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Decision 91-01-017 January 15, 1991

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Greyhound Lines, Inc. for authority to revise, discontinue and abandon Route 8.03 of Route Group 8, Mendocino and Sonoma Counties.

**ORIGINAL**

Application 90-09-061 (Filed September 26, 1990)

ORDER OF DISMISSAL

Introduction

Greyhound Lines, Inc. (Greyhound) filed this application on September 26, 1990, to revise its certificate of public convenience and necessity by abandoning Route 8.03 between Fort Bragg and Cloverdale, California. Abandonment of this route would result in elimination of all Greyhound service between these two points. Protests have been received from the Mendocino Council of Governments, the Mendocino Transit Authority, the City of Fort Bragg, the County of Mendocino, and the Sierra Club Mendocino Lake Group.

Included as exhibits to Greyhound's application are: a copy of Appendix A, Sixteenth Revised Page 15, to Decision (D.) 55893, which constitutes Greyhound's operating authority for this route (Exhibit 1); a map of the route to be abandoned (Exhibit 2); a current timetable of the affected points and routes (Exhibit 3); a revenue and cost statement for the 12-month period from March 1989 through February 1990, with supporting schedules, which purportedly sets forth revenues and costs for the Cloverdale-Fort Bragg route during that period (Exhibit 4); a two-week ticket study for the period from February 1 through 14, 1990, showing all passenger origins and destinations between Fort Bragg and San Francisco during that period (Exhibit 5); and a three-page document furnishing some explanation of how the revenues and costs were calculated and the assumptions underlying those calculations.

The Commission's Division of Ratepayer Advocates (DRA) has moved that the application be dismissed, without prejudice, on the grounds that Greyhound has not furnished information required by Rule 15(f) of the Commission's Rules of Practice and Procedure (Rules).<sup>1</sup> Specifically, DRA argues that Greyhound's supporting revenue and expense data are mismatched because Greyhound has included expenses for the entire Fort Bragg-San Francisco service, but has computed revenues solely for the Fort Bragg-Cloverdale portion, resulting in an overstatement of the loss attributable to the route.

Greyhound's reply contests DRA's assertion. Greyhound represents that it has matched revenues received between San Francisco and Fort Bragg with variable costs incurred in providing service between these points. Curiously, however, the summary of costs and revenues in Exhibit 4 appears to match revenue attributable solely to the Cloverdale-Fort Bragg portion of the schedule with the cost of providing the service only between those points.

This proceeding is subject to the strictures of the federal Bus Regulatory Reform Act of 1982, 96 Stat. 1102, which allows Greyhound to seek permission to discontinue the service from the Interstate Commerce Commission if this Commission has not acted finally on the application by the 120th day after it was filed. 49

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<sup>1</sup> There is currently no subsection (f) of Rule 15. Former subsection (e) was repealed, and former subsection (f) was relettered to current subsection (e), by D.87-04-072, effective April 22, 1987. Consequently, DRA's motion should have been made under Section 15(e), and will be treated as such.

U.S.C. Section 10935.<sup>2</sup> A prehearing conference was held on December 3, 1990, at which time staff and counsel for the law firm of the Commission's Transportation Division disclosed the existence of concurrent discussions among the parties, local agencies, and prospective operators concerning the possibility of subsidizing or replacing the Greyhound service, and of delaying the effectiveness of this statutory deadline.<sup>3</sup> At that time Greyhound's counsel stated that there appeared to be a "significant possibility that

2 49 U.S.C. Section 10935 states in pertinent part:

"When a motor common carrier of passengers having intrastate authority under the laws of a state, and interstate authority under a certificate issued [by the Interstate Commerce Commission], to provide transportation over any route to any point in such State has proposed to discontinue providing transportation over such route to such point or to reduce its level of service over such route to such point to a level which is less than one trip per day...and the carrier has requested the department, agency, or instrumentality of such State having jurisdiction over granting such discontinuance or reduction for permission to discontinue such intrastate transportation or to reduce its level of service to a level which is less than one trip per day and the request has been denied...or such department, agency, or instrumentality has not acted finally...on the request by the 120th day after the carrier made the request, the carrier may petition the [Interstate Commerce Commission] for such permission."

3 Transcript of Prehearing Conference of December 3, 1990 (Tr.), pp. 11-13.

something could be worked out along [these] lines."<sup>4</sup> A further meeting was scheduled to be held the following day, December 4.<sup>5</sup> Although DRA has not advanced sufficient grounds for dismissing Greyhound's application, there are other omissions which prevent the Commission from proceeding to a decision on the merits. These omissions relate not only to Rule 15, but also to other rules, all of which were adopted by the Commission in contemplation of being fully informed before it would be obliged to act upon applications of this type.<sup>6</sup> In view of the extent of formal opposition to this application, the strict time constraint imposed by 49 U.S.C. Section 10935, and the pendency of discussions which potentially could resolve the protestants' concerns, we conclude that dismissal of the application, without prejudice, is appropriate.

