

Decision 90 03 009 MAR 14 1990

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA,

In the Matter of the Application of)
FRANCISCAN LINES, INC., a)
California corporation, for)
permission to abandon its Danville)
commute run.)

Application 88-02-053
(Petition for Modification
filed October 26, 1988 and
October 28, 1988)

OPINION DISMISSING (IN PART) AND DENYING (IN PART)
PETITIONS FOR MODIFICATION OF DECISION 88-09-057

On September 28, 1988, we issued Decision (D.) 88-09-057, authorizing Franciscan Lines, Inc. (Franciscan) to discontinue passenger stage service between the Danville area and San Francisco. The order was made effective October 28, 1988. We authorized Franciscan to suspend service by making appropriate tariff and timetable filings with the Commission and ordered the revocation of the operative rights effective 120 days after October 28, 1988.

On October 26, 1988, William C. Rust, Jr. and 21 other commuters collectively filed a petition for modification of D.88-09-057 (hereinafter referred to as the commuter petition), seeking a 90-day extension of the effective date and several other modifications to the order. Several of the requested modifications would, in summary, provide that certain commuters (those who made statements at the hearing) be recognized as parties to the proceeding, specifically as protestants. Other requested modifications would revise portions of the decision's background section, discussion, findings of fact, conclusions of law, and order to support the commuters' ultimate request that the service be continued and that Franciscan be ordered to promote ridership for 90 days, after which further consideration and possible further Commission action would occur.

On October 28, 1988, the Town of Danville (Danville), a party to the proceeding appearing as a protestant, filed a petition for modification of D.88-09-057. Danville's petition requests that the service be continued, with a route modification and other good-faith efforts to increase ridership, for a minimum period of 120 days. Danville also requests that the commuters be treated as protestants.

Discussion

The commuter petition for a 90-day extension of the effective date of the order was dated October 25, 1988, and the accompanying certificate of service was dated October 26, 1988. It was filed with the Docket Office on October 26, just two days prior to the effective date of D.88-09-057. In the ordinary course of Commission business, several days may pass from the date a pleading is filed with the Docket Office to the date it is processed and assigned. In this case, the Commission's Docket Office files show that the commuter petition was assigned to an ALJ on November 8, 1988 (as was the Danville petition). Regardless of the petition's merits, the Commission could not have granted an extension prior to the effective date of the order.

We have considered all the allegations of error and other arguments in the petitions and have concluded that, even if they had been presented in an application for rehearing, good cause for rehearing has not been shown. By proposing that Franciscan be required to continue providing service for 90 or 120 days at a minimum, and possibly even longer, during which time a determination of whether ridership can be increased would be made, both petitions seek in effect a reversal of our order. Not only did D.88-09-057 authorize Franciscan to discontinue the service because of low ridership, but it specifically considered and rejected a suggestion that Franciscan be directed to explore options for the service as a precondition to discontinuing the service (D.88-09-057, p. 10). Accordingly, the petitions request

the same relief specifically considered and rejected by the Commission in D.88-09-057.

We note that the commuter petition refers to "new current information" on ridership levels sometimes reaching the 25-30 range, and on one occasion exceeding 30, and "recent efforts" of commuters during the summer preceding the issuance of D.88-09-057 to support the service as grounds for the petition. Danville's petition refers to "new evidence" in the form of an August 1988 transportation study and other information not presented at the hearing concerning Franciscan's promotional efforts. Except to observe that the record shows that increases in ridership greater and more regular than those cited by the commuters would be required to warrant continuation of the service, we will not address the merits of such new evidence here. Rule 84 of the Rules of Practice and Procedure provides the procedure under which, after conclusion of hearings, but before issuance of a decision, a party may petition to set aside submission on the basis of material changes of fact or law occurring since the conclusion of hearings. Such a petition was not filed in this case. Parties should come forward with evidence they wish to have considered by the Commission before issuance of the decision.¹

The only other matter to be addressed is whether the commuters who attended the hearing and offered unsworn statements should be recognized as parties. We have carefully reviewed the

¹ Nor would we be inclined to consider new evidence of actual or potential ridership increases occurring after the decision became final. Under our overall scheme of passenger carrier regulation, by which we have moved to a more liberal policy of entry and exit control in the past several years, a passenger stage corporation which has been granted authorization to abandon a route is entitled to a reasonable degree of assurance that it will not be required to resume public utility obligations to serve that route at a future date.

