

ORIGINAL

Decision No. 79143

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own
 motion into the operations, practices,
 and operative authority of HARBOR
 CARRIERS, INC., a California corpora-
 tion.

Case No. 9098
 (Filed August 4, 1970;
 Amended January 13, 1971)

In the Matter of the Application of
 HARBOR CARRIERS, INC., a corporation,
 for a certificate of public conveni-
 ence and necessity, authorizing an
 extension of its operating authority
 so as to authorize it to operate
 vessels "on schedule" as a common
 carrier of passengers between Tiburon
 and Alcatraz Island.

Application No. 51407
 (Rehearing granted
 May 5, 1970)

In the Matter of the Application of
 HARBOR CARRIERS, INC., a corporation,
 for authorization to suspend opera-
 tion of vessels "on schedule" as a
 common carrier of passengers between
 San Francisco and Alcatraz Island.

Application No. 52342
 (Filed December 7, 1970)

In the Matter of the Application of
 HARBOR CARRIERS, INC., a corporation,
 for authorization to suspend opera-
 tion of vessels "on schedule" as a
 common carrier of passengers between
 San Francisco and Sausalito.

Application No. 52409
 (Filed January 20, 1971)

Robert I. Conn, Attorney at Law, for City of
 Tiburon, petitioner for rehearing in Appli-
 cation No. 51407.

Vaughn, Paul & Lyons, by John G. Lyons, Attorney
 at Law, for Harbor Carriers, Inc., applicant
 in Applications Nos. 51407, 52342 and 52409
 and respondent in Case No. 9098.

William P. Clecak, Attorney at Law, for Milton McDonough; Hanson, Bridgett, Marcus & Jenkins, by Ross Stromberg and David J. Miller, Attorneys at Law, for Golden Gate Bridge, Highway and Transportation District; H. Eric Borgwardt, Director of Planning, City of Sausalito, for City Counsel of Sausalito; intervenors or interested parties.
Elmer Sjostrom, Attorney at Law, for the Commission staff.

O P I N I O N

Harbor Carriers, Inc., a California corporation, operates as a common carrier by vessel transporting persons and property between points on San Francisco, San Pablo and Suisun Bays under prescriptive operating rights and certificates of public convenience and necessity transferred or granted to it by the Commission. Its principle place of business is located at Pier No. 41, The Embarcadero, San Francisco.

Decision No. 76922, dated March 10, 1970, in Application No. 51407, authorized Harbor Carriers to provide service between Tiburon and Alcatraz Island on a schedule basis from June 1 through September 10 and on an on-call basis during the balance of the year. With the exception of certain prescriptive rights, Harbor Carriers' operating authority was restated in Appendix A to Decision No. 76922. A petition for rehearing of said matter, filed by the City of Tiburon, was granted by Decision No. 77160, dated May 5, 1970, which suspended the effective date of Decision No. 76922 until further order of the Commission.

Case No. 9098, filed August 4, 1970, and amended January 13, 1971, is an investigation on the Commission's own motion of Harbor Carriers for the purpose of determining whether it has failed to adequately inform the public of changes in its terminal locations, schedules and operations; whether its operating authority should be amended so as to designate specific points it may

serve rather than general areas as now authorized; whether its authority to operate a regularly scheduled service between San Francisco and Alcatraz Island and between San Francisco and Sausalito should be suspended or revoked because of its failure to commence service between said points; and whether any of its other operations and practices should be changed or improved.

By Application No. 52342, filed December 7, 1970, and Application No. 52409, filed January 20, 1971, Harbor Carriers requests authorization to suspend operations as a common carrier of passengers by vessel in common carrier service between San Francisco and Alcatraz Island and between San Francisco and Sausalito, respectively. Harbor Carriers was granted authority to operate between San Francisco and Alcatraz Island by Decision No. 70060, dated December 7, 1965, in Application No. 47411, and between San Francisco and Sausalito by Decision No. 73811, dated March 5, 1968, in Application No. 49712. It has never performed scheduled passenger service between said points.

