

Mailed:
9/26/86

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 CITY
 TRANSPORTATION [TCP 8063] and
 Roderick Narvaez Santos, an individual
 [TCP 9004], should not be revoked.

ORIGINAL FILED
 PUBLIC UTILITIES COMMISSION
 SEP 20 1986
 SAN FRANCISCO
 NO. I. 88 09 032

**ORDER INSTITUTING INVESTIGATION REQUIRING ARTURO V. LUNA
 DOING BUSINESS AS BAY AREA SHUTTLE, THE PARTNERSHIP
 OPERATING OAK TREE CITY TRANSPORTATION AND
 RODERICK N. SANTOS TO SHOW CAUSE WHY THEIR OPERATING
 AUTHORITY 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, workers' compensation insurance, to conduct passenger carrier operations only as authorized by the Commission, to maintain and produce records, to timely respond to customer complaints, to comply with timetables and airport rules. 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 declarations supporting the issuance of this investigatory proceeding's order to show cause, into the business practices of Arturo V. Luna, an individual doing business as Bay Area Shuttle (BAS) [PSC/TCP 1420], Adelekan Michael Aregbe and Eniola Murphy, a partnership doing business as Oak Tree City Transportation (Oak Tree) (8063-P), and Roderick Narvaez Santos, an individual, (Santos) [TCP 9004-P].

Documents in staff's declaration show that BAS apparently failed to maintain evidence of adequate public liability and property damage insurance (PL&PD) and workers' compensation insurance on file and in effect with the Commission, conducted operations when its passenger stage certificate was suspended; failed to timely answer written 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 of passengers after its permit expired on August 31, 1995 and prior to its reissuance by the Commission on June 11, 1996. Respondent Santos apparently conducted operations as a charter-party carrier of passengers 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 as required by General order 115-F and prior to reinstatement of the permit by the Commission on April 11, 1996.

Application 96-07-025 Filed July 19, 1996:

Applicant, Arturo Luna, Antonio Luna and Jeffrey Rhodes, a partnership doing business as Bay Area Shuttle, 18 Chateau Court, South San Francisco, CA 94080, seeks authority, under Section 1031, et. seq. of the Public Utilities Code, to

provide, as a passenger stage corporation, (1) an 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, and (2) a scheduled service between specified points in Berkeley, Oakland and Emeryville and Oakland International Airport. Applicant proposes to perform the on call, door-to-door service between points in the three counties and the two Airports on a twenty four (24) hours per day, seven (7) days per week basis. Applicant presently has available equipment that will be used in the service which is now being operated by Arturo Luna, as a sole proprietor of Bay Area Shuttle, who operates as a passenger stage corporation under PSC Certificate No. 1420 and TCP Permit No. 1420-P. The authority sought by this application, if separately granted, would partially duplicate but be more extensive than the PSC authority now held by Arturo Luna.

The staff has conducted an investigation into the operations and practices of Arturo V. Luna doing business as Bay Area Shuttle. The violations alleged by staff raise serious questions concerning the reasonable fitness and financial responsibility of this operator to conduct its transportation services. Staff believes this application, if granted by the Commission, would endorse and allow the practices of Bay Area Shuttle to continue, albeit now under a partnership entity. In these circumstances the application should be held in abeyance pending Commission review of the issues raised in this investigation.

LICENSE HISTORY

BAY AREA SHUTTLE

Commission records show that Arturo V. Luna, an individual doing business as Bay Area Shuttle, was first issued operating authority, a passenger stage certificate (PSC 1420), from the Commission per Decision 86-06-024 on June 4, 1986. On

October 22, 1992 BAS was issued a Charter Party Carrier Permit. This permit may be renewed every three years upon submission and approval of a renewal application. The Charter Party Carrier Permit was reissued on March 23, 1995. The current address of BAS is 18 Chateau Court, South San Francisco, CA 94080. The staff's review of the License History of BAS shows the carrier has been suspended on numerous occasions. These suspensions were caused by the carrier's failure to maintain PL&PD and workers' compensation insurance on file with the commission. Also, BAS failed to timely remit regulatory fees and to submit reports. A recent suspension, effective July 15, 1996, was caused by the carrier's failure to remit fees to the Commission.

