

ORIGINAL

Decision No. 90106 | MAR 27 1979

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the application)
of GOLDEN GATE SIGHTSEEING TOURS,)
INC., a California Corporation,)
for a Certificate of Public)
Convenience and Necessity to)
operate as a Passenger Stage)
Corporation, authorizing the trans-)
portation of passengers in sightseeing)
service in the San Francisco Bay)
Area, pursuant to the provisions of)
Section 1031, et sec. of the)
Public Utilities Code of the State)
of California.)

Application No. 57095
(Filed February 17, 1977)

Eldon M. Johnson, Attorney at Law, for applicant.
Richard M. Hannon, Attorney at Law, for The Gray
Line, protestant.
Handler, Baker & Greene, by Randall M. Faccinto,
Attorney at Law, for O'Connor Limousine Service,
Inc., dba O'Connor Tours Service, interested party.
Marc E. Gottlieb, for the Commission staff.

O P I N I O N

Statement of Facts

In 1946 four young people out of World War II decided to get into the transportation business, and in Berkeley, California, with limited capital and army surplus buses they launched Sequoia Stages (Sequoia), a charter-party carrier of passengers bus company. Certificated by this Commission under Cal TCP 1A, and doing big bus charter sightseeing business in the Bay Area as Eastshore Lines (Eastshore), over the years Sequoia prospered. Today, apart from The Gray Line Inc. (Gray Line), operating 30 buses, it is the largest charter bus operation in the sightseeing business in the Bay Area, followed closely by Falcon Charter Service, Franciscan Lines, and Scenic Highway Tours.

On the other hand, tracing its derivations and antecedent sightseeing operations back to 1915, Gray Line holds certification from this Commission to operate certain Bay Area per capita sightseeing tours originating in the city of San Francisco. Over the years Gray Line too has prospered and has built up the per capita sightseeing business until at times relevant here it operates 61 buses during the peak sightseeing season, employing 140 drivers. In 1975 it transported 420,000 per capita sightseeing passengers on its tours, producing \$3,658,233 in revenue. This success has not gone unnoticed and other operators, seeking a share of this developed market, have sought entry, albeit unsuccessfully - largely as a consequence of the application of the last sentence of Section 1032^{2/} of the Public Utilities Code - being unable to prove a failure by Gray Line to serve the territory to the satisfaction of this Commission.

In May 1976, the Teamsters Union struck Gray Line during a labor dispute, shutting it down until November 14, 1976, after which Gray Line resumed operations. The temporary removal of Gray Line from the tour scene during the period of the strike proved to be a bonanza for illegal operators, encouraging numerous individuals to enter the void. They were unsanctioned by this Commission or by any local regulatory body; operating rented, leased, and chartered limousines, mini-buses, vans, and full-sized buses (including many leased from certificated charter-party carriers); offering unsanctioned per capita tours duplicative of those previously offered by Gray Line; and

1/ See Decision No. 66165 dated October 15, 1963 in Application No. 45707.

2/ The text of Section 1032 of the Public Utilities Code is set forth in the Discussion portion of this decision.

charging inflated prices fueled further by zooming agents' commissions;^{3/} these illegals proliferated and profited. Since the end of the strike certain of these illegals have continued to operate, using deceptive advertising to assert spurious legality, and illegal chartering practices, and tie-in commission arrangements to obtain patronage from the unwary, unknowing visitor to "Baghdad by the Bay".

Accepting that over the years Gray Line has done a "very credible job" and that "they know their business", the Sequoia management, having "always felt that there was a need for another sightseeing company in San Francisco", and noting that the 1976 strike had brought out many street operators - many inadequately insured - who Sequoia thinks are "running around and they are ripping off the public",^{4/} concluded that this was an opportune time for themselves to seek certification in the per capita field. But there

^{3/} In most instances the point of purchase for per capita tours in the sightseeing business is at the hotel or motel of the traveler. The management of such hotels or motels usually permits only one person or concessionaire (usually the newsstand, bell captain, or tour desk) on its premises to sell sightseeing tours. Competing tour operators must then market their tours through that agent. That agent depends for his livelihood in part upon the commission paid him for each sale of a tour by the tour operator. Naturally, the agent is interested in selling the tour paying the highest commission. The Gray Line commission for its city tour is 75 cents. Some of the illegals pay \$2.00 or more.

