

Decision 89 08 039 AUG 3 1989

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)	
EAST BAY CONNECTION for Certificate)	
of Public Convenience and Necessity)	Application 87-11-020
to Operate Passenger Express Service)	(Filed November 18, 1987;
between Contra Costa County and)	amended November 10, 1988)
Oakland and San Francisco Airports.)	

Spanos & Wassell, by Richard D. Black,
 Attorney at Law, for East Bay
 Connection, applicant.
Thomas Enderle, for the Transportation
 Division.

OPINION

Summary

This decision grants a certificate of public convenience and necessity to East Bay Connection (EBC), authorizing it to conduct operations as a passenger stage corporation between certain points in Contra Costa County and Oakland International Airport (OAK) and San Francisco International Airport (SFO).

Application

EBC is a general partnership whose principal place of business is in Walnut Creek. The partners and their share of ownership interest are listed below:

<u>Partners</u>	<u>Ownership Interest</u>
Bashir A. Sulymankhel	25%
Nazir A. Sulymankhel	25%
Jawad A. Sulymankhel	25%
Reshad A. Sulymankhel	25%

EBC seeks authority under Public Utilities (PU) Code § 1031 to operate as a passenger stage corporation, as defined in

FU Code § 226. Under the proposal, service will be provided between points in Concord, Pleasant Hill, Walnut Creek, and Lafayette in Contra Costa County, and OAK and SFO and intermediate points, over the following route: Sheraton Hotel-Concord, Hilton Hotel-Concord, Ramada Renaissance Hotel-Walnut Creek, Lafayette Park Hotel-Lafayette, and OAK or SFO. EBC will also provide, upon passenger request and for an additional charge, pickups or discharges within the cities of Concord, Pleasant Hill, Walnut Creek, and Lafayette at other than the designated hotels.

EBC will provide an on-call service requiring advance reservations and subject to available seating. Proposed one-way fares are \$12 for service between the airports and the hotels, and \$20 for service between the airports and all other points within the cities of Concord, Pleasant Hill, Walnut Creek, and Lafayette.

Applicant will initially operate a 7-passenger 1988 Plymouth Voyager van. A financial statement included with the application shows that applicant has assets of \$34,150, including current assets in the amount of \$10,700, liabilities of \$21,000, and a net worth of \$13,150.

EBC believes that public convenience and necessity justify the proposed service for the following reasons:

1. Due to highway congestion associated with growth in central Contra Costa County, there is a need for a viable alternative to the single-passenger automobile for transportation to Bay Area airports. For such alternatives to be viable, they must provide reliable, timely, and comfortable service of the kind that EBC intends to provide.
2. The proposed service will alleviate congestion and wear and tear on highways and relieve parking congestion at the airports by reducing the number of vehicles required to provide airport access transportation.

3. The proposed service will meet the needs of business travelers and tourists, and encourage more people to visit central Contra Costa County, thereby enhancing the economy of the community.

Procedural History

Notice of the application was provided by the applicant to involved government entities. Copies of the application were provided to the involved transit operators. Notice also appeared on the Daily Transportation Calendar dated November 23, 1987.

Protests were filed by Bayporter Express, San Francisco Bay Area Rapid Transit District (BART), and Airport Limousine Service of Sunnyvale, Inc. (ALSS). In view of the protests, the Rail/Transit Planning and Policy Branch of the Transportation Division advised that the matter be set for hearing, and the matter was originally set for hearings commencing March 14, 1988.

On March 10, 1988 counsel for EBC advised the administrative law judge (ALJ) that the managing partner of EBC was out of the country and was expected to remain so for an extended period. The matter was taken off calendar and held in abeyance at applicant's request. By letter dated March 11, 1988 Bayporter Express withdrew its protest.

On September 30, 1988 applicant informed the ALJ that it wished to reactivate the request, that it was attempting to reach a stipulation with ALSS, and that an agreement had been reached with BART which would result in the withdrawal of BART's protest. BART had protested because in the original request, EBC had proposed to serve the Concord, Pleasant Hill, Walnut Creek and Lafayette BART stations. BART was concerned that the proposed service would aggravate already serious parking problems at those stations by encouraging airport travelers to use the limited parking facilities there.

EBC filed an amendment to A.87-11-020 on November 10, 1988, removing the BART stations from the proposed route. In view

of the amendment, BART subsequently withdrew its protest, leaving ALSS's as the only remaining protest.

On April 27, 1989 EBC's counsel advised that it was ready to proceed. A duly noticed prehearing conference was scheduled for May 26, 1989. Applicant and the Transportation Division were in attendance, but protestant ALSS failed to appear. Accordingly, EBC made an oral motion that the application be handled ex parte. The motion was taken under submission.

Discussion

By failing to appear at a duly noticed prehearing conference, ALSS has failed to diligently prosecute its protest. The protest will be dismissed. Since the Bayporter Express and BART protests were previously withdrawn, and the ALSS protest will be dismissed, a public hearing is not required. This matter has been delayed extensively, and we see no reason to impose further delays. EBC's motion will therefore be granted.

Applicant has demonstrated that the proposed service is required by public convenience and necessity. Although the operation will be conducted at least initially on a small scale, it can be expected to provide incremental improvements to congestion problems in central Contra Costa County.

