

ORIGINAL

Decision 82 01 82 JAN 19 1982

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of THE GRAY LINE, INC., a California corporation, for authority to operate four new sightseeing tours, Tour Numbers 22, 22W, 25W, and 32W.

Application 60406 (Filed March 30, 1981; amended July 27, 1981)

Malcolm Gissen, Attorney at Law, for applicant.  
Dennis Paul Felso, for Creative Tours; protestant.

O P I N I O N

This is an application by The Gray Line, Inc. (Gray Line) for additional passenger stage sightseeing authority. Dennis Felso, doing business as Creative Tours (Felso), protested the application.

A duly noticed public hearing was held in this proceeding before Administrative Law Judge Donald B. Jarvis in San Francisco on August 17, 1981. The matter was submitted subject to the filing of transcript, which was received August 20, 1981.

Gray Line holds extensive passenger stage sightseeing operating authority granted by the Commission. This divers authority includes authorization to operate the following tours: (1) San Francisco City Tour, (2) Tour from San Francisco to Sausalito and Muir Woods, (3) Tour from San Francisco to Oakland and Berkeley, and (4) San Francisco Bay Cruise Tour. The requested authority seeks authorization for additional tours which are combinations of existing tours. The proposed tours are: (1) A combination of the San Francisco City Tour with the tour from San Francisco to Sausalito and Muir Woods (Tour 22), (2) A combination of the San Francisco City Tour, tour from San Francisco to Sausalito and Muir Woods and Bay Cruise Tour (Tour

tbl 11

22W), (3) Combination of the tour from San Francisco to Oakland and Berkeley with the Bay Cruise Tour (Tour 25W), and (4) Combination of the tour from San Francisco to Muir Woods with the Bay Cruise Tour (Tour 32W).

Felso holds operating authority for a San Francisco City Tour which ends in Sausalito. It provides that the return from Sausalito to San Francisco may be by bus or ferry. Felso commenced operations in 1980. Felso testified that he was of the opinion that the Commission was indifferent to where he operated his tour as long as it was done within the authorized time. He extended the tour to include Muir woods.<sup>1/</sup>

Felso opposes proposed Tours 22 and 22W. He contends that he developed the idea of a tour from San Francisco to Sausalito and Muir Woods with a return by vessel from Marin County to San Francisco. Felso stated that:

"If a tour like that is going to be offered to the people who are visiting the city, then I should be the person who is given the responsibility of providing that tour for those individuals." (RT 17.)

Felso also testified that he had approached the previous and present management of Gray Line offering to run the tour for it, but nothing came of the proposals.

Material Issues

The material issues presented in this proceeding are: 1. Is Felso an "existing carrier" within the meaning of Public Utilities (PU) Code § 1032 with respect to Tours 22 and 22W? 2. Do public convenience and necessity require that the requested authority be granted?

---

<sup>1/</sup> Felso also increased the number of days and months of operation of the tour, without authority from the Commission.

Discussion

The record indicates that Felso is conducting operations in excess of his operating authority in four respects: 1. Felso's certificate of public convenience and necessity authorizes operations Monday through Friday, holidays excluded. He operates seven days a week. 2. Felso's certificate authorizes operations from June to November. He operates the entire year. 3. Felso's certificate authorizes pickups at two specified hotels. He picks up at numerous hotels. 4. Felso's certificate authorizes service from San Francisco to Sausalito. He has enlarged the service area to Mill Valley and Muir Woods. Since this proceeding involves an application by Gray Line, and Felso appears as a protestant, only the fourth item of illegal operations is relevant to the discussion.

PU Code § 1032 provides in part that:

" . . . The commission may, after hearing, issue a certificate to operate in a territory already served by a certificate holder under this part only when the existing passenger stage corporation or corporations serving such territory will not provide such service to the satisfaction of the commission."

The Commission holds that passenger stage operations conducted in excess of operating authority do not make the operator an existing carrier within the meaning of § 1032.

We turn to the question of whether public convenience and necessity require that the requested authority be granted.

It has been held in the analogous monopoly field of patents that: "Certainly naked ideas, independent of the means to carry them out, are not patentable." (Lyman v Ladd (D.C. Cir. 1965) 347 F 2d 482, 483.) Felso's idea cannot thwart this application unless: (1) He has legally implemented it and the facts show he is entitled to protection under § 1032, or (2) Felso proposes a service which would better meet public convenience and necessity. Neither condition is present.

