

ORIGINAL

Decision No. 91927 JUN 17 1980

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application)
of SAN FRANCISCO-YOSEMITE TOURS,)
INC., a California Corporation,)
for a Certificate of Public)
Convenience and Necessity to)
operate as a Passenger Stage)
Corporation, authorizing the)
transportation of passengers)
in round-trip sightseeing service)
from San Francisco to Yosemite)
National Park in mini-buses,)
pursuant to the provisions of)
Section 1031, et seq., of the)
Public Utilities Code of the)
State of California.)

Application No. 57152
(Filed March 17, 1977;
Petitions for Modification filed SS
June 15 and July 23, 1979)

- Eldon M. Johnson, Attorney at Law, for applicant and petitioner.
- Anthony P. Carr, Attorney at Law (Ohio), for California Parlor Car Tours, Inc. and Greyhound Lines, Inc.; and J. Mark Lavelle, for Dolphin Tours, Inc.; protestants. SS ;
- Ellis Ross Anderson, Attorney at Law, for Yosemite Park and Curry Company, interested party.
- Masaru Matsumura, for the Commission staff.

O P I N I O N

San Francisco-Yosemite Tours, Inc. (SFYT) petitions to modify its certificate of public convenience and necessity by removing limitations on bus size and by being allowed to conduct overnight tours, as well as the one-day tours presently authorized, between San Francisco and Yosemite National Park (Yosemite).

On April 8, 1980 the Commission staff received from SFYT a Certificate of Amendment of Articles of Incorporation

filed with the Secretary of State on October 3, 1979 to change the name of SFYT to Express Tours Unlimited.

The original application in this matter was filed on March 17, 1977. It requested authority to conduct daily (one-day round-trip) service from San Francisco to Yosemite, with minibuses only, providing multilingual service to the extent possible. Greyhound, Inc. (Greyhound) and California Parlor Car Tours, Inc. (Parlor Car) protested. After hearing, we issued Decision No. 90352, dated May 22, 1979. We found the service proposed to be substantially different from that provided by either protestant (citing Mexcursions, Inc., _____ CPUC _____, Decision No. 90155 in Application No. 57763 dated April 10, 1979) and granted the applicant the authority to conduct single-day round-trip service using minibuses (14 passengers or less) with the right not to operate in the event that there are fewer than five reservations by 5:00 p.m. the previous day.

For brevity we have described the route as "San Francisco-Yosemite." However, SFYT has authority for passenger stage operation only to the Merced facility of the Yosemite Park and Curry Company (Curry), where Curry drivers begin operating SFYT's vehicles pursuant to a trip-lease agreement provided by the National Park Service. Curry holds the passenger stage certificate to operate between Merced and Yosemite, and also holds exclusive authority from the National Park Service to operate bus service within the Park.

SFYT filed two petitions for modifications: the first requests removal of the limitation on bus size; the second asks modification of its certificate to allow round-trip transportation with the return trip scheduled not later than the second day following the trip from San Francisco. Both of these petitions are the subject of this decision. We note the objection of some protestants that the relief requested is too broad for one or

more petitions for modification and that a separate application is required. We disagree, but the short answer to this contention is that the substantial rights of the protestants were protected by holding full hearings (before ALJ Meaney on October 30 and 31, 1979), and taking the same full evidence that would have been admitted if a separate application had been required. (Cf. Public Utilities Code Section 1701.)

SFYT's Evidence

Mary and Richard Kline, SFYT's principal owners, testified regarding both petitions.

Regarding the operation of larger equipment, the petition proposes use of MC 5A diesel buses, starting with a 1966 model, equipped with a restroom and seating 39 passengers. Both witnesses stressed the fuel and operational problems that they had experienced with their van. They testified that it had, unexpectedly, proved not to be rugged enough to withstand continual long-distance trips and that they had encountered unexpectedly high maintenance costs.

