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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 Charter-Party Carrier Certificate )  
of Luz Maria Borrego Zepeda, an )  
individual, (respondent), doing )  
business as LUCEROS TOURS should not )  
not be revoked. (TCP 6090-B) )

F I L E D  
PUBLIC UTILITIES COMMISSION  
MAY 8, 1996  
SAN FRANCISCO OFFICE  
I.96-05-014

**ORIGINAL**

ORDER INSTITUTING INVESTIGATION REQUIRING  
LUZ MARIA BORREGO ZEPEDA TO SHOW CAUSE  
WHY HER CHARTER-PARTY CARRIER  
CERTIFICATE SHOULD NOT BE REVOKED

The California Public Utilities Commission (Commission), pursuant to the California Constitution, Article XII, by Public Utilities Code Section 1031 et seq., 5351 et seq., General Order (G.O.) 158, the Charter-Party Carriers Act (Public Utilities Code Section 5351 et seq.), and General Order 157-C, regulates carriers of passengers on the public highways. These statutes and regulations require charter-party carriers, among other things, to maintain adequate proof of public liability and property damage insurance, to comply with provisions of the California Vehicle Code (CVC), Title 13 of the California Code of Regulations (13 CCR) and Commission regulations relative to passenger carrier safety, to engage only licensed drivers, to enroll all drivers in the DMV "Pull Notice" Program, to retain certain documents and make them available for inspection by commission staff, and to possess required waybills. These regulations further require operators to establish and maintain reasonable fitness and financial responsibility to conduct their transportation services.

Safety and Enforcement Division (staff) advises us that it initiated an investigation, through the declaration supporting the issuance of this investigatory proceeding's order to show cause, into the business practices of Luz Maria Borregó Zepeda, a Charter-Party Carrier (TCP 6090-B), doing business as Lucero's Tours (Lucero's). Lucero's currently provides transportation services with three fifteen passenger vans.

Staff documents in its declaration that Lucero's failed to enroll all drivers in the DMV "Pull Notice" Program; engaged drivers who did not possess a valid California drivers license or the required commercial drivers license; conducted operations during periods of suspension; failed to comply with safety rules; encouraged a pattern of unsafe driving by its employees; failed to maintain records and issue waybills; and continuously failed to demonstrate fitness to operate.

#### LICENSE HISTORY

Commission records show that Luz Maria Borrégo Zepeda (Zepeda), an individual doing business as Lucero's Tours, was first issued operating authority from the Commission on January 28, 1990. This Charter Party Carrier "B" Certificate was issued under number TCP 6090-B. This certificate was renewed on March 1, 1993 and again on January 24, 1996. Section 5376 of the Public Utilities Code provides that a permit or certificate, or renewal thereof, is effective for three years, unless suspended or revoked by the commission. These authorities may be reissued upon submission and approval of a renewal application. License Section records reveal this permit was suspended effective May 31, 1995 and reinstated on June 12, 1995 because of the carrier's failure to maintain adequate public liability and property damage insurance on file with the Commission. On July 1, 1995 this permit was again suspended and later reinstated on August 9, 1995 due to Lucero's failure to timely remit quarterly fees. The current mailing address of Luz Maria Borregó Zepeda, doing

business as Lucero's Tours, is 804 Villa Grande, Calexico, California 92231.

#### THE INVESTIGATION

The following summarizes the alleged violations by Respondent, as alleged by staff in its declaration. At a hearing, the staff will offer witnesses to support the allegations made below plus present evidence of any other violations which may be discovered.

#### **Use of Unlicensed Drivers And Drivers Who Did Not Possess Valid Commercial Driver's Licenses**

Paragraph 5.01 of General Order 157-C and California Vehicle Code (CVC) Section 12500 require every driver of a charter party vehicle to be licensed. No person shall drive a motor vehicle upon a highway, unless the person then holds a valid driver's license. Section 1808.1(c) CVC provides that the employer shall verify that each employee's driver's license has not been suspended or revoked. Section 15250 CVC provides that no person shall operate a commercial motor vehicle unless that person has in his or her immediate possession a valid commercial driver's license of the appropriate class. The staff's investigation disclosed that Luz Maria Borrego Zepeda, doing business as Luceros Tours, engaged or allowed at least nine drivers to operate her vans, who did not possess a valid California driver's license or the required commercial driver's license to drive the fifteen-passenger vans.

