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Decision No. 87450 June 7, 1977

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of FALCON CHARTER SERVICE, a California Corporation, for authority to increase--on both an interim and a permanent basis-- its commuter fares between San Francisco and Foster City, pursuant to the provisions of Section 451 and 454 of the Public Utilities Code of the State of California,

Application No. 56923
(Filed December 8, 1976)

--or in the alternative--

for authority to abandon its certificated commuter service between San Francisco and Foster City.

Eldon M. Johnson, Attorney at Law, for Falcon Charter Service, applicant.
Joel P. Friedman, for Foster City Transportation Committee, protestant.
David P. Shortino, United Transportation Union Local 1741 California Legislative Board;
Dennis W. Monson, for himself; and Richard L. Campbell and Robert B. Wallace, for themselves as prospective purchasers; interested parties.
Maxine Dremann, Attorney at Law, for the Commission staff.

SECOND INTERIM OPINION

Falcon Charter Service (Falcon), a corporation, operates as a passenger stage corporation between Foster City and San Francisco.

In this application, Falcon seeks an increase in fares averaging 61 percent. Falcon also seeks an order authorizing and approving on an interim basis, subject to an escrow and refund provision, the full amount of increase sought, or such other relief as the Commission deems appropriate.

Decision No. 86947 dated February 8, 1977 granted an interim fare increase of 27.6 percent, pending final determination of all issues involving Falcon's commute operations. Decision No. 86947 contains the following findings:

1. Falcon operates as a passenger stage corporation in providing a peak-hour commute service between Foster City and San Francisco, and also operates as a charter-party carrier.
2. Falcon seeks to increase its commute fares by amounts averaging 61 percent.
3. Preliminary studies conducted by the Commission staff indicate that Falcon's Foster City commute service will be operated at a loss under present fares. Such studies indicate that a revenue increase of 27.6 percent is required to provide an operating ratio of 90 percent (before taxes) for 1977 test-year operations. The staff recommends that interim relief be granted to that extent.
4. An interim fare increase as proposed by the staff will be reasonable pending final determination of all issues involving Falcon's commute operations, and such increase is justified.
5. The fare increase authorized herein is estimated to produce additional annual revenues of \$51,706.

Public hearing in Application No. 56923 was held before Examiner Mallory in San Francisco on May 26, 1977 on a concurrent record with Case No. 10131.^{1/} Applicant presented no evidence in support of the fare increase sought. Applicant stated that it is negotiating the sale of its Foster City commute operations to two of its drivers and requested that the hearing in the consolidated proceeding be adjourned for 60 days during which period approval of the sale and transfer of the Foster City commute operations would be sought.

Inasmuch as the basis for granting interim relief (indicated in the above findings) was, in part, data prepared and presented by the Commission staff, the presiding examiner directed that the staff present its evidence. That evidence includes an audit of the books and records of Falcon conducted by a staff financial examiner (Exhibit 3) and an engineering-economic study prepared by a staff transportation engineer (Exhibit 4).

The staff study in Exhibit 4 developed methods for allocating direct and overhead expenses between commute and charter operations of Falcon. Based on the estimated revenues and expenses for a test year ending July 31, 1978, the engineer determined that Falcon's Foster City charter operations would result in an operating ratio (after taxes) of 71.6 percent under fares proposed in the application, an operating ratio (after taxes) of 77.4 percent under interim fares, and an operating ratio (after taxes) of 85.7 percent under the fares in effect prior to the granting of interim

1/ Case No. 10131 (City Council of Foster City, et al. v Falcon Charter Service) involves the adequacy of service provided by Falcon in connection with its Foster City-San Francisco commute operations. At the hearing in Case No. 10131 held on January 14, 1977, all parties agreed that Case No. 10131 should be temporarily removed from the calendar and should be consolidated with Application No. 56923 for hearing.

relief.^{2/} Based on the foregoing, the staff recommended that the fares authorized by Decision No. 86947 be rescinded and that the fares in effect prior thereto be reestablished.

The staff exhibits were initially distributed at the hearing. Review of staff work papers is necessary for an understanding of the methods employed in arriving at estimated test-year operating results; cross-examination was deferred in order to afford applicant and other parties an opportunity to examine the supporting data underlying the conclusions and recommendations reached in Exhibit 4. Further hearing is scheduled on August 17, 1977.

