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Decision No. \_\_\_\_\_

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application  
of MEXCURSIONS, INC., a corporation,  
for a certificate of public con-  
venience and necessity to operate  
passenger stage tour service between  
points in the County of San Diego,  
on the one hand, and various points  
in Orange County on the other hand,  
and between the City of Anaheim,  
on the other hand, and various points  
in San Diego County, on the other  
hand.

Application No. 57763  
(Filed December 21, 1977;  
amended January 12, 1978,  
May 11, 1978, and  
June 27, 1978)

Virant and deBrauwere, by John E.  
deBrauwere, Attorney at Law,  
for applicant.  
Knapp, Stevens, Grossman and Marsh,  
by Warren N. Grossman, Attorney  
at Law, for The Gray Line  
Tours Company; and Dennis V.  
Menke, Attorney at Law, for  
Aztec Bus Lines, Inc.; protestants.  
William W. Hickenbottom, for the  
Commission staff.

O P I N I O N

By its application and the first amendment thereto the applicant seeks a certificate of public convenience and necessity (certificate) pursuant to Sections 1031, et seq., of the Public Utilities Code (Code), to operate as a passenger stage corporation, as defined in Section 226 of the Code, over regular routes between the cities of San Diego and Coronado, on the one hand, and Lion Country Safari and Disneyland in Orange County, on the other hand, and return; and between the city of Anaheim, on the one hand, and Sea World and the San Diego Zoo in San Diego, on

the other hand, and return. The applicant does not hold any authority to act as a passenger stage corporation.

At the time of filing the application, the applicant was engaged in conducting tours between the city of San Diego and certain points in Mexico which the applicant contends is not intrastate commerce, and as such is not subject to regulation by this Commission.

In addition, at the time of filing the application, the applicant was engaged in the operation of tour and sightseeing buses throughout the city of San Diego under the fictitious name of San Diego/Tijuana Tours. That operation consisted of an irregular route sightseeing tour seven days per week and the applicant contended that the entire operation was conducted within the corporate limits of the city of San Diego and, therefore, was within the exception provision of Section 226 of the Code (because 98 percent or more of its operations, as measured by total route mileage operated, are exclusively within the limits of a single city). In the event that the certificate requested herein is granted, the applicant would no longer come within the exception in Section 226 inasmuch as its operations would no longer be 98 percent or more exclusively within the limits of San Diego. Therefore, the applicant would be required to have a certificate in order to continue its operations in that city.

By its second amendment to the application, the applicant requests a certificate to operate as a passenger stage corporation to continue to conduct certain tours in the city of San Diego as described in Exhibit B-1 attached to the second amendment to the application.

By its third amendment to the application the applicant requests that the certificate requested herein include a tour to Wild Animal Park from its headquarters, both places being in the city of San Diego.

The application was protested by The Gray Line Tours Company (Gray Line), Mexicocoach, Inc., and Aztec Bus Lines, Inc. (Aztec).

The fares proposed for the certificated service in San Diego, which the applicant is now engaged in, are the same as now being charged.

The proposed fares or rates to be assessed for the new service and the rules and regulations governing the same are set forth in Exhibit "D" attached to the application. The applicant proposes fares of: \$27.50 per adult and \$17.50 per child (4 to 15 years) for the San Diego-Lion Country Safari-Disneyland tour, including admission and certain other privileges; \$18.50 per adult for the Anaheim-Sea World tour; and \$17.50 per adult for the Zoo tour; \$15.50 per child for the Anaheim-Sea World tour; \$14.50 per child for the Anaheim-San Diego Zoo tour, all including admission; and \$12 per adult and \$10 per child for the San Diego-Anaheim, or Anaheim-San Diego tour, without admission tickets.

The proposed time schedules for the service to be rendered are set forth in Exhibit "E" attached to the application.

A list of the applicant's operating equipment which will be available for the proposed service is set forth in Exhibit "F" attached to the application.

The applicant alleges that it has the present financial ability to render the proposed service. A copy of its balance sheet and profit and loss statement dated August 1977 is Exhibit "G" attached to the application.

After proper notice, a hearing was held before the assigned Administrative Law Judge on May 15, 16, and 17 in San Diego, and on June 21, 22, 23, 27, and 28, and July 14, 1978 in Los Angeles. The parties were authorized to file concurrent briefs on or before August 18, 1978; and at the request of Gray Line, the time for filing of briefs was extended to Tuesday, August 29, 1978. The matter was submitted on that latter date.