#### **Failure To Comply With Pull Notice Program**

Paragraph 5.02 of General Order 157-C and California Vehicle Code (CVC) Section 1808.1 require charter party carriers to enroll in the Pull Notice Program of the DMV. The staff's investigation disclosed that although Zepeda participated in the

program under Requester Code Number 83011, she failed to enroll all of her drivers (she enrolled only six of her nine drivers).

**Failure To Comply With Safety Requirements**

Paragraph 4.02 of General Order 157-C requires that all vehicles operated under each certificate or permit shall comply with the requirements of the California Highway Patrol and the Motor Carrier Safety Sections of Title 13 of the California Code of Regulations (13CCR). 13CCR Section 1217 provides that no driver shall drive a vehicle transporting passengers in violation of seating capacity. The number of passengers shall not exceed the number of safe and adequate seating spaces. The investigation disclosed that Zepeda overloaded her vehicles with passengers on a regular basis in violation of 13CCR Section 1217 and Rule 4.02 of General Order 157-C.

**Failure To Comply With Provisions of The California Vehicle Code, Unsafe Driving**

Paragraph 1.06 of General Order 157-C requires every charter-party carrier and their drivers to comply with the provisions of the California Vehicle Code. The investigation disclosed that Luz Maria Borrego Zepeda and her drivers violated provisions of the California Vehicle Code, including excessive speed (Sections 22349, 22356 CVC), following too closely (Section 21703 CVC), towed vehicles swerving (Section 21711), engaging a driver whose medical certificate had expired, and engaging an unlicensed driver (Section 12500 CVC). The staff's review of the citation issued for the towed swerving vehicle revealed the very disturbing fact that passengers were on board this van. DMV records revealed two Lucero drivers have been placed on probation as negligent operators under Section 12810.5 CVC, and one did not possess a current driver's license.

### **Operations During Suspension**

Section 5379 of the Public Utilities Code provides that after the revocation of a certificate or permit, or during the period of its suspension, it is unlawful for a charter-party carrier of passengers to conduct any operations as a carrier. The staff's investigation disclosed the carrier conducted continuous daily operations during two separate periods of suspension during 1995.

### **Failure To Maintain Records**

Paragraph 6.01 of General Order 157-C requires charter party carriers to maintain a set of records which reflect information as to the services to be performed, for a minimum period of three years. Luz Maria Borrego Zepeda advised staff she throws her records away after one year.

### **Failure To Issue Waybills**

Paragraph 3.01 of General Order 157-C requires charter party carrier drivers to possess a waybill for every charter engagement. The staff's investigation disclosed the carrier failed to issue waybills for transportation services rendered.

### **Fitness, Failure To Operate in The Public Interest**

Public Utilities Code Sections 5374 and 5375 provide that the Commission shall require passenger carriers to establish reasonable fitness and financial responsibility to initiate and conduct or continue to conduct the proposed or existing transportation services. A fundamental element in any evaluation of carrier fitness and responsibility is compliance with the rules and regulations adopted by the commission, including provisions of the California Vehicle Code and Title 13 of the

California Code of Regulations relative to passenger carrier safety. The staff's investigation has disclosed a pattern of conduct by the carrier which indicates disregard of both regulations of this commission and other requirements aimed at protecting the public .

#### DISCUSSION

After the issuance of a charter-party carrier of passengers certificate, the Commission exercises continuing oversight of a carrier's fitness to operate. Public Utilities Code Section 5378 authorizes the Commission at any time for good cause to suspend or revoke the certificate or permit upon notice to the holder and opportunity to be heard. Sections 5381 and 5382 give the Commission the authority in its regulatory jurisdiction to prescribe rules for the performance of any charter-party carrier.

