

Decision 83 04 072 APR 20 1983**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 PINETREE SERVICE CORPORATION, INC.,)
 a California corporation, for a)
 certificate of public convenience)
 and necessity to operate an airport)
 access service between points in)
 Kern, Orange, Riverside, San)
 Bernardino and San Diego Counties on)
 the one hand, and Los Angeles County)
 on the other hand, and for common)
 carrier rights to carry small)
 packages between the same points.)

Application 60598
 (Filed May 28, 1981;
 amended August 13, 1981
 and September 28, 1981)

John E. deBrauwere, Attorney at Law,
 for Pinetree Service Corporation,
 applicant.

James H. Lyons, Attorney at Law, for
 Skyview Limousine Service, Inc.,
 protestant.

Vahak Petrossian, for the Commission
 staff.

FINAL OPINION

By this application, as amended, Pinetree Service Corporation (Pinetree) requests authority to provide scheduled airport access passenger stage and express service in the following three corridors that extend generally north, south, and east from Los Angeles International Airport (LAX):

1. Between LAX and Bakersfield.
2. Between LAX and San Diego International Airport (SAN), including service to several intermediate points.
3. Between LAX, Ontario International Airport (ONT), and Palm Springs.

Hearing has been held on Pinetree's request to serve the Bakersfield and SAN corridors. Decision (D.) 82-06-100 dated June 15, 1982, as modified by D.82-09-054 dated September 8, 1982, in Application (A.) 60598 et al. granted it authority to serve these two corridors. The decision stated that Pinetree's request to serve the Palm Springs corridor would be the subject of a separate hearing and decision.

A protest to Pinetree's request to provide service between LAX and Palm Springs was filed by Skyview Limousine Service, Inc. (Skyview). There were no other protests. Hearing on this phase of the application was held before Administrative Law Judge Arthur M. Mooney in Los Angeles on July 20 and 21, 1982. The matter was submitted upon the filing of written closing statements on September 10, 1982 by Pinetree and Skyview. Evidence on behalf of Pinetree was presented by its executive vice president and seven public witnesses. Evidence on behalf of Skyview was presented by the president of Skyview and two public witnesses. A representative of the Commission staff assisted in the development of the record.

Pinetree

Pinetree was incorporated in 1971, and its principal place of business is in Westminster, near Los Angeles. It is the sole owner of California Charter Buses (CCB), Pinetree Tours, and Pinetree Commuter Van, all corporations. Pinetree Transportation is an operating division of Pinetree.

As indicated above, Pinetree holds a passenger stage certificate (PSC-1152). In addition to the LAX-SAN and LAX-Bakersfield services, it also provides various sightseeing tours in Los Angeles and Orange Counties. Through its operating division, Pinetree Transportation, it: (1) provides various school bus transportation services, including services for handicapped children, and leases equipment for these services; (2) has charter and special

operations authorities from the Interstate Commerce Commission (ICC); and (3) holds a Class A charter-party carrier of passengers certificate (TCP-88A). It owns no equipment, and charters equipment primarily from CCB for other than school bus operations.

CCB had been in the charter business for a number of years prior to its acquisition by Pinetree. It holds a Class A charter-party carrier of passengers certificate (TCP-23A). CCB provides charter service primarily in the southern California area. It has a terminal in Los Angeles and owns or leases the following air-conditioned equipment: (1) 50 10-passenger vans, (2) 12 39-passenger MC-5A coaches, (3) 10 46-passenger Prevost coaches, and (4) 11 46-passenger MC-9 coaches. CCB has made arrangements to obtain additional equipment.

Pinetree Tours provides various tour services, including arranging sightseeing services for groups coming into southern California and tours for disabled persons. Pinetree Commuter Van may be dissolved.

