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ORIGINAL

Decision 82 05 041 MAY - 4 1982

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the Application of)	
THE GRAY LINE, INC., a California)	Application 60424
Corporation, for authority to)	(Filed April 7, 1981)
operate three new tours, Numbers 35,)	
36, and 38.)	

Malcolm Gissen, Attorney at Law, for The Gray Line, Inc., applicant.
Richard M. Hannon, Attorney at Law, for California Parlor Car Tours Company; and Silver, Rosen, Fischer & Stecher, by Ellis Ross Anderson, for Yosemite Park & Curry Company; protestants.

O P I N I O N

This is an application by The Gray Line, Inc. (Gray Line) which seeks additional passenger stage sightseeing operating authority. California Parlor Car Tours Company (Parlor Car) and Yosemite Park and Curry Co. (Curry Co.) protested portions of the application.

A duly noticed public hearing was held in this matter before Administrative Law Judge Donald B. Jarvis in San Francisco on August 25, 26, and 27, 1981. The proceeding was submitted subject to the filing of the transcript and briefs, which were received by November 10, 1981.

The Application and Protests

Gray Line seeks authority to operate three additional two-day tours originating in San Francisco: 1. A Yosemite National Park Tour (Tour 35). 2. A Gold Country and Yosemite National Park Tour (Tour 36). 3. A State Capitol Sacramento, Lake Tahoe, and Northern Mother Lode Tour (Tour 38). Parlor Car protests granting authority for Tour 35. Curry Co. protests against Tours 35 and 36.

Tentative Disposition

In Western Travel Plaza, Inc. and companion cases (D.93726 in A.59818, A.60174, A.60181, A.60221, and A.60286, entered on November 13, 1981) the Commission concluded that:

- "2. Sightseeing-tour service, originating and terminating at the same point, is not public utility or passenger stage corporation service.
- "3. Sightseeing-tour carriers should not be regulated as public utilities."

Under the holding of the Western Travel Plaza case, this application should be dismissed for lack of jurisdiction.

The Western Travel Plaza decision is not final. It stated that "We anticipate some parties will seek rehearing of this decision and, if rehearing is not granted, seek review of this decision by the California Supreme Court." (Slip Dec. p. 15.) Timely petitions for rehearing were filed and D.93726 has been stayed until further order of the Commission.

D.93726 provided for temporary certificates on an interim basis for pending and new applications. However, the evidentiary record in this matter was completed before the issuance of D.93726. No useful purpose would be served by not alternatively disposing of the issues presented in the event D.93726 is vacated or reversed.

Position of The Parties

A. Gray Line

Gray line contends that there is a need for the proposed tours. The points on the tours are desirable tourist attractions. It has received requests for such tours. Tour 35 would be cheaper than a similar Parlor Car Tour and give the patron more sightseeing time in Yosemite.

B. Parlor Car

Parlor Car contends that it holds authority to conduct tours similar to Tour 35. It operates the tours in a proper and satisfactory manner. Its tours have been operating at less than a full load factor. Parlor Car argues that Tour 35 is deceptive, there is no public need for the tour, Gray Line does not have the fitness (financial ability) to conduct it and that the application should also be denied under the provisions of Public Utilities (PU) Code § 1032.

C. Curry Co.

Curry Co. conducts regular passenger stage operations and sightseeing operations in Yosemite and vicinity. Curry Co. contends that Gray Line failed to prove that the existing services are inadequate or unsatisfactory and that § 1032 mandates that the application be denied. Curry Co. argues that there is no public need for additional service. Curry Co. asserts that its regular route passenger stage operations, which are conducted at a loss, are subsidized by its sightseeing ones. If its sightseeing operations are diluted it will need to curtail or eliminate the regular passenger stage operations to the detriment of the traveling public. Curry Co. also contends that Gray Line does not have the financial ability to conduct the proposed tours. Finally, as an alternate position, Curry Co. argues that if any authority is granted, Gray Line should be required to interline with Curry Co. to protect Curry Co.'s revenues.

Material Issues

- (1) Is § 1032 applicable under the facts of this case?
(2) Does Gray Line have the requisite fitness for its requested operating authority? (3) Do public convenience and necessity require the granting of all or a portion of the requested operating authority?

Discussion

A. Section 1032

Parlor Car and Curry Co. contend that authority for Tours 35 and 365 must be denied under § 1032 because there is no evidence that they, as existing carriers, are not serving to the satisfaction of the Commission. Section 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."

