

Decision No. 60037**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
 THE HARBOR TUG AND BARGE COMPANY, a
 corporation, for a certificate of
 public convenience and necessity
 authorizing an extension of its
 operating authority so as to author-
 ize it to operate vessels "on sched-
 ule" as a common carrier of passengers
 between San Francisco and Angel
 Island.

Application No. 40241

In the Matter of the Application of
 MILTON McDONOGH, whose place of busi-
 ness is at 21 Main Street, Tiburon,
 California and whose mailing address
 is P. O. Box 901, Tiburon, Calif. for
 a vessel passenger carrier certificate.

Application No. 40945

Vaughan, Paul & Lyons, by Reginald L. Vaughan, for
Applicant The Harbor Tug and Barge Company.
Milton McDonogh, Applicant.
Scott Elder, for Applicant Milton McDonogh.
Graham, James & Rolph, by Boris H. Lakusta, for
Russell G. Lewis, protestant.
John I. Noll, for Division of Beaches and Parks of
the State of California, interested party.
Charles W. Overhouse, for the Commission staff.

O P I N I O N

The Harbor Tug and Barge Company seeks a certificate of public convenience and necessity authorizing operation of vessels for the transportation of persons as defined in Public Utilities Code Section 1007 between San Francisco and Angel Island State Park. Milton McDonogh seeks a similar certificate authorizing him to operate between Tiburon and Angel Island State Park. Both applications were consolidated for hearing.

A duly noticed public hearing was held in this matter before Examiner Donald B. Jarvis at San Francisco on July 14, 15 and 29, 1959 when the matter was submitted subject to the filing of briefs. The briefs have been filed and the matter is now ready for decision.

As indicated, Harbor Tug and Barge Company seeks authority to conduct a passenger vessel service between San Francisco and Angel Island State Park and Milton McDonogh seeks to conduct a passenger vessel service between Tiburon and Angel Island State Park. Russell G. Lewis protests the granting of either or both of the applications here under consideration. Lewis holds a certificate of public convenience and necessity granted in Decision No. 58056 dated February 24, 1959 authorizing him to conduct a passenger vessel service between San Francisco and Angel Island, Sausalito and Angel Island, San Francisco and Sausalito and loop service out of San Francisco and Sausalito. At the time of hearing, Lewis had not commenced any operations under his certificate.

Angel Island is located in San Francisco Bay. A portion of the island is a state park which was opened in June of 1958. As a result, many of the variable factors which go into a determination of public convenience and necessity are directly controlled by the State of California Department of Natural Resources, Division of Beaches and Parks. The state park was closed for repairs shortly after it was opened, and was closed at the time of hearing.

The Department of Natural Resources filed an appearance as an interested party in this matter. A representative of the department testified at the public hearing that at that time Angel Island State Park was closed; that when the park reopened it would have a capacity of 1,000 - 300 picnickers and 700 hikers; that any time a state park is saturated the supervisor may order it closed to further visitors and this is the policy practiced generally throughout the state park system; that state parks usually admit people on a first come, first served basis; that initial facilities planned for Angel Island State Park would include finger slips for twenty small boats and a dock which would accommodate larger vessels; and

that as of the time of hearing the Department of Natural Resources had formulated no policy with respect to allocating entry to the island between those coming by private boat and those coming by common carrier vessel.

The Department of Natural Resources takes the position that it has exclusive jurisdiction over Angel Island Park; that it is bound by Section 5003 of the Public Resources Code to regulate concessions in the park; that the right of a passenger vessel service to land and embark passengers is such a concession; that in determining whether a concession should be granted to one or more passenger vessel carriers certificated by this Commission the Department of Natural Resources would, among other things, consider the fee to be paid for the concession, the number of persons to be permitted to land by passenger vessel per day, the quality of the service and equipment offered by the vessel operator and the rates to be charged by the operator. The Department of Natural Resources indicated that it would only enter into concession agreements with operators holding proper authority from this Commission.

The evidence of record clearly discloses that there is a need for public transportation to Angel Island State Park from points in the San Francisco Bay area. The number of passenger vessel carriers needed to meet this need is now uncertain because of the absence of a definite policy on the part of the Department of Natural Resources delineating the number of private boat users and public vessel passengers who will be permitted to use the park under various conditions.

Protestant, Lewis, contends that this Commission should deny the McDonogh and Harbor Tug and Barge applications because (1) the addition of two more operators to Angel Island would so

dilute traffic that none of them could operate properly, and (2) Lewis, as an existing certificate holder should be protected against competition so long as he provides adequate service under his certificate.