The applicant and Gray Line filed briefs and the Commission staff filed a written recommendation. The staff recommended: (1) that the application, as amended, not be granted; (2) that the extension of tours originating in San Diego County for the attractions in Orange County and a continuation of the existing operations not be granted; and (3) that there be a denial of any extension of service, but a granting of a certificate only for the existing operations of the applicant in the city of San Diego. The staff's recommendation sets forth that the applicant's financial condition is precarious, but that since the applicant's San Diego city operation consists of less than 98 percent of its route miles inside the city of San Diego, the applicant is required to have, and should be granted, a certificate for the purpose of continuing its existing operations. However, the staff introduced no evidence regarding the scope of applicant's present operations.

Mr. Raoul Lowery (Lowery), president of the applicant; Mrs. Virginia Bridge (Bridge), a resident of the city of Coronado and former mayor of that city; Mr. Bruce Moore (Moore), an insurance broker who is president of the San Diego Convention and Visitors Bureau; and Mr. Rodney S. Morgan (Morgan), who resides in El Cajon, owns the Plaza International Inn in that city, and is chairman of the El Cajon Visitors Bureau and a member of the board of the Chamber of Commerce of that city, testified for the applicant.

Mr. Kenneth Colton (Colton), operations manager in the San Diego area; Mr. Dale Dullabaun (Dullabaun), president; Mr. Gerald Ballinger (Ballinger), executive vice president and general manager; and Mr. Anthony D. Guion (Guion), vice president in charge of Orange County operations, testified for Gray Line. Mr. Leonard Zlotoff (Zlotoff), president of Aztec, testified for Aztec.

Exhibits 1, 14, 24, 33, 43, and 44 were marked for identification only. Exhibits 5, 6, and 7 were received in evidence for a limited purpose only. Exhibits 2 to 4, 8 to 13, 15 to 23, 25 to 32, 34 to 42, and 45 to 60, inclusive, were received in evidence. The Commission took official notice of D.87984 dated October 12, 1977 (Exhibit 44).

At the hearing Mr. John E. deBrauwere, attorney for the applicant, stated that if the certificate requested by the applicant, enabling it to operate between San Diego and attractions in Orange County and return and from Orange County to attractions in San Diego and return, is not granted, the applicant does not wish the Commission to issue the requested certificate to permit the applicant to continue its present operations inasmuch as it is the applicant's position that such a certificate would not be necessary.

Lowery, the applicant's president, testified that the applicant's terminal is at 1036 West Broadway, San Diego. The applicant contemplates a tour leaving the terminal at 8:45 a.m., arriving at Lion Country Safari at 10:10 a.m. for a tour through the animal compound; the bus will leave Lion Country Safari at 10:50 a.m. and arrive at Disneyland at 11:25 a.m. The passengers will then be picked up from Disneyland at 7:15 p.m. to return to the applicant's terminal at approximately 9:15 p.m., and then to be returned to their respective hotels (see Exhibits 2 and 20). He stated that after the passengers are left at Disneyland at approximately 11:25 a.m., the bus would proceed to the Grand Hotel in Anaheim and pick up passengers at 11:30 a.m. to be transported to Sea World at 1:30 p.m. or the San Diego Zoo at 1:45 p.m. Thereafter passengers will be picked up at the Zoo at 4:45 p.m. and Sea World at 5:00 p.m., arriving at the Grand Hotel in Anaheim at 7:00 p.m. The bus would then pick up the passengers from Disneyland at 7:15 p.m. to return them to San Diego as set forth

above. He stated that the total one-way mileage from the applicant's terminal to Disneyland is approximately 95 miles (see Exhibit 20).

Lowery testified that the price of admission to the point of interest would be included with the fare proposed by the applicant. In addition, the applicant seeks authority to be able to transport persons holding prepaid admission tickets to the amusement attractions along with the package tour customers at a different rate which would be based on transportation only (see Exhibit 23). He stated that this request is made only for the purpose of being able to provide a service to the various tour operators who provide tours for people who have purchased their tickets to the amusement attractions elsewhere and desire to find transportation to such attractions.

He stated that two Mercedes Benz 16-passenger buses, six Dodge maxi-vans, and two 45-passenger buses, a total of 10 vehicles, will be used to provide the proposed service. The operation would be performed primarily with the Dodge maxi-vans, and the buses would be used only if the number of passengers should warrant the use of a larger vehicle. The applicant has no plan to purchase additional buses but if such buses should be needed, intends to lease them from Aztec Bus Lines. He stated that the applicant was in the process of making arrangements to trade the four oldest Dodge vehicles in on five new 1978 models as a means of improving and supplementing the existing fleet of vehicles.

Lowery testified that the charge for the tour from San Diego to Lion Country Safari to Disneyland and return, including admission, would be \$27.50 per adult, although a transportation only fare of \$12 would be made available to persons not desiring to purchase tickets to the attractions.

