

ALJ/SHL/jva

Decision 99-02-068 February 18, 1999

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ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Sonoma County Airport Express, Inc., dba
Airport Express for amendment of certificate of
public convenience and necessity to obtain
citywide authority for City of Santa Rosa.

Application 98-07-061
(Filed July 31, 1998)

Airporter, Inc., dba Santa Rosa Airporter vs.
Sonoma County Airport Express, Inc., dba
Airport Express for violations of the terms of its
passenger stage certificate by serving a point in
Santa Rosa without the Commission authority.

Case 98-08-044
(Filed August 27, 1998)

O P I N I O N

Summary

Sonoma County Airport Express (Express) granted citywide authority to serve Santa Rosa and the Santa Rosa Airport.

Background

Express holds a passenger stage certificate to transport passengers between San Francisco International Airport (SFO) and the Flamingo Hotel in Santa Rosa. The Flamingo Hotel has remodeled its premises and no longer accommodates Express. Express transferred its operations to the Hotel La Rose in Santa Rosa. Express also began operations to and from Santa Rosa to the Santa Rosa Airport. Neither the change of location to the Hotel La Rose nor the stop at the Santa Rosa Airport has been requested of this Commission or authorized by this Commission. By Application (A.) 98-07-061, Express seeks citywide authority within Santa Rosa and authority to serve the Santa Rosa Airport.

A protest to this application was filed by Airporter, Inc., doing business as Santa Rosa Airporter (Airporter). Airporter operates an airport shuttle service to and from SFO with a stop two blocks from the Hotel La Rose. Airporter asserts that the unauthorized competition of Express was and is unfair and improper and that operation without authority from the Commission should prevent extension of operative rights to Express without assurance that Commission orders will be obeyed. A protest was also filed by the City of Santa Rosa (City) opposing a grant of citywide authority within Santa Rosa.

Airporter also filed a complaint against Express, Case (C.) 98-08-044, requesting an order requiring Express to desist from operating beyond its certificate authority. The Enforcement Section of the Rail Safety and Carriers Division of the Commission Staff (Enforcement Staff) filed an Advice of Participation and urged a negotiated settlement that would obviate the need for the issuance of a cease and desist order against Express.

A prehearing conference was held before Administrative Law Judge (ALJ) Sheldon Rosenthal on November 25, 1998 in Santa Rosa. Present were representatives of Express, Airporter, City, and the License Section of the Rail Safety and Carriers Branch. The ALJ consolidated A.98-07-061 and C.98-08-044 for hearing and decision. After listening to the positions of the parties it appeared to the ALJ that there was a possibility of settlement of the matters and he urged this approach on the parties.

The Commission is now in possession of stipulations from Airporter and the City. Express and City have agreed that Express will cease operations at the Hotel La Rose on or before July 31, 1999. Express further agrees not to use any bus stop established or maintained by City on any location on any street within City without first obtaining prior written consent from City.

Express and Airporter have agreed that Express will cease operations at the Hotel La Rose by July 31, 1999. The parties also agreed to discuss ticketing practices and accommodations for passengers who end up traveling on the wrong carrier, a subject of some concern to the carriers and confusion to the public. Airporter and Express also agreed that as of December 3, 1998 they will maintain a one-half mile radius separation between new service stops within Santa Rosa measured by a straight line, rather than an odometer.

Enforcement Staff filed a written statement endorsing the stipulation of Express, Airporter, and City. It cautioned both Express and Airporter that any changes in rates or service must comply with the requirements of the statutes and regulations enforced by this Commission.

With these agreements in hand there appear to be no further areas to be explored or problems with the application. Airporter agreed to withdraw its protest to A.98-07-061 and dismiss its complaint in C.98-08-044. While the protest of City was not specifically withdrawn the stipulation appears to have resolved all of the issues presented at the prehearing conference.

The application shows that Express has the physical and financial capability to serve the public under its requested expanded authority. There appears to be a need for the service in question. Without protest, there is no need for an evidentiary hearing.

