

Decision No. 92285 OCT 8 1980

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the Application)
of Commute Service, Inc., a)
California corporation, to trans-)
fer and Harrell's Tours, to)
acquire, a portion of a Certifi-)
cate of Public Convenience and)
Necessity, pursuant to Section)
851 et seq., of the California)
Public Utilities Code.)

Application No. 59797
(Filed July 7, 1980)

In the matter of the Application)
of Commute Service, Inc., a)
California corporation, to trans-)
fer and Homer W. Price dba CV Com-)
mute Service, to acquire, a por-)
tion of a Certificate of Public)
Convenience and Necessity, pursu-)
ant to Section 851 et seq., of)
the California Public Utilities)
Code.)

Application No. 59808
(Filed July 11, 1980)
(Amended August 12, 1980)

O P I N I O N

By Decision No. 85759, dated May 4, 1976, Commute Service, Inc. (Commute) was issued a certificate of public convenience and necessity to operate as a passenger stage corporation (PSC-862) between the Cities of Livermore, Pleasanton, Fremont, Newark, Hayward, Milpitas, and the northern part of the City of San Jose within three miles of the city limits of Milpitas, on the one hand, and the United Airlines Maintenance Base located at the San Francisco International Airport, on the other hand, subject to certain provisions.

Due to the fact that both Applications Nos. 59797 and 59808 involve transfers of portions of Commute's certificate, the two applications are being resolved by this common decision.

A. 59797 and A. 59808 - T/IE

By Application No. 59797, Commute applied to transfer, and Kenneth Harrell doing business as Harrell's Tours (Harrell) applied to acquire, a portion of a certificate of public convenience and necessity, pursuant to Section 851 et seq., of the California Public Utilities Code. The portion of the Commute certificate, as requested in the application, was for Livermore, Pleasanton, and Dublin. On July 25, 1980 the Commission staff wrote a letter to Harrell informing him that Commute did not have Dublin authority and therefore could not transfer it to Harrell. In response, Harrell wrote a letter to the Commission on August 11, 1980 stating that one of the pickup points in the application was erroneously stated to be in Dublin, but was, in fact, actually in Pleasanton. With this clarification, Application No. 59797 does not now request Dublin authority.

By Application No. 59808, Commute applied to transfer, and Homer W. Price doing business as CV Commute Service (Price) applied to acquire, a portion of a certificate of public convenience and necessity, pursuant to Section 851 et seq., of the California Public Utilities Code. The portion of the Commute certificate, as requested in the application was for Castro Valley and Hayward. On July 25, 1980 the Commission staff wrote a letter to Price informing him that Commute did not have Castro Valley authority and therefore could not transfer it to Price. On August 12, 1980 Price filed an amendment to Application No. 59808 per Section 1031 et seq., of the California Public Utilities Code, requesting authority to also serve a pickup point at the intersection of Castro Valley Boulevard and Marshall Street, in Castro Valley.

Commute will retain the portion of its Hayward authority that it is not transferring to Price, namely that portion that Commute presently serves, pursuant to its current tariff and timetable, as set forth on Original Page 4 in Appendix A to Decision No. 85759, attached hereto.

Harrell and Price propose to use 40 passenger and 45 passenger buses, respectively.

In their applications, Harrell and Price aver net assets of \$167,095 and \$135,100, respectively.

Application No. 59797 was listed on the Commission's Daily Calendar of July 11, 1980. Application No. 59808 and its subsequent amendment were listed on the Commission's Daily Calendar on July 16, 1980 and August 14, 1980, respectively. A letter, dated September 24, 1980 protesting Application No. 59797, was sent by James F. D'Aoust of Altamont Tours (PSC-1132) to the Commission. The allegations, stated in this letter, do not warrant a public hearing of Application No. 59797.

Findings of Fact

1. It can be seen with certainty that there is no possibility that the new Castro Valley service involved in these proceedings may have a significant effect on the environment.
2. Harrell and Price have the operating equipment and financial ability to conduct the operations as proposed.
3. Public convenience and necessity require the Castro Valley service proposed by Price.
4. The proposed transfers would not be adverse to the public interest.
5. Because public convenience and necessity require the continuous operation of these services, the Commission finds that the effective date of this order shall be the date hereof.