OAK TREE CITY TRANSPORTATION

Commission records show that Adelekan Michael Aregbe and Eniola Murphy dba Oak Tree City Transportation were first issued operating authority from the Commission on August 31, 1992, (TCP 8063) a Charter-Party Carrier Permit. This permit was reissued on June 11, 1996. The current address of Oak Tree is 3057 Dakota Street, Oakland, CA 94602.

The License History of Oak Tree shows the carrier has been suspended three times. The cause of these suspensions was the carrier's failure to maintain adequate public liability and property damage insurance on file with the Commission at the annual policy renewal date. Oak Tree's liability insurance was again cancelled effective July 22, 1996, and Oak Tree was suspended by the Commission on that date.

RODERICK N. SANTOS

Commission records show that Roderick Narvaez Santos was first issued operating authority from the Commission on March 16, 1994, (TCP 9004) a Charter-Party Carrier Permit. The current address of Roderick N. Santos is 134 Lisbon Street, San Francisco, CA 94112.

Staff's review of the License Section records of Santos shows the carrier has been suspended twice. The cause of these suspensions was a failure to maintain PL&PD insurance on file with the Commission. Santos was recently under suspension effective March 9, 1996 because his liability insurance had been cancelled on that date. A replacement PL&PD insurance certificate was received by the Commission on April 11, 1996 and Santos was reinstated that date.

THE INVESTIGATION

The staff commenced its investigation of BAS and its sub-carriers in April, 1996 and it concludes as follows. BAS failed to maintain liability insurance on file with the Commission; did not maintain workers' compensation insurance on file with the Commission while engaging employees, conducted operations when its passenger stage certificate was suspended; failed to timely respond to customer complaints; operated schedules other than as set forth in its published timetables; failed to comply with airport rules; failed to include required information in sub-carrier agreements; allowed its operating authority and TCP number to be used by another, and failed to maintain and produce records.

Respondent sub-carrier Oak Tree conducted operations as a charter-party carrier of passengers after expiration of its permit. Respondent sub-carrier Santos conducted operations during a period of permit suspension for failure to maintain PL&PD insurance on file with the Commission.

BAY AREA SHUTTLE VIOLATIONS

Failure To Maintain Insurance on File

Section 1040 of the Public Utilities Code (PUC) requires passenger stage carriers to procure and to continue in

effect during the life of the certificate, adequate protection against liability. The staff's investigation disclosed that on four occasions since 1994 BAS has failed to maintain PL&PD insurance on file and in effect with the Commission.

Failure To Have On File With The Commission a Certificate Of Workers' Compensation Insurance Coverage

Under Section 460.7 PUC, every passenger stage carrier shall file with the Commission either a certificate of workers' compensation coverage for its employees, a certificate of consent to self-insure, or a statement 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. The staff's investigation shows that BAS engaged employees without maintaining on file a certificate of workers' compensation insurance, in violation of Public Utilities Code Section 460.7.

Operations During Suspension

Sections 702 and 1031 PUC provide that no passenger stage corporation shall operate over any public highway in this State without a certificate from the Commission declaring that public convenience and necessity require such operation. The staff's investigation disclosed that the operating authority of BAS was suspended during the period May 22, 1995 through August 19, 1995 (Workers' Compensation Insurance lapse), and again during the subsequent period, March 21, 1996 through April 1, 1996 (Annual Bus Inspection Report). The staff review of BAS records revealed continuous operations during these two periods of suspension in violation of Sections 702 and 1031 PUC.

Failure To Answer Complaints

General Order 158-A, Part 7.01 provides that: "Every carrier shall respond within 15 days to any written complaint

concerning transportation service provided or arranged by the carrier. A carrier shall, within 15 days, respond to Commission staff inquiries regarding complaints and provide copies of any requested correspondence and records." Staff advises it received four written complaints during 1996 concerning transportation services rendered by BAS from dissatisfied customers. The carrier has failed to resolve these customer complaints and related Commission staff inquiries regarding their status within 15 days as required by Part 7.01 of General Order 158-A.

