

ORIGINAL

Decision No. 55533

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of BALBOA PAVILION CO.
 For Authority To Transfer Utility
 Properties and Operative Rights
 To FUN ZONE BOAT COMPANY, INC.
 And Application Of FUN ZONE BOAT
 COMPANY, INC. For Authority To
 Mortgage Utility Properties

Application No. 45259
Filed March 19, 1963

O P I N I O N

Balboa Pavilion Co., a corporation, and Fun Zone Boat Company, Inc., have filed this application for an order authorizing the transfer and lease of equipment and operative rights and the execution of preferred mortgages and long-term notes.

Both applicants are engaged in operating sightseeing vessels on Newport Bay. It appears that the Commission, by Decision No. 58308, dated April 21, 1959, declared that the operations which now are conducted by Balboa Pavilion Co. are those of a public utility by reason of operations prior to August 17, 1923, and that the Commission certificated the operations of Fun Zone Boat Company, Inc., by Decision No. 56944, dated July 8, 1958. Balboa Pavilion Co. picks up and discharges passengers only at the wharf at Balboa,

with no stops en route, but Fun Zone Boat Company, Inc., is authorized by its certificate to pick up and discharge passengers at any suitable point en route.

Applicants report that Balboa Pavilion Co. desires to withdraw from its sightseeing business and that it has entered into negotiations for the sale to Fun Zone Boat Company, Inc., of the two vessels it operates for the total sum of \$15,000 and for the lease of the operative rights and the sublease of certain slip and ticket office facilities to Fun Zone Boat Company, Inc., for a term ending on December 31, 1965, for the sum of \$5,000 for the term ending December 31, 1963, and thereafter for the sum of \$416.67 a month.

Fun Zone Boat Company, Inc., proposes to pay \$900 in cash on the purchase price of one of the vessels and to issue a note for the balance of \$3,600 and to pay \$2,100 in cash on the purchase price of the other vessel and to issue a note for the balance of \$8,400. The \$3,600 note will be payable in annual installments of \$900 beginning January 1, 1964, without interest, and the \$8,400 note will be payable in annual installments of \$2,100 beginning January 1, 1964, without interest. Each note will be secured by a preferred mortgage.

After consideration, the Commission finds and concludes that the requested authorization should be granted; that the several transfers and leases, as proposed, will not

be adverse to the public interest; that the money, property or labor to be procured or paid for by the notes herein authorized is reasonably required for the purpose specified herein; and that such purpose is not, in whole or in part, reasonably chargeable to operating expenses or to income. A public hearing is not necessary.

In issuing our order, we place applicants 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, such rights extend to the holder a full or partial monopoly of a class of business over a particular route. This monopoly feature may be modified or canceled at any time by the State, which is not in any respect limited as to the number of rights which may be given.

The authorization herein granted shall not be construed to be a finding of the value of the operative rights and equipment of applicants nor as indicative of amounts to be included in any future proceeding for the purpose of determining just and reasonable rates.

O R D E R

IT IS ORDERED that:

1. Balboa Pavilion Co., on or after the effective date hereof and on or before December 31, 1963, may transfer its two vessels used in its operations to Fun Zone Boat Company, Inc., and may lease its operative rights and sublease slip and ticket office facilities to Fun Zone Boat Company, Inc., such transfer, lease and sublease to be under the terms and conditions of the agreement between the two companies dated February 19, 1963, and the lease and sublease annexed thereto and filed in this proceeding.

2. Fun Zone Boat Company, Inc., on or after the effective date hereof, and on or before December 31, 1963, may execute two preferred mortgages and may issue two notes, one in the principal amount of \$3,600 and the other in the principal amount of \$8,400, under the terms and for the purpose specified herein.

3. Within thirty days after the consummation of the transfer herein authorized, Fun Zone Boat Company, Inc., shall notify the Commission, in writing, of that fact and within said period shall file with the Commission a true copy of any bill of sale or other instrument of transfer which may be executed to effect said transfer.

4. Fun Zone Boat Company, Inc., shall amend or reissue the tariffs and timetables on file with the Commission, naming rates, rules and regulations governing the common carrier operations herein to show that it has adopted or established, as its own, said rates, rules and regulations. The tariff and timetable filings shall be made effective not earlier than ten days after the effective date of this order on not less than ten days' notice to the Commission and the public, and the effective date of the tariff and timetable filings shall be concurrent with the consummation of the transfer herein authorized. The tariff and timetable filings made pursuant to this order shall comply in all respects with the regulations governing the construction and filing of tariffs and timetables set forth in the Commission's General Orders Nos. 87 and 117.

5. Fun Zone Boat Company, Inc., shall file a report, or reports, as required by General Order No. 24-A, which order, insofar as applicable, is made a part of this order.

6. The authority herein granted shall become effective when Fun Zone Boat Company, Inc., has paid the

minimum fee prescribed by Section 1904(b) of the Public Utilities Code, which fee is \$25.

Dated at San Francisco, California,
this 11th day of JUNE, 1963.

George H. Hoover
President

Walter J. [unclear]

Frederick B. Hildehoff

Stallman Van Buren

Commissioner Peter E. Mitchell, being necessarily absent, did not participate in the disposition of this proceeding.

Commissioners

