

Decision 03-10-083 October 30, 2003

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the application of Xe Do Hoang Transportation, LLC to modify and extend its passenger stage authority (PSC-12777), under § 1031 et seq., of the California Public Utilities Code, to transport passengers and baggage express, on an on-call county to county pricing basis between points in San Diego, Orange, Los Angeles, Riverside, San Bernardino, Kern, Fresno, Santa Clara, San Francisco, Alameda, Sacramento, et al, counties on the one hand, and to establish door-to-door shuttle service in Orange County, described in the body of the Application, on the other hand; and to modify its zone of rate freedom (ZORF) under § 454.2, et seq., of the PU Code.

Application 03-03-030
(Filed March 21, 2003)

O P I N I O N

Summary

This decision grants the application of Xe Do Hoang Transportation, LLC (Applicant), a limited liability company, pursuant to Pub. Util. Code § 1031 et seq., to extend its certificate of public convenience and necessity to operate as a passenger stage corporation (PSC), as defined in Pub. Util. Code § 226, and to modify its zone of rate freedom (ZORF) pursuant to Pub. Util. Code § 454.2.

Discussion

Applicant is currently authorized to operate as an on-call PSC to transport passengers and their baggage pursuant to Decision (D.) 99-12-011, as amended, between San Jose, on the one hand, and Santa Ana, Westminster, and certain points in Los Angeles, on the other hand.

The Application, as amended by letters of May 19, June 27, and October 7, 2003, requests extension of its authority to include (1) "county-to-county" service between the Counties of San Diego, Orange, Los Angeles, Riverside, San Bernardino, Kern, Fresno, Santa Clara, San Francisco, Alameda, and Sacramento and (2) service between points in Orange County, on the one hand, and Los Angeles International Airport (LAX), John Wayne Airport (SNA), Los Angeles/Long Beach Harbors (HBR), and Westminster, on the other hand.

Applicant's customer base consists predominately of Asian families and business people. Applicant wishes to offer these passengers affordable and efficient transportation services in areas that it is not already authorized to serve. It states it has the resources necessary to conduct the additional services. Attached to the application as Exhibit D is an unaudited balance sheet as of February 26, 2003, that discloses assets of \$962,820, liabilities of \$634,000, and net worth of \$328,820.

The proposed adult one-way fares, as listed in Exhibit B of the application, range between \$10 (Alameda - San Francisco) and \$85 (Dana Point - LAX). Applicant currently holds a ZORF of \$12 above and below its published fares. Applicant requests to modify the ZORF to \$12 above and below any existing or proposed fare of \$20 and under, \$20 above and below any fare between \$21 and \$40, and \$40 above and below any fare over \$40. Applicant will compete with other PSCs, taxicabs, limousines, buses, and automobiles in its service area. This highly 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 March 25, 2003. Applicant requests a waiver from the provisions of Rule 21 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 11 involved counties, 7 cities, the affected airports, and 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 87 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 176-3110 dated April 3, 2003, 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 176-3110.

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 is currently authorized to operate as an on-call PSC, pursuant to D.99-12-011 as amended, between San Jose, on the one hand, and Santa Ana, Westminster, and certain points in Los Angeles, on the other hand.

2. The amended application requests extension of its authority to include on-call service (1) between the Counties of San Diego, Orange, Los Angeles, Riverside, San Bernardino, Kern, Fresno, Santa Clara, San Francisco, Alameda,

and Sacramento and (2) between points in Orange County, on the one hand, and LAX, SNA, HBRS, and Westminster, on the other hand.

3. Public convenience and necessity requires the proposed service.

4. Applicant requests authority to modify its ZORF to \$12 above and below any existing or proposed fare of \$20 and under, \$20 above and below any fare between \$21 and \$40, and \$40 above and below any fare over \$40. The minimum fare will be \$5.

5. Applicant will compete with PSCs, taxicabs, limousines, buses, and automobiles in its operations. The ZORF is fair and reasonable.