^{4/} The head of another bus company, Highway Tours, certified as a per capita passenger stage corporation offering a San Francisco tour from San Mateo County, testified that the sightseeing business "is being eroded by unauthorized operators operating unsafe vehicles, vans, and other types of equipment that have not been carrying the proper type of insurance, nor properly inspected by the Highway Patrol", and that he considers this "a menace to the public and...a complete ripoff of the tourists who, in my opinion, or is it a fact, is the main industry in San Francisco now".

is another, and probably more basic reason why the applicant now determines to make its bid for entry to the per capita field. A substantial change is underway in the airline carrier business. In the past the most economical way to fly was by group travel. Under group travel it was easy and profitable^{5/} for the travel agent who put together the group to package group sightseeing together with hotel and air fares into an economical package for the tourist or convention goer. This packaging resulted in extensive sightseeing charter business for charter-party carriers such as Sequoia. By well-developed affiliations with group receptive agents these carriers participated substantially. But the airlines today are now offering a new form of economical air travel (e.g., the "super saver" fares), and the most inexpensive and convenient way to travel is no longer by group. Under "super saver" travel the traveler travels on a per capita individual basis, and after arrival at his destination he tends to purchase his sightseeing on an individual basis directly from the sightseeing passenger stage operator rather than through a travel agent on a group basis. Sequoia, recognizing the potential impact of this change in sightseeing patterns upon its charter business, seeks by this application to broaden its base into the per capita field. However, after looking into the situation and observing the experience of other integrated charter common carrier operators, the Sequoia directors decided that because of what they termed "some problems with the Public Utilities Commission in the expedient granting of rate increases", they did not want to be in a regulated

5/ The travel agent gets an 11 percent commission on all the components of any group package tour he sells, whereas on air fares alone he gets only a 7 percent commission.

per capita situation^{6/} themselves. Accordingly, two Sequoia directors and shareholders joined with two Sequoia managerial employees to form Golden Gate Sightseeing Tours, Inc. (applicant), and to file this application.

The applicant, a recently formed California corporation organized by the aforesaid four individuals from Sequoia, has an initial capitalization of \$10,000 with a commitment of an additional \$40,000 (in equal shares by the four), upon approval of this application. It seeks a certificate of public convenience and necessity to operate a passenger stage corporation in the transportation of passengers on a per capita basis in sightseeing service, offering basically four tours^{7/} to be operated out of San Francisco into the Bay Area as follows:

- Tour 1: A 4-hour city tour for \$9.50;
- Tour 2: A 4-hour Muir Woods tour for \$10.00;
- Tour 3: An 8½-hour Napa Valley wine tour for \$19.50; and
- Tour 4: A 4½-hour East Bay/Marin tour for \$10.00.

^{6/} The tariffs of the chartered bus companies at this time are not subject to tariff filing requirements by this Commission while the tariffs of the per capita bus companies are. Thus, the chartered companies set their own rates.

^{7/} To provide maximum flexibility and weather insurance, the applicant requests authority to run its tours in reverse as well.

Each tour, as an integral part of that tour, but on a passenger option basis,^{8/} would utilize the publicly operated gas turbine powered passenger ferryboats of the Golden Gate Bridge Transit District to complete one leg of its route (between the San Francisco Ferry Terminal and the Larkspur Ferry Terminal). Tour 1, the city tour, would be run twice daily. The other three tours would be run daily except that the Napa Valley wine tour would not be run where there were less than 20 prior-day reservations, and the East Bay/Marin tour would not be run where there were less than 15 prior-day reservations.

The applicant contemplates commencing operations using six large buses to be leased from Sequoia, initially using 45-passenger GMC 4502 suburban coaches on Tours 1, 2, and 4, and 49-passenger GMC 4905-A inter-city restroom-equipped coaches on Tour 3. Sequoia has also tentatively placed orders with GMC on applicant's behalf for future delivery of two new style intercity suburban buses to be applied at a future date to applicant's service. Applicant plans to assume the financing of these latter two vehicles once it is certified.

^{8/} It is a cardinal aspect of the applicant's proposal that each tour proposed be a coordinated land and bay service and that the view of the area from the Bay is essential to a complete appreciation of the geographic and scenic beauty of the area. Therefore, the applicant would provide ferry transportation as stated for one leg of the tour. However, recognizing that some few individuals might not want to undertake the water leg, it would allow such few to ride the bus between the ferry terminals while the rest were aboard the ferryboat proceeding by the water route.