petitions for modification as well as the record in this proceeding and have determined that the requests should be denied for the following reasons:

1. The commuter petition states that D.88-09-057 fails to show on page 3 that seven commuters appeared and gave testimony. However, at page 6 the decision acknowledges and states the nature of their participation, i.e. that the seven commuters offered statements in support of continuation of the service. As to this issue, we find no more than a difference of editorial style which requires no modification to the decision.
2. The commuter petition states that at the hearing, there was no explanation of the steps needed to make an appearance. Ordinarily our court reporters make themselves available off-the-record, before hearings commence and during recesses, to assist with the completion of appearance forms. There is no reason to believe this was not done in this case. Additionally, at the outset of the hearing, the Administrative Law Judge (ALJ) read into the record the appearance slips which were completed and provided for the taking of additional appearances. The ALJ informed those present that they need not be an attorney to be a party. There was also an explanation of alternative ways that the commuters could participate, including the fact that sworn testimony is given significantly more weight than unsworn statements, and an indication of the significance of appearing as a party in that those filing appearances have the right to cross-examine the witnesses of other parties.
3. Danville, a protestant, was represented by an attorney-at-law. The interests of the commuters in preserving the service were essentially the same as or similar to those of Danville. The commuters elected to have Danville's attorney cross-examine

Franciscan's witnesses by conveying their questions to her in lieu of filing appearances. Danville's attorney also coordinated the presentation of the commuters' statements.

We conclude that those in attendance at the hearing were provided sufficient information about filing appearances and becoming parties, were informed who the parties filing appearances were, and were given a reasonable opportunity to become parties. Nevertheless they elected not to do so, electing instead to work with and through protestant Danville. There is no indication that anyone was denied an opportunity to become a party. Under these circumstances they should not be recognized as or allowed to become parties after issuance of the decision.

Findings of Fact

1. D.88-09-057 was issued September 28, 1988 and became effective October 28, 1988.
2. The request in the commuter petition for a 90-day extension of the effective date of the order was not filed until two days prior to the effective date of D.88-09-057.
3. Several days may pass from the date a pleading is filed with the Docket Office to the date it is processed and assigned.
4. The request in the commuter petition for a 90-day extension of the effective date of the order was not made in time to stay the effective date of D.88-09-057.
5. Both petitions for modification seek in effect a reversal of our order by proposing that Franciscan be required to continue providing service for 90 or 120 days at a minimum, and possibly even longer, while a determination is made as to whether ridership can be increased.
6. Commuters in attendance at the hearing were provided information about filing appearances and becoming parties, were informed who the parties were, were given a reasonable opportunity

to become parties, and elected not to do so, electing instead to work with and through protestant Danville.

7. There is no indication that anyone was denied an opportunity to become a party.

Conclusions of Law

1. New evidence on ridership levels, efforts of commuters to support the service, a transportation study and other new information which became available after the hearing but prior to the issuance of D.88-09-057 was not the proper subject of petitions for modification.

2. Having been provided an opportunity to appear as parties at the hearing and having not availed themselves of the opportunity, the commuters should not now be recognized as or allowed to become parties.

3. The petitions should be dismissed insofar as they propose to delay the effective date of the order and require that Franciscan continue to provide the service, and in all other respects they should be denied.

O R D E R

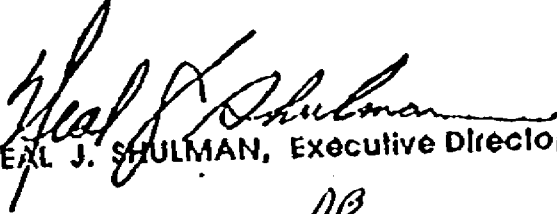
IT IS ORDERED that:

1. The petitions for modification of Decision 88-09-057 filed by William C. Rust, Jr., et al. and by Town of Danville (the petitions) are dismissed insofar as they propose to delay the effective date of the order and require Franciscan to continue, either temporarily or permanently, providing the Danville service.

2. In all other respects the petitions are denied.
This order becomes effective 30 days from today.
Dated MAR 14 1990, at San Francisco, California.

G. MITCHELL WILK
President
FREDERICK R. DUDA
STANLEY W. HULETT
JOHN B. CHANAN
PATRICIA M. ECKERT
Commissioners

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


NEAL J. SHULMAN, Executive Director

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