

Decision No. 84748

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application
of SKIPPER'S 22ND STREET LANDING, INC.,
a California corporation for a
certificate of public convenience
and necessity to operate passenger
and baggage service between Applicant's
landing at 141 W. 22nd Street in
San Pedro to Santa Catalina Island,
Santa Barbara Island, Anacapa Island,
San Clemente Island, San Nicolas
Island, and return.

Application No. 54834
(Filed April 26, 1974;
amended July 23 and
October 3, 1974)

Harry L. Root, Attorney at Law,
for applicant.
James H. Lyons, Attorney at Law,
for MGRS, Inc., and Catalina
Motor Cruisers, Inc.; John G.
Lyons, Attorney at Law, for
Harbor Carriers, Inc.; Frank C.
Seehorn, Jr., for H-10 Water
Taxi Co., Ltd.; and Bill M.
Connally, for Island Packers
Company; protestants.
John deBrauwere and Thomas T.
Hamamoto, for the Commission
staff.

O P I N I O N

By this application Skipper's 22nd Street Landing, Inc. (Skipper's) seeks a certificate of public convenience and necessity to transport passengers and their baggage by vessel between San Pedro (Los Angeles Harbor) and five of the islands located off the coast of southern California.

Public hearing was held at Los Angeles before Examiner Kent Rogers on July 22 and 23, 1974, and before Examiner Norman Haley on October 3, 1974. The matter was submitted November 3, 1974, following receipt of a late-filed exhibit containing applicant's revised rate proposal.

Skipper's 22nd Street Landing is a facility for tying up vessels for loading and unloading passengers. It includes floats, a ramp, restaurants, fish markets, public rest rooms, a ticket office, telephones, and parking space for 250 automobiles. There are 53,000 square feet of landing area and 22,000 feet of water area.

Skipper's has an office with three people to answer telephones for purposes of arranging trips. Skipper's leases the property from the Los Angeles Harbor Department. Mr. Frank J. Hall is the president and sole stockholder of Skipper's. Mr. Hall has been at that location since 1945, and Skipper's has been the sole lessee for about five years.

According to the application the proposed service is unique in that the vessels are sport fishing vessels, as opposed to vessels transporting passengers from one point to another and return without having sport fishing equipment aboard. Many sport fishermen, study groups, boy and girl scout groups, whale watching groups, and other groups have indicated to applicant a strong desire to be transported to the islands involved, to remain for dinner or overnight, and thereafter return to the mainland.

Applicant's Evidence

Evidence on behalf of applicant was presented by its president, its secretary-treasurer, the operator of the 40-foot vessel De Jay One (operating witnesses), and by representatives of four groups and organizations that desire to have transportation performed to the islands by applicant.

Testimony of the operating witnesses shows that applicant plans to use 23 vessels in the proposed transportation service. These are sport fishing vessels identified in Appendix A hereof. They vary in length from 34 to 75 feet and can carry from 19 to 65 passengers. Most of the vessels are owner-operated. Many of the trips are for more than one day's duration. All but two of the vessels are equipped with sleeping bunks. The number of bunks

ranges from 12 to 62 per vessel. All of the vessels are fitted with bait tanks, and some have galleys, air compressors for divers, lounging areas, and other facilities. Together, the vessels can carry in excess of 683 passengers and 82 crew members. The combined vessels have an estimated market value of approximately \$1,381,500.

Applicant utilizes one 62-foot vessel, the Sharpshooter, which is owned by Mr. Hall. The other 22 vessels are owned by other operators. All of the vessels have been certified by the Coast Guard, and each operator carries the bodily injury and property damage insurance required by the Commission's General Order No. 121-A.^{1/} Except for Mr. Hall, the vessel operators have no ownership interest in Skipper's. When a group desires to go to some specific area for fishing, diving, etc., Skipper's assigns one of the vessels to it. When a vessel is not engaged in conducting business out of Skipper's it is available for use elsewhere.