The May 31, 1982 balance sheet, included in Exhibit FH-6, for Pinetree and its subsidiaries showed assets of \$5,990,250, liabilities of \$3,528,008, and a shareholders' equity of \$2,462,242. The exhibit shows for the ten months ended May 31, 1982 for all companies revenue of \$10,975,937 and a net income before income taxes of \$623,546.

The specific authority Pinetree seeks here is to provide a scheduled airport access service for passengers and their baggage between LAX and Palm Springs with intermediate service to and from ONT. Service in Palm Springs would be at the Spa Hotel on Indian Avenue and the Palm Springs Airport. The proposed one-way passenger fares are \$15 between LAX and Palm Springs and \$10 between ONT and LAX or Palm Springs. Pinetree also requests authority to transport small shipments, not to exceed 50 pounds in weight each, between the same points. The proposed charges for this service would vary according to the weight of the packages.

Following is a summary of the evidence presented by Pinetree's executive vice president who has been with the company for five years and has had prior experience in the transportation and marketing fields:

1. As part of his research into the feasibility of the proposed service, he contacted a number of travel agents and representatives of various hotels, chambers of commerce, convention and visitors' bureaus, and the like in Palm Springs area. This and his research into public transportation availability and demand in this market area clearly establishes a need for the service Pinetree seeks to provide. Air service for Palm Springs is limited, particularly out-of-state service. The Palm Springs area has an affluent population that does a lot of traveling and has many visitors and conventions. Most of their air travel is through LAX and much of the balance is through ONT. Many of these travelers now use automobiles as their means of transportation to and from the two airports. There is no scheduled, large bus service similar to that proposed by Pinetree available for them. Pinetree's service, if authorized, would reduce the number of autos on the highway which would enhance the environment and fuel efficiency.
2. Pinetree proposes to initially operate two round trips a day, seven days a week, between Palm Springs and LAX with a stop at ONT in each direction. The one-way distance and time would be approximately 131 miles and three hours, respectively. Pinetree plans to have an early morning and midafternoon departure from Palm Springs and an early afternoon and midevening departure from LAX. It would lease two large buses from CCB. Each would be air-conditioned and have reclining seats and a restroom. They would be maintained in Los Angeles. Both drivers would stay overnight in Palm Springs. Should public demand require, it would add additional schedules and leased equipment from CCB or other sources.

3. Pinetree has provided bus charters between LAX and Palm Springs. It has also provided charters for LAX, ONT, and other airports in the area when they have been closed by fog.
4. Pinetree will, if the authority is granted, advertise the service to travel agents in various trade publications and to the individual traveler in newspapers and by radio. It will also advertise the service at ONT and LAX. Tickets will be sold at LAX kiosks and by travel agents and its drivers. Pinetree will not have its own agent at Palm Springs. However, it will have a toll free number to its Los Angeles office for passenger information and reservations.
5. Pinetree's Pro Forma Income Statement for the first six months of operating this service shows an operating loss of \$50,520, ranging from a loss of \$19,210 for the first month down to \$130 for the sixth month. This is based on an estimated 10 passengers per trip the first month with an increase of two passengers per trip each month to 20 passengers per trip the sixth month. After the six-month, start-up period the number of passengers per trip should continue to increase and the operation should be profitable. Pinetree has the financial resources to absorb this initial start-up loss if it should in fact occur.
6. Pinetree was not aware of protestant Skyview's service when the application was filed. Although Pinetree's proposed fares are lower than those of Skyview, the two companies provide distinctly different types of services and are really not competitive. Skyview uses 8 to 14-passenger limousines and provides service directly to the passenger's home or hotel. Pinetree uses large, highway buses and provides service to named terminal points only.

Evidence in support of the proposed service was presented by the executive director of the Palm Springs Convention and Visitors Bureau, the vice president of the Palm Springs Chamber of Commerce, three representatives of various Palm Springs travel agencies, and representatives of two Palm Springs hotels. The evidence they presented regarding the present commercial air and ground transportation service for Palm Springs and the asserted need for the proposed service was generally similar to that presented by Pinetree's witness. They were of the opinion that the authority should be granted.

