

Decision 90 03 040 MAR 14 1990

**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application for Hearing (Re: sus- )  
pension, revocation, or denial of )  
renewal authority of property or )  
passenger carrier at request of )  
California Highway Patrol). )

Application 89-12-005  
(Filed December 4, 1989)

INTERIM OPINION

On November 15, 1989, the Commission's Transportation Division notified Scenic Hyway Tours (Scenic) that renewal of its charter-party carrier of passengers authority had been denied. The stated reason for denial was "failure to meet California Highway Patrol requirements." The notice also stated:

"IF YOU WISH TO CONTEST THE COMMISSION'S ACTION YOU MAY OBTAIN A HEARING BY FILING WITH THE COMMISSION'S DOCKET OFFICE A COMPLETED ORIGINAL, AND FIVE (5) COPIES, OF THE ACCOMPANYING APPLICATION FOR HEARING FORM.

"THIS DENIAL IS ISSUED PURSUANT TO RESOLUTION TL-18266 ADOPTED BY THE COMMISSION DECEMBER 19, 1988."

On December 4, 1989, in response to the notification, Scenic filed Application 89-12-005 by which it requested a hearing. The application form includes the following statement:

"The carrier understands that at the hearing it will need to show cause why the suspension, revocation, or denial should not be continued."

Resolution TL-18266 provides, among other things, that upon receipt of a completed application form, the Administrative Law Judge (ALJ) Division shall schedule a hearing to be held within 21 days from the application filing date unless the carrier requests a postponement. Public Utilities (PU) Code § 5378.6(c)

contains a similar provision. Accordingly, a hearing was scheduled for December 19, 1989.

On December 18, 1989, Scenic and the Transportation Division entered into a stipulation in which the parties agreed that the December 19 hearing should be taken off calendar and if necessary reset to later date, and that Transportation Division would issue interim authority for a period of 90 days beginning December 20, 1989, during which Scenic would not operate its vehicles over a described segment of California Highway 1 to Muir Woods National Monument in Marin County nor in any other manner to Muir Woods. By the stipulation Scenic also waived its right to a hearing within 21 days.

A hearing was then scheduled and convened on January 11, 1990. Following an oral stipulation by the Transportation Division that the notification requirements of PU Code § 5378.6(b) were not observed during the course of events leading to issuance of its denial notice, Scenic moved for dismissal of the proceeding and grant of the authority sought by Scenic. Transportation Division opposed the motion. The ALJ continued the hearings without receipt of evidence to provide the parties an opportunity to brief the legal issues raised by the motion. Briefs were filed on February 13, 1990 and resolution of the issues raised by the motion is pending.

On February 21, 1990, Scenic filed a pleading entitled "Petition for Extension of Interim Authority Pending a Final Decision in this Proceeding." Scenic states that at the time of the December stipulation it assumed that 90 days would be sufficient to resolve all issues, but such resolution prior to March 20, is now unlikely. Scenic alleges that it will be irreparably injured if the interim authority is not extended.

Scenic alleges that it operates 12 buses and employs from 15 to 20 persons both on a part-time and full-time basis. It further alleges that in 22 years of operation it has not had

adverse action taken against it by the California Highway Patrol (CHP) until the present matter. By a supplement to the petition filed on or about March 6, 1990, Scenic alleges that the strike against Greyhound has created a need for charter bus service which can be partly alleviated by continued availability of Scenic's service. Scenic requests extension of the interim authority to "avoid the destruction of Scenic's business without a full hearing on the issues..."

Scenic agrees to retention of the same conditions applicable to the current interim authority, and specifically agrees that it will not provide service to Muir Woods. Scenic alleges that all of the issues in this proceeding have arisen over its Muir Woods service, and that it has performed no Muir Woods service since early October 1989.

On or about March 7, 1990 Transportation Division filed a response to Scenic's petition in which it indicated opposition to the requested extension. Transportation Division alleges that Scenic has operated unsafely and in violation of the vehicle code by having operated for over one year on State Route 1 in Marin County, raising serious questions about Scenic's fitness, and that the CHP opposes the extension. Transportation Division also notes that Scenic itself requested a procedural delay at the January 11 hearing.

Discussion

PU Code § 768 provides in part:

". . . The Department of the California Highway Patrol shall have the primary responsibility for the regulation of the safety of operation of passenger stage corporations, highway common carriers, and other motor carriers. The commission shall cooperate with the Department of the California Highway Patrol to ensure safe operation of these carriers."

In balancing the public's interest in safety against an individual carrier's interest in continued operations and the

public's interest in the availability of charter bus service, we believe it is appropriate to assign the greatest weight to public safety. Transportation Division argues that in doing so, under PU Code § 768 we must carefully consider the CHP's opposition to the extension. We agree, but we also believe it is our function to carefully evaluate allegations of unsafe operations.

It is readily apparent from the various pleadings in this proceeding that CHP's concern about Scenic's safety stems from Scenic's operation of large buses on a segment of State Highway 1 in Marin County. Without prejudging whether such operations were in violation of the vehicle code or whether they would provide a basis for adjudging Scenic to be unfit to operate as a charter-party carrier, we can only observe that Scenic has alleged cessation of such operations and has agreed to a restriction on such operation in the requested extension of interim authority.