Skipper's has a written agreement with each vessel operator which would govern transportation to the islands. (Exhibits 17 through 39.) The agreements are basically the same except for the name of the vessel and its owner. Essentially, the agreements provide that Skipper's would have control of the following phases of operation of each vessel on trips where passengers are to disembark on one or more of the islands:

1. The time that the vessel is to leave Skipper's; the route of travel of the vessel on each chartered trip; the time that the vessel is to lay over while away from Skipper's; the route of travel on the return trip; and the time that the vessel is to return to Skipper's.

^{1/} General Order No. 121-A applies to for-hire vessel operators hauling passengers, other than vessel common carriers. General Order No. 111-B requires bodily injury and property damage insurance for vessel common carriers.

2. The fares and rates to be charged for the use of each vessel, which would be set forth in a written schedule prepared by Skipper's, posted in the office of Skipper's, and made available for public inspection.
3. The number and competency of the crew members on the vessel.
4. The safety standards that must be followed by vessel owner and his crew in the operation of the vessel.
5. All types and kinds of insurance that must be maintained by each vessel owner for the benefit of the passengers he carries and his crew, as well as for the benefit of the vessel itself. Copies of all liability insurance policies would be maintained with Skipper's, and Skipper's would be named as an additional insured.
6. The submission of a printed schedule by vessel owner to Skipper's of the available days and hours of operation of his vessel. The schedule, or any subsequent modification, would be posted in the office of Skipper's and made available for public inspection.

Each vessel owner would be provided all of the necessary facilities for docking and for booking passengers and advertising the vessel. All monies for charters would be collected by Skipper's and transmitted to the vessel owner after deduction of a percentage for the services and facilities furnished, as specified in the agreement. Each vessel would be hired out on a charter basis only, and the time schedule for each charter would be established as each reservation is made. Skipper's proposes to publish two scales of hourly rates for general application.^{2/} One scale would apply to vessels under 65 feet, and a higher scale would apply to vessels from 65 to 75 feet. In addition, a special hourly school rate is proposed for application to points inside Los Angeles Harbor. The proposed rates are repro-

^{2/} Individual tickets are sold to passengers for fishing trips on three of the vessels.

duced herein in Appendix B. Under the proposal the same price per hour would be charged regardless of the number of passengers aboard a vessel (within limits prescribed by the Coast Guard). Landing fees on the islands, where applicable, would be absorbed in the rates. Food, beverages, cigarettes, and compressed air would be made available by individual vessel operators when needed, and the proceeds would go to those operators. All tips would go to the vessel operators.

The testimony of the operating witnesses discloses that the proposed service is different from that provided by carriers regularly hauling passengers in cross-channel service between the mainland and Santa Catalina. Much of the proposed service would be transporting people who are fishing- and diving-oriented and who desire to combine fishing and diving with a layover at one of the islands for various other activities. A typical trip leaves at 2:00 a.m., and the vessel has sufficient bunks aboard for anyone wishing to sleep.

In the past many trips have been made to the islands by Skipper's and the individual vessel operators, and some of the trips included stops where passengers landed.^{3/} Some of the trips where passengers have been landed on the islands have been for purposes of hiking, exploring, picnicking, and scientific study and testing. Some patrons and groups have desired to land on the islands as part of diving activities involving study or exploration of the underwater environment. Some landings have been made at floats or piers, such as are available at Avalon. Where there is no float or pier available, landings have been made by use of a skiff, which is a small row boat built for rough water usage with a capacity of from five to six people.

^{3/} Applicant's president estimated that from the San Pedro Lighthouse on the outer breakwater of Los Angeles Harbor the distance (in nautical miles) to the five islands is approximately as follows: east end of San Nicolas 65; Santa Barbara 40.8; Anacapa 51.5; San Clemente 48.5; and Santa Catalina 19. He said that travel from Skipper's to the San Pedro Lighthouse takes about 15 minutes. The trip time from Skipper's to the islands was estimated as follows: San Nicolas 6 hours 35 minutes; Santa Barbara 4 hours; Anacapa 5 hours 15 minutes; San Clemente 4 hours 45 minutes; and Santa Catalina 2 hours 30 minutes. These estimates were based upon an assumed speed of 10 knots, however, some of the vessels have a capability of 15 knots. The witness stated that rough weather does not slow the vessels down very much.