#### Discussion

Rule 15(e) of the Commission's Rules of Practice and Procedure states in pertinent part that,

"In addition to otherwise complying with these rules, each application for authority to abandon passenger stage service, or reduce service to less than one trip per day ... shall include the following exhibits:"

4 Tr. p. 12, l. 18-21.

5 Tr. p. 15, l. 23; p. 16, l. 5; p. 17, l. 7-13.

6 See, for example, Resolution PE-452, amending Rule 15 in response to enactment of the federal Bus Regulatory Reform Act of 1982 by adding current Subsection (e), in which the Commission states,

"The Commission...finds that it is absolutely necessary for Commission review, as well as for meaningful public comment, that bus companies provide complete information in their applications with the Commission for authority to discontinue passenger service on intrastate routes in California."

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"Exhibit 1. Points and Routes Affected--a listing of points, routes, and route segments to be abandoned, including...a brief description of any other passenger transportation service available at the points or along the routes affected."

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"Exhibit 5. Traffic--traffic data for a recent representative period, showing numbers of interstate and intrastate passengers (by classification if more than one type of ticket is sold) destined to and originating from each point to be abandoned; also package express shipments similarly stated."

"Exhibit 6. Fares and Rates--description of the fares and rates applicable to the affected services."

"Exhibit 7. Revenues--calculation of the annual interstate and intrastate passenger, express and other revenues which accrue as a result of the service to be abandoned, along with an explanation of how the revenues were calculated, and of any assumptions underlying the calculations."

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"Exhibit 9. Expenses--calculation...of the variable costs of operating each affected service, with an explanation of how the costs were calculated, and of any assumptions underlying the calculations (...consistent with those used to calculate revenues)...."

"Exhibit 10. Financial Assistance--description of any present operating subsidies or financial assistance applicable to the affected service, including identification of source, amounts, duration, and any significant terms or conditions applicable; also description of any proposals or discussions with respect to operating subsidies or financial assistance which have occurred during the year preceding the filing of the application."

In addition to these exhibits, Rule 16 requires a foreign corporation such as Greyhound to annex to its application a certified copy of its current articles of incorporation, and a certified copy of its certificate of qualification to transact intrastate business. Alternatively, if these documents have already been filed with the Commission, the application may make specific reference to such filings instead.

Finally, Rule 17.1, which delineates the Commission's special procedure for implementation of the California Environmental Quality Act (CEQA), Pub. Res. Code Section 21000 et seq., states:

"(c) Applicability. This rule shall apply to any CEQA [sic] for which Commission approval is required by law, except [certain projects not material to this matter]."

If Commission approval involves the issuance of a permit or license, it is a "project" within the meaning of CEQA and thus requires inclusion of an environmental assessment, referred to as the Proponent's Environmental Assessment (PEA), with the application. Pub. Res. Code Section 21065; Rule 17.1(d). "If it can be seen with certainty that there is no possibility that the project in question may have a significant adverse effect on the environment, the project PEA should be limited to a statement of this conclusion and any additional explanation or information which may be necessary for an independent assessment of such issue by the Commission." Rule 17.1(d)(1) [emphases supplied].

Clearly, the revision of a passenger stage corporation's certificate of public convenience and necessity is an activity which falls within the definition of a "project" for CEQA purposes, because it involves amendment of the applicant's original permit to operate. There appears to be no categorical exemption from the Commission's environmental review process for this type of project, and an applicant for such authority consequently must comply with

the requirements of Rule 17.1 before the application is completed. See Rule 17.1(h).

Greyhound's application lacks a substantial number of the items identified in the foregoing Rules, and is therefore incomplete on its face. The missing information may be material to the conduct of this proceeding, and the Commission therefore cannot go forward only on the basis of the information which has been furnished by Greyhound.<sup>7</sup>

Although Greyhound's expense and revenue statement is less than lucid, this is not the stage at which DRA may contravene or impeach Greyhound's contentions. Petition of Trailways Lines, Inc., to discontinue bus transportation in the State of California pursuant to 49 U.S.C. 10935, No. MC-109780 (Sub-No. 111) (February 17, 1987) (Slip Op., pp. 5, 7). However, the total omission of information does justify dismissal. Id., affirming D.86-10-068, In the Matter of Trailways Lines, Inc., etc. Application (A.) 86-09-006 (October 29, 1986). Even assuming, for purposes of this decision, that Greyhound's calculations of interstate and intrastate revenues and variable costs are appropriate and would demonstrate that operation of the route imposes a substantial burden upon it, the Commission still cannot determine what alternative transportation service is, or would be, available in the event of Greyhound's service is discontinued. Nor can the Commission determine what efforts have been, or could be, made to preserve or replace the existing service. As specified in Rule 15(e), this information is expressly required to be submitted as part of Exhibits 1 and 10 to the application. This information

7 Although Greyhound's exhibits also are not prepared in the format required by Rule 15(e), we do not regard this fact as material for purposes of this decision.

is therefore an integral part of the carrier's application to ~~and~~ eliminate all service on a route.

