

Decision No. 40318

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application
of

WALTER J. SATTEL AND RICHARD N. CLAYTON, a copartnership, operating and doing business as "DAY AND NIGHT LAUNCH SERVICE", for a Certificate of Public Convenience and Necessity to operate a Water Taxi service for the purpose of transporting persons between points on San Francisco Bay and waters tributary thereto.

ORIGINAL

Application No. 28276

Appearances

Neil Cunningham and Matthew J. Dooley for Applicants.
Reginald L. Vaughan for The Harbor Tug and Barge Company;
and Harold S. Peterson, in propria persona; Protestants.
John J. O'Toole, City Attorney, Dion R. Holm, Assistant
City Attorney, and Paul L. Beck, Chief Valuation and
Rate Engineer, for City and County of San Francisco;
and Walter G. Westman for Crowley Launch & Tug Boat Co.,;
Interested Parties.

OPINION

By this application, Walter J. Sattel and Richard N. Clayton, copartners doing business as Day and Night Launch Service, seek a certificate of public convenience and necessity, under Section 50(d) of the Public Utilities Act, authorizing the operation of a water-taxi service, as a common carrier by vessel of passengers and their baggage, between points on San Francisco Bay and tributaries. Public hearings have been held at San Francisco before Commissioner Potter and Examiner Bradshaw.

Clayton began operating a launch during November, 1945, transporting San Francisco bar pilots to and from ships in San Francisco Bay or beyond the Golden Gate. He and Sattel formed the present partnership on May 6, 1946, using two boats of less than

five tons net register.¹ Applicants also acquired a launch of eight net tons.

The principal operations conducted by the partnership have consisted of transporting bar and bay pilots, steamship representatives, ships' crews, and others between Pier 7 on the San Francisco water front and vessels when under way or at anchor in the Bay. Their boats have also been used for sightseeing trips and to transport photographers desirous of taking pictures of incoming ships. It is claimed that the larger boat has been used principally for transporting pilots beyond the Golden Gate and, after the loss of one of the smaller boats during a fog in December, 1946, occasionally to carry persons between points on the Bay.

It is alleged that the demand for service has increased to such extent that the operation of vessels of over five net tons is necessary. One of the applicants testified that the one vessel of less than five tons they now own is insufficient, that it is in need of repairs and that, inasmuch as some requests have been received to transport larger groups of men than this boat can accommodate, they desire to operate a larger vessel.

The testimony indicates that the number of steamship companies and others using applicants' service has increased. Exhibits of record also disclose that since May 1946 applicants' monthly revenues have increased, whereas those derived from water-taxi service by The Harbor Tug and Barge Company, a protestant herein, have decreased. The rates charged by applicants have not been uniformly applied and in most instances have been lower than published by other carriers having tariffs on file with the Commission.

¹ A certificate of public convenience and necessity is not required as a prerequisite to the operation of self-propelled vessels of less than 5 tons net register. - Public Utilities Act, Sections 2(y), 50(d).

A representative of Pacific Tankers, Inc., operators of tank steamers, testified that that company has used applicants' boats for one and a half years when necessary for persons to board vessels in the Bay and that the service has been satisfactory. He also stated that his company has always been able to obtain service from The Harbor Tug and Barge Company, but that he is not familiar with the service of Harold S. Peterson, another protestant.

Another witness, engaged in the photography business, testified that he utilizes applicants' vessels for the purpose of taking photographs of incoming ships; that in his business it is necessary to obtain the use of launches on very short notice; and that applicants have been prompt in providing service. This witness also asserted that he has patronized The Harbor Tug and Barge Company, but that its service has not always been furnished with sufficient promptness to meet his requirements, and that he had no knowledge of a water-taxi service rendered by Peterson.

The Harbor Tug and Barge Company and Harold S. Peterson, doing business as Peterson's Water Taxi, oppose the granting of the application.

The president of The Harbor Tug and Barge Company² presented a series of exhibits designed to show that (a) the revenues derived from water-taxi operations have declined considerably since January, 1946; (b) the company is at present operating at a loss; (c) it has eleven vessels available for service; (d) the demand for water-taxi service has decreased since August 1945; and (e) a number of the concerns which now use applicants' vessels formerly patronized The Harbor

² This carrier's operating rights with respect to passenger transportation have previously been defined as embracing "a general launch*** business in 'on call' service for the transportation of passengers between points on San Francisco and San Pablo Bays***". - Inland Vessel Carriers Investigation, 40 C.R.C. 493, 515 (1937).

Tug and Barge Company's facilities. Evidence was also presented to indicate that this carrier is able to take care of all demands for service and that no complaints have been received.

Peterson testified that, except for the duration of the war when his operations were confined to government work under contract, he has operated a water-taxi service since 1938.³ It appears, however, that he does not now participate in this class of business and that no requests to render such a service have been received since the termination of the war. His explanation for this lack of patronage is that he has been unable to give his business the required attention, due to despondency over two deaths in his immediate family. He claims that he is now able to take an active part in the water-taxi business and desires to re-establish himself in this field. He owns two boats and ten others are said to be available for service under charter.

In view of our conclusions herein, further discussion of protestants' evidence is unnecessary. The record is convincing that the service rendered by applicants has been satisfactory to those who have used it. The charging of lower rates than other carriers also appears to have been an inducement to utilize applicants' vessels in certain instances. However, no affirmative showing of a demand for the operation by applicants of vessels of over five tons net register has been presented. The unsupported testimony of one of the applicants that their boat of less than five net tons is sometimes unable to transport the number of passengers seeking transportation is insufficient proof that public convenience and necessity require the proposed operations. The application will therefore be denied.

³ These operations were conducted between the foot of Buchanan Street, San Francisco, and vessels in that portion of the Bay known as the Quarantine Area pursuant to a certificate of public convenience and necessity granted by Decision No. 31115 of July 19, 1938, in Application No. 21046.

O R D E R

Public hearings having been had in the above entitled application and, based upon the evidence received and upon the conclusions and findings set forth in the preceding opinion,

IT IS HEREBY ORDERED that the above entitled application be and it is hereby denied.

This order shall become effective twenty (20) days from the date hereof.

Dated at San Francisco, California this 27th day of May, 1947.

Harold D. Hule
Justin F. Crauer
James F. Farrell
A. J. [unclear]
Kenneth [unclear]
 Commissioners