In its presentation SFYT also pointed out that it first filed for its original authority in March of 1977 and that we did not grant it until 27 months later, during which time gasoline for van service became scarce. At the same time, diesel fuel for buses remained available during gas shortage periods because it was assigned a "100% of demand" mandatory allocation by the U. S. Department of Energy. Additionally, the Klins have found the large buses more economical on a per capita basis (the exact break-even point on fuel economy is not in evidence, although testimony indicated the overall break-even point as ten passengers.)

The Klins also mentioned comfort factors: more room, better vision, the convenience of an on-board restroom for a long trip such as San Francisco-Yosemite (driving time, one way, is roughly five and one-half hours) and easier entrance and exit for infirm passengers. Obese passengers have turned out to be a problem with vans, on days when all seats are sold.

One of SFYT's drivers was called as a witness and essentially corroborated the "comfort and convenience" testimony, pointing out that the larger bus can go to Yosemite with only one rest stop, because of the on-board restroom. Elderly passengers, he said, prefer the larger bus.

Regarding the petition for overnight service, Mary Kline testified that they had received requests from the public to "drop off" people overnight. Nancy Tisher, a part owner of SFYT whose chief duties are as dispatcher, testified that during peak season she received up to twenty calls a day for overnight service.

SFYT called two travel agents and a person employed as a bellman for a San Francisco hotel in support of overnight service. Their testimony, in summary, was that SFYT's service was good, that a one-day only tour allowed for only a short time (a few hours) in the park compared to the driving time, and that sometimes, Parlor Car, which has overnight authority, is booked up.

SFYT points out that although Parlor Car holds overnight (two-day, one-night) authority, it is not currently offering such service, but only a three-day two-night tour. (Parlor Car does not deny this; see further discussion infra.)

Yosemite Park & Curry Co.'s Presentation

Originally, Curry flatly protested the request for overnight authority on the ground that additional overnight accommodations are not available and that more of such tours would add to overcrowding. Together with its brief, Curry filed a revised statement of position which is unclear. No comment is made on the overcrowding situation; instead Curry states that SFYT has been running buses directly to the Park^{1/} causing Curry to lose revenue and control of vehicles in the Park. Curry points

^{1/} The U.S. National Park Service, not Curry, controls entrance to the Park. Curry has no direct authority to stop SFYT's vehicles at the gate.

out that its agreement to handle SFYT's buses from Merced was based on minibus-sized vehicles. The statement ends by saying that while Curry does not oppose the authority, we should require SFYT to enter into an agreement with Curry which will cover the operation.

During the hearings, however, Curry presented the testimony of Thomas L. Williams, one of its vice presidents. He testified that Curry owns 14 diesel buses and employs about 75 drivers, and that Curry transports about 55,000 passengers a year under its certificate from Merced, the vast majority of which are carried under interline agreements from points beyond Merced. Curry also drives the Parlor Car vehicles from Merced so that passengers do not have to change buses. Curry is interested in maintaining its revenue base from its buses.

The witness testified that on weekends and holidays in the spring to fall seasons, rooms on the valley floor are sold out six months in advance, and are sold out well in advance for the whole main season. He said that the government is very strict in dictating the number of rooms Curry may sell for tours.

The evidence demonstrated that, at least on occasion, SFYT did not observe its agreement with Curry and drove its bus directly into the Park.

Presentation of other Protestants

Parlor Car, Greyhound, and Dolphin Tours, Inc. protest the petitions for modification.

Dolphin holds a certificate to operate a passenger stage route from San Francisco to Yosemite (and other routes) restricted to narration in the Japanese language. Dolphin points out that expanding the authority of SFYT, which may conduct tours in languages

other than English, will likely result in diversion of Japanese-speaking clientele from Dolphin.^{2/}

Parlor Car and Greyhound agree that the original grant of authority to SFYT was based on the evidence in this proceeding that no one was actually offering one-day service to Yosemite from San Francisco and that, therefore, such service, in minibuses and for one day, would fill a need not served by other carriers. According to Greyhound and Parlor Car, existing large-vehicle service is adequate, consisting of (1) Greyhound's regular passenger service, from which a connection can be made to Curry's Merced-Yosemite route; (2) Parlor Car's overnight service, which includes authority for either a one- or two-night overnight trip from San Francisco; (3) Dolphin's service for Japanese-speaking persons, and (4) SFYT's existing one-day van service.