Conclusions of Law

1. The proposed transfers should be authorized to the extent set forth in the ensuing order.
2. A certificate of public convenience and necessity to operate as a passenger stage corporation should be granted to Price for the Castro Valley service to the extent set forth in the ensuing order.

The order which follows will provide for, in the event one or both of the transfers is completed, the revision of the certificate presently held by Commute Service, Inc. (PSC-862) and the issuance of the certificate in appendix form issued to Kenneth Harrell, doing business as Harrell's Tours, and/or Homer W. Price, doing business as CV Commute Service.

A. 59797 and A. 59808 - T/IE

Harrell and Price are 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. Within ninety days after the effective date of this order the seller, Commute Service Inc., may sell and transfer the operative rights referred to in Application No. 59797 to the purchaser Kenneth Harrell doing business as Harrell's Tours.
2. Within thirty days after the transfer authorized in paragraph 1, the seller and the purchaser shall file with the Commission written acceptance of the certificates and a true copy of the bill of sale or other instrument of transfer.
3. Pursuant to the transfer authorized in paragraph 1, the purchaser shall issue and the seller shall amend or reissue the tariffs and timetables on file with the Commission, naming rates and rules governing the passenger stage operations transferred to show that they have adopted or established, as their own, the rates and rules. 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 transfer. The tariff and timetable filings made pursuant to this order shall comply in all respects 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. Failure to comply with the provisions of General Orders Nos. 79-Series and 98-Series may result in a cancellation of the operating authority granted by this decision.

4. In the event the transfer authorized in paragraph 1 is completed, effective concurrently with the effective date of the tariff filings required by paragraph 3, a certificate of public convenience and necessity is granted to Kenneth Harrell, doing business as Harrell's Tours, authorizing him to operate as a passenger stage corporation, to transport passengers and their accompanying baggage, as defined in Section 226 of the California Public Utilities Code, between the points and over the routes set forth in Appendix A of this decision, attached hereto.

5. Pursuant to the transfer authorized in paragraph 1, on or before the end of the third month after the transfer, the purchaser shall cause to be filed with the Commission, in such form as the Commission may prescribe, an annual report, or reports, related to the operations of the seller for the period commencing with the first day of the current year to and including the effective date of the transfer.

6. Pursuant to the transfer authorized in paragraph 1, purchaser shall comply with the safety rules administered by the California Highway Patrol, the rules and regulations of the Commission's General Order No. 98-Series, and the insurance requirements of the Commission's General Order No. 101-Series.

7. Pursuant to the transfer authorized in paragraph 1, purchaser 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.

8. Within ninety days after the effective date of this order, the seller Commute Service, Inc. may sell and transfer the operative rights referred to in Application No. 59808 to the purchaser Homer W. Price, doing business as CV Commute Service.

9. Within thirty days after the transfer authorized in paragraph 8, the seller and the purchaser shall file with the Commission written acceptance of the certificates and a true copy of the bill of sale or other instrument of transfer.

10. Pursuant to the transfer authorized in paragraph 8, the purchaser shall issue and the seller shall amend or reissue the tariffs and timetables on file with the Commission, naming rates and rules governing the common carrier operations transferred to show that they have adopted or established, as their own, the rates and rules. 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 transfer. The tariff and timetable filings made pursuant to this order shall comply in all respects 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. Failure to comply with the provisions of General Orders Nos. 79-Series and 98-Series may result in a cancellation of the operating authority granted by this decision.

11. In the event the transfer authorized in paragraph 8, is completed, effective concurrently with the effective date of the tariff filings required by paragraph 10, a certificate of public convenience and necessity is granted to Homer W. Price, doing business as CV Commute Service authorizing him to operate as a passenger stage corporation, to transport passengers and their accompanying baggage, as defined in Section 226 of the California Public Utilities Code, serving the points in Hayward as set forth in Appendix B of this decision, attached hereto. ✓ SS

12. Pursuant to the transfer authorized in paragraph 8, on or before the end of the third month after the transfer, the purchaser shall cause to be filed with the Commission, in such form as the Commission may prescribe, an annual report, or reports, related to the operations of the seller for the period commencing with the first day of the current year to and including the effective date of the transfer.

13. Pursuant to the transfer authorized in paragraph 8, purchaser shall comply with the safety rules administered by the California Highway Patrol, the rules and regulations of the Commission's General Order No. 98-Series, and the insurance requirements of the Commission's General Order No. 101-series.

