

SEP 14 1988

Decision 88 09 006 SEP 14 1988

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)	
San Diego Airporter Express, Inc.,)	
dba The Airporter Express Passenger)	Application 87-11-002
Shuttle, for authority to operate as)	(Filed November 2, 1987;
an on-call PSC between San Diego)	amended December 2, 1987)
communities and San Diego Interna-)	
tional Airport (Lindbergh Field).)	

Randolph Wright, Attorney at Law, for San Diego Airport Express, Inc., applicant.

John C. O'Neill, Attorney at Law, for Spencer J. Bieler, protestant.

Jos. A. Bradley, III, Attorney at Law, for David and Linda Wittman, interested parties.

Vahak Retrossian, for the Transportation Division.

OPINION

San Diego Airporter Express, Inc. (Airporter), a California corporation doing business as The Airporter Express Passenger Shuttle, requests authority under Public Utilities (PU) Code Section 1031 et seq., to operate as a passenger stage corporation, as defined in PU Code Section 226, to transport passengers and their baggage, on call, between San Diego International Airport (Lindbergh Field) and communities in San Diego County, including the U.S. Marine Corps Base at Camp Pendleton.

The application was protested by Spencer J. Bieler and by David and Linda Wittman. A duly noticed public hearing before Administrative Law Judge Orville I. Wright was held in San Diego on April 15, 1988 and the matter was submitted on April 28, 1988.

Need for the Service

Airporter testified through its president that it receives many telephone calls requesting on-call service from homes and offices outside of the city limits of San Diego directly to Lindbergh Field.

Applicant's drivers testified to receiving frequent requests for service from persons waiting at the airport to points in the communities sought to be served by applicant.

The record shows that there is substantial passenger traffic between Lindbergh Field and Camp Pendleton. David and Linda Wittman, operators of an existing service between these points, withdrew their protest at the hearing, expressing the view that the addition of a new carrier to Camp Pendleton would serve the public interest of ensuring innovative, efficient transportation in San Diego County.

Transportation Division's Participation

Transportation Division staff (staff) appeared at the hearing in opposition to the granting of this application on the grounds of fitness.

Staff requested that we take official notice of Decision (D.) 88-03-071, March 23, 1988, involving, among other things, a Commission cease and desist order (Case 87-05-084) issued May 29, 1987 against Airporter for conducting operations outside the scope of its authority.

The referenced decision adjudged Airporter in contempt of the Commission's cease and desist order, imposed fines, and ordered that Airporter shall not operate as a passenger stage corporation until it has a certificate of public convenience and necessity authorizing such operations.

On April 12, 1988, three days before the hearing date in this proceeding, and at a time when Airporter held no operating authority from this Commission, staff members sought and obtained

Airporter per capita transportation from Lindbergh Field to points outside of the City of San Diego.

Staff recommends that the application be denied.

Discussion

In D.88-03-071, we found that there was sufficient evidence to show a need for charter-party service between Lindbergh Field and Camp Pendleton. This finding is reinforced by testimony in this proceeding as to a need for on-call service, as well.

We consider applicant's showing to be adequate in the light of the statements of one of applicant's direct competitors that the addition of a new on-call carrier would tend to improve airport transportation available to the public.

Turning to staff's recommendation of denial, we note that applicant's payment of the \$5,000 fine assessed in D.88-03-071 promises a severe financial hardship on Airporter. Nonetheless, in the face of staff's adverse position at the hearing, and after this case was submitted for decision, applicant paid the fine and obtained a TCP permit.

Concepts of fairness and equity persuade us to allow applicant further opportunity to gain control of his drivers and operate in a legitimate fashion. While we are not convinced that the violations found by staff were willful, we here notify Airporter that our decision today does not change the caveat contained in Ordering Paragraph 6 of D.88-03-071, warning against future violations.

Findings of Fact

1. Public convenience and necessity require that the proposed service be established.
2. Applicant has the ability and financial resources to perform the proposed service.
3. It can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.

