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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Investigation into)
why the Passenger Stage Corporation)
Certificate and the Charter-Party)
Carrier Certificate (PSG 8939))
issued to North Shuttle Service, Inc.)
(respondent), doing business as)
Yellow Airport Express, should not)
be revoked.)

ORIGINAL

FILED
PUBLIC UTILITIES COMMISSION
JANUARY 23, 1997
SAN FRANCISCO OFFICE
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ORDER INSTITUTING INVESTIGATION

The California Public Utilities Commission (Commission or CPUC) regulates intrastate airport passenger common carrier operations on the public highways pursuant to Article XII of the California Constitution, by Public Utilities (PU) Code Sections 1031 et seq., 5351 et seq., and General Order (GO) 158-A, the Charter-Party Carriers Act (PU Code Section 5351 et seq.), and by GO 157-C. These statutes and regulations require carriers, among other things, to maintain proof of adequate public liability and property damage (PL&PD) insurance and of workers' compensation insurance, to serve public convenience and necessity, to timely respond to consumer complaints and to operate and maintain their passenger vehicles in safe operating condition. These regulations further require that carriers obey the provisions of the California Vehicle Code (CVC), participate in the Department of Motor Vehicles (DMV) "Pull Notice Program," ensure that only bona fide employees or qualified Commission licensed subcarriers are authorized to operate the shuttle vans, and comply with airport regulations. Further, these regulations require carriers to establish reasonable fitness and financial responsibility to conduct their passenger transportation services.

Rail Safety and Carriers Division (formerly Safety and Enforcement Division) Passenger Compliance Unit (staff) advises

us that it initiated an investigation into the business and operational practices of Martin B. Smith, President and General Manager [Southbound, Inc. (PSG 8008) and North Shuttle Service, Inc. (PSG 8939)],¹ a corporation doing business as Yellow Airport Express (Yellow), and other business names. Yellow currently operates as a passenger stage corporation [PSC 8939] and as a charter-party carrier [TCP 8939-B]. Yellow formerly held operating authorities as [PSC 8008] a passenger stage corporation, which was voluntarily revoked effective March 21, 1996, and as a Charter-Party carrier [TCP 8008] which expired effective January 19, 1996.

Staff alleges that the respondent Yellow [PSG 8008 and PSG 8939] conducted unlawful operations without possessing PL&PD insurance coverage, engaged drivers who performed passenger transportation with suspended drivers' licenses, failed to comply with the DMV Pull Notice Program, failed to comply with airport rules and regulations, conducted continuous operations during suspension and after revocation, and failed to maintain workers' compensation insurance coverage on file with the Commission. Staff further alleges that Yellow failed to respond to numerous complaints lodged by Yellow's customers about service deficiencies and failure to keep scheduled pick-up appointments, airport officials and others. Staff's investigation of these and other serious violations will be documented in its declaration which it shall serve on the respondents, the assigned Administrative Law Judge and any interested parties or governmental entities.

1. "PSG" is a term indicating passenger authority; it may refer to PSC or TCP authority, or, as in this case, both.

BACKGROUND

Prior Enforcement History

An examination of Commission records revealed that Yellow's [PSC 8008] fitness was questioned in Protests and Requests for Hearing filed on September 21, 1992 by staff, and on September 17, 1992 by the United Taxicab Workers, San Francisco. In Decision (D.) 93-04-016, which granted Yellow [Southbound, Inc. (PSC 8008)] its certificate of public convenience and necessity, the Commission approved a Settlement Agreement between Martin B. Smith and staff which ordered that Yellow pay a fine of \$7,500. The Commission further ordered Yellow to comply with seven (7) additional requirements of the PU Code, such as maintaining safe vehicles and adequate proof of PL&PD and workers' compensation insurance coverage, and participating in the DMV Pull Notice Program, among other things.