These protestants now characterize SFYT's original application as foot-in-door. Exhibit 39, a summary of SFYT's actual operations based on its own records, demonstrates that actual Yosemite operations began, unlawfully, with the use of a large bus on June 27, 1979. Not until the seventh trip, on July 9, was a van even used (a subchartered limousine was used for one trip); thereafter, through September 30, a bus and a van were used interchangeably. Greyhound and Parlor Car question whether SFYT ever intended to use its Yosemite authority as originally restricted.

^{2/} Dolphin also urges us to revise our original grant of authority and not allow SFYT to serve the Japanese-language market. This issue was fully litigated in the original hearings, etc. in this application and may not be re-tried. Cf. Northern Cal. Assn. To Preserve Bodega, etc. v P.U.C. (1964) 61 Cal 2d 126; 37 Cal Rptr 432.

SFYT counters by arguing that its evidence showed the bus was not run at full capacity (although Mr. Kline did admit to some violations as to number of passengers. Exhibit 39 shows eight occurrences in which more than 14 passengers, including half fares and travel agents, were carried, including one instance of 28 passengers and another of 22). SFYT's position is that the service started in this manner because of the gas shortage that worsened between the filing of the application and the date of Decision No. 90352.

On cross-examination of Mr. Kline, it also developed that SFYT's publicity for the Yosemite tour states "Relax in our modern air-conditioned restroom-equipped coaches". Protestants argue that the public might be misled into feeling assured they would ride in the large bus and not the van, when in fact either vehicle might be used.

Lastly, protestants point to the financial condition of SFYT. Exhibit 38 shows that for the four-month period June through September, 1979 (the peak tourist season) SFYT sustained an operating loss of \$2,685.06. Protestants argue that SFYT should have to demonstrate its ability to operate under its existing authority successfully before being allowed even more authority. Dolphin points out that it runs a daily tour and stays within its authority as a Japanese-narration tour carrier and is losing money on its Yosemite operation because of empty seats, even after expending sums on publicity. Greater competition from a carrier which may carry Japanese-language tours, under these circumstances, is not in order, in Dolphin's opinion.

In defense of its overnight proposal, SFYT showed (in cross-examination of the general manager of Parlor Car) that Parlor Car is only running a two-night overnight tour, although the witness said they are "prepared to institute" one-night service

if there is a demand for it. (Parlor Car's certificate does not specify the number of nights the tours must run.)

Discussion

In our opinion the record demonstrates that we should grant SFYT authority to use larger buses but deny its petition for overnight service.

Protestants justifiably bring to our attention matters of financial and operational fitness concerning SFYT. Our statements in Mexcursions, Inc., supra, and O'Connor Limousine Service Inc. (___ CPUC ___, Decision No. 90154 dated April 10, 1979 in Application No. 56580) concerning the difference between general passenger carriage and sightseeing under Public Utilities Code Sections 1031 and 1032 were not intended to encompass the demise of a demonstration of fitness to perform the proposed service. Here, however, much of applicant's financial difficulty is traceable to conditions it could not have readily anticipated, namely, (1) unexpected maintenance expenses and consistent operational problems with the van, and (2) the gas shortage. While SFYT's authority did not encompass the use of a diesel bus, its doing so is at least understandable since, at times, the alternative appeared to be temporary suspension of the route due to lack of fuel. We therefore believe that these negative fitness factors are, under the circumstances, minor. Most unfortunate is SFYT's use of brochures which can be interpreted to mean in every case that a restroom-equipped "coach" will be used. If SFYT intends to continue to use a van or limousine (either its own or under subcharter) for smaller loads, it will be required to say so in its publicity.