The function of this Commission is to determine the requirements of public convenience and necessity under the facts of this case. The policy of this Commission is stated in Pacific Gas and Electric Co. v. Great Western Power Co., 1 C.R.C. 203,209 as follows:

"It certainly is true that where a territory is served by a utility which has pioneered in the field, and is rendering efficient and cheap service and is fulfilling adequately the duty which, as a public utility, it owes to the public, and the territory is so generally served that it may be said to have reached the point of saturation as regards the particular commodity in which such utility deals, then certainly the design of the law is that the utility shall be protected within such field; but when any one of these conditions is lacking, the public convenience may often be served by allowing competition to come in."

On this record it cannot be said that the field of transporting passengers between points in the San Francisco Bay area and Angel Island is saturated or that Lewis is rendering efficient and cheap service and is fulfilling adequately the duty which he owes the public as a public utility. Furthermore, it appears that The Harbor Tug and Barge proposes a service with larger and more luxurious equipment than Lewis plans to operate and that McDonogh proposes to use equipment similar to Lewis but between points Lewis is not authorized to serve.

The Commission is of the opinion that at this time public convenience and necessity would be best served by having more than one passenger vessel carrier with authority to serve Angel Island State Park so that the Department of Natural Resources will have

available to it in developing its park admission and concession policies carriers with varying types of equipment and territorial operating authority. This Commission expresses no opinion with respect to the policies the Department of Natural Resources proposes to utilize in awarding concessions. Of course, once the precise need for passenger vessel service between the San Francisco Bay area and Angel Island is ascertained, any subsequent applications will be judged against that need and the then presently existing service.

Evidence respecting liability insurance for the protection of passenger vessel service patrons and the public was received in connection with the instant applications. The Commission is of the opinion that passenger vessel operators should carry liability insurance in amounts commensurate with the size and scope of their operations and the hazards attendant thereto. Any certificate issued will provide for the operator's maintaining minimum liability insurance coverage.

In the light of the foregoing discussion the Harbor Tug and Barge and McDonogh applications will be considered with respect to the ability of each applicant to conduct the proposed operations.

The Harbor Tug and Barge Company
Application No. 40241

Harbor Tug and Barge holds operating rights to conduct "a general launch, barge, tug and towboat business in 'on-call' service for the transportation of passengers between points on San Francisco and San Pablo Bays ..." (Re Investigation by Commission, etc. 40 C.R.C. 493, 515). It also has authority to transport passengers in scheduled service between specified points in Oakland and Alameda pursuant to Decision No. 41630 in Application No. 29297. Harbor Tug and Barge had, as of May 31, 1959, total assets of \$1,274,746 and an earned surplus of approximately \$442,000.

Harbor Tug and Barge has dock facilities in San Francisco. It proposes a scheduled once a day service ^{1/} between San Francisco and Angel Island from June 1 through September 10 of each year and an on-call service, on one hour's notice for three or more passengers, between September 11 through May 31 of each year. To conduct the proposed service, it has available to lease, through wholly owned subsidiary companies, the following vessels:

<u>Vessel</u>	<u>Passengers</u>	<u>Size</u>
Harbor Queen	400	64' 10" x 24'
Harbor King	400	64' 10" x 24'
Harbor Princess	400	64' 10" x 24'
Harbor Sightseer	219	61' x 18'
Harbor Tourist	219	61' x 18'
Teal	49	55' x 14'
Lark	49	50' x 15'
Chief	49	50' x 15'

All of these vessels are certified and licensed by the Coast Guard. Initially, if a certificate be granted, Harbor Tug and Barge plans to use the Harbor Sightseer and Harbor Tourist in the proposed service.

The Commission finds that The Harbor Tug and Barge Company has the ability, including financial ability, to conduct the proposed operations and that public convenience and necessity require that its application be granted to the extent hereinafter set forth.

^{1/} Harbor Tug and Barge actually proposes to run two round trips a day; one in the morning, the other in the afternoon. However as a practical matter the boat leaving in the morning will discharge passengers at Angel Island and return empty to San Francisco and the afternoon boat will leave San Francisco empty and return with the passengers left in the morning.

Milton McDonogh Application No. 40945

McDonogh has never held any operating authority issued by this Commission. Since 1942 he has been employed as a captain or operating first mate on tugboats operating on San Francisco Bay and environs. He is presently employed as a towboat captain by the Olympian Dredging Company.

McDonogh owns dock and accompanying parking facilities in Tiburon. He plans to use in his proposed service a 45-foot water taxi which was being reconditioned at the time of hearing. It had not yet been certified and licensed by the Coast Guard. McDonogh owns the vessel which is worth approximately \$10,000. He has net assets, including the vessel, of approximately \$40,000.

McDonogh proposes to run four schedules a day, with a minimum of ten passengers per outbound schedule, on Saturdays, Sundays and holidays from Tiburon to Angel Island. The passenger minimum requirement in his proposal is contrary to the public interest and will not be approved. If scheduled service is offered to the public the schedules should be observed regardless of the number of passengers on any particular trip. It does appear reasonable, however, to permit McDonogh to operate on-call service during the winter months.