14. Pursuant to the transfer authorized in paragraph 8, purchaser 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.

15. In the event both of the authorized transfers are completed, the certificate of public convenience and necessity granted to Commute Service, Inc. (PSC-862) is revised as shown on First Revised Page 1 Cancels Original Page 1 and Original Page 4 in Appendix A to Decision No. 85759, attached hereto, effective with the effective date of the last tariff filings required by paragraphs 3 and 10. —
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16. In the event one but not both of the authorized transfers is completed, then Commute Service, Inc. shall continue service to all points not so transferred, in accordance with the tariffs and timetables in effect on the effective date of this order. The Commission will then issue a corrected certificate to Commute Service, Inc. by Supplemental Order, formally setting forth its remaining operating authority. Transfer of any authority as herein authorized shall constitute acceptance of this order by Commute Service, Inc.

17. A certificate of public convenience and necessity is granted to Homer W. Price, doing business as CV Commute Service, authorizing

him to operate as a passenger stage corporation, to transport passengers and their accompanying baggage, as defined in Section 226 of the Public Utilities Code, between the intersection of Castro Valley Boulevard and Marshall Street in Castro Valley, on the one hand, and the United Airlines Maintenance Base located at the San Francisco International Airport, on the other hand, as set forth in Appendix B of this decision, attached hereto.

18. In providing service pursuant to the authority granted by paragraph 17, Homer W. Price, doing business as CV Commute Service, shall comply with the following service regulations. Failure to do so may result in a cancellation of the authority.

- (a) Within thirty days after the effective date of this order, applicant shall file a written acceptance of the certificate granted. Applicant is placed on notice that if he accepts the certificate he will be required, among other things, to comply with the safety rules administered by the California Highway Patrol, the rules and other regulations of the Commission's General Order No. 98-Series, and the insurance requirements of the Commission's General Order No. 101-Series.
- (b) Within one hundred twenty days after the effective date of this order, applicant shall establish the authorized service and file tariffs and timetables, in triplicate, in the Commission's office.
- (c) The tariff and timetable filings shall be made effective not earlier than ten days after the effective date of this order on not less than ten days' notice to the Commission and the public, and the effective date of the tariff and timetable filings shall be concurrent with the establishment of the authorized service.
- (d) The tariff and timetable filings made pursuant to this order shall comply with the regulations governing the construction and filing of tariffs and timetables set forth in the Commission's General Orders Nos. 79-Series and 98-Series.

A. 59797 and A. 59808 - T/IE*

- (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.

19. In the event the transfer authorized in paragraph 8 is completed but the service regulations of paragraph 18 are not complied with, or in the event the transfer authorized in paragraph 8 is not completed but the service regulations of paragraph 18 are complied with, then the Commission will issue a corrected certificate to Homer W. Price, doing business as C.V. Commute Service by Supplemental Order, formally setting forth its correct operating authority. Completion of the transfer authorized in paragraph 8 or compliance with the service regulations of paragraph 18 shall constitute acceptance of this order by Homer W. Price, doing business as CV Commute Service.

The effective date of this order is the date hereof.

Dated OCT 8 1980, at San Francisco, California.

Commissioner Claire T. Dodrick, being necessarily absent, did not participate in the disposition of this proceeding.

Jed E. Gray
President

Simon L. Sturgeon

Richard D. Howell

Samuel H. Smith
Commissioners

Appendix A

KENNETH HARRELL
Doing Business As
HARRELL'S TOURS

Original Title Page

CERTIFICATE
OF
PUBLIC CONVENIENCE AND NECESSITY
AS A PASSENGER STAGE CORPORATION

PSC-1137

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. 92285
dated OCT 8 1980 of the Public Utilities Commission
of the State of California, in Application No. 59797.

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

Kenneth Harrell, doing business as Harrell's 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 to transport passengers between points in Livermore and Pleasanton on the one hand, and the United Airlines Maintenance Base at the San Francisco International Airport on the other hand, subject, however, to the authority of this Commission to change or modify said authority at any time and subject to the following provisions:

- (a) All transportation of passengers shall originate at the pickup points hereinafter specified, on the one hand and shall be destined to the United Airlines Maintenance Base at the San Francisco International Airport on the other hand, or the reverse.
- (b) 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.
- (c) When route descriptions are given in one direction, they apply to operation in either direction unless otherwise indicated.

