

**PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Resolution ALJ-309  
Administrative Law Judge Division  
\_\_\_\_\_, 2015

**RESOLUTION**

RESOLUTION ALJ-309 – Resolves the Appeals of Fines for Violations of Public Utilities Code Section 1031, Operating as a Sub-Carrier for a Passenger Stage Operation Without the Proper Authority.

**SUMMARY**

This resolution grants the appeals of eight carriers to citations for violating Pub. Util. Code § 1031<sup>1</sup> operating without a passenger stage permit.

**BACKGROUND**

Appeals of citations were filed by eight carriers. These appeals are numbered FC-639 through 646: FC-639, George E. Uдах, doing business as *Global Logistics Int'l.*; FC-640, Iona Nicolae Tite, doing business as *Sky Blue Shuttle*; FC-641, *Above All Shuttle LLC*; FC-642, Paul S. Gulati, doing business as *My Ride Shuttle*; FC-643, Charles Ene, doing business as *Ene Transportation*; FC-644, Ernesto Noyola-Gonzalez, doing business as *Noyola Transportation*; FC-645, Vargas Transportation LLC doing business as *Liberty Launch*; and FC-646, Alfred Ponce, doing business as *Alfred Ponce*. All citations

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<sup>1</sup> (a) No passenger stage corporation shall operate or cause to be operated any passenger stage over any public highway in this state without first having obtained from the commission a certificate declaring that public convenience and necessity require such operation, but no such certificate shall be required of any passenger stage corporation as to the fixed termini between which, or the route over which, it was actually operating in good faith on July 29, 1927, in compliance with the provisions of Chapter 213, Statutes of 1917, nor shall any such certificate be required of any person or corporation who on January 1, 1927, was operating, or during the calendar year 1926 had operated a seasonal service of not less than three consecutive months' duration, sightseeing buses on a continuous sightseeing trip with one terminus only. Any right, privilege, franchise, or permit held, owned, or obtained by any passenger stage corporation may be sold, assigned, leased, mortgaged, transferred, inherited, or otherwise encumbered as other property, only upon authorization by the commission.

(b) For purposes of this section, "public convenience and necessity," as it affects applications for passenger stage corporation certificates, means that the applicant has met the criteria for issuance of a certificate specified in Section 1032.

were issued on April 25, 2014 and timely appeals were filed May 15, 2014. Appellants failed to appear at a timely scheduled hearing.

### **DISCUSSION**

In June 2012, the Safety & Enforcement Division (Safety Div.) began its investigation of Liberty Launch, Inc. (Liberty Launch) as a result of a complaint from another carrier alleging that Liberty Launch was operating as a Passenger Stage Corporation without the proper permit. According to the investigator's narrative, he investigated Liberty Launch for the period July 1, 2012, through September 23, 2013. As a result of that investigation, the Safety Div. cited Liberty Launch for violating Public Utilities Code Section 1031 for a total of 55 counts. This was Citation FC-631. Each count was a separate instance of service provision allegedly without the proper permit. The service was all provided from the United States Marine Corps Camp Pendleton Marine Base (Pendleton) in Southern California, to various locations including nearby airports, cities, and attractions such as Disneyland. On January 31, 2014, the Safety Div. issued citation FC-631, to Liberty Launch and on February 21, 2014, Liberty Launch entered into an agreement to pay a fine of \$3,000 to settle citation FC-631. It is unexplained why the Safety Div. cited Liberty Launch again given the settlement in FC-631.

Clearly known to the Safety Div. during the course of its investigation of Liberty Launch, was that Liberty Launch had entered into arrangements with other Transportation Charter Party carriers who were licensed by this Commission, but not as Passenger Stage Carriers. FC-639, the first of the seven citations to the subcontractors,<sup>2</sup> as well as another citation to Liberty Launch (FC-645), resulted from an investigation beginning in March 2013, 11 months before the Safety Div. settled with Liberty Launch. All of the other citations for FC-640 through FC-646 include the identical recital by the Safety Div. inspector and all began at the same time according to the inspector's eight reports.

The record is clear that the other carriers operated as subcarriers to Liberty Launch and provided service from Pendleton. It is clear that the Safety Div. knew the actions of Liberty Launch in Citation FC-631 and the eight citations appealed here were part of a common action. Nevertheless, even though Liberty Launch, the prime contractor has settled citation regarding the Pendleton services, the Safety Div. issued eight more citations, FC-639 through FC-646, to each subcarrier for Pendleton services provided under the umbrella contract between the Marines and Liberty Launch.