Section 1032 has been discussed in numerous Commission decisions over the years. (E.g. The Gray Line Tours Co. (1973) 74 CPUC 669; So. Cal. Sightseeing Co. (1967) 67 CPUC 125; O. Martinez (1967) 66 CPUC 713; Louis E. Smith (1933) 38 CRC 421.) In American Buslines, Inc. (D.91297 in A.58457, entered January 29, 1980, review denied, SF No. 24166) the Commission stated that "we believe that monopoly service (resulting from regulators protecting a carrier by excluding/all new entrants) is not satisfactory service." (Slip Dec. p. 15.) Under the doctrine of American Buslines we hold that § 1032 is not a bar to the requested operating authority.

B. Fitness

Parlor Car and Curry Co. argue that the protested portions of the application be denied because Gray Line has not demonstrated it has the financial ability to operate the challenged tours. Parlor Car and Curry Co. assert that Gray Line is operating at a loss and has discontinued some tours; thus, it does not have the ability to conduct the ones under consideration.

New owners acquired the stock of Gray Line in 1981. The stock was formerly owned by Greyhound Lines, Inc. (Greyhound) which is the parent of Parlor Car. Gray Line argues that it was operated by the Greyhound ownership at a loss but the new ownership has infused additional capital and is attempting to reverse the situation.

We take official notice that Gray Line has extensive operating authority granted by the Commission. The record indicates that it owns 72 buses. It purchased nine 47-passenger, MC-9 buses in 1981. It intends to use them for the proposed tours. In 1981, Gray Line acquired from the New York Transit Authority eight British double-decker buses to be used for specialized service in San Francisco.

Assuming arguendo, that Gray Line has operating losses and has discontinued some tours, accepting the argument put forth by Parlor Car and Curry Co. would result in the absurdity of refusing to permit Gray Line to reverse the situation by eliminating unprofitable tours and establishing profitable new ones. In any event, the record establishes that Gray Line has the ability, including financial ability, to conduct the proposed tours.

C. Public Convenience and Necessity

1. Tour 38

Gray Line presented evidence that there is public interest in a tour from San Francisco to the State Capitol, Sacramento, Lake Tahoe, and the northern Mother Lode. It has sufficient personnel and equipment to operate the tour. There are no protests to this tour. Gray Line should be granted the authority to operate it.

2. Tour 35

Gray Line proposes two routes for Tour 35: (1) A direct route, with no pickups, from San Francisco to Merced or Mariposa via Highways Interstate 80, 580, and 132, and Highways 99 and 140. (2) A route from San Francisco to San Jose via Highway 101. Pickup of additional passengers in San Jose and then to Merced or Modesto via Highways 101, 152, 33, and/or 59 and 140. The tour would depart San Francisco at approximately 1 p.m. and arrive in Mariposa or Merced at 5:30 to 6:30 p.m., depending on the route taken. Customers would spend the night at a motel in Mariposa or Merced. They would leave the next morning for Yosemite and arrive in the park about 9:30 a.m. The patrons would be in the park until 3:30 or 4 p.m. when they would depart, arriving about 7:30-8 p.m. in San Jose and 8:30-9 p.m. in San Francisco.

a. Present Situation

(1) Curry Co.

Curry Co. has a concession agreement from the National Park Service to conduct sightseeing operations in Yosemite. It conducts four tours within the park: 1. A two-hour Valley Floor Tour. 2. A six-hour Mariposa Grove of Big Trees Tour. 3. A four-hour Glacier Point Tour. 4. A full day Grand Tour. Curry Co. also conducts the following regular route passenger stage operations:

<u>Points</u>	<u>Trips in Each Direction Between Points</u>	
	<u>June-Sept.</u>	<u>Oct.-May</u>
Merced - Yosemite	3	2
Fresno - Yosemite	1	0
Lee Vining - Yosemite	1	0

One of the Merced runs is scheduled to accommodate persons using public transportation who wish to take a one-day tour of Yosemite. Passengers are picked up at the Merced Airport, Trailways Station, Greyhound Station, Amtrak Depot, and Southern Pacific. Patrons taking the tour are taken to the park. Lunch is provided at the Ahwahnee Hotel. They are taken on the two-hour Valley Floor Tour and then transported back to Merced to meet return common carrier connections.