LICENSE HISTORY

Southbound, Inc. [PSC 8008]
dba Yellow Airport Van and Tour (Yellow)

The Commission in D.93-04-016 authorized the transfer of the certificate of public convenience and necessity from Yellow Cab Cooperative, Inc. [PSC 1297] to Southbound, Inc., Martin B. Smith, President and General Manager, doing business as Yellow Airport Van and Tour, and under other business names (Yellow/PSC 8008). Effective June 16, 1993, this decision authorized Yellow to provide passenger stage transportation of passengers and baggage between San Francisco International Airport (SFO) and the City and County of San Francisco and San Mateo County. On April 6, 1994, the Commission in D.94-04-019 denied Yellow's [PSC 8008] application to amend and extend its operations as a passenger stage corporation between points in the counties of San Francisco, Contra Costa, and Alameda and the Oakland International Airport (OAK). This authority is no longer active.

North Shuttle Service, Inc. (PSC 8939)
dba Yellow Airport Express (Yellow)

On November 12, 1993, Yellow [North Shuttle Service, Inc.] filed Application (A.) 93-11-037 for authority to operate as a passenger stage corporation. On February 22, 1995, the Commission denied this application in D.95-02-089. An Application for Rehearing was filed on February 28, 1995, and on September 7, 1995, the Commission, in D.95-09-077, issued its Order Granting Rehearing. Subsequent to this decision, the Commission in D.95-11-046 granted a certificate of public convenience and necessity to North Shuttle Service, Inc., Martin B. Smith, President and General Manager, doing business as Yellow Airport Express, and under other business names (Yellow/PSC 8939). This decision authorized Yellow, as a passenger stage corporation, to provide on-call, door-to-door service between points in San Francisco, San Mateo, Santa Clara, Marin, Alameda, and Contra Costa Counties, on the one hand, and SFO, OAK, and San Jose Airport (SJC), on the other hand. This airport shuttle carrier currently operates about 10 vehicles which provide airport shuttle passenger service to SFO and OAK. The division's license records reveal that Yellow also holds Charter-Party Carrier authority [Yellow/TCP 8939-B]. These authorities are currently active.

Staff's investigation of allegations that Southbound, Inc., doing business as Yellow [PSG 8008], managed by Martin B. Smith, was conducting passenger operations after revocation of its operating authorities in November, 1994. Staff informs us that Southbound, Inc. filed for bankruptcy. The bankruptcy case was closed effective January 24, 1995. The investigation disclosed that Yellow conducted operations in 1995-1996 as North Shuttle Service, Inc. doing business as Yellow Airport Express [PSC 8939], prior to issuance of new operating authority on February 13, 1996. During 1995, staff held meetings with President and General Manager Martin B. Smith regarding his fitness to conduct a passenger stage operation. Staff held

discussions with Smith regarding his failure to respond to staff inquiries, complaints from consumers, and failure to maintain PL&PD and workers' compensation insurance coverage. Staff monitored these continuing violations and made repeated efforts to obtain Smith's compliance.

Yellow [PSG 8008 and PSG 8939]

A review of the Commission's license records revealed that the operating authorities granted to Yellow (PSG 8008 and PSG 8939) have been suspended and/or revoked for a total of 312 days since May 1993 due to Yellow's failure to maintain adequate proof of PL&PD and workers' compensation insurance, and to remit regulatory fees to the Commission.

THE INVESTIGATION

The following summarizes Yellow's alleged violations. At a hearing, staff will offer witnesses to support the allegations.

Operations Without Insurance Coverage

Pursuant to PU Code Sections 1040, 1041, 5387 and 5391, and General Orders 101-E, and 115-E, it is unlawful for passenger carriers to conduct for-hire passenger services without possessing a valid certificate from the Commission and maintaining proof of adequate public liability insurance on file and in effect with the Commission.