In his written closing statement, counsel for Pinetree recounted the evidence presented by and on behalf of his client. He emphasized the differences in the services provided by Pinetree and Skyview and the fact that Skyview does not serve ONT. He argued that the evidence supports the proposed service and that it should be authorized.

Skyview

Skyview commenced operations in 1970. Prior to this hearing, it was authorized to provide the following passenger stage service with limousine type, air-conditioned vehicles carrying not more than 11 passengers each, exclusive of driver:

1. Between the Palm Springs Territory, which includes the City of Palm Springs and certain surrounding area and communities, and a large portion of the Los Angeles area referred to as the Los Angeles Territory, excluding LAX.
2. From the Palm Springs Territory to LAX.
3. Between the Palm Springs Territory, on the one hand, and the Disneyland, Los Angeles Harbor, and other nearby areas, on the other hand.

For passengers arriving at LAX and destined to Palm Springs via Skyview, it had an arrangement with the Hyatt Hotel adjacent to LAX

for the hotel to transport the passengers in Hyatt courtesy vehicles from the airport to the hotel where Skyview would pick them up. Skyview provides door-to-door service for all its customers.

By D.82-07-112 dated July 12, 1982 in A.82-04-72 Skyview's certificate was amended as follows:

1. The restriction against picking up passengers at LAX was removed.
2. The number of passengers per vehicle for service between LAX and the Palm Springs Territory was removed, and for all other service was increased to 20, excluding driver.

Rehearing of this decision was denied by D.82-10-036 dated October 6, 1982.

The following evidence was presented by the president of Skyview who owns all of the stock in the company and is assisted by his wife in the operation of the business. Since the amendment to Skyview's certificate by D.82-07-112 occurred while the hearing was in progress, the evidence related primarily to Skyview's operations between the Palm Springs and Los Angeles area, including LAX, prior to the amendment.

1. As of December 31, 1981, Skyview had assets of \$32,142.99, liabilities of \$8,977.34, and a net worth of \$23,165.65. According to the balance sheet, its operating and other equipment are substantially depreciated. For the year 1981, it had revenue of \$237,482, expenses of \$233,247, and a net income of \$4,235 and operating ratio of 97.5% before income taxes. Skyview anticipates a similar operating ratio for 1982.
2. As of July 1982, Skyview operated five 14-passenger and two 8-passenger vehicles, ranging from 1976 to 1981 models. It leases part of a garage in Los Angeles, and its terminal and office are located here.

3. It operates three schedules in each direction every day of the year between the Palm Springs and Los Angeles areas, leaving Palm Springs at 8:00 a.m. and at 1:00 and 4:30 p.m., and leaving Los Angeles at 9:15 a.m. and at 2:15 and 8:00 p.m. During the peak season for Palm Springs, it adds additional schedules. The driver commences picking up passengers at their homes or other locations specified by them a half hour or so before the departure time to meet the schedule. Because of the size of the Los Angeles Territory, two vehicles may be used to pick up passengers here. If this is done the passengers are transferred to a single vehicle for the transportation to Palm Springs.
4. During the first six months of 1982, Skyview transported a total of 3,466 passengers between the Palm Springs Territory and LAX and an additional total of 3,860 people between the Palm Springs Territory and the balance of the Los Angeles Territory. The passenger traffic to and from LAX was heaviest during the first three months, with March accounting for 912 or 26% of this traffic. It has many repeat customers. Some have homes in both the Palm Springs and Los Angeles areas.
5. Skyview mails and/or delivers advertising material to hotels, travel agents, and any interested party in its service areas. It deals with travel agents located throughout the country and in different parts of the world. LAX personnel are familiar with its service. Its fare between Palm Springs and LAX is \$21 and its advertising brochure suggests a tip of approximately 10% for the driver because of the personalized nature of its service. Travel agents are given a commission on prepaid reservations. Most reservations are made directly by customers.
6. Skyview has two reservation telephone numbers for the Palm Springs area and one for the Los Angeles area. Between 6:00 a.m. and 11:00 p.m., all calls are received at its Los Angeles office or its president's home. At other times, an answering machine handles the calls.

