

SERVICE DATE
MAR 07 1991

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In re Application D-2589 of)	ORDER M. V. C. NO. 1899
)	
SAN JUAN AIRLINES, INC.,)	HEARING NO. D-2589
d/b/a SHUTTLE EXPRESS)	
)	
for an Extension of its)	COMMISSION DECISION AND
Certificate to Operate)	ORDER GRANTING ADMINISTRATIVE
Motor Vehicles in furnishing)	REVIEW AND REVERSING INITIAL
AUTO TRANSPORTATION SERVICE.)	ORDER DENYING APPLICATION
.)	

NATURE OF PROCEEDING: This is an application for authority to perform airporter service between points in Pierce County and the Seattle-Tacoma International Airport.

INITIAL ORDER: An initial order was entered on August 13, 1990, which would deny the application on the basis that the applicant failed to demonstrate its financial fitness to conduct the extended operations.

ADMINISTRATIVE REVIEW: The applicant seeks administrative review, contending that it is financially viable and that the test applied in the initial order was improper. Applicant also seeks reopening, contending that a rate increase not of record should be considered in applicant's financial fitness.

ANSWERS: Intervenor and counsel for the Commission answered the petition, contending that the initial order is correct, that it applied the proper test for financial fitness, and that later-developed evidence should not support reopening.

COMMISSION: The Commission grants administrative review but denies reopening. The applicant has sufficiently demonstrated its financial fitness, given its owners' history of supporting its operations and balancing the demonstrated need for its services. Later-developed evidence, which a party could have developed and submitted at the time of hearing, will not support reopening. An on-call requirement should be added to the permit to be granted, for consistency with the demonstration of need and the carrier's existing permit, and for ease of enforcement.

[1]* The Commission's examination of an applicant's financial fitness must be commensurate with the responsibilities of the public service which the firm seeks to provide, the risks

* Headnotes are provided as a service to the readers and do not constitute an official statement of the Commission. That statement is made in the order itself.

to the public of failure, and the firm's financial history.

[2] Information about an applicant's post-hearing rate increase is not information that is reasonably undiscoverable at the time of the hearing by the applicant, who had full control over whether, and when, to pursue a rate increase.

[3] An applicant for unrestricted service which demonstrates a need for service subject to restrictions in the carrier's existing permit, including the provision of only on-call service in small vans, should be granted authority subject to those restrictions.

APPEARANCES: Applicant is represented by Bruce Wolf, attorney, Seattle; Intervenor Pacific Northwest Transportation Services, Inc., d/b/a Capitol Aeroporter, by Clyde H. MacIver, attorney, Seattle; and the Commission, by Robert D. Cedarbaum, assistant attorney general, Olympia.

MEMORANDUM

San Juan Airlines, doing business as Shuttle Express¹ provides airporter service in portions of King and Snohomish counties. In its initial application, it sought Pierce County authority as well; it failed to demonstrate a need for that authority in its presentation and the authority was denied.

It reapplied for Pierce County authority in this application. The initial order finds, the parties do not challenge, and the Commission agrees that the applicant has demonstrated need for the on-call service which it proposes to offer. We will accept and adopt the initial order's finding of need.

The central issue here is the applicant's financial fitness. The initial order discussed extensively the applicant's financial situation, as shown by its own evidence. The initial order found that the carrier had not demonstrated its financial ability to expand operations.

The initial order acknowledges applicant's contentions that it could achieve profitability with increased passenger count, but found that increased passenger counts during the prior year had not led to the profitability which the firm had previously predicted. The order rejects the applicant's contention that its financial fitness should be judged by whether it has been able to pay its bills as they came due. The order

¹When naming the applicant, we will refer to it as "Shuttle Express".

points to applicant's continuous and increasing losses, and it recommends that the application be denied as inconsistent with the public interest.

FINANCIAL ISSUES

The applicant vigorously seeks review. It contends that the proper test for financial fitness was enunciated in Order M. V. No. 141006, In re Becker Trucking, Inc., App. No. E-19787 (March, 1990). The issue in Becker centered on a balance sheet showing that Becker's liabilities exceeded its assets. The Commission there affirmed a proposed finding that the applicant had demonstrated an ability to pay its obligations when due, and rejected protestants' argument that a positive net worth should be a requisite for a grant of authority. The commission said,

We live and regulate in a transitional period. The Commission views it important to determine what its appropriate regulatory public interests are, and then to regulate with those interests, and not others, in mind. Here, proper public interests underlying financial fitness include the carrier's abilities to maintain insurance, keep equipment in repair and provide some measure of operating stability.

