

ORIGINAL

Decision No. 89413 'SEP 19 1978'

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application)
of PACIFIC WESTERN STAGE LINES,)
INC., for a Certificate of Public)
Convenience and Necessity to operate)
a sightseeing tour service between)
points in Los Angeles and Orange)
Counties and The Burbank Studios,)
Burbank, California.)

Application No. 57359
(Filed May 31, 1977)

Virant & deBrauwere, by John E. deBrauwere,
Attorney at Law, for applicant.
Knapp, Stevens, Grossman & Marsh, by
Warren N. Grossman, Attorney at Law,
for The Gray Line Tours Company; and
James H. Lyons, Attorney at Law, for
Orange Coast Sightseeing Company;
protestants.
R. W. Russell, by K. D. Walpert, for
Department of Public Utilities and
Transportation, City of Los Angeles,
interested party.
Thomas P. Hunt, for the Commission staff.

O P I N I O N

Pacific Western Stage Lines, Inc. (PacWes), a California corporation, seeks a Certificate of Public Convenience and Necessity pursuant to Section 1031 et seq. of the Public Utilities Code, to perform a regularly scheduled sightseeing service, twice daily, Monday through Friday, between Los Angeles and Orange service areas, on the one hand, and The Burbank Studios in Burbank, California, on the other hand.

A public hearing was held in Los Angeles before Administrative Law Judge N. R. Johnson on March 13 and 20, 1978 and the matter was submitted on May 29, 1978 upon receipt of concurrent briefs. Testimony was presented on behalf of PacWes by its general manager and by an employee of a ground transportation coordinator firm, and on behalf of Gray Line Tours Company (Gray Line) by its executive vice president and general manager. Other parties to the proceeding participated through cross-examination of the various witnesses.

PacWes is currently engaged as a charter-party carrier and holds a Class "A" Charter-party Carrier Certificate No. TCP-216-A. Additionally, PacWes and its affiliates, Port Terminal Transportation, Inc., and G and M Rentals, are engaged in other transportation-related enterprises such as automobile warehousing and truck and vehicle leasing. According to the record, PacWes currently owns 3 and leases 12 recliner seat, over-the-road, air-conditioned buses with seating capacities in excess of 36 passengers each. The Burbank Studios, located at 4000 Warner Boulevard, in Burbank, California, adjacent to the Ventura Freeway, has for some time been conducting tours through its facilities consisting of the Warner Brothers lot in Burbank and the Columbia Ranch. The tour guests witness actual day-to-day activities and filmings on the sound stages and lots as well as visiting the various streets and villages forming the background of past Warner Brothers and Columbia pictures.

PacWes is seeking a certificate of public convenience and necessity for two tours daily, limited to a maximum of 40 persons per tour, with no children under 10 permitted. It is

proposed that the morning tour will leave Anaheim at 9:00 a.m. and Los Angeles at 9:30 a.m., and arrive at The Burbank Studios at 10:00 a.m. After the tour, the passengers will have an opportunity to eat lunch at the studio commissary. The afternoon tour will leave Anaheim at 12:00 p.m. and Los Angeles at 12:30 p.m., and will arrive at the studio commissary for lunch at 1:00 p.m. The proposed round-trip fare is \$15 which includes the bus fare and the entrance ticket to the studio but does not include the cost of lunch at the studio commissary.

Position of PacWes

Testimony and/or exhibits presented on behalf of PacWes indicate that:

1. PacWes was informed by The Burbank Studios it will cooperate in instituting a public tour of the studio limited to 40 people in the morning and 40 people in the afternoon.
2. PacWes has or can acquire adequate equipment to conduct the proposed operation in addition to its regular charters and leases.
3. No other carriers in Southern California are offering a similar tour of The Burbank Studios.
4. If the requested certificate is granted, PacWes intends to distribute a descriptive brochure of the proposed tour to the various tour agencies and hotel tour directors in Orange and Los Angeles Counties.
5. One hotel in the Disneyland area and one hotel in Los Angeles will be designated as the departure terminal, and PacWes will not provide shuttle service to such hotels.
6. Fifteen passengers on the over-the-road buses is the break-even point for the use of the bus.

7. At the proposed rates, PacWes will be able to realize a net profit.

8. The proposed tour will be well-received and there is a public demand for such a tour.

9. Passengers for the proposed tour would be booked on a first-come-first-served basis and limited to 40 in the morning and 40 in the afternoon.

