

Decision 99-10-068 October 21, 1999

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Airport Services of Rajinder Randhawa, dba American Express Shuttle for the authority to operate as a passenger stage corporation between points in Alameda County, Santa Clara County, San Mateo County and San Joaquin County and Oakland International Airport, San Francisco International Airport, and Sacramento International Airport, Contra Costa County.

Application 99-02-019
(Filed February 17, 1999)

Rajinder Singh Randhawa, for American Express Shuttle, applicant.
Qualid Abderrahim, for Santa Clara Airporter and Shibli S. Azar, for Silicon Valley Airporter, Competitors.
Masaru Matsumura, for Rail Safety and Carriers Division.

OPINION

Summary

This decision grants Rajinder Singh Randhawa, dba American Express Shuttle, an extension of its airport shuttle passenger stage certificate to include service to four Northern California airports from five additional Bay Area counties.

The Application and Protests

Rajinder Singh Randhawa, dba American Express Shuttle (Applicant), presently holds a passenger stage certificate (PSC-11131) to operate an airport

shuttle service between the cities of San Jose, Santa Clara, and Milpitas, on the one hand, and the San Jose International Airport (SJC) on the other hand. He also possesses a charter party carrier license (TCP-11131-P). Applicant wishes to obtain passenger stage authority for all of Alameda, Contra Costa, San Joaquin, San Mateo and Santa Clara Counties on the one hand and the Oakland, Sacramento, San Francisco, and San Jose International Airports on the other hand. Applicant proposes operating every day of the week. His amended application alleges he is in possession of three seven-passenger vans and is in the process of obtaining two more. Applicant's balance sheet ending December 1998 shows net assets of \$36,576, of which \$10,976 is listed as current assets. Current liabilities listed are \$4,800. Current cash of the end of the year was \$3,700.

This matter was preliminarily designated as ratesetting and not requiring a hearing by Resolution ALJ 176-3011, dated March 4, 1999. Several competing passenger stage carriers ("competitors") protested the application. The protests allege that Applicant does not have the financial capability to serve the area requested, that SJC is already saturated with carriers, and that Applicant has been violating his present authority.

A scoping memo and ruling, dated May 11, 1999, confirmed the designation of ratesetting and determined that an evidentiary hearing was necessary. The Commission held a hearing in San Francisco on June 8, 1999. Applicant introduced his application and amended application into evidence and stated that there was a need for his service. He further produced testimonials from customers stating satisfaction with his present service.

Commission Staff and Competitors questioned Applicant's financial capability to take on greater territory with the limited amount of cash showing in his application. Applicant stated that the amended application provided information only to the end of 1998 and that he has accumulated additional cash

since that time. He also stated that he had a partner who would help in obtaining additional vehicles. Applicant said that although the amended application indicated he presently has three vans and would soon obtain two additional vans, he really plans to obtain five additional vans. He further stated that of the three vans mentioned in his amended application, two are the property of his friend and business associate and are not being used by American Express Shuttle. These two vans are presently being used in other carrier operations. Presumably they would be released and put to work for Applicant. Competitors referred to A.99-02-018, a prior filing by Applicant and the business associate mentioned above. That application, dismissed at the request of Applicant, showed the same cash resources of \$3,700 for the combination of Applicant and his associate as is presently shown for Applicant alone.

Applicant indicated that he had studied the market and the need for increased service he proposes, but that they were not in writing. One competitor testified that until recently only three or four shuttle carriers served SJC, but now 23 serve it. He claims that the new carriers are picking up customers who have reservations from the established carriers, and undercutting prices. He accused Applicant of these practices and of unfair business practices. Another witness for competitors testified that on five occasions he witnessed Applicant loading customers into his van for Los Gatos, Palo Alto, Santa Clara, Portola Valley, and Mountain View. These were not single groups, but rather people being transported from SJC to separate destinations. Thus they could not be considered to be charter-party passengers. Applicant does not have passenger stage authority to any of these destinations. Applicant denies these allegations.

Discussion

For many years the Commission has pursued a policy of promoting competition in passenger stage carrier markets. In furtherance of this policy, the

Commission has liberally construed statutory and regulatory requirements in reviewing applications for new and expanded services. It has nevertheless required that carriers demonstrate the financial capability to support proposed ventures.