Operating sightseeing transportation equipment in Yosemite is dependent on Curry Co's concession agreement. Three types of arrangements are available for other carriers: 1. Interlining at a point outside the park and having Curry Co. provide the tour on its equipment with its guides. In this arrangement, Curry Co. receives its full tariff compensation. 2. Interlining outside the park where a Curry Co. driver-guide takes over the bus of the other transportation company. The compensation for this arrangement is negotiated between Curry Co. and the other transportation company. Presently, Parlor Car is the only company which has this arrangement. At the present time Curry Co.'s compensation, as based on its published per capita, are \$21 round-trip from Merced to Yosemite and the payment of \$1.15 per mile to Parlor

Car for trip-leasing its equipment. 3. Trip-leasing. All transportation companies operating equipment directly into Yosemite are required to enter into a trip-leasing arrangement whereby Curry Co. trip leases the bus at the rate of \$1.15 per mile and the other company pays Curry Co. an amount per passenger for its service, depending on the destination in the park. In the case of a vehicle entering at El Portal and going to Yosemite Valley the fee would be \$2 per passenger round trip.¹

Parlor Car operates 14 tours. Eight of these tours include spending at least one night in Yosemite. Two of these tours are the basis for Parlor Car's protest:

1. A two-day tour from San Francisco in which one night is spent at Yosemite Lodge in the park.
2. A three-day tour from San Francisco in which two nights are spent at Yosemite Lodge.

Each year Parlor Car applies for and receives from Curry Co. an allocation of rooms in Yosemite Lodge. The allocation may vary from year to year. The rooms allocated are available for all of Parlor Car's tours. Parlor Car's tours are limited by the number of rooms allocated. Each year Parlor Car establishes a tour schedule based upon the number of rooms allocated and the projected patronage for each tour. It makes preliminary hotel reservations with Curry Co. and blocks out rooms for the tours. Parlor Car confirms the actual space needed the day before the tour departs. If the tour is not sold out the excess rooms are released. However, Parlor Car can bank the unused space and use it later in the year, subject to the availability of rooms. Parlor Car tours depart from San Francisco at approximately 8:30 a.m. They arrive in Merced between 11-11:30 a.m. where the Curry Co. driver takes over the bus, as previously described.

¹ All passengers are subject to a 50¢ entrance fee which is collected by Curry Co. and transmitted to the National Park Service.

b. Analysis

Tour 35 is more of a concept than a fully developed proposal. On the plus side, Gray Line hired William Nieman, the former supervisor of tour guides for Curry Co., to train its prospective driver guides and prepare the basic narration for the tour. Gray Line proposes to charge a lesser fare than Parlor Car, which it asserts is better for the public. However, the record indicates that it has made no arrangements for motel rooms or meals in Mariposa, Merced, and Yosemite. At the time of the hearing Gray Line was in the midst of collective bargaining negotiations with the union representing its drivers. Its wage rates were uncertain. Tour 35 includes three meals: dinner the first day and breakfast and lunch the second one. Cross-examination of Gray Line witnesses focused upon the fact that the second day portion of the tour would depart Yosemite between 3:30-4 p.m. and arrive in San Jose about 7:30-8 p.m., and San Francisco about 8:30-9 p.m. Thus, there would be a long interval without food for the patrons. Thereafter Gray Line modified its proposal to provide for a 30-45-minute rest stop where patrons could purchase a snack. No arrangements had been made for such a stop.

Tour 35, as proposed, raises a potential safety question. Vehicle Code § 21702 provides in part that:

"(a) No person shall drive upon any highway any vehicle designed or used for transporting persons for compensation for more than 10 hours spread over a total of 15 consecutive hours. Thereafter, such person shall not drive any such vehicle until eight consecutive hours have elapsed.

"Regardless of aggregate driving time, no driver shall drive for more than 10 hours in any 24-hour period unless eight consecutive hours off duty have elapsed."

Gray Line proposes to have Tour 35 arrive in Yosemite about 9:30 a.m. It is approximately 89 miles from Merced to the park. Because of mountain roads it takes approximately 2 hours to drive from Merced to Yosemite. If the tour stopped overnight in Merced, it would need to commence at 7:30 a.m. to arrive in the park at 9:30 a.m. Gray Line plans to use one driver for the tour. Assuming the lunch and snack stops previously discussed the proposed operation would appear to violate § 21702.

The § 21702 problem is not fatal to Gray Line. It can be remedied by the use of two drivers, which would increase operating costs and perhaps the price of the tour. It could also be remedied by shortening the tour, which might diminish its attractiveness.

