

ALJ/rr/hh

ORIGINAL

Decision No. 92973 APR 21 1981

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the application of)
 Union Leasing Services Ass'n for)
 certification (sic) of public)
 convenience and necessity to)
 operate a passenger and express)
 shopping service from the)
 mountains of San Bernardino)
 County to shopping malls in the)
 City of San Bernardino.)

Application No. 59932
 (Filed September 10, 1980;
 amended January 28, 1981)

James H. Gay, for himself, applicant.
Gerald E. Hanford and Jo Anne Hanford,
 for themselves, protestants.

O P I N I O N

By this application, as amended, applicant James H. Gay, doing business as Union Leasing Services Association, seeks authority pursuant to Section 1031 of the Public Utilities Code, to operate as a passenger stage corporation for the transportation of passengers and their baggage between Running Springs, Lake Arrowhead, Crestline, Big Bear Lake, and certain nearby points, on the one hand, and points in the city of San Bernardino, on the other hand.

Protestants Gerald E. Hanford and Jo Anne Hanford, doing business as Mountain Area Transit Company, have opposed the granting of the application. The basis for the opposition is that protestants only recently received their own certificate of public convenience and necessity authorizing service between the points sought to be served by applicant.

Hearing was held in Los Angeles on February 19, 1981 before Administrative Law Judge John S. Lemke and the matter was submitted.

The Evidence

A. Applicant

Applicant proposes to perform two distinct services between the mountain communities and San Bernardino. The first involves a reservation-basis shopping excursion service for residents living in the San Bernardino Mountains. The service would apply only for the transportation of members of an association which applicant would organize. The purpose of the association would be to establish a fund source to defray setting up costs for providing the service. Initially, applicant proposed to assess members a one-time fee of \$7.50. By letter dated February 26, 1981 applicant advises he would revise this fee to \$1.00.

Applicant alleges that retail outlets in the mountains for basics such as food and clothing are inadequate; that those goods which are available in the area are extremely expensive. He testified that by transporting residents to San Bernardino shopping centers he will afford them the opportunity to save 30-35 percent in retail costs. Applicant intends initially to use a 24-passenger capacity minibus with interior shelving for parcels. Additional cargo capacity will be provided with a large roof rack.

Applicant testified that he will offer a customized service designed especially to meet the needs of mountain residents who wish to avoid using, or are unable to drive, their own automobiles. He has contacted about 400 individuals in the area.

Approximately 65 percent of these people do their shopping in San Bernardino twice each month, and have expressed an interest in the proposed service. Applicant intends to go into each community and pick up customers at or near their homes; take them to the entrance of a major shopping mall in San Bernardino; load their parcels into the bus; return the passengers to their individual homes and unload their parcels. Round-trip schedules would be about three hours, offered in the middle of the day in order to avoid morning and afternoon rush-hour traffic. Shoppers would receive their route schedules about three weeks in advance of the schedule, and would be again notified the day before the trip. Fares would be payable in advance of the service. The application contains letters from two members of the Board of Supervisors of the county of San Bernardino in support of the sought authority.

The second service proposed by applicant from the same mountain origins is for the transportation of mentally and physically handicapped people between their homes and therapy and vocational centers in San Bernardino. This transportation would be performed with a 15-passenger van. The application contains a letter of endorsement from Inland Counties Development Disabilities Services, a private, nonprofit corporation under contract to the State of California to serve the developmentally disabled. This organization has eight to ten clients residing in the area sought to be served by applicant. It would like to see transportation for this clientele five days per week, to day programs located in San Bernardino.

Applicant alleges that (1) the current cost of operating an automobile approximates 50 cents per mile; (2) the round-trip mileage between Running Springs and San Bernardino is about 40 miles; (3) the cost therefor is over \$19.00; and (4) his proposed fare of \$11.50 compares favorably with this cost.

Applicant is presently engaged in the auto-truck sales and leasing business. He intends to operate leased equipment in performing his passenger stage services. His operating background includes experience in logistics and transportation planning with the United States Air Force. The financial statement attached to his application shows total assets of \$133,870, liabilities of \$94,200, and a net worth of \$39,670.

B. Protestants

Protestants state they are willing to provide most of the services proposed by applicant. However, they did not request certification to provide door-to-door service in connection with their own authority, granted by Decision No. 92278, dated October 8, 1980 in Application No. 59260. They can, in effect, provide door-to-door service indirectly in the Big Bear Lake area for an extra charge, inasmuch as they are the operators of a dial-a-ride taxi service which can meet protestants' bus when it arrives.

