

Decision 07-07-008 July 12, 2007

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Application of OPEN TOP SIGHTSEEING SAN FRANCISCO, LLC a Delaware Limited Liability Company authorized to do business in California, for authority to operate as a scheduled Passenger Stage Corporation between points in the City and County of San Francisco, California and Marin County, California, and to establish a Zone of Rate Freedom.

Application 07-03-021  
(Filed March 21, 2007)

**O P I N I O N**

**Summary**

This decision grants the application of Open Top Sightseeing San Francisco, LLC (Applicant), a Delaware 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.

**Background**

The application<sup>1</sup> requests authority to operate as a scheduled PSC to transport passengers between points in San Francisco and Marin County. Passengers will be able to board and off-board Applicant's buses at any of the many stops that will be established along a scenic route which will travel from

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<sup>1</sup> Applicant supplemented the application on June 1 and June 4, 2007.

Fisherman's Wharf in San Francisco to Muir Beach on the Marin County coast, and return. Applicant believes the proposed service will offer Bay Area visitors and residents alike a unique and fun opportunity to enjoy San Francisco's famous dining opportunities, to visit a museum or other attractions, or alternatively, to enjoy the entire tour non-stop, while learning about the attractions of San Francisco and Marin County. Prerecorded narration will be available in several languages.

Service will be provided at regular intervals using a fleet of new, specially designed double deck, open top buses. Applicant states that the vehicles are compliant with the federal Americans with Disabilities Act standards and employ the latest in engine technology to meet the most stringent pollution control requirements.

Applicant is wholly owned by Les Cars Rouges, which operates double deck, open top buses in Paris. Les Cars Rouges wishes to introduce to the American market, including San Francisco, a product that has been well-tested in Europe. Applicant will rely on the financial resources of the parent company and the knowledge and experience of its principal, Abdallah El Azm, to initiate the operation. Les Cars Rouges' balance sheet as of December 31, 2005, shows a net worth of 7.5 million euros (\$10.1 million). Its sales in 2005 totaled nearly 10 million euros (\$13.5 million). Abdallah El Azm has presided over the Paris operation of Les Cars Rouges since he created it in 1991. His academic credentials include degrees in Transportation and Traffic Planning, and Engineering.

The proposed fare is \$32 for adults and \$16 for children aged 4 to 12. For this fare, passenger will be allowed to "hop on and hop off" the buses as many times as desired over a two-day period. Applicant requests authority to establish

a ZORF of \$15 above and below the adult fare and \$7.50 above and below the children fare.

### **Discussion**

Carriers that conduct sightseeing transportation services usually operate under an “S” charter-party carrier permit. These permits, issued by the Commission pursuant to Pub. Util. Code § 5384(c), authorize “round-trip sightseeing services,” which is the manner in which most sightseeing services are conducted. In Applicant’s case, however, passengers may use the service to travel between any of the many points where Applicant will stop, and not necessarily take a continuous, loop trip. The “point-to-point” nature of the transportation places the service within the realm of PSC operating authority.

Applicant has demonstrated that it possesses the experience and financial ability to conduct the proposed operation. The service will provide passengers with a means of visiting a number of interesting sights at a pace that suits them. We therefore will grant Applicant’s request for a PSC certificate. We also will authorize Applicant to establish a ZORF. There are many other means of transportation that tourists and locals can use to visit the points that will be served. This competitive environment should result in Applicant pricing its service at a reasonable level.

Notice of filing of the application appeared in the Commission’s Daily Calendar on March 23, 2007. Applicant served notice of the application to the involved cities, counties, and transit districts.

In Resolution ALJ 176-3190 dated April 12, 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 176-3190.

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. The application requests authority to operate as a scheduled PSC to transport passengers between points in San Francisco and Marin County.
2. Public convenience and necessity requires the proposed service.
3. Applicant requests authority to establish a ZORF of \$15 above and below the proposed adult fare of \$32 and \$7.50 above and below the proposed children fare of \$16.
4. Applicant will compete with other means of passenger transportation. The ZORF is fair and reasonable.
5. No protest to the application has been filed.
6. A public hearing is not necessary.
7. 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 for a ZORF should be granted.
3. 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.

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

5. 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 Open Top Sightseeing San Francisco, LLC (Applicant), a Delaware limited liability company, authorizing it to operate as a passenger stage corporation (PSC), as defined in Pub. Util. Code § 226, to transport passengers between the points and over the routes set forth in Appendix PSC-21880, 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 \$15 above and below the proposed adult fare of \$32 and \$7.50 above and below the proposed children fare of \$16.

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-21880, granted herein, expires unless exercised within 120 days after the effective date of this order.

10. The Application is granted as set forth above.

11. This proceeding is closed.

This order is effective today.

Dated July 12, 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-21880

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Showing passenger stage operative rights, restrictions,  
limitations, exceptions, and privileges.

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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.

## **I N D E X**

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

Open Top Sightseeing San Francisco, LLC, a Delaware limited liability company, by the certificate of public convenience and necessity granted by the decision noted in the foot of the margin, is authorized to transport passengers and their baggage on a scheduled basis between the points described in Section II, over the routes described in Section III, subject, however, to the authority of this Commission to change or modify this authority at any time and subject to the following provisions:

- A. Service will be operated only at the points described in Section II and over the routes described in Section III. A description of all the stop points and the arrival and departure times from such points shall be indicated in the timetable filed with the Commission.
- B. Stop points must conform to local passenger loading zone regulations, if any.

SECTION II. SERVICE AREA.

- A. Points in the City of San Francisco
- B. Points in the County of Marin

SECTION III. ROUTE DESCRIPTION.

Commencing from the vicinity of Fisherman's Wharf in San Francisco, then over the most convenient streets and highways to Muir Beach in Marin County, and return. Note: Because "sightseeing" is an integral part of the service, transportation will not necessarily be by the most direct route of travel.