Date of Issuance 4/27/2010

Decision 10-04-035 April 22, 2010

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Double D Drivers, LLC for Authority to operate as a scheduled Passenger Stage Company within San Diego County Between San Diego State University and Mission Beach, Pacific Beach, Downtown San Diego Sea Port Village and Del Mar; and to Establish a Zone of Rate Freedom (ZORF).	Application 09-08-007 (Filed August 12, 2009)

DECISION GRANTING AUTHORITY TO OPERATE AS A PASSENGER STAGE CORPORATION

1. Summary

This decision grants authority to Double D Drivers, LLC to operate as a passenger stage corporation within San Diego County between San Diego State University and Mission Beach, Pacific Beach, Downtown San Diego Sea Port Village and Del Mar; and to establish a Zone of Rate Freedom. This proceeding is closed.

2. Request

Applicant requests authority to operate as a scheduled passenger stage corporation (PSC) that transports passengers and their baggage between San Diego State University (SDSU) and Mission Beach, Pacific Beach, Del Mar, and Downtown San Diego Sea Port Village.

Each route will operate Tuesday through Saturday nights to accommodate the transportation needs of university students. Applicant states that many SDSU students frequent Downtown San Diego, and large numbers of them do

not own automobiles and are in need of inexpensive and convenient bus service. The San Diego routes are purportedly designed to meet the needs of SDSU students, who frequent Mission Beach, Pacific Beach, Sea Port Village, and Del Mar. Applicant indicates that there is a need for service over the proposed San Diego routes due to a current lack of evening and night time transportation. Applicant also states that all of the proposed services will help to relieve traffic congestion, alleviate parking problems, and reduce pollution.

3. Experience

Applicant states that it has the knowledge and ability to conduct the proposed service. One of its owners is about to complete his undergraduate degree in business administration with an emphasis on marketing, from Cal-State University Fullerton. The other owner holds an undergraduate degree in English from UC Santa Barbara, has four years of mechanical experience, and has observed the operation of similar passenger stage operations. Service will be conducted using a Blue Bird TC2000 (an enclosed bus). Attached to the application as Exhibit F is Applicant's financial statement that discloses a net worth of $238,655.

4. Competitive Environment

Applicant will compete with other PSCs, taxicabs, charter vehicles, and private automobiles in its service areas. This competitive environment should result in Applicant pricing its services at a reasonable level. The proposed fares are between $6 and $8 one-way, and $10 and $15 round trip, depending on the destination. Applicant requests authority to establish a Zone of Rate Freedom (ZORF) of $5 above and below the fares above. Many other PSCs have been granted ZORFs. The requested ZORF is generally consistent with the ZORFs held by other PSCs.

5. Procedural Background

Notice that the application was filed appeared in the Commission's Daily Calendar on August 21, 2009. Applicant served a notice of the application to the affected cities and counties, and the public transit operators in the service areas. In Resolution ALJ 176-3240 dated September 10, 2009, the Commission preliminarily categorized this application as ratesetting and preliminarily determined that hearings were not necessary.

6. Protest

On September 21, 2009, a protest was received from Arrive Alive LLC (AA). AA would be competing with Applicant if the application is granted.[1] In its protest, AA argues that: 1) Applicant's services are unnecessary; 2) Applicant's buses will increase traffic and pollution; 3) another PSC is not economically feasible; and 4) Applicant lacks sufficient business acumen.

7. Discussion

Our examination shows that while there is substantial overlap between AA's and Applicant's service areas, Applicant proposes to serve Mission Beach, Sea Port Village, and Del Mar, which were not identified as service areas by AA in its protest. Conversely, Applicant does not seek to serve Isla Vista or Santa Barbara as AA purports to do.

The extent of service area overlap between Applicant, and other carriers could not be discerned from AA's protest. A telephonic prehearing conference (PHC) was held on January 12, 2010 to address this and other issues. In response to questions on this issue during the telephonic PHC, AA agreed to provide

[1] AA's comparable application, which was uncontested, was granted on August 20, 2009, approximately one week after Double D's application was filed.

additional written testimony.[2] On January 25, 2010, AA submitted testimony that consisted almost entirely of a list of PSC companies currently operating in the San Diego area. Of the seven PSCs AA identifies, three are said to be operating without permits.[3] Two of the remaining three carriers are "party buses" that claim to operate primarily in the beach and downtown areas. The remaining company, Alive Limo, purports to provide limousine service, specializing in corporate and high profile clients. On its website, Alive Limo states that it provides transportation to nighttime entertainment; Alive Limo does not appear to provide daily or routine pick-ups. AA's claim that Applicant's services would be duplicative seems to ignore differences in route, pick-up availability, target customers, and nature of services offered.

AA next argues that Applicant's buses will increase pollution and traffic hazards in the area. This claim appears to be at odds with statements AA made in support of its recent PSC application. As noted in D.09-08-013, "[AA] states that all of the proposed services will help to relieve traffic congestion, alleviate parking problems, and reduce pollution." (D.09-08-013 at 2.)

AA's claim that Applicant's income projections are not realistic and that another passenger stage in the area is not economically feasible also appears to be contradictory. In its prior application, AA indicated that "there is a need for service over the proposed San Diego routes due to a current lack of evening and

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[2] At the PHC, the parties agreed that evidentiary hearings were not necessary and that factual issues could be resolved by written testimony. Under the agreed-upon schedule AA's testimony was due January 25, 2010, Double D's response was due February 8, 2010.

