Decision 09-07-037 July 30, 2009

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Monterey Transportation , LLC for authority to operate as an on-call Passenger Stage Corporation between points in Monterey County, and between such points in Monterey County and San Francisco, Oakland, and San Jose International Airports and the San Jose Amtrak Station; and to establish a Zone of Rate Freedom for its services.	Application 09-02-016 (Filed February 20, 2009)

DECISION GRANTING A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO MONTEREY TRANSPORTATION, LLC

1. Summary

This decision grants the application of Monterey Transportation, LLC (Applicant), a limited liability company, pursuant to Pub. Util. Code § 1031 et seq., for a certificate of public convenience and necessity to operate as a passenger stage corporation (PSC), as defined in Pub. Util. Code § 226. The certificate authorizes the Applicant to operate as an on-call PSC to transport passengers within Monterey County and between points in Monterey County and the San Francisco, Oakland and San Jose International Airports and the San Jose Amtrak Station.

2. Procedural Background

In Resolution ALJ 176-3230 dated March 12, 2009, the Commission preliminarily categorized this application as ratesetting, and preliminarily determined that hearings were not necessary. Although a protest has been filed,

both the Applicant and Protestant agree that a public hearing is not necessary. There do not appear to be any contested facts. Given this status, public hearing is not necessary, and it is not necessary to alter the preliminary determinations made in Resolution ALJ 176-3230. Because this is a contested matter there will be a 30-day period for public review and comment pursuant to Pub. Util. Code § 311(g)(2).

The Application in this proceeding was filed by Monterey Transportation, LLC on February 20, 2009.[1] Notice of filing of the application appeared in the Commission's Daily Calendar on February 27, 2009. Applicant served notice of the application to the involved city and county offices, and the public transit operators and transportation planning agency in the service area.

By letter dated March 4, 2009, the Airport Director of the San Francisco International Airport (SFO) informed Applicant that the proposed service would not be permitted at that facility because reliable service was presently being provided by another airporter, Monterey Airbus. On March 25, 2009, Main Event Transportation Incorporated d/b/a/ Monterey Air bus (Protestant) filed a protest to the Application, stating that Monterey Airbus provided frequent and less expensive service to the San Jose and San Francisco (SFO) international airports, that additional vehicles would increase adverse carbon emissions, that the Applicant's "no-schedule" proposal for shared-rides at multiple locations was infeasible, that Applicant's proposed service would financially jeopardize Monterey Airbus' business which never operates at full capacity, and that

[1] Marked and accepted into the record as Exhibit 1.

Applicant's intended use of Lincoln Towncars and small vans would result in more trips than otherwise.

Applicant replied to the Protest on April 6, 2009, citing past Commission decisions allowing new entrants and competition in the PSC market. On May 5, 2009, we ruled that the March 4, 2009, letter from the SFO Airport Director be made part of the record and required the Applicant to inform us and others on the service list whether it intended to proceed with the application in light of that letter. We also put the Protestant on notice that a prospect of adverse financial impact due to competition is not a valid ground for denial of a PSC certificate of public convenience and necessity. Applicant responded that it wanted to proceed. Protestant responded to us that the Applicant "has not met the legal definition of showing a need or necessity" for additional service under Pub. Util. Code § 1031(a). Both Applicant and Protestant have indicated that they see no need for an evidentiary hearing in this proceeding.

3. Authority Sought

The application requests authority to operate as an on-call PSC to transport passengers within Monterey County and between points in Monterey County and the San Francisco, Oakland and San Jose International Airports and the San Jose Amtrak Station. The service will cater to airline passengers wanting to be dropped off or picked up at those airports or that Amtrak Station. It will also be available to persons desiring PSC service between any points within Monterey County. Applicant states that the proposed services will address a need for an alternative to existing private transport services that use exclusive use vehicles and conventional buses and operate on fixed schedules and fixed routes. Applicant's proposed service will allow multiple passengers to share a

vehicle on a door-to- door basis without being bound to a fixed schedule or fixed routes.

Applicant Monterey Transportation LLC's principal and manager is Vincent Cardinalli. Applicant presently is authorized by this Commission to operate as a charter party carrier (Carrier ID #PSG0021519) and is in good standing with the Commission. Applicant's projected profit and loss statement supports our finding of financial ability to provide the proposed service. Applicant proposes to use full-sized sedans and passenger vans having seating capacities of ten passengers or less. Applicant will dispatch a vehicle to a calling party's location and transport the party to the requested destination.

Applicant proposes to have zone-based charges for the PSC services and to publish those charges in a general tariff filed with the Commission. A Zone of Rate Freedom (ZORF) is sought that would allow adjustment of the under-$100 rates by a maximum of 15% up or down and of the over-$100 rates by a maximum of $25 up or down. Many other PSCs have been granted ZORFs. The requested ZORF is generally consistent with the ZORFs held by other PSCs.