Although Greyhound has submitted revenue, expense, and traffic data, it is clearly not in the form specified for Exhibits 5, 7, and 9, and is partially incomplete. For example, there is no breakdown of interstate and intrastate figures, so the Commission cannot evaluate the degree to which this route contributes to systemwide traffic and revenue, or even to other intrastate operations, and Greyhound's calculations and assumptions regarding its figures are not fully explained. Indeed, the figures in the columns marked "CPM" are a total mystery, as they do not appear to relate meaningfully to any of the other computations. Greyhound has also omitted a description of fares and rates required in Exhibit 6. This further hampers the Commission's ability to evaluate the revenue, expense, and traffic figures which Greyhound included in its application.

Greyhound has totally omitted information required by Rule 17.1. This also renders its application incomplete. Greyhound may believe that cessation of its bus service would certainly have no possible adverse effect on the environment, but this is not a matter which the Commission can take for granted. Every Commission activity which falls within the ambit of CEQA requires the Commission to consider on the record what the potential adverse environmental consequences may be. The objective is:

"To assess in detail, as early as possible, the potential environmental impact of a project in order that adverse effects are avoided, alternatives are investigated, and environmental quality is restored or enhanced, to the fullest extent possible."

Rule 17.1(b)(3). The Commission simply cannot ignore this responsibility, and the application must be accompanied either by a



PEA or a negative declaration (with supporting explanation) so that the Commission will have a full record upon which to act.

We must emphasize the need for environmental review in this case, because Greyhound's application relates to the availability of public transportation in an era of heightened concern about fuel conservation, mobility for senior citizens and other groups, and air quality. The Commission takes notice of the fact that Route 8.03 operates over undivided state highways in a rural area of the state. We do not know the effect which the loss of bus service would have during the summer periods, particularly if heavier vehicular traffic would occur as a result. Greyhound must furnish an adequate assessment of the effects of the loss of its service, particularly since the traffic data submitted with the application may not be truly representative of use of the service at other times of the year. See, for example, D.86-05-094, In the Matter of the Application of Mendocino Coast Railway, Inc. dba California Western Railroad to discontinue scheduled passenger service, A.85-12-005 (May 28, 1986).

Although Greyhound did not include with its application certified copies of the corporate documents required by Rule 16, we do not consider this omission to be material to this decision. However, Greyhound is reminded that an application to abandon service must be complete in all respects before this Commission is obliged to act upon it. Trailways, supra, affirmed in Petition of Trailways Lines, Inc., etc., supra.

In the circumstances presented here, dismissal of the application, without prejudice to filing a complete application, is appropriate. Trailways Lines, Inc., Id. Unless Greyhound submits a complete application which substantially complies with Rule 15, there will be insufficient time for this Commission to develop a full record and render a well-reasoned decision within the 120-day period under its own procedural rules. See D.86-10-068, supra, pp. 4-5. Loss of the ability to decide this matter as provided

under the Commission's Rules would render the Commission's jurisdiction meaningless, thwarting Congress' intent in adopting the deferral mechanism embodied in 49 U.S.C. Section 10935.

As this Commission stated in Trailways, "We cannot believe that Congress explicitly provided that states can originally have hearings on such passenger carrier abandonment applications, only to then let the carrier render the hearing process meaningless by exploiting the 120-day time limit." See D.86-10-068, supra, p. 4. The Commission therefore ordered dismissal of the application, without prejudice to Trailways' submission of a complete application in accordance with Rule 15. See also D.83-02-053 in Application of Greyhound Lines, Inc. for authority to revise, reauthorize and discontinue specific routes or Route Groups, etc., A.83-01-17 (February 16, 1983).

**Conclusion**

Since Greyhound's application is still lacking in several important respects, the application should be dismissed, without prejudice to refiling a new application prepared in accordance with Rule 15 and other Commission Rules governing applications of this type.

This order must be made effective today, because the 120-day period under 49 U.S.C. 10935 will run before the expiration of 20 days from the date of service hereof. Wherefore,

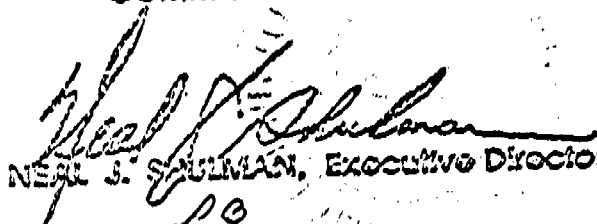
IT IS ORDERED that Application 90-09-061 is dismissed without prejudice.

This order is effective today.

Dated January 15, 1991, at San Francisco, California.

PATRICIA M. ECKERT  
President  
G. MITCHELL WILK  
JOHN B. OHANIAN  
Commissioners

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

  
NEAL J. SULLIVAN, Executive Director  
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