[3] Whether or not AA has filed a complaint against these carriers with this Commission was not addressed in this proceeding.

nighttime transportation." (D.09-08-013 at 2.) Indeed, the fact that Applicant proposes to charge rates that are in many instances approximately 40% less than those charged by AA, suggests that, in the face of competition, it is AA that may not be economically feasible. The threat of competition is not a reason to deny an application. As noted in D.05-12-005, "two decades ago the Commission declared that monopoly service in the face of an application by an aspiring competitor is not satisfactory to us as a matter of policy." (D.05-12-005 at 6, citing American Buslines, Inc., 3 CPUC2d 246 (1980).) While AA does not hold a monopoly in the area, the underlying principle remains applicable.

The remainder of AA's protest challenges Applicant's business acumen. AA asserts that Applicant's financial statements are unrealistic, and states:

> We do not believe that Double D Drivers LLC fully realizes the amount of capital needed to run the business when compared to the amount that they expect to collect. With a limited financial output, the company is either doomed to fail immediately, or they may cut corners, in spite of safety regulations.

AA goes on to argue that "[e]xperience and an insider's knowledge of San Diego play tremendous roles in this operation's beginning stages … it is dangerous to begin a Passenger Stage Coach business without these qualifications." (AA Protest at 1.) Applicant provides a business plan and statement of assets and liabilities which demonstrate that it has sufficient assets to procure insurance and to run the business in a safe and reliable fashion. While we are committed to ensuring that businesses subject to Commission regulation operate in a safe and reliable manner, we do not believe that new market entrants, any more so than existing market participants, are likely to cut corners or operate in an unsafe manner when faced with financial constraints. We therefore reject AA's arguments in this regard.

8. Comments on 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.

9. Assignment of Proceeding

Dian M. Grueneich is the assigned Commissioner and Darwin E. Farrar is the assigned ALJ in this proceeding.

Findings of Fact

1. Applicant requests authority to operate as a scheduled PSC to transport passengers between SDSU and Mission Beach, Pacific Beach, Del Mar, and Downtown San Diego Sea Port Village.
2. Applicant will compete with other PSCs, charter limousines and sedans, taxicabs, and private automobiles in its operations.
3. Public convenience and necessity requires the proposed service.
4. The proposed fares are between $6 and $8 one-way, and $10 and $15 round trip, depending on the destination.
5. Applicant requests authority to establish a ZORF of $5 above and below the proposed one-way and round trip fares.
6. The ZORF is fair and reasonable.
7. A public hearing is not necessary.
8. It can be said with sufficient 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.

3. Before Applicant changes any fares under the ZORF authorized below, Applicant should give this Commission at least 10 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.

O R D E R

IT IS ORDERED that:

1. A certificate of public convenience and necessity is granted to Double D Drivers, LLC (Applicant), a limited liability company, authorizing it to operate as a passenger stage corporation, as defined in Pub. Util. Code § 226, to transport passengers between the points and over the routes set forth in Appendix PSC 25477, subject to the conditions contained in the following paragraphs.

2. Applicant shall:

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

   Establish the authorized service and file tariffs and timetables within 120 days after this decision is effective;

   File tariffs on or after the effective date of this decision. The tariffs 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;

   Comply with General Orders Series 101 and 158, and the California Highway Patrol safety rules;

   Comply with the controlled substance and alcohol testing certification program pursuant to Pub. Util. Code § 1032.1 and General Order Series 158;

   Remit to the Commission the Transportation Reimbursement Fee required by Pub. Util. Code § 423 when notified by mail to do so;

Comply with Pub. Util. Code §§ 460.7 and 1043, relating to the Workers' Compensation laws of this state; and

Enroll all drivers in the pull notice system as required by Vehicle Code § 1808.1.

3. Applicant is authorized under Pub. Util. Code § 454.2 to establish a Zone of Rate Freedom of $5 above and below the proposed one-way fare of between $6 and $8, and the proposed round trip fare of between $10 and $15.

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

5. Applicant 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, Applicant 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. Applicant is authorized to begin operations on the date that the Consumer Protection and Safety Division mails a notice to Applicant 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 Applicant's vehicles for service.

8. Before beginning service to any airport, 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 Certificate of Public Convenience and Necessity to operate as PSC 25477 granted herein, expires unless exercised within 120 days after the effective date of this decision.

10. The Application, as amended, is granted as set forth above.

11. Application 09-08-007 is closed.

This decision is effective today.

Dated April 22, 2010, at Los Angeles, California.

MICHAEL R. PEEVEY
President
DIAN M. GRUENEICH
JOHN A. BOHN
TIMOTHY ALAN SIMON
NANCY E. RYAN
Commissioners

CERTIFICATE

OF

PUBLIC CONVENIENCE AND NECESSITY

AS A PASSENGER STAGE CORPORATION

PSC-25477

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.

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

Double D Drivers, 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 a scheduled 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:

When a route description is given in one direction, it applies to operation in either direction unless otherwise indicated.

Routes may be combined for operational convenience.

Service shall 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.

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 AREAS.

A. The following points within the City of San Diego:

San Diego State University
Pacific Beach
Mission Beach
Downtown Seaport Village

B. City of Del Mar

SECTION III. ROUTE DESCRIPTIONS.

Route 1
Commencing from San Diego State University, then over the most convenient streets and highways to Pacific Beach.

Route 2
Commencing from San Diego State University, then over the most convenient streets and highways to Downtown Seaport Village.

Route 3
Commencing from San Diego State University, then over the most convenient streets and highways to Mission Beach.

Route 4
Commencing from San Diego State University, then over the most convenient streets and highways to Del Mar.