

Decision 15-05-029 May 7, 2015

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to examine whether the current procedures for processing applications to obtain or transfer a passenger stage corporation certificate, to acquire or control a passenger stage corporation, and to establish a zone of rate freedom should be revised.

Rulemaking 09-12-001
(Filed December 3, 2009)

**DECISION ON ORDER INSTITUTING RULEMAKING
REGARDING THE PROCEDURES FOR PROCESSING APPLICATIONS
FOR PASSENGER STAGE CORPORATIONS**

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Appendix - Rule 3.3 - Certificate to Operate

**DECISION ON ORDER INSTITUTING RULEMAKING
REGARDING THE PROCEDURES FOR PROCESSING APPLICATIONS
FOR PASSENGER STAGE CORPORATIONS**

Summary

This Decision revises the Commission’s procedures for granting and denying an application for a passenger stage corporation (PSC) certificate; for granting authority to transfer a PSC certificate that has already been issued; for granting authority to acquire or control a PSC; and for establishing a zone of rate freedom that permits a PSC to adjust its rates within specified limits. Rule 3.3 of the Commission’s Rules of Practice and Procedure is revised to conform to the changes adopted herein. This proceeding is closed.

1. Introduction

The Commission regulates the licensing of passenger stage corporations (PSCs) in California under various provisions of the California Public Utilities Code.¹ Under Section 226, PSCs include “every person or corporation 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,” with certain exceptions such as school bus operators. Section 225 specifies that the term “passenger stage” encompasses basically every stage, auto stage, or motor vehicle used in the transportation of persons and their baggage or express. In the contemporary context, door-to-door airport shuttles, as well as traditional scheduled intercity buses, fall within this description. The current procedure for licensing PSCs

¹ All statutory references hereinafter are to the California Public Utilities Code, unless otherwise noted.

requires an applicant to submit a formal application to the Commission. Interested persons may protest the application within 30 days following notice of its filing, during which period the license may not be granted.

The Commission instituted the instant rulemaking on its own motion² in order to consider simplifying the procedure for granting or denying an application for a PSC certificate (the license the Commission issues to an applicant to operate as a PSC); for granting authority to transfer a PSC certificate that has already been issued; for granting authority to acquire or control a PSC; and for establishing a zone of rate freedom (ZORF) that permits a PSC to adjust its rates within specified limits without seeking further Commission approval. We commenced this rulemaking in response to recent legislative revisions to the statutory requirements for issuance and transfer of PSC certificates that deleted the requirement to consider market effects upon competitors in licensing new PSCs and in our continuing effort to simplify our regulatory procedures.³

In today's marketplace many PSCs are small local operators, rather than the long-haul fixed-route bus companies prevalent in years past. Our current regulation of market entry, transfer of ownership, and adjustment of rates has proven to be burdensome and time consuming for these small operators. As we stated in our order instituting rulemaking (OIR), insurance and safety standards are now paramount, and we are no longer required by statute to consider how the issuance of a PSC certificate will impact the marketplace. This rulemaking is

² Rule 6.1 of the Commission's Rules of Practice and Procedure (Rules) permits the Commission to institute a rulemaking on its own motion.

³ See Senate Bill (SB) 1840 (2005-2006, Reg. Session), Chaptered September 29, 2006.

intended to respond to modern market conditions without sacrificing our duty to protect the safety and welfare of the traveling public.

2. Scope and Procedural History of Rulemaking

The OIR defined the initial scope of the matters to be considered in this proceeding. The Preliminary Scoping Memo, which is part of the OIR, invited interested parties to file comments concerning the following issues:

1. Under a simplified process, what criteria should the Commission use to prescribe territories, airports, and other specific points on a PSC certificate?
2. Are any changes to the requirements to operate PSC service specializing in the transportation of children and infants necessary?
3. Should the Commission establish a simplified process for granting approval to acquire or control a PSC pursuant to Section 854?
4. Should an applicant for PSC authority be required to serve notice of its application to any parties?
5. Under what circumstances, if any, should a protest to a PSC application be entertained, and how should it be resolved?
6. How should the concerns of a public transit operator be addressed when a PSC applicant intends to operate over the same or a similar route, possibly using the same stops, as the public operator?
7. Should a city, or a county in the case of an unincorporated community, be afforded an opportunity to object to the grant of PSC authority, in whole or in part, due to concerns over proposed stop points, traffic congestion, or other safety related issues?
8. Should the current formal application process used to grant a ZORF be revised?
9. What, if any, amendments to the Rules are required to implement any changes to the application process?

The OIR established a schedule for receiving comments. Opening comments were due 45 days after the OIR was issued, and reply comments were due 21 days after the deadline for opening comments, subject to alteration by the assigned Commissioner or Administrative Law Judge. The proceeding was submitted after the receipt of opening and reply comments, because no evidentiary hearing was necessary, as had been anticipated by the OIR.⁴

3. Current Regulatory Framework

Some explanation of the pertinent law and procedure governing our regulation of PSCs will assist in understanding the issues identified in the OIR. Although we are not considering changes to the basic statutory framework, which is established by Sections 1031, *et seq.*, we are striving to find ways to simplify how we carry out our licensing and other regulatory responsibilities relating to PSCs. Such changes are consistent with the legislative revisions to Sections 1031 and 1032, which became effective on January 1, 2007 through SB 1840. SB 1840 added the following paragraph to Section 1031:

(b) For purposes of this section, “public convenience and necessity,” as it affects applications for passenger stage corporation certificates, means that the applicant has met the criteria for issuance of a certificate specified in Section 1032.

Section 1032 requires applicants for a PSC certificate to file an application in the form required by the Commission. Previously, the section required the Commission to consider existing PSC service in the proposed service territory

⁴ The OIR also states that we might conduct workshops if it appeared that they would be needed to clarify proposals or issues, or to promote the exchange of ideas. No workshops appeared to be necessary because of the number and substance of the comments we received, and none were held.

and the impact of the proposed operation on public transit operators before issuing a certificate. SB 1840 eliminated the later requirements from Section 1032.

Additionally, SB 1840 authorized the Commission to delegate the authority to issue or transfer PSC certificates to the Executive Director, also allowing the Executive Director to make all necessary findings. As stated in Section 1032(d):

(d) The Commission may delegate to its executive director or his or her designee, the authority to issue or transfer certificates of public convenience and necessity and to make all necessary findings specific in subdivision (b).

As summarized in the Senate analysis of SB 1840, the changes to Sections 1031 and 1032 were intended to “replace[s] the formal application process for Passenger Stage Corporation with an informal process.”⁵

To start the application process, or to transfer an existing certificate, a potential PSC must submit an application “in the form required by the [C]ommission.”⁶ If approved, the PSC will obtain a certificate from the Commission. The PSC certificate declares that public convenience and necessity requires the operation of any passenger stage over a public highway in California. The certificate must be obtained before a PSC may commence such operation.⁷ Such a certificate is commonly called a certificate of public convenience and necessity (CPCN) or certificate.

⁵ See Senate Energy, Utilities, and Communications Committee’s Analysis of SB 1840, August 21, 2006, available online at http://www.leginfo.ca.gov/pub/05-06/bill/sen/sb_1801-1850/sb_1840_cfa_20060821_172944_sen_floor.html.