The Commission finds that Milton McDonogh has the ability, including financial ability, to conduct passenger vessel operations between Tiburon and Angel Island State Park. The Commission finds that public convenience and necessity would require the granting of a certificate to Milton McDonogh between Tiburon and Angel Island State Park upon a showing that the vessel with which he proposes to operate has been duly licensed and certified by the Coast Guard. Also, any certificate issued shall provide for a

minimum amount of scheduled service without regard to the number of patrons using a particular schedule. On-call service will be permitted during winter months.

O R D E R

A public hearing having been held and based upon the evidence therein adduced,

IT IS ORDERED that:

1.a. The Harbor Tug and Barge Company, a corporation, is granted a certificate of public convenience and necessity authorizing it to operate as a common carrier by vessel for the transportation of persons as defined in Section 211(b) of the Public Utilities Code between the points and at the rates more particularly set forth in Appendix A attached hereto and made a part hereof.

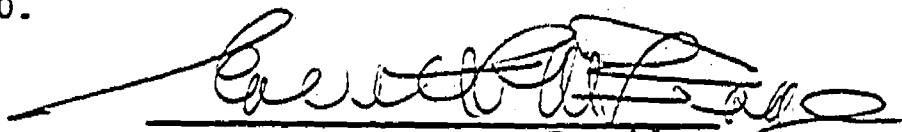
b. In providing service pursuant to the certificate herein granted, applicant shall comply with and observe the following regulations:

- (1) Within thirty days after the effective date hereof, applicant shall file a written acceptance of the certificate herein granted. By accepting the certificate of public convenience and necessity herein granted, applicant is placed on notice that it will be required, among other things, to file annual reports of its operations and to comply with and observe the rules set forth in General Order No. 87. Failure to file such reports, in such form and at such time as the Commission may direct, or to comply with and observe the provisions of General Order No. 87, may result in a cancellation of the operating authority granted by this decision.
- (2) Within sixty days after the effective date hereof, and on not less than ten days' notice to the Commission and to the public, applicant shall establish the service herein authorized and file in triplicate, and concurrently make effective, tariff and timetable satisfactory to the Commission.

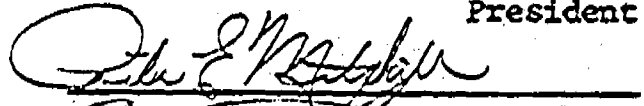
2. If, within ninety days from the effective date of this order, Milton McDonogh files proof satisfactory to this Commission that the vessel to be used in the passenger vessel service proposed by him has been duly licensed and certified by the U. S. Coast Guard, a certificate of public convenience and necessity will be granted without further hearing. Otherwise, Application No. 40945 will be denied.

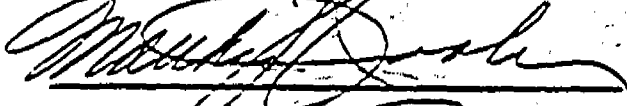
The effective date of this order shall be twenty days after the date hereof.

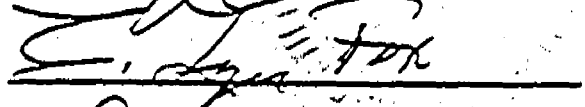
Dated at San Francisco, California, this 3rd day
of May, 1960.

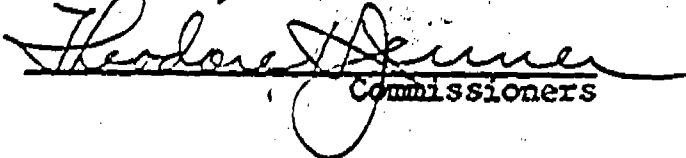


President









Commissioners

1. The Harbor Tug and Barge Company, a corporation, by the certificate granted by the decision noted in the margin, is authorized to transport persons by vessel between San Francisco, on the one hand, and Angel Island State Park, on the other hand.
2. The Harbor Tug and Barge Company shall provide in its tariff and timetable for at least one trip per day each direction during the period between June 1 through September 10 of each year. In addition, applicant is authorized to provide in its tariff and timetable for an on-call service, on one hour's notice, for three or more passengers between the period September 11 through May 31 of each year.
3. Before The Harbor Tug and Barge Company commences operations under the certificate herein granted it shall procure insurance issued by a company licensed to write such insurance in this state in the amount of not less than \$250,000 against liability imposed by law upon it for the payment of damages for personal bodily injury, including death resulting therefrom, on account of bodily injuries to, or for death of one person; and provide for protection in the amount of not less than \$2,000,000 against a total liability of The Harbor Tug and Barge Company on account of bodily injuries to, or death of, more than one person, as a result of any one accident. Applicant shall keep said insurance in effect during the life of this certificate.

Issued by California Public Utilities Commission.

Decision No. 60037, Application No. 40241.