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Decision 97-02-044 February 19, 1997

ORIGINAL
STATE OF CALIFORNIA

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Investigation and)
Order to Show Cause into whether the)
Passenger Stage Certificate and)
Charter Party Carrier permit of)
Arturo V. Luna, an individual doing)
business as BAY AREA SHUTTLE [PSC/)
TCP 1420] should not be revoked;)
whether the Charter-Party Carrier)
Permits held by Adeleken M. Arègbe)
and Eniola Murphy, a partnership)
doing business as OAK TREE CITY)
TRANSPORTATION [TCP 8063] and)
Roderick Narvaez Santos, an)
individual [TCP 9004], should not)
be revoked.)

I.96-09-032
(Filed September 20, 1996)

In the Matter of the Application of)
Antonio Luna and Jeffrey Rhodes, a)
partnership, doing business as East)
Bay Airporter, of authority to)
operate as a passenger stage)
corporation between points in the)
San Francisco, Alameda, and Contra)
Costa Counties and the Oakland and)
San Francisco International Airports,)
and between Berkeley, Emeryville,)
and Oakland and the Oakland)
International Airport.)

Application 96-07-025
(Filed July 19, 1996)

O P I N I O N

Background

We opened this Order Instituting Investigation (OII) requiring Arturo V. Luna, doing business as Bay Area Shuttle (BAS), the partnership operating Oak Tree City Transportation (Oak Tree) and Roderick N. Santos to Show Cause why their operating authority should not be revoked. The OII and Application (A.) 96-07-025 are combined for handling since they are interrelated.

Prior to the issuance of our formal OII, Rail Safety and Carriers Division (staff), had looked into the business practices of Arturo V. Luna, an individual doing business as BAS (PSC/TCP 1420); Adelekan Michael Aregbe and Eniola Murphy, a partnership doing business as Oak Tree (TCP 8063-P); and Roderick Narvaez Santos (Santos), an individual, (TCP 9004-P). Staff found that BAS operated without maintaining evidence of public liability and property insurance (PL&PD) and Workers' Compensation Insurance on file with the Commission; conducted operations when its passenger stage certificate was suspended; failed to timely answer customer complaints; operated schedules at times other than specified in its published timetables; failed to comply with the rules of an airport; failed to include required information in sub-carrier agreements; allowed its authority and TCP number to be used by another; and failed to maintain and produce records. Respondent Oak Tree allegedly conducted operations as a charter-party carrier after its permit expired on August 31, 1995 and prior to its reissuance by the Commission on June 11, 1996. Respondent Santos allegedly conducted operations as a charter-party carrier after his permit was suspended on March 9, 1996 for failure to maintain evidence of PL&PD insurance on file and in effect with the Commission, prior to his reinstatement of the permit by the Commission on April 11, 1996.

Application 96-07-025, filed July 19, 1996 by applicants Arturo Luna, Antonio Luna and Jeffrey Rhodes, a partnership doing business as Bay Area Shuttle, seeks authority under Section 1031 et. seq. of the Public Utilities Code, to provide service as a passenger stage corporation, (1) on-call, door-to-door service between points in San Francisco, Alameda, and Contra Costa Counties, on the one hand, and San Francisco and Oakland International Airports, on the other hand, 24 hours a day, seven days a week, and (2) a scheduled service between specified points

in Berkeley, Oakland, and Emeryville and Oakland International Airport.

The First Amendment to the Application withdrew Arturo Luna as a partner, and changed the name of the carrier to East Bay Airporter (East Bay). Arturo Luna has agreed that, once the application is granted, he will discontinue his service and request his authority to be revoked.

With respect to respondents Aregbe and Murphy of Oak Tree, staff has determined that they have left the transportation business. Staff met with Aregbe on July 17, 1996 at which time he stated that he and Oak Tree were no longer in the transportation business and that his van was for sale. Discussions with Arturo Luna confirmed that Aregbe no longer works for BAS as a sub-carrier. Oak Tree's authority has been suspended effective July 22, 1996 and revoked effective October 20, 1996. Staff believes it would not be in the public interest to pursue the investigation against these respondents, since they apparently have left the airport shuttle business.

Similarly, staff met with Santos on September 27, 1996, at which time he stated that he was no longer in the airport shuttle business, and no longer worked for BAS. Staff contacted Arturo Luna who stated that Santos no longer works for him as a sub-carrier. Santos' authority was suspended effective August 21, 1996 and revoked effective November 19, 1996 for lack of evidence of liability insurance on file at the Commission. Staff believes it would not be in the public interest to pursue the investigation against Santos since he apparently has left the airport shuttle business.

