

ALJ/KIM/pc

Decision 90 06 005 JUN 06 1990

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
Cote Distribution Systems, Inc.,)
dba Sierra Valley Bus Lines, for)
authority to acquire a Class "B")
Charter Party Carrier of)
Passengers Certificate to operate)
in Gilroy.)

ORIGINAL
Application 88-09-012
(Filed September 7, 1988)

O P I N I O N

Cote Distribution Systems, Inc., doing business as Sierra Valley Bus Lines (Sierra), filed this application on September 7, 1988 for authority to operate a charter-party carrier service. Sierra held previous authority for intrastate operations and holds a certificate for interstate operations from the Interstate Commerce Commission.

Transportation Division staff (TD) opposes Sierra's application on the grounds that Sierra does not meet the necessary fitness and financial responsibility requirements of Sections 5374 and 5375 of the Public Utilities Code. The matter was originally set for hearing on November 30, 1988. In response to concerns regarding discovery, the assigned Administrative Law Judge (ALJ) continued the hearing.

On March 7, 1989, TD filed a motion to dismiss on the grounds that Sierra had not provided certain requested information and had therefore failed to pursue its application.

On February 16, 1990, a prehearing conference was held at the request of applicant. At the prehearing conference, the ALJ scheduled hearings and dates for submitting testimony. The parties agreed to hearing dates of April 9 and 10, 1990.

On the first day of hearings, Sierra requested a continuance. Sierra argued that the continuance was reasonable

because some of staff's evidence was almost two years old. Applicant commented that a California Highway Patrol (CHP) inspection had been initiated after the date for submission of Sierra's testimony thus precluding applicant from addressing the CHP's findings. The inspection, according to Sierra, required much time of Sierra employees. Sierra also stated that counsel had been appointed only three days prior and therefore did not have time to review the file.

TD opposed the continuance on the grounds that the CHP inspection could not have interfered with Sierra's preparation of testimony because the inspection was initiated the same day applicant's testimony was due. TD also argued that TD had previously requested more time for preparing its case, that its request was denied, and that Sierra should not now be granted more time.

The ALJ denied Sierra's motion and stated that the hearing would go forward as scheduled. We affirm the ALJ's ruling on the grounds that Sierra requested and was granted expedited treatment of its application even though the schedule created some hardship for TD staff. Sierra agreed to the hearing schedule set forth at the prehearing conference and had ample time and opportunity to prepare its case. The requested continuance would have caused hardship for those of TD's witnesses who traveled from out of town to testify at the hearing on April 9. Finally, Sierra could have moved to strike TD testimony which it believed was improper. Alternatively, it could have attempted to discredit the testimony through cross-examination. Applicant declined to do either at the hearing.

Because the ALJ denied Sierra's request for a continuance, Sierra stated that it was withdrawing its application and requested a dismissal for lack of jurisdiction. TD moved that the application be dismissed with prejudice, precluding the filing of a new application for six months. TD made the motion on the

grounds that it did not wish to prepare its case again in the near future.

We will dismiss the case at the request of applicant. If and when applicant files again for charter-party carrier authority, staff may address procedural and scheduling matters in that proceeding.

Findings of Fact

1. Sierra has had adequate time and opportunity to prepare its case for hearing.
2. A continuance of the scheduled hearing would have caused undue hardship for Transportation Division witnesses who traveled from out of town to testify at the hearing on April 9.
3. Sierra has withdrawn its application and seeks a dismissal of this case for lack of jurisdiction.

Conclusions of Law

1. The ALJ's ruling denying Sierra's request for a continuance was reasonable.
2. Sierra's application should be dismissed.

ORDER

IT IS ORDERED that the application of Cote Distribution Systems, Inc., doing business as Sierra Valley Bus Lines, is dismissed.

This order becomes effective 30 days from today.

Dated JUN 06 1990, at San Francisco, California.

G. MITCHELL WLK
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