7. Skyview has always been able to accommodate all requests for service. At times because of the 11-passenger limitation per vehicle, it has been necessary to run a second section on a schedule. This is the reason for having this limitation removed for the LAX service and increased to 20 for other services.
8. Skyview has operated charters from LAX. With the completion of construction at LAX, it will now, as authorized by D.82-07-112, pick up LAX passengers for Palm Springs at the airport.
9. Pinetree would directly compete with Skyview between LAX and Palm Springs. Their schedules would be similar. Because of Pinetree's cheaper \$15 one-way fare, it would draw people away from Skyview. There is only so much passenger stage business available between Palm Springs and LAX. As shown in the airline schedules by the monthly Palm Springs Guides, there are numerous flights daily between Palm Springs and LAX, with a higher frequency in the winter months. If the Pinetree request were granted and Skyview were to lose 50% of its LAX passengers, this would probably cause Skyview to go out of business.
10. Skyview is providing a good, personalized service, and there is no need for an additional passenger stage operator between Palm Springs and LAX.

Two witnesses testified in support of Skyview. Both live in the Los Angeles area. One has a condominium in Palm Springs and uses its service several times a month. The other visits a relative in the Palm Springs area and uses Skyview about five times a year. Each stated that Skyview's service is excellent and commented on the convenience of being picked up at home. By letter dated July 19, 1982, the Sinatra Enterprises stated that it uses Skyview's service daily and would be greatly inconvenienced without it.

In his written closing statement, counsel for Skyview reviewed the evidence and questioned the estimates and pro forma financial data presented by Pinetree. He pointed out that most of the public witnesses called by Pinetree knew little or nothing of Skyview's service. He argued that Pinetree had not established a public need for the proposed service and that his client is providing satisfactory service between Palm Springs and LAX. The counsel urged that Pinetree's request to serve between these points be denied. He asserted that the grant of such authority would have a serious financial impact on Skyview that could cause it to cease operations which would adversely affect not only those using his client's Palm Springs-LAX service but also those using its other passenger stage services.

Discussion

We are of the opinion that Pinetree should be authorized to provide the proposed service.

As stated, Skyview was the only protestant, and its protest is concerned only with Pinetree's request to serve between the Palm Springs' Spa Hotel and airport, on the one hand, and LAX on the other hand. Again, as stated, there was no protest to Pinetree's request to serve between ONT and the two named Palm Springs locations or LAX, and this part of its request will not be further discussed.

The evidence clearly establishes that Pinetree is an experienced operator in the passenger bus field. While Skyview has questioned the method used by Pinetree in developing the pro forma data for the first year of operating the proposed service, it is obvious from the financial data of record that Pinetree does have the financial ability to initiate and provide all of the proposed services. In this connection, Pinetree's president testified that

his company is willing to invest up to \$200,000 in this operation to cover the first year start-up expense. Although he was not certain whether his company would continue the proposed service if the start-up cost exceeded this amount, it would be mere speculation to presume that this would occur. As to Pinetree's fitness, there is nothing in the record to question this.

While the evidence on the issue of whether public convenience and necessity does require the proposed service was not extensive, nonetheless, a sufficient showing has been made to establish that this does exist. The Palm Springs area is a popular resort and convention area. Many people have second homes there. Numerous travelers between this area and distant places arrive and depart by air carrier at LAX. Of these, many use ground transportation between Palm Springs and LAX. Other than Skyview and charter service, there is no other direct bus service available for the public between the points. There is a public need, particularly for the individual traveler and those in small groups, for the airport access service Pinetree proposes.