Public hearing in the four aforementioned matters was held before Examiner Mooney in San Francisco on December 15, 1970 and February 17 and 18, 1971. The rehearing in Application No. 51407 was submitted on December 15, 1970, and the other three matters were submitted on February 18, 1971. The parties were informed during the hearings that a single decision would be issued covering the four matters. The evidence and argument presented in the rehearing will be discussed separately from the other three which include related issues. The findings, conclusion and order will relate to all four matters.

Rehearing in Application No. 51407

Testimony on behalf of the City of Tiburon, the petitioner for rehearing, was presented by the Regional Director of Property Management and Disposal Service for the U. S. General Services Administration and by the Chief of Police, Planning Director and City Attorney of Tiburon.

The Regional Director testified that Alcatraz Island is a federal enclave subject exclusively to federal law; that no vessel can land at Alcatraz without authority from the federal government; that the island was declared surplus in 1961; that because of safety hazards on the island, the general public is not allowed to visit Alcatraz; that although various plans have been considered, no determination has been reached as to what use will be made of the island; and that Harbor Carriers has not been authorized by the federal government to serve Alcatraz, and no such authority would be granted under conditions as they now exist.

The other three witnesses for petitioner testified as follows: Most of the streets in downtown Tiburon are narrow and many of the buildings are old wooden buildings; there is a limited amount of downtown parking; increased vehicle and pedestrian traffic, which has become substantial on weekends, has created problems in the area for the local police and fire protection; additional traffic would be attracted on weekends should Harbor Carriers commence serving Alcatraz from its present docking facility in downtown Tiburon; Harbor Carriers has done nothing to alleviate the acute parking situation; for these reasons, Tiburon is opposed to any additional tourist attractions, including the operation in issue, which would bring additional traffic into the downtown area.

Counsel for Harbor Carriers stated that no affirmative evidence would be presented on behalf of his client; that at the original hearing, applicant proved public convenience and necessity and the Commission so found in Decision No. 76922; that the City of Tiburon has done nothing more herein than to express the opinion that parking in the downtown area would be increased if Decision No. 76922 is affirmed and Harbor Carriers were to institute the service authorized thereby.

The attorney for Tiburon pointed out that any member of the public landing on Alcatraz would be guilty of trespass. He argued

that in the circumstances, it is impossible to find that public convenience and necessity exist. He further stated that Harbor Carriers had not complied with Section 1004 of the Public Utilities Code which requires that an applicant for a certificate file such evidence as the Commission may require to show that it has received the required consent or permit from the proper public authority, which in this case would be the U. S. General Services Administration. In reply to this latter argument, both counsel for Harbor Carriers and staff counsel stated, and we agree, that said section does not apply to common carriers by vessel. Section 1004 applies only to the specific utilities listed in Section 1001, and common carriers by vessel are not included in said listing.

Upon consideration of the evidence presented at the rehearing, we are of the opinion that the authority granted by Decision No. 76922 should not be annulled but should be modified to provide that if the service authorized therein is not commenced within one year after the effective date of the order herein, it shall lapse, unless the time is extended by further order of the Commission. In so modifying Decision No. 76922, we recognize the fact that Alcatraz cannot be served without authority of the federal government and that although it is unlikely that such authority will be forthcoming in the immediate future, the government is considering developments of the island which would open it to the public. If and when it is open to the public, it is obvious, as found in Decision No. 76922, that public convenience and necessity will require the service in question. However, because of the uncertainty that exists regarding the future use of Alcatraz, the aforementioned modification will prevent the certificate in question from continuing in perpetuity if it cannot be exercised within a reasonable time period.

As to the question of the aggravation of the parking problem in Tiburon that could exist should service to Alcatraz be

commenced, this issue was considered in Decision No. 76922. The additional evidence on this point presented by the City of Tiburon is not persuasive that the certificate granted by said decision should be revoked.

