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Decision No. 90091

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the Application of)
 ERIC H. EBERHARDT, doing business as)
 YUBA/SUTTER AIRPORTER AND CHARTER)
 SERVICE, for certificate of public)
 convenience and necessity to trans-)
 port passengers and their baggage)
 between Marysville, Yuba City, Live)
 Oak, Sutter, Wheatland and Beale Air)
 Force Base, on the one hand, and)
 Sacramento Municipal Airport, on the)
 other hand.)

Application No. 58065
(Filed May 10, 1978)

ORDER DENYING REHEARING

Russell Beauchane (dba Airport Transportation Services) has filed a petition for rehearing of Decision No. 89798. The Commission has considered each and every allegation contained therein and is of the opinion that no good cause for granting rehearing has been shown; therefore,

IT IS ORDERED that rehearing of Decision No. 89798 is hereby denied.

The effective date of this order is the date hereof.

Dated at San Francisco, California, this 12th day of MARCH, 1979.

John E. Byron
 President
Vernon L. Thompson
Robert D. Steele
Clare J. Smith
Arnold W. Quinn
 Commissioners

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Decision No. 89789 December 19, 1978

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the Application of)
ERIC H. EBERHARDT, doing business as)
YUBA/SUTTER AIRPORTER AND CHARTER)
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Application No. 58065
(Filed May 10, 1978)

Eric Hendon Eberhardt, for himself, applicant.
Wilke, Fleury, Hoffelt & Gray, by Alan G.
Perkins, Attorney at Law, for Russell
Beauchane, dba Airport Transportation
Services; and Lyle D. Gisi, Attorney at
Law, for Yellow Cab, Dallas Cab, Gilmore
Cab, and City Cab Companies; protestants.
Thomas J. Clausen, for the Commission staff.

O P I N I O N

This is an application for a certificate of public convenience and necessity for authority to operate as a passenger stage corporation between Marysville and vicinity, on the one hand, and Sacramento Metropolitan Airport, on the other hand. The matter was heard before Administrative Law Judge Thompson at Marysville on July 18, 1978, and was submitted on briefs received August 7, 1978. The application is protested by Russell Beauchane, dba Airport Transportation Services, a passenger stage corporation holding authority to operate between Sacramento Metropolitan Airport and Marysville, Yuba City, Oroville, and Chico. It is also protested by taxicab companies operating in Marysville and Yuba City.

Applicant proposes to institute an on-call airporter service between Sacramento Metropolitan Airport, on the one hand, and Marysville, Yuba City, Live Oak, Sutter, Wheatland, and Beale Air Force Base, on the other hand. It is contemplated that passengers will make reservations for service to the airport so as to be picked up at least two hours before the airline departure time. Applicant will pick up the passenger at any point within the aforementioned cities and their immediate environs. With respect to transportation from the airport, it is intended and anticipated by applicant that passengers will make reservations in advance for his service; however, a passenger at the airport may telephone a recorded answering service to determine the time when applicant will be arriving at the airport terminal.

At the hearing applicant amended his fare proposal. In his application there was proposed a fare of \$12.00 for the first person and \$6.50 for each additional person for transportation to and from Marysville and Yuba City, and a fare of \$16.00 for the first person and \$7.50 for each additional person in the cases of Live Oak, Sutter, Wheatland, and Beale Air Force Base. Applicant testified that his one-way adult passenger fare proposal is \$8.00 for Marysville and Yuba City, \$10.00 for Wheatland, and \$11.00 for Live Oak, Sutter, and Beale Air Force Base.

Applicant recently retired from the United States Air Force where he had been a noncommissioned officer in charge of the Transportation Motor Pool Dispatch Division. He has made a purchase order with a Ford agency to acquire a 1978 Super-van which is an eight-passenger vehicle. The order is subject

to the applicant's acquiring the certificate he seeks in this application. He has obtained a commitment from an insurance agent for the placing of insurance against liability in the amounts prescribed in General Order No. 101-C. His net worth is about \$22,000 of which \$5,000 is cash. His current income of around \$900 per month consists of retirement pay from the Air Force and earnings of his wife who is a public health nurse working part-time.

