

ORIGINALDecision No. 91207 JAN 8 - 1986

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Mark B. Anderson, a sole proprietor, doing business as Adventure Tours, Ltd., for the certificate of public convenience and necessity to operate passengers and their baggage between San Diego, California, and Big Bear, California, and return.

Application No. 59043
(Filed August 2, 1979)

O P I N I O N

Mark B. Anderson (Anderson), doing business as Adventure Tours, Ltd., seeks to operate a common carrier passenger stage service between the Fashion Valley Shopping Center in the city of San Diego and Big Bear City, San Bernardino County, over a defined route.

Transportation would be performed with buses having carrying capacities from 39 to 47 passengers. Anderson seeks exemption from insurance requirements of General Order No. 101-C, (GO 101-C), and seeks qualification as a self-insurer. Assertedly, all equipment would be operated by licensed charter-party carriers maintaining insurance according to General Order No. 115-B, which is identical to insurance required by GO 101-C. Anderson requests that he be relieved of the insurance requirements of GO 101-C.

Anderson's proposed fares are as follows:

Between San Diego and Big Bear City

	<u>One Way</u>	<u>Round Trip</u>
Adults	\$7.50	\$15.00
Children, under 12	5.00	10.00

Children under two would be free if carried on lap. Group fares for a minimum of 30 passengers would be available on request.

Anderson's balance sheet as of July 18, 1979 shows assets of \$13,200 and net worth of \$8,400. Profit resulting from income and expenses projected on the basis of 50 trips between November 24, 1979 and April 16, 1980, assuming 80 percent occupancy, would be \$8,400.

Anderson contends there is no available direct service between San Diego and Big Bear City. From Thanksgiving until Easter the Big Bear area assertedly is overwhelmed with as many as 10,000 skiers a day because that is where the only ski area is located which is within reasonable proximity to the entire southern California area. He states that traffic congestion on the two-lane highways involved is heavy; that road conditions in the winter are dangerous; and that parking facilities in Big Bear City are overtaxed to the point where automobiles are forced to park along the highway and city streets.

Anderson believes that his proposed service would help the environment by eliminating 10 to 20 private automobiles for each busload of passengers carried.

The application was served upon the city of San Diego, county of San Diego, Big Bear Chamber of Commerce, Snow Summit Ski Resort, and Sundance Stage Lines. The matter was noticed on the Commission's Daily Calendar of August 6, 1979. There are no protests.

It is concluded that the application should be granted. It appears that Anderson is not sufficiently familiar with requirements of the Public Utilities Code and general orders of the Commission concerning tariff preparation. The proposal that group fares be available upon request is not satisfactory. All fares must be published for the transportation here involved in a manner that will enable patrons to determine in advance what the charges will be. Anderson's initial tariff may contain

fares which are either the same or which are higher or lower than the proposed fares. : Once published, however, the fares may not be increased without the necessary showing and finding required by Section 454 of the Public Utilities Code.

The Commission's General Order No. 98-A (GO 98-A), Part 12, requires, in part, the following:

"12.01. DRIVER STATUS. Passenger stage corporations and charter-party carriers shall not operate any passenger stage unless the driver thereof is under the complete supervision, direction and control of the operating carrier, and is:"

* * *

"(b) An employee...of another Commission-authorized carrier that owns or possesses the vehicle... This agreement for the utilization of the second carrier's vehicle and driver by the operating carrier shall be evidenced by written contract between the two carriers..."

Applicant proposes to conduct operations as a passenger stage corporation. As an operating carrier applicant is required by GO 98-A to assume complete supervision, direction, and control of any person driving in his service. Under the charter arrangement which applicant intends to enter into, all responsibility for the operation of the bus will remain with the charter operator but applicant will direct the movement of the bus where and when it will travel. Applicant would, therefore, not be in violation of GO 98-A if there were a contract between it and the charter carrier under which he assumed control of the driver. Essentially, applicant's proposal amounts to a tour organizer business rather than that of a carrier of passengers. However, under Section 1035 of the Public Utilities Code, he would be presumed to be a passenger stage corporation by his act of offering transportation on an individual-fare basis by bus between fixed termini and over a regular route.

These circumstances prevent us from granting him a passenger stage certificate to operate as the applicant proposes. However, if applicant is willing to acquire buses and drivers under an arrangement which comports with GO 98-A he should not be denied a certificate. Accordingly, we will require him in accepting the certificate to agree to abide by the requirements of GO 98-A in acquiring buses for his operation. His refusal to so agree will result in a denial of his application. (See Application of Dennis Felso, Decision No. 90985 dated November 6, 1979 in Application No. 58214.)

The findings and order which follow will make reference to tariff filing, insurance, and certain other requirements to be followed by Anderson.

Findings of Fact

1. Anderson seeks to provide a common carrier passenger stage service between the cities of San Diego and Big Bear City.
2. Anderson has the financial resources to perform the proposed passenger transportation. He plans to utilize the services of authorized and insured charter-party carriers to perform transportation between the points involved.
3. Anderson does not propose to use equipment of his own, or equipment leased and operated as his own. The Commission has authorized other passenger stage corporations to operate by using charter-party carriers' equipment in lieu of owned or leased equipment.
4. Anderson's type of arrangement for the utilization of buses and drivers furnished to him by others does not meet the requirements of GO 98-A.
5. Anderson's tariff publication should contain clear and concise statements of rules and individual fares so that patrons will be able to determine in advance what the charges for all services offered should be.

6. The proposed individual fares are justified. Once published, fares may not be increased without the necessary showing and finding required by Section 454 of the Public Utilities Code.

7. Anderson has demonstrated that public convenience and necessity require certification of the service sought. If the operation is to be seasonal, the dates of service shall be identified in tariffs to be filed with the Commission.