⁶ Section 1032(a).

⁷ Section 1031(a).

“Public convenience and necessity” is a term of art used broadly in regulatory practice. Although in the past it signified a requirement for analysis of the public benefit and economic burden to competitors that would result from granting a CPCN to a PSC, the term as used under the revised Section 1032 now has a very circumscribed definition. Subdivision (b)(1) of that section directs the Commission to require the applicant to “establish reasonable fitness and financial responsibility to initiate and conduct, or to continue to conduct, the proposed or existing transportation services,” and prohibits the Commission from issuing or transferring a CPCN unless the applicant meets all of the requirements set forth under Section 1032 (b)(1). These specific statutory criteria are:

- The applicant is financially and organizationally capable of conducting an operation that complies with the rules and regulations of the Department of the California Highway Patrol (CHP) governing highway safety;
- The applicant is committed to observing federal and state hours of service regulations;
- The applicant has a preventive maintenance program in effect for its passenger vehicles that conforms to CHP regulations;⁸
- The applicant participates in a program to regularly check the driving records of its drivers operating vehicles that require Class B driver’s licensing;
- The applicant has a safety education and training program in effect for all employees and subcarriers;

⁸ These regulations are found under Title 13 of the California Code of Regulations.

- The applicant agrees to maintain its passenger vehicles in safe operating condition and in compliance with motor vehicle safety laws and regulations;
- The applicant has filed with the Commission proof of workers' compensation insurance coverage; and
- The applicant has provided a business address where documents may be inspected by the Commission and the CHP.

In addition, Section 1032(c) requires a PSC to meet all other applicable state and federal requirements.

Section 1032(d) now allows the Commission to delegate the authority to issue or transfer a PSC CPCN, and to make all of the necessary findings specified in subdivision (b) outlined above, to the Commission's Executive Director or his or her designee. Here, the Executive Director's designee is the Commission's Safety and Enforcement Division (SED). We may thereby bypass our formal application process as long as the applicant satisfies the substantive criteria summarized above.⁹ The Commission has not previously made this delegation, however.

Article 2 of our Rules specifies the format and information required in general for a formal application to the Commission. In addition, a formal application for a PSC CPCN must contain the following specific information under Rule 3.3¹⁰:

⁹ Certain additional statutory requirements, such as maintaining liability insurance and having a drug and alcohol testing program, must also be met. *See* Section 1032.1. Also, relevant Commission requirements such as the insurance e-filing requirements specified in Resolution TL-19105 remain unchanged by this Decision.

¹⁰ In addition to specifying these contents of an application for a PSC CPCN, Rule 3.3(b) currently requires the applicant to forward a copy of the application to each public transit

Footnote continued on next page

- The type and a general description of the service being performed by the applicant, and a reference to the authority under which existing service is performed;¹¹
- The specific authority requested and the particular statutory provision under which the certificate is requested;
- Information concerning specified commodities proposed to be transported, and any proposed exceptions thereto, if the applicant is a carrier of property;
- The geographical scope of the proposed operation, including the termini and other points proposed to be served, and a concise narrative description of the proposed route;
- A map or sketch of the route and points to be served, drawn to suitable indicated scale, and showing present and proposed operation by distinctive coloring or marking;
- A statement of the rates or fares proposed to be charged and rules governing service. The application need not contain tariffs, but must indicate the level and nature of proposed rates and rules and may refer to tariffs already on file with or issued by the Commission;
- A statement indicating the frequency of proposed service. If “on call” service is proposed, the application must set forth conditions under which the service would be performed;

operator operating in any portion of the territory sought to be served by the applicant, and requires the applicant to mail a notice of filing of the application to all city and county governmental entities and transportation planning agencies within whose boundaries passengers will be loaded or unloaded. The rule requires a copy of the notice and a certificate of service to be filed with the application.

The requirement to notify transit operators was previously included in Section 1032, but was deleted by the 2007 amendments to this section, as well as the requirement to consider the adequacy of existing PSC service and the effect of the applicant’s proposed service upon the transit operations. (Stats. 2006, c.694 (S.B.1840), § 3.) This portion of Rule 3.3 therefore appears to be void.

¹¹ Rule 3.3 (a)(1). The wording of this requirement suggests that it is directed to those carriers that are operating service elsewhere at the time the application is filed.

- The kind and approximate number of units of equipment to be employed in the proposed service;
- A statement of financial ability to render the service; and
- Facts showing that the proposed operation is required by public convenience and necessity.¹²

The required contents of an application to sell, lease or encumber PSC operating rights, merge or consolidate facilities, acquire stock of another PSC, or acquire or control another PSC under Sections 851 through 854 are specified in Rule 3.6. These required contents include specific information about the companies that are parties to the transaction, descriptions of the property and the details of the transaction, financial information, and copies of the underlying documents. An application that involves a PSC CPCN must also state whether the seller is a party to any through routes or joint rates or fares with any other carrier, and whether operation under the rights involved is presently being conducted.¹³ If there has been any suspension of service during the preceding three years, the application must state the facts and circumstances thereof.¹⁴

4. Other PSC Requirements Pertaining to the OIR

Two issues enumerated in the Preliminary Scoping Memo are not, strictly speaking, within the basic regulatory framework for licensing a PSC but are included within the scope of this proceeding. These issues concern requirements for PSCs that specialize in the transportation of children and infants (Child PSCs), and the procedure for granting a ZORF.

¹² Rule 3.3(a)(10).

¹³ Rule 3.6(h).

¹⁴ Rule 3.6(h).

The requirements for Child PSCs were adopted by the Commission in Decision (D.) 97-07-063, 73 CPUC2d 640 (1997). They include various vehicular safety, operating and maintenance requirements, background investigation and training requirements for drivers and others, and additional requirements tailored to safeguard the welfare of the class of passengers consisting specifically of children and infants. The OIR indicates that now is the appropriate time to revisit these rules to consider whether any changes are needed.

The Commission may establish a ZORF for a PSC that is operating in competition with other transportation services, if the competition, together with the ZORF, will produce reasonable rates and charges for the PSC.¹⁵ Most commonly, an applicant for a PSC CPCN will include a request in its application to establish a ZORF, citing competition with other PSCs, charter party carriers, taxicabs, private automobiles, and occasionally public transit operators. We generally grant the request in recognition of the competitive influence of these other transportation choices. Our purpose for re-examining the process here is to determine whether a simpler method of considering the request would be more appropriate than the formal application procedure we have historically followed.¹⁶

5. Comments Concerning Proposals to Change the Existing Requirements

The OIR did not propose for public comment any specific revisions to the language of existing rules; rather, it invited interested parties to comment on the

¹⁵ Section 454.2.

¹⁶ The OIR includes as part of this proceeding the possibility of delegating authority to grant the ZORF, and the adoption of a standardized percentage range applicable to all ZORFs. We recognize that granting ZORFs in conjunction with tariff regulation is provided by statute.

nine issues articulated in the Preliminary Scoping Memo. Any changes to our rules and procedures consequently must be entirely drafted in response to the comments we have received, as well as our independent analysis of the issues.

