

Decision 99-12-007 December 2, 1999

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of Application of CORONADO LIVERY, INC., a California corporation, to transfer control of its passenger stage certificate (PSC-0914) to its subsidiary SAN DIEGO DIRECT TRANSPORTATION SERVICES LLC, a California Limited Liability Company, under Section 851, et seq., of the Public Utilities (PU) Code, on the one hand, and to establish a Zone Of Rate Freedom (ZORF) under Section 454.2 of the PU Code, on the other hand.

Application 99-08-015
(Filed August 10, 1999)

O P I N I O N

Summary

Application of Coronado Livery, Inc. to transfer passenger stage certificate PSC-0914 to its subsidiary, San Diego Direct Transportation Services, LLC, and establish a Zone Of Rate Freedom granted.

Discussion

Coronado Livery, Inc, (Transferor) seeks permission to transfer its passenger stage certificate (PSC-0914) to its subsidiary, San Diego Direct Transportation Services, LLC (Transferee). Transferee wishes to establish a zone-of-rate-freedom of plus or minus \$12 from the existing rates of Transferor.

Transferor operates as an on-call shuttle operator between all points in San Diego County on the one hand, and San Diego International Airport, San Diego Santa Fe Train Depot, and San Diego Greyhound Bus Terminal, on the other hand. Transferor owns 80% of Transferee, with the President of Transferor

owning the remaining 20%. The stated purpose of the transfer is to provide an organizational structure in which the drivers may participate as member-owners.

Notice of this application appeared in the Commission's Daily Calendar on August 12, 1999. In Resolution ALJ 176-3022 dated September 2, 1999, the Commission preliminarily categorized this application as ratesetting and preliminarily determined that a hearing was not necessary.

Protest was filed by the San Diego Unified Port District (SDUPD). This Protest states that SDUPD has not been served with a copy of the application, in contravention of the Rules of Practice and Procedure (Rules) of the Commission. We note that the service list attached to the application (Exhibit I) shows service on SDUPD, though at a different address than is listed on the declaration of service by mail attached to SDUPD's Protest. In any event, the Protest of SDUPD was filed within the 30-day period specified in Rule 44.1 and will be recognized by this decision.

SDUPD's Protest states two independent grounds for denial of the requested transfer or delay until such time as an appropriated application is filed. First it calls attention to our General Order (GO) 158, Sec. 3.01, which provides:

"3.01 – OPERATIONS AT AIRPORTS. No carrier shall conduct any operations on the property of or into any airport unless both this Commission and the airport authority involved authorize such operations. Consistent failure to comply with safety or traffic rules and regulations of an airport authority may result in suspension or revocation of Commission operating authority."

Issuance of the requested certificate would not violate this GO. The GO specifically deals with commencement of operations on the property of the airport. These operations require two approvals – one from the airport and one from this Commission. *City of Oakland v Burns* (1956) 46C2d 401; *Regulation of*

Passenger Carrier Services (1989) 33 CPUC2d 5. There is no authority that states which must be obtained first. Our Rule 3.01 only requires that both be in hand before operations on that property are conducted. The portion that speaks to compliance with the regulations of the airport authority pertains to already-certified carriers, since it addresses "...suspension or revocation of Commission operating authority."

The second grounds for protest is that "...the Applicant willfully and knowingly has violated the SDUPD's Code Section 5.9(k) [unauthorized transfer of a Ground Transportation Service Permit]." This code section requires the prior written consent of the Executive Director of SDUPD before a transfer of a permit can be made. Nothing in this application relates to the transfer of any permit issued by SDUPD. Nor can it, since that is beyond our authority. Transferor and Transferee must make whatever arrangements are necessary to obtain the permission of SDUPD for that transfer.

Since SDUPD has not raised any legal basis for delay or denial of the application, we shall deny its request. However, we call attention to Ordering Paragraph 10 of this decision, which requires Transferee to obtain authorization from SDUPD before commencing operations. This Ordering Paragraph should fully protect the interests of SDUPD.

The Commission's Rail Safety and Carriers Division recommends that this application be granted.

Comments on Draft Decision

The draft decision of the ALJ in this matter was mailed to the parties in accordance with Pub. Util. Code § 311(g) and Rule 77.1 of the Rules of Practice and Procedure. No comments were filed.

Findings of Fact

1. Transferor wishes to transfer PSC-0914 to its subsidiary, Transferee.
2. Transferee wishes to have a Zone of Rate Freedom established at \$12 above and below the present rates of Transferor with a minimum \$5 rate.
3. Transferee will offer the same service to the public as Transferor.
4. SDUPD protested this application alleging that authority to transfer operating authority on airport property had not been sought.