4. Resolution of Issues Posed by Protestant

In opposing the Application Protestant Monterey Airbus alleges that (1) its own service is superior; (2) Applicant's proposed service is not truly unscheduled and will add trips, traffic and carbon emissions; and (3) the proposed service is not necessary and will threaten the financial stability of Monterey Airbus as a provider of existing service. Over the opposition of Monterey Airbus, we find that public convenience and necessity require Applicant's proposed service, and that Applicant's request for a ZORF is just, reasonable and in the public interest.

Applicant's proposed service must meet the statutory standards for passenger stage service. There is no requirement that it exceed in quality any element of existing service provided by another passenger stage corporation in the same market. Because Protestant's claim of providing existing service of superior quality is not relevant, we will not address that claim on the merits.

Contrary to Protestant's argument, the type and extent of scheduling involved in on-call shared ridership services do not amount to "scheduled service" as that phrase is commonly used in the passenger stage sector of the transportation industry.[2] Accordingly, we do not find Applicant's proposal to provide non-scheduled service to be flawed.

Any restraints on market entry due to expectant traffic and air quality impacts fall within the primary regulatory purview of other local and state agencies. The March 4, 2009, letter from the SFO Airport Director (Exhibit 1 in this proceeding), forewarning the Applicant that no permit would be currently available and citing SFO's action plan to reduce greenhouse gas emissions, exemplifies this. Nothing in the Application, Protest or SFO letter suggests to us that the carbon emissions associated with the proposed service are of a magnitude that warrants this Commission duplicating or complementing the vehicle-emission control or reduction activities of other state and local agencies.[3]

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[2] "Scheduled Service" is defined in § 2.05 of General Order (G.O.) 158-A as "service to be provided to specific places at specific times." "On-call service is not performed at specific places or specific times," D.89-10-028 (Order Instituting Rulemaking concerning the regulation of passenger carrier services), at 12; 1989 Cal.PUC LEXIS 573, at 6.

[3] The fact that SFO, one of the three airport termini involved, presently is closed to the Applicant in terms of PSC service does not defeat the Application. In § 3.01 of G.O. 158-A, the Commission recognizes the concurrent permitting and regulatory

Footnote continued on next page

In light of the few vehicles and trips that will be involved in the proposed service, we see no possibility that the activity in question may have a significant effect on the environment.

Finally, Protestant's arguments that the proposed service is not necessary and threatens Protestant's financial stability run counter both to the Commission's interpretation of § 1031(a) of the Public Utilities Code and to its related policy toward market entry with respect to passenger stage services. It was once true that the Public Utilities Code and Commission practice[4] called for a finding that existing passenger stage service in a territory was unsatisfactory before a certificate of public convenience and necessity could be issued to a new entrant. Under the prior language public convenience and necessity did not "require" a new and different provider of services within the meaning of § 1031(a) as long as the Commission found the services of the existing provider

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authority of airports. During the life the certificate we are issuing the Applicant will have to meet the airports' reasonable requirements relating to entry and operation.

[4] The Public Utilities Code once contained a subsection (§1032(b)) mandating that the Commission could issue a certificate "only when the existing passenger stage corporation or corporations serving the territory will not provide that service to the satisfaction of the commission." That provision was interpreted literally to discourage competition in selective Commission decisions from the 1930s into the 1970s. Thereafter, however, it came to be demoted through Commission interpretation to allow more competition in ground transportation services. For an historical sketch of the change in policy from monopoly service to competitive service, *see* Application of American Buslines, Inc. , Decision 91279 (January 29, 1980), 1980 Cal. PUC Lexis 100, 3CPUC2d 246 (1980). Also, *see* Decision (D.) 00-06-073 (Mickey's Space Ship Shuttle and others) and In the Matter of the Application of Silverado Stages, Inc., D.05-12-005, 2005 Cal. PUC Lexis 100. With the removal of that particular §1032(b) provision in 2006 (S.B. 1840; Stats. 2006, Ch.694, Sec. 4, effective January 1, 2007) the legislature aligned itself with the Commission's policy and practice of promoting ground transportation competition in the public interest.

to be satisfactory.[5] Satisfactory existing service was rewarded with protection from competition. That era has long passed. For many years we have viewed the market entry of a qualified competitor generally to be in the public interest.

By providing on-call ground transportation and using vehicles other than buses the proposed service will offer new choices to the riding public in the affected territory. As we said In the Matter of the Application of Silverado Stages, Inc., D.05-12-005, at 9-10, in 2005:

> This differentiation in services provides the public different options and contributes to consumer choices. As in all competitive markets, trial and error, and the pricing of these choices, will determine which options truly meet the public need and which do not, but if a qualified operator desires to compete in a market and offer different services it should be allowed to do so, and the established carriers must adapt to the challenge.

In short, we generally view competition to be a positive component of public convenience and necessity supporting the issuance of a certificate.

Monterey Airbus contends that the existing service it provides fulfills the needs of the market. It cites the § 1031(a) pre-condition "that public convenience and necessity require such operation" in support of its argument that there is no

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[5] It appears that SFO follows such a policy. Its March 4, 2009 letter (now Exhibit 1 in this proceeding) states:

> Prearranged shared-ride and airporter services are generally authorized only when no satisfactory existing operation is present in a geographic market, yet a market need exists. ***Should Monterey Transportation divert passengers from Monterey Airbus, neither company may be able to operate the larger vehicles needed. Furthermore, both services might be imperiled in the current economic downturn.