The license records for Yellow [PSG 8008 and PSG 8939] and its antecedent company, both managed by respondent Martin B. Smith, revealed that its operating authorities were suspended for a total of 233 days for failure to maintain adequate proof of PL&PD insurance on file with the Commission. These suspensions were effective from February 22, 1994 to April 1, 1994; August

24, 1994 to September 28, 1994 (when it was revoked and not reinstated until December 12, 1994); March 8, 1995 to April 6, 1995 and March 12, 1996 to April 10, 1996. Staff informs us that evidence obtained during the course of its investigation indicates that Yellow apparently conducted continuous passenger operations on about 200 days during these periods of suspension without evidence of any PL&PD insurance coverage. (Apparently Yellow was asked to show what coverage it had during these periods and could produce no evidence of coverage for the staff.) Business records obtained from Yellow President and General Manager Martin B. Smith, SFO, and others, indicate that Yellow performed transportation for 50-130 passenger reservations every day, meaning that Yellow could have transported more than 10,000 passengers during these periods without any public liability and property damage insurance coverage in effect for its airport shuttle vans.

Failure To Enroll Drivers In DMV Pull Notice Program

Pursuant to General Order 158, Part 5.02, every passenger stage carrier must enroll its drivers into the California Department of Motor Vehicles' Pull Notice Program, pursuant to Vehicle Code Section 1801.1. This program tracks and monitors the driver license status of an employee/driver and reports to the employer if the driver's driving privilege has been suspended or revoked. The investigation revealed that Yellow apparently failed to enroll approximately 19 of its drivers in the DMV Pull Notice Program.

Failure To Comply With Airport Rules

Pursuant to General Order 158-A, Part 3.01 and GO 157-C, Part 3.02, a consistent failure to comply with safety or traffic rules and regulations of an airport authority may result in the suspension or revocation of operating authority. The

investigation revealed that during 1996 alone, Yellow received 13 violation notices from SFO, relating to unsafe vehicle conditions and other violations of airport regulations.

Use Of Drivers With Suspended Drivers' Licenses

Rule 5.01 of General order 158-A provides that: "Every driver of a vehicle shall be licensed as required under the California Vehicle Code (CVC) and shall comply with the driver provisions of the Motor Carrier Safety Sections of Title 13 of the California Code of Regulations." Section 1808.1(c) CVC provides that an employer of drivers in a business such as Yellow's must verify that each employee's driver's license has not been suspended or revoked. Staff's review of DMV and Yellow's records disclosed that the carrier used four drivers whose California drivers' licenses had expired or been suspended to perform passenger transportation services.

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 that it has received more than eighty (80) complaints concerning transportation services rendered by Yellow from dissatisfied customers, SFO and former employees. The carrier has failed to respond to many of these customer complaints, and related staff inquiries regarding their status, within 15 days as required by the General Order.

Failure To Have On File With The Commission A Certificate of Workers' Compensation Insurance Coverage

Under Sections 460.7 and 5378.1 of the PU Code, every passenger 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 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 Yellow engaged employees without maintaining on file a certificate of workers' compensation insurance, in violation of these provisions.

Operations During Periods of Suspension or Revocation

Sections 702, 1031 and 5379 provide that no passenger carrier shall operate over any public highway in this State without a certificate from the Commission authorizing such operations. The staff's investigation disclosed that the operating authority of Yellow has been suspended and revoked on many occasions. Yellow's records, SFO records, and others indicated continuous operations during periods of suspension or after revocation in violation of these provisions.

Failure To Assess Tariff Rates On File With The Commission

Pursuant to PU Code Section 494, "No common carrier shall charge, demand, collect, or receive a different compensation for the transportation of persons ... than the applicable rates, fares, and charges specified in its schedules filed and in effect at the time, nor shall any such carrier refund or remit in any manner or by any device any portion of the rates, fares, or charges so specified, ... nor extend to any corporation or person any privilege or facility in the transportation of passengers or property except such as are regularly extended to all corporations or persons." The staff

declaration indicates that Yellow was charging its passengers amounts other than its tariff rates on file with the Commission through the use of fare devices. Sometimes fares greater than the tariff rate were charged customers when Yellow could not pick-up as scheduled and arranged other transportation for these customers.

