

ORIGINAL

Decision No. 87384 May 24, 1977

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
KENNETH HENRICKSEN, an individual,)
doing business as POODLE BUS LINES,)
for a passenger stage certificate)
authorizing the transportation of)
passengers and their baggage between)
certain designated points within)
the State of California.)

Application No. 56783
(Filed September 29, 1976;
amended October 29, 1976
and December 2, 1976)

Thomas P. Kelly, Jr., Attorney at Law, for Kenneth
Henricksen, dba Poodle Bus Lines, applicant.
William Curtis Howell, for All-Cal Tours, interested
party.
R. E. Douglas, for the Commission staff.

O P I N I O N

Kenneth Henricksen, doing business as Poodle Bus Lines, originally sought a certificate of public convenience and necessity authorizing him to conduct passenger stage service between the cities of Ukiah, Santa Rosa, Cloverdale, Geyserville, Sonoma, Healdsburg, Windsor, Sebastopol, Cotati, Petaluma, Novato, and intermediate points, on the one hand, and Marriott's Great America and Santa Cruz, on the other hand. By letter dated October 6, 1976, Greyhound Lines, Inc. protested the granting of the application asserting that it is providing adequate service to the points in question.

On October 29, 1976, applicant filed an amendment to the application requesting a change of route from that which was originally requested and that authority be included for special operation sightseeing, pleasure tours in intrastate commerce from all points and places within the counties of Sonoma, Marin, Mendocino, Napa, and Lake to all points and places within California, on a sightseeing, pleasure tour basis only, travelling over the most direct routes. Applicant asserts that this type of service is not being offered to the general public at this time by any bus line and requested that these tours for pleasure be made available to the general public on an individual fare basis when a tour is developed. The tours would include restaurant meals, tour guides, and accommodations. He expected to obtain patrons by advertising, through travel agencies, motels, hotels, chambers of commerce, etc., within the five counties listed above. The tours would be available depending upon weather conditions and seasonal visitation rights available.

Hearing was held at San Francisco on December 2, 1976 before Examiner Gillanders. No one appeared to protest the amended application. The staff appeared to aid in developing the record. Applicant requested permission to again amend his application. The examiner accepted the amendment. Applicant now requests that his proposed tours begin within the limits of the counties of Sonoma, Lake, Mendocino, Napa, and the city limits of Novato located in Marin County. Applicant requests authorization of ten specific tours ranging in duration from one day to four days.

Applicant testified that presently he is authorized to act as a passenger stage corporation and that he also holds a charter "A" certificate for charter-party carrier. He testified that his 1975 annual report clearly shows that he has the financial resources and ability to provide the requested service (Exhibit 1). He introduced three exhibits, each containing an advertisement

for travel services which he claimed shows a need for his proposed tours. He also presented a travel agent with offices in Novato and Santa Rosa who testified that in his opinion there was a public demand for the proposed tours.

As the amendments^{1/} to the application changed the scope of the requested authority from a rather limited area to almost statewide, the examiner directed that applicant serve a copy of the second amended application upon those entities which the staff believed might protest. Such service was made on December 6, 1976 with 20 days given for reply. No protests have been received from the 13 entities served.

Further hearing was held at San Francisco on February 23, 1977. William Curtis Howell appeared on behalf of All-Cal Tours as an interested party. He stated he had filed an application requesting similar authority (Application No. 57098, filed February 18, 1977) and that he appeared in this proceeding not as a protestant but rather to express his opinion that the Commission should not circumscribe entry into the field.

Applicant presented three public witnesses, a representative of the city of Santa Rosa who arranges tours for its Senior Citizens, a travel agent from Ukiah, and a travel agent with offices in Napa and Sebastopol, all of whom testified that there was a need for the service especially as it applied to the carrying of individual passengers who did not wish to join organized clubs or groups.