In this case, Applicant presented a weak showing of financial fitness and customer demand for expanded service. The implication of Applicant's circumstances is that his business may fail. Notwithstanding the views of Applicant's competitors, we believe Applicant has ample incentive to make business decisions in his own best interest, and is in a better position than his competitors or this Commission to assess his risk of financial loss and his tolerance for it.

The more important question for the Commission is whether the public interest would be compromised if Applicant's business failed, a matter no party addressed. If Applicant's business fails, we confidently assume by the record in this proceeding and by observing the circumstances at subject airports, that other carriers and transportation options would remain available for service between Bay Area airports and the counties Applicant proposes to serve.

Notwithstanding competitors' self-interested claims that Applicant offered service outside his existing PUC authority, Applicant appears to be operating safely and providing a service that, to our knowledge, is satisfactory to his riders.

We herein state our intent to pursue policy and, if necessary, legislation that would free passenger stage carriers from costly economic regulation that, in a competitive market, serves no public purpose. In this case, Applicant has been subjected to litigation initiated by competitors who presented little evidence to suggest Applicant's proposal for existing operations would in any way disadvantage the public. Although we intend to continue to oversee carrier safety, we do not intend to use the resources of the state and legitimate

businesses to provide a forum for protests that offer little or no prospect of addressing the broader public interest.

For these reasons, we grant Applicant's request for authority to expand his services.

Comments on Proposed Decision

The alternate proposed decision of Commissioner Joel Hyatt was mailed to the parties in accordance with Pub. Util. Code § 311(d) and Rule 77.1. No party filed comments to the alternate.

Findings of Fact

1. Applicant seeks authority to provide airport shuttle service from all points within the Counties of Alameda, San Mateo, San Joaquin, and Santa Clara on the one hand and the Oakland, Sacramento, San Francisco, and San Jose International Airports on the other hand.

2. Applicant presently has authority to serve all points within the Cities of Milpitas, San Jose, and Santa Clara on the one hand and the San Jose International Airport on the other hand, pursuant to PSC-11131.

3. Applicant's financial statement suggests his proposed expanded operation may not be highly profitable.

4. No party alleged or presented evidence to suggest Applicant's proposal would disadvantage the public in any way.

Conclusion of Law

Because no disadvantage to the public will result, Applicant should be granted the expanded authority requested in the subject application.

ORDER

IT IS ORDERED that:

1. The certificate of public convenience and necessity granted to Rajinder Randhawa (Applicant), an individual, set forth in Appendix PSC-11131 of

Decision 97-07-016 is amended to authorize service as requested in this application, subject to the following paragraphs.

2. Applicant 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.

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

4. Applicant is authorized to begin operations on the date that the Rail Safety and Carriers Division mails a notice to the Applicant that his 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 Applicant's vehicles for service.

5. The extension of the certificate of public convenience and necessity to operate as a passenger stage corporation (PSC-11131), granted herein, expires, unless exercised within 120 days after the effective date of this order.

6. This proceeding is closed.

This order is effective today.

Dated October 21, 1999, at San Francisco, California.

RICHARD A. BILAS
President
JOEL Z. HYATT
CARL W. WOOD
Commissioners

I dissent.

/s/ HENRY M DUQUE
Commissioner

I dissent.

/s/ JOSIAH L. NEEPER
Commissioner

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

Rajinder Randhawa, an individual, by the certificate of public convenience and necessity granted by the decision noted in the foot of the margin, is authorized to transport passengers and their baggage on an "on-call" basis, between points and places as described in Section *IIA, and points and places described in Section *IIB, over and along the route 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 operation in either direction unless otherwise indicated.
- b. 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.
- 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.

Issued by California Public Utilities Commission.

*Revised by Decision 99-10-068, Application 99-02-019.

SECTION II. SERVICE AREA.

A. Points and places within the *Counties of Alameda, San Mateo, Santa Clara and San Joaquin.

B. *San Francisco International Airport.
San Jose International Airport.
*Oakland International Airport.
*Sacramento International Airport.

SECTION III. ROUTE DESCRIPTION.

Commencing from any point as described in *Section IIA, then over the most convenient streets, expressways, and highways to any airport described in *Section IIB.

Issued by California Public Utilities Commission.

*Revised by Decision 99-10-068, Application 99-02-019.