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Decision No. 88955

JUN 13 1978

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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the application of
Ruth D. Margolies and P.S.P.A. Corporation
(dba Airport Connection) doing business as
California Tour and Expedition Company.
For Certificate of Public Convenience and
Necessity to operate as a Passenger Stage
Corporation for sightseeing services from
points in Alameda and Contra Costa Counties
to points of scenic interest in the
Counties of San Francisco, Marin, Sonoma,
Napa, Monterey, Placer, and Mariposa.

Application No. 57634
(Filed October 17, 1977;
amended March 14, 1978)

Lester Margolies and Clifford S. Orloff, for Ruth
D. Margolies and P.S.P.A. Corporation (dba
Airport Connection), doing business as California
Tour and Expedition Company, applicants.
Richard M. Hannon, Attorney at Law, for The Gray Line
Inc.; California Parlor Car Tours Company; and
Greyhound Lines, Inc., protestants.
Masaru Matsumura, for the Commission staff.

O P I N I O N

Applicants request a certificate of public convenience and necessity authorizing operations as a passenger stage corporation to conduct round-trip sightseeing tours from specified hotels/motels in the Oakland-Berkeley-Emeryville area to points of interest in the counties of San Francisco, Marin, Sonoma, Napa, and Monterey.^{1/} One of the applicants (the P.S.P.A. Corporation) currently operates a local airport passenger van service, doing business as the Airport Connection.

^{1/} Applicants also seek authority to reserve the right to pick up and discharge passengers at other hotels/motels and places of public gathering within the cities of Oakland, Berkeley, and Emeryville.

Public hearings were held before Administrative Law Judge Gagnon on February 17 and March 20, 1978 at San Francisco. The matter was submitted on the latter date.

The proposed operation would consist of four round-trip tours originating from:

- Oakland - Airport Hilton Inn
- Oakland - London Lodge
- Oakland - Claremont Hotel
- Berkeley - Durant Hotel
- Berkeley - Marriott Inn
- Emeryville - Holiday Inn - Bay Bridge

The four tours are generally described as:

- Tour 1 - East Bay to San Francisco
- Tour 2 - East Bay to Muir Woods and Sausalito
- Tour 3 - East Bay to the Wine Country
- Tour 4 - East Bay to Monterey and Carmel-by-the-Sea

The proposed adult fares for Tours 1 and 2 are \$12. For Tours 3 and 4 an adult fare of \$21 and \$30, respectively, is suggested. Children's fares (ages 6 to 14) are to be one-half the applicable adult fare and senior citizen adult fares will reflect a 15 percent discount. All proposed tours will be operated with so-called mini-buses (maxi-wagons) having a carrying capacity for 14 passengers plus driver. No tour will be conducted for less than six passengers unless otherwise expressly provided in connection with a particular tour. Tour 1 will be operated three days per week from each of the hotel/motel pickup points and Tour 2 will be available two days per week from each of the origin points. Tour 3 will be operated at least one day per week from each origin point and Tour 4 will be conducted upon request.

Applicants contend that public convenience and necessity require the granting of the sought authority in order to meet the demand of tourists and other patrons of East Bay hotels/motels for direct sightseeing services now available from San Francisco origins only. Several innkeepers and a representative for the Berkeley Chamber of Commerce testified in support of the sought authority. In addition several letters from hotel representatives were presented wherein a need was expressed for the proposed service. Financial data

included in the application indicates applicants have sufficient cash assets and capital on hand to inaugurate the service. Financial projections by applicants also support their anticipated results of operations to be profitable.

In the March 14, 1978 amendment to Application No. 57634 the scope of the proposed East Bay sightseeing service was materially reduced and clarified. In addition, applicants raised no objections to the suggested relinquishment of their efforts to obtain authority to reserve a future right to operate round-trip sightseeing tours from East Bay hotels/motels and related public gathering places other than those specified in the application. In light of such amendments to the sought authority, the protests of California Parlor Car Tours Company and Greyhound Lines, Inc. were withdrawn. However, The Gray Line, Inc. continued to object to the granting of the sought authority, as amended.