Position of Gray Line

Testimony and/or exhibits presented on behalf of Gray Line indicate that:

1. Gray Line has approximately 350 employees of which approximately 200 are driving personnel.

2. Gray Line has full maintenance capability at 1207 West Third Street in Los Angeles.

3. Gray Line develops its patronage through an intense marketing effort, through the use of toll-free numbers serving all states outside of California, through intense local marketing efforts, and through its staff of sales personnel.

4. Tours are developed through semi-annual seminars and passenger survey polls.

5. Gray Line's tours are not limited as to maximum or minimum.

6. Gray Line's present in lieu certificate grants it the right to operate a tour of The Burbank Studios but Gray Line has not exercised this right because of a lack of public interest.

7. The proposed restricted tour would be harmful to the image of sightseeing tours because of the necessity of turning prospective passengers away.

8. If the restriction of 80 people per day for The Burbank Studio tours were lifted, Gray Line would want to conduct and market the proposed tour.

9. Usually tours have more passengers than made reservations so that having a limit of 40 passengers per trip would create an impossible situation.

10. The Burbank Studios has never contacted Gray Line to implement the proposed tour.

11. No public need for the proposed tour has been demonstrated.

Position of Orange Coast Sightseeing Company

Upon the stipulation of PacWes that the pending application was limited for the tour of The Burbank Studios located at 4000 Warner Boulevard and excluded all other studios in the Burbank area, Orange Coast Sightseeing Company withdrew from the proceeding.

Position of the Commission Staff

In a closing statement Mr. Hunt of the Commission staff stated that there was no presentation to demonstrate that the authority of Gray Line was anything other than permissive allowing it to serve any of several studios and should not incur harm should the requested certificate be granted. Under these circumstances the Commission staff supports the application, conditioned upon the prior authorization of The Burbank Studios.

Position of the City of Los Angeles

In his closing statement Mr. Walpert stated that the city of Los Angeles suggests that PacWes revise its proposed service area to more closely represent the area it intends to serve and urged this Commission to consider the ill feeling

that might be possibly generated against the sightseeing industry if the tour is so popular that all comers cannot be accommodated.

Discussion

In determining whether or not to grant a certificate the Commission considers such factors as: (1) public requirements for the service; (2) adequacy of existing service; (3) adequacy of proposed service; (4) quality of proposed service; (5) revenue requirements and rates; (6) technical feasibility; (7) technical competence and financial integrity of the operator; (8) economic feasibility of the proposed operations; and (9) present operations. (Silver Beehive Tel. Co. (1970) 71 CPUC 304.)

Also, there is no question that PacWes has the burden of proving public convenience and necessity to obtain a certificate. But there is no requirement that this burden be met by public witness testimony, particularly in an application for a sightseeing tour in a resort area, which is sui generis, and by its nature serves an itinerant vacationing public. Consequently, the lack of numerous public witnesses testifying in support of the proposed tour is not an adequate basis for denial of the application. PacWes' witnesses testified to having taken presently offered tours that are basically similar to the proposed tour and finding them attractive and interesting. These witnesses further testified that, in their opinion, if the tours are properly advertised and promoted, a public demand will be created. This position was contested by Gray Line who alleges that limitations on the number of passengers per day will result in the refusal of tour agents, bell captains, etc.,

to promote the tour with the result that there would be no public demand for such a tour. We are not persuaded and feel that such restrictions might result in limiting the number of hotels and travel agents that might promote the tour but would not eliminate nor substantially reduce public demand.

It is clear from the record that irrespective of whether or not Gray Line has the requisite authority to establish a tour to The Burbank Studios, it has no intention of attempting to do so unless the limitation of number of persons per tour is removed and there is no evidence that the removal of the studio-imposed restriction is forthcoming. Under these circumstances, it is obvious that Gray Line is not supplying the requested tour service, and the provisions of its in lieu certificate cannot serve as a basis for denying the application.

The record indicates that PacWes has the financial resources necessary to implement the proposed tours. Gray Line takes issue with PacWes' estimated operating results and cites the omission of entrance fees, payroll taxes, and other items from the estimates as a basis for invalidating the results. On redirect examination PacWes' witness indicated instances of overestimations in the estimated operating costs that would negate the effect of the above-mentioned omissions and indicate overall profitable operations.