Those persons not desiring to visit Lion Country Safari will be required to disembark the bus at the time it enters that attraction and will have to wait for approximately 40 minutes until the bus returns from the tour. Those passengers who only wish to partake of the Lion Country Safari portion of the tour will wait at Disneyland or some other location for approximately six hours until the bus departs from the Grand Hotel at approximately 7:15 p.m. He testified that his application did not contemplate seeking authority to conduct a tour from San Diego to Disneyland without a stop-off at Lion Country Safari. He stated that the tour could not be operated under circumstances where Lion Country Safari is not open on any given day, but if on any given day the only customers he had desired to purchase the transportation only fare to Disneyland, he would operate directly between San Diego and Disneyland, eliminating the stop at Lion Country Safari. He stated that if for some reason Lion Country Safari should not continue in operation, he would be unable to operate the tour. He stated that he would not be willing to accept a restriction in a grant of authority issued herein precluding the provision of a transportation only service from San Diego to Disneyland.

Lowery offered Exhibits 3, 19, 21, and 22 to show the scope of the present San Diego tours, the fares charged, and the approximate departure and arrival times of the various tours. Such evidence indicates that applicant's present San Diego operations, as measured by total route mileage operated, are 98 percent or more within the limits of the city of San Diego.

Lowery further testified that Exhibits 5 and 6 (received for a limited purpose) were circulated at the various hotels and motels where he ordinarily renders service for his present tours (Exhibit 4). Exhibit 5 contains the signatures of various hotel personnel, including bellmen, managers, and owners who indicated their support of the proposed tours to and from Orange County. Exhibit 6 consists of names of customers who were approached on a random basis between 8:30 and 9:00 a.m. on several mornings

where Lowery explained the proposed tours to the customers, some of whom thereafter signed their names indicating interest in the proposed tours. Based upon his experience and survey, Lowery expressed his opinion that he felt such a combination tour as sought herein would be successful and was a necessary alternative to the tours now existing.

Exhibit 7 (received for a limited purpose) consisted of a two-page resolution from the San Diego City Council issued in support of the requested tours to and from Orange County. Exhibit 7 also contained letters from the president of the San Diego chapter of the Hotel Sales Management Association, the San Diego County Board of Supervisors, the San Diego Chamber of Commerce, the San Diego Visitors and Convention Bureau, the El Cajon Chamber of Commerce, Sea World, and the San Diego County Hotel/Motel Association, all in support of the proposed tours as requested by the applicant.

Bridge, a resident of the city of Coronado and a former mayor of that city, testified that she has lived in Coronado for 20 years and is familiar with the tourist industry in that city. She stated that the Hotel del Coronado has approximately 750 rooms and is in the process of adding 100 more rooms, and there are two other smaller hotels and three motels in that city. She testified that there are many conventions in Coronado and that the Hotel del Coronado is booked for conventions through 1981, usually every week except during the summer tourist season. She stated that she was familiar with the applicant's proposed tours and it was her opinion that there was a need for such a service in the city of Coronado.

She testified that although she personally supported the application, she was not sure as to the precise nature of the proposal; whether it involved separate trips to Disneyland and Lion Country Safari or not.



Moore, an insurance broker and president of the San Diego Visitors and Convention Bureau (Bureau), testified that the Bureau was an organization primarily concerned with bringing visitors either individually or in groups to the San Diego community. It is concerned with the tourist and convention promotion, has 40 full-time and 40 part-time employees, and operates with a budget of \$1.8 million per year. He testified that during 1977 the marketing department statistic branch estimated that 19 million people came to the San Diego area. There is a membership of approximately 1,300 who pay fees to the Bureau and are serviced by it. He testified that there has been an increase in visitors to San Diego during the past years and the Bureau is interested in the expansion of the tourist business. He testified that the occupancy rate for hotels in San Diego has risen approximately 12 percent during the past three years and they are currently having approximately 73 percent occupancy. He testified that he was of the opinion that there was a need for more frequent service between San Diego and the Orange County area.

He testified that the Anaheim Convention Center can accommodate up to 35,000 persons and there are many visitors to the city of Anaheim and the surrounding area in Orange County. He testified that there are many more visitors to San Diego from the Los Angeles area than the Orange County area, and that the applicant's proposed tour would encourage more people from Orange County to visit the attractions in San Diego. He acknowledged that Gray Line conducts tour operations in and around San Diego but stated that he felt the granting of the certificate as requested would expand rather than divide the market. He admitted that service to Lion Country Safari would detract from San Diego's attractions such as the Zoo and Wild Animal Park.

Morgan operates a motel in the city of El Cajon and is chairman of that city's convention and visitors bureau. He testified that the applicant has been rendering service to the city of El Cajon since the spring of 1977, where it picks up passengers at the hotels and motels in that city and takes them on the various tours set forth in Exhibit 3. He stated that this is the only tour service offered to the El Cajon area, and it is important to that area, and the persons he had talked to who had taken the several tours offered by the applicant were pleased with their respective experiences.