Issued by California Public Utilities Commission.

Decision No. 92285, Application No. 59797.

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Appendix A

KENNETH HARRELL
Doing Business As
HARRELL'S TOURS
(PSC-1137)

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SECTION 2. ROUTE DESCRIPTIONS.

Commencing in the City of Livermore with a pickup point at the intersection of North Livermore Avenue and Las Positas Boulevard; thence via the most appropriate streets and highways to the City of Pleasanton with a pickup point at the intersection of Hopyard Road and Stoneridge Drive; thence to a pickup point (also in Pleasanton) at the intersection of Stoneridge Drive and Foothill Road; thence via the most appropriate streets and highways to the United Airlines Maintenance Base at the San Francisco International Airport.

Issued by California Public Utilities Commission.

Decision No. 92285, Application No. 59797.

Appendix B

HOMER W. PRICE
Doing Business As
CV COMMUTE SERVICE

Original Title Page

CERTIFICATE
OF
PUBLIC CONVENIENCE AND NECESSITY
AS A PASSENGER STAGE CORPORATION

PSC-1138

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. 92285
dated OCT 8 1980 of the Public Utilities Commission
of the State of California, in Application No. 59808

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

Homer W. Price, doing business as CV Commute Service, 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 to transport passengers between points in Castro Valley and Hayward on the one hand, and the United Airlines Maintenance Base at the San Francisco International Airport on the other hand, subject, however, to the authority of this Commission to change or modify said authority at any time and subject to the following provisions:

- (a) All transportation of passengers shall originate at the pickup points hereinafter specified, on the one hand and shall be destined to the United Airlines Maintenance Base at the San Francisco International Airport on the other hand, or the reverse.
- (b) 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.
- (c) When route descriptions are given in one direction, they apply to operation in either direction unless otherwise indicated.

Issued by California Public Utilities Commission.

Decision No. 92285, Application No. 59808.

SECTION 2. DESCRIPTION OF POINTS SERVED

Service to Castro Valley and Hayward to the United Airlines Maintenance Base shall be provided at the following pickup points only via the most appropriate streets and highways:

CASTRO VALLEY - Castro Valley Boulevard & Marshall Street

HAYWARD - Washington Avenue & Lewelling Boulevard
Washington Avenue & Grant Avenue
Via Alamitos & Paseo Grande
Via Alamitos & Via Manzanas
Via Alamitos & Bockman Road
Bockman Road & Via Arriba
Hesperian Boulevard & West "A" Street
Hesperian Boulevard & Depot Road

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

The certificate hereinafter noted supersedes all operative authority heretofore granted to Commute Service, Inc.

Commute Service, Inc., 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 passengers on passenger-carrying vehicles between the Cities of * , Fremont, Newark, Hayward, Milpitas, and the northern part of the City of San Jose within three miles of the city limits of Milpitas, on the one hand, and the United Airlines Maintenance Base located at the San Francisco International Airport, on the other hand, over the most suitable public roads and highways, subject to the following provisions:

- (a) Schedules shall be designed to meet the working hours of employees.
- (b) No passengers shall be transported except those having point of origin or destination at said United Airlines Maintenance Base.
- (c) Service area in Santa Clara County which includes the City of Milpitas and the northern part of the City of San Jose within three miles of the city limits of Milpitas is further restricted to specific pickup and discharge points in its specific shift as noted and hereinafter described in Section 2.
- *(d) Service area in the City of Hayward shall be restricted to the specific pickup and discharge points as noted and hereinafter described in Section 2.

Issued by California Public Utilities Commission.

*Changed by Decision No. 92285 in Application No. 59797 and 59808.

SECTION 2. DESCRIPTION OF POINTS SERVED. (Continued)

Service for specific pickup and discharge points in the City of Hayward shall be between the United Airlines Maintenance Base and the following points only:

Hayward - Industrial Boulevard and Sleepy Hollow Avenue,
Tennyson Road and Hesperian Boulevard,
Cryer Street and Chapman Avenue,
Cryer Street and Gettysburg Avenue.

Issued by California Public Utilities Commission.

Decision No. 92285, Application No. 59797 and 59808.