We received opening comments from SuperShuttle of San Francisco, Inc. (SuperShuttle) and Daniel W. Baker (Baker). Baker also filed reply comments.

SuperShuttle is a PSC that provides airport ground transportation in California and elsewhere, and Baker is an experienced practitioner who has represented many applicants for PSC authority. Inasmuch as the comments we received were not numerous or lengthy, we will summarize the positions and suggestions of these two interested parties on each of the enumerated issues.

1. *Under a simplified process, what criteria should the Commission use to prescribe territories, airports, and other specific points on a PSC certificate?*

The comments agree that a CPCN should be granted to a PSC only to serve areas where it will “hold out” its service as a common carrier, and that this requires identification of the counties and, if applicable, the name of the airport(s) to be served. SuperShuttle suggests that the description of the details of the service and a map are not necessary, and that Rule 3.3(a)(4) and (5), should be deleted. Baker contends it is necessary to include in the application a description of the regular routes to be served, pickup and delivery points, and timetables with the schedule of pickup times.

2. *Are any changes to the requirements to operate PSC service specializing in the transportation of children and infants necessary?*

There is no suggestion that these requirements be changed.

3. *Should the Commission establish a simplified process for granting approval to acquire or control a PSC pursuant to Section 854?*

SuperShuttle observes that a simplified advice letter process exists under D.98-10-031 and Resolution (Res.) 18875 where both the acquired and acquiring entity are already certificated. In instances where the transfer would result in new market entry, SuperShuttle suggests that it is necessary to require the applicant to seek authority for the acquisition and obtain a new PSC CPCN. Baker contends that the process is already simple, and could not be made simpler.

4. *Should an applicant for PSC authority be required to serve notice of its application to any parties?*

SuperShuttle suggests that it is only necessary to provide notice to a transportation terminal to which the applicant intends to provide service on a regular basis. Absent a special request to the Commission, in which event notification may be in order, Baker contends that publication in the Daily Calendar is sufficient.

5. *Under what circumstances, if any, should a protest to a PSC application be entertained, and how should it be resolved?*

Neither SuperShuttle nor Baker indicate that protests should be foreclosed under any rule we adopt, but both emphasize that there must be a legally valid basis for filing a protest. Thus, SuperShuttle contends that any protest based upon market considerations should be dismissed out of hand. Baker suggests that protests should be addressed informally by conference or hearing.

6. *How should the concerns of a public transit operator be addressed when a PSC applicant intends to operate over the same or a similar route, possibly using the same stops, as the public operator?*

Baker reports that in his forty years of practice experience, no transit operator has ever shown an interest in the proposed plans of a PSC applicant he

has represented, and he therefore perceives no need to maintain this requirement. SuperShuttle contends that a transit operator's concern should only be addressed to the extent that it reflects an effort to prevent congestion at certain stops, but not out of concern for competitive effects.

7. *Should a city, or a county in the case of an unincorporated community, be afforded an opportunity to object to the grant of PSC authority, in whole or in part, due to concerns over proposed stop points, traffic congestion, or other safety related issues?*

SuperShuttle contends that such opportunity should be made available; Baker perceives no need, based upon his experience.

8. *Should the current formal application process used to grant a ZORF be revised?*

SuperShuttle is in favor of retaining the current formal application procedure for seeking a ZORF, but providing for broader terms to be granted as part of the ZORF. SuperShuttle suggests that only the upper end of the zone requires scrutiny, and that the current 10-day filing period for upward adjustments should be retained, but fare reductions should be permitted on one day's notice to permit rapid response to competitive conditions. Baker contends that the current formal process should be retained without change.

SuperShuttle suggests that we expressly allow a "discount" provision in filed tariffs, permitting a carrier to offer discounted rates to specific groups or through specific marketing vehicles such as the internet, and require only that the carrier advise the Commission by letter one day in advance of offering the discounted promotion. Baker agrees that discounts are allowable and must be published in tariffs, but suggests that the current 10-day notice period should be retained.

9. *What, if any, amendments to the Rules are required to implement any changes to the application process?*

Apart from the changes discussed above, SuperShuttle made specific suggestions concerning amendment of our Rules to streamline our procedures or ensure that they conform to current statutory requirements. Baker disagreed with certain of these suggestions. Their positions are summarized below:

- Rule 3.3(a):
 - (a) Delete subparagraph (3) to avoid application to passenger baggage.¹⁷
 - (b) Amend subparagraph (4) to require only the geographical scope, including identification of the airports within the service area.
 - (c) SuperShuttle suggests we delete subparagraph (5), the map requirement; Baker disagrees.
 - (d) SuperShuttle suggests deleting subparagraph (7), which requires disclosure of frequency of service and conditions of on-call service; Mr. Baker considers this information to be necessary.
 - (e) SuperShuttle suggests deleting subparagraph (10), specifying facts showing that the proposed operation is required by public convenience and necessity. Baker contends that this information is required by law as the basis for granting a PSC CPCN.¹⁸

¹⁷ We note that the current requirement is incongruous for a PSC, given the definition of a PSC in Section 225. PSCs do not carry commodities, as subparagraph (3) implies. Authority to carry passengers' baggage has always been included in PSC CPCNs as a matter of course.

¹⁸ We suspect that the conflict may reflect that SuperShuttle misconstrues this term of art. The statutory amendments that occasioned this proceeding deleted the requirement to consider marketplace effects, but Section 1031 requires satisfaction of a number of specific requirements to meet the public convenience and necessity test.

- Rule 3.3(b):

SuperShuttle proposes the following amended language:

[E]very applicant for a passenger stage certificate shall forward a copy of the application to each airport operating at any portion of the territory sought to be served by the applicant.

Baker appears to concur.

- Rule 3.4:

SuperShuttle suggests specific amendments to this rule, which governs authorization for a PSC to reduce or abandon service. Baker agrees that the rule is outmoded, but suggests that notification to the public and to governmental agencies is needed in the event of cessation of service.¹⁹

6. Assigned Commissioner's Rulings, Proposed Rule Amendments, and Comments

On May 27, 2014, Commissioner Michel Florio issued an Assigned Commissioner's Ruling, which proposed direct changes to the Commission's Rules of Practice and Procedure and sought additional public comment. The proposed changes were subject to public comment pursuant to Government Code Sections 11346.6 and 11351, and the California Code of Regulations, Title 1, Sections 1-120. Notice of the proposed changes was published in the California Regulatory Notice Register on June 20, 2014. In addition, the Ruling was mailed to all persons on the service list of this proceeding, as well as the service list used

¹⁹ Both parties overlook the circumstance that such activities are beyond the scope of this proceeding, which is specifically concerned with initial licensing of PSCs, and not with abandonment of service.

by the Commission for this purpose. The proposed rule amendments, based on the discussion, above, were as follows²⁰:

PROPOSED RULE AMENDMENTS, RULE 3.3.

3. (Rule 3.3) Certificate to Operate.

