

Decision 90 05 036 MAY 4 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)

Eldon M. Johnson, Attorney at Law, for
applicant.
Catherine A. Johnson, Attorney at Law, and
James D. Westfall, for Transportation
Division.

O P I N I O N

Summary

Scenic Hyway Tours (Scenic) is found to possess the necessary fitness and is therefore authorized to continue operations as a charter-party carrier of passengers. This order adopts, with concurrence of the California Highway Patrol (CHP), a settlement agreement reached by Scenic and the Commission's Transportation Division (Transportation) as Appendix A. The agreement provides, among other things, that Scenic will comply with the regulations and orders of the Commission and the California Vehicle Code, will only operate vehicles of an authorized length on California State Route 1 (SR 1) in Marin County, and will observe vehicle length limitations as advised on official highway signs. Additionally, Scenic will pay a fine of \$7,500 pursuant to § 5413.5 (all references are to the Public Utilities Code unless otherwise stated), and will be subject to a 30-day suspension of its operating authority during the next 12 months if, after hearing, the Commission finds that Scenic has violated terms of the settlement agreement or has committed an act described in § 5378(a).

Background

Scenic has operated as a San Francisco-based charter-party carrier of passengers for more than 22 years. On December 29, 1988, Transportation routinely issued the annual renewal of Scenic's Class A certificate (TCP 4604-A) and its round-trip sightseeing permit (TCP 4604-S). The terms of both the certificate and the permit provided that the authorities would expire on October 15, 1989, subject to renewal upon submission and approval of a renewal application.¹ Scenic requested renewal of its authorities by application dated September 18, 1989. The application was submitted to Transportation in accordance with established delegated authority procedures for the processing of charter-party authority requests.

As more fully described in Decision (D.) 90-03-040 (issued March 15, 1990 in this proceeding to grant Scenic a 60-day extension of interim authority), Transportation notified Scenic on November 15, 1989 that its renewal application had been denied for "failure to meet California Highway Patrol safety requirements." On November 9, 1989 the CHP's Enforcement Services Division had written to the Transportation Director recommending denial of the application because of Scenic's decision to continue operating large buses on SR 1 in Marin County following double striping of the pavement by Caltrans.

The denial notice advised Scenic how it could contest the denial by filing a formal application and, on December 4, 1989, Scenic filed Application 89-12-005. On December 18, 1989, Scenic and Transportation entered into a stipulation in which the parties

¹ A recent amendment to § 5376 provides that charter-party permits and certificates and renewals thereof are effective for three years unless suspended or revoked by the Commission. Renewal was formerly on an annual basis. The amendment became effective January 1, 1989.

agreed that Transportation 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 SR 1 to Muir Woods National Monument in Marin County.

As previously noted, we extended the interim authorities for an additional 60 days by D.90-03-040, finding that procedural and factual issues could not be resolved prior to the scheduled March 20, 1990 expiration of the authorities granted on December 20. We found that that extending the interim authority would not endanger public safety, and that failure to do so would impose substantial hardship and possibly irreparable harm on Scenic.

Responding to a ruling by the Administrative Law Judge (ALJ) by letter dated March 23, 1990, Transportation advised the ALJ and Scenic of the grounds for its objection to granting the renewal. Transportation asserted that Scenic did not possess the fitness required by §§ 5374 and 5375, referring to its allegations that Scenic had a history of Vehicle Code violations on SR 1 in Marin County which created unsafe driving conditions and which in turn endangered passengers and the motoring public. Transportation also alleged that Scenic had conducted operations after its authorities had lapsed and that this further demonstrated a lack of fitness.

Settlement Agreement

Evidentiary hearings were held in San Francisco on April 2, 3, and 10, 1990. On April 10 the parties advised the ALJ that a settlement agreement had tentatively been reached. In accordance with the proposed agreement, hearings were adjourned without cross-examination of Transportation's witnesses, who remained subject to recall for cross-examination in the event of failure of the parties to reach, and the Commission to adopt, a final settlement agreement.

A final settlement agreement (attached as Appendix A) was reached and signed by the parties on April 13, 1990. The agreement is intended to settle all issues raised in the original application and all subsequent pleadings in this proceeding. CHP's Enforcement Services Division has reviewed the settlement agreement and finds its terms acceptable. On April 16, 1990, Transportation filed concurrently with the agreement a motion for its adoption.

Discussion

As discussed below, we believe the terms of the settlement bring this matter to a reasonable conclusion. Accordingly, we will grant Transportation's motion to adopt the settlement agreement.