Case No. 9098 and Applications Nos. 52342 and 52409

An engineer of the Commission's Transportation Division testified that he had made an investigation of the operations and practices of Harbor Carriers and that the results of his investigation are set forth in Exhibit 2 in Case No. 9098. Following is a summary of the testimony and the information in the exhibit: Harbor Carriers is authorized to transport passengers by vessel in regularly scheduled service from June 1 through September 10 and on an "on-call" basis from September 11 through May 31 of each year between San Francisco and Angel Island State Park, San Francisco and Tiburon, San Francisco and Alcatraz Island and San Francisco and Sausalito; only two of four said routes have actually been established and operated; they are the routes from San Francisco to Angel Island and to Tiburon; Decision No. 70060, supra, which granted authority to operate between San Francisco and Alcatraz, provided that said service should be commenced within 120 days after Harbor Carriers obtained authority from the U. S. General Services Administration to serve Alcatraz; by letter dated December 7, 1970, the U. S. General Services Administration informed the Commission staff that no such authority had been granted to Harbor Carriers or anyone else and that there are no immediate plans to issue any authorization in the immediate future; Decision No. 78311, supra, which granted authority to operate between San Francisco and Sausalito, provided that said service was to be commenced within 120 days after March 25, 1968, the effective date of the order; while attempts have been made by Harbor Carriers to obtain a permit to land at Sausalito, no such authority has been granted by said city; all of Harbor Carriers' operations were shut down by a strike from June 30, 1969

to April 5, 1970; from November 10, 1969 to the end of the strike, the Golden Gate Bridge, Highway and Transportation District provided the San Francisco-Sausalito service with equipment leased from Harbor Carriers; subsequent thereto, Harbor Carriers has provided the Angel Island and Tiburon Service; the Commission staff received some complaints from the public regarding Harbor Carriers when it resumed said service; certain of Harbor Carriers' operations have not taken place at scheduled times; timetables and tariffs on file with the Commission indicate service is being performed between San Francisco and Sausalito and San Francisco and Alcatraz Island when none in fact is being performed; Harbor Carriers has changed its timetables and points of arrival and departure without proper notification to the Commission and the public as required by General Order No. 87.

The following recommendations were made by the staff engineer and are included in his exhibit: Harbor Carriers' certificate to operate on a regularly scheduled basis between San Francisco and Alcatraz Island should be revoked; Harbor Carriers should be allowed a maximum of 90 days within which to commence service between San Francisco and Sausalito, and if it fails to do so within said time, the certificate granted to it to operate on a regularly scheduled basis between said points should be revoked; Harbor Carriers should be directed to revise its timetables and tariffs to conform to actual operations and service and to make public timetables readily available to the general public at all terminal points; Harbor Carriers should be ordered to cease and desist from changing timetables without proper notice as required by General Order No. 87.

A resolution of the City Council of the City of Sausalito was presented by the Director of Planning for said city as Exhibit 3 in Case No. 9098. The resolution stated that the Golden Gate Bridge, Highway and Transportation District presently provides adequate ferryboat service between Sausalito and San Francisco and recommended that

the certificate of public convenience and necessity granted to Harbor Carriers to provide such service be rescinded. The director testified that visitor-oriented activity in Sausalito is at the saturation point, and the city has adopted a policy to limit further expansion of such activity.

A written statement in Case No. 9098 was presented on behalf of the Golden Gate Bridge, Highway and Transportation District. The statement asserted that it was for information only. It described the present ferry service between Sausalito and San Francisco provided by the District and its future plans for expanding said service and other public transportation services.

A stipulation between Harbor Carriers and Milton McDonough, doing business as Tiburon-Angel Island Tours and Angel Island State Park Ferry, was received in evidence as Exhibit 1 in Case No. 9098. McDonough operates, pursuant to a certificate of public convenience and necessity granted by the Commission, as a common carrier of passengers by vessel between Tiburon and Angel Island State Park. Harbor Carriers has prescriptive authority to perform "on-call" service between said points. The stipulation states that Harbor Carriers shall cease and desist transporting passengers and advertising service between said points other than "on-call" service and requests the Commission to approve said stipulation.