Protestant Gray Line has conducted sightseeing operations within southern California since the early 1920's. It holds a variety of certificates from this Commission authorizing the performance of sightseeing service to all major attractions. Basically, such operations are conducted out of Los Angeles, Anaheim, Palm Springs, and San Diego. Gray Line's headquarters are located in Los Angeles. Facilities there include its general offices, a major passenger terminal, and parking available for 125 units. Additionally, located at this site are full-shop facilities for equipment maintenance purposes. Gray Line has expended in excess of \$3,500,000 in the acquisition of property and facilities at this Los Angeles location.

Gray Line employs approximately 400 individuals in its system operations, including 125 to 150 administrative and maintenance personnel and 250 drivers. All driving personnel go through a nine-day formal training program whereby each is familiarized with the vehicles from both a maintenance and driving standpoint. Each individual is trained to drive all varieties of buses operated in Gray Line's fleet.

Gray Line maintains additional facilities in the Anaheim-Buena Park area, stationing 10 to 15 buses within that territory. It has conducted operations in Anaheim since the opening of Disneyland in the 1950's.

Gray Line has a major terminal facility in San Diego. Approximately one year ago it moved into the new facilities, expending approximately \$1 million in the acquisition of property and the improvement thereof. It stations 75 to 80 employees in the San Diego area, including approximately 73 drivers.

Gray Line employs 12 individuals in its marketing department covering the Los Angeles, Anaheim, and San Diego areas. Its promotion and advertising budget is in excess of \$300,000 each year. This money is expended for the publication and distribution of brochures (over 2,000,000 each year), mailing, and advertising in various magazines relating to the touring industry. In addition, it sells its services through agents such as hotel bellmen who come in regular contact with the touring public. It has approximately 80 such agents in the San Diego area. Such efforts are made by Gray Line in order to actively increase its patronage and serve the needs of its patrons.

Gray Line has a policy of constantly updating and increasing its fleet based on the needs of its customers. Its total fleet investment is approximately \$4 million to \$5 million. Gray Line currently operates a total of 150 units of equipment. The majority of its equipment is over-the-road, highway-type, deluxe recliner, motor coach equipment. The balance consists of 31 units of equipment that are primarily utilized in charter shuttle-type operations. It also operates three van pieces of equipment. The majority of the buses are radio-equipped, enabling Gray Line to stay in constant communication with its driver personnel. This enables the drivers to inform the

operations department if they are experiencing mechanical problems or if some other problem arises. Thus, Gray Line can immediately respond to any emergency and send a replacement piece of equipment, if needed, so that passengers incur a minimum of inconvenience. Each vehicle is inspected once a week and, in addition, each vehicle has an automatic thorough inspection at 6,000 miles.

Gray Line's permanently stationed San Diego fleet consists of 25 units of equipment. Supplemental additional equipment from the Los Angeles area is available when needed. Its total investment in the San Diego fleet is approximately \$1 million based on net book value. Gray Line has expanded its San Diego equipment fleet substantially over the past three years. Approximately three years ago Gray Line had only nine vehicles stationed in the San Diego area. Such increase has been accomplished in order to keep pace with the growth in sightseeing demands.

Gray Line introduced into evidence a number of published brochures reflecting, both on a present and historical basis, its operations between San Diego and Anaheim and within the city of San Diego. Exhibit 60 consists of pertinent portions of Gray Line's certificate issued to it by this Commission. Item 731 authorizes sightseeing services to all points of interest located within the city of San Diego. Item 730 authorizes sightseeing services from San Diego and Coronado to Disneyland. Item 330 authorizes services from the nonexclusive pickup territory of Anaheim-Buena Park (Item 100) to points of interest in San Diego, such as the San Diego Zoo and Sea World, and Item 500, coupled with Item 100, authorizes service from the nonexclusive pickup

territory of San Diego to Lion Country Safari and Disneyland. Gray Line contends that under Item 500, Disneyland is a part of authorized service which may be substituted, thus enabling the provision of a combined tour to Lion Country Safari and Disneyland.

Gray Line recently instituted a tour from San Diego to Lion Country Safari and Disneyland on a combination basis, in order to determine whether, in light of the applicant's through service proposal, there was any public market for such a combined attraction. Although such a tour was advertised by Gray Line, not a single ticket had been sold for the combination tour. A witness for Gray Line testified that such a tour is not viable from a public interest standpoint.

