

ORIGINAL

Decision No. 39668

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application)
of BRYAN BAYLY, doing business under)
the name of HARBOR WATER TAXI CO.,)
for certificate of public convenience) Application No. 27623
and necessity to operate passenger)
and hand-baggage service in water taxis)
between Wilmington, California, and)
Avalon, California.)

Clock, Waestman & Clock, by John G. Clock, for applicant;
Carroll M. Counts, for Charles P. Slocombe; and James E. Pawson
for E-10 Water Taxi Company, protestants; Gibson, Dunn &
Crutcher, by Woodward M. Taylor, for Wilmington Transportation
Company and Clyde Thomas for Avalon Transportation Company,
interested parties.

O P I N I O N

Bryan Bayly, an individual doing business as Harbor
Water Taxi Co., seeks authority to establish and operate a
water taxi service, for the transportation of persons and their
hand baggage, on a seasonal basis from May 1st to September 30th
each year, between Wilmington (City of Los Angeles) and the
City of Avalon, situated on Catalina Island.

A public hearing was held in this matter at Los Angeles
on August 29, 1946, before Examiner Chiesa. Evidence, both
oral and documentary, having been adduced, the application was
submitted for decision.

Proposed fares are \$4.92 for a round trip and \$2.85
one way. Said fares include all taxes. Regular scheduled

trips are proposed, as follows: Leave Wilmington 6:30 p.m., arrive Avalon 8:30 p.m.; leave Avalon 1:00 a.m. and 8:00 a.m., and arrive Wilmington 3:00 a.m. and 10:00 a.m., respectively. Said schedules are subject to cancellation in the event of bad weather. "Unscheduled" trips, requiring a minimum of 10 passengers, are proposed, leaving Wilmington at 10:30 a.m., arriving at Avalon at 12:30 p.m.; and leaving Avalon at 4:00 p.m. and arriving Wilmington at 6:00 p.m. The latter trips are offered to accommodate persons who reach the Catalina Terminal too late for departure on Wilmington Transportation Company steamships and on rare occasions to care for overflow steamship patrons.

The record shows that applicant proposes to use two water taxis which he owns, the Oceanic, a 58-foot wooden-hulled boat having a capacity of 50 passengers and powered by a 175 horsepower Hall-Scott motor, and the Irene, a 48-foot wooden-hulled boat equipped with a 143 horsepower Chrysler motor. Both taxis have ship-to-shore radios, life belts, and automatic and hand fire extinguishers. Applicant will provide public liability insurance. Applicant will use both boats but principally the Oceanic. Additional boats are available on a rental or charter basis in the event either or both boats are disabled. Each boat will have a crew consisting of one operator and one deck hand.

The evidence also shows that applicant is financially responsible, having tangible assets of \$35,017 and liabilities of \$2,800, and is an experienced and capable operator of water taxis. He has a booth with public landing privileges at Berth 186

on the Los Angeles City Pier a half block east of the Catalina Terminal, a permit from the Los Angeles Harbor Department, and a booth with landing privileges at the City Pier at Avalon. The proposed route is along the main San Pedro channel to No. 1 bell buoy, and to the lighthouse, a distance of approximately four miles, thence directly to Avalon, an additional distance of approximately 22 nautical miles.

Four individuals and three Avalon business firms offered evidence that there is need for applicant's proposed service. The evidence shows that the scheduled trips will meet the needs of persons desiring to transact business on the mainland, as well as those desiring to visit Catalina Island, and that the service is not materially competitive with any similar service. It was also shown (Exhibit No. 4) that almost daily, between July 2 and August 27, 1946, an average of 16 persons called at applicant's booth at Berth 186 requesting transportation to Catalina after the regular steamer had departed. Applicant's "unscheduled" service would have met the requirements of said persons.

Wilmington Transportation Company is the only certificated carrier offering public transportation between Wilmington and Avalon and this carrier has not protested the granting of this application. The general manager and vice president of this carrier testified that applicant has a good reputation and is fully competent to operate the proposed water taxi service.

Protestants, Charles P. Slocombe and E-10 Water Taxi Company, contend (1) that there is no need for a service as

proposed and (2) that said service would be competitive with that which is now operated by Slocombe between Long Beach and Avalon and, therefore, might jeopardize said operation. The evidence offered in this proceeding disposes of the first contention. We are of the opinion and find that there is a public need for the proposed service.

As to the second contention, protestant Slocombe, protestant H-10 Water Taxi Company, and the Long Beach Harbor port manager testified that said proposed service would be competitive with that now offered by Slocombe. No evidence was offered in support of such statements except that applicant's docking facilities were situated within four or five miles of Slocombe's landing and that rail or bus transportation or taxi service is available between the respective landings. The evidence shows that persons who arrive at Catalina Terminal too late for steamer sailings would encounter considerable inconvenience and expense in traveling to protestant's dock in Long Beach unless they used their private automobiles, in which event they would either have to return by water taxi or rely on other transportation between Catalina Terminal and their parked cars in Long Beach. On the other hand, passengers leaving from applicant's dock could return by steamer to the point of departure.

We are unable to find upon this record that the establishment of a service, as proposed by applicant, would materially affect the operation of any existing carrier or be detrimentally competitive therewith.

Upon a full review of this record the Commission finds that public convenience and necessity require the operation of a water taxi service for the transportation of persons and their hand-baggage, as proposed herein, and, therefore, the application will be granted.

Bryan Bayly is hereby placed upon notice that operative rights, as such, do not constitute a class of property which may be capitalized or used as an element of value in rate fixing for any amount of money in excess of that originally paid to the State as the consideration for the grant of such rights. 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 to the number of rights which may be given.

O R D E R

A public hearing having been held in the above entitled application, the matter having been duly submitted, and the Commission being fully advised,

IT IS ORDERED:

(1) That a certificate of public convenience and necessity, as provided in Section 50 (d) of the Public Utilities Act, be, and it hereby is, granted to Bryan Bayly, authorizing the establishment and operation of a service as a common carrier for the transportation of persons and their hand-baggage, by vessel, between Wilmington, in the City of Los Angeles, and Avalon, on Catalina Island,

(2) The foregoing certificate is granted subject to the following conditions and service regulations:

- (a) That the common carrier service herein authorized shall be performed on a seasonal basis approximately from the first day of May to the thirtieth day of September each year.
- (b) Applicant shall file a written acceptance of the certificate herein granted within a period of not to exceed thirty (30) days from the effective date hereof.
- (c) Applicant shall, within sixty (60) days from the effective date hereof and upon not less than one (1) day's notice to the Commission and the public, establish the service herein authorized and comply with the provisions of General Order No. 79 and Part IV of General Order No. 95-A by filing, in triplicate; and concurrently making effective, tariffs and time schedules satisfactory to the Commission.

The effective date of this order shall be twenty (20) days from the date hereof.

Dated at San Francisco, California, this 26th day of November, 1946.

Harold P. Auld
Justus F. Cooper
Edward J. ...
John H. ...
G. F. ...

COMMISSIONERS.