Moreover, we believe SFYT has made a strong showing of public need for the use of a larger vehicle in one-day service. The one-way driving time to Yosemite from San Francisco is about 5-1/2 hours; comfort and convenience factors are important. In the peak season, larger passenger loads and a lower per capita cost may alleviate SFYT's financial situation. While it is true that SFYT may run foreign language tours, it has not stressed this element of its business and we believe diversion of business from Dolphin, if any, will be minimal.

Regarding Greyhound's service, while it is possible to travel to Merced and then take Curry's service to Yosemite, such service is not designed to attract the tour passenger, and certainly cannot accommodate the tourist who wishes a one-day round trip schedule.

SFYT is admonished that we do not condone its running vehicles directly to Yosemite in violation of its certificate and its agreement with Curry. This is a serious violation, especially considering the limited capacity of Yosemite Valley. It is now common knowledge that the valley floor is becoming overcrowded during the Spring, summer, and fall seasons and that the National Park Service is investigating methods of reducing vehicular traffic and perhaps even limiting the number of people permitted into the Park, and into the valley in particular. Also, as counsel for Curry pointed out, Curry has invested in its Merced bus route by purchasing equipment, maintaining a Merced depot, and employing a staff of drivers. Counsel for Curry stated that Curry was favorably disposed to entering into an interlining agreement with SFYT so that SFYT's passengers would not have to change buses at Merced.

We will order SFYT to cease its route violations and will require it to enter into good-faith negotiations with Curry concerning a new SFYT-Curry agreement which will permit inter-lining of SFYT's larger buses. If for any reason such an agreement is not consummated, SFYT is not relieved from its responsibility to observe its route limitations. If SFYT's passengers must change buses at Merced, its publicity should so indicate. We will take further action if there are route violations.

Regarding the request for overnight service, we believe that even without any of the protestants' evidence, SFYT failed to present a prima facie case that modification should be granted. SFYT made no affirmative showing that accommodations at or near Yosemite would be available for the overnight passengers it would solicit. It had no well-thought-out plan for either making such reservations or checking any documentation to see if a passenger would have his own advance reservation. Mr. Kline's general assurances that some system would be worked out (see Tr. 285 and 311) are not sufficient. With conditions at Yosemite as they are (discussed previously) we do not believe we serve the public need by certifying any more overnight runs to Yosemite without a clear and convincing showing that definite arrangements have been made to assure accommodations.

By contrast, Parlor Car offers a package tour for a package price which includes a prepaid reservation, usually made months in advance. We recognize that the evidence shows Parlor Car to be running a three-day, two-night tour only. No party offered any organized survey, one way or the other, to show the demand, or lack of it, for a one-night tour. (Yosemite's testimony suggests that there may be a problem, at least in the peak season, in

scheduling one-night only reservations.) We therefore make no findings on the need for such an arrangement. Parlor Car should not, however, regard its certificate as an ironclad grip on one-night overnighters when it is not running such a service. Non-use of part of a certificate may, under certain conditions, constitute abandonment of that part (see discussion, Kadletz v Gray Line Tours Co., ___ CPUC ___, Decision No. 89804, December 19, 1978, Case No. 10601, and A.C. Cal Spanish Tour Service, ___ CPUC ___, Decision No. 89945, January 30, 1979, Application No. 57371).

We note that we are now at the beginning of the high point in the 1980 California tourist season. Because the processing of these petitions was delayed by other matters, we will make the order in this decision effective on the date it is signed so that the public and SFYT may benefit by the use of the larger buses for SFYT's one-day service.

Findings of Fact

1. SFYT's present certificate permits it to offer minibus (up to 14 passenger) service from San Francisco to Merced facility of Curry, from where its vehicles are driven to Yosemite by Curry, and a return trip by the same route. The operation is restricted to single-day round trips.

2. Over two years elapsed between the filing of the original application and the effective date of Decision No. 90352. During that time a fuel shortage had developed which made it difficult for SFYT to commence its operation entirely with the use of vehicles using gasoline. SFYT therefore began using a diesel bus for some of its runs.

3. SFYT has encountered unexpectedly high costs connected with maintaining its van. It has proved mechanically unreliable for frequent long-distance driving.