Shuttle Express argues that it has paid its obligations when due; that its service is stable and consistent over the three-year period it has operated; that it has the financial resources to conduct operations, including a positive net worth, according to its balance sheet, of \$700,000; that the initial order erroneously read the financial statements; that the applicant should not be held to make a profit during its start-up period; and that the investors' contribution to initial and expansion capital needs demonstrates their commitment to maintaining service and to making a profit.

Becker does not speak to the circumstances presented here. It merely says that a positive net worth is not a mandatory element for approval of a motor carrier application. Becker sought motor carrier authority, not airporter authority. It was a carrier with a number of years' operating history. There was no contention that Becker was operating at a loss. Becker operated in a field in which the legislature has authorized a large measure of competition. Motor carrier entry is less onerous -- no finding need be made that existing carriers are not providing satisfactory service -- and markets, once entered, are largely competitive markets. The demise of one carrier usually leaves remaining carriers able to absorb the business without disruption of service.

[1] We still consider the principles discussed in Becker to be valid. However, there are statutory and policy differences --not to mention large factual differences -- between Becker's circumstances and those of Shuttle Express. Becker does not mandate the result which the applicant argues. Our examination of finances must be commensurate with the responsibilities of the public service which the firm seeks to provide, the risks of failure, and the firm's financial history.

Although we agree with the initial order that the applicant's presentation here is sketchy, we face the practical dilemma of balancing the showing of extensive public need for a service with the valid regulatory concern that the carrier be financially able to meet its public and its regulatory obligations. We decide that the showing of financial fitness is sufficient, based on this record and balanced with the need and the potential risks to the public.

Two principal factors support our decision. First, we observe the carrier's history of supporting the operations. Its present financial condition is due in large part to large and repeated infusions of cash from its principals. The company spokesperson, Mr. Sherrell, gave assurances on the record of further contributions.

Second, we find credible the carrier's evidence that it can begin service by using its existing equipment and its existing personnel, without incurring additional capital expenses. It will be able to expand its operations, therefore, incurring only the direct costs of operation such as hourly- and mileage-related expenses.

Coupling the record assurances and the backers' history of support with the lack of substantial start-up costs for the proposed service, particularly in light of the extensive demonstrated public need for the service, the Commission believes that the carrier has met its burden of demonstrating financial fitness even when balanced against the possibility of substantial consequences to the public if the carrier were to fail.

REOPENING

The applicant moves for reopening. It contends that it has sought and received a rate increase since the close of the application record, that the Commission staff believes that the rate increase will make the company profitable, and that the requested reopening will thus resolve issues of financial viability. Both the intervenor and Commission counsel oppose the petition, citing to pertinent procedural rules and to prior Commission cases.

[2] The Commission denies reopening. Whether to seek a rate increase is a matter entirely within the control of the carrier. Information about the rate increase was not reasonably undiscoverable by the applicant, who had full control over whether, and when, to pursue a rate increase.

CERTIFICATE RESTRICTION

[3] The carrier's present permit is restricted to on-call service in seven- or fewer-passenger vans. Its evidence demonstrated, and the initial order found, a need for on-call service. It proposed to provide service in its existing, small-van equipment. The Commission believes that the authority granted in this order should be subject to the permit's existing restrictions.

The burden on the carrier and on the public from the on-call requirement is slight. The carrier provides this sort of service under its present certificate and it demonstrated need for that service to Pierce County locations. Also, the certificate terms must be consistent for enforcement purposes. It would be hopelessly confusing to the public, for example, and extremely difficult to enforce, if some arriving airline passengers could use one method of obtaining service, while other passengers were required to use another. Maintaining the existing limitations will allow the carrier to be consistent in its instructions to its employees and the public and to have consistent advertising and tariff provisions.

SUMMARY

The petition for administrative review should be granted, although the motion to reopen should be denied. The initial order should be reversed, and the carrier authorized to extend its on-call operations between the Seattle-Tacoma International Airport and points in Pierce County.