Testimony relating to the requests by Harbor Carriers in Applications Nos. 52342 and 52409 to suspend scheduled common carrier service by vessel between San Francisco and Alcatraz Island and San Francisco and Sausalito, respectively, was presented by its president. His testimony regarding the applications was as follows: At the time the certificate to serve between San Francisco and Alcatraz was granted, it appeared that the island was going to be sold to private interests and a scheduled service would be needed; as soon as it is open to the public, it will require service; diligent efforts have been made to obtain a landing site at Sausalito; counsel has been

retained to obtain a landing facility and has been instructed to file a court action if necessary; Harbor Carriers constantly receives requests for service to Sausalito; the service provided by the Bridge District to Sausalito is a commute service; Harbor Carriers would provide a tourist service; Harbor Carriers would be agreeable to having the Sausalito suspension request in Application No. 52409 limited to one year; this would allow a reasonable time within which to obtain the required site, and if additional time were required, an extension could be requested; Harbor Carriers is ready, willing and able to provide service to Alcatraz and Sausalito.

As to the staff recommendations regarding timetables and tariffs, the president testified that Harbor Carriers currently uses the services of a tariff publishing agent to handle such matters and that any irregularities that may have occurred have been remedied. The attorney for Harbor Carriers suggested that if a one-year suspension of the authority to serve Alcatraz and Sausalito from San Francisco is authorized, Harbor Carriers be allowed to retain in its tariff and timetable information relating to said service with a notation that it is under suspension for one year. Staff counsel stated that although the staff does not agree with the one-year suspension, if it were granted, it would have no objection to the suggested method of publication.

For the reasons set forth hereinabove in connection with our discussion of the rehearing of Application No. 52407, we are of the opinion that the request in Application No. 52342 to suspend the commencement of service between San Francisco and Alcatraz Island should be granted for a one-year period unless, for good cause, said time limitation is extended.

With respect to Harbor Carriers' authority to serve between San Francisco and Sausalito, we are of the opinion that the request in Application No. 52409, as modified by applicant at the hearing, to suspend the commencement of service between said points for one

year should be granted. According to the evidence, some attempts, though unsuccessful to date, have been made by Harbor Carriers to obtain a landing site at Sausalito, and Harbor Carriers had been unable to operate during the nine month strike which ended April 5, 1970. Because of the difficulties Harbor Carriers has been experiencing in attempting to obtain a docking location, the one year is more realistic than the three months suggested by the staff. We have heretofore found in the decision which initially granted the service in issue that public convenience and necessity require said service. There is nothing in the record herein that would persuade us to reverse this position. In this regard, the statement by the Golden Gate Bridge, Highway and Transportation District asserts that the District is contemplating expanding its ferry service between San Francisco and Sausalito. This certainly indicates a need for added service between the points. Furthermore, the District's service is primarily a commute operation from the Ferry Building in San Francisco; whereas, Harbor Carriers would primarily provide a seasonal tourist service from Fisherman's Wharf in said city.

Since the evidence establishes that problems relating thereto have occurred, we agree with the staff that Harbor Carriers should be placed on notice that it must comply with the requirements of General Order No. 87 which governs the posting and filing of timetables and that it must make timetables available to the public at appropriate locations, including all terminals. We do not concur with the request by the attorney for Harbor Carriers that if it inserts a notation in its applicable timetable and tariff that service to Alcatraz Island and to Sausalito is suspended for one year, it may retain information currently shown therein relating to said service. The service has never been operated, and it is conjectural as to whether it ever will be. The public might be misled to believe that at the end of the one-year period the service would be commenced. We concur with the recommendation that Harbor Carriers

be directed to conform its timetables and tariffs to actual operations.