The president of the Foster City Transportation Committee, whose occupation is that of a certified public accountant, presented an analysis of the data appended to the application to show that if applicant's adjustment factors are eliminated and a different allocation of drivers' hours is made, no additional fare increase is justified.

^{2/} The tabulation below summarizes the operating ratios and rates of return for the test year at the present (interim) fares, at the fares proposed by applicant and at the pre-interim fares, as set forth in Exhibit 4:

	<u>Foster City</u>	<u>Marin</u>	<u>Charter</u>	<u>Total</u>
<u>Operating Ratio</u>				
Present (interim)				
Fares	77.4%	81.4%	92.4%	90.5%
Proposed Fares	71.6	81.7	92.5	89.7
Pre-Interim Fares	85.7	81.1	92.3	91.2
<u>Rate of Return</u>				
Present (interim)				
Fares	63.9%	49.4%	20.4%	25.7%
Proposed Fares	101.2	48.7	20.2	28.4
Pre-Interim Fares	31.6	50.4	20.6	23.4

Staff counsel pointed out that applicant offered no evidence in support of the interim relief heretofore granted nor any evidence with respect to the relief sought in the application. She also called attention to Paragraph XI of the application which states, in part, as follows:

"In order to reasonably accommodate the effects of regulatory lag and to nonetheless accommodate the reasonable interests of APPLICANT's patrons and the Commission, in the event that the Commission grants an interim increase herein, APPLICANT will segregate all of the funds attributable to such increase and place them in a separate, interest-bearing escrow account. In the event that, after hearing in this matter, it is determined by the Commission that this increase of any portion thereof is inappropriate, such funds will be utilized to accommodate any finding by the Commission that the rate is too high."

Staff counsel moved that the Commission immediately impose the escrow and refund provisions proposed in the application pending final determination of the issues raised in the consolidated proceedings in view of the conclusions and recommendations reached in staff Exhibit 4.

Applicant opposed the motion on the ground that the staff study contains inaccuracies that negate the conclusions reached by the staff. The president of Foster City Transportation Committee opposed an immediate roll-back of fares to the pre-interim level because it is the view of that body that the interim fare level should remain in effect until such time as the prospective buyers have an opportunity to evaluate their experience under such a fare level.

Discussion

The staff's evidence adduced at the hearing in Application No. 56923 establishes a prima facie showing that the existing level of fares authorized in the interim order are excessive and that the former fares will be reasonable for the future. Cross-examination of the staff engineer is not completed, and applicant has not yet undertaken its burden of proof. It is a strong possibility that applicant will not be able to sell its certificate and that it will continue to perform the Foster City commute operations. In that circumstance, the evidence of record (still to be completed) indicates that existing fares are too high. In order that patrons of the Foster City service will not have to bear the burden of excessive fares for the future should we ultimately find that existing fares are too high, the staff's motion should be granted, and the effective date of this order should be the date of issuance.

SECOND INTERIM ORDER

IT IS ORDERED that:

1. Falcon Charter Service shall establish a record of the purchasers of commute tickets for service between Foster City and San Francisco sold on and after the effective date of this order.
2. In connection with commute tickets referred to in the preceding ordering paragraph, the difference in revenues between the fares established pursuant to Interim Decision No. 86947 and those fares in effect immediately prior thereto shall be segregated and placed in a separate, interest-bearing escrow account. Only fares collected on and after the effective date of this order are subject to this order.

3. In the event that a fare level below that authorized and established pursuant to Decision No. 86947 is ultimately found justified in this proceeding, the difference between the revenues under fare level ultimately found reasonable and the revenues under fare levels established pursuant to Decision No. 86947 shall be refunded with interest to the purchasers of commute tickets referred to in Ordering Paragraph 1 above.

The effective date of this order is the date hereof.

Dated at San Francisco, California, this 7th day of JUNE, 1977.

I dissent
Robert Debraun
Commissioner

~~*Robert Debraun*~~

President
William Sproull
Norman L. Sturgeon
Richard D. Gwalle

Commissioners