Fishing at Santa Catalina frequently is performed within one-fourth mile of the island. Sometimes when fishing is poor the fishermen desire to spend some of their trip time on the island. A number of fishermen bring wives and friends along who desire to be let off during part of the trip to shop in the stores in Avalon or to spend time sightseeing. Some groups do not want to fish, but desire a private trip which includes riding around, landing on Santa Catalina, and returning to the mainland. If a group of 20 desired to land at Avalon, the vessel operator would call the harbor master and ask for instructions. A shore boat would take the passengers to land, or if prior arrangements were made, passengers would unload directly at the dock. Passengers can be landed at any point on Santa Catalina. Many acres have been opened for hiking by the Los Angeles County Recreation Department.

Some groups have landed and stayed on Santa Barbara and Anacapa for two or three days.^{4/} Permission from the Navy is required to land on San Clemente and San Nicolas, which are military reservations. During a period in the 1950's applicant's president was granted authority to land on San Clemente in conjunction with work for a large research company, and also to deliver freight to a Polaris missile site. A trip to San Nicolas would be for the purpose of transporting military personnel. That island has one small pier and landings can be rough.

Sometime in 1973 or early 1974 the practice of landing passengers on the islands was discontinued following receipt of information by Skipper's and the vessel operators that such transportation required authority from the Commission. Applicant's

^{4/} The secretary-treasurer stated that Coast Guard regulations require that where there is only one pilot aboard, the vessel must return to port within 12 hours. However, she explained that the regulations provide that the vessel may stay out over 12 hours (in fact, indefinitely) if there are two pilots and additional deck hands aboard.

operating witnesses explained that since landings on the islands were discontinued numerous calls have been received from organizations who desire to go to the islands and land on them. Requests have been received from the Sierra Club, UCLA (biology classes), girl and boy scout groups, Rockwell International, McDonnell Douglas, and the Battelle research facility. Applicant referred some of these groups to H-10 Water Taxi Co., Ltd., for service to Santa Catalina.

None of the protestant vessel common carriers operating out of Long Beach and Los Angeles Harbor serve any of the islands except Santa Catalina. Applicant does not plan to provide the same type of service as carriers now serving Santa Catalina. Island Packers Company, operating out of Oxnard and Ventura, serves Anacapa and Santa Barbara, among the islands involved here. That carrier does not serve Santa Catalina. Applicant's president stated that his company would not be in substantial competition with Island Packers Company which he asserted gets its business mainly from the northern part of Los Angeles County and areas to the north and west of that.

A member and tour director of the Cabrillo section of the Sierra Club testified on behalf of applicant. The Cabrillo section has approximately 200 members interested particularly in the ocean waters and off-shore islands. The witness said that in the past members of his group have gone to Santa Catalina, Anacapa, and Santa Barbara for purposes of hiking along the beaches, climbing over the rocks, hiking through the interiors of the islands, viewing tide pools and life under water, swimming, and going into the scenic caves. He said that the Sierra Club formerly scheduled about four trips a year to Santa Catalina and about six trips a year to Santa Barbara. Trips are not limited to the Cabrillo section, but are advertised by the Sierra Club on a first-come-first-serve basis to both members and nonmembers. The witness prefers to handle groups of about 30 passengers, although some groups are larger. He said that only rarely were one-day trips arranged. The longest trips

were three days and generally involved two islands. On a typical trip to Santa Catalina the group would first land at the Isthmus, pay landing fees, spend the day at the Isthmus, the night in Catalina Harbor, travel around the island (with weather permitting), and spend the balance of the second day at Avalon before returning to the mainland.

The witness from the Sierra Club explained that his group had used the Golden Doubloon since 1963, but that agreements which he made for 1975 were canceled because the vessel owner became aware that he would be unable to land passengers on the islands without authority from the Commission. He said that sleeping accommodations and food are available on the Golden Doubloon, and that 29 persons can be accommodated if food is served, and 32 persons otherwise. The witness stated that the vessel operator is skilled in landing passengers on the rocks and getting back off again. He said that the Golden Doubloon has the ability to stay at the islands for a three-day period of time. When such trips are operated to Santa Catalina or Santa Barbara the members of the group return to the vessel to sleep, although they have the option of camping overnight and being picked up the next morning. When he found that he no longer could get passage to the islands on the Golden Doubloon he called Catalina Motor Cruisers, Inc., and Harbor Carriers, Inc., but those carriers could not provide service at a price which the club could afford.