These are but commercial considerations. Under older doctrine the shortcomings in Tour 35 would have resulted in a denial of operating authority. (E.g. The Gray Line Tours Co. (1971) 72 CPUC 687.) However, the Commission's present policy is to foster competition:

"Competition tends to bring out the highest degree of effort and imagination in a business endeavor to the benefit of the public. In the area of sightseeing bus operations, competition will have a direct bearing on the quality of overall treatment afforded passengers, rates, scheduling, equipment condition, and operational innovation generally. California needs an influx of vigorous, innovative thinking and application if publicly acceptable alternatives to private auto use are to fully develop. We state now that competition in the area of sightseeing bus operations is a most desirable goal." (O'Connor Limousine Service (1979) 1 CPUC 2d 285, 292-93; American Buslines, Inc., supra.)

Since Tour 35 can be restructured to comply with the requirements of \$ 21702, we do not perceive this to bar the requested authority.

3. Tour 36

Gray Line presently operates a one-day Gold Country Tour. Tour 36 combines this concept into a two-day tour which includes Yosemite. Gray Line proposes that Tour 36 would depart from San Francisco about 9 a.m. It would go through Walnut Creek, Antioch, Rio Vista, Jackson, Mokelumne Hill, San Andreas, Angels Camp, and Columbia; ending in the Sonora area where the patrons would spend the night at a motel. Lunch and dinner would be included as part of the tour on the first day. On the second day the tour would leave Sonora by 8:30 a.m. and arrive at Yosemite about 9:30 a.m. It would leave the park by 4 p.m. and arrive in San Francisco about 9 p.m.

The first day itinerary is similar to Gray Line's present one-day tour. It has not been protested. No discussion of this portion is necessary. The second day of Tour 36 is similar to that of Tour 35. We have considered this at length in considering Tour 35 and the discussion need not be repeated. Protest of Curry Co.

Some of the points raised by Curry Co. have been previously considered. However, one of its contentions not yet discussed merits attention. Curry Co. argues that its regular passenger stage operations are being operated at a loss. It uses revenues from its sightseeing operations to continue the regular route operations as a public service. Curry Co. takes the position that if Gray Line is given the authority to operate directly to and in Yosemite it will divert passengers from Curry Co., thereby reducing its revenue from sightseeing operations. In this event, Curry Co. would have to discontinue some or all of its regular route operations.

Curry Co.'s regular route operations between Merced, Fresno, Lee Vining, and Yosemite have been detailed. In 1979 the Commission found that Curry Co. has a net loss of \$39,652 on its intrastate, intercity service for the 12 months ending May 27. (D.91775, Slip Dec. at p. 5.) In 1980 Curry Co. had a loss of \$69,866. For the similar period its total net revenue from all transportation activities, which includes the loss, was \$93,544.

The point raised by Curry Co. is of some concern. However, the potential diminishment of Curry Co.'s regular route service within Yosemite Valley is not sufficient reason to deny the public the benefits of additional competition in service from the Bay Area to Yosemite. If necessary, Curry Co. has the option to request from us a rate increase to cover its operation costs for the route which is currently operating at a loss. Over the last several years, services providing sightseeing by bus, especially of the round-trip variety, have mushroomed in response to increased demand. We have been forced to conclude that PUC Code §1032 must be interpreted differently for sightseeing transportation than we interpreted it historically vis-a-vis "through" transportation for the general movement of passengers. Cf. discussion of this development, and recent cases, in Pacifico Creative Service, Inc., ___CPUC 2d___, A.58739, dated November 13, 1981. We believe that the granting of a certificate in this case is consistent with the framework established in our recent decision.

Parlor Car's Protest

In points not otherwise discussed Parlor Car contends that the authority requested by Gray Line is deceptive and that granting such authority would have an adverse effect on Parlor Car.

Parlor Car contends that Tours 35 and 36 are deceptive because they are categorized as overnight tours to Yosemite, when, in fact, the patrons would spend the night in Merced, Mariposa, or Sonora. Patrons of Parlor Car Yosemite tours spend one or more nights in the park. Regardless of where the patrons would be quartered, Tours 35 and 36 do provide for sightseeing

in Yosemite. Gray Line argues that it could operate tours more frequently because it would not be limited by the availability of hotel rooms in the park; although there is no showing of the availability of rooms in Merced, Mariposa, or Sonora. In any event, the question of whether patrons will desire to stay inside or outside the park should be left to the forces of competition in the marketplace.

