

ORIGINAL

Decision No. 60752

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own motion into the operations, rates, and practices of MARGEE CORP., a California corporation.

Case No. 6374

Elmer Siostrom, for the Commission staff.
Murchison & Stebbins, by Donald Murchison and
Robert P. Stebbins, for respondent.

O P I N I O N

The Commission issued the above-entitled order instituting investigation on October 27, 1959, to determine:

1. Whether Margee Corp. is a common carrier within the definition of Section 211 of the Public Utilities Code subject to the jurisdiction of the Public Utilities Commission in accordance with Section 216 of said Code.
2. Whether Margee Corp. has violated Section 1007 of the Public Utilities Code by failing to secure a certificate of public convenience and necessity pursuant to the requirements of said section.
3. Whether Margee Corp. has violated Section 486 of the Public Utilities Code by failing to file and publish tariffs in conformity therewith.
4. Whether Margee Corp. should be ordered to cease and desist from any or all unlawful operations or practices.

5. Whether other order or orders that may be appropriate should be issued in the lawful exercise of the Commission's jurisdiction.

A copy of the order was served on Margee Corp. (respondent) on October 30, 1959. A public hearing was held before Examiner Kent C. Rogers in Los Angeles on January 21, 1960, at which time the respondent appeared. The respondent and the Commission staff jointly submitted a written "Stipulation Re Agreed Facts" (Exhibit No. 1), evidence was presented and the matter was submitted subject to the filing of briefs. These briefs have been filed and the matter is ready for decision.

Stipulation Re Agreed Facts

The said stipulation contains the following information, among other things:

Margee Corp. is a California corporation with offices at 1642 North Las Palmas Avenue, Los Angeles. Its principal officers are William D. Swanson, President, and James L. Hayes, Vice-President. The corporation is engaged in the business under the concession name of "Polynesian Trader", of providing pleasure excursion rides on two vessels which leave from and return to the same point on Pacific Ocean Park pier in Santa Monica with no intermediate stops during the short voyage on the coastal waters near Pacific Ocean Park pier. The pleasure excursion scenic rides on the two vessels owned by Margee Corp. are available only to paid admittees of Pacific Ocean Park who must again pay to the ticket office of the "Polynesian Trader" (the name given to the particular concession at Pacific Ocean Park) an additional compensation for the pleasure excursion ride.

The pleasure excursion rides were first operated for paid admittees to Pacific Ocean Park on approximately July 28, 1958, and were continued until the end of the summer season on approximately October 8, 1958, except for certain Saturdays and Sundays through approximately November 1, 1958. During 1959, the pleasure excursion scenic rides were operated from approximately May 20, 1959, through approximately September 1, 1959. The plan is that henceforth the pleasure excursion scenic rides will be operated from June 15 to September 15 of each year.

The "Polynesian Trader" concession is conducted from docking space leased from Pacific Ocean Park, Inc., the private owner of the pier.

The operation is a scenic excursion-type amusement concession by vessels and consists of 15- to 20-minute roundtrips on the coastal waters in the immediate vicinity of the pier. There are no intermediate stops and the vessels return to the same point at Pacific Ocean Park pier from which they originate. The rides are not operated on a fixed schedule. The frequency of the operation depends almost entirely upon the number of paid admittees to Pacific Ocean Park who desire to take the ride. Under average conditions the vessels might leave approximately every half hour and, during periods when there are not many customers, service might be operated once an hour, or less frequently.

The fares for the rides have been 50 cents for adults and 25 cents for children. On occasions, depending on the number of paid admittees on the pier, and particularly on week days when the size of the crowd is smaller, children ride free when accompanied by parents. It is not feasible to set any particular

schedule when children are admitted free because the size of the crowd on the pier and the number of customers for the ride depend upon such variable factors as the condition of the weather, the time of day, the day of the week, and whether or not there may be large groups, such as clubs or parties, on the pier.

The fares stated above for the boat rides are in addition to the admission charges to Pacific Ocean Park, such charges being \$1.25 for adults and 90 cents for children. Paid admittees to Pacific Ocean Park who desire to take a ride on one of the boats pay the additional charge at a ticket office at the "Polynesian Trader" pier. There are a few persons who may ride the boat without charge if they have a pass from Pacific Ocean Park. Only a few such passes are given out and are given to newspaper reporters and to other individuals for publicity purposes.

The ride of approximately 15 minutes leaves the pier, makes a small trip of two or three miles in the coastal waters immediately adjacent to the pier, and then returns to the same point of embarkation without making any intermediate stops whatsoever. There would appear to be no necessity for the paid admittees of Pacific Ocean Park to take the ride and no particular educational benefit would appear to be derived therefrom.

Two boats are used in the operation. Margee Corp. is the owner thereof and each is of 13 tons net register. Each has an over-all length of 45 feet, a maximum capacity of 93 passengers plus a crew of two, and is diesel-powered.

Witnesses

In addition to the facts set forth in the stipulation, the respondent called three witnesses: the President of Margee Corp.;

the President of Pacific Ocean Park, Inc.; and the Vice-President and one of the boat operators of Margee Corp.

The President of Margee Corp. testified, inter alia, that the ride is but one of many concessions in Pacific Ocean Park; that the operation is seasonal; that in order to take the ride a person must pay the admittance fee to Pacific Ocean Park; that neither the City of Los Angeles nor the City of Santa Monica benefit from the rides; that the boats have licensed skippers; that the fares are collected by Margee Corp. at the point of departure; that payment to Pacific Ocean Park, Inc. is on a percentage of revenue basis; and that Margee Corp. operates under pier rules and regulations which include the setting of the fares.