(a) Applications for a certificate to operate as a vessel common carrier or passenger stage corporation shall contain the following information:

- (1) The type of service applicant seeks to perform or that is being performed by applicant, a general description of it, and a reference to the authority under which existing service is performed.
- (2) The specific authority requested and the particular statutory provision under which the certificate is requested.
- ~~(3) If a carrier of property, a description of specified commodities proposed to be transported, and, if general commodities with exceptions are proposed to be transported, a statement specifying such exceptions.~~
- ~~(4) The geographical scope of the proposed operation, including the termini and other points proposed to be served, and a concise narrative description of the proposed route.~~
- ~~(3) The areas and points where the applicant will be holding out service, by county, fixed termini, and regular route, if appropriate. If the applicant intends to serve one or more commercial airports, this information must include each airport proposed to be served.~~
- ~~(5) (4) A map or sketch of the route and points to be served, drawn to suitable indicated scale, and showing present and proposed operation by distinctive coloring or marking.~~
- ~~(6) (5) A statement of the rates or fares proposed to be charged and rules governing service. A list of the base fares to be charged, and identification of existing competitors who offer the same or substantially similar services. In addition, all proposed discounted fares must be disclosed as part of this list.~~ Applications for certificates need not contain tariffs, but

²⁰ Proposed additions are shown in underlined format, while proposed deletions are shown in strike-through format.

shall indicate the level and nature of proposed rates and rules, as required herein, and may refer to tariffs on file with or issued by the Commission.

~~(7)~~ (6) A statement indicating the frequency of the proposed service. If "on call" service is proposed, the application shall set forth conditions under which such service would be performed.

~~(8)~~ (7) The kind and approximate number of units of equipment to be employed in the proposed service.

~~(9)~~ (8) A statement of financial ability to render the proposed service.

~~(10)~~ (9) Facts showing that the proposed operation is required by public convenience and necessity, as defined by Public Utilities Code Section 1032. Pursuant to Section 1032, the applicant must show:

a. That the applicant is financially and organizationally capable of conducting an operation that complies with the rules and regulations of the Department of the California Highway Patrol (CHP) governing highway safety;

b. That the applicant is committed to observing federal and state hours of service regulations;

c. That the applicant has a preventive maintenance program in effect for its passenger vehicles that conforms to CHP regulations found under Title 13 of the California Code of Regulations (CCR);

d. That the applicant institutes a program to monitor the driving records of those operating vehicles that require Class B driver's licenses;

e. That the applicant has a safety education and training program in effect for all employees and subcarriers;

f. That the applicant agrees to maintain its passenger vehicles in safe operating condition and in compliance with motor vehicle safety laws and regulations; and

g. That the applicant has filed with the Commission proof of workers' compensation insurance coverage.

(b) Every applicant for a passenger stage certificate shall forward a copy of the application to each ~~public transit operator operating in any portion of the territory sought to be served by the applicant~~. ~~The applicant shall also mail a notice that the application has been filed with the Commission to all city and county governmental entities~~ entity and regional transportation planning ~~agencies~~ agency within whose boundaries passengers will be loaded or

unloaded. ~~This notice shall state in general terms the authority sought, including the proposed routes, schedules, fares and equipment. Said notice shall also state that a copy of the application and related exhibits will be furnished by applicant upon written request. A copy of the notice and a certificate of service shall be filed with the application.~~

Note: Authority cited: Section 1701, Public Utilities Code; and Section 2, Article XII, California Constitution. Reference: Sections 701, 1007, ~~1010~~, 1032, ~~1062~~ and 1701, Public Utilities Code.

As directed in the Assigned Commissioner's Ruling, the Administrative Law Judge published the proposed amendments in the California Regulatory Notice Register on June 20, 2014, in accordance with California Government Code §§ 11346.4 and 11351, and California Code of Regulations, Title 1, §§ 1-120. As required, the publication started the 45-day public comment period on the text of the regulations. The comment window closed on August 4, 2014, at 5:00 p.m.

On August 6, 2014, Administrative Law Judge Colbert granted a limited extension of time to file comments based upon a request from a party. The time to file comments was extended until August 8, 2014, at 5:00 p.m.

Two sets of comments were received on the proposed amendments to Rule 3.3: Goodin, MacBride, Squeri & Day, LLP (Goodin MacBride) and Baker.²¹ Commenters did not take issue with most of the proposed amendments to Rule 3.3. The areas of controversy that commenters did address are as follows:

²¹ Goodin MacBride submitted comments during the public comment period and did not submit these comments (filed July 25, 2014) on behalf of SuperShuttle of San Francisco, Inc.

With regard to Proposed Rule 3.3.(a)(5), Goodin MacBride noted that the phrase “and identification of existing competitors who offer the same or substantially similar service” should be deleted because it is overly burdensome since it requires the applicant to identify potentially hundreds of carriers. Further, Goodin MacBride contends that the best source for this information would be in the Commission’s own records. Baker also stated that providing a list of “existing competitors who offer the same or substantially similar services” would be overly burdensome and would cause the applicant to have to identify thousands of competitors. In addition, similar information – such as a description of similar competitive services offered – is typically included in the application for a ZORF.

With regard to Proposed Rule 3.3(a)(9), Baker commented that subsection “g” is incomplete, since the proposed language does not discuss carriers whose drivers are not employees, are exempt from the requirements, or are not covered by workers’ compensation insurance. Such text should be reconciled with Section 460.7. With regard to Proposed Rule 3.3(b), Baker noted that the proposed requirement for each applicant to forward a copy of the application to each city and county governmental agency and regional planning agency within whose boundary passengers will be unloaded would be overly burdensome and pose a substantial cost. Baker stated that he has sent thousands of notices, as required, and has only received one request for a copy of an application. He notes that there is a substantial cost difference in serving a notice of the application versus serving a copy of the entire application.

In response to the comments received, the Assigned Commissioner modified the proposed rule amendments. Such changes are sufficiently related changes, as defined by Title 1, California Code of Regulations, and Section 42.

The new text of Rule 3.3 was again published, as part of an Assigned Commissioner's Ruling, on December 5, 2014. The proposed rule amendments, as modified in response to the comments, are as follows²²:

PROPOSED RULE AMENDMENTS, RULE 3.3

3.3. (Rule 3.3) Certificate to Operate.

(a) Applications for a certificate to operate as a vessel common carrier or passenger stage corporation shall contain the following information:

(1) The type of service applicant seeks to perform or that is being performed by applicant, a general description of it, and a reference to the authority under which existing service is performed.

(2) The specific authority requested and the particular statutory provision under which the certificate is requested.

~~(3) If a carrier of property, a description of specified commodities proposed to be transported, and, if general commodities with exceptions are proposed to be transported, a statement specifying such exceptions.~~

~~(4) The geographical scope of the proposed operation, including the termini and other points proposed to be served, and a concise narrative description of the proposed route.~~

(3) The areas and points where the applicant will be holding out service, by county, fixed termini, and regular route, if appropriate. If the applicant intends to serve one or more commercial airports, this information must include each airport proposed to be served.

~~(5) (4)~~ A map or sketch of the route and points to be served, drawn to suitable indicated scale, and showing present and proposed operation by distinctive coloring or marking.