The charter master of the Third Saturday of Every Month group testified on behalf of applicant. This is a group of 22 persons, mostly in professional occupations, who have obtained vessel service from Skipper's for the past three years. The group has used the Peace, the Indian, the Pioneer, the Truth, and the Maverick to go fishing around Santa Catalina, San Clemente, Santa Barbara, and San Nicolas. The witness stated that they had not been allowed to go ashore, but there had been a number of requests to do that, particularly at times when

fishing was poor. He said that some of the members brought their wives, and was of the opinion that they would rather have gone on an island than fish. He stated that he was familiar with Catalina Motor Cruisers, Inc. and Harbor Carriers, Inc., but had not contacted them because they do not have the facilities that the group needs, which is bunks to sleep on and a departure time of 2:00 a.m.

A manufacturer of fish food and aquarium equipment testified that he takes groups ranging from three or four to 20 or 30, mostly on the vessel Sharpshooter. He stated that he had been doing this for approximately 15 years in conjunction with his business. He said that his groups have not landed on any of the islands, but believed that his business trips would be more effective if the people were not required to stay on the boat all day, but could go ashore on an island such as Catalina. He stated he would particularly like to take his group ashore on San Clemente. He stated that he had personally been ashore on the islands of Santa Barbara, San Clemente, and Anacapa. He said he had not contacted any of the established carriers, including Catalina Motor Cruisers, Inc. and Harbor Carriers, Inc. because it was his understanding that they did not provide fishing facilities. His trips also leave at 2:00 a.m. He said that he would prefer service which would combine fishing and going ashore for the people who desire to explore and shop.

A member of the Brass and Stripes Club, composed of retired military personnel, testified on behalf of applicant. The witness has been with the club since 1966. He said that they have 45 active members, and with wives and children there is a total of approximately 100 people. He stated that groups of from 40 to 100 desire to go to the offshore islands. He explained that if one of his groups were to go to Santa Catalina it would be their desire to combine a little fishing with an overnight stay, returning the next day. He said that he had contacted Catalina Motor Cruisers, Inc. and Harbor Carriers, Inc., and was informed that the type of service

desired by his group was not available at the time. Those carriers assertedly could not provide vessels that would stay with a group while it was on the island. He said the group would need a vessel for shelter from rain, and also to sleep on in case of rain.

Protestants' Evidence

MGRS, Inc. and Catalina Motor Cruisers, Inc. produced testimony in opposition to the application through the vice president and secretary of Catalina Terminals, Inc. The latter company provides management functions for both vessel carriers. MGRS, Inc. operates the steamship Catalina (capacity 2,184 passengers) about three months of the year during the summer in scheduled service between San Pedro and Avalon. In 1973 Catalina Motor Cruisers, Inc. operated the motor cruisers Cabrillo^{5/} (capacity 110 passengers), and Sportsman (capacity 125 passengers), in scheduled service between the same points. The witness stated that both companies also have charter rights to Santa Catalina, and that Catalina Motor Cruisers, Inc. has on-call rights to any point on that island. The witness disclosed that for the year ended January 31, 1973 Catalina Motor Cruisers, Inc. transported 6,814 two-way charter passengers (13,628 one way). He had no comparable figure for MGRS, Inc. He said that the major business of the two carriers is the transportation of passengers to Santa Catalina and return. None of their vessels have any overnight facilities or facilities for fishing or diving.

Evidence was presented by the general manager of Long Beach Catalina Cruisers, a Division of Harbor Carriers, Inc. Harbor Carriers, Inc. operates both scheduled and on-call service, including charter service, between Long Beach and Avalon as well as other points on the northeasterly (landward) side of Santa Catalina. Harbor Carriers, Inc. operates four vessels in service

^{5/} The Cabrillo is now operated by Harbor Carriers, Inc.

to Santa Catalina; the Long Beach King (750 passengers), the Long Beach Prince (500 passengers), The Eagle, (150 passengers), and The Cabrillo (110 passengers). The King, Prince, and Eagle are vessels owned only by affiliates of Harbor Carriers, Inc. The Cabrillo is owned by Island Boat Service and is leased from that company.

