

ORIGINAL

Decision No. 48806

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application)
of SHEARWATER, INC., a California)
Corporation, for a Certificate of)
Public Convenience and Necessity.)

Application No. 34128

A. Maxon Smith, for applicant. Edmund I. Read, for H-10 Water Taxi Company, Ltd., James E. Pawson and John Harvey, for De Luxe Water Taxi Co., protestants; Henry E. Jordan, for Bureau of Franchises and Public Utilities, and James R. Seaton, for City of Long Beach, Francis O. Reider, for Long Beach Harbor Commissioner, Gordon H. Sandberg, for Long Beach Chamber of Commerce, H. A. Stevens, for Long Beach Hotel Association, David Olmsted, Director Auditorium Convention and Publicity Department, City of Long Beach, J. A. Krancus, for Long Beach Apartment House Association, Robert Metzgar, for Port of Long Beach, Dick Racine, for Long Beach Board of Realtors, Paul E. Wilcox, for Association of Property Owners, Harold C. Levy, for City Manager, City of Long Beach, Interested parties; C. S. Abernathy, Senior Transportation Rate Expert, of the Commission's staff.

O P I N I O N

Applicant Shearwater, Inc., is a California corporation formed for the purposes, among others, of owning the motor boat Shearwater and engaging in the operation thereof in Long Beach and Los Angeles harbors. It has requested that it be granted a certificate of public convenience and necessity authorizing it to transport passengers by vessel via a route originating at the Magnolia Pier in Long Beach, thence to the Pierpoint landing, and thence through Long Beach Channel, Cerritos Channel, East Bay Channel, Los Angeles Channel, Fish Harbor and San Pedro Bay to the Magnolia Pier, a distance of approximately 20 miles.

Public hearings were held on the application before Examiner Rogers in Long Beach on April 30 and May 27, 1953, at which latter time the matter was submitted. Prior to the first hearing, notice thereof was published and posted as required by this Commission.

Applicant will use the vessel Shearwater to render this service. The Shearwater is a two-decked boat, constructed in 1950, 64 feet 10 inches in length, with a beam of 16 feet 5 inches. It is 55 tons gross, or 48 tons net register, and is powered with two diesel engines of 165 horsepower each. It seats 145 passengers and carries a crew of three in the daytime and four at night. Separate toilet facilities are provided for men and women. For fire protection the Shearwater has automatic fire control for each engine, five soda and Foamite guns, 67 one-quart Pyrene extinguishers, and 100 feet of 1½-inch hose with pumps capable of throwing a stream of water 200 feet. The ship is periodically checked by the Coast Guard.

Applicant's proposed fares, rules and regulations are set out in Appendix "A" to this decision.

Scheduled trips will be as follows:

May 15 to June 14:

Leave Magnolia Pier, Long Beach, 2:00 p.m.
Leave Pierpoint, Long Beach, 2:30 p.m.

June 15 to September 14:

Leave Magnolia Pier, Long Beach, 11:00 a.m., 2:00 p.m., 4:30 p.m.
Leave Pierpoint, Long Beach, 12:00 noon, 2:30 p.m., 5:00 p.m.

September 15 to November 14:

Leave Magnolia Pier, Long Beach, 2:00 p.m.
Leave Pierpoint, Long Beach, 2:30 p.m.

November 15 to May 14:

Saturdays and Sundays only.
Leave Magnolia Pier, Long Beach, 2:00 p.m.
Leave Pierpoint, Long Beach, 2:30 p.m.

Applicant commenced its present and proposed operations in May, 1951. Regular landings are and will continue to be made

at Magnolia Pier and Pierpoint landing in Long Beach. The Magnolia Pier is owned by the City of Long Beach. Applicant pays the City of Long Beach 6 percent of its gross revenues from all tickets sold at this pier for the privilege of using the pier but maintains its own personnel. It pays the Pierpoint landing 15 percent of the gross revenue from all tickets sold at this pier, but the pier managers supply all necessary personnel and facilities.

In addition to the afore-mentioned scheduled stops, applicant picks up groups at the Ferry Building in San Pedro at the request of the Los Angeles Harbor Department.

Applicant has assets valued at \$50,174.28, including the vessel Shearwater having a claimed depreciated value of \$48,688.66. Its liabilities are alleged to be \$23,381.57, including the balance due on a mortgage against the Shearwater of \$18,000, payable at 6 percent per annum, payable on demand.

Applicant carries public liability insurance in the amounts of \$25,000 to \$1,000,000.

Nine witnesses appeared in support of applicant's request. These witnesses included the president of the Long Beach Hotel Association, the president of the Long Beach Apartment House Association, the director of Publicity of the Long Beach Harbor Department, the manager of Transportation of the Long Beach Chamber of Commerce, the managing director of the Auditorium Stadium Convention and Publicity Department of the City of Long Beach, the director of Public Relations and Advertising for the Port of Los Angeles, the president of the Long Beach Motel Association, and the administrative assistant to the city manager of the City of Long Beach. Generally, these

witnesses were familiar with the operation and equipment of water taxis and the operation and equipment of the applicant. They stated that the water taxis and the applicant propose a different type of service. All desired that the applicant's services be continued as well as the services of the water taxis.

