

Decision No. 29507.

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
McCOUGH BROS. TRANSPORTATION CO.,
a co-partnership, for certificate of
public convenience and necessity to
operate boats for the transportation
of passengers for compensation be-
tween points upon the inland waters
of the State of California.

Application No. 20867.

Russell D. Garner, for Applicant.

Gibson, Dunn and Crutcher and Woodward
M. Taylor, by Woodward M. Taylor, for
Wilmington Transportation Company,
Interested Party.

Frederick Baker, City Attorney of Avalon,
for the City of Avalon, Interested Party.

C. P. Slocombe, for Water Taxi Company of
Long Beach, Interested Party.

BY THE COMMISSION:

O P I N I O N

This is an application filed by the McGough Brothers Transportation Company, operating under a co-partnership arrangement, seeking a certificate of public convenience and necessity to operate boat service between Santa Monica and Avalon, for the transportation of passengers and their hand luggage up to but not exceeding 75 pounds per person.

Public hearing was conducted on this application by Examiner Hunter at Los Angeles, on January 20th, 1937, on which date the matter was submitted, and it is now ready for decision.

Applicant proposes to provide daily service between Santa Monica and Avalon during the period May 31st to Septem-

ber 15th of each year and further operation outside of this period if business warrants. It is proposed to provide this service through the operation of one boat having a capacity of eighty passengers. Plans for the boat are now in the process of development and will provide for a ship 64 feet in length, with a beam of 12 feet, to cost approximately \$20,000 and to be operated by a crew of three men. The proposed service will be operated on the following schedule:

Leave Santa Monica 9:00 A.M.
Arrive Avalon 12:00 to 12:30 P.M.

Leave Avalon 12:00 midnight
Arrive Santa Monica between 3:00
and 3:30 A.M.

The length of the proposed route is approximately 46 miles. Applicant proposes the following fare structure:

Adults	One Way	\$2.50
Adults	Round Trip	3.50
Children under 12, One Way		1.25
Children under 12, Round Trip		2.00

Applicant introduced a letter from the Mayor of Santa Monica (Exhibit No. 2), which indicates that the city is agreeable to the Commission granting this application and that the service, in so far as this city is concerned, would be desirable, provided that applicant pay the city ten per cent (10%) of the fares collected, as a rental fee for the use of the municipal facilities at Santa Monica.

Applicant also introduced a letter from the Beverly Hills Chamber of Commerce (Exhibit No. 1), which urges the granting of this application.

The City of Avalon, through its City Attorney, introduced a statement from the City Council (Exhibit No. 3), which indicates that that city looks with favor upon this operation and the granting of the application, subject to two conditions -

(1) that daily service is provided during the period May 30th to September 15th of each year, as proposed in the application, and (2) that, if more than one boat is put into service on this run, the city be given advance notice of this plan, so that it can, if it elects, oppose increased operation. This is for the reason that the city has limited facilities for docking boats at Avalon.

In addition to the above mentioned exhibits, the Commission has received letters from the Santa Monica-Ocean Park Chamber of Commerce, the Los Angeles Chamber of Commerce, the Culver City Chamber of Commerce and the Santa Monica-Ocean Park Business Men's Association, all of which urge the granting of this certificate.

Applicant, for the past three years, has operated boat service in the Santa Monica bay district with three boats, two of which have a capacity of twelve passengers and are engaged in water taxi service between Santa Monica and boats anchored in and in the vicinity of Santa Monica Harbor. The third boat, which has a capacity of thirty passengers, has been used for transporting excursion parties in the Santa Monica bay district. Applicant alleges that it is financially able to carry on the proposed operation, in addition to its present business.

With respect to providing adequate facilities to safeguard the lives of the passengers, applicant stated that it expected to comply with all of the government requirements and will provide life belts equal in number to the capacity of the ship and, in addition, three rafts, each of which has a capacity of twenty persons. Further than this, the boat is designed with separate water-tight compartments in the hull to add to safety in case of an accident, and is to be provided with adequate

fire-fighting equipment.

It appears appropriate to mention the fact that a service was undertaken by the Wilmington Transportation Company, during the summer months of the year 1935, between Santa Monica and Avalon, which service was discontinued through lack of patronage and also difficulties experienced in landing the boat at Santa Monica. Applicant pointed out, however, that the service proposed herein was materially different from that conducted by the Wilmington Transportation Company, in that its boat would be much smaller and would make the round trip daily during the hours of the day when the water along the course normally was most calm, whereas the Wilmington Transportation Company's operation necessitated passengers stopping at the Island overnight. It was applicant's contention that this latter feature detracted materially from the patronage and, basing its conclusion upon the many requests which have been received, it was felt that the round trip feature will attract a larger number of passengers than was the case with the Wilmington Transportation Company's operation.

While applicant proposes to perform this operation with one boat, it alleged that, in case of accident or failure of the boat, a substitute boat could be secured in that district, so as to maintain the schedule.

No opposition developed to the granting of this application and a review of the record reasonably leads to the conclusion that the application should be granted. The following Order will so provide.

McGough Brothers Transportation Company is hereby placed upon notice that "operative rights" do not constitute a class of property which should be capitalized or used as an

element of value in determining reasonable rates. Aside from their purely permissive aspect, they extend to the holder a full or partial monopoly of a class of business over a particular route. This monopoly feature may be changed or destroyed at any time by the State, which is not in any respect limited as to the number of rights which may be given.

O R D E R

Public hearing having been held on the above entitled matter and the Commission being fully advised;

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA HEREBY DECLARES that public convenience and necessity require the operation by McGough Brothers Transportation Company of a motor boat service for the transportation of passengers and their hand baggage between the Port of Santa Monica and the Port of Avalon, both in the County of Los Angeles, State of California; and

IT IS HEREBY ORDERED that a certificate of public convenience and necessity be and the same is hereby granted to the McGough Brothers Transportation Company for such service, subject to the following conditions:

- (1) Applicant shall file a written acceptance of the certificate herein granted within a period of not to exceed fifteen (15) days from the date hereof.
- (2) Applicant shall commence the service herein authorized not later than May 31st, 1937, and shall file, in triplicate, and concurrently make effective, on not less than ten (10) days' notice to the Railroad Commission and the public, a tariff or tariffs constructed in accordance with the requirements of the Commission's General Orders and containing rates and rules which, in volume and effect, shall be identical with the rates and rules shown in the application, in so far as they conform to the certificate herein granted, or rates and rules satisfactory to the Railroad Commission.

- (3) Applicant shall file, in duplicate, and make effective as of the date of the institution of the service, on not less than five (5) days' notice to the Railroad Commission and the public, time schedules covering the service herein authorized in a form satisfactory to the Railroad Commission.
- (4) If at any time applicant desires to operate more than one vessel in this service, it shall give the City of Avalon not less than ten (10) days' advance notice, in writing, or secure its permission to institute the additional service.
- (5) The rights and privileges herein authorized may not be discontinued, sold, leased, transferred or assigned, unless the written consent of the Railroad Commission to such discontinuance, sale, lease, transfer or assignment has first been obtained.
- (6) No vessel may be operated by applicant herein unless such vessel is owned by said applicant or is leased by applicant under a contract or agreement on a basis satisfactory to the Railroad Commission.

For all other purposes the effective date of this Order shall be twenty (20) days from the date hereof.

Dated at San Francisco, California, this 15 day of February, 1937.

Matthew J. Quinn
Leon A. White
James R. Kelly
Ralph W. [unclear]
Ray & Kelly
Commissioners.