

ORIGINAL

JUL 7 1981

Decision 93275

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)  
San Luis Transportation, Inc., for )  
a Class "B" certificate to operate )  
as a charter-party carrier of )  
passengers, San Luis Obispo. )

Application 60063  
(Filed November 6, 1980)

Handler, Baker, Greene & Taylor, by  
William B. Taylor, Attorney at Law,  
for San Luis Transportation, Inc.,  
applicant.

Robert D. Rierson, Attorney at Law (Illinois),  
for Greyhound Lines, Inc., protestant.

O P I N I O N

San Luis Transportation, Inc. (San Luis) seeks a Class B charter-party carrier of passengers certificate under Public Utilities (PU) Code §§ 5371 et seq. to operate a charter-party carrier service from points of origin within 40 miles of its terminal in San Luis Obispo, California, to all points within California. San Luis already holds passenger stage authority (PSC-1142) and a charter-party permit (TCP-1441-P). The only protestant to the application is Greyhound Lines, Inc. (Greyhound). In order to resolve the issues raised by Greyhound's protest, a duly noticed public hearing was held in this matter before Administrative Law Judge (ALJ) Gilman in Los Angeles on February 18, 1981. The matter was submitted with permission to the parties to file written arguments and proposed findings and conclusions on or before March 18, 1981. Both parties filed, whereupon the matter was taken under submission.

San Luis' Contentions

San Luis' contentions are summarized in its proposed findings and conclusions:

Findings of Fact

1. San Luis operates as a passenger stage corporation (PSC-1142) under operating authority granted by the Commission, under Decision 92522 dated December 16, 1980. In addition San Luis provides subsidized inter- and intra-city passenger services between points in San Luis Obispo County, California. These services will continue in conjunction with those proposed. San Luis' charter-party permit number is TCP-1441-P.
2. San Luis operates 14 transit coaches, 1 antique sightseeing coach, and 1 newly acquired intercity coach. San Luis intends and has the financial ability to purchase or lease additional intercity coaches as public demand warrants.
3. San Luis had gross operating revenues of \$423,727.27 for the six months ended November 30, 1980. It had total assets of \$204,051.58 on November 30, 1980. Net income as of November 30, 1980 was \$53,125.33.
4. San Luis has the ability, including financial ability, to conduct the proposed operations.
5. San Luis will operate both transit and intercity coaches in the service authorized which will allow the public a choice of equipment and services, as well as a corresponding choice of rates depending on the type of equipment chartered. No other carrier, including Greyhound, provides such an option.
6. Public convenience and necessity require that the service proposed by San Luis be established.
7. Greyhound, under its Class A certificate, does provide locally based charter service, which, however, has proven to be unacceptable and/or uneconomical in meeting the growing demand for charter service from points in San Luis Obispo County, California. For this reason, its service is not adequate to meet the public demand for

charter service. In any event, any diversion of traffic which may result by grant of this application would not substantially affect the financial condition of Greyhound.

8. San Luis should be authorized to pick up passengers within a radius of not more than 40 air miles from its home terminal at 505 Higuera St., San Luis Obispo, California 93401.
9. San Luis has the ability, experience, equipment, and financial resources to perform the proposed service.
10. It can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.
11. The Commission has no reason to doubt that San Luis will faithfully comply with the rules and regulations of the Commission.

#### Conclusions of Law

1. The grant of this Class B charter-party certificate is not adverse to the public interest.
2. Greyhound is not providing services which are satisfactory and adequate for or to the public.
3. The proposed authority should be issued as provided in the following order.

#### Greyhound's Contentions

Greyhound primarily relies on PU Code § 5375.1 which provides:

"Notwithstanding the provisions of Section 5375, if the applicant desires to operate in a territory already served by the holder of a certificate, the commission shall hold a hearing before granting the certificate. The commission shall not grant a certificate to such an applicant unless it can be shown that the existing charter-party carrier of passengers serving the territory is not providing services which are satisfactory to the commission and adequate for the public. In no event shall the commission issue more certificates than public convenience and necessity require and the commission shall place any restrictions upon such certificates as may reasonably be necessary to protect any existing charter-party carrier of passengers."