A.98-07-061 was preliminarily designated to be a ratesetting matter not requiring a hearing by Resolution ALJ 176-2999 dated September 3, 1998. Complaint C.98-08-044 was designated an adjudicatory matter requiring a hearing. When these matters were consolidated by the ALJ at the prehearing conference he ruled that both matters would be considered adjudicatory and hearings were required. With the dismissal of the complaint, only the application

remains. There is no protest to the application and the original designation of ratesetting, without hearing, shall be reinstated.

One further matter remains to be discussed. Express has been operating outside the scope of its certificate and filed tariff. At the prehearing conference counsel for Express stated that this was done in the good faith belief that such operation was permitted. It based this belief on a written opinion obtained from a former Commission employee. Lest there be any doubt, that opinion was and is wrong. Barring an emergency there can be no unauthorized operation of a passenger stage corporation. Even in an emergency the Commission should be notified, and if the new operation is to continue, then new authority should be sought. Express is cautioned that it should not expect indulgence from this Commission should another instance of unauthorized operations be discovered.

Although these matters were contested initially, this disposition is not and this order grants the relief requested. Accordingly, pursuant to Public Utilities (Pub. Util.) Code Section 311(g)(2), the otherwise applicable 30-day period for public review and comment is being waived.

Findings of Fact

1. Express is a passenger stage corporation authorized to transport passengers to and from the Flamingo Hotel in Santa Rosa to SFO.
2. The Flamingo Hotel remodeled its property and no longer provides access to Express.
3. Express began operating from the Hotel La Rose in Santa Rosa without Commission authorization.
4. Express also began operations to the Santa Rosa Airport without Commission authorization.

5. Express filed A.98-07-061 to obtain citywide authority within Santa Rosa and authority to serve the Santa Rosa Airport.

6. Protests to A.98-07-061 were filed by City and Airporter.

7. Airporter filed a complaint against Express.

8. Stipulations between Express and City and Express and Airporter resolved the issues between the parties. Enforcement Staff does not oppose the stipulations.

9. Express has the financial and physical capability of serving the public in the areas stipulated to by the parties.

10. There are no further protests to the application, and Airporter has asked that its complaint be dismissed.

Conclusions of Law

1. Express should be granted citywide authority within Santa Rosa under the following conditions:

a. It will stop service to the Hotel La Rose by July 31, 1999.

b. It will maintain a one-half mile radius separation between new service stops in Santa Rosa from service stops of Airporter, the one-half mile to be measured by a straight line, not an odometer.

c. Express shall not use for it business any bus stop established or maintained by City.

d. Express shall not use any location on any street within Santa Rosa without first obtaining the written consent of City.

2. Express shall enter into discussions with Airporter over ways to handle problems of passengers who inadvertently use the services of either operator while ticketed to the other.

3. Express has demonstrated that it has the physical and financial ability to provide the service authorized herein.
4. The public convenience and necessity require the service authorized herein.
5. The complaint in C.98-08-044 should be dismissed.

O R D E R

IT IS ORDERED that:

1. The certificate of public convenience and necessity granted to Sonoma County Airport, Express, Inc. (Express), a corporation, authorizing it to operate as a passenger stage corporation, as defined in Public Utilities (Pub. Util.) Code § 226, to transport persons and their baggage between the points and over the routes set forth in Appendix PSC-1120 of Decision 90-09-021, is amended by replacing Original Pages 2 and 3 with First Revised Pages 2 and 3, that includes the following:
 - a. The point designated as the Flamingo Hotel in Santa Rosa is deleted.
 - b. Express is authorized citywide service in Santa Rosa for its shuttle service to San Francisco International Airport.
 - c. Express may not operate from any bus stop established or maintained by the City of Santa Rosa (City).
 - d. Express must obtain the written approval of City before establishing any service stop within the City.
 - e. Express may establish service to the Santa Rosa Airport.

