

Decision No. 54522

**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application )  
of SANTA BARBARA WHARF COMPANY, ) Application No. 38168  
a corporation, to increase rates. )

Hugh Gordon and Norris Montgomery, for applicant.

Robert C. Newman, for the City of Santa Barbara,  
interested party.

David S. Licker, for Farallone Fisheries, Inc.  
and Hovden Sea Food Products, interested  
parties.

Pier Gherini, for Castagnola Bros., Pierce Bros.,  
Harbor Restaurant, Carl Casali, Edwin L.  
Stanton and Maria Gherini, interested parties.

A. L. Gieleghem and Glenn E. Newton, for the staff  
of Public Utilities Commission of the State  
of California.

O P I N I O N

Applicant is a California corporation engaged in public wharfage operations in the City of Santa Barbara. By this application it seeks authority to establish increased rates and to make other changes in its tariff.

Public hearing on the application was held before Examiner C. S. Abernathy at Santa Barbara on November 9, 1956. Evidence was presented by applicant through its president and through a consulting engineer. Representatives of the City of Santa Barbara and of applicant's patrons participated in the proceedings as interested parties. Members of the Commission's engineering and accounting staffs assisted in the development of the record. The matter was continued to a date to be set for purposes of amendment and for purposes also of submitting to the Commission certain questions pertaining to the services to which

the sought increases would apply.<sup>1</sup> The opinion and order herein deals with these questions.

The application states that the properties of Santa Barbara Wharf Company consist of a wharf upon which are maintained and operated a boat hoist, facilities for mooring vessels and for the receipt and discharge of cargo. It further states that in addition to uses of the wharf for public utility purposes the wharf is also operated for recreational and business activities of a nonpublic utility character, and that in connection with said activities there have been erected, maintained and operated a restaurant, several stores, fisheries, and other improvements from which revenues are received by the way of rentals.

The wharf properties and operations were acquired by Santa Barbara Wharf Company pursuant to authority from this Commission granted by Decision No. 52148, dated November 1, 1955, and pursuant to a franchise from the City of Santa Barbara. Formerly, for many years, the operations had been conducted by Stearns Wharf Company. In assuming the operations of Stearns Wharf Company, Santa Barbara Wharf Company adopted that company's tariff and has continued said tariff provisions in effect to the present time. In this proceeding applicant seeks to revise its tariff to conform to present circumstances. It states that many of the tariff rates are of no present use or value for the reason that commodities to which they apply have not been handled either by applicant or by its predecessor for more than ten years. It states further that other of the rates are now unreasonably low, and should be increased to provide a fair return on the value of the properties

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<sup>1</sup> Interested parties were afforded opportunity of filing the statements concerning the issues involved in the latter instance on or before December 10, 1956. No such statements have been filed.

dedicated to public service. It proposes to cancel the unused rates and to effect increases ranging upwards to 500 percent in certain rates. Generally speaking, the principal increases which are proposed would apply in connection with fresh fish, lobster and abalone. No increases are sought in many of the rates.<sup>2</sup>

The questions to which reference has been made above, and which are under consideration herein, pertain to the nature of the services for which increases are proposed, and to whether the services are such as to justify exercise of the Commission's regulatory powers with respect thereto.

In its application Santa Barbara Wharf Company seeks the rate increases as a public utility wharfinger. Under Section 242 of the Public Utilities Code a public utility wharfinger is defined as including:

"Every corporation or person owning, controlling, operating, or managing any dock, wharf, or structure used by vessels in connection with or to facilitate the receipt or dispatch of freight, other than bulk liquid commodities, or passengers for compensation within this State."

The term "vessel" is defined in Section 238(a) of the Public Utilities Code as including:

"Every species of water craft, by whatsoever power operated, which is owned, controlled, operated, or managed for public use in the transportation of persons or property, except rowboats, sailing boats, and barges under 20 tons dead weight carrying capacity, and other water craft propelled by gas, fluid naphtha, electricity, or other motive power under the burden of 5 tons net register."

From the foregoing definitions it appears that an element which distinguishes public utility wharfinger operations from wharfinger operations generally is that the facilities of the public utility

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<sup>2</sup>The present and proposed rates are set forth in detail in exhibits attached to the application.

wharfinger are utilized by vessels which are "owned, controlled operated, or managed for public use." Conversely, it appears that services which are provided by a wharfage operation in connection with vessels which are not "owned, controlled, operated, or managed for public use", are not in themselves public utility services and are not subject to regulation as such except as they may be regulated as services incidental to public utility services of a wharf-inger.

With respect to the nature of applicant's services, the testimony of the company's president and statements of its counsel show that in past years there was a substantial volume of water-borne commerce through the port of Santa Barbara, and that during those years applicant's facilities, as then operated by its predecessor, were used extensively as a public utility wharf for the receipt and discharge of passengers and cargo. More recently, however, this traffic has disappeared. Applicant's president stated that for several years vessels which are operated for public use have not called at Santa Barbara and accordingly have not utilized his company's wharfage facilities. During this more recent period the users of the applicant's facilities have been, and they now are, commercial fishing vessels, industrial vessels and pleasure craft, none of which are operated in public service.<sup>3</sup> Thus it appears that insofar as applicant's services relate to vessel operations, the services currently are all of a nonpublic utility nature.

In view of these conclusions the question is whether increases should be authorized for nonpublic utility services in a proceeding of this nature when the income from said services

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<sup>3</sup>Vessels also are operated from the wharf in a commercial sports fishing enterprise. These vessels use a portion of the wharf which is leased to the sports fishing company as nonpublic utility properties of applicant.

(along with income from rentals) constitutes the sole revenues from the company's operations. Since these services currently constitute all of applicant's present wharfage operations, it appears that they should not be considered as incidental services to public utility operations and be subjected to regulation as public utility services. It is concluded, therefore, that the sought increases, as they would apply at present, do not involve exercise of the Commission's regulatory powers.<sup>4</sup>

With reference to the application of the sought rate increases to public utility wharfing services which applicant may be called upon to provide in the future, it appears that applicant's re-evaluation of its proposals may be desirable in view of the conclusions hereinbefore expressed. It may be pointed out, moreover, that the showing in this matter, as advanced so far through the applicant's president and the consulting engineer, has been based largely, if not entirely, upon operating experience in conjunction with nonpublic utility services. Such a showing should be supplemented by a showing of experience or anticipated experience in conjunction with public utility services in order to provide sound grounds for increases in the rates for these services.

In the circumstances it appears that this application in its present form should be dismissed. It is noted that applicant has under consideration certain amendments to its

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<sup>4</sup>Although it here appears that prior authorization from the Commission is not required for establishment of the sought rates, it may be that authorization therefor should be obtained from the City of Santa Barbara. The record indicates that under the franchise which applicant holds from the city, power to regulate applicant's rates is reserved to the city. The city's representative stated that this power would be utilized in the event that the Commission does not exercise jurisdiction over applicant's rates.

proposals. Other amendments may be desired in light of the conclusions herein. Such amendments may be sought in a supplemental application. Dismissal of this application in its present form will be without prejudice to any subsequent filing that applicant may wish to make in this matter.

ORDER

Based on the conclusions and findings set forth in the preceding opinion,

IT IS HEREBY ORDERED that the above-entitled application be, and it hereby is, dismissed without prejudice.

This order shall become effective twenty days after the date hereof.

Dated at San Francisco, California,  
this 11<sup>th</sup> day of FEBRUARY, 1957.

*John C. Mitchell*  
President

*Ralph Ventresca*

*William J. Dool*

*Paul H. ...*

*E. L. Fox*  
Commissioners