The only opposition was presented by the H-10 Water Taxi Company, Ltd., and the De Luxe Water Taxi, Inc.

H-10 Water Taxi Company, Ltd., has authority to carry passengers by vessel "between Fifth Street Ferry Landing, Twenty-second Street Landing and all vessels of the United States Navy or other vessels lying at anchor within Los Angeles-Long Beach Harbor for the transportation of passengers and

packages, ..." ⁽¹⁾ It is obvious that the service is not competitive with applicant's proposed service. In addition, H-10 has authority to operate "a sight-seeing service by vessel for the transportation of passengers from San Pedro and from Long Beach and return to point of departure, said service to be performed upon the inland waters of the state encompassed by

the Los Angeles and Long Beach Harbors." ⁽²⁾ The former president of this corporation testified that this authorized service was discontinued in 1948, about one year after the certificate was granted, because of lack of revenues. The present operator, manager for the H-10 Water Taxi Company, testified that the

(1) Decision No. 25668, dated February 27, 1933, on Application No. 18612, as modified by Decision No. 34510, dated August 19, 1941, on Application No. 23652.

(2) Decision No. 41431, dated April 6, 1948, on Application No. 29098.

authorized service was resumed with water taxis about five or six weeks prior to May 27, 1953 (the application herein was filed on February 26, 1953), but that the H-10 had carried no passengers over the authorized route since its resumption of service.

Counsel for De Luxe Water Taxi Company, Inc., argued that the company, by virtue of long existing operation over a route similar to that proposed by applicant, has a right to a certificate equal to or prior to that of the applicant. De Luxe Water Taxi Company, Inc., has certificated authority to serve "between landing points in the City of Long Beach and vessels of the United States Navy when anchored in Long Beach-Los Angeles Harbor, and for the transportation of passengers and freight to such vessels or to other merchant vessels when anchored in said Long Beach-Los Angeles Harbor, ..." (3) There appears to be no conflict between the authority requested by applicant and the authority now held by De Luxe Water Taxi Company.

Upon a full review of this record, the Commission is of the opinion and finds that public convenience and necessity require the operation by applicant of a service for the transportation of persons by vessel over the inland waters of this state between the points and over the routes set forth in the ordering paragraph herein.

Shearwater, Inc., 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

(3) Decision No. 34510, dated August 19, 1941, on Application No. 23653.

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

Application as above entitled having been filed, public hearings having been held, the matter having been submitted and the Commission being fully advised in the premises,

IT IS HEREBY ORDERED:

(1) That a certificate of public convenience and necessity, as provided in Section 1007 of the Public Utilities Code, be, and it hereby is, granted to Shearwater, Inc., a corporation, authorizing the establishment and operation of a service as a common carrier for the transportation of persons by vessel from the Magnolia Pier in the City of Long Beach via Cerritos Channel, San Pedro and San Pedro Bay to the point of origin.

(2) That in providing service pursuant to the certificate herein granted, applicant shall comply with and observe the following service regulations:

- (a) Within thirty days after the effective date hereof, applicant shall file a written acceptance of the certificate herein granted.
- (b) Within sixty days after the effective date hereof, and upon not less than five days' notice to the Commission and the public, applicant shall establish the service herein authorized and file in triplicate, and concurrently make effective, tariffs and time schedules satisfactory to the Commission.

(c) Subject to the authority of this Commission to change or modify such passenger vessel operation at any time, Shearwater, Inc., shall conduct such operation via the following described route:

From Magnolia Pier, City of Long Beach, thence to the Pierpoint landing, thence through Long Beach Channel, Cerritos Channel, East Bay Channel, Los Angeles Channel, Fish Harbor and San Pedro Bay to Magnolia Pier, point of origin.

Applicant may pick up or discharge passengers at Magnolia Pier, Pierpoint landing or San Pedro Harbor only.

The effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco, California, this 7th day of July, 1953.

A. J. [Signature]
President

Harold [Signature]

[Signature]

Commissioners

Justus F. Craemer
Commissioners Kenneth Potter, being necessarily absent, did not participate in the disposition of this proceeding.

APPENDIX "A"

PROPOSED FARES, RULES AND REGULATIONS

FARESI. Scheduled ServiceA. Individual Fares

Adult, per person \$ 1.74

Child, per person

12 years and older 1.74

5 years and older, but
less than 12 years87

Less than 5 years Free

B. Organized parties of 25 or
more, per person 1/2 of individual
fare.

II. On-call service, per hour* \$ 50.00

Minimum charge, on-call service 25.00

* For the purpose of computing charges
for on-call service, time will be computed
from time of departure from dock to time
of return to dock.

RULES AND REGULATIONS

1. The management reserves the right to cancel any trip if
 - a. The weather is inclement, or if
 - b. Not more than five persons have booked passage.
2. No children under 12 years of age will be permitted aboard unless accompanied by a person 18 years old or older.
3. No dogs will be permitted aboard.
4. No trip reservations will be made without a cash deposit of one-half of the required fare.
5. Unused tickets will be redeemed at the fare paid provided request for refund is made within 6 months of date of sale of ticket.

(End of Appendix)