

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Evergreen Trails, Inc. dba Horizon Coach Lines for authority to operate as a scheduled passenger stage corporation between points in Bakersfield and Los Angeles International Airport and to establish a Zone of Rate Freedom.

Application 12-11-016
(Filed November 13, 2012)

D E C I S I O N**Summary**

This decision grants the application of Evergreen Trails, Inc., doing business as Horizon Coach Lines, a Washington corporation, pursuant to Pub. Util. Code § 1031 et seq., for a Certificate of Public Convenience and Necessity to operate as a Passenger Stage Corporation, as defined in Pub. Util. Code § 226, and to establish a Zone of Rate Freedom pursuant to Pub. Util. Code § 454.2.

Discussion

Evergreen Trails, Inc., doing business as Horizon Coach Lines (applicant), provides Transportation Charter Party (TCP) and sightseeing services in numerous states including California, and holds intrastate charter authority issued by California (TCP# 27333A). The applicant requests authority to operate as a scheduled Passenger Stage Corporation (PSC) to transport passengers between points in Bakersfield and Los Angeles International Airport (LAX). The federal Surface Transportation Board (STB) approved the transaction by STB Docket No. MCF-21047 with a service date of September 6, 2012, approving applicant's acquisition of CUSA CC, LLC's, assets and operating permits (TCP#

16907)¹, which provided Bakersfield to LAX service as a charter operation for 25 years. CUSA CC, LLC, acquired the certificate through its transfer, as authorized by Decision 04-07-016.²

This proposed service will primarily serve passengers who are embarking on or returning from a longer trip that includes a flight to or from LAX. The service will operate daily according to the schedule as shown as Exhibit C of the application. Applicant states that there is a need for this proposed service. There is currently no alternative scheduled bus or shuttle service between Bakersfield and LAX. Greyhound's service to downtown Los Angeles does not serve the same market demand as the proposed service. Increase in gas prices, cost of taxis, and costs of a flight between Bakersfield and LAX have caused a large number of the public to desire and seek lower cost alternative transportation services.

Applicant indicates that it possesses the ability, knowledge and equipment necessary to operate a PSC service. Its officers and directors have a combined experience of over 10 years in the passenger transportation industry. Applicant will operate motor coaches seating 55-57 passengers.

The proposed one-way fares for adults are \$32 (Bakersfield - Los Angeles) and \$54 round-trip. The proposed one-way fares for children (ages 6-12) are \$17 and \$29 round-trip. Applicant requests authority to establish a Zone of Rate Freedom (ZORF) of 30% above and below the proposed fares. It states that it will be competing with other bus companies and private automobiles. This

¹ TCP# 16907 revoked as of December 17, 2012.

² D04-07-017 authorized the transfer of Antelope Valley Bus, Inc. to CUSA CC, LLC dba Airport Bus of Bakersfield and Antelope Valley Bus.

competitive environment should result in applicant pricing its service at a reasonable level.

Concurrent with the filing of the application, applicant filed a motion, pursuant to Rule 11.4 of the Commission's Rules of Practice and Procedure, for an order that Exhibit F to the application be sealed and not open to public inspection. The exhibit consists of a financial statement for the first nine months of 2012 for Evergreen and affiliated companies. Exhibit F was removed from the public version of the application which was filed with the commission.

Administrative Law Judge (ALJ) John S. Wong ruled on June 4, 2013, that the information in Exhibit F is of the type that is not commonly made public and which, if made public, could subject Evergreen to an unfair business disadvantage, and granted the unopposed motion of the applicant to file Exhibit F under seal.

Notice of filing of the application appeared in the Commission's Daily Calendar on November 28, 2012. Applicant served notice of the application to the involved cities, counties, regional transportation planning agencies and public transit operators.

In Resolution ALJ 176-3305, dated November 29, 2012, the Commission preliminarily categorized this application as ratesetting, and preliminarily determined that hearings were not necessary. No protest has been received. Given this status, public hearing is not necessary, and it is not necessary to alter the preliminary determinations made in Resolution ALJ 176-3305.

Waiver of Comment Period

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Section 311(g)(2) of the Public Utilities Code

and Rule 14.6(c)(2) of the Commission's Rules of Practice and Procedure, the otherwise applicable 30-day period for public review and comment is waived.

Safety Considerations

In order to be authorized to commence operations as a PSC, the applicant must comply with the following requirements in order to protect public safety: Proof of insurance pursuant to General Order Series 101, compliance with the controlled substance and alcohol testing program pursuant to Pub. Util. Code §1032.1 and General Order Series 158, and enrollment in the pull notice system as required by Section 1808.1 of the Vehicle Code.

Assignment of Proceeding

Emory J. Hagan, III is the assigned Examiner in this proceeding.

Findings of Fact

1. The application requests authority to operate as a scheduled PSC to transport passengers between Bakersfield and LAX.
2. Applicant acquired the assets and operating permit of CUSA CC, LLC, approved by the federal Surface Transportation Board (STB) by STB Docket No. MCF-21047.
3. Public convenience and necessity requires the proposed service.
4. Applicant requests authority to establish a ZORF of 30% above and below the proposed fares described in the application.
5. Applicant will compete with other means of passenger transportation.
6. Applicant's motion for an order that Exhibit F to the application be sealed and not open to public inspection was granted by ALJ John S. Wong's ruling dated June 4, 2013.
7. No protest to the application has been filed.
8. A public hearing is not necessary.

