

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

TRANSPORTATION DIVISION RESOLUTION TEA - 1

Date: November 6, 1991

R E S O L U T I O N

RESOLUTION TEA - 1. ESTABLISHING A MORATORIUM ON ISSUING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY TO APPLICANTS FOR PASSENGER STAGE CORPORATION AUTHORITY TO SERVE LOS ANGELES INTERNATIONAL AIRPORT AND SAN FRANCISCO INTERNATIONAL AIRPORT.

SUMMARY

The City of Los Angeles Department of Airports and San Francisco International Airport have requested the Commission place a six month moratorium on the granting of new passenger stage corporation (PSC) certificates of public convenience and necessity to serve Los Angeles International Airport (LAX) and San Francisco International Airport (SFO).

BACKGROUND

In the past several years, LAX and SFO have experienced a significant increase in the number of on-call shuttle van operators serving the airports and the surrounding communities. In 1990, 27 new PSCs were authorized by the Commission, 5 serving SFO and 13 serving LAX. The airports claim this increase in operators and vehicles has exacerbated problems of congestion, illegal van operations, unethical business practices, and safety. The airports have instituted new programs designed to alleviate the problems, with mixed results.

A July 10th inspection of on-call shuttle vans at LAX resulted in 42 of 45 vans being cited for safety violations. In all, 136 violations were reported and 23 vans were placed out-of-service. A follow-up inspection on October 1st had similar results. Of the 62 shuttle vans inspected, approximately 50 were cited for safety violations and 26 were placed out of service.

Discussion

It is apparent from the LAX inspections that there are widespread and serious safety problems in the shuttle van industry. The need for improved safety programs is critical.

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The airports would like to work cooperatively with the Commission to resolve their problems and meet Commission goals. The airports are planning, for example, to assess the van safety issue and develop an appropriate inspection and certificate program. To enable the airports to undertake these efforts, they are requesting a six month moratorium on new PSC shuttle van operations to SFO and LAX.

The Commission is interested in promoting cooperative methods to provide adequate and dependable ground transportation to and from airports at reasonable rates. The airport's proposed van inspection and certification program, by protecting passenger safety, is a good example of the type of program the Commission would like to promote.

Both LAX and SFO are served by several PSCs. Placing a six month moratorium on new PSCs will not materially impair the public's ability to get adequate transportation at reasonable rates.

THEREFORE, IT IS ORDERED that:

A moratorium is declared during which no action will be taken to approve any application received after November 6, 1991, for a certificate of public convenience and necessity to operate a passenger stage corporation at Los Angeles International Airport or San Francisco International Airport. This moratorium applies to all applications for new or additional authority to serve Los Angeles International Airport and San Francisco International Airport.

The moratorium shall remain in effect until May 6, 1992. There shall be no extensions. Exceptions to this moratorium may be granted by the Commission in an emergency situation, such as a vital public need that cannot be met by existing carriers.

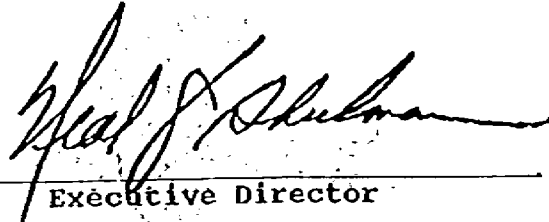
During the moratorium period, staff will work with the Airport Authorities and the California Highway Patrol to develop appropriate programs to protect the safety of shuttle van passengers. Staff will also work with carriers and Airport Authorities to examine Commission regulations and determine what changes, if any, can be made in those regulations to promote safety, consumer protection and better service to the public. Staff will report back to this Commission, with recommendations, on the results of its cooperative efforts.

In addition, staff will continue performing unannounced inspections of vehicles serving the airports and will work with local law enforcement agencies and City Attorney Offices to ensure carrier compliance with safety laws.

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I hereby certify that this Resolution was adopted by the Public Utilities Commission at its regular meeting on November 6, 1991. The following Commissioners approved it:

PATRICIA M. ECKERT
President
DANIEL Wm. FESSLER
NORMAN D. SHUMWAY
Commissioners


Executive Director

I will file a written dissent.
/s/ JOHN B. OHANIAN
Commissioner

Resolution TEA-1

Commissioner John B. Ohanian, Dissenting

Today's resolution is not only bad public policy but a dangerous departure from the consistent path this Commission has followed in our transportation program. The purpose of this dissent is to put forth my rationale for rejecting this resolution outright, and why I can not sit silently while four years of Commission precedent uselessly falls to the wayside.

