

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the Commission's Own Motion to Examine Whether the Regulations Regarding Prearrangement of Charter-Party Transportation Contained in General Order 157-C Should Be Revised.

FILED
PUBLIC UTILITIES COMMISSION
AUGUST 8, 2002
SAN FRANCISCO OFFICE
RULEMAKING 02-08-002

ORDER INSTITUTING RULEMAKING**SUMMARY**

By this order, we open a rulemaking to examine whether the Commission's regulations regarding prearrangement of transportation by charter-party carriers should be revised. We want to be certain that our regulations are adequate to ensure that carriers do not unlawfully conduct taxicab or taxicab-like operations under their Commission-issued licenses.

BACKGROUND

The Commission regulates charter-party carriers (TCPs) pursuant to the Passenger Charter-party Carriers' Act, Public Utilities (Pub. Util.) Code § 5351 et seq.).¹ There are currently about 3,200 carriers holding charter-party authority from the Commission.

Regulations governing the operations of TCPs are contained in the Commission's General Order (G.O.) 157-C. The original version of the G.O. was adopted in 1989. (Decision (D.) 89-10-028 in R.88-03-012.) Several minor updates have been made since then, primarily in response to new legislation.

¹ Unless otherwise indicated, all statutory references are to the Public Utilities Code.

Prearrangement

Charter-party carriers are required by statute and Commission regulation to conduct their operations only on a prearranged basis. Pub. Util. Code § 5360.5² provides:

- (a) Charter-party carriers of passengers shall operate on a prearranged basis within this state.
- (b) For purposes of this section, “prearranged basis” means that the transportation of the prospective passenger was arranged with the carrier by the passenger, or a representative of the passenger, either by written contract or telephone.

General Order 157-C, Part 3.01 states:

PREARRANGED TRANSPORTATION. Class A and Class B charter-party carriers, as defined in Public Utilities Code Section 5383, and carriers holding permits under Public Utilities Code Section 5384(b) shall provide transportation only on a prearranged basis.³ The party arranging the transportation shall have exclusive use of the vehicle. The driver shall possess a waybill which includes the following:

1. Name of carrier and TCP number
2. Vehicle license plate number.
3. Driver’s name.
4. Name and address of person requesting or arranging the charter.
5. Time and date when charter was arranged.
6. Number of persons in the charter group.
7. Points of origination and destination.

² This section as originally enacted applied only to charter-party carriers serving airports. (Stats. 1990, Ch. 518. Effective August 13, 1990.) It was amended effective January 1, 1999, to make it applicable to all charter-party carriers. (Stats. 1998, Ch. 828.)

³ Charter-party carriers not subject to Part 3.01 are those providing transportation incidental to commercial balloon operations, commercial river rafting, or skiing under a Class C certificate, as defined in Section 5383; specialized carriers operating under a “Z” permit, as defined in Section 5384(a); and carriers conducting round-trip sightseeing tour service under an “S” permit, as defined in Section 5384(c).

Upon request, the driver shall show the waybill to any Commission or airport enforcement officer.

A prearrangement requirement was included in the G.O. in response to concerns raised by airport officials about (1) rampant curbside solicitation of passengers and (2) the difficulty of distinguishing between services provided by charter-party carriers and services offered by a greatly expanding number of on-demand, door-to-door airport shuttle carriers operating under passenger stage corporation authority. We believed that a regulation requiring prearrangement of charter-party services, to be evidenced by a waybill in the driver's possession, provided an adequate tool for airport enforcement officers and the Commission staff to address these problems.

Taxicab Regulation

The Legislature has unequivocally made the regulation of taxicab service the responsibility of local authorities. Government Code § 53075.5(a) states:

Notwithstanding Chapter 8 (commencing with Section 5351) of Division 2 of the Public Utilities Code, every city or county shall protect the public health, safety, and welfare by adopting an ordinance or resolution in regard to taxicab transportation service rendered in vehicles designed for carrying not more than eight persons, excluding the driver, which is operated with the jurisdiction of the city or county.

Pub. Util. Code § 5353 lists various transportation services that are excluded from the Passenger Charter-Party Carriers' Act, including:

(g) Transportation service licensed and regulated by a city or county, by ordinance or resolution, rendered in vehicles designed for carrying not more than eight persons excluding the driver.