In App. of Walter Hoffman (1976) 80 Cal.P.U.C. 117, we said:

" . . . 'reasonable fitness' connotes more than mere adequacy or sufficiency in training appropriate technical and vocational aspects of the service to be rendered. It also includes an element of moral trustworthiness, reliance, and dependability. The standards must be based on the interests of the public and distinguished from the interests of the applicant to demonstrate that he is reasonably fit to be entrusted with a renewal of Commission authority."

The allegations made by the staff against this passenger carrier are very serious. Should we find these allegations to be true, we believe that this carrier's pattern of conduct shows a fundamental lack of fitness and trustworthiness which the law requires from a certificate or permit holder providing passenger service. There appears to be a lackadaisical attitude exhibited by the carrier, a pattern of neglect of

statutory requirements and a disregard of the safety of both its own passengers and other motorists. Staff alleges that Lucero's Tours engaged at least nine drivers who did not possess required driver's licenses to operate 15-passenger vans. With three exceptions, all of the drivers that drove Lucero's vans were not enrolled in the DMV "Pull Notice" Program.

Former drivers and passengers interviewed by staff stated that the carrier often overloaded her vans. One elderly woman who believed her leg was broken in a fall from a Lucero's van complained that little or no concern was expressed for her plight, to the extent that the driver had to be persuaded to call 911. On one occasion it was reported that, after the mechanical breakdown of one van, about 30 passengers were loaded into another 15 passenger capacity van.

Another former Lucero's customer stated that on approximately twenty occasions she observed Luz Maria Borrego Zepeda eat and play cards or bingo as she drove. Staff reviewed a citation issued for a swerving towed van. A most disturbing disclosure was that the van in question was occupied by passengers at the time. Lucero's Tours drivers have been cited for speeding and driving without licenses. In late 1995, two Lucero's drivers were placed on probation for being negligent operators, yet Lucero's continued to allow them to operate its vans. If proven, the actions of the carrier described in this investigation defy logical explanation.

We are immediately suspending the respondent's operating authority, effective the date this order is personally served on Luz Maria Borrego Zepeda, due to the carrier's failure to ensure that all drivers are properly licensed and enrolled in the DMV pull notice program, and failure to comply with the Commission's safety regulations, the California Vehicle Code and Title 13 of the California Code of Regulations. Operations conducted by reckless drivers, and drivers who may have unsuitable driving records and are not enrolled in the Pull Notice program, in frequently overloaded vans, expose both the

carrier's passengers and the driving public to unacceptable levels of risk. We find the alleged conduct, which is documented sufficiently by staff to show that there is probable cause that this conduct occurs, translates clearly into an imminent threat to public safety.

At a public hearing, the respondent will have an opportunity to show cause why her charter party carrier certificate should not be revoked.

O R D E R

IT IS ORDERED that:

1. An investigation on the Commission's own motion is instituted into the operations and practices of Luz Maria Borrego Zepeda, dba Lucero's Tours, Respondent. There is substantial evidence to support a finding that Respondent:

a. Violated Public Utilities Code Sections 5381 and 5382, Part 5.01 of General Order 157-C (GO 157-C) and California Vehicle Code Sections 1808.1, 12500 and 15250 by engaging unlicensed drivers and drivers who did not possess valid commercial drivers' licenses to operate 15 passenger commercial motor vehicles upon the public highway;

b. Violated PU Code Sections 5381, 5382 and Part 5.02 of GO 157-C and California Vehicle Code Section 1808.1 by failing to enroll all drivers in the DMV "Pull Notice" Program;

c. Violated PU Code Sections 5381, 5382, Part 4.02 of GO 157-C and Title 13 of the California Code of Regulations Section 1217 by overloading passengers in excess of safe and adequate seating capacity;

d. Violated PU Code Sections 5381, 5382, Part 1.06 of GO 157-C, and California Vehicle Code Sections 22349, 22356 (Maximum Speed Limit), 21703 (Following Too Closely), 21711 (Towed Vehicles Swerving), 14606 (Driver Medical Certificate), 12500 (Unlawful To Drive Unless Licensed), 40508 (Violation of Promise To Appear or Pay Fine);

e. Violated Public Utilities Code Section 5379 by conducting operations as a charter party carrier of passengers during periods her permit was under suspension;

f. Violated PU Code Sections 5381, 5382 and Part 6.01 of GO 157-C by failing to maintain records for a minimum period of three years;

g. Violated PU Code Sections 5381, 5382 and Part 3.01 of General Order 157-C by failing to issue waybills;

h. Violated PU Code Sections 5374 and 5375 by failing to adhere to reasonable fitness and responsibility standards required by the Commission.

