

Decision 90 07 040 JUL 18 1990

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
Jozsef Illes, doing business as)
Sureride, for authority to operate)
as a passenger stage corporation)
between points in San Diego County,)
including the San Diego Airport.)

Application 90-02-038
(Filed February 16, 1990)

O P I N I O N

Jozsef Illes, doing business as Sureride, seeks a certificate of public convenience and necessity authorizing operations as a passenger stage corporation between certain points within San Diego County, including San Diego International Airport, as set forth in Exhibit B attached to the application. A map showing the area of the proposed service is attached to the application as Exhibit C.

Applicant proposes to perform an on-call service on a seven-day per-week basis. Passengers will be picked up and dropped off at numerous points within the described service area. The pickups will be made at the point within the proposed service area as specified by the passenger.

The application states:

"Applicant currently operates an on-call shuttle or 'jitney' service transporting passengers within the City of San Diego. The applicant will initially operate three vans capable of transporting 7 and 12 passengers. The 12-passenger van is a 1978 Ford E-250 Econoline, ID. No. S25HBG0740, DMV License No. 3G34243. The 7-passenger vans are a 1987 Chevrolet Astro GL and a 1989 Ford Aerostar XL, I.D. No. 1GNDM15Z3HB217097, DMV License No. 2FXM413 and I.D. No. 1FMDA31V6KZB56569, DMV License No. 3V98368, respectively. All three vans are owned by the applicant. These vans are fully automatic, air-conditioned units. They are utilized primarily because of their

maneuverability and comfort within a metropolitan area.

"All of the vehicles intended to be operated are currently covered by liability insurance in amounts that exceed the minimums required under the Commission's General Order No. 101-C. Applicant's vehicles will be garaged, serviced and maintained at its present vehicle service facilities located at San Diego, California. Servicing and maintenance will be performed by applicant's employees and by outside firms specializing in specific areas of maintenance as necessary."

Applicant alleges that:

"Public convenience and necessity require the granting of this application for the following reasons:

"1. The services to be offered by applicant are different and distinct from the public transportation system currently in place between the points involved here. The concept of bus or van transportation is not unique, but the existing services simply do not meet the needs of the public needing to travel between the points involved in this application and particularly to and from the San Diego Airport, the Amtrack Station, and the San Diego Convention Center. Existing services are not regular; they are often not operated when they are supposed to be operated; and they simply do not meet the requirements of the public for service. A comparison of our rates and those of existing services will disclose that applicant intends to charge a higher price than existing services. This, however, will make it possible for applicant to provide a superior service.

"2. Applicant has been requested by numerous members of the public to provide the service proposed here and is therefore certain that public convenience and necessity requires the proposed service.

"3. This will not really be a new service. Applicant currently operates a shuttle service under authority issued by the City of San Diego. This has included service to the airport; however, the airport will not allow curbside service unless the operator has passenger stage authority. A grant of the authority here will simply make it possible for the applicant to provide a more responsive service by allowing it to make curbside pickups at the airport."

Exhibit D attached to the application set forth the fares applicant proposes to charge for service from and to the San Diego Airport, San Diego Amtrak, and The Convention Center.

Exhibit E attached to the application is a copy of applicant's balance sheet as of June 30, 1988. It discloses assets of \$642,870.04 offset by liabilities of \$276,064.55 a resultant net worth of \$366,805.49.

The application was served in accordance with Rule 21(K) of the Commission's Rules of Practice and Procedure. Notice of the filing of the application was published in the Commission's Daily Transportation Calendar of February 26, 1990. No protests to the granting of the application have been received.

The Commission's Transportation Division (TD) staff has advised in its advice of participation dated May 9, 1990 that the application is incomplete due to certain discrepancies. The advice of participation describ the discrepancies as follows:

"This application has no provision for Workman's Compensation in the projected income statement, and provides no rules or conditions under which the proposed on-call service will be provided (Rule 21 - f,g). On April 2, 1990, applicant agreed to correct the discrepancies in his projected income statement, and serve copies of the application on the San Diego Amtrak Station and Convention Center. On April 10, 1990, staff received proof of service of the copies. However, the corrected projected income statement received on April 26, 1990, still showed no provision for Workman's Compensation, and has discrepancies in the mileage estimated.