Counsel for the eight citations of Liberty Launch and the seven subcarriers appealed the citations arguing that the citations were unreasonable given that the Safety Div. had knowingly settled with Liberty Launch (FC-631) for allegedly providing service to the

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<sup>2</sup> It does not substantively matter here whether there was a contractual relationship between Liberty Launch and these other carriers: "Subcontractor" is a convenient description.

Marines without a Passenger Stage Corporation permit. This is in essence an argument that the Safety Div. negotiated in bad faith by settling with Liberty Launch and then separately pursuing the subcarriers all of whom were providing service under the single contract between the Marines and Liberty Launch. We agree. We therefore grant the appeals filed by Liberty Launch and the seven subcarriers and rescind citations FC-639-646.

Counsel for the carriers also argues, alternatively, that (despite settling FC-631) the transaction between Liberty Launch and the US Marine Corp. was a federal action exempt from state regulation. However the transportation provided by Liberty Launch and the other appellants were not confined to Camp Pendleton, a federal military base: they traversed California roads and highways to destinations like Disneyland and cities clearly not on federal lands, and therefore pursuant to § 1031 a carrier needs the proper California permit. We therefore reject this alternative argument.

### COMMENTS

Pub. Util. Code § 311(g)(1) requires that a draft resolution be served on all parties, and be subject to a public review and comment period of 30 days or more, prior to a vote of the Commission on the resolution. Comments were filed by Safety Div. objecting to the finding that it had acted in bad faith in piecemealing the violations. We disagree. Safety Div. argues that all of the subcontractor carriers committed violations for which they are individually responsible, and that it is the division's "policy" to individually cite the carriers. But there is only one cause of action: the single contract between the US Marine Corps and Liberty Launch. Therefore, any settlement on permitting issues were all the result of this contract. Negotiating a settlement with the primary contractor and not disclosing the intention of additionally citing all subcarriers/subcontractors is clearly bad faith. The subcontractors were not individually responsible for entering into a contract with the US Marine Corps – only the prime contractor did that. Safety Div. offers no legal authority and cites to no Commission directive to justify its "policy" of issuing separate violations under one cause of action (here, the Marines' contract). The only conclusion is that such a practice creates the appearance of eight violations being separately identified and pursued when, in fact, there was only one. Safety Div. also argues in the comments that had the subcontractors been employees of the prime contractor then there would have been only one carrier in violation. This again is not relevant: the subcarriers did not enter into transactions with the US Marine Corps, only Liberty Launch did. If Safety Division believed that either the subcarriers needed their own permits, or had they been employees who lacked, for example, the correct licenses, then all of this should have been addressed in FC-631 and been subject to the one citation and the one settlement process. Although Safety Div. cites to no requirement to individually issue a total of nine citations, the common single cause of action should have meant that any negotiation to settle should have included all nine carriers/citations in the process. Safety Div. clearly piecemealed this process and deceived counsel for Liberty Launch (who also appeared here for the other eight

carriers) when settling FC-631 for the service provided under the one contract to the US Marine Corps.

**FINDINGS OF FACT**

1. Liberty Launch operated a service to transport passengers from Camp Pendleton, a Marine Base, in Southern California, to various locations including nearby airports, cities, and attractions.
2. The appellants did not have the required permits under Pub. Util. Code § 1031.
3. Safety Div. cited Liberty Launch and seven subcontractors for operating without a permit to provide a service to transport passengers from Camp Pendleton, a Marine Base, in Southern California, to various locations including nearby airports, cities, and attractions.
4. Liberty Launch settled a similar citation, FC-631, which involved the identical service to and from Pendleton addressed in citations FC-639 through FC646.

**CONCLUSIONS OF LAW**

1. Pub. Util. Code § 1031 requires a passenger stage corporation to be permitted by the Commission.
2. The transportation services provided were subject to this Commission's jurisdiction.
3. There is no federal action exemption when a carrier is on California public street and roads.
4. Appellants met their burden of proof that they believed the settlement in FC-631 covered the whole of their operations and FC-639 through FC-646 was issued in bad faith.

**THEREFORE, IT IS ORDERED** that the fines for citations FC-639 through FC-646 are rescinded.

This resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed, and adopted at a conference of the Public Utilities Commission of the State of California held on \_\_\_\_\_, the following Commissioners voting favorably thereon:

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TIMOTHY J. SULLIVAN  
Executive Director