Applicant would operate employing Sequoia's maintenance, office, and managerial services, and plans to share the services of both Sequoia's general manager and driving instructor. With the close management association between the two entities, the organizers anticipate little trouble in prorating costs from Sequoia to applicant. The applicant expects to obtain its insurance through Sequoia, in that manner obtaining use of Sequoia's established favorable rates. The applicant will employ its drivers off the Sequoia list in the long run, but at the outset Sequoia will furnish drivers and pay them, billing the applicant. Sequoia's union driver contract is with the Amalgamated Transit Union. The applicant has had some negotiations with this union, and subject to acceptance later by such drivers as it would employ, it would attempt to transfer the terms applicable to Eastshore's operation in Sequoia's Amalgamated contract to its own operation. The objective is hopefully to avoid a situation wherein both the applicant and Gray Line might be simultanecusly shut down by a future labor dispute (Gray Line's union contract being with the Teamsters Union).

Public hearing, appropriately noticed, was held on the application in San Francisco before Administrative Law Judge John B. Weiss on July 25, 26, 27, and 28, 1977. Post-hearing briefs were submitted by October 20, 1977 at which time the matter was submitted. The application was protested by Gray Line. Although the United Transportation Union, representing a variety of bus drivers for existing sightseeing and charter bus companies in the area, notified the Commission of its interest, it did not make an appearance at the hearing. Similarly, the city manager of the city of Larkspur, while by letter expressing his concern about recreational travel emanating from the Larkspur Ferry Terminal, and asking for an opportunity to comment, also failed to make an appearance at the hearing.

Following the suggestion of the staff, the applicant prepared and presented evidence in the form of a pro forma income statement based on the use of leased vehicles (applicant also presented a similar statement based upon new, owned equipment). Forecasting 2 tours daily on the City and Muir Woods tours year-round, and 4 tours a week average each for the year on the Napa Valley wine tour and the East Bay/Marin tour,^{9/} and using an average year-round load factor of 25 passengers, applicant anticipated operating 130,750 miles the first year and transporting 46,900 passengers to produce operating revenues of \$509,275 and operating expenses of \$454,764, producing a net income of \$54,511.^{10/} The applicant also produced evidence in the form of a fare/cost feasibility analysis covering each of the 4 basic tours. These analyses showed that with a load factor of 16 passengers on the City and Muir Woods tours, 22 passengers on the Napa Valley tour, and 17 passengers on the East Bay/Marin tour, it would cover out-of-pocket or direct operating expenses. Noting that the buses proposed to be used can accommodate from 39 to 53 passengers, applicant anticipates a profitable operation.

^{9/} Sequoia's general manager, who would also be applicant's chief executive officer and in charge of operations, testified:

"We estimated the average for the year as four times a week. It might be less in the winter but it should run real heavy in the summer".

^{10/} Applicant's pro forma income statement based on new, owned equipment, rather than leased vehicles, shows net income the first year of \$2,851. This reflects appropriate and necessary adjustments downward to reflect maintenance and depreciation expenses and the addition of interest costs on the projected 6 buses required, as well as deletion of rental expenses.

In support of its application, the applicant presented five "public witnesses" whose evidence is summarized as follows:

Witness David Francis (Francis), president of a local receptive agent organization in the travel business providing hospitality desks, hosts, and guides, shuttle services and sightseeing tours for preformed convention and travel groups coming to San Francisco, testified of the growth of San Francisco as a sightseeing attraction, the high quality of Eastshore charter service (utilized by his organization for its tours, and which has contributed substantially to his agency's growth), and of changes in airline fare patterns which will result in less group travel and more per capita business in sightseeing. Francis expressed his opinion that applicant's proposed tours would be very well accepted by the public, and that he personally wants them so that he can avoid giving any of the anticipated per capita business to his competitor Gray Line. Francis believes that San Francisco should not be limited in its per capita sightseeing to one operation.

Witness Maurv Swidler (Swidler), owner-operator of a San Mateo-based passenger stage corporation certificated to provide per capita sightseeing service in San Francisco, who occasionally leases buses from Eastshore and whose equipment is maintained by Eastshore, testified of Eastshore's capability and conscientious efforts to serve the public; and that the tours proposed by the applicant are "different" from Gray Line and would be well received. Swidler also expressed his opinion that a second certificated carrier would help stop the proliferation of illegal operators who are "ripping off the public", buying their business through payment of escalating commissions to bellmen and desk clerks, and providing shorter tours in un-inspected vehicles carrying inadequate insurance.

Witness Gloria Lindermann (Lindermann), the director of tour services with an Inglewood, California, tour operator handling hotel, transportation, and sightseeing services for foreign inbound groups and individuals, testified that Eastshore has ably handled their Bay Area group tour business; and that as a consequence of the 1976 Gray Line strike she thinks that there should be more than one per capita service so that agents and their clients are protected.