Failure To Include PSC/TCP Numbers In Advertisements

Pursuant to sections 702, 1039, 5381, 5386 PUC, Part 3.07 of General Order 157-C and Part 3.05 of General Order 158-A, in every written or oral advertisement of the service it offers, every passenger stage corporation and charter-party carrier shall state the number of its certificate or identifying symbol, as specified by the Commission. Staff's investigation disclosed that Yellow failed to include its PSC and TCP numbers in its advertisements to the public.

Failure To Maintain Records

Pursuant to GO's 157-C and 158-A, Part 6.01, a carrier must institute and maintain in its offices, a set of records which reflect information as to the services performed, and these records are to be maintained for a minimum period of three years. Yellow failed to maintain a complete set of records. Various records of consumer complaints were not retained and were simply discarded. Staff says that it gave the carrier sufficient time to correct the problem but the carrier did not fully comply with staff requests, thus impeding the investigation. Evidence of operations during some periods had to be gleaned by staff from SFO Airport records and other sources.

DISCUSSION

After the issuance of a certificate of public convenience and necessity, the Commission exercises continuing oversight of the carrier's fitness to operate. Public Utilities Code Section 1033.5 authorizes the Commission at any time for good cause to suspend a certificate of public convenience and necessity, or to revoke the certificate upon notice to the holder and opportunity to be heard. "Good cause" in PU Code Section 1033.5 (c) (1) includes a consistent failure to comply with the provisions of the Vehicle Code.

The Department of Motor Vehicles' Pull Notice Program tracks and monitors the driver's license status of each of its employees/drivers, and reports to the employer if any employee's driving privilege has been suspended, revoked, or otherwise restricted by the DMV. Under this program, an employer who continues the use of an employee whose driver's license has been suspended, is guilty of a misdemeanor and subject to fines and/or imprisonment.

This Commission's mission in regulating airport shuttle operators is to ensure that transportation services provided to the public are conducted in a safe and dependable manner. To ensure only safe and qualified drivers provide passenger service to our citizens, it is vital that all airport shuttle operators fully comply with the DMV's Pull Notice Program, and that carriers monitor the performance of their drivers.

We find very serious the allegations made by staff against this airport shuttle operator. There appears cause for us to assume that this operator, Martin B. Smith, has in the past three years: frequently conducted operations without PL&PD and workers' compensation insurance (about 200 days); used drivers with suspended California drivers' licenses; failed to timely respond to about eighty customer complaints; conducted continuous operations during many periods of suspension, or after revocation of operating authority; and engaged charter-party sub-carriers

whose operating authorities were under suspension for lack of PL&PD insurance.

These allegations, if found to be true, indicate that Yellow lacks the the moral fitness and trustworthiness which we expect from a certificate holder providing passenger service. 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, competency, or adaptability to the 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, and the burden rests with the applicant to demonstrate that he is reasonably fit to be entrusted with a renewal of Commission authority."

In the past, we have directed staff to inform us of any unsafe carrier operations so that we can take immediate action necessary to protect public safety. We took such action in D.93-09-004, when we revoked American Transportation Enterprises's certificate of public convenience for repeated violations of the safety provisions of the Vehicle Code.

The apparent patterns of operating over a long time span without any PL&PD insurance, and employing unfit drivers, can only lead us to conclude that this carrier and the corporate president and manager, Martin B. Smith, are possibly threats to public safety.

Accordingly, today's order will direct staff not to administratively reinstate the respondents' operating authority in the event it is suspended for failure to have evidence of PL&DP insurance coverage on file with the Commission and subsequently they produce evidence of coverage. It can, under these circumstances, only be reinstated upon order of the Commission after considering a petition from the respondents filed in this OII and the results of staff's investigation and

any recommendations which it may have. Likewise, we will require the respondents to monthly file, under penalty of perjury, evidence that all drivers are enrolled in the DMV pull notice program. These are prudent measure for us to order in view of the long span of compliance problems and the serious nature of the alleged violations.