Exhibits 25 and 26 show that Gray Line's San Diego-Disneyland tour (Tour 317) is operated daily, except Sunday, during the summer, Wednesday and Saturday during the off-season from January through May 9, and four days a week during the rest of the year. Local tours within the city of San Diego are operated on a daily basis 365 days a year. Tours out of Anaheim to points of interest in San Diego are operated three days a week. Exhibit 28 shows that during the first five months of 1978 Gray Line transported a total of 2,389 passengers from Anaheim to Sea World, 1,324 passengers from Anaheim to the San Diego Zoo, and an additional 262 passengers from Anaheim to San Diego in connection with Gray Line's city tours. During the same period, Gray Line transported 1,991 passengers from San Diego to Disneyland and 2,503 passengers in local San Diego sightseeing service.

In addition, Gray Line operates a tour from San Diego to Universal City Studios in Los Angeles. During the indicated five-month period, it transported 1,134 passengers in that service.

The San Diego-Disneyland and San Diego-Universal City Studios are in the main combined on one bus, the Disneyland passengers being dropped off at that point and picked up in the evening upon return of the Gray Line bus from the Universal City Studios.

Exhibit 58 reflects that Gray Line has increased the number of days per week and the number of buses it is operating from San Diego to Disneyland in order to better serve the sight-seeing public. This has resulted in a 27.6 percent increase in patronage and a 67.3 percent increase in buses. However, average busload factor has dropped from 20.8 to 15.8 persons, a 24 percent decrease. Exhibit 59 reflects that in the comparable six-months' period, 1977-1978 versus 1975-1976 (October through March), Gray Line's local San Diego sightseeing patronage rose from 8,394 to 11,334.

Exhibit 51 identifies a total of 69 hotels and motels, having a total room capacity of approximately 12,386, at which points Gray Line picks up on a virtual daily basis. Pickups at additional points are made upon reservation and dependent upon a sufficient number of passengers to make such outlying pickup service economically feasible.

During the testimony of witness Guion, Gray Line's vice president in charge of its Anaheim-Buena Park activities, exhibits were received in evidence which reflected points at which Gray Line regularly picks up in that territory. A total of 87 hotel or motel facilities are listed. This witness testified that at one time he had been director of marketing at Lion Country Safari and expressed knowledge as to the

viability of that point as a sightseeing attraction. Exhibit 49 indicates that Lion Country Safari attendance in 1972 was 1,284,000 but dropped in 1977 to 603,000, representing a total decline of 53 percent over five years. Exhibit 48 reflects that of the various southern California sightseeing attractions, viz., Disneyland, Knotts Berry Farm, San Diego Zoo, Wild Animal Park, Lion Country Safari, and Marineland, Lion Country Safari is the lowest in point of customer attraction. This witness stated that it was his opinion that with the presence of Wild Animal Park in San Diego, relatively few tours would visit Lion Country Safari from the San Diego area.

Zlotoff, president and sole shareholder of Aztec, testified that he has been operating between San Diego and Disneyland since 1965 under authority granted by the Commission. Aztec currently operates approximately 100 pieces of equipment and maintains a fully equipped facility in San Diego. The witness stated that it was his opinion that there is no demand by the public for additional services between San Diego and Disneyland which is not being filled by Aztec and Gray Line.

On several occasions Aztec has leased equipment to the applicant. The Flexible 1964 highway coach listed on Exhibit "F" of the application was leased to the applicant by Aztec. However, Aztec regained possession of the unit on December 31, 1977 due to the fact that the applicant had failed to make lease payments. At the present time, there is in excess of \$6,000 owed Aztec by the applicant arising out of such lease. He further stated that he still does business with the applicant and that there were accounts receivable each entity had with respect to the other, and indicated that there is no ill feeling between his company and the applicant.

Discussion

On June 2, 1972, applicant was incorporated under the name of Tijuana Tours, Inc., and on November 10, 1972, the name was changed to Mexcursions, Inc. From June 2, 1972, until October 9, 1975, applicant operated tours exclusively into Tijuana, Mexico. Since October 10, 1975, applicant has also been operating tours within the city of San Diego pursuant to city permits.

The following tabulation is prepared from the Profit and Loss Statements introduced as Exhibits 9, 10, 11, and 16:

<u>Period</u>	<u>Sales</u>	<u>Cost of Sales</u>	<u>Gross Profit</u>	<u>Expenses</u>	<u>Owner's Withdrawal And Dep'n</u>	<u>Net Profit or [Loss]</u>
1976 (actual)	\$530,489	\$171,221	\$359,268	\$310,737	\$33,360	\$15,171
1977 (actual)	636,982	220,038	416,944	386,304	38,521	[7,881]
1st 4 months of 1978 (actual)	166,056	61,977	104,079	111,529	-	[7,450]
1978 (projected)	728,964	240,558	488,406	421,350	29,000	38,056

As of December 31, 1977, Exhibit 18 shows that applicant's current liabilities of \$51,509 exceeded its current assets of \$47,324 by \$4,185 and that its total liabilities of \$166,819 exceeded its total assets of \$87,457 producing a net worth deficit of \$79,362. Included in the long-term liabilities are stockholder's loans in the amount of \$8,890 and a ten-year loan from the Small Business Administration in the amount of \$67,919 bearing an annual interest rate of 6.58 percent, which together total \$76,809, an amount about equal to the net worth deficit of \$79,362. The ten year note payable to Steven Cushman in the amount of \$12,119 bears a nominal interest rate of 1 or 2 percent per annum.