Witness John Jenkins (Jenkins), owner of a receptive agency service for traveling groups originating from abroad, and the holder of a charter-party carrier certificate from this Commission permitting big bus charter sightseeing tours to San Francisco and Muir Woods from the area around San Francisco International Airport (Jenkins charters his buses from Falcon and Eastshore), testified of his familiarity and satisfaction with the quality of Eastshore's charter service, that there is increasing interest on the part of travel agents in the bay ferry and water transportation, and that the applicant's tours will sell. Jenkins, while supporting this application, is "perhaps more so supporting the basic principle that there should be competition and other operators in this business".

Witness Richard Kline (Kline), operator of a travel agency handling group tours, tour lectures, and occasional Eastshore driver, testified that it would be beneficial having a San Francisco-Larkspur ferry leg in the proposed tours by applicant and that the tours proposed could be successfully marketed.

The applicant intends that its drivers will employ and adhere to a set formal narrative in conducting tours. In addition, each patron, when dropped off at the appropriate ferry terminal to board the ferry for the water leg of his tour, will be given a small folder entitled "San Francisco Bay Tour Guide" to take along on the ferryboat. This folder contains some color photographs and a map of the bay, together with thumbnail statements about each of 19 bay features coded to a number locating that feature on the map. These are intended to assist the ferry rider in identifying points along the route between the terminals. Two of the applicant's principals testified that it would be their intent, if the application is approved, to amend the Napa Valley tour to try to incorporate in it a visit to the Calistoga Steam Railroad as an alternative option on that tour for non-wine drinking tourists and children.

The protestant Gray Line presented evidence from James Mulpeters (Mulpeters), then vice president (now president) of the ✓ Greyhound Inc. subsidiary. Mulpeters reviewed the origins and history of the approximately 50 years of San Francisco Bay Area sightseeing service provided by Gray Line and described his family's role in it. He presented evidence on the carrier's equipment, drivers, tours, extensive agency network, hotel/motel pickup service, and convention hospitality activities. In this last regard he described a recent San Francisco International Rotary convention where he served as Transportation Chairman and was responsible for arranging about 600 individual bus dispatches. He described his company's promotional efforts in later years including its experiments with new tours (some successful, others not) including the Haight-Ashbury "Hippie-Hop" tour, the "Holiday in the Vineyards" tour, the "Christmas Lights" tour, the "Fleishhacker Zoo - Childrens Museum" tour, the "Roaring Camp Railroad and Historic California" tour, and the "San Francisco Art" tour. He told of the dilutive adverse effect of the illegal tour operators on the legitimate carriers, of the commission wars being waged, and presented evidence of the alleged adverse effects of open competition in other cities. Gray Line asserts that while the argument is endlessly made that competition in San Francisco would make the Gray Line more responsive to the public, yet each applicant coming forward to obtain certification purportedly to provide this so-called "more responsive" service, always asks for the identical tours operated by Gray Line. Mulpeters pointed out that the tours proposed by the applicant here are competitive to those of Gray Line's in that they encompass the same attractions and territory. He pointed out that Gray Line since the early 1950's has provided a combined city and bay tour, a fully narrated tour that covers more of the bay than the ferry ride between the terminals proposed by the applicant. He testified that opportunity

is also available and that it is suggested to all Gray Line Muir Woods tour customers that they may elect on the return trip to leave the tour in Sausalito and take the ferry back to the San Francisco terminal. The thrust of the Gray Line testimony and evidence was to the point that the public has received excellent service over the many years from Gray Line at a relatively modest cost; that Gray Line has been responsive to the public and to the Commission; and that there is nothing to evidence that additional service as is here proposed is needed.

Both the applicant's and the protestant's presidents are well-esteemed members of the San Francisco Convention and Visitors Bureau, an instrumentality dedicated to promoting tourism, conventions, and trade shows in San Francisco.

Discussion

The applicant herein proposes to operate motor vehicles to transport people for compensation over the highways of this State between fixed termini over regular routes with more than 2 percent of operations outside the limits of the city and county of San Francisco. As such, under the provisions of Sections 225 and 226 of the Public Utilities Code, the applicant proposes to operate a passenger stage corporation operation. The Public Utilities Code in Section 1031 further provides that no passenger stage corporation shall operate or cause to be operated such an operation without first obtaining from this Commission a certificate of public convenience and necessity. In compliance with these statutory requirements, the applicant, pursuant to the provisions of Section 1032 of the Public Utilities Code, has applied to this Commission for that certificate. Section 1032 provides:

"Every applicant for a certificate shall file in the office of the commission an application therefor in the form required by the commission. The commission may, with or without hearing, issue the certificate as prayed for, or refuse to issue it, or issue it for the partial exercise only of the privilege sought, and

may attach to the exercise of the rights granted by the certificate such terms and conditions as, in its judgment, the public convenience and necessity require. 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".