4. The 39-passenger diesel bus has proved superior for San Francisco-Yosemite service because of the availability of diesel fuel during gas shortage periods, because of better reliability mechanically, and because of comfort and convenience factors as reviewed in the discussion section of this decision.

5. The evidence shows that SFYT on occasion received up to 20 calls a day for overnight Yosemite service, but SFYT presented no organized survey which supported overnight trips.

6. SFYT failed to demonstrate that it has any well-thought-out plan for making overnight Yosemite reservations or assuring that those who would board its buses for its proposed Yosemite overnight service would have their own advance reservations.

7. During the spring, summer, and fall, overnight reservations at Yosemite are sold out well in advance. The U. S. National Park Service sets strict limits on the number of reservations which Curry may sell. The valley floor is becoming overcrowded during the peak season.

8. Curry holds a certificate of public convenience and necessity for passenger stage service between Merced and Yosemite. It owns 14 diesel buses, employs about 75 drivers, and maintains a terminal at Merced. Curry's service transports about 55,000 passengers a year between Merced and Yosemite.

9. Dolphin holds a certificate to operate a passenger stage route from San Francisco to Yosemite, limited to round-trip fares and also limited to tours conducted with Japanese narration. While SFYT is authorized to conduct tours in foreign languages, including Japanese, this is not its primary business, and the use of larger buses will not have more than minimal effect on Dolphin's operation.

10. Greyhound operates regular (general passenger) routes to and from Merced. This service is not designed to accommodate adequately persons who wish a single-day round-trip tour between San Francisco and Yosemite.

11. Parlor Car holds a certificate for overnight service between San Francisco and Yosemite. The certificate does not specify the number of nights which tours must include. At present, Parlor Car is actually operating a three-day, two-night tour only.

12. SFYT has on occasion gone beyond its authorized route and driven its vehicle directly to Yosemite.

13. Exhibit 39 demonstrates that SFYT sometimes operated its route with a 39-passenger diesel bus rather than a minibus, and sometimes took more passengers than authorized.

14. Some of the SFYT's publicity implies that all trips would be made in an air-conditioned restroom-equipped coach.

Conclusions of Law

1. SFYT has failed to establish that its certificate should be modified to allow it to conduct overnight San Francisco-Yosemite passenger stage tour service.

2. The record in this proceeding demonstrates that we should grant SFYT modification of its existing passenger stage certificate to allow it to use diesel buses not exceeding a 39-passenger capacity.

3. SFYT should be ordered to cease violations of its certificate and should be admonished that we will take further action if future violations occur.

4. SFYT should be ordered to assure that its publicity is accurate.

5. SFYT should be ordered to enter into good faith negotiations with Curry in an attempt to enter into an agreement that will permit SFYT's passengers to be driven in SFYT's buses by Curry's drivers from Merced to Yosemite, and return, rather than having to change buses.

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

7. The effective date of this order should be the date it is signed because the conclusion of this proceeding has been delayed by other matters and because it is reasonable to allow SFYT, and the public, the use of larger buses on SFYT's San Francisco-Yosemite route during the 1980 spring, summer, and fall seasons.

O R D E R

IT IS ORDERED that:

1. The petition of San Francisco-Yosemite Tours (SFYT), now known as Express Tours Unlimited, to modify its certificate to allow it to conduct overnight tours from San Francisco to Yosemite National Park is denied.

2. SFYT's certificate of public convenience and necessity, issued in Decision No. 90155 dated April 10, 1979, is modified as set forth in Appendix A to this decision to permit operation of SFYT's Yosemite service with diesel buses not exceeding a 39-passenger capacity.

3. SFYT shall enter into good faith negotiations with Curry for the purpose of concluding a written agreement with Curry which will permit Curry personnel to drive SFYT's buses between Merced and Yosemite, thus making it unnecessary for SFYT's passengers to change buses at Merced.

4. SFYT shall strictly observe the limits of its authority regarding its route, its equipment size, and in all other particulars. SFYT is admonished that we shall take prompt action in the event of further violations.

