

**ORIGINAL**Decision No. 60050

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of SHEARWATER, INC.  
 for authority to sell, and  
 SOUTHLAND HARBOR CRUISES, INC.  
 for authority to purchase cer-  
 tain operative rights and  
 equipment of Shearwater, Inc.

Application No. 41978

O P I N I O N

By this application, as amended, Shearwater, Inc., a common carrier of persons by vessel, seeks authority to sell its business and assets, including its operating authority,<sup>1/</sup> to Southland Harbor Cruises, Inc. The property proposed to be transferred, free and clear of any liens, encumbrances, or liabilities, consists of two motor vessels, the "Shearwater" and the "Princess", together with all equipment, appliances and stores, and all franchises, permits and licenses. The consideration is \$85,000<sup>2/</sup> payable \$24,650 upon approval of the sale, the balance in equal installments of \$4,000 payable on May 15, September 15 and December 31 of each year thereafter until the principal and interest on the unpaid balance, at the rate of 6 percent per annum, has been paid. The indebtedness will be evidenced by a promissory note and mortgage on the said vessels.

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<sup>1/</sup> Decisions Nos. 48806, 53849, 55303 and 55699.

<sup>2/</sup> Subject to adjustment and other conditions as set forth in the agreement filed as Exhibit "C" with the application.

Southland Harbor Cruises, Inc., is a California corporation recently incorporated with an authorized capital of \$200,000, consisting of 200,000 shares of the par value of \$1.00 each. It has no assets or liabilities. It proposes to sell 90,000 shares at par for cash to Pierpoint Landing, Inc., a California corporation, engaged in the operation of sport-fishing vessels, boat rentals, and other related business at Pierpoint Landing, Pier A in the Long Beach harbor. The officers and directors of Southland Harbor Cruises, Inc., and Pierpoint Landing, Inc., are the same except that G. P. Ellington, who is vice president of both companies, is not a director of the new corporation. The other officers and directors are: William A. Nott, President, J. E. McClintock, Secretary, and W. J. Gillis, Treasurer.

As of December 31, 1959, the financial condition of Pierpoint Landing, Inc., was as follows: Total Assets, \$346,491.01; Total Liabilities, \$95,083.34; Net Worth, \$251,407.67; represented by Capital, \$203,325.18; and Surplus, \$48,081.47. Its net income, before taxes, for the year 1959 was \$67,774.

No changes are proposed in the operations of the business other than may be authorized by the Commission in Application No. 41627, now pending.<sup>3/</sup>

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<sup>3/</sup> Said application requests route and schedule changes and an increase in fares on one route, and for "on-call" service. The application has been held in abeyance pending the sale and transfer of the business as herein requested. Pending disposition of said application the service will be conducted as heretofore authorized.

Having considered the matter, the Commission finds that the proposed sale and transfer is not adverse to the public interest and that the money, property, or labor to be procured or paid for by the issue of stock and note herein authorized is reasonably required for the purposes specified herein, and that such purposes are not, in whole or in part, reasonably chargeable to operating expenses or to income.

While we have found that the transfer of operative rights is not adverse to the public interest, we desire to take this opportunity to place the parties herein, and all other holders of operative rights, upon notice that this Commission views with disfavor any action which may constitute or which may appear to constitute the trafficking in such rights. Operative rights constitute privileges granted by the State and are to be considered in that light. An excessive price paid for such operative rights, in our opinion, is contrary to the public interest and violative of the spirit of Section 820 of the Public Utilities Code. These rights having been granted by the State, it is incumbent upon public authority to be vigilant to prevent the trafficking in such rights or other action concerning such rights which may be contrary to the public interest.

The action taken herein shall not be construed to be a finding of the cost or value of the operative rights herein proposed to be transferred, <sup>not</sup> not as authorization to capitalize

them in excess of the amount allowed by law. Applicants are hereby placed on 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 as to the number of rights which may be given.

O R D E R

Application having been made, the Commission being fully advised in the premises and having found facts and conclusions as hereinabove set forth,

IT IS ORDERED:

(1) That Shearwater, Inc., a corporation, may sell and transfer, on or before sixty days after the effective date of this order, to Southland Harbor Cruises, Inc., a corporation, all of its right, title and interest in and to the business and assets, including the certificate of public convenience and necessity referred to in the foregoing opinion, upon the terms and conditions set forth in the application, and Southland Harbor Cruises, Inc., may acquire said business and assets

and certificate and shall continue to operate a common carrier vessel service as heretofore authorized by this Commission.

(2) That Southland Harbor Cruises, Inc., may issue 90,000 shares of its common stock at the par value of one dollar each and its promissory note in the aggregate principal amount of not to exceed \$61,000, for the purposes and in the manner set forth in the application, and may also execute and enter into an agreement providing for the payment of \$85,000 substantially as set forth in said application and may execute a mortgage to secure the payment of said note.

(3) That on not less than five days' notice to the Commission and to the public, effective concurrently with the consummation of such transfer, applicant shall supplement or reissue the tariffs and timetables on file with the Commission naming rates, rules and regulations governing the operations here involved to show that Shearwater, Inc., has withdrawn or canceled and Southland Harbor Cruises, Inc., has adopted or established as its own, said rates, rules, regulations and timetables. The tariff filings made pursuant to this order shall comply in all respects with the regulations governing the construction and filing of tariffs set forth in the Commission's Tariff Circular No. 2.

(4) That Southland Harbor Cruises, Inc., shall file with the Commission a report, or reports, as required by General Order No. 24-A, which order, insofar as applicable, is made a part of this order.

(5) This order shall become effective when Southland Harbor Cruises, Inc., has paid the fee prescribed by Section 1904(b) of the Public Utilities Code, which fee is \$61.

Dated at San Francisco, California, this 4th day of May, 1960.

*[Handwritten Signature]*

*[Handwritten Signature]*  
President

*[Handwritten Signature]*

*[Handwritten Signature]*

Commissioners