It is evident from the foregoing that any applicant seeking entry into a territory already served by another certificated passenger stage carrier faces two burdens. First, he must demonstrate that public convenience and necessity require the operation that he is proposing to furnish; and, second, that the restrictive provisions contained in the final sentence of Section 1032 should not bar granting the operating authority.

In the context of a passenger stage sightseeing application, public convenience and necessity usually require demonstrating that the following five factors exist:

1. The adequacy and quality of the service proposed;

2. The financial, business, and technical ability of the applicant to carry on the proposed operation to serve the public at reasonable rates;
3. The good faith and willingness of the applicant to assume responsibility for service at all times and under all conditions;
4. The willingness of the applicant to abide by the law and Commission rules; and
5. A public demand for the service proposed.

We have little difficulty with the adequacy and quality of the service proposed. The applicant has full access to the drivers, equipment, and expert services of Sequoia through its interconnected ownerships. There is abundant testimony on the record in this proceeding attesting to the quality and excellence of the charter services supplied in the past through tour agencies to the general public groups through Eastshore, Sequoia's subsidiary. The rates proposed by the applicant while higher generally than those of Gray Line's for the three comparable tours, ^{11/} include the additional cost

11/ Comparison of tour fares:

	<u>City-Bay</u>	<u>Muir Woods</u>	<u>Napa Valley</u>	<u>East Bay/Marin*</u>
<u>Golden Gate:</u>				
Adult	\$ 9.50	\$10.00	\$19.50	\$10.00
Children	6.50	6.50	13.00	7.00
<u>Gray Line:</u>				
Adult	10.00	5.95	17.50	16.25
Children	5.00	2.75	11.85	11.25

* Three of the four tours compete head to head with comparable tours already offered by Gray Line; however, Gray Line's East Bay/Marin tour is more extensive than that proposed by Golden Gate. Applicant omits the Muir Woods/Sausalito feature of the Gray Line tour. In reality, applicant's East Bay/Marin tour is merely a ferryboat ride, San Francisco to Larkspur; then a bus ride over the Richmond-San Rafael bridge and down the upper East Bay through Albany to Berkeley. After the Larkspur ferry ride the two tours compare closely. The applicant's tour would be 4½ hours compared to 7½ hours for Gray Line's tour.

for the ferry trip portion of each tour,^{12/} and appear reasonable.

It appears entirely reasonable on this record to conclude that the applicant also possesses requisite financial, business, and technical ability to carry on the proposed service. The pro forma income statements prepared at the staff's request and introduced into the record as exhibits, projecting the results of operation on both a leased and on an owned-equipment basis, indicated successful operations financially. Similarly, a fare/cost feasibility analysis for each lane projected a successful venture. The business and technical abilities of Sequoia, again as evinced by the long success of Eastshore charter operations, tend to underwrite a probability of success. It was obvious at the hearing that there were indications of a considerable mutual respect between Gray Line and Sequoia. In this regard it is noteworthy that Gray Line, while testing the adequacy of the proposal thoroughly, does not really question the fitness of the applicant.

While the application essentially asserts a good faith intent and willingness to operate year-round on all the routes proposed (and notes specifically in its argument that Gray Line does not operate its per capita service to the Napa Valley during the winter months), we are left with a concern with the inherent sincerity of its request for winter operating authority to the Napa Valley when we note the size of the hedge it would place on that asserted willingness to serve year-round. It is clear that applicant also recognizes the dearth of sightseeing business to both the Napa Valley and to the East Bay/Marin in the wintertime, when by its application it would provide "daily service" year-round provided

^{12/} Applicant proposes to merely purchase a ferryboat ticket at the terminal for each tour customer, see the customer into the ferry, and then have its driver drive the bus on the land route to meet the ferry on the other end, and then resume the tour. The customer on the tour would have the same status as any other member of the general public riding the ferry.

there were no less than 20 and 15 prior-day advance reservations respectively for a tour.^{13/} It must be noted that Gray Line under its tariff requires the carrier to provide service as scheduled during its months scheduled for operation on a route so long as there are at least 6 passengers who want to take that tour.^{14/} It would be difficult to see how we could require less of a new carrier seeking entry to any particular similar route.