Russell Beauchane (Airport Transportation Services) operates a scheduled passenger stage service on a reservation basis between Sacramento Metropolitan Airport, on the one hand, and terminals at Chico (Holiday Inn), Oroville (Motel 6), and Yuba City/Marysville (Bonanza Inn), on the other hand. He was granted a certificate without public hearing for that service by Decision No. 88745, dated April 18, 1978, in Application No. 57701 (filed November 23, 1977, and amended February 16, 1978). He operates three van-type automobiles with eleven-passenger capacities. There are four round-trip schedules per day; however, he does not operate schedules for which there are no advance reservations. The schedules are:

SOUTHBOUND

<u>Chico</u>	<u>Oroville</u>	<u>Yuba City/Marysville</u>	<u>Airport</u>
4:30 a.m.	5:05 a.m.	5:47 a.m.	6:43 a.m.
6:45 a.m.	7:20 a.m.	8:02 a.m.	8:58 a.m.
10:00 a.m.	10:35 a.m.	11:17 a.m.	12:13 p.m.
4:45 p.m.	5:20 p.m.	6:02 p.m.	6:58 p.m.

NORTHBOUND

<u>Airport</u>	<u>Yuba City/Marysville</u>	<u>Oroville</u>	<u>Chico</u>
7:00 a.m.	7:56 a.m.	8:38 a.m.	9:13 a.m.
9:50 a.m.	10:46 a.m.	11:28 a.m.	12:03 p.m.
1:30 p.m.	2:26 p.m.	3:08 p.m.	3:43 p.m.
7:30 p.m.	8:26 p.m.	9:08 p.m.	9:43 p.m.

The present fares to and from the airport are \$6.00 for Yuba City/Marysville, \$10.00 for Oroville, and \$12.00 for Chico. During the thirty days ended July 16, 1978, this carrier transported 520 passengers, an average of 17.3 per day, of which about 17 percent were transported to or from the Yuba City terminal. The general manager testified that the operations have been at a loss.

Protestants argue that applicant's proposed operation is a taxicab service and not a passenger stage service contemplated under Section 226 of the Public Utilities Code because it will not be between fixed termini or over a regular route. It is contended that as applicant proposes a door-to-door service which would go wherever the passenger wished to be met within the listed cities, there would be no fixed termini. That contention has no merit. The word "termini" in the statute implies a broader meaning than a passenger terminal as such. (Charter Sedan Service v Robert Nyland (1969) 70 CPUC 22.) Applicant has stated that he proposes to transport passengers between Sacramento Metropolitan

Airport, on the one hand, (one terminus) and any point located at Beale Air Force Base or within the incorporated city limits of Marysville, Yuba City, Sutter, Live Oak, and Wheatland, that is not proscribed by local authorities (the other terminus). Applicant's proposed service differs from a taxicab service in that he proposes to charge an individual fare for each person transported. (See Section 1035 of the Public Utilities Code.)^{1/}

^{1/} The statutes governing the regulation of passenger transportation by motor vehicle to and from airports are discussed at length in Applications of John R. Zaveleta, et al. (1973) 75 CPUC 361. Therein the Commission stated at p. 362:

"The Commission observes that until the Legislature acts in this area, on-call limousine service to and from airports will continue to cause regulatory problems and the Commission will not have the tools for the most effective regulation. Problems in the industry are aggravated by the coalescence of economic factors and inadequate regulatory statutes."

We do not extend that discussion here except to note that a person may be transported between Marysville and the airport by three separate types of for-hire carriers in motor vehicles designed for carrying not more than eight passengers excluding the driver: 1. a passenger stage corporation, 2. a charter-party carrier, and 3. a taxicab. The regulations governing them differ. The passenger stage corporation is governed by the provisions of Division 1, Part 1 of the Public Utilities Code. The charter-party carrier is governed by Division 2, Chapter 8 of the Public Utilities Code. A taxicab licensed by the city of Marysville is governed by Chapter 5.36 of its Code of Ordinances Governing Business Licenses and Regulations. (Exhibit 1.) Only the passenger stage corporation may assess and collect charges on an individual fare basis.

Protestant Beauchane contends that applicant may not be granted a certificate by reason of Section 1032 of the Public Utilities Code which 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."