Discussion

In deciding whether to grant authority on a countywide basis for four counties, we should give consideration to the

^{1/} Apparently the amendments were based on the policy set forth in Decision No. 85837 dated May 18, 1976 in Application No. 55763.

implications of Public Utilities Code Section 1032^{2/} which provides that the Commission may issue a certificate to operate as a passenger stage corporation "in a territory already served by a certificate holder" only when the existing passenger stage corporation or corporations serving such territory will not provide such service to the satisfaction of the Commission. As we noted in The Gray Line Tours Company (1973) 74 CPUC 669 at page 700 the result of too broad an authority may be the stifling of competition:

"The staff does not object to the change in emphasis of the tour. It does, however, object to the language of proposed Item 739. The basis for the objection is that the language is so broad that it preempts the Pacific Coast Highway, even though Gray Line does not propose to operate through La Jolla, Del Mar, and other beach cities on that route. We believe the staff's objection has merit. In Decision No. 81036, the Examiner's proposed report, adopted by the Commission, stated: 'The grant of such authority would establish Gray Line as the existing carrier, within the meaning of Section 1032 in a vast area of Southern California, with a minimal commitment to render service. It would tend to stifle competition and the development of tourism in these areas. It is, of course, in Gray Line's interest to develop additional tours which are profitable. However, others may visualize tours not apparent to Gray Line or be able, because of their proximity or connections in an area, to develop tours which Gray Line cannot operate economically. The innovative will be met with the contention that under Section 1032 the existing carrier must first be afforded an opportunity to place the idea in effect to the satisfaction of The Commission and only upon a failure to do so, will the originator be afforded an opportunity to establish the tour.'"

^{2/} "Section 1032. . . . 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." (Emphasis supplied.)

Given the appearance of a potential competitor, Mr. Howell, in this case and Application No. 57098 which he has before this Commission, we will not grant the sought four-county authority because of its overly broad nature. (See also Allen Transportation Co., D.85837, May 18, 1976.) Instead we will grant authority based on the developed record in this case as to the five cities of Ukiah, Santa Rosa, Sebastopol, Novato, and Napa.

Findings

1. Kenneth Henricksen, dba Poodle Bus Lines, has applied for a certificate to operate as a passenger stage corporation for the purpose of conducting 10 sightseeing and pleasure tours throughout the state beginning and ending within a four-county area or the city limits of Novato over fixed point or regular route operations.

2. Evidence was presented concerning public convenience and necessity for such tours beginning and ending only in the specific cities of Santa Rosa, Ukiah, Novato, Sebastopol, and Napa.

3. The public witnesses who appeared and testified in support of the application referred to tours originating and ending only in these specific cities.

4. Public convenience and necessity have not been shown to require the granting of the requested four-county areawide authority.

5. Granting a four-county areawide certificate to Poodle Bus Lines would be overly broad, would tend to stifle passenger stage competition in the field of sightseeing and pleasure tours over a large territory of the state, and would be against the public interest.

6. Public convenience and necessity have been shown to require the issuance of a certificate for Tours 1 through 10 originating and ending in the cities of Ukiah, Santa Rosa, Sebastopol, Novato, and Napa.

7. Applicant is ready, willing, and able to perform Tours 1 through 10.

Conclusion

Public convenience and necessity have been shown to require the granting of a certificate for Tours 1 through 10 listed in the second amendment to the application beginning and ending only in the cities of Santa Rosa, Ukiah, Sebastopol, Novato, and Napa.

Applicant is placed on notice that operative rights, as such, do not constitute a class of property which may be capitalized or used as an element of value in rate fixing for any amount of money in excess of that originally paid to the State as the consideration for the grant of such rights. Aside from their purely permissive aspect, such rights extend to the holder a full or partial monopoly of a class of business. This monopoly feature may be modified or canceled at any time by the State, which is not in any respect limited as to the number of rights which may be given.

O R D E R

IT IS ORDERED that:

1. A certificate of public convenience and necessity is granted to Kenneth Henricksen, an individual, doing business as Poodle Bus Lines, authorizing him to operate as a passenger stage corporation, as defined in Section 226 of the Public Utilities Code, between the points and over the routes set forth in Appendix A of this decision.

2. In providing service pursuant to the authority granted by this order, applicant shall comply with the following service regulations. Failure so to do may result in a cancellation of the authority.

- (a) Within thirty days after the effective date of this order, applicant shall file a written acceptance of the certificate granted. Applicant is placed on notice that if he accepts the certificate he will be required, among other things,

to comply with the safety rules administered by the California Highway Patrol, the rules and other regulations of the Commission's General Order No. 98-Series, and the insurance requirements of the Commission's General Order No. 101-Series.

