which holds itself out to embark non-reservation passengers at specified time at a named hotel or restaurant is nevertheless an on-call carrier which is not required to file its timetable under GO 98-A. It has not cited any support for this proposition either in the case law, in the order itself, or its administrative history. We will not adopt a conclusion of law to that effect.

The proposed decision describes a Skyview timetable, Timetable No. 4, as still being in effect. As of today, that timetable is not in the official timetable files. We will therefore eliminate the proposed decision's discussion of protestant's standing, Finding 7, and Conclusion 4. Substitute Finding 7 describes protestant's service. There will be no substitute for Conclusion 4; subsequent conclusions will be renumbered.

We should emphasize that this decision does not ratify the Staff practice which apparently requires a timetable filing

a proper proceeding, nor does this decision prejudice either its claims or likely defenses.

Findings of Fact

1. The management of the hotels named as applicant's service points in Palm Springs, Palm Desert, and San Bernardino have denied applicant permission to use their properties.

2. Applicant now instead uses Denny's Restaurant in Palm Desert, the Riviera Hilton Hotel in Palm Springs, and Kettle's Restaurant in San Bernardino as substitute service points.

3. Applicant has not explained why it chose those points as substitute service points. It has not shown that these points are fully satisfactory to the public.

4. None of the parties has recommended any means of enabling applicant to continue service to Palm Springs/Palm Desert other than to change its certificate to substitute Denny's Restaurant in Palm Desert and the Hilton Riviera Hotel in Palm Springs for the existing service points. The substitution of Kettle's Restaurant for the Hilton Hotel in San Bernardino is unopposed.

5. Protestant has twice allowed its insurance to lapse. Its service is not reliable enough to be satisfactory to the Commission as the only service in the area if this application were to be denied.

6. Protestant has not filed a timetable which describes all of the actual operations conducted at its consolidation points in Palm Springs and Palm Desert.

7. The service described in protestant's timetable is an operation under which a passenger can be transported only by making an advance reservation and specifying a pick up or delivery point in Palm Springs/Palm Desert service area. The timetable does not describe another service it conducts to serve LAX by which non-reservation, non door-to-door patrons will be carried if they appear at a consolidation point before the vehicle departs.

Departures are at predesignated times, not specified in the timetable.

8. Protestant does not pick up or deliver passengers to LAX terminals. They must change from a hotel shuttle to protestant's vehicle or vice versa at a hotel near LAX.

9. Protestant uses stretched Suburban vehicles.

10. Applicant offers conventional scheduled service to specific service points, in the Palm Springs/Palm Desert using conventional over-the-road buses. Applicant picks up and delivers at LAX without vehicle changes.

11. Applicant and protestant offer different classes of ground transportation to the airport. Passengers who do not wish to travel in stretched vehicles or to make vehicle changes and who do not wish to pay for door-to-door service should have an alternative.

12. Protestant had good cause not to delay a trip to LAX for a passenger who asked for a delay and purchased coffee to drink in the coffee shop.

13. There is insufficient evidence to find that protestant's drivers are not dressed neatly or that their deportment is unsatisfactory.

14. Protestant's service as described in its timetable is a specialized service meeting a part of the public need. If conventional scheduled service is available to the public as an alternative, protestant's current service as described in the timetable is satisfactory to the Commission except as set forth in findings 4 and 5.

15. If applicant and protestant share a stop in the cities of Palm Spring or Palm Desert, control of both carrier's schedules will prevent either from poaching. The Staff recommendation to impose such control should be adopted with modifications.

16. Whenever both applicant and protestant share a stop, both carriers should be subject to schedule regulation.

Rather than adopting the Staff proposed time limits, we should allow both carriers to cooperate in fixing time limits.

17. Since there is no opposition, application should be authorized to relocate its San Bernardino service point.

18. Applicant should be once again authorized two stops in Palm Springs.

19. No party has proposed a site for the second site other than the International Hotel Resort.

20. The International Hotel Resort is in use as a consolidation point by protestant. It also offers a service at this point for non-reservation, non door-to-door customers.

21. Public convenience and necessity requires that applicant institute service to a service point in the city of Riverside on its Palm Springs/Palm Desert route.

22. Applicant has not alleged or shown any fact justifying grant of an area certificate in Riverside. It should be authorized to serve the public need for LAX-Riverside transportation at a point to be specified in its timetable.

Conclusions of Law

1. Because none of the parties offered alternatives, the only means available to protect the public's opportunity to choose between classes of service in the Palm Springs/Palm Desert area is to grant applicant the relief it seeks.

2. The Commission has determined that public convenience and necessity require applicant's service on its route between Palm Springs/Palm Desert, and LAX. No additional finding of public convenience and necessity is needed to order a relocation of stops in those communities. No additional finding of public convenience and necessity is required to restore the second stop.

3. The Commission should not consider safety of all stretched vehicles in a certificate application in which the only user of such vehicles is a protestant.

4. A carrier which operates a scheduled operation without specifying its stops in a filed timetable has no standing to protest a competitor's selection of the same points as stops for the latter's scheduled operation.

5. Without a pleading requesting such additional authority, the Commission cannot in this proceeding authorize applicant to add the Alicante Princess as a stop on its Anaheim shuttle.

6. The Commission does not ordinarily consider sanctions in application proceedings. Nothing in this order prohibits Staff from initiating sanction proceedings against either carrier party. Nothing in this order should be construed as limiting the issues to be considered in such proceeding.

7. The applicant's certificate for Palm Springs/Palm Desert service should be amended to authorize the relocation of service points in Palm Springs, Palm Desert, and San Bernardino; an unspecified service point should be added in Riverside. In Palm Springs, applicant should be authorized a second service point at the International Hotel Resort.

8. Staff should be authorized to reject any timetable filing from either party for service to Palm Springs/Palm Desert-LAX service if there is shared stop, and the filing does not provide reasonable schedule separation. The length of protection proposed should be deemed reasonable if agreed to by both carriers. If there is disagreement over time periods, both carriers should be permitted to file using the shortest time proposed by either carrier.

FINAL ORDER

IT IS ORDERED that:

1. Applicant Pinetree Service Corporation, Inc.'s certificate of public convenience and necessity, Appendix PSC-1152, is amended by substituting First Revised Page 6 for Original Page 6.

2. Applicant shall:

- a. File a written acceptance of this revision of certificate within 30 days after this order is effective.
- b. Establish the revised 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.

3. Staff is authorized to reject any timetable filing from either party for service to Palm Springs/Palm Desert-LAX service if there is a shared stop, and the filing does not provide reasonable schedule separation at that stop. The length of protection proposed is deemed reasonable if agreed to by both carriers. If there is disagreement over time periods, Staff shall accept a filing using the shortest time proposed by either carrier.

This order becomes effective 30 days from today.

Dated _____, at San Francisco, California.