Protestants operate a 39-passenger capacity bus in two schedules daily between Big Bear Lake and San Bernardino and intermediate points. They offered in evidence an exhibit which is a ridership chart for the 48-day period including January and the first 17 days of February, 1981. Schedule No. 1 leaves Big Bear Lake at 8:15 a.m., arriving San Bernardino at 10:30 a.m. It then leaves San Bernardino at 11:15 a.m. and arrives back at Big Bear Lake at 12:45 p.m. A similar schedule is operated with the same bus in the afternoon, departing Big Bear Lake at 1:30 p.m. and returning at 5:45 p.m. The ridership chart shows that for the 48-day period, protestants transported 340 fares on the morning schedule, an average of seven passengers per day. They transported 430 fares on the afternoon schedule, an average of nine passengers per day.

A comparison of applicant's and protestants' proposed and present round-trip fares between San Bernardino and various points is shown in Table I.

Table I

	<u>Applicant's Proposed Fares</u>	<u>Protestants' Present Fares</u>
Big Bear Lake	\$11.50	\$7.20
Lake Arrowhead Village	11.50	4.95
Running Springs	11.50	5.85
Crestline	11.50	3.15

Applicant's proposed fares are considerably higher than those currently assessed by protestants because of the highly personalized service applicant intends to provide. In addition to the fares proposed by applicant, he would assess a one-time association membership fee to all users of his shopping excursion service.

Discussion

Applicant proposes to institute service from mountain communities presently served by a single passenger stage corporation. Applicant's shopping excursion service would be "customized," i.e., tailored to the needs of persons who desire to avoid the expense and stress of operating their own automobiles. It is especially designed to give assistance to elderly customers who may not be readily able to load and unload parcels and carry them several blocks to their homes. The service would be performed only on a reservation basis. This would involve a cooperative effort on the part of prospective customers. For instance, if some shoppers desire to make a trip on a Monday and another group prefers a Wednesday excursion, applicant may reconcile both groups to a common trip date in order to minimize his operating expenses. This may not be consistent with

traditional unequivocal holding out or fixed scheduling concepts underlying common carriage. However, it is in keeping with this Commission's recent statements concerning authorization of passenger stage operations for a public which finds itself increasingly confronted with the need for innovative for-hire transportation services.^{1/}

Protestants have only recently begun their own passenger stage operation--November 24, 1980 marked the commencement of their service. Protestants' service is designed to accommodate the broader public, rather than to the special needs of any particular group of passengers. Although they cannot presently perform the door-to-door service sought by applicant, protestants' present customers could avail themselves of that proposed service, if we grant this application. A brief discussion, therefore, of the relevance of Public Utilities Code Section 1032 as it relates to the facts presented in this case is warranted.

Public Utilities Code Section 1032

The last sentence of Section 1032 of the Public Utilities Code states:

"The commission may, after hearing, issue a certificate to operate in a territory already served by a certificate holder under this part only when the existing passenger stage corporation or corporations serving such territory will not provide such service to the satisfaction of the commission."

The question of the application of Section 1032 has been considered extensively in two recent Commission decisions. In American Buslines, Inc. (supra) we stated:

^{1/} American Buslines, Inc. D.91279, dated January 29, 1980 in Application 58457.

"...Competition stimulates efforts of competitors to excel, which accrues to the benefit of the general public. In the instant proceeding active competition between the involved parties will have a direct bearing on the quality of overall treatment afforded passengers, rates, scheduling, equipment condition, and operational innovation generally. The overall effect of such competitive practices could very well be the provision of a publicly acceptable alternative to private automobile use which, in these times of energy shortage, will rebound to the overall benefit of the general public.

* * *

"In addition, we also note that Section 1032 leaves the Commission the task of determining whether, and under what circumstances, existing passenger stage corporations provide satisfactory service (which would preclude a new entrant into the field).

"In these times of acute and prolonged energy shortage it is essential that Californians be exposed to the greatest variety of innovative surface passenger transportation modes and operations. Passenger stage corporations will stand a better chance of rising to this challenge, and luring the public out of the private automobile, if they have a clear incentive to innovate and provide the best possible service.

* * *

"It is important that carriers operate in an environment that encourages and rewards those with the better ideas on how to attract and serve patrons, and for better execution of such ideas.

* * *

"Finally, we wish to emphasize that we do not consider monopoly passenger stage service adequate service to the public. And we will not apply Section 1032 as a bar to deprive the public of the most innovative, attractive, and agreeable bus service that may potentially exist for its benefit. Rather, we will apply Section 1032 in an enlightened manner, consistent with today's realities and requirements, which is what the Legislature intended when it granted to us the task of weighing all factors in determining whether existing passenger stage corporations provide adequate service. . . ."