Transportation asserts that Scenic's compliance with this Commission's regulations and orders, the California Vehicle Code, and particularly vehicle size limitations in the Muir Woods area of Marin County, will avoid further enforcement and safety problems of the type which led to CHP's recommendation to deny the renewal application. Since CHP's Enforcement Services Division now concurs with allowing Scenic to operate, with limitations on its ability to operate larger vehicles on narrow highways, we are persuaded that all safety concerns are satisfactorily resolved by the settlement. We note the extensive testimony of several witnesses demonstrating the high regard that Scenic's customers, competitors, liability insurer, and others have for Scenic's attention to maintenance of its vehicles and selection and training of its drivers. We also note that on November 13, 1989 Scenic received a terminal rating of "satisfactory" from the CHP. Finally, we note that Scenic certifies that it will maintain its vehicles in a safe operating condition and in compliance with the Vehicle Code and with the regulations contained in Title 13 of the California Administrative Code relative to motor vehicle safety, thereby fulfilling a threshold requirement of § 5374. We conclude from the foregoing,

and from Scenic's agreement to comply with the settlement agreement, that Scenic has established reasonable safety fitness.

With respect to the issue of charter-party operations conducted after lapse of the authorities, Transportation believes that a fine of \$7,500 is an appropriate amount to address past violations and discourage similar violations in the future. In accordance with § 5413.5, the Commission may impose a fine of not more than \$5,000 for each violation. Testimony and exhibits presented by the Transportation investigator show that Scenic continued to operate on at least two separate dates (October 18 and 21, 1989) after the authorities lapsed on October 15, 1989, allowing us to make the finding required by § 5413.5 that Scenic operated without a valid certificate or permit. In view of the settlement agreement, it is not necessary to address Scenic's operations after lapse of its authority as a fitness issue.

The 30-day suspension of Scenic's operating authorities, to be stayed for one year then dismissed, provides an agreed-upon remedy to be exercised if Transportation shows that Scenic has violated the terms of the settlement agreement or has committed an act described in § 5378(a). This provision of the agreement provides for a hearing. We find it to be reasonable.

We will direct Transportation to prepare and issue a renewal certificate and permit as applied for on or before May 19, 1990, the date of expiration of the interim authority. Since Scenic was issued interim authority effective December 20, 1989, the three-year effective period provided in § 5376 shall be computed from that date. The authorities shall reflect the terms of the settlement agreement. Accordingly, the condition imposed by D.90-03-040 that Scenic submit weekly reports of operations and copies of citations will be deleted. Similarly, the prohibition on operations on SR 1 and to Muir Woods National Monument will be deleted to the extent it is inconsistent with the settlement agreement.

Rule 77.1 of the Rules of Practice and Procedure states that applicants in matters involving passenger buses may request waiver of the filing of and comment on the ALJ's proposed decision. Scenic made such a request, and Transportation concurs in such a waiver. The waiver is hereby granted.

Findings of Fact

1. The terms of Scenic's last routinely issued renewal of its Class A certificate (TCP 4604-A) and its round-trip sightseeing permit (TCP 4604-S) provided that the authorities would expire on October 15, 1989.

2. On November 9, 1989 the CHP's Enforcement Services Division recommended to the Transportation Director that Scenic's renewal application be denied because of Scenic's decision to continue operating large buses on SR 1 in Marin County following double striping of the pavement by Caltrans.

3. Scenic was issued interim authority effective December 20, 1989 for a period of 90 days. The interim authority was extended for an additional 60 days and made subject to additional conditions by D.90-03-040.

4. A settlement agreement (attached as Appendix A) was reached and signed by the parties on April 13, 1990. The agreement is intended to settle all issues raised in the original application and all subsequent pleadings in this proceeding.

5. By the terms of the settlement agreement, Scenic agrees to the following:

- a. Scenic agrees to comply with the terms of the settlement agreement, the regulations and orders of the California Public Utilities Commission and the California Vehicle Code, in particular, Scenic will only drive vehicles of an authorized length on SR 1 in Marin County, and will observe vehicle length limitations as advised on official highway signs.

- b. Pursuant to Public Utilities Code § 5413.5, Scenic will pay a fine of \$7,500 to the California Public Utilities Commission within 60 days of the date of the Commission decision approving the settlement agreement but, in any case, not sooner than 90 days from the date this settlement is signed.
- c. Pursuant to Public Utilities Code § 5378(a), Scenic's operating authority will be suspended for 30 days. The suspension will be stayed for 12 months and dismissed after that period. Transportation Division may recommend to the Commission that the stay be lifted for any violation of the settlement or for any act described in § 5378(a). Such stay will be lifted if, after hearing on the matter, the Commission finds that Scenic violated § 5378(a) or terms of the settlement agreement.