Finally, Parlor Car contends it is providing good service to Yosemite and not operating at full capacity on these tours. It argues that its present load factors are slightly above the break-even point and if Gray Line diverts even a small amount of traffic it will lose money on these operations. Parlor Car also takes the position that the fact that it is not operating at full capacity demonstrates there is no need for Tours 35 and 36.

The record indicates that Parlor Car provides excellent service on its tours. Parlor Car operates its two-day Yosemite tour with buses having a seating capacity of 43 persons. It tries not to sell more than 36 seats on the bus because the last three rows in the rear next to the restroom are not adequate for sightseeing. In 1981 Parlor Car was averaging 27 patrons per tour. The following is a tabulation of the number of passengers carried on the two-day tour

<u>Year</u>	<u>No. of Passengers</u>
1978	2023
1979	2337
1980	1371
1981	1700 (estimate)

Parlor Car's position rests upon two premises: 1. It is entitled to protection under § 1032. 2. Since it gives good service and is running at less than full capacity, public convenience and necessity do not require an additional carrier to provide similar service. We have previously held that Parlor Car is not entitled to protection under § 1032. While granting the requested authority may injure Parlor Car, the competition engendered by Gray Line might stimulate additional traffic for both. We adhere to our policy of fostering competition.

No other points require discussion.

A.60424 ALJ/jn*

Findings of Fact

1. In Western Travel Plaza, Inc., and companion cases (D.93726 in A.59818, A.60181, A.60221, and A.60286, entered on November 13, 1981) the Commission concluded that:

"2. Sightseeing-tour service, originating and terminating at the same point, is not public utility or passenger stage corporation service.

"3. Sightseeing-tour carriers should not be regulated as public utilities."

Timely petitions for rehearing were filed and D.93726 has been stayed until further order of the Commission pending rehearing.

2. New owners acquired the stock of Gray Line in 1981. The stock was formerly owned by Greyhound which is the parent of Parlor Car. Gray Line was operated by the Greyhound ownership at a loss. The new ownership has infused additional capital and is attempting to reverse the situation.

3. Official notice is taken of the fact that Gray Line has extensive operating authority granted by the Commission.

4. Gray Line owns 72 buses. It purchased nine 47-passenger, rest room equipped MC-9 buses in 1981. It intends to use them for the proposed tours. In 1981, Gray Line acquired from the New York Transit Authority eight British double-decker buses to be used for specialized service in San Francisco.

5. Gray Line has received requests from the public indicating that there is public interest in a two-day tour from San Francisco to the State Capitol, Sacramento, Lake Tahoe, and the northern Mother Lode (Tour 38). Gray Line has sufficient personnel and equipment to operate such a tour. ✓

6. Gray Line proposes two routes for Tour 35: 1. A direct route with no pickups, from San Francisco to Merced or Mariposa via Highways Interstate 80, 580, and 132 and Highways 99, and 140. 2. A route from San Francisco to San Jose via Highway 101. Pickup of additional passengers in San Jose and then to Merced or Modesto via Highways 101, 152, 33, and/or 59, and 140. The tour would depart San Francisco at approximately 1 p.m. and arrive in Mariposa or Merced at 5:30 to 6:30 p.m., depending on the route taken. Customers would spend the night at a motel in Mariposa or Merced. They would leave the next morning for Yosemite and arrive in the park about 9:30 a.m. The patrons would be in the park until 3:30 or 4 p.m. when they would depart. There would be a rest-snack stop of 30-45 minutes on the return trip which would arrive about 8-8:30 p.m. in San Jose and about 8-9:30 p.m. in San Francisco.

7. Gray Line presently operates a one-day Gold Country Tour. Tour 36 combines this concept into a two-day tour which includes Yosemite. Gray Line proposes that Tour 36 would depart from San Francisco about 9 a.m. It would go through Walnut Creek, Antioch, Rio Vista, Jackson, Mokelumne Hill, San Andreas, Angels Camp, and Columbia; ending in the Sonora area where the patrons would spend the night at a motel. Lunch and dinner would be included as part of the tour on the first day. On the second day the tour would leave Sonora by 8:30 a.m. and arrive at Yosemite about 9:30 a.m. It would leave the park by 4 p.m. and arrive in San Francisco about 9-9:45 p.m. The first day itinerary is similar to Gray Line's present one-day tour. The second day of Tour 36 is similar to that of Tour 35.