Conclusion of Law

The application should be granted as set forth in the order. Since there is a present need for this service, the order should become effective on the date it is signed.

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.

ORDER

IT IS ORDERED that:

1. A certificate of public convenience and necessity is granted to San Diego Airporter Express, Inc. authorizing it to operate as a passenger stage corporation, as defined in PU Code § 226, between the points and over the route set forth in Appendix PSC-4041 to transport persons and baggage.
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 § 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.

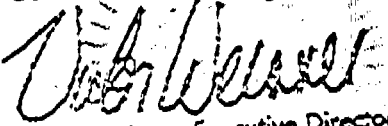
5. The application is granted as set forth above.

This order is effective today.

Dated SEP 14 1988, at San Francisco, California.

STANLEY W. HULETT
President
DONALD VIAL
FREDERICK R. DUDA
C. MITCHELL WILK
JOHN B. OHANIAN
Commissioners

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


Victor Weissor, Executive Director

T/VK/vjk

Appendix PSC-4041

San Diego Airporter
Express, Inc.

Original Title Page

CERTIFICATE

OF

PUBLIC CONVENIENCE AND NECESSITY

AS A PASSENGER STAGE CORPORATION

PSC- 4041

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

All changes and amendments as authorized by
the Public Utilities Commission of the State of California
will be made as revised pages or added original pages.

Issued under authority of Decision 88 09 006, dated
SEP 14 1988 of the Public Utilities Commission of the
State of California in Application 87-11-002.

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Decision 88 09 006, Application 87-11-002.

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

San Diego Airporter Express, Inc., by the certificate of public convenience and necessity granted by the decision noted in the margin, is authorized to transport passengers and baggage on an on-call basis, between points in San Diego County, described in Section 2, and San Diego International Airport (SAN), over and along the route described, subject, however, to the authority of this Commission to change or modify the route at any time and subject to the following provisions:

- (a) Motor vehicles may be turned at termini and intermediate points, in either direction at intersections of streets or by operating around a block contiguous to such intersections, in accordance with local traffic regulations.
- (b) When route descriptions are given in one direction, they apply to operations in either direction unless otherwise indicated.
- (c) 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 the authorized door-to-door, on-call service will be provided, and shall include the description of the boundary of each fare zone, except when a single fare is charged to all points within a single incorporated city.
- (d) No passengers shall be transported except those having a point of origin or destination at SAN.
- (e) This certificate does not authorize the holder to conduct any operation on the property of or into any airport unless such operation is authorized by both this Commission and the airport authority involved.

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SECTION 2. SERVICE AREA DESCRIPTION.

SAN DIEGO COUNTY SERVICE AREA.

Includes all points within the geographical limits of the following cities/communities and postal zip codes:

<u>CITY/COMMUNITY</u>	<u>ZIP CODES</u>
Bonita/Sunnyside	92002
Bonsall	92003
Camp Pendleton	92055
Cardiff-By-The-Sea	92007
Carlsbad	92008/92009
Chula Vista	92010/92011/92113
Coronado	92118/92155
Del Mar	92014
El Cajon	92019/92020/92021
Encinitas	92024
Escondido	92025/92026/92027/92082
Fallbrook	92028
Imperial Beach	92032
La Jolla	92117/92119-92124/92037 92161
Lakeside	92040
La Mesa	92041/92042
Lemon Grove	92045
Miramar/Mira Mesa	92126/92131/92145
National City	92050
Nester	92154
Oceanside	92054/92056
Paradise Hills	92139
Poway	92064
Rancho Bernardo	92128
Rancho Penasquitos	92129/92130
Rancho Santa Fe	92067
San Diego	92101-92116/92133-92136/ 92138/92140/92147
San Ysidro	92073
Santee	92071
Solana Beach	92075
San Marcos	92069
Spring Valley	92077/92078
Vista	92083/92084

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Appendix PSC-4041

San Diego Airporter
Express, Inc.

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SECTION 3. ROUTE DESCRIPTION.

Commencing at any point within the authorized service area,
described in Section 2, then via the most convenient streets and
highways to SAN.

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