Resolution TEA-1 purports to be a safety matter of great urgency. Accepting that the safety concerns cited by TEA-1 are true, and I have no reason to doubt that they are, the wrong solution is to stop granting authorities.

For four years this Commission has steadfastly held that safety is best assured through direct enforcement. Indeed, the direct enforcement efforts of the airports are tackling the problem head on. When operators are shown to be unsafe we should decertify them. If operating practices are illegal and abusive the operators should be prosecuted. If congestion exists at airports then airports should take remedial action on their private property.

However, we can not promote safety by restricting entry of new operators! Restricting entry merely restricts competition to the advantage of those with existing permits. To accept such an argument contravening four years of consistent policy on the basis of untested assertions gives me grave concern.

One concern is the appearance of this Commission continuing to process applications already filed, but not working on any applications filed after today. Where is the reasoning for this arbitrary decision? Are we discriminating against tomorrow's applicant because yesterday's applicant will receive a certificate in March stating it is in the Public Convenience and Necessity to promote competition, but tomorrow's applicant is not? Are we discriminating because we have not only not had a hearing, but haven't provided any notice whatsoever?

I read today's resolution as preventing us from processing any application which includes Los Angeles International Airport (LAX) or San Francisco International Airport (SFO). Yet, an applicant may also be requesting authority to serve other areas where service is a concern. We will not process these applications. This is bad public policy; an ill thought out idea to implement a bad policy with terrible results. At a minimum, I hope our staff will inform new applicants of the moratorium when

applications are filed and recommend amendments to these applications if LAX or SFO are mentioned. While this will help, it still does not solve the problem of the remote operator who may have a van load from Victorville or Santa Paula to LAX. These passengers will have to drive to the airport because we will not entertain such services. If we determine that service from remote sites is an emergency with an overriding public need, then we can expect to see Blythe as one point of origin for service to LAX. How we will determine the merits of these applications while not processing them is a mystery to me.

TEA-1 also opens a Pandora's Box of troubles. By starting down the slippery slope of limiting entry for purposes of safety we begin to erode our direct enforcement policy. Once we step back from direct enforcement just one iota we will be continually fighting to maintain our rate flexibility programs in general freight, household goods, and dump trucks. Each of these parties have argued that public safety demands limited entry into their industry. Consistently, we have rejected these arguments. To reverse this policy invites these interests to come forward with "new safety programs" under the guise of temporary moratoria to implement the new safety programs. I can not and will not be a party to encouraging these interests to reopen the basis of our transportation program.

Let us now turn to the expected results of this "temporary moratorium". The airports, CHP and our staff will establish safety procedures to protect the public. We all agree this cooperation is beneficial, and this is consistent with our past safety policies.

What has not been explained is how eight or ten new entrants with a couple vans apiece spread over a five or six month period in a field of a thousand vans will subvert this cooperative effort. Even most of these authorities are transfers from existing carriers which does not increase the amount of vans at all. The incremental additions to the market from our authorities is negligible. This insignificant portion of the market is now being used to overturn our general safety policy.

Why can airports not simply deny access to these operators to their private property? Some have argued that court cases have limited this right of airports. These cases have been mentioned to me, but no legal analysis has been presented. If the problem is with the wording of the CPC&Ns we issue, then let us amend that language to clarify our intent that permits at airports are needed. That would be a reasonable step to solve a real problem if such a problem does exist. Simply to stop issuing permits because of this is unnecessary.

SFO has successfully limited the number of vans allowed on the airport at one time. Why this process will not work has not been

explained to me. In fact, it is working. Why and how a limit on authorities by us will do a better job escapes me.

Despite language claiming that there will be no extensions we can also expect to see a petition for an extension. Perhaps my colleagues will find a way back up the slippery slope, and I wish them luck, but I also caution that such slopes get slipperier and steeper once one has stepped over the edge.

In summary, TEA-1 accomplishes nothing positive, sets dangerous precedents in other transportation matters, and includes us in blatantly unfair behavior without providing notice or a hearing for the affected parties. Further, the order will have the effect of limiting passenger stage service to other areas simply because the applicant requests authority to SFO or LAX. TEA-1 is bad policy, bad precedent, and a bad idea.

/s/ JOHN B. CHANIAN
JOHN B. CHANIAN

San Francisco, California
November 6, 1991