Greyhound claims this section "was intended to preserve the territory of existing carriers and prevent over-saturation by the entrance of new carriers." It contends that unless existing charter carriers have insufficient capacity to meet demand, the Commission must refuse to issue additional certificates. It argues that it would be contrary to public policy to certificate additional operators in reliance on the theory that competition will produce better and cheaper service.

Greyhound asserts that it has vigorously solicited business and has adequate equipment and manpower to meet all expected demands for charter service. It concludes that, therefore, the Commission has a statutory obligation to protect it from competition.

Greyhound also emphasized that no public witnesses appeared to personally support the application. San Luis did submit six letters of support which were marked and received in evidence as Exhibit 7. None of the letters were notarized and the authors were not available for cross-examination. One of the letters, San Luis admitted, was not solicited in connection with this hearing. The City of San Luis Obispo and the San Luis Obispo Chamber of Commerce each wrote letters stating a need for the proposed service, although there is no indication they would be potential users.

Greyhound objected to Exhibit 7 on the grounds of hearsay. The ALJ overruled the objection. He offered, however, to set an extra day of hearing and issue subpoenas to Greyhound to make the authors of the letters available for cross-examination. Greyhound declined the offer.

Greyhound claims that this ruling was erroneous and that the ALJ improperly tried to compel it to assume the burden and expense of proving an absence of public convenience and necessity

rather than compelling San Luis to introduce competent evidence that it exists. If this evidence had not been erroneously admitted, Greyhound further contends, the Commission would have been compelled to find that public convenience and necessity do not require more than one carrier.

#### Discussion

##### The Hearsay Objections

By statute (PU Code § 1701) the Commission is not obligated to observe the technical rules of evidence. The Commission's Rules of Practice and Procedure contain a similar provision (Rule 64); the only qualification is that the "substantial rights of the parties shall be preserved."

Greyhound has not shown that receiving these documents injured or could injure its substantial rights.

Use of technical hearsay rules is especially inappropriate in a quasi-legislative proceeding such as a certificate application. It is even less appropriate where the challenged documents are more argument than evidence.<sup>1/</sup> The documents were properly admitted.

##### Effect of Charter Operations on Passenger Stage Operations

In most Class B hearings, Greyhound can make one argument which applicants find it difficult to counter. Greyhound is obligated as a passenger stage corporation to provide a great deal of capacity for peak load conditions. Hence, it can assert that it needs the revenue from a protected charter business to support this capacity.

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<sup>1/</sup> We have not considered these documents in determining whether Greyhound's service is satisfactory.

San Luis, unlike most applicants for Class B authority, conducts a substantial local transit operation. Like Greyhound, it too needs charter business to provide off-peak revenue. Without substantial charter revenue, San Luis has three less acceptable options; it may raise transit fares, fail to adequately meet its peak transit demand, or seek additional subsidies from the taxpayer. In comparison with these other alternatives, it is clearly preferable that San Luis be allowed to defray a maximum share of its fixed costs with charter revenue.

Until now San Luis has been able to conduct its transit operation in vehicles built on van chassis. These vehicles are small enough to be used in charter operations under San Luis' permit (PU Code § 5384(b)). Now there is reason to believe that several of these transit routes will develop to the point where use of larger vehicles would save fuel and reduce costs. If San Luis were denied the right to use these same vehicles in off-peak charter service, these savings would be diluted, disadvantaging the carrier, the taxpaying public, and the transit patron. In our view, San Luis should be free to make the transition to full-size transit vehicles without artificial competitive restrictions. Denying it Class B authority would contravene this principle.

San Luis has somewhat complicated its case by purchasing one over-the-road bus which would not be useful in any of its transit operations. Charter operations performed in this vehicle will not support San Luis' transit operation. However, since Greyhound did not ask for any conditions to restrict the use of this or similar vehicles, none will be imposed. To the extent that the use of nontransit vehicles creates an unresolved public convenience and necessity issue, it may be reexamined in annual proceedings to renew San Luis' charter authority.

Market Analysis

Greyhound's position seems based on an implicit assumption that there is a unitary market for charter service in San Luis Obispo. San Luis' evidence, however, shows that there are two submarkets, with comparatively little overlap.