Failure To Comply With Timetables and Airport Regulations

Public Utilities Code Sections 451, 493(a), 494, 702, Part 8.01 of General Order 158-A, and the regulations of San Francisco International Airport (SFO) require carriers, among other things, to operate its schedules in conformance with times specified in its published timetables. Section 702 PUC and Part 3.01 of General Order 158-A require carriers to comply with regulations of an airport authority. Records of the Commission and SFO disclose BAS has operated schedules at other than times specified in its published timetables in violation of Commission and SFO rules. On June 21, 1996 SFO cancelled the Ground Transportation Operating Permit of BAS to provide scheduled ground transportation service to and from San Francisco International Airport as authorized by the Director of Airports Executive Action No. 2749. In addition, staff noted the Commission issued Decision No. 88-02-047 on February 24, 1988 which previously ordered Arturo Luna to cease and desist from operating his schedules at other than the times specified in his published timetables.

Sub-Carrier Agreements

General Order 158-A, Part 3.03 provides that: "A carrier shall not use the services of another carrier (sub-carrier) that provides the vehicle and the driver, unless the second carrier holds Commission authority as a charter-party carrier. The agreement for the utilization of the second carriers' vehicle(s) and driver(s) by the operating carrier shall be evidenced by a written document, and shall contain the carrier's names, TCP numbers, and the services to be provided." BAS sub-carrier agreements failed to include TCP numbers, a list of drivers or specify all services to be provided, compensation levels and other pertinent information.

Use Of Operating Authority

General Order 158-A, Part 4.07, provides that: "A carrier shall not knowingly permit its operating authority or its PSC number(s) to be used by others." The staff's investigation disclosed that on January 15, 1993 BAS executed an agreement with sub-carrier Adelekan Michael Aregbe. This contract, provided, in part, that: ". . .the Purchaser (BAS) shall assist Supplier to secure such permit or may allow Supplier to use Purchaser's TCP."

Failure To Maintain and Produce records

General Order 158-A, part 6.01 requires carriers to maintain records for a minimum period of three years. Public Utilities Code Section 425 and Part 6.02 of General Order 158-A requires carriers to afford authorized Commission representatives reasonable opportunity to inspect its business records. Staff says it requested BAS make various business records available for inspection. BAS advised the staff investigator that its

Reservation Forms and driver logs for the months of June, July, August and September 1995 were not available and had been "thrown out".

OAK TREE CITY TRANSPORTATION VIOLATIONS
(Bay Area Shuttle Sub-Carrier)

Operations During Suspension

Section 5379 of the Public Utilities Code provides that after the cancellation or revocation of a permit or certificate, or during the period of its suspension, or after the expiration of its permit or certificate, it is unlawful for a charter-party carrier of passengers to conduct any operations as a carrier. The staff's investigation disclosed Oak Tree City Transportation conducted operations as a charter-party carrier after its permit expired on August 31, 1995 and prior to its reissuance on June 11, 1996.

RODERICK NARVAEZ SANTOS
(Bay Area Shuttle Sub-Carrier)

Operations During Suspension

Section 5379 PUC provides that during a period of suspension of a permit or certificate, it is unlawful for a charter-party carrier of passengers to conduct any operations as a carrier. The staff's investigation disclosed Roderick Narvaez Santos conducted operations as a charter-party carrier of passengers after his permit was suspended on March 9, 1996 and prior to its reinstatement on April 11, 1996.

Failure To Maintain Insurance On File

Sections 5381, 5391 PUC and General Order 115-F require charter-party carriers of passengers to procure, and to continue in effect during the life of the permit or certificate, adequate protection against liability. The staff's review of License

Section records revealed that during the period March 9, 1996 through April 10, 1996, Roderick Narvaez Santos failed to maintain evidence of adequate public liability and property damage insurance on file and in effect with the Commission.

DISCUSSION

After the issuance of a passenger stage certificate or a charter-party carrier of passengers permit, the Commission exercises continuing oversight of a carrier's fitness to operate. Public Utilities Code Sections 1033.5 and 5378 authorize 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 702, 5381 and 5382 give the Commission the authority in its regulatory jurisdiction to prescribe rules for the performance of any passenger 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 vocation 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."

We find the allegations made by the staff against these passenger carriers very serious. Should we find the allegations brought by the Staff to be true, we believe that these carriers' pattern of conduct show a fundamental lack of fitness and trustworthiness which the law requires from a certificate or permit holder providing passenger service.