^{13/} Although the applicant is seeking authorization for daily service to Napa and East Bay/Marin, it estimates only an average year-round frequency of 4 times a week, "recognizing that in the wintertime it will fall down". But it expects that "...it should run real heavy in the summer". A potential conflict of interest rests in the decision to go charter or per capita in given situations. Sproul testified that "if a group does come in with 25 people, we are going to stay off this per capita, [and] charter a bus as a group." Sproul stated that "we have found that under 20 it is more expensive to charter than to go on this situation [per capita], and under 20 at the present time we usually tell them to ride the local sightseeing service, which is Gray Line".

^{14/} But Mulpeters testified that in actual practice this minimum requirement is not practiced, stating that "if you would get a request, say, for four or five people, we would take care of them, but as far as selling an individual ticket..." He noted that Gray Line within a couple days previous to his testimony (mid July, 1977) had sent a full-sized bus on a tour to Sonora with 4 people aboard.

It should also be noted that effective November 16, 1978, Gray Line instituted 3 times weekly service to the Napa Valley on a trial basis to test volume.

On this record there is no reason to doubt that the applicant, were it to be granted certification, would fully abide by the law and Commission rules. The principals involved in this venture for the applicant are all responsibly associated with Sequoia and Eastshore, and these carriers enjoy an excellent reputation in the transportation industry.

The remaining underlying question is whether the particular service proposed by the applicant herein is such that there exists a public requirement for its particular service.

In Orange Coast Sightseeing Co. (1969) 70 CPUC 479, the Commission determined that in situations where the requested service is dissimilar to that presently provided by the existing certificated carrier, and there is no other service identical to that being proposed, the restrictive clause of Section 1032 is not applicable. Before examining the merits of Golden Gate's contention, we first note that the word "territory" as used in Section 1032, in the context of specialized sightseeing passenger stage operations, means the tour conducted; that is, the attractions which comprise the tour, not the mere route followed, or the area involved (Ray E. Evans and Ruth O. Evans, dba Tramway Transportation and Sightseeing Tours, Decision No. 85765 dated May 4, 1976 in Application No. 55981). Therefore, if the proposed attractions differ materially from those attractions already offered by the existing certificated carrier, the territory differs from that already served; and the so-called "restrictive element" of Section 1032 would not operate to bar additional certifications.

We now examine^{ish} the applicant's proposed four tours, comparing them to those already offered by Gray Line. On each of the applicant's four proposed tours it has included, as an integral and significant portion of each tour, one leg of the tour using the San Francisco-Larkspur ferryboats. On only one of its comparable tours does Gray Line offer similar water transportation. Apart from the water transportation there is no real difference between the service proposed by the applicant and that already provided by Gray Line on three of the tours. The land attractions are the same. The question then arises, at least as to two of the tours, the Muir Woods

and the Napa Valley, whether the water movement is merely an alternate diversity of route being used or is it in and of itself an attraction of real significance. Considering that the water movement, while only provided as an included ferryboat trip between the Ferry Building in San Francisco and the ferry terminal in Larkspur, a mode of transportation essentially a commuter run point-to-point general transportation, does indeed also provide a fine, although limited, view of the harbor and bay, giving a new perspective to many points of interest, we conclude that it is also a significant and major attraction in and of itself. The applicant would further enhance this by providing its tour participants with a map-folder panorama of the bay, identifying many of the land attractions visible from the ferry and giving a very brief statement

on the attraction. Thus the "Ship 'n' Shore" aspect of the tour makes a significant difference on two of the four tours being compared, on those two tours where Gray Line does not include a water movement segment as an integral part of the two tours.^{15/} The water movement segment on these two tours, Muir Woods and Napa Valley, provides additional facets that otherwise would be missed by the tourist (unless he elected to take a ferryboat round trip on his own, and then without the guidance of the descriptive map-leaflet he would not know what he was observing). The third tour in question, the applicant's East Bay/Marin tour (although it too proposes to use the San Francisco - Larkspur ferry for a water movement over one leg of the tour), is so different from the Gray Line tour most nearly similar, Gray Line's Muir Woods, Sausalito, Oakland, Berkeley, University of California tour, that it constitutes an entirely distinctive package. As noted earlier it would use the San Francisco - Larkspur ferry to reach Marin, but then it entirely omits Muir Woods and Sausalito and immediately leaves Marin, thereafter following the Gray Line Marin/East Bay tour closely, proceeding over the Richmond-San Rafael Bridge to the East Bay including Berkeley, Oakland, and the University of California. It is 3 hours shorter, less expensive, and not duplicative of the Gray Line tour. The Larkspur ferry ride, as noted earlier, provides a distinctively different alternative feature attraction to that offered by Gray Line. Accordingly, as to these three tours, the Muir Woods, Napa Valley, and East Bay/Marin tours, we conclude that the applicant is proposing distinctive and different service from that offered by the protestant, and that public convenience and necessity require it.