6. CHP's Enforcement Services Division has reviewed the settlement agreement and finds its terms acceptable.

7. Scenic's compliance with this Commission's regulations and orders, the California Vehicle Code, and particularly vehicle size limitations in the Muir Woods area of Marin County, will avoid further enforcement and safety problems of the type which led to CHP's recommendation to deny the renewal application.

8. Scenic's customers, competitors, liability insurer, and others have high regard for Scenic's attention to maintenance of its vehicles and selection and training of its drivers.

9. On November 13, 1989 Scenic received a terminal rating of "satisfactory" from the CHP.

10. Scenic certifies that it will maintain its vehicles in a safe operating condition and in compliance with the Vehicle Code and with the regulations contained in Title 13 of the California Administrative Code relative to motor vehicle safety.

11. Scenic possesses reasonable and satisfactory fitness to initiate and conduct the proposed transportation services.

12. Scenic did not possess authority to operate as a charter-party carrier of passengers during the period commencing with the October 15, 1989 expiration of its authorities and continuing until December 20, 1989 when interim authority was granted.

13. Scenic continued to operate on at least two separate dates (October 18 and 21, 1989) after the authorities lapsed on October 15, 1989.

14. The 30-day suspension of Scenic's operating authorities, stayed for one year then dismissed, provides an agreed-upon remedy to be exercised if Transportation shows that Scenic has violated the terms of the settlement agreement or has committed an act described in § 5378(a).

Conclusions of Law

1. The terms of the settlement agreement bring all issues in this matter to a reasonable conclusion without resolving each material issue, and Transportation's motion to adopt the settlement agreement should be granted.

2. Pursuant to § 5375 the Commission may attach terms and conditions to certificates and permits such as those proposed by the parties in the settlement agreement.

3. Transportation should be directed to prepare and issue a renewal certificate and permit as applied for, subject to the terms of the settlement agreement, to become effective on or before May 19, 1990. Since Scenic was issued interim authority effective December 20, 1989, the three-year effective period provided in § 5376 should be computed from that date.

4. In accordance with §§ 5413.5 and 5415, the Commission may impose a fine of not more than \$5,000 for each days' operation as a charter-party carrier without a valid certificate or permit.

5. A fine of \$7,500 is appropriate to address Scenic's past operations without a valid certificate or permit and discourage similar violations in the future.

O R D E R

IT IS ORDERED that:

1. The motion of Transportation Division (Transportation) to adopt the settlement agreement of Scenic Hyway Tours, Inc. (Scenic), attached as Appendix A, is granted.

2. Transportation shall prepare and issue a renewal of Scenic's certificate (TCP 4604-A) and a renewal of its permit (TCP 4604-S) as applied for, subject to the terms and conditions of the settlement agreement, to become effective on or before May 19, 1990. The three-year effective period provided in § 5376 shall be computed from December 20, 1989.

3. Scenic shall pay a fine of \$7,500 to the California Public Utilities Commission within 60 days of the date of this decision.

4. Scenic's operating authority shall be suspended for 30 days. The suspension shall be stayed for 12 months from the effective date of this decision and dismissed after that period.

Transportation may recommend to the Commission that the stay be lifted for any violation of this settlement or for any act described in § 5378(a). Such stay will be lifted if, after a hearing on the matter, the Commission finds that Scenic violated § 5378(a) or terms of this settlement agreement.

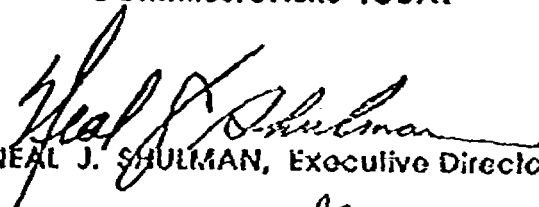
This proceeding is concluded.

This order is effective today.

Dated MAY 4 1990, at San Francisco, California.

G. MITCHELL WALK
President
FREDERICK R. DUDA
STANLEY W. HULETT
JOHN B. OHANIAN
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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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA
PUBLIC UTILITIES COMMISSION

FILED

APR 16 1990

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

SAN FRANCISCO OFFICE
Application 89-12-005
(Filed December 21, 1989)

SETTLEMENT AGREEMENT

The parties to this proceeding are:

1. Scenic Hyway Tours, Inc. (Scenic), a bus company holding authority from this Commission in TCP 4604-A and 4604-S.
2. The Transportation Division of the California Public Utilities Commission.

