

ORIGINAL

Decision No. 57666

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of  
FRANK E. HUBATY, doing business as  
Victor Lee Boat Company, for a  
certificate of public convenience  
and necessity to operate a tour and  
sightseeing service between  
Portuguese Bend and Marineland.

Application No. 40461

Frank E. Hubaty, in propria persona.  
William F. Hibbard, for the Public Utilities  
Commission staff.

O P I N I O N

Frank E. Hubaty is an individual who, doing business as Victor Lee Boat Company, operates power boats for transportation of persons. He has no authority of any type from this Commission. By the application herein, filed on September 25, 1958, he seeks authority to conduct a service as a common carrier by vessel via a circular route approximately twelve miles in length, beginning and ending at the Marineland Pier situated between Redondo Beach and San Pedro in Los Angeles County. No stops are to be made at any point other than said pier.

A public hearing on the application was held in Los Angeles on October 29, 1958, before Examiner Kent C. Rogers, at which time evidence was presented and the matter submitted.

Applicant has been rendering since January, 1956, the service for which he seeks a certificate. He has a ten-year contract, executed at the time the service commenced, with Marineland for the use of its pier. Marineland collects the fares and issues tickets for the passenger services rendered by the applicant and for which authority is requested herein. In exchange for this service he pays Marineland ten per cent of the gross revenues exclusive of transportation tax. Applicant and Marineland pay the ticket agent \$18 per day, which is divided equally between the applicant and Marineland.

The boat used and proposed to be used is a 155-foot water-taxi-type vessel known as the "Victor Lee II". This vessel is diesel powered, seats 61 passengers and carries a crew of two, including a captain. It complies with the Coast Guard requirements for such vessels with the exception that it has no life rafts. Applicant is negotiating for the acquisition of three life rafts at a cost of \$135 each and, when these rafts have been obtained, the vessel will be in full compliance with the Coast Guard requirements. The Coast Guard has given applicant authority to operate temporarily until such life rafts have been obtained.

The fares charged and to be charged are as follows:

Children under 13 years of age	\$ .50 per round trip
Juniors between the ages of 13 and 18 years, inclusive	.75 " " "
Adults, over the age of 18 years	1.25 " " "

Where applicable, i.e. the 75-cent and the \$1.25 fares, the transportation tax is included.

The applicant now makes, and for the future proposes, daily scheduled operations between June 1 and October 1 of each year, with six round trips, the first of which will start at approximately noon. Each trip requires approximately one hour. No services will be rendered during inclement weather. During the remainder of the year service is to be rendered on Saturdays, Sundays, and holidays.

The financial condition of the applicant is reflected in Exhibit C, attached to the application. This exhibit shows that applicant has assets valued at \$123,500 and liabilities totaling \$11,500. The assets include the boat to be used in the operation, which is valued at \$25,000, and a boat used in sport fishing operations, valued at \$30,000. The assets also include an item described as "franchise", valued at \$40,000. This latter item is the applicant's estimate of the value of his exclusive contract with Marineland to use its pier. This contract has a remaining life of seven years. Of the \$11,500 liabilities, \$5,000 thereof had been paid at the time of the hearing herein.

Either the applicant or another captain will be in charge of the vessel on all trips. During the summer months there will be a second crew member or deck hand. The applicant and the other captain are both licensed by the Coast Guard.

The record shows that applicant has been rendering the proposed service for three years; that in this service he has been making six round trips per day during the summer months, and that during these months he has averaged 30 passengers per trip.

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

Frank E. Hubaty 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.

ORDER

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

IT IS 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 Frank E. Hubaty authorizing the establishment and operation of a service as a common carrier for the transportation of persons by vessel via a route approximately 12 miles in length and extending between Portuguese Bend and Marineland Pier, originating at and terminating at the Marineland Pier in the San Pedro channel, no passengers to be picked up or discharged at any point other than the Marineland Pier.

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

- (a) That the service herein authorized shall be performed on a daily scheduled basis during the period from June 1 to October 1 of each year, and on a scheduled basis on Saturdays, Sundays and holidays for the remainder of the year.
- (b) Within thirty days after the effective date hereof, applicant shall file a written acceptance of the certificate herein granted.

(c) Within thirty days after the effective date hereof, and on 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 tables satisfactory to the Commission.

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

Dated at San Francisco, California, this 2nd day of December, 1958.

Carl L. Fox  
President  
Richard M. ...  
Paul ...  
...  
Commissioners

Commissioner Theodore H. Jenner, being necessarily absent, did not participate in the disposition of this proceeding.