8. Gray Line has received requests from the public indicating that there is public interest in Tours 35 and 36.

9. Vehicle Code § 21702 provides in part that:

"(a) No person shall drive upon any highway any vehicle designed or used for transporting persons for compensation for more than 10 consecutive hours nor for more than 10 hours spread over a total of 15 consecutive hours. Thereafter, such person shall not drive any such vehicle until eight consecutive hours have elapsed.

"Regardless of aggregate driving time, no driver shall drive for more than 10 hours in any 24-hour period unless eight consecutive hours off duty have elapsed."

Tour 35 is estimated to arrive in Yosemite about 9:30 a.m. It is approximately 89 miles from Merced to the park. Because of mountain roads it takes approximately 2 hours to drive from Merced to Yosemite. If the tour stopped overnight in Merced, it would need to commence at 7:30 a.m. to arrive in the park at 9:30 a.m. Gray Line plans to use one driver for the tour. Assuming the lunch and snack stops previously discussed, the proposed operation would appear to violate § 21702.

10. The potential § 21702 problem can be remedied by the use of two drivers which would increase operating costs and perhaps the price of the tour. It could also be remedied by shortening the tour, which might diminish its attractiveness.

11. Gray Line proposes to conduct Tour 35 at a lesser price than a similar tour by Parlor Car. Gray Line has made no arrangements for motel rooms or meals in Mariposa, Merced, and Yosemite. At the time of the hearing Gray Line was in the midst of collective bargaining negotiations with the union representing its drivers. Its wage rates were uncertain. The pricing of Tour 35 is not a factor in determining whether the requested authority should be granted.

12. Curry Co. has a concession agreement from the National Park Service to conduct sightseeing operations in Yosemite. It conducts four tours within the park: 1. A two-hour Valley Floor Tour. 2. A six-hour Mariposa Grove of Big Trees Tour. 3. A four-hour Glacier Point Tour. 4. A full day Grant Tour. Curry Co. also conducts the following regular route passenger stage operations:

<u>Points</u>	<u>Trips in Each Direction</u>	
	<u>Between Points</u>	
	<u>June-September</u>	<u>October-May</u>
Merced-Yosemite	3	2
Fresno-Yosemite	1	0
Lee Vining-Yosemite	1	0

13. One of Curry Co.'s regular route Merced runs is scheduled to accommodate persons using public transportation who wish to take a one-day tour of Yosemite. Passengers are picked up at the Merced Airport, Trailways Station, Greyhound Station, Amtrak Depot, and Southern Pacific. Patrons taking the tour are taken to the park. Lunch is provided at the Ahwahnee Hotel. They are taken on the two-hour Valley Floor Tour and then transported back to Merced to meet return common carrier connections.

14. Operating any sightseeing transportation equipment in Yosemite is dependent on Curry Co.'s concession agreement. Three types of arrangements are available for other carriers:

1. Interlining at a point outside the park and having Curry Co. provide the tour on its equipment with its guides. In this arrangement Curry Co. received its full tariff compensation.
2. Interlining outside the park where a Curry Co. driver-guide takes over the bus of the other transportation company. The compensation for this arrangement is negotiated between Curry Co. and the other transportation company. Presently, Parlor

Car is the only company which has this arrangement. At the present time Curry Co.'s compensation is based on its published per capita fare (\$21 round trip from Merced to Yosemite) and the payment of \$1.15 per mile to Parlor Car for trip-leasing its equipment. 3. Trip-leasing. All transportation companies operating equipment directly into Yosemite are required to enter into a trip-leasing arrangement whereby Curry Co. trip leases the bus at the rate of \$1.15 per mile and the other company pays Curry Co. an amount per passenger for its service depending on the destination in the park. In the case of a vehicle entering at El Portal and going to Yosemite Valley the fee would be \$2 per passenger round trip. In addition, all passengers are subject to a 50¢ entrance fee which is collected by Curry Co. and transmitted to the National Park Service.

15. In 1979 the Commission found that Curry Co. had a net loss of \$39,652 on its intrastate, intercity service for the 12 months ending May 27. In 1980 Curry Co. had a loss of \$69,866 for the similar period. Its total net revenue from all transportation activities, which includes the loss, was \$93,544.