The Commission takes official notice of Resolution No. 222920 passed and adopted by the Council of the city of San Diego on February 26, 1979, a certified copy of which was transmitted to the Commission by letter dated March 7, 1979 from Lowery. This resolution recites that the City Manager, for noncompliance with regulations, revoked the Automobile for Hire and Sightseeing Vehicle Permits previously granted to applicant.

On February 26, 1979, the City Council granted Lowery a hearing appealing the decision of the City Manager to revoke said permits at which time the City Council reversed the decision of the City Manager and reinstated said permits on the following conditions:

- "1. That within ten (10) working days from the date of February 26, 1979, Mr. Lowery shall bring into compliance any and all violations of local regulations and state law as determined by Mr. E. Marty Morris in City Manager's Report to the Mayor and City Council issued February 7, 1979, as Report No. 79-97;
- "2. That Mr. Lowery meet with appropriate City staff to determine the loss and expense involved to the City from Mr. Lowery's failure to correct the deficiencies noted in Report No. 79-97 and, within a reasonable time of receiving an invoice from the City, Mr. Lowery shall reimburse the City for all such identified costs; and
- "3. The City Manager is directed to report back no later than six (6) months to the Public Services and Safety Committee to ensure that Mr. Lowery has complied with these conditions and that his operations in the interim satisfactorily comply with all applicable rules and regulations of the San Diego Municipal Code and State law."

If Lowery satisfies the conditions set forth above, applicant will be able to continue to operate its sightseeing tours in the city of San Diego.

The threshold issue in any sightseeing bus application is always whether or not public convenience and necessity require the particular service sought to be authorized by that application (See Public Utilities Code Section 1031). If it can be demonstrated that public convenience and necessity require it, a certificate may be issued, provided that, in those instances where a certificate holder or holders are already serving the territory, holder or holders will not provide service to the satisfaction of the Commission (See Public Utilities Code Section 1032). Traditionally, the satisfactory service test of existing carriers has been based on the relatively narrow analysis of factors such as route patterns, service frequency, adequacy of equipment, and the fitness of the applicant. There are, however, other significant underlying factors which, in our opinion, have not received enough attention. For example, is monopoly service of itself unsatisfactory service to the public? ✓

This nation's antitrust laws and policies are premised on the understanding that competitive service generally results in a superior overall level of service to the public. Competition tends to bring out the highest degree of effort and imagination in a business endeavor to the benefit of the public. In the area of sightseeing bus operations, competition will have a direct bearing on the quality of overall treatment afforded passengers, rates, scheduling, equipment condition, and operational innovation generally. California needs an influx of vigorous, innovative thinking and application if publicly acceptable alternatives to private auto-use are to fully develop. We state now that competition in the area of sightseeing bus operations is a most desirable goal. ✓

We are dealing here with sightseeing service. This class of service, unlike the traditional common carrier passenger stage operation, is essentially a luxury service, recreationally oriented and essentially different from the conventional point-to-point public transportation service, and therefore it is a service less imbued with that essentiality to the public welfare which we usually hold inherent in the underlying concept of public convenience and necessity. Accordingly, it is a service less entitled to the strict territorial protectionism from competition and competitive factors which necessarily is accorded the "natural" utility monopolies such as electric, gas, or telephone utilities.

Applicant proposes to operate as a passenger stage corporation on a regular route northbound from San Diego to Disneyland via Lion Country Safari in Orange County and return, and also on an alternate route which includes Escondido and Vista. Applicant also proposes to operate on a regular route southbound from Anaheim to Sea World via Interstate 5 and Sea World Drive (San Diego) and return, and on an alternate route southbound from Anaheim to Balboa Park and San Diego Zoo via Interstate 5 and Interstate 8 and return.

Gray Line was unsuccessful in its efforts to provide a tour from San Diego to Lion Country Safari and Disneyland on a combination basis, but that does not necessarily indicate that applicant should not be given an opportunity to institute such service. One of the benefits of competition is that some succeed where others have failed.