Settlement Agreement

On November 25, 1996, staff filed a motion to adopt a stipulation for settlement and partial dismissal. The Settlement Agreement (Agreement) between staff and Arturo Luna doing business as BAS, and Antonio Luna and Jeffrey Rhodes, a partnership doing

business as East Bay, is attached to this order as Appendix A. Following is a summary of the salient provisions:

1. Revocation The passenger stage certificate and charter-party carrier permit of Arturo Luna, PSC/TCP 1420 are revoked, effective 30 days after the effective date of the Commission's final decision in this matter.

2. Probation East Bay shall serve a two-year probation period beginning on the effective date of the Agreement. If East Bay violates the terms of this Agreement, the Commission may reopen this proceeding with East Bay as the respondent to reconsider the terms of the Agreement, including possible sanctions against East Bay.

- a. Suspension East Bay's operating authority shall be suspended for 90 consecutive days, with the actual suspension stayed, subject to East Bay's compliance with the terms of the Agreement. The stay may be lifted after affording East Bay with notice and an opportunity to be heard.
- b. Interim Operations BAS may provide service between East Bay hotels and Oakland International Airport during the transition period prior to issuance of a passenger stage certificate in A.96-07-025, provided its operating authority is in good standing.
- c. Workers' Compensation Insurance East Bay agrees to either maintain proof of Workers' Compensation Insurance on file at the Commission, or file a statement that it does not employ any employee subject to Workers' Compensation laws.
- d. General Order (GO) 101-E East Bay agrees to comply with the PL&PD insurance requirements and maintain proof on file at the Commission, consistent with GO 101-E.
- e. Passenger Operations East Bay agrees to not operate during periods of suspension, after revocation or expiration of

authority, or without appropriate permit from the Commission.

- f. Compliance with Tariffs and Airport Rules
East Bay agrees to operate in conformance with airport regulations and Commission approved tariffs and schedules.
- g. Compliance with General Order 158-A
 - i. Sub-Carrier Agreements (Part 3.03)
East Bay agrees to only engage sub-carriers which hold operating authority from the Commission, and to keep proper records of those used.
 - ii. Use of Operating Authority (Part 4.07)
East Bay agrees to not knowingly allow its operating authority to be used by others.
 - iii. Inspection of Records East Bay agrees to allow reasonable inspection of its records by the Commission.
 - iv. Complaints East Bay agrees to comply with the requirement to timely respond to customer complaints, and guarantee refunds by BAS to all customers due refunds.
- h. Compliance of BAS East Bay guarantees that BAS will comply with the terms of this Agreement.

3. BAS agrees that this Agreement resolves only the instant investigation before the Commission.

4. East Bay agrees that this Agreement resolves some but not all issues pending in A.96-07-025.

5. Staff agrees to withdraw its protest of A.96-07-025 upon adoption of this Agreement.

Discussion

The operations of Arturo Luna, doing business as BAS, have been very troubling to the Commission, due to lack of compliance with rules and regulations and laws of the Commission

and airports, lack of care in handling passengers and their complaints, and generally unprofessional operations.

Staff apparently has confidence that Arturo Luna, Antonio Luna, and Jeffrey Rhodes understand the seriousness of this situation and are committed to complying with all provisions of the Agreement. However, their future actions will speak for themselves. Although the Agreement provides for a 90-day suspension if the terms are not adhered to by respondents, we nevertheless may not hesitate to reopen this investigation if violations continue or we learn if all provisions are not adhered to. If we reopen the investigation, we may suspend or revoke the authority of East Bay immediately.

We believe that staff through the negotiated Agreement, and the Commission through approving it, are giving respondents Antonio Luna and Jeffrey Rhodes a reasonable opportunity to demonstrate their commitment to responsible operations. They should take this Agreement seriously if they wish to remain in this business.

We agree with staff that it is not in the public interest to pursue the investigation against Oak Tree and Santos, since they have apparently left the business and have shown no signs of attempting to return.

Findings of Fact

1. An Agreement was entered into by staff and respondents Arturo Luna, Antonio Luna, and Jeffrey Rhodes, assuring compliance with all relevant rules, regulations, and laws.
2. Staff seeks adoption of the Agreement and partial dismissal.
3. Staff will withdraw its protest of A.96-07-025 upon approval of the Agreement.
4. Oak Tree, whose authority has been revoked, has left the airport transportation business.

5. Santos, whose authority has been revoked, has left the airport transportation business.

Conclusions of Law

1. The Motion of Staff to adopt the stipulation for settlement and for partial dismissal should be granted.
2. This investigation should be closed.
3. This application should remain open for handling.

O R D E R

IT IS ORDERED that:

1. The Settlement Agreement between Rail Safety and Carriers Division and Arturo Luna for Bay Area Shuttle, and Antonio Luna and Jeffrey Rhodes and counsel Daniel Baker for East Bay Airporter, attached to this order as Appendix A, is approved.
2. Investigation 96-09-032 is closed.
3. Application 96-07-025 remains open for routine processing by the Commission.

