

Decision No. 58308**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
NEWPORT BAY INVESTMENT CO., a cor-
poration, doing business as BALBOA
PAVILION COMPANY, for a certificate
of public convenience and necessity
to operate a passenger transportation
and excursion service in the waters
of Newport Bay.

Application No. 40457

Mark A. Soden, for applicant.
Ashton, Drohan and Marchetti, by Harry Ashton,
for Dal Grettenberg, doing business as
Fun Zone Boat Company, protestant.
W. F. Hibbard, for the Commission staff.

O P I N I O N

Public hearings were held in this matter on December 9, 1958, and February 24, 1959, before Examiner Grant E. Syphers at Newport Beach, California. On these dates evidence was adduced and on the last-named date the matter was submitted. It now is ready for decision.

The applicant presently operates a sight-seeing boat, known as the "Balboa," in the area of Newport Bay. This operation has been conducted by applicant corporation for many years and in the instant application it requests a determination as to whether or not a certificate of public convenience and necessity is necessary and, if so, it requests that such a certificate be issued.

The evidence discloses that these operations have been conducted from the Balboa Pavilion, which was built in 1904, and from which boats were operated beginning at about 1910. The boat "Balboa"^{1/} has been operating from this pavilion for over forty years. One witness testified that to his knowledge it was operating in 1921. The present operator of the boat "Balboa" testified that it was built in 1908 and rebuilt in 1923. The operations have been conducted by the Newport Bay Investment Co., a corporation, which, according to this record, was formed on December 27, 1904, and since that time has owned and operated the Balboa Pavilion. It also has operated sight-seeing boats including the boat "Balboa" during the time hereinbefore indicated.

Upon this record we now conclude that the Newport Bay Investment Co. has operated the boat "Balboa" since prior to August 17, 1923. Accordingly, under the provision of Section 1007 of the Public Utilities Act, we now declare this operation to be that of a public utility. This section reads as follows:

"1007. No corporation or person shall begin to operate or cause to be operated any vessel for the transportation of persons or property, for compensation, between points in this State, without first having obtained from the commission a certificate declaring that public convenience and necessity require such operation, but no such certificate shall be required as to termini between which any such corporation or person is lawfully operating vessels in good faith under this part as it existed prior to August 17, 1923, under tariffs and schedules of such corporations or persons, lawfully on file with the commission. ..."

^{1/} The boat "Balboa" is a 70-passenger motor sight-seeing boat powered by a 100-h.p. Nordberg engine having an over-all length of 40 feet 12 inches, and a beam of 10 feet 7 inches.

There was opposition to this application presented by Dal Grettenberg who holds a certificate of public convenience and necessity issued by this Commission by Decision No. 56944, dated July 8, 1958, in Application No. 39808. This opposition was of two types, (1) opposition to the issuance of a certificate of public convenience and necessity, and (2) opposition to the fact that the applicant herein charges lower rates than does Grettenberg for similar service.

Since we have concluded that this operation comes under the provisions of Section 1007, the remaining issue before us is one of rates and charges.

The evidence disclosed that prior to 1957 applicant charged 65¢ or less for adults. During 1957 applicant raised his fare to equal that of Grettenberg (85¢ for adults and 35¢ for children), and early in the spring of 1958 resumed the fare schedule which is proposed herein.

It is the position of the objector Grettenberg that this rate differential will divert considerable business away from his operation. It is the position of the applicant herein that the boat "Balboa" is older and not as attractive to the public as are the boats operated by Grettenberg.

A consideration of all of the evidence adduced herein now leads us to conclude that the applicant, under the terms of Section 1007, shall file tariffs and schedules covering its operations. We also find that such rates shall be 65 cents for adults and 25 cents for children, which rates we now find to be reasonable.

In making this finding as to the rates, we have taken into consideration Section 730 of the Public Utilities Code which provides in part:

"Whenever two or more common carriers are furnishing service in competition with each other, the commission may, after hearing, when necessary for the preservation of adequate service and when public interest demands, prescribe uniform rates..."

It is the Commission's opinion, and it finds, that in view of the nature of the service to be rendered and that since Grettenberg and applicant both operated at a profit during 1958 with dissimilar rates, neither the preservation of adequate service nor public interest demand the prescription of uniform rates.

We are aware that this operation is a sight-seeing one operating from a pier at the Balboa Pavilion. Such operations are those of a common carrier and subject to the authority of this Commission (in re Grettenberg, Decision No. 56944, dated July 8, 1958, in Application No. 39808). Accordingly, in the ensuing order the applicant will be directed to file tariffs to cover the operations of its vessel.

ORDER

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

IT IS ORDERED that the Newport Bay Investment Co., a corporation, doing business as Balboa Pavilion Company, be and it hereby is required to observe the following service regulation:

Within thirty days after the effective date hereof, and on not less than ten days' notice to the Commission and to the public, applicant shall file in triplicate, and concurrently make effective, tariffs and schedules satisfactory to the Commission.

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

Dated at San Francisco, California,
this 21st day of April, 1959.

[Signature]
President
[Signature]
[Signature]
[Signature]
Commissioners

Commissioner Everett C. McKeage, being necessarily absent, did not participate in the disposition of this proceeding.