- (b) Within one hundred twenty days after the effective date of this order, applicant shall establish the authorized service and file tariffs and timetables, in triplicate, in the Commission's office.
- (c) The tariff and timetable filings shall be made effective not earlier than ten days after the effective date of this order on not less than ten days' notice to the Commission and the public, and the effective date of the tariff and timetable filings shall be concurrent with the establishment of the authorized service.
- (d) The tariff and timetable filings made pursuant to this order shall comply with the regulations governing the construction and filing of tariffs and timetables set forth in the Commission's General Orders Nos. 79-Series and 98-Series.
- (e) Applicant shall maintain his accounting records on a calendar year basis in conformance with the applicable Uniform System of Accounts or Chart of Accounts as prescribed or adopted by this Commission and shall file with the Commission, on or before March 31 of each year, an annual report of his operations in such form, content, and number of copies as the Commission, from time to time, shall prescribe.

3. The certificate of public convenience and necessity granted in paragraph 1 of this order shall supersede the certificate of public convenience and necessity granted by Decision No. 78616, as amended by Decisions Nos. 80665 and 85945, which certificate is revoked effective concurrently with the effective date of the tariff filings required by paragraph 2(b).

The effective date of this order shall be twenty days after the date hereof.

Dated at Los Angeles, California, this 24th
day of MAY, 1977.

President

William J. Lyons, Jr.
Thomas L. Stevenson
Richard D. Green

Commissioners

Commissioner Robert Batinovich, being necessarily absent, did not participate in the disposition of this proceeding.

ANV/kd *

Appendix A

Kenneth Henricksen

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dba
POODLE BUS LINE

CERTIFICATE
OF
PUBLIC CONVENIENCE AND NECESSITY
NO. 856
TO OPERATE AS
A PASSENGER STAGE CORPORATION

Showing passenger stage operative rights, restrictions, limitations,
exceptions and privileges applicable thereto.

All changes and amendments as authorized by
the Public Utilities Commission of the State of California
will be made as revised pages or added original pages.

Issued under authority of Decision No. 87384
dated MAY 24 1977 of the Public Utilities Commission
of the State of California, in Application 56783.

ANV/kd *

Appendix A

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ANV /kd *

Appendix A
(D. 78616)

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The certificate herein stated supersedes all passenger stage corporation operating authority heretofore granted to Kenneth Henricksen:

PART A - HOME-TO-WORK OPERATIONS

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

Kenneth Henricksen, dba Poodle Bus Line, by the certificate of public convenience and necessity granted in the decision noted in the margin, is authorized as a passenger stage corporation to transport passengers between the Cities of Santa Rosa, Sebastopol, Sonoma, Cotati and the Communities of Windsor, Boyes Hot Springs, Kenwood and Glen Ellen, on the one hand, and Mare Island Naval Shipyard, on the other hand, over the most suitable public roads and highways subject to the following provisions:

1. Only passengers destined to or originating at Mare Island Naval Shipyard shall be transported.
2. Routes hereinafter described are via the most appropriate streets and highways with motor vehicles being operated in accordance with governing traffic regulations.
3. Service shall be operated only at times necessary to meet employee shift needs on regular working days.

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Modified by Decision 87384, Application 56783.

PART B - SIGHTSEEING OPERATIONS

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

Kenneth Henricksen, dba Poodle Bus Line, by the certificate of public convenience and necessity granted by the decision noted in the margin, is authorized to transport passengers and their baggage for sightseeing or pleasure tour purposes between Ukiah, Santa Rosa, Novato, Sonoma, Napa and Sebastopol and various points of interest on the tours hereinafter described, subject, however, to the authority of this Commission to change or modify said tour routes at any time and subject to the following provisions:

- (a) All such transportation shall be conducted on a sightseeing or pleasure tour basis.
- (b) All tours and passengers on tours shall originate and terminate within one or more of the authorized cities and shall be operated on an "on-call" basis.
- (c) All service herein authorized shall be limited to the transportation of round-trip passengers only.
- (d) All tours shall be conducted on a continuous basis except for stops for sightseeing, meals and lodging.
- (e) All tours shall include more than bare expeditious point-to-point transportation and shall provide accessorial services including, but not limited to, tour guides, restaurant meals and accommodations; tariffs shall define and include the charges for such accessorial services.

The term "on-call" as used herein 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.

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SECTION 2. AUTHORIZED TOUR DESCRIPTIONS

Tour No. 1 - San Francisco City Tour

Commencing from any of the cities authorized in Part B, Section 1, thence via the appropriate route and U.S. Highway 101 for a day of touring in San Francisco and points located on San Francisco Bay in Marin County with stops at various points of interest, thence return by the most appropriate route to Highway 101 thence via U.S. Highway 101 and appropriate routes to the original point or points of embarkation.