The first is the market for comfortable, long-haul transportation. Greyhound with its fleet of over-the-road buses is admirably positioned to serve this market. Its vehicles, equipped with reclining seats, restrooms, and underfloor luggage space are specifically designed to make long trips as comfortable as possible.

There are, however, disadvantages to Greyhound's fleet. Comfort and restricted seating capacity produce high seat-mile costs. The high-backed seating tends to restrict conversation to one's seat mate. ✓

San Luis' transit buses, on the other hand, are not designed for long highway hauls. While far less comfortable for long trips than Greyhound's equipment, their lower initial cost and greater capacity allow lower per seat-mile charges. When used for shorter trips, the buses' more spartan accommodations are not a significant competitive disadvantage. ✓ Furthermore, many charter groups welcome the freer communication patterns made possible by the low-back seats. San Luis' has developed a specialized clientele which enjoys on-the-road partying.

The two submarkets overlap where a group is planning a long trip, but will trade off comfort for lower rates. Such a situation presents the only point where San Luis' transit fleet and Greyhound are in direct competition. Because of this small overlap, it is unlikely that authorizing San Luis to charter in larger transit buses will put much pressure on Greyhound's rates or compel it to improve its service.

On the other hand, San Luis' over-the-road bus can only be used in direct competition with Greyhound's charter operations. However, with only this single bus to deal with, Greyhound's charter operations will still have much more freedom from competition in this territory than in most other areas in the State. There are no other Class A or B charter carriers operating from the San Luis Obispo area.

#### Findings of Fact

1. Greyhound's charter rates in the San Luis Obispo market are no higher than in territory where it is subject to direct, effective charter competition.
2. Greyhound's charter service in the San Luis Obispo market is no less satisfactory or attractive than the service it provides in the most competitive markets.
3. Greyhound has adequate capacity stationed in San Luis Obispo to meet both normal demands for charter service and its obligations as a passenger stage corporation; when demand is abnormally high, Greyhound can call in additional buses from its other depots on short notice. It will not charge deadhead mileage for such buses.
4. Allowing San Luis to use larger transit vehicles in charter service will divert an unknown amount of traffic from Greyhound.
5. To the extent that off-peak charter traffic is diverted from Greyhound, its passenger stage operation will become less economically viable.
6. If San Luis uses large transit-type vehicles in charter operations, these operations will not create effective price or service competition in the San Luis Obispo charter carrier market.



7. Public convenience and necessity require that any carrier performing local transit operations in the San Luis Obispo area have authority to operate buses used for transit operations, regardless of size, in charter operations as well.

8. Greyhound does not satisfactorily or adequately serve that portion of the market which needs low-cost charter transportation or prefers to charter transit-type vehicles.

9. San Luis has the ability, experience, equipment, and financial resources to perform the proposed service and will faithfully comply with Commission and Highway Patrol regulations.

10. San Luis should be authorized to pick up passengers within a radius of 40 air miles from its home terminal at 505 Higuera St., San Luis Obispo, California.

11. 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 Commission has the discretion under PU Code §§ 5375 and 5375.1 to issue a Class B charter-party carrier of passengers certificate to San Luis.

2. Public convenience and necessity having been demonstrated, a certificate should be issued to San Luis.

3. The following order should be effective the date of signature since there is a demonstrated public need for applicant's proposed service.

O R D E R

IT IS ORDERED that:

1. A certificate of public convenience and necessity, to be renewed each year, is granted to San Luis Transportation, Inc. (San Luis) authorizing it to operate as a Class B charter-party carrier of passengers, as defined in PU Code § 5383, from a service area with a radius of 40 air miles from San Luis' home terminal at 505 Higuera Street, San Luis Obispo, California.

2. The Passenger Operations Branch will issue the annual renewable certificate on Form PE-695 as authorized by Resolution PE-303, when it receives California Highway Patrol clearances and evidence of liability protection in compliance with General Order Series 115.

3. In providing service under the certificate, San Luis shall comply with General Orders Series 98 and 115, and the California Highway Patrol safety rules.

This order is effective today.

Dated JUL 7 1981, at San Francisco, California.

John E. Bayne  
President

[Signature]  
[Signature]

Priscilla C. Green  
Commissioners

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