FINDINGS OF FACT

1. On November 15, 1989, San Juan Airlines, Inc., d/b/a Shuttle Express, filed an application for an extension of Certificate of Public Convenience and Necessity No. C-975 to furnish passenger and express service between points in Pierce County and the Seattle-Tacoma International Airport.
2. On the basis of the applicant's proposed amendment to exclude service to Fort Lewis and McChord Air Force Base, the protest of Bremerton-Kitsap Airporter, Inc. was withdrawn.
3. Pacific Northwest Transportation Services, Inc., d/b/a Capital Airporter, the holder of Certificate No. C-862,

intervened in opposition to the application.

4. San Juan Airlines, Inc., d/b/a Shuttle Express, is a Washington corporation. Paul Whittier owns 96.25% of the stock; Jimmy M. Sherrell owns 2.38%; and the remainder is owned by others. The company is undergoing restructuring and these proportions are subject to change.

5. Jimmy Sherrell, president of the applicant corporation, testified as its operating witness. He described the business of Shuttle Express as an on-call, door-to-door service serving the Seattle-Tacoma International Airport (Sea-Tac) to and from the general service areas of King and Snohomish Counties pursuant to its WUTC certificate. It operates 24 hours per day, 365 days per year.

6. The applicant holds Certificate of Public Convenience and Necessity No. C-975. That certificate, along with the authority granted herein, is set out in Appendix A to this order. The applicant also holds WUTC charter party authority for King, Pierce and Snohomish Counties.

7. The applicant's general offices and maintenance facilities are located in Seattle. This facility will be sufficient for the proposed operations.

8. The applicant's equipment consists of 44 vans, each capable of carrying seven passengers and luggage. All vans are 1988, 1989 or 1990 Dodge vans, Series Ram 150. All vans are radio-equipped. The actual number of vans in operation varies due to the seasonality of the business. In view of applicant's unused equipment, it will not need to acquire additional equipment to serve Pierce County. New equipment will continue to be added as needed. Appropriate insurance is carried on the vehicles. This equipment is regularly serviced and maintained in good operating condition, and is suitable for the proposed operations.

9. The applicant employs from 74 to 85 professional drivers. Each of the drivers is trained, screened and checked. Safety is stressed in the hiring and training of drivers.

10. The applicant is familiar with the laws and Commission rules and regulations governing auto transportation companies. Notwithstanding past violations, its operating witness gave credible assurance that the applicant intends and has the ability to comply with all applicable laws, rules and regulations.

11. Testimony in support of the amended application was given by Brian Correll, guest services director of the Tacoma

Sheraton Hotel, Tacoma; Patricia Schaier, assistant vice-president of the Burlington Northern Credit Union and president of the Pierce County Credit Association, Tacoma; Elizabeth Wisher, resident of Tacoma; Herb Munson, Jr., resident of Pierce County; Jerry Rogers, Pierce County resident; Melba Knudson, co-owner of Knudson Travel, Tacoma; Max Cook, resident of Tacoma; and Rose Osage, resident of Tacoma. This testimony established a public need for on-call, door-to-door passenger and express service of an auto transportation company between Sea-Tac airport and points in Pierce County.

12. Intervenor Pacific Northwest Transportation Services, Inc., d/b/a Capital Aeroporter, is the holder of Certificate No. C-862, which authorizes service between the Seattle-Tacoma International Airport and the City of Tacoma and Fife, and specified locations in Pierce County, including the Lakewood Motor Inn, Sherwood Inn, Days Inn, Motel 6, Tacoma Mall, Sumner, Puyallup, Parkland, Lakewood, Steilacoom, Pacific Lutheran University, Nendel's Motel (in South Tacoma), Denny's Restaurant on 38th Street (Tacoma), and the Tacoma Amtrak Railway Station.