Exhibits 14 and 15 show the number of vessel trips, passengers carried, and empty seats experienced by Harbor Carriers, Inc. between Long Beach and points on Santa Catalina for the period June 15 through July 15, 1974. A total of 47,005 passengers were transported from and to Santa Catalina on 107 vessel trips. This figure represented 24,213 passengers to the island and 22,792 from the island. On these same trips there were 64,091 empty seats. This is the sum of 31,335 empty seats to the island, and 32,756 from the island.

Exhibit 16 shows the number of passengers in Exhibit 15 which were transported by Harbor Carriers, Inc. from and to Long Beach and coves on Santa Catalina, other than Avalon, from June 15 through July 15, 1974, as follows:

	<u>Passengers</u>
Camp groups	4,191
Other groups	89
Charters	206
Individuals	<u>1,081</u>
Total	5,567

The camp passengers were those transported from and to organized resident camps leased on a year-around basis from the Santa Catalina Island Company by the YMCA, Boy Scouts, Girl Scouts, Catalina Island Boys' Camp, Catalina Island Girls' Camp, Catalina Island Gym Camp, and Campus By the Sea. The term "other groups" refers to passengers that go to Santa Catalina and lease camp sites from the Cove and Camp agency to camp for a day, or several days or a week. The term "charters" refers to people who have leased, or rented camp sites

and charter a vessel for their exclusive use, rather than travel on scheduled operations as a group. Harbor Carriers, Inc. has a group sales department that serves groups who are interested in going anywhere on Santa Catalina. The witness stated that Exhibits 14 and 15 show that Harbor Carriers, Inc. has ample space on operations that are currently running, and that there are many days when there are vessels available that never leave the dock. He said Harbor Carriers, Inc. is in a position to handle additional business if it is offered.

The witness for Harbor Carriers, Inc. stated that if there was a group of 30 people that wanted charter service for exclusive use of the vessel including a stay overnight, the Cabrillo would be furnished at \$100 an hour with a four-hour minimum. He stated, however, that if price were a factor, such a group normally would go on a scheduled vessel at a group rate and pay \$7.65 a person, round trip. He said that if there were 30 people from a company, such as Rockwell International, who did not want to go with somebody else, the Cabrillo would be offered at \$100 per hour. For a group of 141 Harbor Carriers, Inc. would charter the Long Beach Prince at \$321 an hour. He asserted that the scheduled sailing times of the regular vessels meet with the plans of the groups most of the time. He said that most of the groups going to coves, other than Avalon, are in excess of 100 persons. Most of them are traveling on scheduled service as opposed to charter service. The witness stated that Harbor Carriers, Inc. has never been requested to go to any island, other than Santa Catalina, and that the company does not have authorization to serve any other islands.

Discussion

The principal Public Utilities Code sections applicable to this proceeding are: Section 1007: "No corporation or person shall begin to operate or cause to be operated any vessel for the transportation of persons or property, for compensation, between

points in this State, without first having obtained from the Commission a certificate declaring that public convenience and necessity require such operation ..."; Section 211: " 'Common carrier' includes: (b) 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 ..."; and Section 216(a): " 'Public utility' includes every common carrier ... where the service is performed for or the commodity delivered to the public or any portion thereof."

Skipper's and its president have been transporting passengers by vessel for compensation as a business for many years. Many of the passengers have been fishermen and sightseers. These activities by themselves, where the passengers stay aboard the vessel until it returns to point of embarkation, do not require authority from the Commission. (Golden Gate Scenic S. S. Lines, Inc. v Public Utilities Commission (1962) 57 C 2d 373.) However, we have held that when passengers are put ashore at a place other than point of embarkation, the transportation is subject to the Commission's jurisdiction.^{6/} We also have held that charter vessel carriers

^{6/} In Re Harbor Carriers, Inc., Decision No. 81850 (1973) the Commission held in Conclusions 2 and 3, as follows:

"Conclusion 2. The transportation of passengers by vessel for compensation from a point in California to any other place in California, where some or all of the passengers disembark with the vessel standing by, the same passengers thereafter being returned by that vessel to point of embarkation, constitutes transportation of persons 'between points in this State', as that term is used in Section 1007 of the Public Utilities Code."

