

D.16-06-035

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Swoop Shuttle Service LLC, doing business as Swoop, for a Certificate of Public Convenience and Necessity to operate as a Scheduled Passenger Stage Company exclusively on, and within, the Campus and property of California Polytechnic University, San Luis Obispo, California; and to establish a Zone of Rate Freedom (ZORF).

Application 15-11-004
(Filed November 05, 2015)

ORDER OF DISMISSAL

Pursuant to Public Utilities Code § 226(a), the Commission must dismiss the application. Swoop Shuttle Service LLC, (Swoop) requests a certificate of public convenience and necessity (CPCN), pursuant to Public Utilities Code § 1032¹, to establish and operate a scheduled Passenger Stage Company to the Campus of California Polytechnic University, San Luis Obispo, California. Such transportation services generally require Commission approval pursuant to § 1031(a)² and are granted at the Commission's discretion, pursuant to its authority

¹ All subsequent references are to the Public Utilities Code unless otherwise specified.

² Section 1031 (a) states, in part: 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.

Footnote continued on next page

under § 1032(a).³ A “passenger stage corporation” (PSC) includes every corporation or person engaged as a common carrier, for compensation, in the ownership, control, operation, or management of any passenger stage over any public highway in this state between fixed termini or over a regular route except those, 98 percent or more of whose operations as measured by total route mileage operated, which are exclusively within the limits of a single city or city and county, or whose operations consist solely in the transportation of bona fide pupils attending an institution of learning between their homes and that institution.⁴ (Emphasis Added.) A carrier whose operations satisfy either of these exceptions is not a passenger stage corporation.

The application states that Swoop’s scheduled service is exclusively on, and only within, the Campus and property of California Polytechnic University, San Luis Obispo. Thus, according to the application, 100 percent of its services will be rendered within the City of San Luis Obispo.

In Rulemaking (R.) 95-08-002, re: Specialized Transportation of Unaccompanied Infants and Children (Specialized Transportation), the Commission established rules governing on-call, door-to-door passenger stage service for the transport of children to and from school – and non-school-related activities. Decision (D.) 97-07-063 held that the Commission has no jurisdiction

³ Section 1032 (a) states: Every applicant for a certificate or transfer of a certificate shall file in the office of the commission an application therefor in the form required by the commission. The commission may, with or without a hearing, issue the certificate as requested, or refuse to issue it, or issue it for the partial exercise only of the privilege sought, and may attach to the exercise of the rights granted by the certificate terms and conditions that, in its judgment, are required in the public interest.

⁴ “Section 226(a).

over any passenger stage carrier that operates wholly within the boundaries of a single municipality, as state law confers authority on the Commission only to the extent that two percent or more of a carrier's total route mileage occurs outside of the boundaries of a city or a city/county.⁵ Thus, the limits of the Commission's authority in this context are well-settled. See, e.g., *Hladek v. City of Merced*, 69 Cal. App. 3d 585, 590 (1977).

The statutory language and our previous rulemaking is unambiguous. Cf. *Anaheim Jitney Systems, Inc. v. Valen Parking Management, Inc.*, Dec. 78679, 72 CPUC 192, 192-95, 1971 Cal. PUC LEXIS 636, *3-*8 (1971) (the Commission fined a passenger stage corporation for operating more than two percent of its total mileage outside a single city when it lacked a CPCN).

Because Swoop presently plans to operate entirely within the City of San Luis Obispo, it is not a PSC as defined by § 226(a). Accordingly, the Commission lacks authority to grant it a CPCN under section 1031(a) and, therefore, dismisses the application.

⁵73 CPUC 2d 640 at 655. See also Conclusion of Law No. 10.

O R D E R

IT IS ORDERED that:

1. Application 15-11-004 is dismissed.
2. This proceeding is closed.

This order is effective today.

Dated June 17, 2016, at San Francisco

/s/ TIMOTHY J. SULLIVAN

TIMOTHY SULLIVAN
Executive Director