

Decision 89 04 015

APR 12 1989

ORIGINAL
MAILED

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
OLD TOWN TROLLEY TOURS OF SAN DIEGO,)
INC. for a certificate of public)
convenience and necessity to provide)
passenger stage service with)
incidental "express" service, i.e.,)
free baggage hauling, between points)
in the cities of San Diego and)
Coronado.)

APR 15 1989

Application 88-06-053
(Filed June 29, 1988)

OPINION

Old Town Trolley Tours of San Diego, Inc. (applicant) is a California corporation operating out of San Diego, California. A copy of its Articles of Incorporation is attached to the application in this proceeding. Applicant is a subsidiary of and wholly owned by Coach Tour Train, Inc.

This application was filed to request a certificate of public convenience and necessity to authorize operation as a passenger stage corporation in the transportation of passengers and baggage between points of public interest in the cities of San Diego and Coronado, both located in San Diego County.

The sightseeing tour is programmed to visit the following points of interest in the San Diego area: Old Town, military and naval area, waterfront, downtown, Convention Center, Chicano Park, Coronado and Balboa Park. There are two alternate routes from Balboa Park to the starting point of the tour in Old Town. Applicant's proposed route is a loop which includes all of the major sightseeing attractions in the San Diego area. The passengers leave the bus when the tour is over at the same spot where they enter the bus to begin the tour. Trolley vehicles will leave every 30 minutes from 9:00 a.m. to 3:00 p.m., 363 days per year. The tour will occupy two hours, but a passenger can leave

his vehicle and spend more time at a point of interest he wants to see, then climb on a later-scheduled vehicle if he prefers. It is alleged that this service will be unique and is not provided by other operators. It links major points of interest, provides tourists with the opportunity to spend more or less time at each exhibit according to their interests, and lessens traffic congestion, since those who ride the sightseeing schedules will not be driving to and parking at each point visited by the tour vehicles.

The sightseeing tour will be supported by a shuttle to transport passengers from Hotel Circle North and Hotel Circle South in San Diego to the starting point of the sightseeing service in Old Town. Those who take the sightseeing tour will not be charged for the shuttle ride. Other riders will pay an individual fare of \$2.00 to ride the round-trip shuttle bus.

Applicant has eight custom-36 passenger coaches on order from Specialty Vehicles of Downey, California. They are deluxe models, to be constructed on John Deere chassis. Applicant's balance sheet dated June 20, 1988 states that applicant has \$400,000 in assets. Assets and liabilities are not listed individually, nor are they defined.

Copies of a single sheet which summarized the content of the application were mailed to 84 interested parties, including governmental agencies, transit districts, bus operators, municipal and county clerks, local chambers of commerce, theaters, hotels, motels, and business associations. Notice of the filing of the application was included in the Commission's Daily Calendar on July 5, 1988. A protest was filed on August 9, 1988 by the City of Coronado Chamber of Commerce. There were no other protests or requests for hearing.

The Coronado Chamber of Commerce protest was rejected due to a failure to prove service on the applicant. It was refiled on September 15, 1988 with a "Petition to Authorize the Filing of a

Late Protest" attached. Protestant is identified as a non-profit corporation, which represents 254 businesses in the City of Coronado. The protest is based on applicant's failure to provide evidence of financial stability and protestant's allegation that Coronado already has adequate sightseeing service. The City of San Diego and San Diego County did not protest the application.

Discussion

This Commission does not consider the movement of passengers for sightseeing to be transportation which requires a certificate of public convenience and necessity. The reasoning is that in sightseeing the movement of the passengers is incidental to the viewing of points of interest, and the Legislature has no intent to classify sightseeing as "common carriage". (Western Travel Plaza, Inc. (1982) 9 CPUC 2d 681, 684.) The Commission defines tour or sightseeing bus service as "operation over a loop, returning to the point of departure after viewing or visiting points of interest". (Western Travel Plaza, Inc., et al. (1981) 7 CPUC 2d 128, 138.)

The Commission regulates the transportation of passengers between an origin and destination for compensation. A bus transporting paying passengers between San Francisco and Los Angeles, or two other points on the route, is under Commission regulation since the riders take the bus to travel between two specific points. Sightseers mount a bus as a means of viewing scenery or getting to where they can view scenery. The distinction between sightseeing and passenger transport is thereby established.

The Commission now refrains from regulating sightseeing, other than in issuing permits to authorize the service (Public Utilities (PU) Code § 5384) and in requiring that vehicles to be used pass the safety inspection of the California Highway Patrol.

The shuttle service is performed entirely within the city limits of San Diego and is therefore exempted from

passenger stage regulation under the exception noted in the first paragraph of § 226 (a) of the PU Code:

Applicant's primary service will be sightseeing, which no longer requires a showing of public convenience and necessity and a finding by the Commission that the service is needed as a public convenience. Protestant's arguments that the field is already saturated and there is a lack of financial stability are no longer issues which the Commission must consider before granting a sightseeing permit.

Findings of Fact

1. Applicant has applied for authority to initiate a sightseeing service to visit points of interest within the County of San Diego.
2. The service will follow a circular route through points in the Cities of Coronado and San Diego, then return to the starting point.
3. A separate shuttle will transport passengers from hotels to the start of the sightseeing schedules and then return to provide prospective passengers with round-trip transportation.
4. The shuttle service will be performed entirely within the city limits of the City of San Diego and is therefore exempt from Commission jurisdiction or regulation.
5. The proposed service will extend from 9:00 a.m. to 3:00 p.m., 363 days a year; buses will leave every 30 minutes.
6. The protest was filed to allege that another sightseeing service is not needed in the Coronado area. This is no longer a reason to deny sightseeing authority. The allegation of financial instability is not persuasive on the issuance of a permit.

Conclusions of Law

1. Sightseeing-tour service, originating and terminating at the same point, is not public utility or passenger stage corporation service.

2. Sightseeing-tour carriers should not be regulated as public utilities.

3. The shuttle service is not subject to Commission regulation under § 226 (a) of the PU Code.

4. Applicant should be granted a sightseeing carrier permit to authorize the sightseeing 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.

5. The protest should be denied.

O R D E R

IT IS ORDERED that:

1. The Executive Director of the Commission is directed to issue a sightseeing carrier permit to Old Town Trolley Tours of San Diego, Inc. within 60 days of the effective date of this order, providing all vehicles to be used in the service pass the safety inspection of the California Highway Patrol.

2. The protest of the Coronado Chamber of Commerce is denied.

3. The application is granted as set forth above.
This order becomes effective 10 days from today.
Dated APR 12 1989 , at San Francisco, California.

G. MITCHELL WILK
President
STANLEY W. HULETT
JOHN B. OHANIAN
PATRICIA M. ECKERT
Commissioners

Commissioner Frederick R. Duda
being necessarily absent, did
not participate.

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

Victor Weisser
Victor Weisser, Executive Director