"Conclusion 3. The decision of the California Supreme Court in Golden Gate Scenic S. S. Lines v. Pub. Util. Com'n, 57 Cal 2d 273 does not remove from the jurisdiction of the Commission authority to require a certificate of public convenience and necessity under Public Utilities Code Section 1007 for transportation described in Conclusion 2."

operating between points, and vessel carriers providing nonscheduled service between points at hourly rates, are subject to code requirements for obtaining a certificate of public convenience and necessity.^{7/}

The service Skipper's proposes is the transportation of passengers for compensation upon the high seas between points within this State, in vessels which it controls and causes to be operated. Such service is that of a common carrier, as described in Section 211(b) of the Public Utilities Code, for which a certificate of public convenience and necessity is required under Section 1007.

^{7/} In Re Harbor Carriers, Inc. v. California Inland Pilots Assn., et al (1971) 72 CPUC 518, the Commission stated: "So long as defendant charter vessel carriers operate between points on the inland waters of California for compensation, the Code subjects them to the requirements of obtaining a certificate. There is no exemption for charter boats in the code and this Commission cannot create exemptions."

In Re Island Boat Service, Decision No. 64776 (1963), the Commission determined that a certificate was necessary to provide nonscheduled service charged for on an hourly basis between points on Santa Catalina as well as between Long Beach and Santa Catalina.

In Re MGRS, Inc. (1962) 60 CPUC 148, the Commission stated: "One further comment which is necessary in this matter relates to the nonscheduled service which the record shows that applicant provides between Wilmington and Avalon during the period from Labor Day to the end of April. It appears that in providing this service applicant operates as a common carrier by vessel, as that term is defined in Section 211(b) of the Public Utilities Code, and that the charges which applicant assesses for the service are based on the duration of the trip or according to the group transported ..." (Also held that applicant should obtain certificate for all nonscheduled service and file rates.)

Applicant produced evidence which shows that passengers have been landed on the islands in the past; that there is a demand for the proposed service; and that it stands ready and is able to perform the service. No vessel carrier operating out of Long Beach or Los Angeles Harbor serves any islands other than Santa Catalina. Island Packers Company operating out of Oxnard and Ventura (approximately 80 miles northwesterly of Los Angeles Harbor) provides transportation to two of the islands here involved. That carrier does not serve Santa Catalina. The record shows that applicant would be serving a substantially different market than that served by Island Packers Company. This brings us to the principal issues raised by protestants, which relate to transportation performed between the mainland and points located along the northeasterly side of Santa Catalina.

It is clear from the record that the points located along the northeasterly side of Santa Catalina are the points of principal concern and interest both to applicant and protestants. This is the one area on any of the five islands involved where there are substantial real estate improvements, including boat harbors, bays, and coves that are equipped with piers, docks, landing floats, and other facilities. The incorporated city of Avalon, the facilities at the Isthmus, and camps, including the permanent camps of organized groups, are located along the northeasterly side of the island. Applicant proposes to provide a service generally different from that performed by existing carriers serving Santa Catalina. Such transportation would include accommodations for one or several days in vessels not over 75 feet in length, equipped for fishing, or diving, and with sleeping facilities (in all but two vessels). Departures would be about 2:00 a.m. The vessels would generally stay with the passengers until return to the mainland. On trips of more than one day duration the vessels may be used to sleep on overnight. Existing carriers to Santa Catalina provide basic transportation that does not include the same services and facilities proposed by applicant.

Applicant has demonstrated that public convenience and necessity require operation of the proposed service to the five islands involved. In granting the certificate we will impose certain restrictions with respect to transportation to and from points on the northeasterly side of Santa Catalina, as set forth in the following order. The purpose of the restrictions will be to prevent applicant from providing regular daytime cross-channel service in direct competition with existing carriers.