If applicant is granted a certificate to operate the above routes, less than 98 percent of its intrastate operations will be within the city of San Diego and so its operations in San Diego will no longer qualify under the exception provision of Section 226 of the Code; hence the certificate of public convenience and necessity should also include applicant's operations which are wholly within the city of San Diego.

Findings

1. Applicant operates a tour between San Diego and certain points in Mexico, which is an exempt interstate movement under the provisions of Section 203(b)(8) of the Interstate Commerce Act.

2. At the time of filing the application and since July 1975, applicant has been engaged in the operation of tour and sightseeing buses throughout the city of San Diego which is within the exception provision of Section 226 of the Code because 98 percent or more of its operations, as measured by total route mileage operated, are exclusively within the limits of a single city.

3. In the event that the certificate requested herein is granted, applicant would no longer come within the exception of Section 226 of the Code inasmuch as its operations would no longer be 98 percent or more exclusively within the limits of San Diego and, therefore, applicant would be required to have a certificate in order to continue its operations in that city.

4. Applicant seeks a certificate to operate as a passenger stage corporation between the cities of San Diego and Coronado, on the one hand, and Lion Country Safari and Disneyland in Orange County, on the other hand, and return, and between the city of Anaheim, on the one hand, and Sea World and the San Diego Zoo in San Diego, on the other hand, and return. In addition, if the certificate as requested is granted, applicant also seeks authority to continue its present operations within the city of San Diego.

5. Applicant has the requisite equipment and upon compliance with conditions 1 and 2 of Resolution No. 222920 passed and adopted by the Council of the city of San Diego on February 26, 1979, applicant will have the necessary fitness to provide the per capita sight-seeing service on the proposed tours included in its application.

6. The tours proposed by applicant offer distinctions from comparable tours offered by the existing certificated carriers.

7. A public need exists for the proposed tours.

8. Competition between applicant and the existing certificated passenger stages under regulation will be in the public interest in that it will lead to the development of the territory served by such passenger stages and will promote good service and hold down fares.

9. It can be seen with certainty that the proposed activity may have no significant effect on the environment.

10. Public convenience and necessity require that applicant be granted a certificate to operate the tours proposed in the application provided that applicant complies with conditions 1 and 2 of Resolution No. 222920 passed and adopted by the Council of the City of San Diego on February 26, 1979.

Conclusions

1. The Commission concludes that the application for a certificate of public convenience and necessity authorizing applicant to operate as a passenger stage corporation between the cities of San Diego and Coronado and certain places in Orange County, and between Orange County and certain places in San Diego, should be granted, and that inasmuch as the applicant will require a certificate to continue its present operations in the city of San Diego, its request for such authority should also be granted, subject to the condition that within ninety days after the effective date of this order applicant submit to the Commission a written statement from the City Manager of the city of San Diego that applicant has complied with conditions 1 and 2 of Resolution No. 222920 passed and adopted by the Council of the city of San Diego on February 26, 1979.

2. In the event such written statement from the City Manager is not submitted within ninety days after the effective date of this order the application should be denied.

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 Mexcursions, Inc., authorizing it 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, subject to the condition precedent that Mexcursions, Inc., within ninety days after the effective date of this order, submits to the Commission a written statement from the City Manager of the city of San Diego that Mexcursions, Inc., has complied with conditions 1 and 2 of Resolution No. 222920 passed and adopted by the Council of the city of San Diego on February 26, 1979.

2. In providing service pursuant to the authority granted by this order, Mexcursions, Inc., 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 submission to the Commission of the written statement from the City Manager of the city of San Diego referred to in Ordering Paragraph 1 above, 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.



3. In the event within ninety days after the effective date of this order, Mexcursions, Inc., fails to submit a written statement from the City Manager of the city of San Diego that Mexcursions, Inc., has complied with conditions 1 and 2 of Resolution No. 222920 passed and adopted by the Council of the city of San Diego on February 26, 1979, the application is denied.

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

Dated at San Francisco, California, this 10th day of APRIL, 1979.

John E. Bryan  
President  
Veronica L. Stinson  
Richard D. Gould  
Clair D. Friedrich  
Edward M. Pencil  
Commissioner

CERTIFICATE

OF

PUBLIC CONVENIENCE AND NECESSITY  
TO OPERATE AS A  
PASSENGER STAGE CORPORATION  
PSC 1066

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

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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.

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Issued under authority of Decision No. 90155,  
dated APR 10 1979, of the Public Utilities Commission  
of the State of California, in Application No. 57763.