Our regulations make it clear to charter-party carriers that they may not conduct taxicab service under their Commission authority. Part 3.03 of G.O. 157-C states:

TAXI TRANSPORTATION SERVICE NOT AUTHORIZED. A carrier is not authorized to engage in taxicab transportation service licensed and regulated by a city or county. Carriers are prohibited from using vehicles which have top lights and/or taxi meters.

Moreover, in 1982 the Commission directed staff to include a restriction prohibiting the use of top lights and/or taxi meters in all charter-party carrier permits, a practice that continues today. (D.82-05-069 in Case No. 10902.)

Complaints

It has come to our attention, primarily through formal and informal complaints received from taxi operators and local taxicab regulators, that a growing number of charter-party carriers that operate limousines and sedans may be misusing their Commission-issued licenses. Taxi operators complain that carriers are conducting taxicab or taxicab-like services under the guise of charter-party operations. Activities complained of include providing service on short notice or in immediate response to telephone calls, conducting transportation that is predominately one-way and of short duration, obtaining customers by waiting at hotels, picking up passengers who hail the driver, advertising in a manner that suggests taxicab service, failing to prepare waybills, operating vehicles that bear a resemblance to taxicabs, and charging flat rates instead of on a time and/or mileage basis. Complainants generally assert that these carriers are either violating specific statutes or regulations, or are operating in a manner that is inconsistent with the intended permissible scope of charter-party services.

City officials complain that carriers engaged in these activities undermine their taxicab regulatory programs. These programs vary from city to city. In addition to liability insurance requirements, they may include limits on the

number of franchises granted, licensing of individual drivers (which could entail a criminal background check), fare regulation, vehicle maintenance and appearance requirements, and service standards.

To the extent that some charter-party carriers are in fact misusing their charter-party authority, insufficient Commission and local enforcement resources may be partly to blame. However, complaining parties frequently point to gaps in Commission regulations as a hindrance to meaningful enforcement. In particular, Part 3.01 is viewed as in need of clarification and strengthening if it is to be effective in preventing abuses. Complainants point out, for instance, that “prearrangement” is not limited to a time period, and solicitation of passengers is not specifically prohibited.

GOALS AND PURPOSE OF THE RULEMAKING

The rulemaking which culminated in the creation of G.O. 157 (and G.O. 158 for passenger stage corporations) was initiated primarily to respond to problems associated with the proliferation of carriers serving the state’s airports. The regulations we promulgated together with increased airport enforcement efforts (sometimes in coordination with Commission staff) appear to have contained those problems to an acceptable level. However, our current regulations may not be adequate to curb practices occurring in other venues which are disruptive to the taxicab industry and frustrate local authorities in effectively regulating that industry as mandated by the Government Code.

Our goal is to have clear, enforceable regulations that will help abate the problem at issue. Prearrangement is one of the key factors in distinguishing charter-party service from taxicab service. In this rulemaking we will focus on Part 3.01 of G.O. 157-C and examine whether revisions are necessary to improve its effectiveness. We will also consider recommendations for other changes to G.O. 157-C that are consistent with our goal. We should note, though, that it is

not our intention to make regulations that are unnecessarily burdensome or that unreasonably impede the public from obtaining the kinds of transportation services they desire.

COMMENTS

We invite interested parties to file comments recommending changes to G.O. 157-C, Part 3.01, and any other parts of the G.O., which will further our goal as stated above.⁴ Attachment A contains a revised version of Part 3.01 upon which parties may comment and/or make their own recommendations. We do not have any preconceived notions of what revisions, if any, should be made. We are providing this example in hopes that it will generate interest and encourage filing of comments.

We are aware that some parties advocate setting a minimum time for prearrangement. Parties making such a recommendation should include in their comments a discussion on how to prevent a minimum time requirement from unreasonably restricting the majority of charter-party carriers who are not engaging in taxi or taxi-like services. Examples might be:

- An operator has regular clients who normally reserve service well in advance, but who on occasion require service on short notice.
- A hotel may be requested by its guests to arrange charter limousine service with little advance notice.