2. Express shall cease service to the Hotel La Rose no later than July 31, 1999.
3. Express shall meet with Airporter to discuss means of resolving customer confusion with tickets of the two airport shuttle carriers.
4. Express shall maintain a one-half mile radius separation between new service stops within Santa Rosa from stops of Airporter. Airporter has agreed that it will do the same. This separation shall be measured by a straight line, not by odometer.
5. Express shall:
 - a. File a written acceptance of this certificate within 30 days after this order is effective.
 - b. Establish the authorized service and file tariffs and timetables within 120 days after this order is effective.
 - c. State in the tariffs and timetables when service will start; allow at least 10 days' notice to the Commission; and make timetables and tariffs effective 10 or more days after this order is effective.
 - d. Comply with General Orders Series 101, 104, and 158, and the California Highway Patrol (CHP) safety rules.
 - e. Comply with the controlled substance and alcohol testing certification program pursuant to Pub. Util. Code § 1032.1 and General Order Series 158.
 - f. Maintain accounting records in conformity with the Uniform System of Accounts.
 - g. Remit to the Commission the Transportation Reimbursement Fee required by Pub. Util. Code § 403 when notified by mail to do so.
 - h. Comply with Pub. Util. Code §§ 460.7 and 1043, relating to the Workers' Compensation laws of this state.
 - i. Enroll all drivers in the pull notice system as required by Section 1808.1 of the Vehicle Code.

6. Before beginning service to any airport, applicant shall notify the airport's governing body. Express shall not operate into or on airport property unless such operations are also authorized by the airport's governing body.

7. Express is authorized to begin operations on the date that the Rail Safety and Carriers Division mails a notice to applicant that their evidence of insurance and other documents required by Ordering Paragraph 2 have been filed with the Commission and that the CHP has approved the use of express's vehicles for service.

8. The amended certificate of public convenience and necessity to operate as a passenger stage corporation granted herein, expires, unless exercised within 120 days after the effective date of this order.

9. The Application is granted, as set forth above.

10. Case 98-08-044 is dismissed.

11. Since all protests have been satisfied by stipulation, this decision is effective on the date signed.

12. These matters are closed.

This order is effective today.

Dated February 18, 1999, at San Francisco, California.

RICHARD A. BILAS
President
HENRY M. DUQUE
JOSIAH L. NEEPER
Commissioners

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

Sonoma County Airport Express, Inc., a California corporation, by the certificate of public convenience and necessity granted by the *revised decision noted in the foot of the margin, are authorized to transport passengers and their baggage, between points and places, over and along the routes described in Section III, subject, however, to the authority of this Commission to change or modify this authority at any time and subject to the following provisions:

- a. When a route description is given in one direction, it applies to operations in either direction unless otherwise indicated.
- b. Scheduled service will be operated only at the designated service area as described in Section II. A description of all the stop points and the arrival and departure times from such points shall be indicated in the timetable.
- c. No passengers shall be transported except those having a point of origin or destination, as described in Section IIB.
- d. This certificate does not authorize the holder to conduct any operation on the property of or into any airport unless such operation is authorized by the airport authority involved.
- *e. Any location on any street or bus stop established or maintained by the City of Santa Rosa may be used only upon first obtaining the written consent from them.
- *f. Sonoma County Express, Inc., and Airporter, Inc. shall maintain a separation of one-mile radius, measured by a straight line, not by odometer, between any new service stops within the City of Santa Rosa.

Issued by California Public Utilities Commission.

*Revised by Decision 99-02-068, Application 98-07-061.

**SECTION I. GENERAL AUTHORIZATIONS, RESTRICTIONS, LIMITATIONS,
AND SPECIFICATIONS (concluded).**

- g. Service may also be provided on an on-call basis. The term "on-call", as used, refers to service which is authorized to be rendered dependent on the demands of passengers. The tariffs and timetables shall show the conditions under which each authorized on-call service will be rendered.

SECTION II. SERVICE AREA.

A. Points and places in the following cities or community in the County of Sonoma:

1. *Santa Rosa, including Sonoma County Airport (Santa Rosa Airport). (Service at Hotel La Rose shall cease no later than July 31, 1999).
2. Community of Oakmont.
3. Rohnert Park.
4. Petaluma.

B. Airports:

1. Oakland International Airport (OAK).
2. San Francisco International Airport (SFO).

SECTION III. ROUTE DESCRIPTIONS.

Route - Oakmont/*Santa Rosa/Rohnert Park/Petaluma/SFO

Commencing from the Community of Oakmont, then over the most convenient streets, expressways, and highways to the Cities of *Santa Rosa, Rohnert Park and Petaluma, as described in Section IIA, and to SFO.

Issued by California Public Utilities Commission.

*Revised by Decision 99-02-068, Application 98-07-061.