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

Mexcursions, Inc., a corporation, by the Certificate of Public Convenience and Necessity granted by the decision noted in the margin, is authorized as a passenger stage corporation, to transport sightseeing passengers between San Diego, and on-call pickup service in Rancho Bernardo, Escondido, and Oceanside on the one hand and Anaheim on the other hand; also between Anaheim on the one hand and Sea World Oceanarium or San Diego Zoo on the other hand, over and along the routes hereinafter described; and to transport passengers on sightseeing oriented tours that commence from 1036 W. Broadway, San Diego, and continues through the City and County of San Diego to the various points of interest described in Section 3B; subject, however, to the authority of this Commission to change or modify said routes at any time and subject to the following provisions:

a. 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. All service herein authorized shall be limited to the transportation of round-trip passengers only.

c. Applicant shall not pick up or discharge passengers except within the limits of the specified service points as hereinafter set forth. This restriction shall not prevent stopovers for the purpose of permitting sightseeing passengers to visit points of interest along the route.

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

d. Motor vehicles may be turned at termini and intermediate points, in either direction, at intersections of streets or by operating around a block contiguous to such intersections, in accordance with local traffic regulations.

e. When route descriptions are given in one direction, they apply to operation in either direction unless otherwise indicated.

f. Daily service shall be operated year-round.

g. "On-call" service shall be operated year-round.

h. Each tour shall be conducted for a minimum of four (4) persons, except those tours within the City and County of San Diego which shall be conducted for a minimum of one (1) person.

i. Transportation may be provided in equipment obtained from Class A Charter Carriers and the drivers shall be under the complete supervision, direction, or control of the carrier authorized hereunder.

SECTION 2. SERVICE POINTS.

Passengers may be picked up and discharged at any of the following described points, subject to local traffic regulations:

1. San Diego
  - a. 1036 W. Broadway (1)
2. Rancho Bernardo (2)
  - a. Rancho Bernardo Inn
  - b. Rancho Bernardo Travel Lodge
3. Escondido (2)
  - a. Colonial Inn
4. Oceanside (2)
  - a. Miramar Hotel
5. Anaheim
  - a. Grand Hotel

(1) On-call service will be available to residents of Coronado, La Jolla, Pacific Beach, El Cajon, La Mesa, Chula Vista and guests at the various hotels and motels in and along Hotel Circle in San Diego free of charge to the main departure point at 1036 W. Broadway, via feeder vans.

(2) On-call pickup service will be available. All tours shall be performed with a minimum of four (4) persons, except those tours within the City and County of San Diego which shall be conducted for a minimum of one (1) person.

SECTION 3. ROUTE DESCRIPTIONS.

A. San Diego to Lion Country, Disneyland Tours and Return.

1. Regular Route

Northbound coast route via Interstate 5 from San Diego to Lion Country Safari, thence Disneyland (Anaheim) and return.

2. Alternate Route

Northbound inland route from San Diego via State Sign Route 163 and Interstate 15 to Escondido, and via State Sign Route 78 near Oceanside and via Interstate 5 to Lion Country Safari, thence Disneyland (Anaheim) and return.

Issued by California Public Utilities Commission.

Decision No. 90155, Application No. 57763.

SECTION 3. ROUTE DESCRIPTIONS. (Continued)

Anaheim to Sea World/San Diego Zoo Tours and Return.

3. Regular Route

Southbound from Anaheim to Sea World via Interstate 5 and Sea World Drive (San Diego) and return.

4. Alternate Route

Southbound from Anaheim to Balboa Park and San Diego Zoo via Interstate 5 and Interstate 8 (San Diego) and return.

B. Sightseeing Operations Within the City and County of San Diego.

Commencing at 1036 West Broadway, San Diego, thence over the most appropriate streets, roads and freeways to the following described sightseeing points of interest or combinations thereof in the City and County of San Diego, thence returning over appropriate streets, roads, and freeways to the point of beginning:

- TOUR 1. San Diego City Tour including Downtown, Balboa Park, Mission Valley, Old Town, Mission Bay, La Jolla, Scripps Aquarium, Cabrillo National Monument, and the Waterfront.
- TOUR 2. San Diego Zoo.
- TOUR 3. Sea World.
- TOUR 4. Harbor Excursion - San Diego Harbor.
- \*\*TOUR 5. San Diego Sport Events.
- \*TOUR 6. Family Tour at Planetarium, Reuben H. Fleet Space Theatre and dinner.\*
- \*TOUR 7. Evening Theatre\* Tour.
- \*TOUR 8. San Diego Night Club Tour.
- TOUR 9. Wild Animal Park.

Issued by California Public Utilities Commission.

Decision No. 90155, Application No. 57763.

SECTION 3. ROUTE DESCRIPTIONS. (Continued)

\*\* All home games of the San Diego Padres baseball team, Chargers football team, San Diego State University teams, soccer team, and other local sporting events. Reservations to be arranged in advance and transportation and admission to the event included in price.

\*\* Theatres and night clubs are subject to change. Refer to current brochure for details of clubs and theatres on the tour.

(END OF APPENDIX A)