Findings

The Commission finds that:

1. Harbor Carriers holds authority to operate as a carrier of passengers by vessel in regularly scheduled service from June 1 through September 10 of each year and on an "on-call" basis from September 11 through May 31 of each year over the following five routes: San Francisco-Tiburon, San Francisco-Angel Island, San Francisco-Sausalito, San Francisco-Alcatraz Island and Tiburon-Alcatraz Island.

2. Harbor Carriers operates over the San Francisco-Tiburon and San Francisco-Angel Island Routes only.

3. Harbor Carriers was authorized to serve between San Francisco and Sausalito by Decision No. 73811, dated March 5, 1968, in Application No. 49712. It has been unable to commence service over said route because of its inability to obtain a landing site at Sausalito. Further attempts are being made to obtain a location and the necessary authority from the City of Sausalito for docking at said city.

4. The Golden Gate Bridge, Highway and Transportation District provides passenger service by vessel between San Francisco and Sausalito. The service it performs is primarily a commute service from the Ferry Building in San Francisco.

5. Harbor Carriers has had requests from the public for service between San Francisco and Sausalito, and the service it would perform between said points would primarily be for tourists from Fisherman's Wharf in San Francisco.

6. The City of Sausalito has experienced problems from the expansion and additions of tourist-oriented businesses and attractions and is concerned that service by Harbor Carriers to Sausalito would aggravate these problems.

7. Alcatraz Island is a federal enclave, and no vessel can land there without authority from the federal government. Because of the lack of adequate facilities, the public has not been allowed to visit the island. While various plans for the future use and development of Alcatraz which would open it to the public have been considered, none have been adopted as yet.

8. Harbor Carriers was authorized to serve between San Francisco and Alcatraz Island by Decision No. 70060, dated December 7, 1965, in Application No. 47411, and between Tiburon and Alcatraz Island by Decision No. 76922, dated March 10, 1970, in Application No. 51407. Decision No. 76922 was stayed by the timely filing of a Petition for Rehearing by the City of Tiburon, and the petition was granted by Decision No. 77160, dated May 5, 1970. For the reasons stated in Finding 7 Harbor Carriers has been and continues to be unable to provide service for the public to Alcatraz Island.

9. The City of Tiburon is confronted with parking and traffic congestion problems and is concerned that service by Harbor Carriers between Tiburon and Alcatraz would aggravate these problems. The evidence is not persuasive that any inconvenience that might result from additional parking, should said service be commenced, would outweigh the public convenience and necessity that would result from said service.

10. At such time as Harbor Carriers is able to obtain a landing site at Sausalito and Alcatraz Island is open to the general public, public convenience and necessity will require the services Harbor Carriers has heretofore been authorized by the Commission to provide to Sausalito and to Alcatraz Island.

11. Because of the uncertainties that exist as to when, if ever, Harbor Carriers will be able to obtain docking facilities in Sausalito and authority to land at Alcatraz Island, each of the three certificates of public convenience and necessity heretofore granted to it by the Commission to serve said locations should be

made subject to the condition that if service is not commenced within one year after the effective date of the order herein, the certificate shall lapse and terminate unless the time is extended by further order of the Commission. This will avoid the undesirable situation of having a certificate to perform a particular service continuing indefinitely when the service has not and cannot be commenced within a reasonable time.

12. Harbor Carriers may have performed regularly scheduled passenger service of passengers by vessel between Tiburon and Angel Island. It has not been authorized by the Commission to perform said service.

13. Harbor Carriers' timetable and tariff covering passenger service within the area here in issue do not conform to actual operations provided by said carrier. Information regarding service to Sausalito and Alcatraz Island are shown in said publications when in fact such services are not provided.

14. Harbor Carriers has in the past failed to comply with General Order No. 87 which governs the posting and filing of timetables and has failed to make timetables available to the public at all appropriate places. Apparently these problems have been corrected.

15. The Commission staff has received a few informal complaints from the public regarding Harbor Carriers. Most of the matters complained of have been remedied.