The interpretation which the Commission applied to Section 1032 in American Buslines, Inc., was heavily relied upon in Airborn of Sonoma County, et al., July 2, 1980, D.91993, in A.59086, where similar competing service was authorized as a convenience to the public.

The policy enunciated in our recent decisions concerning innovative passenger stage operations should apply a fortiori to the matter before us because applicant's proposed service would offer to the public an additional fresh approach to the transportation needs of the residents in these mountain communities.

Protestants express concern that their business will be diluted by applicant's proposed operation. However, protestants offered no evidence to indicate that any of their riders would abandon their operation and avail themselves of the service offered by applicant. It is difficult to imagine how that would occur if applicant's fares are substantially higher (since its service is specialized).

The services proposed by applicant are innovative, well-conceived, and designed to meet the special needs of a community not presently offered an excess of for-hire passenger transportation. The application, in the main, should be granted.

However, the matter of the initiation of an association and the membership fee which applicant would assess users of his shopping excursion service remains to be considered. We believe that the institution of an association and restricting of service to members thereof is not compatible with common carriage. The proposed service must be available to all persons in the communities sought to be served without regard to any organizational affiliation. That is the essence of public utility service.

Applicant intends to operate a service specifically included in P.U. Code Section 211(c) under the definition of "Common carrier." California Jurisprudence (3rd Edition) contains the following statement concerning the duty of common carriers:

"It is the duty of a common carrier of persons to receive as passengers all who offer to become such and are ready and willing to pay the legal fare, if all can be accommodated." 2/

The decision in this proceeding will not authorize service limited to members of any particular association. Nor is applicant authorized to assess a fee in addition to the normal fares set forth in his tariff. His intent in assessing this association membership fee, as stated in the amended application, is to provide revenue assistance in setting up the proposed service. However, a reduction of the fee from \$7.50 to \$1.00, as proposed in his letter of February 26, clearly suggests that this extra charge is not designed to provide a significant portion of applicant's total income from the conduct of the business.

2/ 11 Cal Jur 3d 397.

Applicant intends to lease the equipment necessary to perform the service. The initial capital demands concerned with equipment costs where leased buses are used should not be as great as those required when purchasing the same vehicles. Applicant should be able to begin his service at the regular tariff fares proposed in his application without the minor income which would be generated by the sought membership fees.

Findings of Fact

1. Applicant is an individual presently engaged in the auto-truck sales and leasing business.
2. Applicant proposes to perform a door-to-door, on-call reservation passenger stage shopping excursion service between San Bernardino, on the one hand, and various San Bernardino mountain communities, on the other hand.
3. Applicant also proposes to operate a door-to-door on-call passenger stage service between the same points described in Finding 2 for developmentally handicapped people.
4. Applicant possesses the management ability and financial resources to perform the proposed services.
5. Protestants have offered a scheduled passenger stage service since November 24, 1980 between the points sought to be served by applicant.
6. Protestants are not presently authorized to perform door-to-door service as a part of their passenger stage operations.
7. Increased use of public transportation is in the public interest.
8. The fares proposed by applicant are considerably higher than those currently assessed by protestants, due to the personalized services applicant proposes to offer.

9. Applicant has demonstrated that public convenience and necessity require certification of the services he seeks authorization to perform.

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

Conclusions of Law

1. Public convenience and necessity require the granting of the authority sought by applicant; except for the establishment of an association membership fee by applicant in connection with the proposed shopping excursion service, and limited service to members.

2. Pursuant to Section 211(c) of the Public Utilities Code the shopping excursion service to be offered on a reservation basis by applicant must be available to the general public, and may not be limited to members of any particular association or organization. Applicant may not be authorized to assess a fee to any user of this service in addition to the fares set forth in his tariff.

3. The application should be granted as set forth in the following order.

4. Since there is a demonstrated need for applicant's proposed service the following order should be effective the date of signature.

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 James H. Gay (applicant), doing business as Union Leasing Services Association, to provide an on-call service as a passenger stage corporation pursuant to Sections 1031 et seq. of the Public Utilities Code for the transportation of passengers, their attendant baggage and package express between Running Springs, Lake Arrowhead, Crestline, Big Bear Lake, and all points intermediate thereto and within five miles laterally thereof located on State Highway 18, on the one hand, and San Bernardino, on the other hand, over the routes set forth in Appendix A of this decision. In performing the service authorized herein, applicant is authorized to pick up and return passengers to their individual homes.