16. Curry Co. owns and operates 16 vehicles in its passenger stage transportation service.

17. Parlor Car operates 14 tours. Eight of these tours include spending at least one night in Yosemite. Two of these tours are the basis for Parlor Car's protest: 1. A two-day tour from San Francisco in which one night is spent at Yosemite Lodge in the park. 2. A three-day tour from San Francisco in which two nights are spent at Yosemite Lodge.

18. Each year Parlor Car applies for and receives from Curry Co. an allocation of rooms in Yosemite Lodge. The allocation may vary from year to year. The rooms allocated are available for all of Parlor Car's tours. Parlor Car's tours are limited by the number of rooms allocated. Each year Parlor Car establishes a tour schedule based upon the number of rooms

allocated and the projected patronage for each tour. It makes preliminary hotel reservations with Curry Co. and blocks out rooms for the tours. Parlor Car confirms the actual space needed the day before the tour departs. If the tour is not sold out the excess rooms are released. However, Parlor Car can bank the unused space and use it later in the year, subject to the availability of rooms. Parlor Car tours depart from San Francisco at approximately 8:30 a.m. They arrive in Merced between 11-11:30 a.m. where a Curry Co. driver takes over the bus.

19. Parlor Car provides excellent service on its tours. Parlor Car operates its two-day Yosemite tour with buses having a seating capacity of 43 persons. It tries not to sell more than 36 seats on the bus because the last three rows in the rear next to the rest room are not adequate for sightseeing. In 1981 Parlor Car averaged 27 patrons per tour. The following is a tabulation of the number of passengers carried on the two-day tour:

<u>Year</u>	<u>No. of Passengers</u>
1978	2023
1979	2337
1980	1371
1981	1700 (estimate)

20. Gray Line has the ability, including financial ability to conduct the proposed operations.

21. Granting the requested operating authority may result in the diminution of Curry Co.'s revenues for sightseeing operations which presently subsidize its regular route operations. This may cause Curry Co. to seek to discontinue some or all of the regular route service.

22. If the requested authority is granted some traffic may be diverted from Parlor Car to Gray Line.

23. The Commission's policy of allowing competition in passenger stage sightseeing service is in the public interest and outweighs any impact on Curry Co. or Parlor Car.

24. Public convenience and necessity require that Gray Line be granted the operating authority to conduct Tours 35, 36, and 38. Given the demonstrated need for the proposed service the following order should be effective today.

Conclusions of Law

1. If D.93726 is not altered or annulled, this proceeding should be dismissed for lack of jurisdiction.

2. Section 1032 does not preclude granting the requested authority.

3. Vehicle Code § 21702 does not preclude granting the requested authority.

4. Gray Line should be granted authority to conduct Tours 35, 36, and 38.

O R D E R

IT IS ORDERED that:

1. If D.93726 is not altered or annulled, this proceeding is dismissed for lack of jurisdiction. Pending such occurrence, the remainder of this order shall remain in full force and effect.

2. A certificate of public convenience and necessity is granted to The Gray Line, Inc., a corporation, authorizing it to operate as a passenger stage corporation, as defined in PU Code § 226, between the points and over the routes set forth in Original Page 9.2 of Appendix A of Decision 82-01-82 (attached) to transport passengers and their baggage for sightseeing purposes.

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.

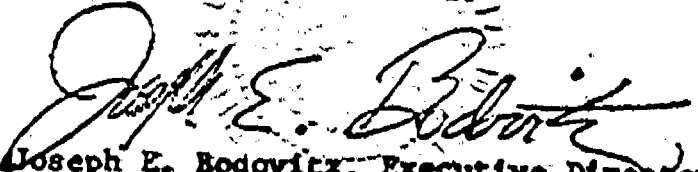
- c. State in its tariffs and timetables when service will start; allow at least 10 days' notice to the Commission; and make timetables and tariffs effective 10 or more days after this order is effective.
- d. Comply with General Orders Series 79, 98, 101, and 104, and the California Highway Patrol safety rules.
- e. Maintain accounting records in conformity with the Uniform System of Accounts.

This order is effective today.

Dated MAY 4 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

SECTION II TOUR DESCRIPTIONS (Continued)

Tour No. Yosemite National Park Tour

35(a) Leave carrier's San Francisco terminal; then via Highway 101 to San Jose; then via Highway 101 to Gilroy; then via Highways 152 and 33 to Red Top; then via Highway 59 to Merced; then via Highway 140 to Mariposa; then via Highway 140 to Yosemite National Park; and return, via Highways 140, 33, 150, 101, and 280 to carrier's terminal.

