Decision **PROPOSED DECISION OF ALJ TSEN**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Petition to Adopt, Amend or Repeal a Regulation pursuant to Public Utilities Code Section 1708.5.	Petition 13-10-009 (Filed October 16, 2013)

DECISION DENYING PETITION

1. Summary

We deny the Petition of The Greater California Livery Association (Petitioner or GCLA), to adopt a new regulation on vehicle standards for limousine operators and other charter-party carriers in this state. The proposed regulation is within the scope of Rulemaking (R.) 12-12-011. The GCLA may seek to become a party in R.12-12-011 and have its proposal considered by the Commission.

2. Procedural History and Background

Petitioner, The Greater California Livery Association (Petitioner or GCLA), filed this petition on October 16, 2013, pursuant to Public Utilities Code Section 1708.5.[1] That statute authorizes "interested persons to petition the California Public Utilities Commission (Commission) to adopt, amend, or repeal a regulation." On November 1, 2013, the assigned Administrative Law Judge (ALJ) issued a ruling requiring GCLA to serve California airports as additional interested parties in the proceeding. Burbank-Glendale-Pasadena Airport

Authority (BGPAA) timely filed a response opposing the petition: GCLA filed a timely reply.

On December 30, 2013, the assigned ALJ issued a ruling requesting additional information from the petitioner. GCLA filed a timely response with the Commission but failed to serve its response to the service list until February 7, 2014.

On February 7, 2014, the California Airports Council (CAC) filed a motion requesting leave to late-file comments. That motion was denied.[2]

GCLA represent limousine operators in California and petitioned the Commission to adopt a regulation specifying that vehicle standards for limousine operators and other charter-party carriers are the exclusive jurisdiction of the Commission and not in the domain of airport operators in the state.

3. Discussion

GCLA proposes the adoption of a regulation as follows: "Vehicle standards for limousine operators and other charter-party carriers are in the exclusive domain of the California Public Utilities Commission. Local airport operators do not have the authority to prescribe the types of vehicles that limousine services may operate with respect to their emissions, fuel economy (miles per gallon), types of fuel used and age."[3] The proposed regulation would

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[1] Unless otherwise noted, all statutory references are to the Public Utilities Code.

[2] As an additional interested party served pursuant to the ALJ ruling dated November 1, 2013, the CAC had until December 4th, 2013 to file its response. The CAC cites the holiday season for its inability to file a timely response but failed to file and serve its motion until February 7, 2014, more than 75 days after being served the petition.

[3] *See* P.13-10-009 Petition at 3.

not apply to entities that operate solely out of airport property such as car rentals or airport shuttles, but to limousine operators and charter-party carriers that operate both over California freeways and roadways as well as in airports. Section 5731.4 allows airport operators to enforce non-discriminatory regulations pertaining to access, use of streets and roads, parking, traffic control, passenger transfers, trip fees and occupancy, and the use of buildings and facilities.[4] GCLA argues that vehicle standards relating to emissions, fuel economy, types of fuel used and age has nothing to do with access or the use of airport facilities, and exceeds an airport operator's permissible power to regulate. BGPAA, in its response to the petition urges the Commission to deny GCLA's Petition and argues that adopting a regulation as proposed would impermissibly interfere with the jurisdiction of airports throughout the state to regulate the access and conduct of limousine operators and other charter-party carriers.[5]

The parties present opposite interpretations of Public Utilities Code Section 5731.4. We do not express an opinion on the merits of the parties' arguments, but deny this petition on the basis of Rule 6.3(f) of Rules of Practice and Procedure. Subsection (f) of Rule 6.3 states "The Commission will not entertain a petition for rulemaking on an issue that the Commission has acted on or decided not to act on within the preceding 12 months."

Decision 13-09-045 in Rulemaking (R.) 12-12-011 instituted a second phase to that proceeding to review the Commission's existing regulations over limousines and other charter party carriers in order to ensure that the rules have kept pace with the needs of today's transportation market, and that the public

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[4] *See* Section 5731.4 and Petition at 3-4.

[5] Burbank-Glendale-Pasadena Airport Authority's Response to Petition at 1.

safety rules are up to date. The issues raised by the instant petition fall squarely within the scope of R.12-12-011 and can best be addressed in that proceeding.

The December 30, 2013 ALJ ruling gave GCLA an opportunity to present arguments as to why the issue raised in its petition could not be considered in R.12-12-011. In its Response, GCLA characterized its petition as a proposal to establish a new regulation but that R.12-12-011 is limited to a review of existing regulations. We find this argument to be unpersuasive. R.12-12-011 will review existing regulations to limousine operators and charter-party carriers to make sure that they remain timely and relevant to today's transportation market. That review may result in modification of existing or establishment of new rules.

GCLA also states that its requests is too urgent to await an decision in R.12-12-011. It cites pending airport regulations going into effect in 2014 and 2015 as the reason the Commission should grant this petition.[6]

Any changes to the existing rules would necessitate input from interested parties and stakeholders. Thus, granting the petition would not result in immediate adoption of the proposed regulation, but rather would open a new proceeding to consider input from all interested parties. Therefore, a separate proceeding would not necessarily hasten the review of the instant proposal.

Based on the above, we see no reason to institute a separate proceeding to consider the proposed regulation. Petitioner may choose to become a party in R.12-12-011 and submit its proposal to be included as part of the scoping memo to be issued by the assigned ALJ and Commissioner.

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[6] *See* Response at 3-4.

4. Assignment of Petition

Michael Peevey is the assigned Commissioner and S. Pat Tsen is the assigned ALJ.

5. Comments on Proposed Decision

The proposed decision of the ALJ in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on _____, and reply comments were filed on _____ by _____.

Findings of Fact

1. Notice of the application appeared on the Daily Calendar on October 16, 2013. On December 5, 2013, BGPAA responded to the petition with leave from the assigned ALJ. The GCLA filed a timely reply.

2. The GCLA represents limousine operators and charter-party carriers and petitions the Commission to adopt new regulation excluding airport operators from regulating vehicle standards with respect to emission, fuel economy, type of fuel used and age.

3. BGPAA responded to the petition and urges the Commission to deny the petition for impermissible interference with the jurisdiction of airport operators to regulate the access and conduct of limousine operators and other charter-party carriers.

4. Phase 2 of R.12-12-011 will review existing regulations over limousines and other charter-party carriers in order to ensure that the rules have kept pace with the needs of today's transportation market.

5. The Petitioner's request is within the scope of R.12-12-011.

Conclusions of Law

1. Rule 6.3(f) of the Commission's Rules of Practice and Procedure prohibits a petition for rulemaking from raising an issue that the Commission has acted on or decided not to act on within the preceding 12 months.
2. The Petition should be denied.

O R D E R

IT IS ORDERED that:

1. The Petition filed October 16, 2013, by The Greater California Livery Association is denied without prejudice.
2. Petition 13-10-009 is closed.

This order is effective today.

Dated _____, at San Francisco, California.