*Original**td 11*

Felso owns no operating equipment. He leases equipment on a daily basis to conduct his tours. Felso uses 2-3 parttime employees to help him operate his tours. He personally conducts most of them. Felso has cash reserves of approximately \$5,000 and no indebtedness.

Gray Line has authority to serve all of the areas encompassed by this application, but not in the manner sought. This is because Gray Line's certificate, issued in 1963, provides for specified tours and does not authorize combinations of them.

A total of 150,000-175,000 persons annually take Gray Line's San Francisco City and Muir Woods Tours. During the period of February to August 1981, approximately 15,000 persons took Gray Line's Bay Cruise Tour. It is undisputed that Gray Line has the equipment and ability to conduct the proposed operations. Witnesses testified about public demand for such service.

Felso adduced uncontested evidence which discloses that Gray Line has been operating the two protested proposed tours during the pending of this application. Gray Line's illegal operations will not be condoned, but they will not be used as a bar for the requested authority. (John R. Zavaleta, et al. (1973) 75 CPUC 361, 369.)

No other points require discussion.

#### Findings of Fact

1. Gray Line holds passenger stage operating authority for sightseeing purposes granted by this Commission.
2. Authority to conduct the following tours is included in Gray Line's operating authority: (1) San Francisco City Tour,

(2) Tour from San Francisco to Sausalito and Muir Woods, (3) Tour from San Francisco to Oakland and Berkeley, and (4) San Francisco Bay Cruise Tour.

3. The authority requested by Gray Line does not include any new service points or areas. It involves new combinations of existing authority.

4. A total of 150,000-175,000 persons annually take Gray Line's San Francisco and Muir Woods Tours. From February to August 1981, approximately 15,000 persons took Gray Line's Bay Cruise Tour.

5. There is a public demand for the proposed tours.

6. Gray Line has sufficient operating equipment to conduct the proposed tours.

7. Gray Line commenced operating proposed Tours 22 and 22W in March 1980 and continues to operate them without authority from this Commission.

8. Felso holds passenger stage operating authority for sight-seeing purposes granted by this Commission which provides in part as follows:

"Dennis Felso...is authorized to transport passengers between the St. Francis Hotel and the Fairmont Hotel, on the one hand; and points of interest in downtown San Francisco, Yerba Buena Island and Sausalito, on the other hand, over and along the route hereinafter described, subject, however, to the authority of this Commission to change or modify said route at any time and subject to the following provisions:

"(a) All service herein authorized shall be limited to the transportation of round-trip passengers only who shall be returned to the originating hotel.

"(b) Operations will be Monday through Friday (holidays excluded) from June to November, inclusive.

"(c) No passengers shall be transported except those having the point of origin at the St. Francis Hotel and/or Fairmont Hotel."

\* \* \*

"(e) Passengers shall have the option of returning from Sausalito to San Francisco via ferry trip at carrier's expense."

9. Felso's operating authority was granted in 1979 and he commenced operations in 1980. Felso conducts operations seven days a week 12 months a year. He picks up passengers at numerous hotels and motels in San Francisco.

10. Felso operates his tour to Mill Valley, Muir Woods, and Muir Beach Overlook without authority from this Commission.

11. Felso owns no operating equipment. He leases equipment on a daily basis to conduct his tours. Felso uses 2-3 parttime employees to help him operate big tours. He personally conducts most of them. Felso has cash reserves of approximately \$5,000 and no indebtedness.

12. Felso approached the previous and present management of Gray Line offering to run a tour for Gray Line similar to Tours 22 and 22W but nothing came of the proposals.

13. Gray Line has the ability, including financial ability, to conduct the operations for which authority is sought.

14. Public convenience and necessity require that Gray Line be granted the requested operating authority.

Conclusions of Law

1. Passenger stage operations conducted in excess of operating authority do not make the operator an existing carrier within the meaning of PU Code § 1032.

2. Felso is not an existing carrier within the meaning of § 1032 with respect to this application.

3. 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 at any time.

O R D E R

IT IS ORDERED that:

1. A certificate of public convenience and necessity is granted to The Gray Line, Inc., authorizing it to operate as a passenger stage corporation, as defined in Public Utilities Code § 226, between the points and over the routes set forth in revised Appendix A of Decision 66515.

2. Appendix A of Decision 66515 is amended by replacing pages with Revised Pages (attached).

3. 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 its tariffs and timetables when service will start; allow at least three days' notice to the Commission; and make timetables and tariffs effective three or more days after this order is effective.
- d. Comply with General Orders Series 79, 98, 101, and 104, and the California Highway Patrol safety rules.