Tour No. 2 - Wine Country

Commencing from any of the cities authorized in Part B, Section 1, thence over the most appropriate route to the various wineries and other points of interest in Napa, Sonoma and Mendocino Counties, thence returning by the most appropriate route to the original point or points of embarkation.

Tour No. 3 - Disneyland and Knott's Berry Farm

Commencing from any of the cities authorized in Part B, Section 1, thence via the most appropriate route to Interstate Highway 5 to Anaheim.

Second Day: Touring of Disneyland.

Third Day: Continuation of touring Disneyland and Knott's Berry Farm in Buena Park.

Fourth Day: Commencing from Anaheim over the most appropriate routes to U. S. Highway 101 thence return via Highway 101 and appropriate routes to the original point or points of embarkation.

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Tour No. 4 - San Simeon, Santa Barbara

First Day: Commencing from any of the cities authorized in Part B, Section 1, thence via the most appropriate route to San Jose, Santa Cruz, Carmel, 17-Mile Drive and Monterey.

Second Day: Commencing from Monterey via State Highway 1 to Big Sur State Park, San Simeon (Hearst Castle) and Morro Bay.

Third Day: Commencing from Morro Bay to San Simeon (Hearst Castle) thence over the most appropriate route to Solvang and Santa Barbara.

Fourth Day: Commencing from Santa Barbara over the most appropriate route through the Salinas Valley to Mission San Juan Bautista and return to the original point or points of embarkation.

Tour No. 5 - Sacramento City Tour

Commencing from any of the cities authorized in Part B, Section 1, thence over the most appropriate route for a day of touring in Sacramento with stops at various points of interest, thence return by the most appropriate route to the original point or points of embarkation.

Tour No. 6 - Gold Country-Yosemite

First Day: Commencing from any of the cities authorized in Part B, Section 1, thence via the most appropriate route to State Highways 12 and 88, thence via State Highway 49, to Angels Camp, Columbia State Park and Sonora.

Second Day: Commencing from Sonora via State Highways 49 and 120 to Yosemite National Park, thence via State Highway 140 to Gustine, thence via Interstate Highway 5 and the most appropriate route to the original point or points of embarkation.

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Tour No. 7 - Mother Lode

First Day: Commencing from any of the cities authorized in Part B, Section 1, by the most appropriate route to Interstate Highway 80 thence via Interstate Highway 80 to Auburn, thence via State Highways 49 and 193 to Coloma, Sutter Creek, Columbia State Park and Sonora.

Second Day: Commencing from Sonora over the most appropriate route to Jamestown and Yosemite National Park.

Third Day: Sightseeing in Yosemite National Park.

Fourth Day: Commencing from Yosemite National Park via the most appropriate route to Gustine, thence via Interstate Highway 5 and the most appropriate route to the original point or points of embarkation.

Tour No. 8 - Queen Mary and Catalina Island

Commencing from any of the cities authorized in Part B, Section 1, thence via the most appropriate route to Interstate Highway 5 and Los Angeles, thence to Long Beach.

Second Day: Tour of Queen Mary

Third Day: Via vessel common carrier for a tour of Catalina Island.

Fourth Day: Commencing from Long Beach over the most appropriate routes to U. S. Highway 101 thence return to the original point or points of embarkation.

Issued by California Public Utilities Commission.

Decision 87384, Application 56783.

Tour No. 9 - Santa Clara and Santa Cruz

Commencing from any of the cities authorized in Part B, Section 1, thence over the most appropriate routes to Redwood City for a tour of Marine World, thence to Santa Clara, San Jose, and Saratoga, California, by the most expeditious routes with stops at various points of interest, thence to Santa Cruz with stops at various points of interest, thence return by the most appropriate route to the original point or points of embarkation.

Tour No. 10 - Northern Gold Trail

Commencing from any of the cities authorized in Part B, Section 1, thence over the most appropriate route to Interstate Highway 80, thence via Interstate Highway 80 to Auburn, thence via State Highway 49 to Downieville.

Second Day: Commencing at Downieville to Nevada City including the mines and other points of interest between the two towns.

Third Day: Tour of points of interest within fifteen miles of Nevada City.

Fourth Day: From Nevada City via State Highway 20 with tours of points of interest between Nevada City and Marysville, thence return to the original point or points of embarkation by the most expeditious route.

(END OF APPENDIX A)

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Decision 87384, Application 56783.