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Decision No. 89414 SEP 19 1978

ORIGINAL

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 certain points in the)
City of Newport Beach, California.)

Application No. 57360
(Filed May 31, 1977)

Virant & deBrauwere, by John E. deBrauwere,
Attorney at Law, for applicant.
Stuart Alan Messnick, for The Co-ordinators,
protestant.
R. W. Russell, by K. D. Walpert, for
Department of Public Utilities and
Transportation, City of Los Angeles;
and Dale L. Dulabaun, for The Gray
Line Tours Company; interested parties.
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 sight-seeing service, twice daily, Monday through Sunday, between service areas in Los Angeles and Orange Counties, on the one hand, and particular points of interest in the city of Newport Beach including the Lido Village Shopping Center, Newport Harbor, the Cannery Restaurant, and the Kona Hawaii Restaurant in the city of Costa Mesa, on the other hand.

A public hearing was held in Los Angeles before Administrative Law Judge N. R. Johnson on May 8, 1978, and the matter was submitted upon receipt of concurrent letter briefs due June 10, 1978. Testimony was presented on behalf of PacWes by its president, by its general manager, by a boat operator, and by representatives of the Cannery and Kona Hawaii restaurants. Testimony was presented in opposition to the granting of the requested certificate by the protestant, S. A. Messnick. 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.

PacWes is seeking a certificate of public convenience and necessity for two tours daily.

The morning or luncheon tour is to leave the Hyatt Regency in Los Angeles at 8:00 a.m. and the Sheraton-Anaheim Hotel in Anaheim at 10:00 a.m., and arrive at Lido Village at 10:30 a.m. After stopover of approximately one and one-half hours to permit browsing in the various gift shops, the tour will proceed to the harbor where passengers will board a sight-seeing yacht for a tour of Newport Beach harbor. After the tour the guests will have approximately one hour for lunch at the Cannery Restaurant. After lunch the passengers are returned to their

hotels. The total trip lasts about six hours for groups originating in Los Angeles and four and one-half hours for groups originating in Anaheim.

The evening tour is proposed to leave the Hyatt Regency at 6:00 p.m. and the Sheraton-Anaheim Hotel at 7:00 p.m., and arrive at the Cannery Restaurant at 7:30 p.m. and board the sight-seeing yacht. The night cruise of Newport Beach harbor will last approximately one and one-half hours and a free open bar and hors d'oeuvre will be provided as a part of the tour. After the cruise the passengers are returned to the Cannery Restaurant where they will be provided dinner at no extra charge from a special menu. After dinner the passengers will have the option of paying an additional \$5.00 to have two drinks and see the Polynesian floor show at the Kona Hawaii Restaurant.

The tour is limited to 70 persons in the morning and 40 persons in the evening. Tickets for these tours will be sold by the bell captains at the Hyatt Regency, Bonaventure, and Ambassador hotels in Los Angeles and the Sheraton-Anaheim Hotel in Anaheim, the Sheraton Hotel in Newport Beach, and the Quality Inn in Buena Park, on a first-come-first-served basis.

The proposed round-trip fare for the luncheon tour is \$15.00 from the Sheraton-Anaheim Hotel and \$18.00 from the Hyatt Regency, and includes the boat ride fare. The proposed round-trip fare for the evening cruise is \$22.00 from the Sheraton-Anaheim Hotel and \$25.00 from the Hyatt Regency, and includes the boat ride fare with its free open bar and hors d'oeuvre and dinner at the Cannery Restaurant from a special menu.

Evidence of PacWes

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

1. The tour was formulated after conversations with travel agents and hotel personnel and the management of the Cannery Restaurant, Newport Harbor Water Taxi Company, and the Kona Hawaii Restaurant.
2. PacWes' total liabilities and net worth as of March 1, 1978 were \$88,910.
3. PacWes has or can acquire adequate equipment to conduct the proposed operation in addition to its regular charters and leases.
4. No other carriers in southern California are offering a similar tour.
5. 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.
6. The departure points will be the Sheraton-Anaheim Hotel in Anaheim and the Hyatt Regency in Los Angeles, and PacWes will provide shuttle service from nearby hotels.
7. The minimum tour size will be 25 passengers.
8. At the proposed rates, PacWes will be able to realize a net profit.
9. The proposed tour will be well-received and there is a public demand for such a tour.
10. Passengers for the proposed tour would be booked on a first-come-first-served basis and limited to 70 in the luncheon tour and 40 in the evening tour.