Staff's calculations from the income data show a proposed average wage of \$1.24 per hour (based on 2 ten-hour shifts per day for a 350 day-year: less than the prevailing minimum wage. Unless applicant provides a complete cost estimate and satisfies Rule 21(f,g), staff believes that the viability of the proposed service, under the guidelines of General Order 158, cannot be determined. Additional information has been requested to complete the application. Staff will prepare a supplemental advice of participation when the application is completed."

With respect to the concern that the application provides no rules or conditions under which the proposed on-call service will be provided, we believe that the description of the proposed service set forth in the application is sufficient. Detailed rules will have to be set forth in the tariff which applicant will be required to file. Further the description set forth in the application is almost identical to the description of a similar proposed service which was the subject of Application 88-11-035. In that proceeding the Transportation Division (TD) staff advised it had reviewed the application and recommended that it be granted by ex parte order in the absence of protests.

With respect to the alleged discrepancies in the projected income statement there has been correspondence between the TD staff and applicant's counsel. In that correspondence applicant's counsel has stated that the great majority of the driving will be done by the applicant and that when drivers are employed they are compensated on the basis of a commission. Applicant's counsel has also stated that "...where workman's compensation is required, it will be paid..."

On May 17, 1990 TD staff issued a Supplemental Advice of Participation (AP) wherein it states the following:

"On April 2, 1990, applicant agreed, by telephone, to submit a completed projected annual income statement, rules/conditions under which the proposed on-call services will be provided (Rule 21 - f,g), and serve copies of his application on the San Diego Amtrak Station and Convention Center. He submitted proof that the copies have been served as requested, but failed to provide information on Workman's Compensation, and rules/conditions under which the proposed services will be rendered. Staff requested the same information by mail on April 11, 1990, and May 4, 1990. On each occasion, however, applicant submitted deficient documents. In his letter of May 9, 1990, applicant contended that he has been providing a similar service, profitably, under authority issued by City of San Diego, and that it is impossible for him to estimate Workman's Compensation based on how his drivers are hired. Applicant's current 'Jitney' service does not operate under the guidelines of General Order 158, and the information provided shows potential violations of this Commission's authority. Staff believes that a formal hearing is necessary, in this matter, to show evidence of public convenience and necessity."

By letter dated May 23, 1990 counsel for applicant wrote to the assigned administrative law judge wherein he stated in the first paragraph the following:

"On May 19, 1990, this office received a document entitled 'Supplemental Advice of Participation Planned by Transportation Division' [emphasis added]. This 'supplemental' advice of participation is strange in that there has never been an initial advice of participation ever filed in this application by the Commission staff."

The letter further describes the exchange of correspondence between the applicant and TD staff. The letter requests that because of its tardiness the supplemental AP be rejected and that the application be granted on an ex parte basis.

Careful examination of the AP dated May 9, 1990 discloses that it was not served upon the applicant's attorney.

While the concerns expressed by the TD staff are legitimate we believe the correspondence from applicant's counsel, especially the letter dated May 9, 1990 clearly sets forth applicant's intentions with respect to the payment of drivers and workman's compensation where required. We believe that this application can be processed through ex parte order since there are no protests. Further because TD staff believes there may be potential violations rather than actual violations is not a reason to hold up the issuance of authority.

We note that this application was filed on February 16, 1990 and the AP and the supplemental AP were not issued until May 9, and 17, 1990, respectively. TD staff is placed on notice that Advices of Participation wherein it is requested that the matter go to hearing or the application be amended, should be issued within the time period allowed for the filing of protests as set forth in other Commission's Rules of Practice and Procedure.

Findings of Fact

1. Applicant seeks authority to perform operations as a passenger stage corporation between various points in San Diego County including San Diego International Airport.
2. Applicant has the ability, experience, equipment, and financial resources to provide the proposed service.
3. Public convenience and necessity require the issuance of a certificate to perform the proposed service.
4. No protests have been received.
5. A public hearing is not necessary.
6. It can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.

Conclusion of Law

The Commission concludes that the application should be granted.

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.

O R D E R

IT IS ORDERED that:

1. A certificate of public convenience and necessity is granted to Jozsef Illes, authorizing him 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-6431, to transport persons and baggage.
2. Applicant 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 his 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 101, 104, and 158, 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. Before beginning service to any airport, applicant shall notify the airport's governing body. Applicant shall not operate into or on airport property unless such operations are also authorized by the airport's governing body.