In support of its protest The Gray Line, Inc. presented a series of exhibits and supporting testimony designed to show that it currently provides sightseeing tours from its San Francisco terminal to points of interest now proposed to be served by applicants directly from several hotel/motel origins in the East Bay. Protestant's tour service is conducted with standard main line bus equipment having a seat capacity for 30-43 passengers. Its current level of fares are lower than those proposed to be assessed by applicants. It is the general position of protestant that its existing sightseeing tour service, originating from the San Francisco Gray Line terminal, with connection available via AC Transit, BART, taxi, and/or other public or private limousine service, is adequate to meet the existing demand for tour service from origins in the East Bay. Protestant states that its experience over the past several years indicates that the East Bay demand for sightseeing tours is not sufficient to justify the additional expense to inaugurate a direct service from this area. Moreover, it is evident that protestant does not contemplate establishing a sightseeing tour service direct from East Bay origins at this time.

Based on rather extensive recent market research efforts, applicants have shown that the current and potential future growth in the demand for sightseeing tours originating directly from East Bay hotel/motel sites more than justifies the availability of such service. It is to be noted that over the past few years a significant number of modern hotels/motels have been constructed in the East Bay area. Due to the large increase in hotel/motel accommodations and the current and potential growth in hotel/motel occupancy rates due to increases in tourism, conventions, and other related commercial interests, applicants' optimism for profitable operations under the sought authority is well founded. Since protestant does not contemplate establishing now or in the foreseeable future expanded tour service direct from the East Bay in order to meet the growing demand therefor, the advancement of the provisions of Section 1032^{2/} of the Public Utilities Code is not a viable defense against the granting of the sought authority.

Findings

1. Applicants have applied for a certificate of public convenience and necessity to operate as a passenger stage corporation for the purpose of conducting four scheduled sightseeing tours from specified hotels/motels located in the cities of Oakland, Berkeley, and Emeryville to points of interest in the counties of San Francisco, Marin, Sonoma, Napa, and Monterey.

2. Applicants also seek certificated authority to reserve the future right to pick up and discharge passengers at other unspecified hotels/motels and places of public gathering within the cities of Oakland, Berkeley, and Emeryville.

3. There is no known existing mini-bus sightseeing service originating from the specified hotels/motels located in the cities of Oakland, Berkeley, and Emeryville to the points of interest involved in the four tours sought to be established by applicants.

2/ Section 1032 of the Public Utilities Code reads, in part:

"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."

4. There is a public need for the specified sightseeing tour service proposed to be immediately established by applicants. No such public need has been shown at this time for the future expanded tour service proposed by applicants.

5. Applicants have shown they possess the skill, experience, and financial experience to commence, maintain, and perform adequately the specified sightseeing tour service they now propose to establish.

6. Public convenience and necessity require that the service proposed to be established by applicants immediately should be authorized.

7. The sightseeing tour services of The Gray Line, Inc., available to East Bay hotel/motel patrons from San Francisco only to the points of interest proposed to be served by applicants, are now and as proposed for the immediate foreseeable future not satisfactory to the Commission.

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

The Commission concludes that Application No. 57634 should be granted to the extent provided in the ensuing order and that the effective date of this order should be the date on which it is signed because public convenience requires prompt commencement of the proposed service.

Applicants are 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 Ruth D. Margolies and P.S.P.A. Corporation (dba Airport Connection), doing business as California Tour and Expedition Company, authorizing them 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, applicants 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, applicants shall file a written acceptance of the certificate granted. Applicants are placed on notice that if they accept the certificate, they 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, applicants 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) Applicants shall maintain their 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 their operations in such form, content, and number of copies as the Commission, from time to time, shall prescribe.

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3. To the extent not granted herein Application No. 57634, as amended, is denied.

The effective date of this order is the date hereof.

Dated at San Francisco, California, this 13th day of JUNE, 1978.

I dissent.
William S. Gurnea Jr.