11. The Cannery and Kona Hawaii restaurants and the Newport Harbor Water Taxi Company support the proposed operation.

12. The service area will be limited to the Hyatt Regency, Bonaventure, and Ambassador hotels in Los Angeles and the Sheraton-Anaheim Hotel in Anaheim, the Sheraton Hotel in Newport Beach, and the Quality Inn in Buena Park rather than the broad service area encompassed in the application.

Evidence of The Co-ordinators

Testimony presented by S. A. Messnick on behalf of The Co-ordinators indicated that:

1. He presently offers a tour as authorized by Decision No. 87034 dated March 1, 1977 which leaves Anaheim at approximately 8:00 p.m. and connects with a vessel for an evening sight-seeing tour of the Newport Beach harbor.

2. The sight-seeing is performed enroute by the driver who describes the various points of interest.

3. The tour has not been really profitable and for the summer months of 1977 the number of monthly passengers has varied from a maximum of 671 in July to a minimum of 79 in September.

4. The creation of another nighttime harbor cruise would undermine The Co-ordinators operations.

5. There is not enough business to support two such operations.

6. He has no objection to the certification of the day cruise or any proposed cruise departing from Los Angeles.

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 sight-seeing 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.

As conceded by protestant Messnick, he provides no service comparable to the proposed luncheon tour nor for the evening tour departing from Los Angeles. Consequently, the competition clause of Public Utilities Code Section 1032 is inapplicable for these operations. The remaining question is whether the evening tour provided by The Co-ordinators is essentially similar to PacWes' proposed evening tour departing from Anaheim. From the record it is evident there are similarities and dissimilarities between these two tours. Both leave Anaheim in the evening and connect with a boat for a sight-seeing tour of Newport Beach harbor. Here the similarity ends. Whereas passengers on The Co-ordinators tour are returned to their starting points upon completion of the sight-seeing harbor cruise, the passengers of the proposed PacWes tour have an evening meal at the Cannery

Restaurant and the option of seeing the Polynesian floor show at the Kona Hawaii Restaurant after the cruise and before being returned to their starting point. We are persuaded that the proposed tour is sufficiently dissimilar to that presently provided by The Co-ordinators and that the competition clause of Section 1032 is also inapplicable to the proposed evening tour departing from Anaheim.

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 sight-seeing tour.
3. Public convenience and necessity require that the service proposed by PacWes be certificated.
4. Sight-seeing tours are a specialized type of passenger stage service primarily serving an itinerant segment of the public.
5. There is presently no sight-seeing tour of the Newport Beach area substantially similar to the tours 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 extend operations as a passenger stage corporation as defined in Section 226 of the Public Utilities Code, to provide sight-seeing tours to Newport Beach from certain points in Los Angeles, Buena Park, Anaheim, and Newport Beach.

2. Appendix A of the Commission Decision No. 89413 in Application No. 57359 is amended by incorporating First Revised Page 2, attached hereto, in revision of Original Page 2.

- (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 J. Quinn President
James L. Batine
Robert Batine
Robert Batine Commissioners

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

Appendix A
 (Dec. 89413
 in A.57359)

PACIFIC WESTERN STAGE
 LINES, INC.

First Revised Page 2
 Cancels
 Original Page 2

SECTION 1. GENERAL AUTHORIZATIONS, RESTRICTIONS, AND
 SPECIFICATIONS (Continued)

2. Newport Harbor Tour:

Pacific Western Stage Lines, Inc. is authorized as a passenger stage corporation to transport passengers over the most convenient and appropriate routes from certain points named herein in Los Angeles, Buena Park, Anaheim, and Newport Beach to points of interest in the City of Newport Beach, including the Lido Village Shopping Center, Newport Harbor, and the Cannery Restaurant, and, optionally on evening tour, to the Kona Hawaii Restaurant in the City of Costa Mesa, 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 70 persons in the morning and 40 persons in the evening, each tour subject to availability by advance reservation.
- (c) Service shall be operated for each tour with no fewer than 25 passengers except at the operator's discretion.
- (d) Pickups shall be permitted at the following locations only:

<u>Hotel:</u>	<u>Location:</u>	<u>City:</u>
Hyatt Regency	711 S. Hope St.	Los Angeles
Bonaventure Hotel	5th & Figueroa	Los Angeles
Ambassador Hotel	3400 Wilshire Blvd.	Los Angeles
Quality Inn	4555 Beach Blvd.	Buena Park
Sheraton-Anaheim Hotel	1015 W. Ball Rd.	Anaheim
Sheraton Hotel	4545 Mac Arthur Blvd.	Newport Beach