Parties should also address whether the existing G.O. 157-C regulations present a problem in terms of consumer protection or public safety. For example, do bait-and-switch or price gouging occur as a result of non-prearranged transportation?

Service List

⁴ G.O. 157-C is available for viewing on the Commission's Web site (www.cpuc.ca.gov).

Within ten days from the date of this order, any person or representative of an entity interested in monitoring or participating in this rulemaking should send a letter to the Commission's Process Office (1) asking to be placed on the service list, and (2) stating the person's interest as either "monitoring" or "participating."⁵ A service list will be created and distributed shortly thereafter. We note that we will be posting significant documents (e.g., rulings, decisions) in this proceeding on the Commission's Web site, and many people may find it more convenient to follow this proceeding by checking the Web site. No letter is needed to monitor in this fashion.

How to File Comments

Service of comments is governed by our Rules of Practice and Procedure (http://www.cpuc.ca.gov/PUBLISHED/RULES_PRAC_PROC/8508.htm), which includes a requirement that comments be served to all parties on the service list for a proceeding. To encourage the participation of parties that do not normally appear in Commission proceedings, we are going to have the staff of our Consumer Protection and Safety Division (CPSD) assist parties in the service of comments.

Anyone wishing to file comments shall do so by filing comments (an original document plus eight copies) with our Docket Office. CPSD staff will then mail a listing to all parties showing the names of those that filed comments. Anyone desiring to receive a copy of a particular filing will notify CPSD, who will then provide them with a copy.

⁵ Persons stating an interest in monitoring the proceeding will be placed on the "Information Only" portion of the service list and not have party status. Only rulings and Commission decisions are distributed to the "Information Only" portion of the service list. Persons stating an interest in participating (i.e., intention to file comments) will be placed on the service list as a party.

PRELIMINARY SCOPING MEMO

We preliminarily determine the categorization of this rulemaking proceeding to be “quasi-legislative,” as that term is defined in Rule 5(d) of the Commission’s Rules of Practice and Procedure. In this rulemaking, we will consider revisions to regulations contained in G.O. 157-C, in particular Part 3.01. Consistent with the quasi-legislative categorization of this proceeding, we anticipate that there will be full panel hearings wherein we will receive information on legislative facts, that is, general facts that help us decide questions of law and policy and discretion (Rule 8(f)(3)). At this time, we do not see a need for hearings for the presentation of adjudicative facts which answer questions such as who did what, where, when, how, why, or with what motive or intent (see Rule 8(f)(1)). We intend to resolve this proceeding within 18 months.

As required in Rule 6(c)(2), any party filing responsive comments to this rulemaking shall include in the comments any objections to the categorization, need for hearing for the presentation of general facts, determination to not hold hearings for the presentation of adjudicative facts, and the preliminary scoping memo. Rule 6.4 provides for appeal of categorization, which may only occur after the Assigned Commissioner issues a ruling, pursuant to Rule 6(c)(2), on category, the need for hearings, and the scoping memo.

If any party to this proceeding believes that an evidentiary hearing for the presentation of adjudicative facts is required in this proceeding, that party must file a motion no later than ten days after the filing of comments. The motion must request an evidentiary hearing and justify the need for an evidentiary hearing by identifying the material disputed factual issues on which a hearing should be held. In addition, this motion should identify the general nature of the adjudicative evidence the party proposes to introduce at the requested hearing. Any right a party may otherwise have to an evidentiary hearing for the

presentation of adjudicative facts will be waived if the party does not follow the above procedure for a timely request.

A copy of this rulemaking and the attachments may be obtained from the Commission's Web site. Alternatively, a copy may be obtained by contacting the Commission's Central Files Office at (415) 703-2045 or the Commission's Public Advisor's Office in Los Angeles (213) 576-7055.

If parties are interested in participating in this rulemaking and are unfamiliar with Commission procedures, they should contact the Commission's Public Advisor Office at either (415) 703-2074 or (213) 576-7055.

IT IS ORDERED that:

1. A rulemaking is instituted on the Commission's own motion to examine whether the Commission's regulations regarding prearrangement of charter-party transportation as set forth in General Order (G.O.) 157-C, Part 3.01 should be revised. While Part 3.01 will be the primary focus of this rulemaking, we will also consider changes to other parts of G.O. 157-C that further our goal of preventing charter-party carriers from conducting taxicab or taxicab-like operations under their Commission operating authority.