The President of Pacific Ocean Park, Inc. testified that Pacific Ocean Park, Inc. is engaged in the entertainment business; that it has been engaged since July 31, 1958, in Santa Monica and in Los Angeles; that its business primarily consists of amusement rides and attractions; that there are at least 28 amusement rides in Pacific Ocean Park; that the "Polynesian Trader" is one of such rides; that Margee Corp. is under lease to Pacific Ocean Park, Inc. for the conduct of the "Polynesian Trader" concession; that under the terms of Margee Corp.'s lease the lease may be terminated for a violation thereof; that if the lease were terminated the concession could not be operated; that the lease provides that all prices must be reasonable and subject to reasonable control, by Pacific Ocean Park, Inc.; that Pacific Ocean Park, Inc. determines whether or not a concession shall open or close; that members of the press are admitted to the park

free and to the concessions, including the "Polynesian Trader", free; that any person Pacific Ocean Park, Inc. designates is admitted to the concessions free; and that by the terms of the lease to the "Polynesian Trader" Pacific Ocean Park, Inc. may take Margee Corp.'s boats for any lease violation.

The Vice-President of Margee Corp. and the operator of one of its boats testified that the boats do not have a scheduled operation but operate according to the demands of the business.

The staff presented no evidence other than the stipulation, Exhibit No. 1.

Briefs

The parties presented concurrent briefs to the Commission, the staff supporting the contention that the operation described by the stipulation is subject to the Commission's jurisdiction and the respondent arguing that it is not for the reasons (1), that the operation is not between two or more termini and (2), that fixing of rates by the Commission would violate the terms of the respondent's lease with Pacific Ocean Park, Inc.

Section 211(b) of the Public Utilities Code defines a "common carrier" to include:

"Every corporation or person, owning, controlling, operating, or managing any vessel engaged in the transportation of persons or property for compensation between points upon the inland waters of this State or upon the high seas between points within this State, except as provided in Section 212. 'Inland waters' as used in this section includes all navigable waters within this State other than the high seas."

A vessel is defined as follows:

"'Vessel' includes every species of water craft, by whatsoever power operated, which is owned, controlled, operated, or managed for public use in the transportation of persons or property, except rowboats, sailing boats and barges under 20 tons dead weight carrying capacity, and other water craft propelled by steam, gas, fluid naphtha, electricity, or other motive power under the burden of 5 tons net register." (Section 238(a) P.U.C.)

The record shows and we find that respondent is operating "vessels" powered by diesel and having a net register of over 5 tons. Such boats are vessels within the definition of Section 238(a), supra. The record further shows and we find that respondent is carrying passengers for compensation on the high seas (Ross vs. McIntyre, 35 L. Ed. 581 at 588). Inasmuch as all landings are at Santa Monica, California, it is obvious that the service is "within the State".

Respondent argues that, regardless of such facts, it is not subject to this Commission's jurisdiction for the reason that a service which originates and terminates at the same point without stopping at any intermediate point is not within the purview of Section 211(b), supra, for the claimed reason that such operation is not "between points". This Commission has decided this contention directly contrary to respondent's theory on virtually identical operations (Re Star and Crescent Boat Company, 54 Cal. P.U.C. 64; re Grettenberg Decision No. 56944, Application No. 39808).

Upon the record herein we find and conclude that respondent is operating as a common carrier by vessel

as defined in Section 211, Public Utilities Code, for the transportation of persons for compensation between points in this State, and is a public utility as defined in Section 216 of the Public Utilities Code. The records of this Commission, of which we take judicial notice, also show and we find that respondent has not received from this Commission a certificate of public convenience and necessity as required by Section 1007 of the California Public Utilities Code. The records of this Commission also show and we find that respondent has no tariff on file as required by Section 486 of the Public Utilities Code.

The respondent also argues that the exercise of jurisdiction over the respondent by this Commission as to admission prices, schedules, or periods of operation would be in violation of the terms of respondent's lease with Pacific Ocean Park, Inc.; and that any breach of the lease by respondent which was made necessary by an order from the Commission would result in a forfeiture under a chattel mortgage in favor of Pacific Ocean Park, Inc., and a resultant loss by respondent of property valued at approximately \$70,000.

The basic law governing the operation of common carriers such as we have found respondent to be is set forth in the California Constitution and the Public Utilities Code.

Section 20 of Article XII of the Constitution provides that no transportation company shall raise any rate or charge for the transportation of persons except upon a showing before this Commission. Said prohibition is also embraced in Section 454 of the Public Utilities Code. It thus appears that the

respondent may not raise its rates without authority from this Commission regardless of its contract with Pacific Ocean Park, Inc.

Respondent also gives free passes at the request of Pacific Ocean Park, Inc. Such conduct is prohibited except when the passes are given to the particular parties specified in the Public Utilities Code (Sections 522 and 523 P.U.C.).

O R D E R

A public hearing having been held, the Commission being fully advised in the premises and having made the foregoing findings and based upon said findings,

IT IS ORDERED that Margee Corp. be and it hereby is ordered to cease and desist from operating any vessels as a common carrier, as defined in Section 211 of the Public Utilities Code, unless and until it shall first have obtained from this Commission a certificate of public convenience and necessity authorizing such operation as required by Section 1007 of the Public Utilities Code.

The Secretary of the Commission is directed to cause personal service of this decision and order to be made upon an officer of said corporation.

The effective date of this order shall be twenty days after personal service of this order as aforesaid.

Dated at San Francisco, California, this 13th day of September 1960.

[Signature]
President

[Signature]

[Signature]

Commissioners

Matthew J. Dooley

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