Scenic's operating authorities, 4604-A and 4604-S, expired October 15, 1989. On November 15, 1989, the Transportation Division issued a denial of Scenic's renewal application. The denial was issued at the recommendation of the California Highway Patrol who informed the Transportation Division that Scenic had been violating the Vehicle Code and operating unsafely by driving 40 foot buses on State Highway 1 to and from Muir Woods.

Scenic appealed the denial on December 4, 1989. Scenic's operating authority was reinstated on an interim basis by an Administrative Law Judge's Ruling on December 21, 1989 (for the period of December 20, 1989 through March 20, 1990). Thereafter, the authority was extended from March 20, 1990 through May 19, 1990. (By Decision 90-03-040.)

To date, three days of hearings have been held. On April 10, 1990, the hearings were adjourned subject to being reopened if this settlement is not approved by the Commission.

The Enforcement Services Division of the California Highway Patrol, which recommended denial of the authority in November, has reviewed this settlement and finds its terms acceptable.

This Settlement Agreement represents a mutually acceptable outcome to this proceeding without resolving the individual

material issues. This agreement is intended to settle all issues raised in the original application and all subsequent pleadings. The parties agree as follows:

1. Scenic Hyway Tours agrees to comply with the terms of this Settlement Agreement, the regulations and orders of the California Public Utilities Commission and the California Vehicle Code, in particular, Scenic Hyway Tours will only drive vehicles of an authorized length on State Highway One in Marin County, and will observe vehicle length limitations as advised on official highway signs.

2. Pursuant to Public Utilities Code Section 5413.5, Scenic Hyway Tours will pay a fine of Seven Thousand Five Hundred Dollars (\$7500) to the California Public Utilities Commission within sixty (60) days of the date of the Commission decision approving this Settlement Agreement but, in any case, not sooner than ninety (90) days from the date this settlement is signed.

3. Pursuant to Public Utilities Code Section 5378(a), Scenic Hyway Tours' operating authority will be suspended for thirty (30) days. The suspension will be stayed for twelve (12) months and dismissed after that period. Transportation Division may recommend to the Commission that the stay be lifted for any violation of this settlement or for any act described in Section 5378 (a). Such stay will be lifted if, after a hearing on the matter, the Commission finds that Scenic violated Section 5378(a) or terms of this Settlement Agreement.

4. It is the intention of the parties that Scenic Hyway Tours' present authority under TCP 4604A and S will not lapse and, if necessary, the current interim authority, due to expire on May 19, 1990, will be extended until a final Commission decision is issued in A.89-12-005.

5. Transportation Division withdraws its recommendation to deny Scenic Hyway Tours' application for authority in A.89-12-005.

6. Pursuant to Rule 77.1 of the Commission's Rules of Practice and Procedure, the parties agree to waive the filing of and comment on a proposed decision in A.89-12-005.

7. Scenic Hyway Tours has waived its cross examination of Transportation Division witnesses in A.89-12-005 pending the finalizing and approval of this settlement, but reserves the right to recall such witnesses for cross examination if the Settlement Agreement is not finalized or if the Commission rejects the settlement. If such a witness cannot subsequently appear his testimony will be stricken. The Transportation Division will be allowed to offer another witness on the same subject matter.

It is understood that the terms of this Settlement Agreement represent a compromise of disputed claims and that neither this settlement nor the fine and suspension are to be construed as an admission of liability on the part of Scenic Hyway Tours and Scenic Hyway Tours denies any such liability. Should this Settlement Agreement not be approved by the Commission, the parties agree to proceed to hearing upon all issues at a time scheduled by the presiding Administrative Law Judge. In that case, this Settlement Agreement shall not be deemed to be an

admission, answer or response of either party, nor shall this Settlement Agreement be used for any purpose at any hearing.

Dated: April 13, 1990 By: Richard E. Twining
Richard E. Twining
Vice President
Scenic Hyway Tours

Dated: 4-13, 1990 By: Eldon M. Johnson
Eldon M. Johnson
Attorney for Scenic Hyway
Tours

Dated: April 13, 1990 By: Paul Wuerstle
Paul Wuerstle
Transportation Division

Dated: April 13, 1990 By: Catherine A. Johnson
Catherine A. Johnson
Attorney for Transportation
Division

(END OF APPENDIX A)