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need or necessity for the additional service proposed by Applicant.[6] We interpret § 1031(a) differently. Where "public convenience and necessity" in a passenger stage service market can be best served by competition, which is our finding here, and the Applicant otherwise is qualified, then a § 1031(a) declaration "that public convenience and necessity require such operation" can lawfully be made.

5. Comments of Proposed Decision

The proposed decision of the Administrative Law Judge (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. No comments were filed.

6. Assignment of Proceeding

Timothy Alan Simon is the assigned Commissioner and Gary Weatherford is the assigned ALJ in this proceeding.

Findings of Fact

1. The application requests authority to operate as an on-call PSC to transport passengers within Monterey County and between points in Monterey County and the San Francisco, Oakland and San Jose International Airports and the San Jose Amtrak Station.

2. Public convenience and necessity require the proposed service.

Pursuant to G.O. 158-A, we can respect the concurrent regulatory authority of airports even in instances where, as here, that authority is exercised in a locality to further policies different from our own.

[6] May 11, 2009, letter response to ALJ's May 5, 2009 ruling. Marked and accepted into the record as Exhibit 2.

3. Applicant Monterey Transportation LLC has the financial ability to render the proposed service.

4. Competition together with an authorized Zone of Rate Freedom will result in reasonable rates and charges for the PSC service.

5. A protest to the application has been filed.

6. A public hearing is not necessary.

7. 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. A ZORF should be authorized.

3. Since the matter is contested, the decision will be open to comment under Rule 14.3 of the Rules of Practice and Procedure.

O R D E R

IT IS ORDERED that:

1. A certificate of public convenience and necessity is granted to Monterey Transportation, LLC a limited liability company, to operate as a passenger stage corporation, as defined in Pub. Util. Code § 226, to transport passengers and their baggage between the points and over the routes set forth in Appendix PSC-21519, subject to the conditions contained in the following paragraphs.

2. Monterey Transportation, LLC shall:

   a. File a written acceptance of this certificate within 30 days after this decision is effective.

   b. Establish the authorized service and file tariffs within 120 days after this decision is effective.

c. File tariffs on or after the effective date of this decision. They shall become effective ten days or more after the effective date of this decision, provided that the Commission and the public are given not less than ten days' notice.

d. Comply with 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. Monterey Transportation, LLC is authorized to begin operations on the date that the Consumer Protection and Safety Division mails a notice to Monterey Transportation, LLC that its evidence of insurance and other documents required by Ordering Paragraph 2 have been filed with the Commission and that the California Highway Patrol has approved the use of Monterey Transportation, LLC's vehicles for service.

4. Monterey Transportation, LLC is authorized to establish zone-based charges and is granted a Zone of Rate Freedom within which it may adjust its under-$100 rates by a maximum of 15% up or down and its over-$100 rates by a maximum of $25 up or down.

5. Before beginning service to any airport, Monterey Transportation, LLC shall notify the airport's governing body. Monterey Transportation, LLC shall not operate into or on airport property unless such operations are authorized by the airport's governing body.

6. The certificate of public convenience and necessity to operate as PSC-21519, granted herein, expires unless exercised within 120 days after the effective date of this decision.
7. The application is granted as set forth above.
8. Application 09-02-016 is closed.

This decision is effective today.

Dated July 30, 2009, at San Francisco, California.

MICHAEL R. PEEVEY
President
DIAN M. GRUENEICH
JOHN A. BOHN
RACHELLE B. CHONG
TIMOTHY ALAN SIMON
Commissioners

CERTIFICATE

OF

PUBLIC CONVENIENCE AND NECESSITY

AS A PASSENGER STAGE CORPORATION

PSC-21519

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 09-07-037, dated July 30, 2009, of the Public Utilities Commission of the State of California in Application 09-02-016.

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

Monterey Transportation, LLC, a limited liability company, 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 an on-call basis between the points described in Section II, over the routes described in Section III, 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. The term "on-call," as used, refers to service which is authorized to be rendered dependent on the demands of passengers. The tariffs shall show the conditions under which each authorized on-call service will be provided, and shall include the description of the boundary of each fare zone, except when a single fare is charged to all points within a single incorporated city.

C. Service shall be operated only at the points described in Section II.

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. SERVICE AREA.

A. County of Monterey
B. San Francisco International Airport, County of San Mateo
C. San Jose International Airport and San Jose Amtrak Station, County of Santa Clara
D. Oakland International Airport, County of Alameda

SECTION III. ROUTE DESCRIPTION.

Route 1
Commencing from any point in Monterey County, then over the most convenient streets and highways to Oakland International Airport, San Francisco International Airport, San Jose International Airport and the San Jose Amtrak Station, and returning.

Route 2
Commencing from any point in Monterey County, then over the most convenient streets and highways to any other point in Monterey County.