

Decision No. 60662

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 to extend service)
and to establish rates.)

Application No. 41842

Harwood, Hefferman & Soden, by Mark A. Soden, for applicant.
Ashton, Drohan & Morgan, by Harry Ashton, for Fun Zone Boat Co., Inc.; Hewett and Rickles, by James H. Radcliffe, for Island Transportation Company, protestants; and
Walter W. Charamza, for City of Newport Beach, protestant and interested party; and
John A. Williamson, for Orange County Harbor District, and Clyde Thomas, for Pacific-Catalina Passenger Service; interested parties.
W. F. Hibbard, for the Commission staff.

O P I N I O N

Public hearings were held in this matter on April 6 and April 27, 1960, at Newport Beach, California, before Examiner Grant E. Syphers. On these dates evidence was adduced and the matter submitted, subject to the filing of briefs. These briefs now have been filed and the matter is ready for decision.

The applicant presently conducts an operation as a common carrier by vessel in the area of Newport Bay (see Decision No. 58308, dated April 21, 1959, in Application No. 40457). This operation is a prescriptive one, having been conducted since prior to August 17, 1923, and having been recognized by the Commission in the aforementioned decision.

In the instant application it requests authority to extend its service to include scheduled trips to Laguna Beach, round-trip excursions to the Upper Newport Bay area, and charter trips to Catalina Island.

In this proposed service it intends to use two boats, one known as the "Pavilion" and the other as the "Balboa." The boat "Balboa" is a 70-passenger motor sightseeing boat powered by a 100-horsepower Nordberg engine, the boat having an over-all length of 40½ feet and a beam of 10 feet 8 inches. The boat "Pavilion" is an 84-passenger motor sightseeing boat powered by a 225-horsepower Grey marine diesel engine, the boat having an over-all length of 50 feet and a beam of 14 feet 2 inches. Both boats have been certificated by the U. S. Coast Guard.

In support of the application, the applicant contended that its predecessors have conducted charter trips to Catalina Island since 1904 and also runs to Laguna Beach for the past 30 years. One witness testified that he was a former operator of the Pavilion, and during the years 1934 to 1945 he took charter trips to Catalina Island. His testimony was substantiated by a ship's master who worked for him. However, all of the evidence in this connection does not establish that this service has been continuous and, indeed, shows that there were periods of several years when no service was supplied. Such service has not been supplied in recent years. Two witnesses testified as to requests for charter trips to Catalina Island. One of these operates a store in the Balboa area and states that he has had requests from groups of from seven to ten people. Another testified that he had requests for charter trips from Norm's Landing, which formerly was in Balboa and now has

moved to San Pedro. Other testimony was presented concerning the growth of the Newport area.

In opposition to the run to Laguna, Dal Grettenberg, who operates as a common carrier by vessel under authority of a certificate issued by this Commission (Decision No. 56944, dated July 8, 1958, in Application No. 39808), testified that he now was providing service and, further, that the applicant was using allegedly unfair methods in attempting to divert business from Grettenberg, such methods including the placing of advertising signs and the use of an unduly loud amplifying system to announce the trips. Grettenberg further testified that he was not operating at capacity and could handle additional business.

In opposition to the proposed operations to Catalina Island, the Island Transportation Company, which is a certificated common carrier by vessel (Decision No. 48700, dated June 9, 1953, in Application No. 34289; Decision No. 51067, dated February 1, 1955, in Application No. 35758), presented testimony that it conducts regular trips to Avalon as well as handling off-season charters. This company alleged that it is not operating at capacity and can handle additional business. It has plans to construct a new boat, and the machinery and parts therefor have been bought and paid for but, due to the present passenger demand, the new boat has not as yet been constructed. This protestant also raised the question as to whether or not the boat "Pavilion" was qualified to conduct runs to Catalina Island. An examination of the financial condition of this protestant shows that it is operating at a loss.

Relative to the third part of the application, wherein applicant requests authority to conduct sightseeing service to Upper Newport Bay, the testimony discloses that this area is not now available for boat travel. It is planned to enlarge and extend the Upper Bay area sometime in the future.

Based upon all of the evidence presented in this matter, and giving consideration to the briefs and statements filed by the parties, we now make the following findings:

1. Dal Grettenberg presently has authority to conduct sightseeing service between Newport and Laguna Beach and has the capacity to handle additional business in that connection.
2. The Island Transportation Company now has authority to conduct operations between Newport Bay and Avalon and has the capacity to handle additional business.
3. The Balboa Pavilion Company has not established any claim to prescriptive rights either as to operations to Avalon nor as to operations to Laguna Beach.
4. There is no need for additional service between Newport Bay and Laguna Beach nor between Newport Bay and Avalon.
5. The Upper Bay area is not now ready for vessel operations and, accordingly, there is no present need for service thereto.

In the light of the foregoing findings we now conclude that the application should be denied.

O R D E R

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 application of Newport Bay Investment Company, No. 41842, be and it hereby is denied.

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

Dated at San Francisco, California, this 30th day of August, 1960.

George W. [Signature]
President

[Signature]

[Signature]

[Signature]

Commissioners

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