Although applicant has identified specific hotels as service points, we have found that inclusion of such specific points in certificates of public convenience and necessity frequently necessitates additional formal proceedings for relatively minor route changes which are of little or no significance to other parties. We will therefore provide a more general route description in the certificate granted to EBC. However, in view of the original protest by BART and the subsequent amendment to the application which resulted in the protest being withdrawn, we will restrict operations at BART stations. Also, although applicant referred to points intermediate to SFO and OAK in the application, it is apparent from reading the entire

application that authority to provide service between central Contra Costa County and such intermediate points is neither intended nor justified.

Findings of Fact

1. Protests were filed by Bayporter Express, BART, and ALSS.
2. Bayporter Express withdrew its protest on March 11, 1988.
3. BART withdrew its protest after the application was amended to delete BART stations as designated service points.
4. ALSS failed to appear at a duly noticed prehearing conference.
5. No protest to the application has been received from any public transit operator serving the territory applicant proposes to serve, other than BART, whose protest was withdrawn.
6. The proposed service can be expected to provide incremental improvements to congestion problems in central Contra Costa County.
7. Inclusion of specific points such as hotels in certificates of public convenience and necessity frequently necessitates additional formal proceedings for relatively minor route changes which are of little or no significance to other parties.
8. Service to points intermediate to SFO and OAK is neither intended nor justified.
9. Public convenience and necessity require that the proposed service be established.
10. Applicant is qualified to perform the proposed service.
11. It can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.

Conclusions of Law

1. The protest of ALSS should be dismissed for failure of the protestant to prosecute, and the motion of EBC to proceed ex parte should be granted.

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

3. 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 the partnership of Bashir A. Sulymankhel, Nazir A. Sulymankhel, Jawad A. Sulymankhel, and Reshad A. Sulymankhel, authorizing them 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-1454, to transport persons and their baggage.

2. Applicants 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 their 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, applicants shall notify the airport authority involved. This certificate does not authorize the holders 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. This certificate does not authorize the holders to conduct any operations on the property of or into any station of the San Francisco Bay Area Rapid Transit District (BART), unless such operation is authorized by both this Commission and BART.

4. Applicants are authorized to begin operations on the date that the Executive Director mails a notice to applicants that they have evidence of insurance on file with the Commission and that the California Highway Patrol has approved the use of applicants' vehicles for service.

5. The protest of Airport Limousine Service of Sunnyvale, Inc. is dismissed.

6. The motion of applicants to proceed ex parte is granted.

7. The application is granted as set forth above.

This order is effective today.

Dated AUG 3 1989 at San Francisco, California.

G. MITCHELL WILK
President
FREDERICK R. DUDA
JOHN B. OHANIAN
PATRICIA M. ECKERT
Commissioners

Commissioner Stanley W. Hulett,
being necessarily absent, did not
participate.

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


Victor Weiss, Executive Director

CERTIFICATE
OF
PUBLIC CONVENIENCE AND NECESSITY
AS A PASSENGER STAGE CORPORATION
PSC-1454

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 89-08-039, dated August 3, 1989,
of the Public Utilities Commission of the State of California in
Application 87-11-020.

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

Bashir A. Sulymankhel, Nazir A. Sulymankhel, Jawad A. Sulymankhel, and Reshad A. Sulymankhel (Sulymankhel Partners), by the certificate of public convenience and necessity granted by the decision noted in the margin, are authorized to transport passengers and their baggage on an on-call basis between Concord, Lafayette, Pleasant Hill, and Walnut Creek, on the one hand, and the San Francisco International Airport (SFO) and the Oakland International Airport (OAK), on the other hand, subject, however, to the authority of this Commission to change or modify this authority at any time and subject to the following provisions:

- (a) When route descriptions are given in one direction, they apply to operation in either direction unless otherwise indicated.
- (b) No passengers shall be transported except those having point of origin or destination at OAK or SFO.
- (c) This certificate does not authorize the holder to conduct any operations on the property of or into any airport unless such operations are authorized by both this Commission and the airport authority involved, or on the property of or into any station of the San Francisco Bay Area Rapid Transit District (BART), unless such operation is authorized by both this Commission and BART.
- (d) The term "on-call" as used refers to service which is authorized to be rendered dependent on the demands of passengers. The tariffs shall show the conditions under which authorized on-call service shall be rendered.

Issued by California Public Utilities Commission.

Decision 89-08-039, Application 87-11-020.

SECTION 2. SERVICE AREAS DESCRIPTION.

Service Area 1. Contra Costa Territory.

The Cities of Concord, Lafayette, Pleasant Hill, and Walnut Creek.

SECTION 3. ROUTE DESCRIPTIONS.

Route 1. Contra Costa Territory - San Francisco International Airport.

Commencing within the Contra Costa Territory as specified in Section 2, then via the most appropriate streets and highways to SFO.

Route 2. Contra Costa Territory - Oakland International Airport.

Commencing within the Contra Costa Territory as specified in Section 2, then via the most appropriate streets and highways to OAK.

Issued by California Public Utilities Commission.

Decision 89-08-039, Application 87-11-020.