Public Utilities (PU) Code § 1032 does provide in part that the Commission may certificate a new carrier in a territory already served by a certificated carrier only if the existing carrier is not providing service satisfactory to the Commission. Skyview is an existing certificated carrier between Palm Springs and LAX. However, service by a single carrier in a particular territory is a monopoly service. In this connection, we have held in prior decisions that monopoly service is not service to our satisfaction (see American Buslines, Inc. (1980) 3 CPUC 2d 246, review denied). Allowing Pinetree to compete with Skyview on this route will ensure that the public will be served by carriers which have maximum incentive to offer schedules and service tailored to their customers' needs in order to attract patronage.

Aside from the competitive consideration, there are sufficient differences between the service proposed by Pinetree and that provided by Skyview to make the provision of PU Code § 1032 not applicable to Pinetree's request. Skyview provides an advance reservation service directly to the homes of customers or other locations specified by them in its Palm Springs service area. Pinetree would not provide such personalized service. It would service only two named terminal points in this area. Also, to the time of the hearing in this matter, Skyview was limited to operating equipment carrying not more than 11 passengers each. While this restriction has been removed on its Palm Springs-LAX route and it can now operate equipment of any size of passenger carrying capacity on this route, Pinetree would exclusively use large, intercity buses. Additionally, Pinetree would have an intermediate stop at ONT which Skyview would not have.

Skyview's argument that certifying Pinetree could cause it to lose a substantial amount of its LAX business which could possibly cause it to go out of business is not persuasive. As stated, the service by each would differ. We find no evidence that this traffic market is so saturated with service that competition between Pinetree and Skyview would not be in the public interest. Pinetree should be allowed to serve the public need that does exist for its service between the two points.

Since there is a need for the proposed service, the following order should be made effective on the date it is signed.

Findings of Fact

1. Pinetree holds a passenger stage corporation certificate authorizing various airport access services at LAX and SAN and various other services. It also holds a Class A charter-party carrier of passengers certificate and charter and special operations authorities from the ICC.

2. Pinetree seeks authority to provide scheduled airport access service for passengers and their baggage between LAX and Palm Springs with intermediate service to and from ONT. Service in Palm Springs would be at the Spa Hotel and Palm Springs Airport only. It also seeks authority to handle express shipments not over 50 pounds each in connection with this service.

3. Pinetree has the experience, financial resources, ability, and fitness to provide the proposed service.

4. Skyview protests the request by Pinetree to serve between Palm Springs and LAX. Skyview holds passenger stage operating authority to provide various services, including service between any point in its Palm Springs Territory, which includes the City of Palm Springs and certain nearby communities and surrounding area, and LAX. It does not hold authority to serve ONT. Its service in the Palm Springs Territory is an advance reservation service directly to the passenger's home or other location in the territory specified by the customer.

5. There was no protest to Pinetree's request to serve between ONT on the one hand, and Palm Springs and LAX on the other hand.

6. As pointed out in Findings 2 and 4, the service proposed by Pinetree and that provided by Skyview at Palm Springs differ in that Skyview provides service direct to a passenger's home or other customer specified location in its Palm Springs Territory service area, whereas Pinetree would serve only two terminal points in this area. Also, Pinetree would have an intermediate stop at ONT and Skyview would not.

7. Skyview is the only passenger stage operator now certificated to provide direct service between Palm Springs and LAX. Such single carrier service is in effect a monopoly-type service.

8. Monopoly passenger stage service by Skyview between Palm Springs and LAX is not service to the satisfaction of the Commission.

9. Competition between Skyview and Pinetree on the Palm Springs-LAX route will have a beneficial effect for the public in that it would promote the best possible service and encourage innovative rate schedules and practices.

10. Public convenience and necessity require the Palm Springs-ONT-LAX service proposed by Pinetree.

11. It can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.

Conclusions of Law

1. Pinetree should be authorized to provide passenger stage and express shipment service between Palm Springs, ONT, and LAX as provided in the following order.