O R D E R

IT IS ORDERED that:

1. There is substantial evidence to initiate an investigation on the Commission's own motion into the operations and practices of the respondents, North Shuttle Service, Inc., a corporation, holding a certificate of public convenience and necessity as a passenger stage corporation, and a charter-party carrier certificate, and those of Martin B. Smith, an individual, President and General Manager of North Shuttle Service, Inc., doing business as Yellow Airport Express (Yellow). Smith, North Shuttle Service, Inc. and Yellow are all respondents.

2. There is good cause to believe that Yellow and Smith have violated the following laws and regulations which are applicable to their operations:

- a. Violated PU Code Sections 1040, 1041, 5387, and 5391; GO 101-E and GO 115-E by failing to maintain evidence of public liability and property damage insurance on file with the Commission;
- b. Violated PU Code Sections 5381 and 5382; GO 158-A and GO 157-C, Parts 5.02, and CVC Section 1808.1 by failing to enroll all drivers in the DMV Pull Notice Program;
- c. Violated GO 158-A and GO 157-C, Part 5.01, by employing drivers with suspended and/or expired California drivers' licenses;

- d. Violated GO 158-A, Part 3.01, and GO 157-C, Part 3.02 by failing to comply with safety or traffic rules and regulations of an airport authority;
- e. Violated PU Code Sections 460.7 and 5378.1 by employing workers without maintaining 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 with the Commission;
- f. Violated PU Code Sections 1031 and 5379 by conducting operations during periods of suspension and after revocation of its operating authorities;
- g. Violated GO 158-A and GO 157-C, Parts 7.01, by failing to respond within 15 days to written customer complaints and staff inquiries concerning transportation service provided or arranged by the carrier;
- h. Violated PU Code Sections 454, 458 and 494 by failing to assess tariff rates on file with the Commission through the use of fare devices;
- i. Violated PU Code Sections 1039, 5381 and 5386; GO 157-C, Part 3.07, and GO 158-A, Part 3.05 by failing to include its PSC and TCP number in advertisements;
- j. Violated GO 158-A and GO 157-C, Part 6.01 by failing to maintain records.

3. If, during the pendency of this proceeding, the operating authority of the respondents is suspended for failure to maintain on file with the Commission evidence of PL&PD insurance, the operating authority shall not be reinstated unless an order from the Commission is obtained so directing after filing a petition in this proceeding and considering staff's investigation of the incident and recommendations.

4. Every thirty days during the pendency of this proceeding the respondents shall submit to the Director of the

Consumer Services Division a report, signed under penalty of perjury, listing all drivers employed during the last thirty days and certifying that they are enrolled in the DMV pull notice program (listing all drivers license numbers).

5. At hearings to be set, respondent North Shuttle Service, Inc. can appear and show cause why its passenger stage and charter-party carrier certificates should not be revoked pursuant to Public Utilities Code Sections 1033.5(a) and 5378(a), in view of the serious allegations made by staff and assuming the allegations are proven at the hearing.

6. Staff, if it elects to do so, may present additional evidence beyond that described in this order, either by prepared testimony or through documentation.

7. The Executive Director is directed to cause a copy of this order to be personally served upon the respondents, North Shuttle Service, Inc. and Martin B. Smith, doing business as Yellow Airport Express, 176 Golden Gate Avenue, San Francisco, California 94102, by serving a copy on Smith, the corporation president.

This order is effective today.

Dated January 23, 1997, at San Francisco, California.

P. GREGORY CONLON
President
DANIEL WM. FESSLER
JESSIE J. KNIGHT, JR.
HENRY M. DUQUE
RICHARD A. BILAS
Commissioners