It should also be noted that certification of Golden Gate on these three routes may divert some patronage from Gray Line. ✓

^{15/} Gray Line does offer its passengers on the Muir Woods tour the option of taking the ferry at Sausalito and continuing back to San Francisco by ferry rather than by bus, but the 2 ferry rides are not comparable.

with an initial adverse effect upon load capacity levels, but in the end each carrier will ultimately adjust its operations to that required to serve its patronage. But the new ferry ride attractions offered should also draw upon other sources of tourist patronage. To the extent it serves to draw customers from the numerous illegal maxi-vans to the legitimate carrier's larger capacity buses, and divert individuals from their automobiles, issuing this certificate to Golden Gate should serve to lessen congestion, noise, and pollution on our highways and contribute towards less fuel consumption, all environmentally desirable results. Certainly it will contribute no significant adverse effect on the environment. ✓

The bay and city tour, however, is a different matter. The applicant is proposing to offer essentially the same but a lesser quality tour as that already provided by Gray Line in its DeLuxe City tour and Bay Cruise tour, although the price is approximately the same. Both tours offer the same city attractions, and both offer a view of the bay from a boat. But the tours proposed by the applicant, at least as to the boat portion, is second best. It offers a rather generalized view from a ferryboat enhanced by a map-leaflet provided by the applicant to each tourist. This is poorly comparable to the fully narrated view from a cruise boat used by Gray Line. While Gray Line's tour takes longer, the tours are not essentially different in the attractions covered. Accordingly, we are of the opinion that the applicant has not demonstrated a likelihood that there is public demand for this fourth proposed route, and we do not find that public convenience and necessity require this additional tour.

Findings

1. Gray Line holds a certificate of public convenience and necessity authorizing it to operate as a passenger stage corporation as defined in Section 226 of the Public Utilities Code, between various points and over defined routes in the San Francisco Bay Area,

including as relevant here, specific authority to provide sight-seeing tour service on four particular tours: (1) Tour 1W - DeLuxe City tour and Bay Cruise, (2) Tour 12 - Muir Woods, Giant Redwoods - Sausalito; (3) Tour 6 - Napa Valley Wine Country, and (4) Tour 16 - Muir Woods - Sausalito - Oakland - Berkeley - University of California.

2. Golden Gate herein seeks a certificate of public convenience and necessity from this Commission to provide sight-seeing tour services under provisions of Sections 1031, et seq. of the Public Utilities Code for four particular tours: (1) City tour, (2) Muir Woods tour, (3) Napa Valley tour, and (4) East Bay/Marin tour.

3. Each of the four tours proposed by Golden Gate would include as an integral segment of the tour a ferryboat ride (supplemented by a descriptive folder) between the terminals of the San Francisco - Larkspur bay ferry.

4. The DeLuxe City tour and Bay Cruise now provided by Gray Line includes as an integral segment of the tour a narrated bay cruise aboard a bay cruise boat.

5. The tour attractions and scenic vistas in the bus transported land portion, and in the ship or ferry transported bay portion of the respective city-bay tours proposed by Golden Gate, and now provided by Gray Line, are virtually identical.

6. Water-borne tour transportation over a sizable portion of San Francisco Bay, when coupled with either narration or descriptive material covering that part of the area, and included as an integral and significant part of any area sightseeing tour, provides new perspective to many points of interest, and constitutes a significant and major tour attraction in and of itself.

7. Golden Gate's combination, packaging ferry-borne transportation (with descriptive material provided) over a sizable portion of San Francisco Bay with bus-borne transportation over the land portion on both its proposed Muir Woods and Napa Valley tours, serves to render these two tours unique and distinctively different in form and content from the Muir Woods (Tour 12) and Napa Valley (Tour 6) tours presently provided by Gray Line.

8. Similarly, Golden Gate's combination of significant water movement (including descriptive materials) with land transit in its proposed East Bay/Marin tour, further differentiated by the deletion of Muir Woods and Sausalito as included attractions, serves to render this latter tour different in form and content from the East Bay/Marin (Tour 16) tour presently provided by Gray Line.

9. In the territories which would be served by the Muir Woods, Napa Valley Wine Country, and East Bay/Marin tours proposed by Golden Gate, there is no comparable per capita sightseeing passenger stage tour service available to the general public from San Francisco.