Conclusions

The Commission concludes that:

1. The authority granted to Harbor Carriers by Decision No. 76922 (Tiburon-Alcatraz) should be affirmed subject to the condition that if the service authorized by said decision is not commenced within one year after the effective date of the order which follows, said authority shall lapse and terminate unless the time is extended by further order of the Commission.

2. Application No. 52342 (San Francisco-Alcatraz Island) should be granted for a one-year period only unless the time be extended by further order of the Commission.

3. Application No. 52409 (San Francisco-Sausalito) should be granted for a one-year period only unless the time be extended by further order of the Commission.

4. Harbor Carriers should be directed to cease and desist from providing any common carrier service for which it has not obtained authority from the Commission.

5. Harbor Carriers should be directed to cease and desist violating any rules and regulations governing its operations, including General Order No. 87, and should publish tariffs and time-tables only for services actually performed.

O R D E R

IT IS ORDERED that:

1. The authority granted to Harbor Carriers, Inc., by Decision No. 76922, dated March 10, 1970, in Application No. 51407, to provide common carrier passenger service by vessel between Tiburon and Alcatraz Island is hereby affirmed subject to the condition that if said service is not commenced within one year after the effective date hereof said authority shall lapse and terminate unless the one-year period is extended by further order of the Commission.

2. Application No. 52342 is granted for a one-year period from the effective date hereof, and if the common carrier passenger service by vessel between San Francisco and Alcatraz Harbor Carriers, Inc., has heretofore been authorized to provide by Decision No. 70060, dated December 7, 1965, in Application No. 47411, is not commenced within said period, said authority shall lapse and terminate unless the one-year period is extended by further order of the Commission.

3. Application No. 52409 is granted for a one-year period from the effective date hereof, and if the common carrier passenger

service by vessel between San Francisco and Sausalito Harbor Carriers, Inc., has heretofore been authorized to provide by Decision No. 73811, dated March 5, 1968, in Application No. 49712, is not commenced within said period, said authority shall lapse and terminate unless the one-year period is extended by further order of the Commission.

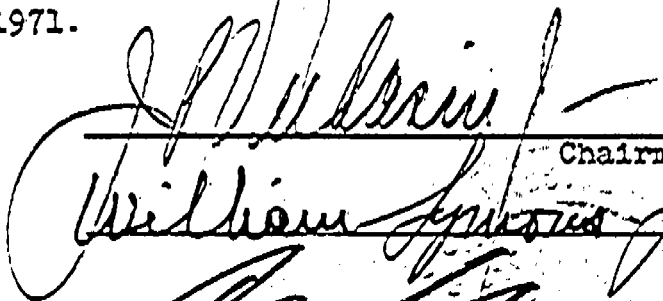
4. Harbor Carriers, Inc., shall cease and desist from providing any common carrier passenger service by vessel for which it has not obtained authority from the Commission.

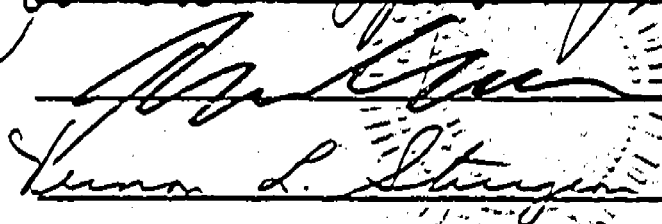
5. Harbor Carriers, Inc., shall cease and desist violating any rules and regulations governing its operations, including General Order No. 87, and shall file any revisions or reissues of its tariffs and timetables which may be necessary to reflect its actual operations.

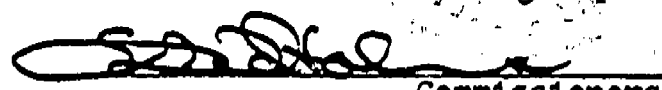
6. In all other respects, Applications Nos. 52342 and 52409 are denied, and Case No. 9098 is discontinued.

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

Dated at San Francisco, California, this 9th
day of SEPTEMBER, 1971.



Chairman


Kenneth L. Sturgeon


Commissioners