9. It can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.

Conclusions of Law

1. Public convenience and necessity has been demonstrated and the application should be granted.
2. The request for a ZORF should be granted because the ZORF is fair and reasonable.
3. Before Applicant changes any fares under the ZORF authorized below, Applicant should give this Commission at least ten days' notice. The tariff should show the high and low ends of the ZORF and the then currently effective fare between each pair of service points.
4. Since the matter is uncontested, the decision should be effective on the date it is signed.
5. Only the amount paid to the State for operative rights may be used in rate fixing. The State may grant any number of rights and may cancel or modify the monopoly feature of these rights at any time.

O R D E R

IT IS ORDERED that:

1. A Certificate of Public Convenience and Necessity is granted to Evergreen Trails, Inc., a Washington corporation, authorizing it to operate as a Passenger Stage Corporation (PSC), as defined in Pub. Util. Code § 226, to transport passengers between the points and over the routes set forth in Appendix PSC-27333, subject to the conditions contained in the following paragraphs.
2. Evergreen Trails, Inc., shall:
 - a. File a written acceptance of this certificate within 30 days after this order is effective.

- b. Establish the authorized service and file tariffs and timetables within 120 days after this order is effective.
- c. File tariffs on or after the effective date of this order. They shall become effective ten days or more after the effective date of this order, provided that the Commission and the public are given not less than ten days' notice.
- d. Comply with Commission's General Orders Series 101 and 158, and the California Highway Patrol safety rules.
- e. Comply with the controlled substance and alcohol testing certification program pursuant to Pub. Util. Code § 1032.1 and General Order Series 158.
- f. Remit to the Commission the Transportation Reimbursement Fee required by Pub. Util. Code § 423 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 Vehicle Code § 1808.1.

3. Evergreen Trails, Inc., is authorized under Pub. Util. Code § 454.2 to establish a Zone of Rate Freedom of 30% above and below the proposed fares described in the application.

4. Evergreen Trails, Inc., shall file a Zone of Rate Freedom (ZORF) tariff in accordance with the application on not less than ten days' notice to the Commission and to the public. The ZORF shall expire unless exercised within 120 days after the effective date of this order.

5. Evergreen Trails, Inc., may make changes within the Zone of Rate Freedom by filing amended tariffs on not less than ten days' notice to the Commission and to the public. The tariff shall include the authorized maximum and minimum fares and the fare to be charged between each pair of service points.

6. In addition to posting and filing tariffs, Evergreen Trails, Inc., shall post notices explaining fare changes in its terminals and passenger-carrying vehicles.

Such notices shall be posted at least ten days before the effective date of the fare changes and shall remain posted for at least 30 days.

7. Evergreen Trails, Inc., (Applicant), is authorized to begin operations on the date that the Safety and Enforcement Division mails a notice to Applicant that its evidence of insurance and other documents required by Ordering Paragraph No. 2 have been filed with the Commission and that the California Highway Patrol has approved the use of Applicant's vehicles for service.

8. Before beginning service to any airport, Evergreen Trails, Inc., (Applicant), shall notify the airport's governing body. Applicant shall not operate into or on airport property unless such operations are authorized by the airport's governing body.

9. The confidential information subject to Administrative Law Judge (ALJ) John S. Wong's ruling dated June 4, 2013, shall remain under seal. The information shall not be made accessible or disclosed to anyone other than (a) Commissioners and Commission staff; (b) other parties to this proceeding who have executed a reasonable nondisclosure agreement with Evergreen Trails, Inc.; or (c) upon further order or ruling of the Commission, the assigned Commissioner, the assigned ALJ, or the ALJ then-designated as Law and Motion Judge.

10. The Certificate of Public Convenience and Necessity to operate as Passenger Stage Corporation-27333, granted herein, expires unless exercised within 120 days after the effective date of this order.

11. The Application is granted as set forth above.

12. This proceeding is closed.

This order is effective today.

Dated _____, at Carmel-by-the-Sea, California.

CERTIFICATE
OF
PUBLIC CONVENIENCE AND NECESSITY
AS A PASSENGER STAGE CORPORATION
PSC-27333

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.

Issued under authority of Decision _____, dated _____, of the Public
Utilities Commission of the State of California in Application 12-11-016.

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

Evergreen Trails, Inc., doing business as Horizon Coach Lines, 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 on a scheduled basis over the routes described in Section II, 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. Service will be operated only at the points described in Section II. A description of all the stop points and the arrival and departure times from such points shall be indicated in the timetable filed with the Commission.
- C. Only passengers having a point of origin or destination of Los Angeles International Airport shall be transported.
- D. This certificate does not authorize the holder to conduct any operation on the property of any airport unless such operation is authorized by the airport authority involved.

SECTION II. ROUTE DESCRIPTIONS.

Scheduled Service

Commencing at any point in Bakersfield, then over the most convenient streets and highways to Los Angeles International Airport (LAX).