5. SFYT's publicity shall fairly and accurately inform the public about the equipment to be used and the extent of its route. Pending an agreement with Curry, SFYT's advertising shall indicate that there is a change of buses in Merced. If SFYT intends to keep using its van or to subcharter limousines for small loads, its advertising and schedules should so indicate.

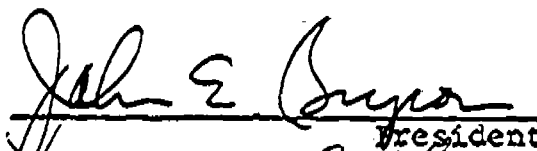
6. In providing service pursuant to the authority granted by this order, SFYT shall comply with the following service regulations. Failure to do so may result in a cancellation of the authority.

- (a) Within thirty days after the effective date of this order, SFYT shall file a written acceptance of the revised certificate. SFYT is placed on notice that if it accepts the revised 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 as they relate to the large size equipment.

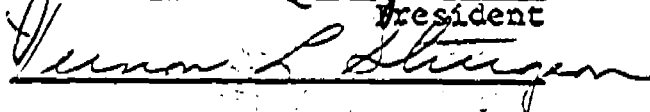
- (b) Within one hundred twenty days after the effective date of this order, SFYT shall establish the authorized service and file tariffs and timetables, in triplicate, in the Commission's office reflecting the use of the large size equipment.

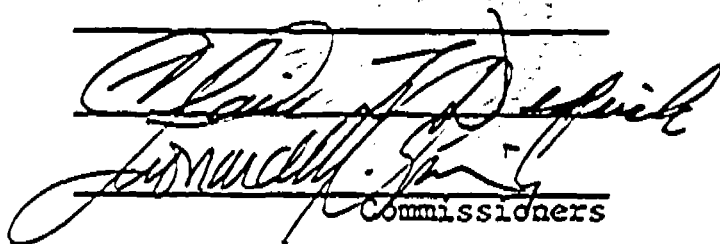
The effective date of this order is the date hereof.

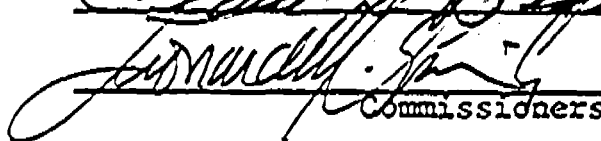
Dated JUN 17 1980, at San Francisco, California.



President






Commissioners

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

T/CBG

Appendix A
(Decision 90352)

First Revised Title Page
Cancels
Original Title Page

*EXPRESS TOURS UNLIMITED

CERTIFICATE
OF
PUBLIC CONVENIENCE AND NECESSITY
AS A PASSENGER STAGE CORPORATION

PSC - 1075

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.

*Modified under Decision No. 91927
dated JUN 17 1929, of the Public Utilities
Commission of the State of California, in Application No. 57152.

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

*Express Tours Unlimited, a California corporation, by the Certificate of Public Convenience and Necessity to operate as a passenger stage corporation granted by the decision noted in the margin, is authorized to transport passengers for sightseeing between the City and County of San Francisco via San Francisco-Oakland Bay Bridge (Interstate Highway 80), Interstate Highway 580, California Highways 132 and 99, and to the Yosemite Park & Curry Company facility in Merced, subject to the authority of this Commission to change or modify said route at any time and subject to the following provisions:

- a. Service herein authorized shall be limited to the transportation of single-day, round-trip passengers only.
- b. Scheduled daily service shall be provided, including weekdays, weekends and holidays.
- c. Carrier reserves the right not to operate in the event that there are less than five (5) reservations by 5:00 p.m. on the day preceding a tour.
- d. Carrier shall not transport any baggage except hand-carried items of the passengers.
- *e. Service shall be provided using vehicles with a seating capacity not exceeding 39 passengers.

Issued by California Public Utilities Commission.

*Modified by Decision No. 91S27, Application No. 57152.