2. This order should be made effective on the date signed because public convenience and necessity require the proposed service

FINAL ORDER

IT IS ORDERED that:

1. A certificate of public convenience and necessity is granted to Pinetree Service Corporation, Inc., (Pinetree), a corporation, authorizing it to expand its operations as a passenger stage corporation, as defined in PU Code § 226, to transport persons, baggage, and/or express. Appendix A of D.92763, as amended, is further amended by replacing Second Revised Page 1 with Third Revised Page 1 and Original Page 2-A with First Revised Page 2-A, attached.

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 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.

3. 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.

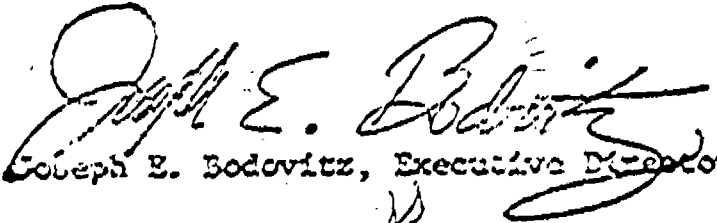
This order is effective today.

Dated APR 20 1983, at San Francisco, California.

LEONARD M. GRIMES, JR.
President
VICTOR CALVO
DONALD VIAL
Commissioners

Commissioner Friscilla C. Grew, being necessarily absent, did not participate in the disposition of this proceeding.

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


Joseph E. Bodovitz, Executive Director

Appendix A PINETREE SERVICE CORPORATION, INC. Third Revised Page 1
(D.92763) (PSC-1152) Cancels
Second Revised Page 1

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

Pinetree Service Corporation, Inc., by the certificate of public convenience and necessity granted by the decision noted in the margin, is authorized to transport passengers for sightseeing and for pleasure trips between points in Los Angeles and Orange Counties, on the one hand, and various points of interest, on the other hand, and daily scheduled passenger service and shipment of small packages, not to exceed 50 pounds in weight each, between San Diego International Airport (SAN) and Los Angeles International Airport (LAX), and between Bakersfield and LAX, and between Palm Springs Airport (PSP) and LAX*, over and along the routes described, subject, however, to the authority of this Commission to change or modify these routes at any time and subject to the following provisions:

- a. All sightseeing service authorized shall be limited to the transportation of round-trip passengers only.
- b. Sightseeing service shall be operated on an on-call basis. The term on-call as used refers to service which is authorized to be rendered dependent on the demands of passengers. The tariffs and timetables shall show the conditions under which each authorized on-call service will be rendered.
- c. When route descriptions are given in one direction, they apply to operation in either direction unless otherwise indicated.
- d. On Route C, all buses will enter and depart that area in the City of Beverly Hills bounded by Beverly Drive, Santa Monica Boulevard, Camden Drive and Charleville Boulevard via Wilshire Boulevard and in all other respects shall be restricted from proceeding to or from other points within that City.

Issued by California Public Utilities Commission.

83 04 072
*Added by Decision _____, Application 60598.

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Appendix A PINETREE SERVICE CORPORATION, INC. First Revised Page 2-A
(D.92763) (PSC-1152) Cancels
Original Page 2-A

SECTION 2. AUTHORIZED POINTS OF ORIGIN/TERMINATION. (Continued)

BAKERSFIELD TO LAX

Service will originate at the Bakersfield Inn, 1101 Union Avenue, Bakersfield then via the most convenient and appropriate routes and highways to LAX.

PSP TO LAX*

Service will originate and terminate at PSP and LAX with intermediate en route stops in Palm Springs at the Spa Hotel, Indian Avenue and at the Ontario International Airport (ONT).

NOTE:

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.

Issued by California Public Utilities Commission.

*Added by Decision 83 94 072, Application 60598.