10. Golden Gate has demonstrated that it possesses the requisite fitness to provide per capita sightseeing passenger stage tour service.

11. Golden Gate has demonstrated that public convenience and necessity require establishment of per capita sightseeing passenger stage tour service on all routes except the bay and city tour.

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

13. It is not adverse to the public interest to allow Golden Gate to cancel any tour when there are less than six full fares.

Conclusions

1. Golden Gate, as to its proposed bay and city tour, has not demonstrated public convenience and necessity.

2. Golden Gate, as to its proposed Muir Woods, Napa Valley Wine Country, and East Bay/Marin tours, would not be operating in a territory already served by a certificate holder providing similar service.

3. A certificate of public convenience and necessity should be granted to Golden Gate for service to (1) Muir Woods, (2) Napa Valley Wine Country, and (3) East Bay/Marin.

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. The application, as to the requested bay and city route, is denied.

2. A certificate of public convenience and necessity is granted to Golden Gate Sightseeing Tours, Inc., a corporation, authorizing it to operate a passenger stage corporation, as defined in Section 226 of the Public Utilities Code, between the points and over the routes particularly set forth in Appendix A attached hereto and made a part hereof.

3. 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 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, 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 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 27th day of MARCH, 1979.

John E. Guyon
President
Vernon L. Sturgeon

Clair T. Friedrich
Barrett J. Jennings
Commissioners

Commissioner Richard D. Gravelle, being necessarily absent, did not participate in the disposition of this proceeding.

CERTIFICATE
OF
PUBLIC CONVENIENCE AND NECESSITY
TO OPERATE AS A PASSENGER STAGE CORPORATION
PSC - 1065

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. 90106, dated MAR 27 1979,
of the Public Utilities Commission of the State of California,
in Application 57095.

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

Golden Gate Sightseeing Tours, Inc., by the Certificate of Public Convenience and Necessity granted by the decision noted in the margin, is authorized to transport passengers 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) All passenger service herein authorized shall be limited to the transportation of round-trip passengers only, originating and terminating at the Union Square area in San Francisco.
- (b) Service shall be operated on a scheduled basis but applicant will not be obligated to render service for less than six passenger fares.
- (c) When route descriptions are given in one direction, they apply to operations in either direction unless otherwise indicated.

Issued by California Public Utilities Commission.

Decision No. 90106 i, Application 57095.

SECTION 2. ROUTE DESCRIPTIONS.Route 1. San Francisco/Muir Woods Tour

Commencing at the Union Square area in San Francisco, thence by appropriate streets to the San Francisco Ferry Building at the foot of Market Street, thence via Golden Gate Bridge, Highway, and Transportation District passenger ferry service to the Larkspur Ferry Terminal, thence via appropriate streets and highways to visit the Muir Woods National Monument and the City of Sausalito, thence via U.S. Highway 101 across the Golden Gate Bridge and returning to the Union Square area in San Francisco.

Route 2. San Francisco/Napa Valley Wine Tour

Commencing at the Union Square area in San Francisco, thence by appropriate streets to the San Francisco Ferry Building at the foot of Market Street, thence via Golden Gate Bridge, Highway, and Transportation District passenger ferry service to the Larkspur Ferry Terminal, thence via U.S. Highway 101 and appropriate streets and highways to the City of Sonoma, thence via appropriate streets and highways to St. Helena, thence via the Silverado Trail to the City of Napa, thence via State Highway 29 and appropriate streets to the City of Vallejo, thence via the Carquinez Bridge, Interstate Highway 80, and the San Francisco-Oakland Bay Bridge to appropriate streets in San Francisco to return to the Union Square area in San Francisco.

Issued by California Public Utilities Commission.

Decision No. 90106 + Application 57095.

SECTION 2. ROUTE DESCRIPTIONS. (Continued)Route 3. San Francisco/East Bay-Marín Tour

Commencing at the Union Square area in San Francisco, thence via appropriate streets to visit the following points of interest:

Treasure Island
Jack London Square in Oakland
Lake Merritt in Oakland
City of Piedmont
Oakland Temple of the Church of Jesus Christ
of Latter Day Saints
University of California in Berkeley

thence via appropriate streets and the Richmond-San Rafael Bridge to the Larkspur Ferry Terminal, thence via Golden Gate Bridge, Highway, and Transportation District passenger ferry service to the San Francisco Ferry Building, and thence returning to the Union Square area in San Francisco.

(END OF APPENDIX)

Issued by California Public Utilities Commission.

Decision No. 90106, Application 57095.