4. Applicant is authorized to begin operations on the date that the Executive Director mails a notice to applicant that his evidence of insurance on file with the Commission and that the California Highway Patrol has approved the use of applicant's vehicles for service.

5. The application is granted as set forth above.

This order becomes effective 30 days from today.

Dated JUL 18 1990, at San Francisco, California.

G. MITCHELL WILK

President

FREDERICK R. DUDA

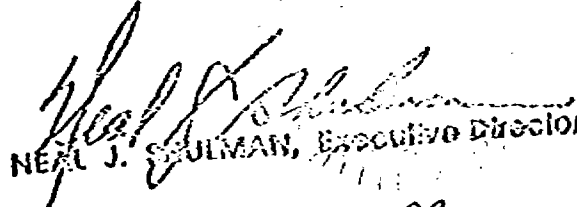
STANLEY W. HULETT

JOHN B. OHANIAN

PATRICIA M. ECKERT

Commissioners

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


NEAL J. SULMAN, Executive Director

OB

T/MEE/ebi

Appendix PSC-6431

Jozsef Illes

Original Title Page

CERTIFICATE

OF

PUBLIC CONVENIENCE AND NECESSITY

AS A PASSENGER STAGE CORPORATION

PSC-6431

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 30 07 040, dated
JUL 10 1930 of the Public Utilities Commission of the
State of California in Application 90-02-038.

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

Jozsef Illes by the certificate of public convenience and necessity granted by the decision noted in the margin, is authorized to transport passengers and their baggage, on an on-call, door-to-door basis, between points in San Diego County, over and along the routes described in Section 3, subject, however, to the authority of this Commission to change or modify the routes at any time and subject to the following provisions:

- (a) This certificate does not authorize the holder to conduct any operations on the property of or into any airport unless such operation is authorized by the airport authority involved.
- (b) When route descriptions are given in one direction, they apply to operations in either direction unless otherwise indicated.
- (c) 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 each authorized on-call service will be provided, and shall include the description of the boundary of each fare zone, except when a single fare is charged to all points within a single incorporated city.

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SECTION 2. SERVICE AREA DESCRIPTION.

SAN DIEGO COUNTY SERVICE AREA.

All points within the geographical limits of the following cities and communities and postal zip codes:

<u>CITY/COMMUNITY</u>	<u>ZIP CODE</u>
Alpine	92001
Bonita	92002
Bonsall	92002
Borrego Springs	92004
Boulevard	92005
Campo	92006
Cardiff by the Sea	92007
Carlsbad	92008, 92009
Chula Vista	92010, 92011, 92013
Del Mar	92014
Descanso	92016
Dulzura	92017
El Cajon	92019, 92020, 92021
Encinitas	92024
Escondido	92025, 92026, 92027
Fallbrook	92028
Guatay	92031
Imperial Beach	92032
Jacumba	92034
Janul	92035
Julian	92036
La Jolla	92037
Lakeside	92040
La Mesa	92041, 92042
Lemon Grove	92045
Mount Laguna	92048
National City	92050
Oceanside	92054, 92055, 92056
Pala	92059

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Palomar Mountain	92060	
Pauma Valley	92061	
Pine Valley	92062	
Potrereo	92063	
Poway	92064	
Romona	92065	
Ranchita	92066	
Rancho Sante Fe	92067	
San Luis Rey	92068	
San Marcos	92069	
Santa Ysabel	92070	
Santee	92071	
San Ysidro	92073	
Solana Beach	92075	
Spring Valley	92077,	92078
Tecate	92080	
Valley Center	92082	
Vista	92083,	92084
Warner Springs	92086	
Harbor Island	92101	
Coronado, North Island	92155	
Temecula	92390	
San Onofre	92672	
San Diego	92101,	92102, 92103
	92104,	92105, 92106
	92107,	92108, 92109
	92110,	92111, 92112
	92113,	92114, 92115
	92116,	92117, 92118
	92119,	92120, 92121
	92122,	92123, 92124
	92125,	92126, 92127
	92128,	92129, 92130
	92131,	92133, 92134
	92135,	92136, 92138
	92139,	92140, 92145
	92147,	92154, 92161
San Diego International Airport	92101	

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Appendix PSC-6431

Jozsef Illes

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SECTION 3. ROUTE DESCRIPTIONS.

Service shall be provided between any point or points in the service area as described in Section 2 over the most convenient routes.

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