~~(6) (5) A statement of the rates or fares proposed to be charged and rules governing service.~~ A list of the base fares to be charged, and a statement indicating whether or not the applicant is aware of and identification of existing competitors who offer the same or substantially similar services. In addition, all proposed discounted fares must be disclosed as

²² The specific changes are shown in double strikethrough (~~double strikethrough~~) and double underline (double underline) format. The original additions and deletions are shown in strikethrough (~~strikethrough~~) and single underline (single underline) format.

part of this list. Applications for certificates need not contain tariffs, but shall indicate the level and nature of proposed rates and rules, as required herein, and may refer to tariffs on file with or issued by the Commission.

~~(7)~~ (6) A statement indicating the frequency of the proposed service. If "on call" service is proposed, the application shall set forth conditions under which such service would be performed.

~~(8)~~ (7) The kind and approximate number of units of equipment to be employed in the proposed service.

~~(9)~~ (8) A statement of financial ability to render the proposed service.

~~(10)~~ (9) Facts showing that the proposed operation is required by public convenience and necessity, as defined by Public Utilities Code Section 1032. Pursuant to Section 1032, the applicant must show:

a. That the applicant is financially and organizationally capable of conducting an operation that complies with the rules and regulations of the Department of the California Highway Patrol (CHP) governing highway safety;

b. That the applicant is committed to observing federal and state hours of service regulations;

c. That the applicant has a preventive maintenance program in effect for its passenger vehicles that conforms to CHP regulations found under Title 13 of the California Code of Regulations (CCR);

d. That the applicant institutes a program to monitor the driving records of those operating vehicles that require Class B driver's licenses;

e. That the applicant has a safety education and training program in effect for all employees and subcarriers;

f. That the applicant agrees to maintain its passenger vehicles in safe operating condition and in compliance with motor vehicle safety laws and regulations; and

g. That the applicant has filed with the Commission proof of workers' compensation insurance coverage or a statement as required by Public Utilities Code Section 460.7.

(b) Every applicant for a passenger stage certificate shall forward a ~~copy~~ notice of the application to each ~~public transit operator operating in any portion of the territory sought to be served by the applicant.~~ The applicant shall also mail a notice that the application has been filed with the Commission to all city and county governmental ~~entities~~ entity and regional transportation planning ~~agencies~~ agency within whose boundaries passengers will be loaded or unloaded. This notice shall inform parties that a complete copy of the

application may be made available on the website of the California Public Utilities Commission and, if not made available online, that a copy of the application can obtained by contacting the applicant or the California Public Utilities Commission and requesting a paper copy. ~~This notice shall state in general terms the authority sought, including the proposed routes, schedules, fares and equipment. Said notice shall also state that a copy of the application and related exhibits will be furnished by applicant upon written request. A copy of the notice and a certificate of service shall be filed with the application.~~

Note: Authority cited: Section 1701, Public Utilities Code; and Section 2, Article XII, California Constitution. Reference: Sections 460.7, 701, 1007, ~~1010~~, 1032, ~~1062~~ and 1701, Public Utilities Code.

Written comments on the changes were allowed for 15 days. No additional comments were submitted to the Commission.

7. Discussion

The 2007 legislative amendments to the statutory requirements for obtaining PSC operating authority simplified the Commission's task of evaluating the substantive content of an application. The Commission no longer must assess the impact of a new entrant on the relevant transportation market, and satisfaction of many of the current statutory requirements is simple to confirm. However, some of the process, such as the evaluation of an applicant's financial fitness to perform the proposed service, is not subject to the application of predetermined standards, and the determination consequently requires the exercise of discretion.

Delegation of the decision-making process to the Executive Director (or his or her designee) is now permitted by statute, but we have not yet made that delegation. We believe it is now time to do so. If the details of an application are examined, and the findings required by statute are made on the basis of that examination, our duty to protect the public is properly discharged. By

simplifying the procedure, as we have done in other regulatory areas, we will facilitate the application process without sacrificing the quality of our decision-making, because granting or denying a PSC application does not require full scrutiny by the Commission.

Without the requirement to analyze the marketplace, this task can be done by staff examiners who have the expertise to evaluate the fitness and financial responsibility of an applicant, and ensure satisfaction of the straightforward statutory and administrative requirements for licensing. Delegation of this responsibility will automatically shorten the time for issuing decisions by eliminating Section 311 comment and public review requirements. Such steps are unnecessary, as applications of this type tend to be routine and uncomplicated. There is no reason to process them in accordance with a procedural calendar that imposes delay without justification.

We also have the discretion to prescribe a simplified form of application to request PSC authority, as Section 1031 merely requires an applicant to file an application in the form we require. This is the occasion to reevaluate our present application and simplify it. As long as Section 1031 requires submission of the information required by statute, order, and rule, there is no need to require an applicant to file a formal application, as has been required until now. A simple preprinted application form with room to fill in and/or attach the required information will suffice, and will be more user friendly for aspiring PSCs.

This simplified application will require the applicant to file an application for PSC authority with the Commission's Docket Office and submit a copy directly to the Safety and Enforcement Division by using the preprinted application form that SED and the Docket Office will make available on the Commission website. The Docket Office will then review the application for

completeness. If the application is deficient in any way the Docket Office will return the application to the applicant, thereby giving the applicant an opportunity to correct any deficiency. If the application is complete, or if the Commission subsequently receives a complete application, the Commission's Docket Office, in order to provide notice to interested persons, businesses, or organizations, will publish the PSC application in the Commission's Daily Calendar under the "Miscellaneous Transportation Items" category that is currently included in the Daily Calendar. Copies of the proposed application can either be obtained from the Commission or from the applicant.

Should anyone wish to protest the proposed application, the protest shall be filed with the Docket Office and one copy submitted to SED at the email or mailing address shown in the Daily Calendar. Protests shall be due 30 days from the date the application is published in the Daily Calendar.²³ If a protest is received, the Docket Office shall then refer the matter to the Administrative Law Judge Division, which can proceed with a hearing, briefing, or other procedural steps to address and resolve the proceeding. Protests shall contain sufficient information and detail to show that the applicant is wholly unfit to provide the proposed service, or has otherwise fails to meet the standards necessary for being granted a certificate of public convenience and necessity. Protests based on market issues will not be entertained and will be rejected outright.

If a protest is not received, SED will evaluate the PSC application for compliance with the California Public Utilities Code and other applicable laws, rules, regulations, and requirements for PSCs. Provided the application

²³ See Rule 2.6.

demonstrates consistency with all applicable requirements, SED shall issue the PSC certificate and the Docket Office will be notified of the issuance. Should the application fail to demonstrate compliance with the California Public Utilities Code and/or other applicable laws, rules, regulations or requirements for PSCs, SED shall deny the application. The status of the application will be made available on the Commission's "Transportation Carriers Lookup" system.²⁴

Thus, this Decision adopts a process for PSCs that is akin to the process currently used for obtaining a charter party carrier permit or Wireless ID Registration for certain telephone corporations.²⁵ That is, carriers apply to the Commission and SED is delegated to make a determination on the carriers permit application, without necessitating the time, or resources, of a formal Commission proceeding. In contrast to that process for charter party carriers however, this Decision still maintains the public notice and opportunity for protest required in the California Public Utilities Code and the Rules.

As far as the content of the application content is concerned, our existing rules serve as an adequate framework, but some changes are necessary to conform the process to current legal requirements and eliminate some ambiguities that have come to light in this proceeding. Section 3.3,²⁶ in

²⁴ Available online at www.cpuc.ca.gov/tmis/.