In response to the Commission staff's and the city of Los Angeles' concern with the proposed service area, PacWes proposed that the certificate, if granted, restrict the service area to the downtown central city area of the

city of Los Angeles, and the cities of Long Beach, Anaheim, Buena Park, and Newport Beach. As late-filed Exhibit 11, PacWes delineated the central downtown area of central Los Angeles as:

"All that area bounded on the north by Third Street, on the south by Exposition Boulevard, on the east by Broadway and on the west by Western Avenue."

PacWes also requested that the Century Plaza Hotel in Century City and the city of Beverly Hills be specifically enumerated. The city of Beverly Hills, by letter dated April 12, 1978, requested that any certificate granted limit the pick-up and delivery point to the Santa Monica Boulevard side of the Beverly Hilton Hotel or to a point on the hotel property, and the operation of buses be limited to streets posted as heavy-hauling streets to and from the hotel. The certificate will incorporate the above-listed restrictions.

Findings

1. PacWes has sufficient equipment, experience, and financial resources to perform the proposed service.
2. PacWes has met the burden of proving public convenience and necessity for the purposes of a sightseeing tour.
3. Public convenience and necessity require that the service proposed by PacWes be certificated.
4. Sightseeing tours are a specialized type of passenger stage service primarily serving an itinerant segment of the public.
5. There is presently no sightseeing tour of The Burbank Studios as proposed by PacWes.

6. 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 the application should be granted as set forth in the ensuing order.

PacWes is hereby 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 over a particular route. 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 Pacific Western Stage Lines, Inc. (PacWes), authorizing it to operate as a passenger stage corporation, as defined in Section 226 of the Public Utilities Code, between the points and subject to the conditions particularly set forth in Appendix A of this decision.

2. In providing service pursuant to the authority granted by this order, PacWes 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, PacWes shall file a written acceptance of the certificate granted. PacWes is placed on notice that if it accepts the certificate it 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, PacWes 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) PacWes shall maintain its 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 its operations in such form, content, and number of copies as the Commission, from time to time, shall prescribe.

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

Dated at San Francisco, California, this 19th day of SEPTEMBER, 1978.

William Synovis President
Veronica L. Stoyan
Richard P. Howell
Clair J. Daniels Commissioners

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

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Appendix A

PACIFIC WESTERN STAGE
LINES, INC.

Original Title Page

CERTIFICATE

OF

PUBLIC CONVENIENCE AND NECESSITY

PSC No. 1050

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. 89413
dated SEP 19 1978 of the Public Utilities Commission of
the State of California in Application No. 57359.

SECTION 1. GENERAL AUTHORIZATIONS, RESTRICTIONS, AND SPECIFICATIONS.

1. Burbank Studio Tour.

Pacific Western Stage Lines, Inc. is authorized as a passenger stage corporation to transport passengers over the most convenient and appropriate routes from points in Anaheim, Buena Park, and Newport Beach, all in Orange County; from points in Long Beach, Beverly Hills, and the Los Angeles Service Area (described in Section 2), all in Los Angeles County; to The Burbank Studios, located at 4000 Warner Boulevard, Burbank, California; and return; subject to the authority of this Commission to change or modify the authority at any time and subject to the following provisions:

- (a) All service herein authorized shall be limited to the transportation of round-trip sightseeing passengers only.
- (b) Service shall be limited to two tours daily, limited to a maximum of 40 persons per tour, subject to availability by advance reservation.
- (c) Children under 10 shall not be permitted on the tours.
- (d) Service shall be operated for each tour with no fewer than 15 passengers except at the operator's discretion.
- (e) Service to and from Beverly Hills shall be limited to passenger pickups and/or discharges on the Santa Monica Boulevard side of the Beverly Hilton Hotel or at a point on the hotel property, and the operation of buses shall be limited to streets posted as heavy-hauling streets to and from the hotel.

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Appendix A

PACIFIC WESTERN STAGE
LINES, INC.

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Issued by California Public Utilities Commission.
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SECTION 2. DESCRIPTION OF LOS ANGELES SERVICE TERRITORY.

- (a) All that area bounded on the north by Third Street, on the south by Exposition Boulevard, on the east by Broadway, and on the west by Western Avenue.
- (b) Century Plaza Hotel at intersection of Avenue of the Stars and Constellation Boulevard in Century City district of Los Angeles.