Conclusions of Law

1. There is no requirement that permission from the airport authority must first be obtained before an application is filed with this Commission.
2. Our action in granting a transfer of a passenger stage shuttle certificate does not impinge on SDUPD's authority to consider the same subject as it relates to operations on airport property.
3. The transfer of PSC-0914 from Transferor to Transferee is not adverse to the public interest and should be granted.
4. A zone of rate-freedom \$12 above and below the present rates of Transferor with a \$5 minimum rate should be permitted.
5. An evidentiary hearing is not necessary.

O R D E R

IT IS ORDERED that:

1. The Protest of San Diego Unified Port District (SDUPD) is denied.
2. Within 120 days from the effective date of this decision, Coronado Livery, Inc. (Transferor), a corporation, may transfer the operative rights specified in the application to San Diego Direct Transportation Services, LLC (Transferee), a

limited liability company, subject to the conditions contained in the following paragraphs.

3. Transferee shall:

- a. File a written acceptance of the transfer certificate and the extended certificate within 30 days after this order is effective.
- b. Amend or reissue Transferor's tariffs and timetables, state in them when the service will start, make them effective 10 or more days after this order is effective, and allow at least 10 days' notice to the Commission.
- c. Comply with General Orders (GO) Series 101, 104, and 158, and the California Highway Patrol (CHP) safety rules.
- d. Comply with the controlled substance and alcohol testing certification program pursuant to Pub. Util. Code § 1032.1 and GO Series 158.
- e. Maintain accounting records in conformity with the Uniform System of Accounts.
- f. Remit to the Commission the Transportation Reimbursement Fee required by Pub. Util. Code § 403 when notified by mail to do so.
- g. Comply with Pub. Util. Code §§ 460.7 and 1043, relating to the Workers' Compensation laws of this state.
- h. Enroll all drivers in the pull notice system as required by § 1808.1 of the Vehicle Code.

4. Upon completion of the transfer and compliance with the requirements in the ordering paragraphs, a certificate of public convenience and necessity (CPCN) is granted to Transferee authorizing it to operate as a passenger stage corporation, as defined in Pub. Util. Code § 226, between the points and over the routes set forth in Appendix PSC-12852, to transport persons and their baggage.

5. The CPCN granted to Transferor by D.80420, as amended by D.91-11-007, is revoked effective on the date the Transferee is notified, as indicated in Ordering Paragraph 10.

6. Transferee is authorized under Pub. Util. Code § 454.2 to establish a Zone of Rate Freedom (ZORF) of \$12 above and below the tariff fares filed with the Commission with a minimum \$5 rate.

7. Transferee shall file a ZORF tariff on not less than 10 days' notice to the Commission and to the public and subject to Commission approval. The ZORF shall expire unless exercised within 120 days after the effective date of this order.

8. Transferee may make changes within the ZORF by filing amended tariffs on not less than 10 days' notice to the Commission and to the public. The tariff shall include between each pair of service points the authorized maximum and minimum fares and the fare to be charged.

9. In addition to posting and filing tariffs, Transferee shall post notices explaining fare changes in his terminals and passenger-carrying vehicles. Such notices shall be posted at least 5 days before the effective date of the fare changes and shall remain posted for at least 30 days.

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

11. Transferee is authorized to begin operations on the date that RSCD mails a notice to the Transferee that its 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 Transferee's vehicle for service.

12. The CPCN to operate as a passenger stage corporation (PSC-12852), granted herein to the Transferee, expires, unless exercised within 120 days after the effective date of this order.

13. The application is granted as set forth above.

14. This proceeding is closed.

This order is effective today.

Dated December 2, 1999, at San Francisco, California.

RICHARD A. BILAS

President

HENRY M. DUQUE

JOSIAH L. NEEPER

JOEL Z. HYATT

CARL W. WOOD

Commissioners

RSCD/mm

Appendix PSC-12852

San Diego Direct
Transportation Services, LLC
(a limited liability company)

Original Title Page

CERTIFICATE

OF

PUBLIC CONVENIENCE AND NECESSITY

AS A PASSENGER STAGE CORPORATION

PSC-12852

Showing passenger stage operative rights, restrictions,
limitations, exceptions, and privileges

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.

Supersedes the authority heretofore granted
to Elmer Reynolds, an individual by D.80420 and
to Coronado Livery, Inc., a corporation by D.91-11-007.

Issued under authority of Decision 99-12-007, dated December 2, 1999, of the
Public Utilities Commission of the State of California in Application 99-08-015.

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Issued by California Public Utilities Commission.

Decision 99-12-007, Application 99-08-015.

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

This certificate supersedes all passenger stage operative authorities granted to Elmer Reynolds, an individual and Coronado Livery, Inc., a corporation.

San Diego Direct Transportation Services, LLC, a limited liability company, 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 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.

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SECTION II. SERVICE AREAS.

A. All points within the geographical limits of San Diego County.

B. San Diego International Airport.

San Diego Santa Fe Train Depot (AMTRAK Station)

San Diego Greyhound Bus Terminal (Greyhound Station).

SECTION III. ROUTE DESCRIPTION.

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

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