2. It is further ordered that Lucero's Tours charter-party certificate (TCP 6090-B) is, upon receipt of personal service of this order, immediately suspended for failure to comply with safety regulations of the State of California. We delegate to the Director of the Safety and Enforcement Division the authority to reinstate this authority only upon his receipt of written evidence that Lucero's Tours has passed a 1996 CHP Terminal Inspection with a satisfactory rating and showing that the carrier is in full compliance with the California Vehicle Code and provisions of Title 13 of the California Code of Regulations pertaining to passenger carrier safety. Operations cannot be resumed by the respondent until written reinstatement is issued by the S&E Division Director. If respondent requests a hearing on today's immediate suspension, we will hold one on this limited issue within 10 days of receiving respondent's written request and proof that copies of the request have been sent to both the Chief Administrative Law Judge and the Director of the Safety and Enforcement Division.

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3. It is further our order that, throughout the pendency of this OSC, if the respondent is allowed to resume operations, the following conditions shall apply to any and all passenger stage operations which Lucero's Tours may resume and conduct:

a. That Lucero's Tours fully comply with the drivers' license requirements of the California Vehicle Code,

b. That Lucero's Tours obey fully Section 1808.1 of the Vehicle Code by enrolling all drivers in and fully participating in the DMV Pull Notice system,

c. That Lucero's Tours not allow any of its vehicles to be operated by any driver who is not fully qualified and licensed by the DMV to operate that vehicle,

d. That Lucero's Tours cease and desist any and all unsafe operating practices.

During the pendency of this OSC, we authorize and expect the Director of the Safety and Enforcement Division to again immediately suspend Lucero's Tour's charter-party carrier certificate, should Luz Maria Borregos Zepeda fail to comply with any of the above conditions, as evidenced by a written report to the Director from our staff and/or DMV records. If the Commission suspends Lucero Tour's authority under this procedure, the respondent may have a hearing on not more than 10 days notice, with copies served as provided in Ordering Paragraph 2.

4. It is further ordered that, unless it can show cause to the contrary, Lucero's Tours charter-party operating authority will be revoked for unsafe and unlawful passenger transportation operations, for repeated violations of the Vehicle Code, for failing to comply with the DMV Pull Notice Program, and for violations of safety regulations of this Commission.

A public hearing on this investigation, and to allow Lucero's Tours to show cause why its operating authority should not be revoked, shall be held in San Diego before an Administrative Law Judge (ALJ), on an expedited schedule. At the

hearing, respondent Zepeda shall appear and show cause why her charter-party carrier certificate should not be revoked pursuant to Public Utilities Code Section 5378(a), in view of the serious allegations made by staff investigators, assuming the allegations are proven at the hearing. The respondents shall present fully through prepared testimony any direct evidence which they have to refute staff's allegations, at least ten days prior to the date set for hearing. This requirement is to advance the efficient administration of justice. Non-compliance with this or similar orders entered by our ALJ to facilitate timely adjudication of this enforcement matter may result in suspension of operating authority during any remaining time it takes to complete hearings and adjudicate this matter.

5. The Safety and Enforcement Division staff, if it elects to do so, may continue its investigation and present additional evidence beyond that described in its declaration supporting this order, either by prepared testimony or through documentation.

6. The Executive Director is directed to cause a copy of this order and staff's declaration to be personally served upon the respondent, Luz Maria Borrégo Zepeda, doing business as Lucero's Tours.

This order is effective today.

Dated May 8, 1996, at San Francisco, California.

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

Commissioner Daniel Wm. Fessler,  
being necessarily absent, did not  
participate.