35(b) (Alternate Route) Leave carrier's San Francisco terminal; then via Highways 80, 580, and 132; then via Highways 99 and 140 to Merced and Mariposa; then via Highway 140 to Yosemite National Park; and return to carrier's terminal over the same route.

36 Gold Country and Yosemite National Park

Leave carrier's San Francisco terminal by the most appropriate route to Walnut Creek, Antioch, Rio Vista, Jackson, Mokelumne Hill, San Andreas, Angels Camp, Columbia, and Yosemite National Park; then to Merced, Modesto, Livermore, Hayward, and the carrier's terminal.

38 State Capitol, Sacramento, Lake Tahoe, and Northern Mother Lode Country Tour

Leave carrier's San Francisco terminal; then via the most appropriate route to Sacramento, South Lake Tahoe, Nevada City, Marysville, Sutter, Colusa, Knights Landing; and return to carrier's terminal.

Curry Co.'s regular route operations between Merced, Fresno, Lee Vining, and Yosemite have been detailed. In 1979 the Commission found that Curry Co. has a net loss of \$39,652 on its intrastate, intercity service for the 12 months ending May 27. (D.91775, Slip Dec. at p. 5.) In 1980 Curry Co. had a loss of \$69,866. For the similar period its total net revenue from all transportation activities, which includes the loss, was \$93,544.

The point raised by Curry Co. is of some concern. However, the potential diminishment of Curry Co.'s regular route service within Yosemite Valley is not sufficient reason to deny the public the benefits of additional competition in service from the Bay Area to Yosemite. If necessary, Curry Co. has the option to request from us a rate increase to cover its operation costs for the route which is currently operating at a loss. Over the last several years, services providing sightseeing by bus, especially of the round-trip variety, have mushroomed in response to increased demand. We have been forced to conclude that PUC Code §1032 must be interpreted differently for sightseeing transportation than we interpreted it historically vis-a-vis "through" transportation for the general movement of passengers. Cf. discussion of this development, and recent cases, in Pacifico Creative Service, Inc., ___ CPUC 2d ___, A.58739, dated November 13, 1981. We believe that the granting of a certificate in this case is consistent with the framework established in our recent decision.

Parlor Car's Protest

In points not otherwise discussed Parlor Car contends that the authority requested by Gray Line is deceptive and that granting such authority would have an adverse effect on Parlor Car.

Parlor Car contends that Tours 35 and 36 are deceptive because they are categorized as overnight tours to Yosemite, when, in fact, the patrons would spend the night in Merced, Mariposa, or Sonora. Patrons of Parlor Car Yosemite tours spend one or more nights in the park. Regardless of where the patrons would be quartered, Tours 35 and 36 do provide for sightseeing

in Yosemite. Gray Line argues that it could operate tours more frequently because it would not be limited by the availability of hotel rooms in the park; although there is no showing of the availability of rooms in Merced, Mariposa, or Sonora. In any event, the question of whether patrons will desire to stay inside or outside the park should be left to the forces of competition in the marketplace.

Findings of Fact

1. In Western Travel Plaza, Inc., and companion cases (D.93726 in A.59818, A.60181, A.60221, and A.60286, entered on November 13, 1981) the Commission concluded that:

- "2. Sightseeing-tour service, originating and terminating at the same point, is not public utility or passenger stage corporation service.
- "3. Sightseeing-tour carriers should not be regulated as public utilities."

Timely petitions for rehearing were filed and D.93726 has been stayed until further order of the Commission pending rehearing.

2. New owners acquired the stock of Gray Line in 1981. The stock was formerly owned by Greyhound which is the parent of Parlor Car. Gray Line was operated by the Greyhound ownership at a loss. The new ownership has infused additional capital and is attempting to reverse the situation.

3. Official notice is taken of the fact that Gray Line has extensive operating authority granted by the Commission.

4. Gray Line owns 72 buses. It purchased nine 47-passenger, rest room equipped MC-9 buses in 1981. It intends to use them for the proposed tours. In 1981, Gray Line acquired from the New York Transit Authority eight British double-decker buses to be used for specialized service in San Francisco.

5. Gray Line has received requests from the public indicating that there is public interest in a two-day tour from San Francisco to the State Capitol, Sacramento, Lake Tahoe, and the northern Mother Lode (Tour 35). Gray Line has sufficient personnel and equipment to operate such a tour.