²⁵ See e.g., Information for Telecommunications Applicants and Registrants in California, available online at <http://www.cpuc.ca.gov/PUC/Telco/Information+for+providing+service/forms+for+applying+provider.htm>.

²⁶ Paragraph (a) of Rule 3.3 applies to vessel common carriers as well as passenger stage corporations. The proposed changes to subsection (a) are applicable to both classes of carriers, the other subsection revisions are not applicable to vessel common carriers.

particular, requires substantial revision. Based upon our evaluation and the comments we received, the following changes to that rule are desirable:

- Subparagraph (a)(1) should be clarified by adding a reference to the service the applicant seeks to perform, so the rule does not appear to refer only to existing PSCs.
- Subparagraph (a)(3) should be eliminated.
- Subparagraph (a)(4) should be revised to require only that the applicant identify the areas and points where it will be providing service, by county, fixed termini and regular route, if appropriate. If the applicant intends to serve one or more commercial airports, each should be specifically identified.
- Subparagraph (a)(6) should require a list of the base fares, and a statement indicating whether or not the applicant is aware of existing competitors who offer the same or substantially similar services. (The Commission should automatically grant a ZORF as part of the CPCN where the statutory prerequisites are met.) Disclosure of all proposed discounted fares should also be required under this section. The subparagraph should also be revised to contain a reference to the other requirements found in the Rule.
- Subparagraph (a)(10) should be revised to be consistent with current statutory requirements, and list the specific requirements so they can be ascertained easily.
- Subparagraph (b) should be revised to delete any specific requirement to serve or notify transit operators. Language should be added instructing parties on how to receive a complete copy of applications.

Revision of Rule 3.4 (application to abandon service) is beyond the scope of this proceeding, and we reject the suggestion to revise that rule without obtaining noticed public comment.

We perceive no need to alter the substantive requirements of Rule 3.6 (transfers and acquisitions), but the procedure for filing such applications should

be the same as those for requesting CPCNs. A simplified informal application form, and delegation of authority to decide the requests, should suffice.

The requirements for granting Child PSC requests should not be changed in this Decision, although a future rulemaking may adopt new requirements. For the present, continuing our practice of requiring applicants to satisfy the requirements we have established for this type of transportation in Appendix A of D.97-07-063 will suffice.

Although we cannot dispense with ZORFs in the absence of legislative action to repeal the underlying statute, we can adopt an informal application procedure and delegate the task of deciding the merits of a ZORF request. We find that the ability to adjust fares within a standard range of 15 percent above and below stated base fares is reasonable in light of the existence of competition, and that giving ten days' advance notice of prospective fare changes (both increases and decreases) to the Commission and the public would enable a PSC to respond to changing market conditions without unfairly surprising customers or competitors.

Finally, although we conclude that it is appropriate to retain the ability of interested persons to protest the substance of an application on appropriate grounds, a simplified procedure is necessary to harmonize the handling of protests with the simplified application procedure. Therefore, SED is delegated the authority to "issue the certificate as requested, or refuse to issue it, or issue it for the partial exercise only of the privilege sought," pursuant to Code Section 1032, whether or not a protest is received.

8. Conclusion

We find that our current procedure for issuing initial requests for PSC CPCNs, and for authorizing the sale or transfer of such authority and granting

ZORFs, can be simplified without degrading the quality of our regulatory oversight. We will modify the procedure to be used by applicants as reflected in the Order.

9. Text of the Adopted Rule

We adopt the amended Rule 3.3 of the Commission's Rules of Practice and Procedure, Title 20, Division 1, of the California Code of Regulations as shown in the appendix to today's decision.

10. Comments on the Proposed Decision

In accordance with the California Administrative Code, the full text of the rule changes discussed herein was served on the service list for this proceeding, and the Commission's list of rules changes, via the Assigned Commissioner's Ruling on December 5, 2014. No comments were submitted on the current proposed changes. The proposed decision of ALJ Colbert 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 and Practice and Procedure. Comments were filed on April 23, 2015 by SuperShuttle of San Francisco, Inc. No reply comments were filed.

SuperShuttle requested that the requirements of Section 1032 not be applied to applications to amend existing PSC certificates, as such requirements would be burdensome and were not adequately noticed in the Proceeding. SuperShuttle noted that the Proposed Decision should be revised to exclude applications to amend existing PSC certificates from the requirements of Ordering Paragraph 2. The Commission agrees and we have revised Ordering Paragraphs 2 and 5 to exclude applications to amend existing PSCs. In addition, SuperShuttle alerted the Commission to typographical errors, which have been corrected on pages 6 and 19. The Commission corrected typographical and other

non-substantive errors on pages 4, 5, 6, 8, 16, 24, 25, 26, 28, 32, and 33. There are no further changes to the proposed decision.

11. Assignment of Proceeding

Michel Peter Florio is the assigned Commissioner and W. Anthony Colbert is the assigned Administrative Law Judge in this proceeding.

12. Findings of Fact

1. In the contemporary passenger transportation marketplace many PSCs are small local operators, rather than long-haul fixed-route bus companies.

2. Our current regulation of market entry, transfer of ownership, and adjustment of rates has proven to be burdensome and time consuming for these small operators.

3. Insurance and safety standards are now paramount in our licensing of PSCs and other passenger carriers.

4. Section 1031 and 1032 were revised in 2007. As a result of those revisions the Commission is no longer required to consider how the issuance of a PSC certificate will impact the marketplace.

5. The consequence of eliminating the requirement to consider the impacts of entry on the marketplace is that a simpler procedure than that required under the Commission's current regulatory practices can be instituted to address the matters identified in Finding of Fact 2. Our current procedure for issuing initial requests for PSC CPCNs, and for authorizing the sale or transfer of such authority, and granting ZORFs, can be simplified without degrading the quality of our regulatory oversight.

6. Simplification of the existing regulatory procedure will reduce the regulatory burden upon applicants and PSCs, saving both time and money for applicants and operators.

7. Simplification of the existing regulatory procedure in accordance with current statutory requirements will reduce the burden and expense upon the Commission and its staff. These reductions include reporting, processing, and other costs.

8. Simplification of the existing regulatory procedure will reduce the processing time for applications for market entry, transfer of ownership, and adjustment of rates for PSCs, and reduce the number of formal Commission proceedings.

9. Under a simplified procedure, processing of applications for market entry, transfer of ownership, and adjustment of rates for PSCs can be performed by Commission staff under the direction of the Executive Director or his or her designee, and such applications can be granted or denied pursuant to such delegation.

10. Providing ten days advance notice of prospective fare changes (both increases and decreases) to the Commission and the public under the terms of a ZORF would enable a PSC to respond to changing market conditions without unfairly surprising customers or competitors.

11. The record in this proceeding is insufficient to consider changes to the requirements to operate PSC service specializing in the transportation of children and infants.

12. Rule 3.3 of the Commission's Rules of Practice and Procedure should be revised to conform to the 2007 revision of the Public Utilities Code Section 1032.

