

Decision 89 02 011 FEB 8 1989

**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

**Mailed**

**FEB 8 1989**

Application of Greater San Diego Aero Express Transportation, Inc., dba Aero Express, for certificate of public convenience and necessity to operate passengers and express service between San Diego International Airport and San Diego Amtrak Station and points in San Diego County, and San Diego County areas and communities of San Diego.

Application 88-08-050  
(Filed August 24, 1988;  
amended November 28, 1988)

Coleen D. Stroup and Virginia Bumpass,  
for Greater San Diego Aero Express  
Transportation, Inc., applicant.  
James K. Burnham, for Peerless Limousine  
Service, protestant.

O P I N I O N

Greater San Diego Aero Express Transportation, Inc., a California corporation, doing business as Aero Express, requests authority under Public Utilities (PU Code) § 1031, et seq. to establish and operate an on-call passenger stage corporation service for the transportation of passengers and baggage between San Diego International Airport, San Diego Amtrak Station, Sea World, San Diego Zoo, and points in San Diego County.

A protest to the application was filed by Brian Burnham and James K. Burnham, a partnership doing business as Peerless Limousine Service, and a duly noticed public hearing was held in San Diego on November 30, 1988 before Administrative Law Judge (ALJ) Orville I. Wright. The matter was submitted on January 5, 1989 upon receipt of the transcript. Applicant waived the filing of and comment on the proposed decision, and protestant made no objection to the waiver (Rule 77.1, Rules of Practice and Procedure).

Applicant's Evidence

Applicant's president Coleen D. Stroup (Stroup) testified that she has had 12 years of experience in the hotel industry, achieving positions at managerial level. She presently works for Airporter Express, a passenger stage operator in San Diego, in a supervisory capacity.

Applicant owns three vans which are currently leased to Airporter Express, but which will be utilized in its proposed service if a certificate of public convenience and necessity is granted by the Commission.

A projected annual income statement was submitted into evidence showing anticipated income of \$782,881 for the first year of operations, corresponding expenses of \$764,806, and net income before taxes of \$18,075.

Stroup's testimony was supported by letters of commendation from past employers and correspondence from Amtrak officials welcoming her proposed service to the train station.

Need for the service is demonstrated, according to Stroup, by statistics showing airport passenger counts of 9,840,000 for 1986 and 10,101,000 for 1987. At Amtrak station, the passenger count was 583,000 for 1986 and 601,000 for 1987.

Protestant's Showing

James K. Burnham (Burnham) testified on behalf of protestant. His transportation company, Peerless Limousine Service, was granted operating authority by the Commission in August 1988 in Decision 88-08-007 (PSC-1466).

Burnham requested a public hearing in this matter primarily to present the policy of the San Diego Airport on new carrier entry which, according to the witness, was being reformulated. At the hearing, however, protestant reported that new airport policy decisions had not yet been made.

Protestant gave its average passenger load factor per trip as being 1.8, as compared to applicant's projected factor of

2.3, arguing that using the lesser number in applicant's projections would result in showing a deficit rather than any net income in the proposed service.

Discussion

Applicant's showing in support of the application is adequate, in our opinion, in the light of the Commission's policy favoring regulated competition as a means of ensuring the least expensive, most efficient public transportation services.

Protestant's testimony, standing alone, as to the load factor it has experienced after only three months of operating experience at the San Diego Airport is insufficient to persuade us under PU Code § 1032 that the existing passenger stage corporations serving the territory are providing or will provide service to the satisfaction of the Commission.

Motion to Dismiss

Applicant filed a motion to dismiss the protest, which motion contained controversial statements of fact. The motion was denied by the ALJ at the outset of hearing in order to preserve to the parties their rights to present evidence and cross-examine witnesses with respect to factual issues. We affirm the ALJ's ruling.

Findings of Fact

1. Applicant has the ability, equipment, and financial resources to perform the proposed service.
2. Public convenience and necessity require the service proposed by applicant.
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

Public convenience and necessity have been demonstrated and a certificate should be granted to applicant.

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 Greater San Diego Aero Express Transportation, Inc., authorizing it to operate as a passenger stage corporation, as defined in PU Code § 226, between the points and over the routes set forth in Appendix PSC-5084, 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 becomes effective 30 days from today.

Dated FEB 8 1989, at San Francisco, California.

G. MITCHELL WILK  
President  
FREDERICK R. DUDA  
STANLEY W. HULETT  
JOHN B. CHANIAN  
Commissioners

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

  
Victor Weisberg, Executive Director

T/MEE/ebi

Appendix PSC-5084

GREATER SAN DIEGO AERO EXPRESS  
TRANSPORTATION, INC.

Original Title Page

CERTIFICATE

OF

PUBLIC CONVENIENCE AND NECESSITY

AS A PASSENGER STAGE CORPORATION

PSC-5084

---

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 89 02 011, dated  
FEB 8 1989, of the Public Utilities Commission of the  
State of California in Application 88-08-050.

I N D E X

	<u>Page</u>
SECTION 1. GENERAL AUTHORIZATIONS, RESTRICTIONS, LIMITATIONS, AND SPECIFICATIONS.....	2
SECTION 2. SERVICE AREA DESCRIPTION.....	3
SECTION 3. ROUTE DESCRIPTIONS.....	3

Issued by California Public Utilities Commission.

Decision 89 02 011, Application 88-08-050.

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

Greater San Diego Aero Express Transportation, Inc., by the certificate of public convenience and necessity granted by the decision noted in the margin, is authorized to transport passengers and their baggage, on an on-call, door-to-door basis, between points in San Diego County, over and along the routes described in Section 3, subject, however, to the authority of this Commission to change or modify the routes at any time and subject to the following provisions:

- (a) 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.
- (b) When route descriptions are given in one direction, they apply to operations in either direction unless otherwise indicated.
- (c) Only passengers originating at or destined to San Diego International Airport (SAN), San Diego Amtrak Station, San Diego Zoo or Sea World shall be transported.
- (d) 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 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.

Issued by California Public Utilities Commission.

Decision 89 02 011, Application 88-08-050.



SECTION 2. SERVICE AREA DESCRIPTION.

SAN DIEGO COUNTY SERVICE AREA.

Includes all points within the geographical limits of the following cities:

Carlsbad, Chula Vista, Coronado, Del Mar, El Cajon, Encinitas, Escondido, Imperial Beach, La Mesa, Lemon Grove, National City, Oceanside, Poway, San Diego, San Marcos, Santee, Solana Beach, Vista, and the following communities and postal zip codes in San Diego County:

Bonsall	92003
Fallbrook	92028
Lakeside	92040
North Island Naval Base	92135
Rancho Santa Fe	92067

SECTION 3. ROUTE DESCRIPTIONS.

Route 1. SAN/AMTRAK ON-CALL DOOR-TO-DOOR SERVICE

Commencing at San Diego International Airport or San Diego Amtrak Station then via the most convenient streets and highways to any point within the service area described in Section 2.

Route 2. SEA WORLD/ZOO ON-CALL DOOR-TO-DOOR SERVICE

Commencing at Sea World or San Diego Zoo then via the most convenient streets and highways to any point within the service area described in Section 2.

Issued by California Public Utilities Commission.

Decision 89 02 011, Application 88-08-050.