This order becomes effective 30 days after today.

Dated February 19, 1997, at San Francisco, California.

P. GREGORY CONLON
President
JESSIE J. KNIGHT, JR.
HENRY M. DUQUE
JOSIAH L. NEEPER
RICHARD A. BILAS
Commissioners

APPENDIX A
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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Investigation and)
Order To Show Cause into whether the)
Passenger Stage Certificate and Charter)
Party Carrier Permit of Arturo V. Luna,)
an individual doing business as BAY)
AREA SHUTTLE (PSC/TCP 1420) should not)
be revoked; whether the Charter-Party)
Carrier Permits held by Adelekan M.)
Aregbe and Eniola Murphy, a partnership)
doing business as OAK TREE)
TRANSPORTATION (TCP 8063) and Roderick)
Narvaez Santos, an individual)
(TCP 9004), should not be revoked.)

I.96-09-032 FILED
SEPTEMBER 20, 1996

In the Matter of the Application of)
Antonio Luna and Jeffrey Rhodes, a)
partnership, doing business as East)
Bay Airporter, for authority to operate)
as a passenger stage corporation)
between points in the San Francisco,)
Alameda and Contra Costa Counties and)
the Oakland and San Francisco)
International Airports, and between)
Berkeley, Emeryville and Oakland and)
the Oakland International Airport.)

A.96-07-025 FILED
JULY 19, 1996

SETTLEMENT AGREEMENT

This agreement is entered into by and between the Rail Safety and Carrier Division of the California Public Utilities Commission (Staff), Arturo V. Luna dba BAY AREA SHUTTLE (BAS), and Antonio Luna and Jeffrey Rhodes, a partnership dba EAST BAY AIRPORTER (EAST BAY) (collectively, the parties). The effective date of this Agreement shall be the date of its approval and adoption by the California Public Utilities Commission (Commission).

The Commission regulates intrastate passenger stage carriers pursuant to the California Constitution, Article XII, by Public Utilities Code Section 1031 et seq., 5351 et seq., and General Order (G.O.) 158-A. Staff filed a protest to East Bay's application (A.96-07-025) because, as (1) Antonio Luna is the son

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of Arturo Luna and is known to have managed the operation of BAS at one time; (2) EAST BAY desires to take over BAS's subcarrier contracts, hotel contracts, customer lists, and some of its equipment upon issuance of the authority sought; and (3) EAST BAY's application was filed after Staff's initial investigation of BAS and before the issuance of Order Instituting Investigation 96-09-032, Staff was concerned that EAST BAY would continue to conduct operations in the same manner which had led the Commission to open this investigation.

THE PARTIES TO THIS PROCEEDING now pending before the Public Utilities Commission, to resolve outstanding issues in dispute between them, have agreed on a settlement of said issues and desire to submit to the Public Utilities Commission this stipulation for approval and adoption as its final disposition of the matters in I.96-09-032 and partial resolution of issues in A. 96-07-025.

NOW, THEREFORE, in consideration for the mutual promises set forth herein, the parties agree as follows:

AGREEMENT

1. Revocation. The Passenger Stage Certificate and Charter-Party Carrier Permit of Arturo V. Luna, an individual DBA BAY AREA SHUTTLE under PSC/TCP 1420 are revoked, effective thirty days after the effective date of the Commission's final decision in this matter.

2. Probation. EAST BAY shall serve a two year probation which shall begin on the effective date of this Agreement. In the event that EAST BAY violates the terms of this Agreement, the Commission may reopen this proceeding with EAST BAY as the respondent, to reconsider the terms of this Agreement, including, without limitation, adopting findings of violations of applicable rules and regulations and those sanctions which should be imposed for present or future acts or omissions with respect to EAST BAY'S performance of its passenger stage operation.

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a) Suspension. Beginning on the effective date of any certificate or permit issued to EAST BAY, that operating authority shall be suspended for ninety (90) consecutive days, with actual suspension stayed, subject to EAST BAY's observance of the provisions of this Settlement. The stay of the suspension may be lifted on further order of the Commission, provided that Applicant is accorded notice and an opportunity to be heard.

b) Interim Operations. During all periods in which the operating authority of BAS is in good standing and in compliance with all rules and regulations, service from East Bay hotels into the Oakland Airport may continue during the transition period prior to issuance of a passenger stage certificate sought by Applicant in A. 96-07-025. (The operating permits of BAS at San Francisco International Airport have been revoked by the Airport Commission.)

c) Compliance With Workers' Compensation Insurance Coverage Requirements. EAST BAY agrees that it will either (a) maintain on file a certificate of workers' compensation insurance coverage for its employees as required by Public Utilities Code Section 460.7 or (b) file a statement, signed under penalty of perjury, that its passenger stage operations do not employ any person in any manner so as to become subject to the workers' compensation laws of the State of California.