13. The proposed amendments to the Rules of Practice and Procedure (Title 20, Division 1, Chapter 1 of the California Code of Regulations), as changed in response to comments, and attached in the appendix to this Decision, will update

Rule 3.3 of the Commission's Rules to conform to the 2007 revision of the Public Utilities Code Section 1032.

14. The proposed amendments were noticed in the Commission's Notice of Proposed Regulatory Action printed in the California Regulatory Registry of June 20, 2014 (Register 2014, No.25-Z at 1129).

15. Notice of the proposed amendments, as reprinted in an Assigned Commissioner's Ruling, was served on those persons appearing on a service list commonly used for such procedural purposes and on the service list for the proceeding.

16. The period for commenting on the proposed amendments set forth in the Regulatory Registry and Assigned Commissioner's Ruling remained open for 45 days following the publication of the Notice of Proposed Regulatory Action.

17. Comments were received by the Commission and substantially related changes were made to the proposed amendments.

18. A second Assigned Commissioner's Ruling, containing the revised proposed amendments, was served on those persons appearing on a service list commonly used for such procedural purposes and on the service list for the proceeding. No new comments were filed.

13. Conclusions of Law

1. Public Utilities Code Section 1032, subdivision (d), allows the Commission to delegate the authority to issue or transfer a PSC CPCN, and to make all necessary findings specified in subdivision (b) of that section, to the Commission's Executive Director or his or her designee.

2. The Commission should adopt a simplified procedure for granting and denying an application for a PSC certificate; for granting authority to transfer a

PSC certificate that has already been issued; for granting authority to acquire or control a PSC; and for establishing a ZORF.

3. A variation of 15 percent above and below a PSC's proposed base rates is reasonable *per se* under the terms of a ZORF in light of the existence of competition, which is a requirement for obtaining a ZORF. Variations above or below this level may unreasonably impact affected travelers or competitors.

4. The Commission should delegate the authority to grant and deny applications referred to in the preceding paragraph as specified in the order.

5. Rule 3.3, subparagraph (a) should be revised to conform to current statutory and procedural requirements of Public Utilities Code Section 1032, which was revised in 2007. The specific revisions required are:

- Subparagraph (a)(1) should be clarified by adding a reference to the service the applicant seeks to perform, so the rule does not appear to refer only to existing PSCs.
- Subparagraph (a)(3) should be eliminated.
- Subparagraph (a)(4) should be revised to require only that the applicant identify the areas and points where it will be providing service, by county, fixed termini and regular route, if appropriate. If the applicant intends to serve one or more commercial airports, each should be specifically identified.
- Subparagraph (a)(6) should require a list of the base fares, and a statement indicating whether or not the applicant is aware of existing competitors who offer the same or substantially similar services. (The Commission should automatically grant a ZORF as part of the CPCN where the statutory prerequisites are met.) Disclosure of all proposed discounted fares should also be required under this section. The subparagraph should also be revised to contain a reference to the other requirements find in the Rule.

- Subparagraph (a)(10) should be revised to be consistent with current statutory requirements, and list the specific requirements so they can be ascertained easily.
- Subparagraph (b) should be revised to delete any specific requirement to serve or notify transit operators. Language should be added instructing parties on how to receive a complete copy of applications.

6. The right of interested persons to protest the substance of an application on appropriate grounds should be retained, but a simplified procedure should be adopted to harmonize the handling of protests with any simplified application procedure.

7. The substantive requirements of Rule 3.6 do not need to be changed but the procedure for filing applications for transfers and acquisitions should be the similar to those for requesting CPCNs. A simplified application form, and delegation of authority to decide the requests, should be adopted for this purpose.

8. The requirements for granting Child PSC requests should not be changed at this time. The Commission's practice of requiring applicants to satisfy the requirements we have established for this type of transportation in Appendix A of D.97-07-063 should be affirmed.

9. The Commission should adopt the amendments to Rule 3.3 of the Rules of Practice and Procedure.

10. In order to complete the adoption process promptly, this order should be effective immediately.

O R D E R

IT IS ORDERED that:

1. Authority to issue, deny, or transfer a passenger stage corporation Certificate of Public Convenience and Necessity, and to make all findings specified in subdivision (b) of Section 1032 of the Public Utilities Code, is hereby delegated to the Executive Director or his or her designee pursuant to Public Utilities Code Section 1032, subdivision (d).

2. Every applicant for a new Passenger Stage Corporation certificate or to transfer an existing certificate shall demonstrate that it is reasonably fit and financially responsible to initiate and conduct, or continue to conduct, the proposed or existing transportation service by showing that it:

- a. Is financially and organizationally capable of conducting an operation that complies with the rules and regulations of the Department of the California Highway Patrol governing highway safety;
- b. Is committed to observing the hours of service regulations of state and federal law, where applicable, for all persons, whether employees or subcarriers, operating vehicles in transportation for compensation under the certificate;
- c. Has a preventive maintenance program in effect for its vehicles used in transportation for compensation that conforms to regulations of the Department of the California Highway Patrol, as described in Title 13 of the California Code of Regulations;
- d. Participates in a program to regularly check the driving records of all persons, whether employees or subcarriers, operating vehicles used in transportation for compensation requiring a Class B driver's license under the certificate;

- e. Has a safety education and training program in effect for all employees or subcarriers operating vehicles used in transportation for compensation;
- f. Agrees to maintain its vehicles used in transportation for compensation in safe operating condition and in compliance with applicable laws and regulations relative to motor vehicle safety;
- g. Has filed with the Commission a certificate of workers' compensation insurance coverage or statement required by Public Utilities Code Section 460.7;
- h. Has an office or terminal where documents supporting the factual matters specified in this paragraph may be inspected by the Commission and the California Department of Highway Patrol;
- i. Provides for a mandatory controlled substance and alcohol testing certification program in accordance with Public Utilities Code Section 1032.1(b); and
- j. Has filed with the Commission evidence of liability insurance coverage that meets the requirements of Public Utilities Code Section 1040 and General Order 101-Series.

3. Any applicant that proposes to operate a Passenger Stage Corporation service specializing in the transportation of children and infants shall, in addition to the items listed in Ordering Paragraph 2, comply with the requirements established by the Commission for this type of transportation as set forth in Appendix A of Decision 97-07-063.

4. All passenger stage corporation certificate applications shall be filed with the Commission's Docket Office and submitted to the Safety and Enforcement Division using a form prescribed by the Safety and Enforcement Division.

5. Every application for a new Passenger Stage Corporation certificate shall include a full description of the proposed service and indicate whether the service will operate on a scheduled or on-call basis. An application that requests

authority to operate an on-call, door-to-door airport shuttle service shall name the counties and airports to be served. Requests to conduct any other type of transportation service shall include a description of the specific points to be served. The applicant shall request authority only for those counties or points with respect to which it intends to hold itself out to serve the public, which holding out shall include listing the service points in the carrier's tariff and timetable. Each application shall include a proposed tariff and timetable that comports with General Order 158-A, Part 8. The applicant shall own, lease, or otherwise have at its disposal sufficient motor vehicle equipment to operate the proposed service.