6. Applicant requests a waiver of the notice requirements of Rule 21 of the Rules of Practice and Procedure as it has served notice to 11 counties, 7 cities, the affected airports, and public transit operators in the service area.

7. No protest to the application has been filed.

8. A public hearing is not necessary.

9. 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, as amended by letters of May 19, June 27, and October 7, 2003, should be granted.

2. The request to waive the notice requirements of Rule 21 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. The certificate of public convenience and necessity (CPCN) granted to Xe Do Hoang Transportation, 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 persons and their baggage, between the points and over the routes set forth in Appendix PSC-12777 of Decision 99-12-011, as amended, is further amended by replacing First Revised Page 2 and Original Page 3 with Second Revised Page 2 and First Revised Page 3, 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 Section 1808.1 of the Vehicle Code.

3. Applicant is authorized under Pub. Util. Code § 454.2 to modify its current zone of rate freedom (ZORF) to \$12 above and below any existing or proposed fare of \$20 and under, \$20 above and below any fare between \$21 and \$40, and \$40 above and below any fare over \$40. The minimum fare will be \$5.

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. In addition to posting and filing tariffs, Applicant shall post notices explaining fare changes in its terminals and passenger-carrying vehicles. Such notices shall be posted at least ten days before the effective date of the fare changes and shall remain posted for at least 30 days.

7. Applicant is authorized to begin operations on the date that the Consumer Protection and Safety Division mails a notice to Applicant that its evidence of insurance and other documents required by Ordering Paragraph 2 have been

filed with the Commission and that the CHP has approved the use of Applicant's vehicles for service.

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

9. The CPCN to operate as PSC-12777, granted herein, expires unless exercised within 120 days after the effective date of this order.

10. The notice requirements of Rule 21 of the Commission's Rules of Practice and Procedure are waived as copies and notice of the application have been served upon parties that may have an interest in this proceeding.

11. This Application, as amended by letters of May 19, June 27, and October 7, 2003, is granted as set forth above.

12. This proceeding is closed.

This order is effective today.

Dated October 30, 2003, at San Francisco, California.

MICHAEL R. PEEVEY
President

CARL W. WOOD
LORETTA M. LYNCH
GEOFFREY F. BROWN
SUSAN P. KENNEDY
Commissioners

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

Xe Do Hoang Transportation, LLC, a limited liability company, by the certificate of public convenience and necessity granted by the *revised decision noted in the foot of the margin, is authorized to transport passengers and their baggage on an "on-call" basis, between points and places as described in Section II, and over and along the route 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. *On Route 1, described in Section III, passengers shall be provided only inter-county transportation.
- d. *On Route 2, described in Section III, only passengers having a point of origin or destination as described in Section IIB shall be transported.

Issued by California Public Utilities Commission.

*Revised by Decision 03-10-083, Application 03-03-030.

SECTION I. GENERAL AUTHORIZATIONS, RESTRICTIONS,
LIMITATIONS, AND SPECIFICATIONS (concluded).

- e. This certificate does not authorize the holder to conduct any operation on the property of any airport unless such operation is authorized by the airport authority involved.

SECTION II. SERVICE AREA.

- A. Points and places in *San Diego, *Orange, *Los Angeles, *Riverside *San Bernardino, *Kern, *Fresno, *Santa Clara, *San Francisco, *Alameda, and *Sacramento Counties.
- B. *Los Angeles, International Airport, *John Wayne Airport, *Westminster, and *Los Angeles and *Long Beach Harbors.

SECTION II. ROUTE DESCRIPTIONS.

*Route 1 – Counties

Commencing from any county described in Section IIA, then over the most convenient streets, expressways, and highways to any county described in Section IIA.

*Route 2 – Orange County/Airports-Harbors

Commencing from any point or place in Orange County, then over the most convenient streets, expressways, and highways to points described in Section IIB.