8. The proposed certificate should be withheld if applicant fails to agree that he will abide by GO 98-A, particularly Part 12.00 of GO 98-A, when utilizing the buses and drivers furnished by others.

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

Conclusions of Law

1. The application should be granted subject to applicant's furnishing written agreement that he will abide by Part 12.00 of GO 98-A in utilizing buses and drivers furnished by others.

2. Unless applicant furnishes the written agreement set out in Conclusion of Law No. 1, the application should be denied.

3. Since there are no protests and since the public will benefit from immediate institution of the service, the following order should be effective the date of signature.

Mark B. Anderson, doing business as Adventure Tours, Ltd., 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

anceled 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 Mark B. Anderson, doing business as Adventure Tours, Ltd., authorizing him to operate as a passenger stage corporation, as defined in Section 226 of the Public Utilities Code, between the points and over the route described in Appendix A hereof.

2. In providing service pursuant to the authority granted by this order, applicant shall comply with the following service regulations. Failure to do so may result in a cancellation of the authority.

- (a) Within thirty days after the effective date of this order, applicant shall file a written acceptance of the certificate granted. The written acceptance shall contain a statement that applicant agrees to abide by Part 12.00 of General Order No. 98-A when he utilizes the buses and drivers of others in his operation. Applicant is placed on notice that if he accepts the certificate he will be required, among other things, to comply with the safety rules administered by the California Highway Patrol, the rules and other regulations of the Commission's General Order No. 98-Series, and the insurance requirements of the Commission's General Order No. 101-Series.
- (b) Within one hundred twenty days after the effective date of this order, applicant shall establish the authorized service and file tariffs and timetables, in triplicate, in the Commission's office.
- (c) The tariff and timetable filings shall be made effective not earlier than ten days after the effective date of this order on not less than ten days' notice to the Commission and the public, and the effective date of the tariff and timetable filings shall be concurrent with the establishment of the authorized service.

- (d) The tariff and timetable filings made pursuant to this order shall comply with the regulations governing the construction and filing of tariffs and timetables set forth in the Commission's General Orders Nos. 79-Series and 98-Series.
- (e) Applicant shall maintain his accounting records on a calendar year basis in conformance with the applicable Uniform System of Accounts or Chart of Accounts as prescribed or adopted by this Commission and shall file with the Commission, on or before March 31 of each year, an annual report of his operations in such form, content, and number of copies as the Commission, from time to time, shall prescribe.
- (f) In the event applicant does not furnish the written agreement as set out in Ordering Paragraph 2(a) within the time specified, the application is denied.

The effective date of this order is the date hereof.

Dated JAN 8 - 1920, at San Francisco, California.

John E. Guyon
President

Wm. L. Stanton

Richard W. Howell

Clair T. DeSpain

Arnold M. Jones
Commissioners

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Appendix A

MARK B. ANDERSON
doing business as
ADVENTURE TOURS

Original Title Page

CERTIFICATE

OF

PUBLIC CONVENIENCE AND NECESSITY

PSC - 1098

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. 91207
dated JAN 8 - 1987 of the Public Utilities Commission
of the State of California, in Application No. 59043.

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Appendix A

MARK B. ANDERSON
doing business as
ADVENTURE TOURS
(PSC-1098)

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Appendix A

MARK B. ANDERSON
doing business as
ADVENTURE TOURS
(PSC-1098)

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

Mark B. Anderson, an individual, doing business as Adventure Tours, by the certificate of public convenience and necessity granted by the decision noted in the margin, is authorized to operate as a passenger stage corporation between the Fashion Valley Shopping Center located in the City of San Diego, on the one hand, and that area commonly known as the Snow Summit Ski Resort in the vicinity of Big Bear Lake located in San Bernardino County, on the other hand, over and along the route hereinafter described, subject, however, to the authority of this Commission to change or modify said route at any time and subject to the following provisions:

- (a) 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.
- (b) When route descriptions are given in one direction, they apply to operation in either direction unless otherwise indicated.
- (c) All service herein authorized shall be limited to the transportation of round-trip passengers only.
- (d) All trips will begin and terminate from pickup points described in Section 2.
- (e) The tariff publications of Mark B. Anderson, an individual, doing business as Adventure Tours, shall contain clear and concise statements of rules and individual fares in order that prospective customers will be able to determine in advance the charges to be assessed for the service that is to be performed.

Issued by California Public Utilities Commission.

Decision No. 91207, Application No. 59043.

Appendix A

MARK B. ANDERSON
doing business as
ADVENTURE TOURS
(PSC-1098)

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

- (f) Mark B. Anderson, an individual, doing business as Adventure Tours, shall furnish this Commission with written agreement that he will abide by Part 12.00 of this Commission's General Order No. 98 in utilizing buses and drivers furnished by others.

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Appendix A

MARK B. ANDERSON
doing business as
ADVENTURE TOURS
(PSC-1098)

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SECTION 2. ROUTE DESCRIPTIONS.

Commencing at the southwest corner of the Fashion Valley Shopping Center parking lot at 352 Fashion Valley Road located in the City of San Diego, along the most appropriate route or routes to Interstate Highway 15(I-15), north on Interstate Highway 15(I-15), to California State Highway 330, thence northeast on California State Highway 330 to California State Highway 18, northeasterly on California State Highway 18 to Big Bear Boulevard, thence east on Big Bear Boulevard to Summit Boulevard, south on Summit Boulevard to that area commonly known as the Snow Summit Ski Resort in the vicinity of Big Bear Lake located in San Bernardino.

(End of Appendix A)

Issued by California Public Utilities Commission.

Decision No. 91207, Application No. 59043.