O R D E R**IT IS ORDERED that:**

1. There is substantial evidence to support a finding that respondent, Arturo V. Luna, an individual doing business as Bay Area Shuttle, 18 Chateau Court, South San Francisco, CA 94080, may have:

- a. Violated Public Utilities Code Sections 702, 1040 and General Order 101-E by failing to maintain evidence of adequate public liability and property damage insurance on file and in effect with the Commission during the life of its certificate;
- b. Violated PU Code Section 460.7 by employing workers without a certificate of workers' compensation insurance coverage for its employees or a certificate of consent to self-insure issued by the Director of Industrial Relations on file and in effect with the Commission;
- c. Violated PU Code Sections 702 and 1031 by conducting operations when its passenger stage certificate was suspended for failure to maintain evidence of workers' compensation insurance coverage on file and in effect with the Commission;
- d. Violated PU Code Section 702 and Part 7.01 of General Order 158-A by failing to timely answer written customer complaints and staff inquiries concerning transportation services provided or arranged within 15 days;
- e. Violated PU Code Sections 451, 493(a), 494, 702 and Part 8.01 of General Order 158-A by operating schedules at other than the times specified in its published timetables;
- f. Violated PU Code Section 702 and Part 3.01 of General Order 158-A by failing to comply with regulations of an airport authority;

I. _____

L/IRA/bjk

- g. Violated PU Code Section 702 and Part 3.03 of General Order 158-A by failing to include all required information in sub-carrier agreements;
- h. Violated PU Code Section 702 and Part 4.07 of General Order 158-A by allowing its operating authority to be used by others;
- i. Violated PU Code Section 702 and Part 6.01 of General Order 158-A by failing to maintain records on the service it performs for a minimum period of three years;
- j. Violated PU Code Section 425 and Part 6.02 of General Order 158-A by failing to afford the Commission staff reasonable opportunity to inspect its business records.

2. There is substantial evidence to support a finding that respondent, Adelekan Michael Aregbe and Eniola Murphy, a partnership doing business as Oak Tree City Transportation, 2844 Madera St., Oakland, CA 94619, may have:

- a. Violated PU Code Section 5379 by conducting operations as a charter-party carrier of passengers after expiration of its permit and prior to its reissuance by the Commission;

3. There is substantial evidence to support a finding that respondent, Roderick Narvaez Santos, an individual, 134 Lisbon Street, San Francisco, CA 94112, may have:

- a. Violated PU Code Section 5379 by conducting operations as a charter party carrier of passengers during a period of permit suspension;
- b. Violated PU Code Section 5381, 5391 and General Order 115-F by failing to maintain evidence of adequate public liability and property damage insurance on file and in effect with the Commission

during the life of its permit or certificate.

4. Arturo V. Luna, Adelekan Michael Aregbe and Eniola Murphy, and Roderick Narvaez Santos are put on notice that unless they can show cause to the contrary, their operating authority can be revoked because of the serious chain of misconduct documented in the staff's declarations.

5. A public hearing on this matter shall be held before an Administrative Law Judge at a time and place to be determined, at which time the respondents may appear and show cause why their passenger stage certificate and charter-party carrier permits should not be revoked.

6. The Safety and Enforcement Division staff, if it elects to do so, may present additional evidence beyond that described in its declarations supporting this order, either by testimony or through documentation, but it should provide a copy of any supplemental testimony/evidence to the respondent at least 10 days before the hearing.

7. The Executive Director is directed to cause a copy of this order and staff's declaration to be personally served upon Arturo V. Luna operating under PSC 1420 and doing business as Bay Area Shuttle, 18 Chateau Court, South San Francisco, CA 94080. A copy of this order and staff's declaration shall also be mailed to Daniel W. Baker, Attorney at Law, 333 Market St., Suite 2300, San Francisco, CA 94105-2173, Counsel for Respondent Bay Area Shuttle.

8. The Executive Director is directed to cause a copy of this order and the staff declaration pertaining to this respondent to be personally served upon Adelekan Michael Aregbe or Eniola Murphy, a partnership operating under TCP 8063-P and doing business as Oak Tree City Transportation, 2844 Madera St., Oakland, CA 94619. If personal service cannot be made, despite diligent efforts, then service by mail may be made by mailing a copy by certified mail to the respondents.

I. _____ L/IRA/bjk

9. The Executive Director is further directed to cause a copy of this order and the staff declaration pertaining to this respondent to be personally served upon Roderick Narvaez Santos 134 Lisbon Street, San Francisco, CA 94112. If personal service cannot be made, despite diligent efforts, then service by mail may be made by mailing a copy by certified mail to the respondent.

This order is effective today.

Dated _____, at San Francisco, California.