d) Compliance With General Order 101-E. EAST BAY will comply with all provisions of General Order 101-E. It will provide and continue in effect, so long as it is authorized to operate as a passenger stage carrier, adequate protection against liability imposed by law upon such carriers for the payment of bodily injuries (including death resulting therefrom) and for damage to or destruction of property, and shall maintain proof of such protection on file with the Commission at all times.

e) Passenger Operations. EAST BAY agrees that it will not conduct any operations as either a passenger stage carrier or a charter-party carrier of passengers during periods of suspension, after revocation or expiration of its authority, or without first

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having obtained a certificate or permit from the Commission authorizing such operations.

f) Compliance With Tariffs and Airport Rules. EAST BAY agrees to operate its service in conformance with airport regulations and its tariffs, schedules and timetables on file with this Commission.

g) Compliance With General Order 158-A.

i) Sub-Carrier Agreements (Part 3.03). EAST BAY agrees that it will only engage sub-carriers which hold operating authority from the Commission as passenger carriers. EAST BAY will prepare, for all sub-carriers which it engages, written documents containing the carrier's names, TCP numbers, and the services to be provided.

ii) Use of Operating Authority (Part 4.07). EAST BAY agrees that it will not knowingly permit its operating authority or its PSC number(s) to be used by others.

iii) Inspection of Records (Part 6.02). EAST BAY agrees that it will afford authorized representatives of the Commission reasonable opportunity to inspect its business records when so requested.

iv) Complaints (Part 7.01). EAST BAY will comply with the provisions of General Order 158-A, including the requirement that it timely respond to customer complaints as required by Rule 7.01. This rule states that a carrier shall respond within 15 days to any written complaint concerning transportation service provided or arranged by the carrier. EAST BAY agrees to guarantee refunds by BAS to all customers to whom refunds are due, including, but not limited to, the following listed BAS customers whose complaints were pending during the Staff's investigation:

Sylvia R. Dean \$ 134.54
8 Captain Dr. #551
Emeryville, CA 94608

Debra Martinez \$ 65.00
34590 County Line Rd. Suite 10
Yucaipa, CA 92399

Laynee Zimmerman \$ 45.00
6610 Bobbyboyer
West Hills, CA 91307

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h) EAST BAY guarantees that, immediately upon the adopting of this Settlement Agreement by the Commission, BAS will be in compliance with the terms of the Settlement Agreement. EAST BAY further guarantees that BAS shall pay All amounts set forth in Paragraph (g) (iv), above, shall be paid to customers as specified within 30 days of the execution of this Agreement, independent of the date on which the Commission adopts or rejects this Stipulation. Evidence of such payments shall be provided to the staff by either EAST BAY or BAS.

3. BAS agrees that this Settlement Agreement is intended only to resolve the instant investigation affecting it before the Commission.

4. EAST BAY agrees that this Settlement Agreement resolves some, but not all, issues in conjunction with its passenger stage application pending before the Commission in A. 96-07-025. EAST BAY, by its signature below, represents that it understands the regulations it has agreed herein to obey, and that it, and its managing partners Antonio Luna and Jeffrey Rhodes, are capable of complete compliance as agreed to herein.

5. Staff agrees to withdraw its protest to A.96-07-025 upon the adoption of this Agreement by the Commission. EAST BAY's application will accordingly be subject only to normal review procedures.

The parties agree jointly by executing and submitting this Settlement Agreement that the conditions herein are just, fair and reasonable, and that the terms herein are binding when approved by the Commission. The parties respectfully request that the Commission adopt this Settlement Agreement for inclusion in its final decision in Investigation I. 96-09-032.

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IN WITNESS WHEREOF, the parties hereto have executed this Settlement Agreement on the date set forth opposite their respective signatures.

EAST BAY AIRPORTER

Dated: 11-15-96

By: *Antonio Luna*
ANTONIO LUNA, Partner

Dated: 11-15-96

By: *Jeffrey Rhodes*
JEFFREY RHODES, Partner

Dated: 11-15-96

By: *Daniel W. Baker*
DANIEL W. BAKER, Attorney
at Law, Counsel for EAST
BAY AIRPORTER

BAY AREA SHUTTLE

Dated: 11-15-96

By: *Arturo V. Luna*
ARTURO V. LUNA, Owner,
for BAY AREA SHUTTLE

STAFF OF THE CALIFORNIA PUBLIC
UTILITIES COMMISSION

Dated: November 19, 1996

By: *Carol Dumond*
CAROL DUMOND, Attorney
at Law, Counsel for RAIL
SAFETY AND CARRIER DIVISION

(END OF APPENDIX A)