Based on the pleadings, and pending opportunity for all parties to be heard, we find no indication of a safety concern which would justify an action (or inaction) to prevent Scenic from operating on an interim basis, other than to Muir Woods. Moreover, if such a safety concern does arise, an appropriate remedy exists in PU Code § 5378.5, which provides for suspension of a charter-party carrier certificate or permit under specified conditions. Accordingly, we conclude that granting the requested extension of interim authority will not endanger public safety. Since expiration of the authority would impose a substantial hardship and possibly irreparable harm on Scenic, the request should be granted.

With regard to Transportation Division's observation that Scenic sought a delay in the proceedings at the January 11 hearing, we note there were sufficient procedural grounds for Scenic's request for resolution of a basic legal question governing the conduct of this proceeding. The parties have a fundamental disagreement over the statutory basis for this proceeding which has yet to be resolved. Scenic is entitled to resolution of that

question prior to the taking of evidence, and should not be penalized for its request for such resolution.

From the pleadings it appears that a primary, if not exclusive factor, motivating the Transportation Division's decision to deny renewal of authority on November 15, 1989 may have been an earlier memorandum from the CHP to the Transportation Division. That memorandum, dated November 9, 1989, contains allegations by the CHP of vehicle code violations and unsafe operations by Scenic in connection with operations on State Route 1 in Marin County and a recommendation of denial of operating authority. Despite the importance of the memorandum, it was not made available to Scenic until February 13, 1990 when it was included as an attachment to Transportation Divisions' brief. In light of such procedural deficiencies, we do not find Scenic's request for a delay to be unreasonable or unwarranted.

Although Scenic requests that the interim authority be extended until the issuance of a final decision in this proceeding, we will not unnecessarily limit our future procedural options by adopting such an approach. It may be appropriate to amend, restrict, or cancel the authority by other than a final decision. We will simply provide that the interim authority shall remain in effect for 90 days or until further order of the Commission. Scenic is placed on notice that this grant of interim authority does not excuse any failure to comply with such requirements as maintenance of liability insurance and payment of regulatory fees, and that the authority may be suspended or revoked in accordance with established procedures for any such noncompliance.

Findings of Fact

1. On November 15, 1989 Transportation Division notified Scenic that its application for renewal of charter-party carrier of passengers authority had been denied for failure to meet CHP requirements.

2. Under the terms of a stipulation between Transportation Division and Scenic which was signed on December 18, 1989, the Transportation Division agreed to issue interim authority to Scenic.

3. Pursuant to the December 18 stipulation, the interim authority prohibits Scenic from operating its vehicles over a described segment of California Highway 1 to Muir Woods National Monument nor in any other manner to Muir Woods.

4. The interim authority will expire on March 20, 1990 unless further extended by the Commission.

5. Resolution of preliminary procedural issues and hearing on factual issues cannot be completed prior to March 20, 1990.

6. Scenic alleges that it will be irreparably injured if the interim authority is not extended.

7. CHP's concern about Scenic's safety stems from Scenic's operation of large buses on a segment of State Highway 1 in Marin County.

8. Scenic agrees to a continuation of the condition prohibiting operations on a segment of State Highway 1 in Marin County.

9. Granting the requested extension of interim authority will not endanger public safety.

Conclusions of Law

1. An appropriate remedy for safety concerns exists in PU Code § 5378.5, which provides for suspension of a charter-party carrier certificate or permit under specified conditions.

2. The requested extension of interim operating authority should be granted pending further order of the Commission.

3. Because the interim authority created by stipulation of the parties will expire on March 20, 1990, this order should be made effective on the date it is signed.

INTERIM ORDER

IT IS ORDERED that:

1. The interim authority granted to Scenic Hyway Tours (Scenic) to operate as a charter-party carrier of passengers (File number TCP 4604-A, S) is continued in effect for 60 days or until further order of the Commission. ✓

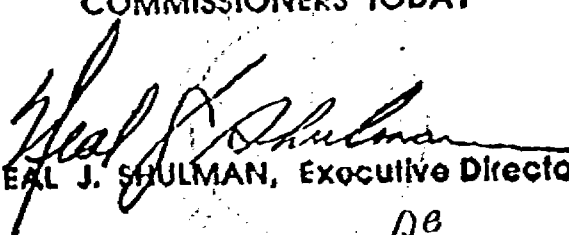
2. As a condition of the interim grant of authority specified in Ordering Paragraph 1, Scenic shall not operate any vehicles over California Highway 1 between its intersection with U.S. Highway 101 (Tam Junction) and Muir Woods National Monument in Marin County, nor in any other manner to Muir Woods.

3. As a further condition of granting interim authority, Scenic shall submit to the Commission's Transportation Division (1) weekly reports of the intrastate charter service it performs, and (2) copies of any citations issued by the California Highway Patrol or other law enforcement agencies to Scenic or its drivers for violations of the California Vehicle Code. The weekly reports shall be filed every Monday, commencing March 26, 1990, and shall fully describe the charter services performed during the prior week. Copies of citations shall be submitted within 5 days of issuance.

This order is effective today.

Dated March 14, 1990, at San Francisco, California.

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

  
NEAL J. SHULMAN, Executive Director

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