2. Any person or representative of an entity interested in participating in the rulemaking as a party must send a letter to the Commission's Process Office within ten (10) days from the date of this order. Any person or representative of an entity not seeking party status but interested in being placed on the "Information Only" portion of the service list must send a letter to the Commission's Process Office within ten (10) days from the date of this order. A service list shall be created and distributed within twenty (20) days from the date of this order.

3. After the service list is distributed, persons seeking to participate in this proceeding shall proceed as follows:

(a) To monitor this proceeding, send a written request to be accorded “Information Only” (Non-Party) status to the Commission’s Process Office;

(b) To appear as a party, obtain a copy of the service list from the Commission’s Process Office and serve a written request for party status on the assigned Administrative Law Judge and all parties on the service list within ten (10) days from the date of this order. A copy of the updated service list will be available at the Commission’s Web site.

4. Pursuant to Rule 6(c)(2), we preliminarily determine the categorization of the rulemaking proceeding to be “quasi-legislative,” as that term is defined in Rule 5(d). Consistent with the quasi-legislative categorization of this proceeding, there will be hearings at which we anticipate receiving information on legislative facts. At this time, we do not see a need for hearings for the presentation of adjudicative facts.

5. Parties desiring to file comments shall do so within 45 days of the date of this order in accordance with Rules 2, 2.1, 2.2, and 2.5 of the Commission’s Rules of Practice and Procedure. Comments shall also be served on the Director of the Consumer Protection and Safety Division, 505 Van Ness Avenue, San Francisco, CA 94102.

6. Staff of the Consumer Protection and Safety Division (CPSD) shall compile a list of comments received and send it to parties on the service list established in accordance with Ordering Paragraph 2. Thereafter, CPSD staff will mail a copy of any of the comments to any party requesting them.

7. As required in Rule 6(c)(2), any party filing responsive comments shall include in the comments any objections to the order regarding category, need for hearing for the presentation of general facts, determination to not hold hearings for the presentation of adjudicative facts, and preliminary scoping memo, including the description of issues.

8. If any party to this proceeding believes that an evidentiary hearing for the presentation of adjudicative facts is required in this proceeding that party must file a motion making that request no later than ten (10) days after the filing of comments. Any right a party may otherwise have to an evidentiary hearing for the presentation of adjudicative facts will be waived if the party does not follow this procedure for a timely request.

9. The Executive Director shall cause a copy of this order to be served upon every charter-party carrier holding authority from the Commission, the City of Los Angeles, the City of San Francisco, the League of California Cities, and the California State Association of Counties.

This order is effective today.

Dated August 8, 2002, at San Francisco, California.

LORETTA M. LYNCH
President
HENRY M. DUQUE
CARL W. WOOD
MICHAEL R. PEEVEY
Commissioners

Commissioner Geoffrey F. Brown, being
necessarily absent, did not participate.

ATTACHMENT A

Draft Revised Part 3.01, General Order 157-C
(Revisions in ***bold italics***)

PREARRANGED TRANSPORTATION. Class A and Class B charter-party carriers, as defined in Public Utilities Code Section 5383, and carriers holding permits under Public Utilities Code Section 5384(b) shall provide transportation only on a prearranged basis. ***Prearranged basis means that the transportation of the prospective passenger was arranged with the carrier by the passenger, or a representative of the passenger, by either written contract or telephone, or other form of electronic transmission. Carriers, drivers, and their agents are prohibited from soliciting a prospective passenger by any means or device for any transportation not previously arranged by the passenger or a representative of the passenger.*** The party arranging the transportation shall have exclusive use of the vehicle. ***Prior to picking up a passenger,*** the driver shall possess a waybill which includes the following:

1. Name of carrier and TCP number
2. Vehicle license plate number.
3. Driver's name.
4. Name and address of person requesting or arranging the charter.
5. Time and date when charter was arranged.
6. Number of persons in the charter group.
7. Points of origination and destination.

Upon request, the driver shall show the waybill to any Commission or airport enforcement officer, ***or to any peace officer.***

(End of Attachment A)