6. The Commission's Docket Office shall review Passenger Stage Corporation applications initially to ensure that applications are complete; the Docket Office will return incomplete applications. After the Docket Office determines that a Passenger Stage Corporation application is complete, the Docket Office will list the application in the Commission's Daily Calendar. Applications shall be listed in the Commission's Daily Calendar under "Miscellaneous Transportation Items." An application may be protested within 30 days of the date it appears in the Daily Calendar. A letter of protest shall be sent to the Director of the Safety and Enforcement Division and filed with the Docket Office and contain sufficient information and detail to show that the applicant is wholly unfit to provide the proposed service, or has otherwise failed to meet the standards necessary for being granted a certificate of public convenience and necessity. Protests based on market issues must be rejected outright. If the Commission receives a protest the Docket Office shall refer the matter to the Commission's Administrative Law Judge Division for hearing. The Safety and Enforcement Division may appear

and participate at the hearing to apprise the Commission of any relevant information that has come to its attention regarding the applicant's fitness.

7. Applicants shall be given a minimum of 90 days to meet all of the above requirements found in Ordering Paragraphs 2, 3, 4, 5, as necessitated by the type of service the applicant seeks to provide. The Safety and Enforcement Division is authorized to issue, deny, amend, and transfer certificates of public convenience and necessity to operate as a passenger stage corporation immediately upon satisfaction of those requirements. The Safety and Enforcement Division may deny an application after 90 days if the applicant has failed to meet the prescribed requirements for issuance.

8. Each certificate issued under this authority shall include the following condition:

This certificate does not authorize the carrier to conduct operations on the property of or into any airport unless such operation is authorized by the airport's governing body.

9. Each certificate issued under this authority which authorizes the carrier to conduct scheduled services shall include the following condition:

Stop points established by the carrier to load and discharge passengers shall conform to all applicable parking or passenger loading zone regulations adopted by local authorities.

10. Once a certificate is issued, the carrier shall have 60 days to file a tariff and timetable in accordance with General Order 158-A, Part 8. The tariff and timetable shall correct any deficiencies noted by the Commission's Safety and Enforcement Division in its review of the proposed tariff and timetable that was submitted with the application. In the case of a transfer, once the transfer is approved, the transferee may adopt the transferor's tariff in accordance with Part 8.11 of General Order 158-A. Every certificate issued shall be conditioned to

state that operations may not be conducted until a tariff and timetable have been accepted for filing.

11. A passenger stage corporation certificate application may include a request to establish a Zone of Rate Freedom which will allow fare adjustments of not more than 15 percent above and below the carrier's initial fares. The Executive Director or his or her designee is authorized to grant such requests. All other requests for a zone of rate freedom shall be made by a formal application to the Commission.

12. Requests to acquire or control a passenger stage corporation under Public Utilities Code Section 854, subdivision (a), may be filed with the Commission's Docket Office and one copy submitted to the Safety and Enforcement Division, and shall include:

- a. A description of the ownership and managerial structure of the organization upon completion of the transaction, including a list of the owners and the interest held by each, and the names of the corporate officers and directors or the limited liability company managing members.
- b. A copy of the proposed contract for sale and purchase.
- c. Certification by an officer or managing member of the purchaser stating that due diligence confirms the carrier to be acquired or controlled is in compliance with each of the following:
 - California Highway Patrol safety regulations, if applicable to the type of equipment being operate.
 - Department of Motor Vehicles Employer Pull Notice requirements.
 - Commission drug and alcohol testing requirements.
 - Commission public liability and property damage insurance requirements.

- The state's workers' compensation insurance requirements.

13. The Executive Director or his or her designee is authorized to approve applications to acquire or control a passenger stage corporation under Public Utilities Code Section 854, subdivision (a), upon the applicant's compliance with Ordering Paragraph 12.

14. The amendments to the Rule 3.3 of the Rules of Practice and Procedure, as shown in the attached appendix to this Decision are adopted.

15. The Chief Administrative Law Judge shall take all appropriate steps to submit the newly adopted rules to the Office of Administrative Law for purposes of approval and printing the newly adopted rules in the California Code of Regulations.

16. Rulemaking 09-12-001 is closed.

This Decision is effective today.

Dated May 7, 2015, at San Francisco, California.

MICHAEL PICKER

President

MICHEL PETER FLORIO

CATHERINE J.K. SANDOVAL

CARLA J. PETERMAN

LIANE M. RANDOLPH

Commissioners

APPENDIX

3.3. (Rule 3.3) Certificate to Operate.

(a) Applications for a certificate to operate as a vessel common carrier or passenger stage corporation shall contain the following information:

- (1) The type of service applicant seeks to perform or that is being performed by applicant, a general description of it, and a reference to the authority under which existing service is performed.
- (2) The specific authority requested and the particular statutory provision under which the certificate is requested.
- (3) The areas and points where the applicant will be holding out service, by county, fixed termini, and regular route, if appropriate. If the applicant intends to serve one or more commercial airports, this information must include each airport proposed to be served.
- (4) A map or sketch of the route and points to be served, drawn to suitable indicated scale, and showing present and proposed operation by distinctive coloring or marking.
- (5) A list of the base fares to be charged, and a statement indicating whether or not the applicant is aware of existing competitors who offer the same or substantially similar services. In addition, all proposed discounted fares must be disclosed as part of this list. Applications for certificates need not contain tariffs, but shall indicate the level and nature of proposed rates and rules, as required herein, and may refer to tariffs on file with or issued by the Commission.
- (6) A statement indicating the frequency of the proposed service. If "on call" service is proposed, the application shall set forth conditions under which such service would be performed.
- (7) The kind and approximate number of units of equipment to be employed in the proposed service.
- (8) A statement of financial ability to render the proposed service.
- (9) Facts showing that the proposed operation is required by public convenience and necessity, as defined by Public Utilities Code Section 1032. Pursuant to Section 1032, the applicant must show:
 - a. That the applicant is financially and organizationally capable of conducting an operation that complies with the rules and regulations of the Department of the California Highway Patrol (CHP) governing highway safety;

- b. That the applicant is committed to observing federal and state hours of service regulations;
- c. That the applicant has a preventive maintenance program in effect for its passenger vehicles that conforms to CHP regulations found under Title 13 of the California Code of Regulations (CCR);
- d. That the applicant institutes a program to monitor the driving records of those operating vehicles that require Class B driver's licenses;
- e. That the applicant has a safety education and training program in effect for all employees and subcarriers;
- f. That the applicant agrees to maintain its passenger vehicles in safe operating condition and in compliance with motor vehicle safety laws and regulations; and
- g. That the applicant has filed with the Commission proof of workers' compensation insurance coverage or a statement as required by Public Utilities Code Section 460.7.

(b) Every applicant for a passenger stage certificate shall forward a notice of the application to each city and county governmental entity and regional transportation planning agency within whose boundaries passengers will be loaded or unloaded. This notice shall inform parties that a complete copy of the application may be made available on the website of the California Public Utilities Commission and, if not made available online, that a copy of the application can be obtained by contacting the applicant or the California Public Utilities Commission and requesting a paper copy. A certificate of service shall be filed with the application.

Note: Authority cited: Section 1701, Public Utilities Code; and Section 2, Article XII, California Constitution. Reference: Sections 460.7, 701, 1007, 1032, and 1701, Public Utilities Code.

(End of Appendix)