Protestant holds a certificate authorizing passenger stage operations between Marysville/Yuba City and Sacramento Metropolitan Airport. The issue then is whether protestant will provide service in this territory to the satisfaction of the Commission. We have already set forth protestant's schedules of departures and arrivals. Applicant presented evidence showing the arrival times and departure times of certain United Air Lines, Inc. (United) and Pacific Southwest Airlines (PSA) flights at Sacramento Metropolitan Airport which would not be served by protestant's schedules. In his brief applicant appended PSA's timetable effective June 21, 1978, in support of his contentions that protestant's service is neither practical nor convenient for many airline passengers departing or arriving at the airport. In his brief applicant, of course, emphasized the flights for which protestant's service would not be convenient. We have compared protestant's schedule with PSA's timetable in order to evaluate applicant's contention. PSA's June 21, 1978, timetable shows 107 weekly departures and 107 weekly arrivals at Sacramento Metropolitan Airport. In our judgment protestant's schedule provides reasonable ground transportation service to and from Marysville and Yuba City for just under half of PSA's departing flights and about a quarter

of PSA's arriving flights.^{2/} PSA is not the only air carrier serving the airport but the timetables of United, Western Air Lines, Inc., Hughes Airwest, Air California, Swift Aire Lines, and other airlines serving Sacramento are not in the record. Protestant's transportation service between the airport and Marysville/Yuba City is adequate for some passengers desiring transportation between those points, but it is not convenient for passengers on something over half of the airline flights. Taking into consideration that it takes about five hours for a bus to make the round trip from his home terminal in Chico, and that only 17 percent of protestant's traffic originates at Marysville/Yuba City, the institution of additional schedules by protestant merely to provide additional service to Yuba City/Marysville would not appear to be economical. Under the foregoing circumstances, and

^{2/} For this purpose we considered protestant's service may be convenient where its arrival at the airport is between 20 minutes and 2 hours prior to a PSA scheduled departure, and where its departure from the airport is between 15 minutes and 1 hour and 30 minutes after a PSA scheduled arrival. The times give consideration to the following: PSA's timetables reflect departures and arrivals at the terminal gates; PSA suggests check-in for departures at least one-half hour prior to departure; baggage claim procedures; there are car rentals and taxicabs readily available; the driving time between the airport and Marysville/Yuba City is less than 1 hour. While the allowance of 20 minutes for check-in on departing flights would be insufficient for a passenger that has to purchase a ticket at the airport or who has baggage that must be checked, and the 15 minutes' allowance would probably be insufficient for a passenger to claim baggage which has been checked, it is within our knowledge that a large number of passengers of PSA travel with only hand-held baggage and obtain tickets other than at the airport ticket counter. PSA ordinarily permits checking in at the gate for ticket holders with hand-held baggage.

where there is an applicant seeking authority to establish additional service between those points, we find that Russell Beauchane will not provide to the satisfaction of the Commission the full amount of transportation service between Marysville/Yuba City and Sacramento Metropolitan Airport required by public convenience and necessity. Applicant has demonstrated a need for passenger stage service between the points he proposes to operate.

Protestants contend that applicant does not have the financial ability to maintain his proposed service and that said operation will be uneconomical at the proposed fares. If applicant were to transport only one passenger daily, his proposed venture would be doomed to failure; on the other hand, with a full bus-load each way with only two round trips daily, applicant would soon become one of the leading capitalists of Yuba County. Neither circumstance is likely to occur. We are impressed that applicant has made a reasonably thorough study and analysis of potential traffic as well as the business expense he will incur in the conduct of the proposed operation. There is sufficient evidence to show that in the conduct of the proposed operation applicant will be able to supplement his income although he is not likely to be greatly rewarded for his labor. With respect to his financial ability to maintain the service, the proposed on-call operation does not involve a high out-of-pocket cost. His fixed costs are mainly for communications, insurance, and depreciation of the bus. Were he not to obtain any passenger traffic at all, he has enough capital to sustain operations for over six months.

We look now to whether applicant's proposed service will meet the public need. There are a number of considerations

here. First of all, it must be recognized that applicant's proposed operation could not possibly meet the needs of all potential traffic between the airport and all of the points he proposes to serve; but, of course, that is also true in connection with Beauchane's operation. Applicant's proposed operation can only be considered as a supplemental service which type of operation should be certificated only if there is reasonable assurance that it will not impair existing services. Applicant's service is not likely to make inroads upon Beauchane's operation because the latter maintains the lower fare, because he maintains a scheduled service, and because it is likely that the traffic to and from the Bonanza Inn (Beauchane's terminal) and nearby motels will continue to use his service.

Findings

1. Applicant proposes to initiate and maintain an on-call passenger stage service between Sacramento Metropolitan Airport, on the one hand, and Marysville, Yuba City, Sutter, Live Oak, Wheatland, and Beale Air Force Base, on the other hand.