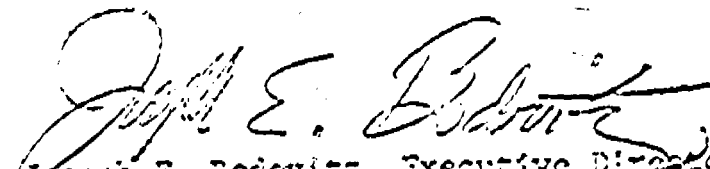
c. Maintain accounting records in conformity with the Uniform System of Accounts.

This order becomes effective 30 days from today.

Dated JAN 19 1982, at San Francisco, California.

JOHN E. BRYSON  
President  
RICHARD D. GRAVELLE  
LEONARD M. GRIMES, JR.  
VICTOR CALVO  
PRISCILLA C. GREW  
Commissioners

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

  
Joseph E. Bodovitz, Executive Director



T/rfh/nb

Appendix A

THE GRAY LINE, INC.  
(PSC 524)

First Revised Page 9

SECTION II. TOUR DESCRIPTIONS (continued)

Tour No.      San Francisco - Point of Origin (continued)

20              GOLD COUNTRY TOUR

Leave the carrier's San Francisco terminal over San Francisco-Oakland Bay Bridge to Walnut Creek, Concord, Antioch, Rio Vista, Jackson, Mokelumne Hill, San Andreas, and Angels Camp to Columbia, returning via Sonora, Jamestown, Oakdale, Tracy and the San Francisco-Oakland Bay Bridge to carrier's San Francisco Terminal.

21              SAN FRANCISCO-HEARST RANCH AND CASTLE TOUR

Leave the carrier's San Francisco terminal, then over Bypass U.S. Highway 101 to junction of California Highway 17, then over California Highway 17 to Santa Cruz, then over California Highway 1 to San Simeon, then return to San Francisco via Morro Bay and over U.S. Highway 466 to Atascadero, then over U.S. Highway 101 and Bypass U.S. Highway 101 to the carrier's San Francisco terminal, with overnight stop en route.

22              COMBINATION CITY, SAUSALITO, AND MUIR WOODS TOUR

Leave carrier's San Francisco terminal and drive through Union Square to Civic Center, to Twin Peaks, through Golden Gate Park to Cliff House, through Presidio to Golden Gate Bridge and Vista Point, to Sausalito, to Muir Woods, return to Golden Gate Bridge, through the Marina to Fisherman's Wharf and Pier 39 area, return to passengers' hotels and motels and carrier's terminal.

Issued by California Public Utilities Commission.

Decision 82 01 82, Application 60406.

T/rfh

Appendix A

THE GRAY LINE, INC.  
(PSC 524)

Original Page 9.1

SECTION II. TOUR DESCRIPTIONS (continued)

Tour No.

22W

COMBINATION CITY, MUIR WOODS, AND SAUSALITO TOUR  
WITH BAY CRUISE

Leave carrier's San Francisco terminal and drive through Union Square to Civic Center, to Twin Peaks, through Golden Gate Park to Cliff House, through Presidio to Golden Gate Bridge and Vista Point, to Sausalito, to Muir Woods, return to Golden Gate Bridge, through the Marina to Fisherman's Wharf and Pier 39 area, cruise on the San Francisco Bay and return to passengers' hotels and motels and carrier's terminal.

25W

OAKLAND-BERKELEY, UNIVERSITY OF CALIFORNIA TOUR AND  
BAY CRUISE

Leave the carrier's San Francisco terminal then over San Francisco-Oakland Bay Bridge, viewing downtown Oakland, Lake Merritt, Lakeside Park, Piedmont, Berkeley, University of California campus, return to San Francisco via San Francisco-Oakland Bay Bridge, Fisherman's Wharf and Pier 39 area, cruise on the San Francisco Bay and transportation to passengers' hotels and motels and to carrier's terminal.

32W

MOUNT TAMALPAIS - MUIR WOODS TOUR WITH BAY CRUISE

Leave the carrier's San Francisco Terminal, then over Golden Gate Bridge, through Tamalpais Valley to Muir Woods, then to summit of Mount Tamalpais, to Sausalito, return to San Francisco via Golden Gate Bridge, Fisherman's Wharf and Pier 39 area and cruise on San Francisco Bay, return to passengers' hotels and motels and to carrier's terminal.

Issued by California Public Utilities Commission.

Decision 82 01 82, Application 60406.