Robert B. Burt
President

Lawrence L. Stryker
Charles A. Gurnea
Clare T. Schick
Commissioners

Ruth D. Margolies and
P.S.P.A. Corporation
doing business as
CALIFORNIA TOUR AND EXPEDITION COMPANY

CERTIFICATE

OF

PUBLIC CONVENIENCE AND NECESSITY

AS A PASSENGER STAGE CORPORATION

PSC - 1040

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

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

Issued under authority of Decision No. 88955,
dated _____ of the Public Utilities
Commission of the State of California, in Application No. 57634.

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

Ruth D. Margolies and P.S.P.A. Corporation, doing business as California Tour and Expedition Company, by the Certificate of Public Convenience and Necessity granted by the decision noted in the margin, is authorized as a passenger stage corporation to transport passengers for sightseeing purposes, between specified hotels and motels as stated herein, located in the Cities of Oakland, Berkeley and Emeryville, on the one hand, and points of interest and places in the Counties of San Francisco, Marin, Sonoma, Napa and Monterey, on the other hand, over and along the routes hereinafter described, subject, however, to the authority of this Commission to change or modify said routes at any time and subject to the following provisions:

1. All sightseeing service herein authorized shall be limited to the transportation of round-trip passengers only, originating and terminating at specific hotel and motel locations in Alameda County.
2. Sightseeing service shall be operated on a scheduled basis but applicant will not be obligated to render service for less than six passengers.
3. Applicant shall not operate vehicles with a seating capacity of more than 14 passengers in providing the service.
4. Other than the transportation of personal baggage accompanying a passenger, no additional transportation service, including the transportation of express matter, shall be performed.
5. No passengers shall be transported except those having point of origin and destination at one of the following points:

- (1) Airport Hilton Inn, London Lodge and Claremont Hotel, Oakland
- (2) Durant Hotel and Marriott Inn, Berkeley
- (3) Holiday Inn - Bay Bridge, Emeryville

This restriction shall not prevent stopovers for the purpose of permitting sightseeing passengers to visit various points of interest along the route as noted herein.

Issued by California Public Utilities Commission.

By Decision No. 88955, Application No. 57634.

SECTION 2. TOUR DESCRIPTIONS

Tour No. 1 - SAN FRANCISCO TOUR

Commencing from the specific hotels and motels named herein within the Cities of Oakland, Berkeley and Emeryville, thence via Highway 17 or 80, Oakland-San Francisco Bay Bridge to San Francisco then via the most appropriate route to view points of interest and places that include Mission Dolores, Twin Peaks, Golden Gate Park, Presidio, Golden Gate Bridge, Marina, Ghirardelli Square, The Cannery, Fisherman's Wharf, "Crookedest Street", Chinatown, Hyatt Regency Hotel and thence via the San Francisco-Oakland Bay Bridge to the original point or points of embarkation.

Tour No. 2 - MUIR WOODS and SAUSALITO

Commencing from the specific hotels and motels named herein within the Cities of Oakland, Berkeley and Emeryville, thence via Highway 17 or 80, over the Oakland-San Francisco Bay Bridge, San Francisco, Golden Gate Bridge to Marin County, continue to Muir Woods. Sausalito, Highway 101, San Rafael-Richmond Bridge, Highway 17 and returning to the original point or points of embarkation.

Tour No. 3 - WINE COUNTRY

Commencing from the specific hotels and motels named herein, within the Cities of Oakland, Berkeley and Emeryville, thence over Highway 17 or 80, Oakland-San Francisco Bay Bridge, San Francisco, Golden Gate Bridge, Highways 101, 37 and 121, to the wineries in Sonoma and Napa Counties and return to original point or points of embarkation via Highways 29, 80 and 17.

Tour No. 4 - MONTEREY and CARMEL -by-the-Sea

Commencing from the specific hotels and motels named herein, within the Cities of Oakland, Berkeley, and Emeryville, thence over Highways 17 or 80, 101, 17 to Santa Cruz, continue on Highway 1 to Monterey and Carmel and return via Highways 68, 101 and 17 to original point or points of embarkation.

THE END

Issued by California Public Utilities Commission.

By Decision No. 88955, Application No. 57634.