13. James N. Fricke, president of Capital Aeroporter, testified in opposition to the application. Capital Aeroporter generally operates a scheduled service. Its facilities and equipment are based in Olympia. Nine of its 13 employees are drivers. It has 6 vans, with capacities ranging from 10 to 20 passengers per van; it uses 2 to 3 vans on a regular basis. Capital Aeroporter currently makes 12 scheduled runs between points in Pierce County and Sea-Tac. The earliest pick up to Sea-Tac is 4:35 a.m. and the latest is 10:55 p.m. Departures from Sea-Tac range from 5:45 a.m. to 12:45 a.m. the next morning. Capital Aeroporter is not in the business of providing door-to-door, residential service, but rather picks up passengers at predesignated, scheduled points, which are primarily hotels and motels. Mr. Fricke feels it would be too costly to provide door-to-door, on-call service. The carrier is not willing to pick up an individual at a time other than the regularly scheduled time even if the pick up point were his principal and most important Pierce County pick up point, the Tacoma Sheraton Hotel.

14. Mr. Fricke predicts that a grant of this application will have a serious adverse impact on its business. Even a 10% drop in its traffic could cause the company to operate at a loss, and continued losses could cause it to fail.

CONCLUSIONS OF LAW

1. The Washington Utilities and Transportation Commission has jurisdiction over the subject matter of this application and the parties thereto.

2. The applicant's proposed amendment to exclude service to or from the Fort Lewis Army Base and the McChord Air Force Base is permissible and should be accepted.

3. The protest of Bremerton-Kitsap Airporter, Inc., was withdrawn and should be dismissed.

4. Capital Aeroporter will not provide the needed on-call, door-to-door services between points in Pierce County and Sea-Tac Airport to the satisfaction of the Commission.

5. The evidence of public need for service is substantial and supports a grant of authority, and the applicant has demonstrated that it has the financial ability to support the proposed services. It is in the public interest, and is required by public convenience and necessity, pursuant to the provisions of RCW 81.68.040, that the applicant be granted an extension of Certificate of Public Convenience No. C-975 to extend its presently-authorized service to those Pierce County locations sought in this application.

O R D E R

IT IS HEREBY ORDERED That Application D-2589 of San Juan Airlines, d/b/a Shuttle Express, as amended, for extension of Certificate No. C-975 is granted, subject to the restrictions in the carrier's existing permit regarding alienation, vehicle size and limitation to on-call service.

IT IS FURTHER ORDERED That the protest of Bremerton-Kitsap Airporter, Inc. is dismissed; and

IT IS FURTHER ORDERED That, on applicant's compliance with pertinent provisions of law and rule, a revised permit shall

be issued to the applicant as set forth in Appendix A, attached to this order and incorporated herein by reference.

DATED at Olympia, Washington, and effective this 6th day of March, 1991.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION



SHARON L. NELSON, Chairman



RICHARD D. CASAD, Commissioner



A. J. PARDINI, Commissioner

NOTICE TO PARTIES:

This is a final order of the Commission. In addition to judicial review, administrative relief may be available through a petition for reconsideration, filed within 10 days of the service of this order pursuant to RCW 34.05.470 and WAC 480-09-810, or a petition for rehearing pursuant to RCW 80.04.200 or RCW 81.04.200 and WAC 480-09-820(1).

APPENDIX A

PASSENGER AND EXPRESS AIRPORTER SERVICE.

Between: The Seattle-Tacoma International Airport, Boeing Field, Renton Airport, and Paine Field and points within the Seattle Commercial Zone in King and Snohomish Counties and excluding points in Kitsap and Pierce Counties, described as follows:

- (a) the municipality of Seattle;
- (b) all points within a line drawn fifteen miles beyond the municipal line of Seattle;
- (c) those points in King County which are not within the area described in (b) of this subsection and which are west of a line beginning at the intersection of the line described in (b) of this subsection and Washington Highway 18, thence northerly along Washington Highway 18 to junction of Interstate Highway 90, thence westerly along Interstate Highway 90 to junction of Washington Highway 203, thence northerly along Washington Highway 203 to the King County line; and those points in Snohomish County, which are not within the area described in (b) of this subsection and which are west of Washington Highway 9.
- (d) All on any municipality any part of which is within the limits of the combined areas defined in (b) and (c) of this subsection; and
- (e) all on any municipality wholly surrounded, or so surrounded except for a water boundary, by the municipality of Seattle or by any other municipality included under the terms of (d) of this subsection.

Between: The Seattle-Tacoma International Airport, Boeing Field, Renton Airport and Paine Field and points within a 25 mile radius of these airports, excluding points in Kitsap and Pierce Counties.

Between: The Seattle-Tacoma International Airport and