

Decision 07-09-029 September 20, 2007

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the Application of AGUILAS DEL DESIERTO, LLC, for passenger stage authority under § 1031, et. seq., of the California Public Utilities (PU) Code, to transport passengers and baggage express, on an on-call, county-to-county fare basis, between the counties of San Diego, Imperial, Orange, Los Angeles, San Bernardino, Riverside, Kern, Monterey, Tulare, Fresno, and Santa Clara, on the other hand; and to establish a Zone of Rate Freedom (ZORF) under § 454.2, et. seq., of the PU Code.

Application 07-06-009
(Filed June 4, 2007)

O P I N I O N

Summary

This decision grants the application of Aguilas Del Desierto, 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, and to establish a zone of rate freedom (ZORF), pursuant to Pub. Util. Code § 454.2.

Discussion

The application requests authority to transport passengers, their baggage, and express as a PSC. Applicant proposes to provide on-call, "county-to-county"

transportation between points in 11 counties.¹ While Applicant desires to serve the public in general, it views its customer base as primarily Spanish speaking families, business people, and migrant workers whose need for competitive, licensed transportation service is not currently being met. Applicant explains that members of this community are particular about the type of transportation they use, and their choice of transportation provider is usually based on common language and price. Applicant's owners belong to the community and have a clear understanding of its culture and transportation needs. Applicant already holds a certificate from the Commission to operate as a charter-party carrier (TCP 20407-B).

Applicant will operate daily, 24 hours per day. It will offer passengers the convenience of flexible pickup and drop-off points. Service will be provided initially with twelve 14-passenger vans. Vehicles will be added to the fleet as needed to meet passenger demand. Attached to the application as Exhibit D is an unaudited balance sheet for Applicant's founding members that discloses assets of \$578,000, liabilities of \$103,000, and net worth of \$475,000. Applicant states that its owner-members will contribute any additional resources necessary to operate and ensure the viability of the service.

The proposed fares, as shown in Exhibit B of the application, range between \$10 and \$70. Applicant requests authority to establish a ZORF of \$5 above and below the proposed fares of \$20 and under and \$10 above and below the proposed fares over \$20. Applicant will compete with other PSCs, public transit, taxicabs, charter vehicles, and private automobiles in its service area.

¹ The counties to be served are San Diego, Orange, Los Angeles, Imperial, San Bernardino, Riverside, Kern, Monterey, Tulare, Fresno, and Santa Clara.

This competitive environment should result in Applicant pricing its services at a reasonable level. Many other PSCs have been granted ZORFs. The requested ZORF is generally consistent with the ZORFs held by other PSCs.

Notice of filing of the application appeared in the Commission's Daily Calendar on June 8, 2007. Applicant requests a waiver from the provisions of Rule 3.3(b) of the Commission's Rules of Practice and Procedure which require service of a notice of the application on all city and county officials within whose boundaries the passengers will be loaded or unloaded. Applicant served a notice to the involved counties, six cities, and the public transit operators in the service area. Applicant states that all parties that have an interest in Commission proceedings subscribe to or have access to the Commission's Daily Calendar. We shall exercise the discretion accorded to us by Rule 1.2 and grant the waiver requested by Applicant because it will be providing on-call service, not scheduled service, and service on all cities in the service territory would be burdensome.

In Resolution ALJ 176-3194 dated June 21, 2007, the Commission preliminarily categorized this application as ratesetting, and preliminarily determined that hearings were not necessary. No protest has been received. Given this status, public hearing is not necessary, and it is not necessary to alter the preliminary determinations made in Resolution ALJ 176-3194.

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Pub. Util. Code § 311(g)(2), the otherwise applicable 30-day period for public review and comment is being waived.

Assignment of Proceeding

Richard Clark is the assigned Examiner in this proceeding.

Findings of Fact

1. Applicant requests authority to operate as a PSC to transport passengers, their baggage, and express on an on-call basis between points in the Counties of San Diego, Orange, Los Angeles, Imperial, San Bernardino, Riverside, Kern, Monterey, Tulare, Fresno, and Santa Clara.

2. Public convenience and necessity requires the proposed service.

3. Applicant requests authority to establish a ZORF of \$5 above and below the proposed fares of \$20 and under and \$10 above and below the proposed fares over \$20, shown in Exhibit B of the application.

4. Applicant will compete with other PSCs, public transit, taxicabs, charter vehicles, and private automobiles in its operations. The ZORF is fair and reasonable.

5. Applicant requests a waiver of the notice requirements of Rule 3.3(b) of the Rules of Practice and Procedure as it has served notice to the involved counties, six cities, and the public transit operators in the service area.

6. No protest to the application has been filed.

7. A public hearing is not necessary.

8. 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. The request to waive the notice requirements of Rule 3.3(b) should be granted.

3. The request for a ZORF should be granted.

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

5. Since the matter is uncontested, the decision should be effective on the date it is signed.

6. Only the amount paid to the State for operative rights may be used in rate fixing. The State may grant any number of rights and may cancel or modify the monopoly feature of these rights at any time.

O R D E R

IT IS ORDERED that:

1. A certificate of public convenience and necessity (CPCN) is granted to Aguilas Del Desierto, LLC (Applicant), a limited liability company, authorizing it to operate as a passenger stage corporation (PSC), as defined in Pub. Util. Code § 226, to transport passengers, their baggage, and express between the points and over the routes set forth in Appendix PSC-20407, subject to the conditions contained in the following paragraphs.

2. Applicant shall:

- a. File a written acceptance of this certificate within 30 days after this order is effective.
- b. Establish the authorized service and file tariffs and timetables within 120 days after this order is effective.
- c. File tariffs on or after the effective date of this order. They shall become effective ten days or more after the effective date of this order, 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 (CHP) 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. Applicant is authorized under Pub. Util. Code § 454.2 to establish a zone of rate freedom (ZORF) of \$5 above and below the proposed fares of \$20 and under and \$10 above and below the proposed fares over \$20, shown in Exhibit B of the application.

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

5. Applicant may make changes within the ZORF 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. 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 CHP has approved the use of Applicant's vehicles for service.

7. 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.

8. The CPCN to operate as PSC-20407, granted herein, expires unless exercised within 120 days after the effective date of this order.

9. The notice requirements of Rule 3.3(b) of the Commission's Rules of Practice and Procedure are waived as notice of the application has been served upon parties that may have an interest in this proceeding

10. The Application is granted as set forth above.

11. This proceeding is closed.

This order is effective today.

Dated September 20, 2007, 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-20407

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.

Aguilas Del Desierto, 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, their baggage, and express 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. No passengers shall be transported except those having a point of origin and destination as 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.

All points in the Counties of San Diego, Orange, Los Angeles, Imperial, San Bernardino, Riverside, Kern, Monterey, Tulare, Fresno, and Santa Clara.

SECTION III. ROUTE DESCRIPTION.

Commencing from any point described in Section II, then over the most convenient streets and highways to any other point described in Section II.