2. Russell Beauchane, dba Airport Transportation Services, conducts a passenger stage service between Sacramento Metropolitan Airport, on the one hand, and terminals at Yuba City, Oroville, and Chico, on the other hand. Other than this service there is no other passenger stage operation between the points proposed to be served by applicant.

3. The schedules maintained by Russell Beauchane between his terminal at Yuba City and Sacramento Metropolitan Airport are reasonably convenient to not more than one-half of the airline flights arriving and departing at Sacramento Metropolitan Airport. The nature of Beauchane's passenger stage operation between Chico and the airport with Yuba City and Oroville as intermediate points on the route precludes Beauchane from efficiently and economically maintaining additional schedules between Yuba City and the airport. To that extent Russell Beauchane will not provide to the satisfaction of

the Commission the full amount of transportation service between Marysville/Yuba City and Sacramento Metropolitan Airport required by public convenience and necessity.

4. Applicant intends to conduct the proposed operation with an eight-passenger motor vehicle on which he has a purchase order conditioned only upon applicant's being granted the certificate sought herein. He has a commitment for an insurance policy for protection against liability in the amounts prescribed in General Order No. 101-C. He has the financial ability to initiate and maintain the proposed service.

5. There is a need for the service applicant proposes and there is a reasonable prospect that the operation by applicant will be economically viable.

6. The operation by applicant of the on-call passenger stage service proposed will not impair the ability of Beauchane to continue and maintain his scheduled passenger stage operation.

7. The passenger stage service by applicant is an alternative to transportation by private automobile and is consistent with fuel and energy conservation policies. It can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.

8. Public convenience and necessity require the operation by applicant as a passenger stage corporation as proposed in this application.

We conclude that the application should be granted.

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 Eric H. Eberhardt, doing business as Yuba/Sutter Airporter and Charter Service, 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 to do so 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.

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

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

ROBERT BATINOVICH
President
WILLIAM SYMONS, JR.
VERNON L. STURGEON
RICHARD D. GRAVELLE
CLAIRE T. DEDRICK
Commissioners

TLR

Appendix A

Eric H. Eberhardt
d.b.a.
YUBA/SUTTER AIRPORTER
AND CHARTER SERVICE

Original Title Page

CERTIFICATE
OF
PUBLIC CONVENIENCE AND NECESSITY
TO OPERATE AS A PASSENGER STAGE CORPORATION

PSC-1058

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. 89789 dated
December 19, 1978, of the Public Utilities Commission of the
State of California, in Application No. 58065.

Eric H. Eberhardt
d.b.g.
YUBA/SUTTER AIRPORTER
AND CHARTER SERVICE

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

Eric H. Eberhardt, by the Certificate of Public Convenience and Necessity granted by the decision noted in the margin, is authorized to transport passengers and their baggage between the community of Sutter, the Cities of Live Oak, Marysville, Yuba City and Wheatland, and Beale Air Force Base, on the one hand, and the Sacramento Metropolitan Airport (SMF), on the other hand, over 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:

- (a) Service shall be operated on an "on-call" basis. 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.
- (b) No passengers shall be transported except those having a point of origin or destination at SMF.
- (c) Service shall be rendered via a direct route from the point of origin to the point of destination of a passenger, except that when more than one passenger is to be transported in a single vehicle, service shall be rendered by the most appropriate and direct routing possible, taking into consideration the various points of origin and destination of the several passengers.
- (d) Drivers shall have discretion in choosing routings and order of origins and destinations, based upon the above considerations.

Issued by California Public Utilities Commission.

Decision No. 89789, Application No. 58065.

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Appendix A

Eric H. Eberhardt
d.b.a.
YUBA/SUTTER AIRPORTER
AND CHARTER SERVICE

Original Page 2

SECTION 2. ROUTE DESCRIPTIONS.

From points in the community of Sutter (bounded by Butte House Road, Mulberry Street, South Butte Road and Acacia Avenue), the Cities of Live Oak, Marysville, Yuba City and Wheatland, and Beale Air Force Base, on the one hand, over the most appropriate route to the Sacramento Metropolitan Airport (SMF), on the other hand, returning over the most appropriate route.

(End of Appendix A)

Issued by California Public Utilities Commission.

Decision No. 89789, Application No. 58065.