2. The service to be performed by applicant shall be available to the general public, and shall not be limited to members of any particular organization or association. Applicant shall not assess any fee in connection with his service in addition to the fares set forth in his tariff. The application to form such an association and to charge a membership fee as a prior condition of service is denied.

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

- (a) Within thirty days after the effective date of this order, applicant shall file a written acceptance of the certificate granted. Applicant is placed on notice that if he accepts the certificate he will be required, among other things, to comply with the safety 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.

4. Applicant's tariff publication shall contain clear and concise statements of service rules and individual fares for the authority granted in a manner that will enable patrons to determine in advance precisely what services will be offered and the charges to be assessed.

This order is effective today.

Dated APR 21 1981, at San Francisco, California.

John E. Byrne President
Richard P. L. [unclear]
Thomas M. [unclear]
Walter [unclear]
James C. [unclear] Commissioners

T/am

Appendix A

JAMES H. GAY
doing business as
UNION LEASING SERVICES ASSOCIATION

Original Title Page

CERTIFICATE
OF
PUBLIC CONVENIENCE AND NECESSITY
PSC - 1163

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. 92973, dated APR 21 1981
of the Public Utilities Commission of the State of California, in
Application No. 59932.

T/am

Appendix A

JAMES H. GAY
doing business as
UNION LEASING SERVICES ASSOCIATION
(PSC - 1163)

Original Page 1

INDEX

	<u>Page No.</u>
SECTION 1. GENERAL AUTHORIZATION, RESTRICTIONS, LIMITATIONS, AND SPECIFICATIONS	2, 3
SECTION 2. ROUTE DESCRIPTIONS	4

Issued by California Public Utilities Commission.
Decision No. 92973, Application No. 59932.

T/am

Appendix A

JAMES H. GAY
doing business as
UNION LEASING SERVICES ASSOCIATION
(PSC - 1163)

Original Page 2

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

James H. Gay, an individual, doing business as Union Leasing Services Association, 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, their attendant baggage, and package express between Big Bear Lake, Running Springs, Lake Arrowhead, Crestline and intermediate points, on the one hand, and San Bernardino, on the other hand, over regular routes as hereinafter described, subject, however, to the authority of this Commission to change or modify said routes at any time and subject to the following provisions:

- (a) Service shall be operated on an "on-call" basis. 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 time-tables shall show the conditions under which each authorized "on-call" service will be rendered.
- (b) When route descriptions are given in one direction, they apply to operation in either direction unless otherwise indicated.
- (c) The transportation of baggage and express shall be on passenger-carrying vehicles and shall be incidental to the transportation of passengers and limited to a weight of not more than one hundred (100) pounds per shipment.

Issued by California Public Utilities Commission.

Decision No. 92973, Application No. 59932.

T/am

Appendix A

JAMES H. GAY
doing business as
UNION LEASING SERVICES ASSOCIATION
(PSC - 1163)

Original Page 3

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

- (d) The tariff publication shall contain clear and concise statements of rules and individual fares in a manner that will enable patrons to determine in advance what the charges for the service would be.
- (e) Service on Route 1 shall be limited to passengers originating at or destined to the Gemco Mall or Central City Mall.
- (f) Service on Route 2 shall be limited to mentally and physically handicapped persons only.

T/vcp

Appendix A

JAMES H. GAY
doing business as
UNION LEASING SERVICES ASSOCIATION
(PSC - 1163)

Original Page 4

SECTION 2. ROUTE DESCRIPTIONS.

Route 1 - Shopping Services

Commencing at the intersection of Moonridge Road and Big Bear Boulevard (Rte. 18) in Big Bear Lake, and serving all points within five miles on either side of Route 18 from Moonridge Boulevard to Crestline, including the communities of Big Bear Lake, Running Springs, Lake Arrowhead, and Crestline, thence along the most convenient and appropriate streets and highways to the Gemco Mall on Sterling Avenue or the Central City Mall on "E" Street in the City of San Bernardino.

Route 2 - Mentally and Physically Handicapped Services

Commencing at the intersection of Moonridge Road and Big Bear Boulevard (Rte. 18) in Big Bear Lake and serving all points within five miles on either side of Route 18 from Moonridge Boulevard to Crestline, including the communities of Big Bear Lake, Running Springs, Lake Arrowhead, and Crestline, thence along the most convenient and appropriate streets and highways to therapy and vocational centers in the City of San Bernardino.

Issued by California Public Utilities Commission.

Decision No. 92973, Application No. 59932.