The school rate proposal in Appendix B, relative to trips only inside Los Angeles Harbor, was explained by applicant's secretary-treasurer as being for a school program with the Los Angeles Harbor Department. She said that school children are taken out to the vessels (apparently, ships at anchor) where Skipper's gives them an eight-week course. The students take plankton samples, travel, and are taught the mechanical workings of the ships. From the record we cannot ascertain whether the school business applicant conducts within Los Angeles Harbor would be that of a common carrier, in whole or in part. In any event, this portion of applicant's rate proposal goes beyond the basic scope of the application, which involves transportation to the islands. The school rate proposal will be denied on this record. If Skipper's feels that its harbor school business requires authority from the Commission, this matter can be made the subject of a separate application.

Findings

1. Skipper's leases facilities from the Los Angeles Harbor Department for tying up vessels and loading and unloading passengers. The facilities include floats, a ramp, restaurants, markets, public restrooms, a ticket office, telephones, and parking spaces for 250 automobiles. The facilities encompass 53,000 square feet of landing area and 22,000 square feet of water area.

2. Skipper's proposes to transport passengers and their baggage from its facilities in Los Angeles Harbor to the islands of Santa Catalina, Santa Barbara, Anacapa, San Clemente, San Nicolas, and return.

3. Skipper's proposes to utilize 23 vessels in the proposed service which range in length from 34 to 75 feet, and which have basic carrying capacities from 19 to 65 passengers. All of the vessels are equipped for fishing or diving, and all but two are equipped with sleeping bunks.

4. Skipper's proposes to utilize the vessels identified in Appendix A pursuant to written agreements with vessel operators received as Exhibits 17 through 39.

5. Skipper's proposes to exercise close control over the vessel operators, and the operations of the vessels, as evidenced by Exhibits 17 through 39.

6. The vessels identified in Appendix A have been certified by the United States Coast Guard.

7. The vessel operators identified in Appendix A carry bodily injury and property damage insurance currently required of them by the Commission's General Order No. 121-A.

8. The service proposed by Skipper's would include transportation completed in one day, as well as transportation of more than one day's duration.

9. Skipper's proposes to provide on-call (nonscheduled) service at hourly rates which would include the use of a vessel with crew, regardless of the number of passengers transported.

10. The proposed service of applicant, where passengers would be transported for compensation upon the high seas between points within this State in vessels which applicant would control and cause to be operated, is that of a common carrier as described in Section 211(b) of the Public Utilities Code, for which a certificate of public convenience and necessity is required under Section 1007.

11. Skipper's proposes initially to publish two scales of hourly rates for transportation to the islands, as set forth in Appendix B. One scale would apply to vessels under 65 feet in length, and a higher scale would apply to vessels from 65 to 75 feet in length.

12. Skipper's does not propose to sell individual tickets for transportation that includes landing passengers on the islands.

13. Protestants, Harbor Carriers, Inc. (Long Beach), and MGRS, Inc. and Catalina Motor Cruisers, Inc. (Los Angeles Harbor), regularly engage in cross-channel transportation of passengers between the mainland and points along the northeasterly side of Santa Catalina.

14. Protestant H-10 Water Taxi Co., Ltd. holds itself out to serve any point on Santa Catalina from Long Beach and Los Angeles Harbor.

15. Protestant Island Packers Company engages in the transportation of passengers, baggage, and freight between Oxnard and Ventura, on the one hand, and the islands of Anacapa, Santa Barbara, Santa Cruz, San Miguel, and Santa Rosa, on the other hand. This carrier does not serve Santa Catalina. Applicant's proposed services would compete little, if at all, with services of Island Packers Company.

16. No vessel common carrier service is now provided between Long Beach or Los Angeles Harbor, on the one hand, and the islands of Anacapa, Santa Barbara, San Clemente, or San Nicolas, on the other hand.

17. Among the points applicant proposes to serve, those of principal concern to applicant and protestants operating out of Long Beach and Los Angeles Harbor are points located along the northeasterly side of Santa Catalina.

18. Prior to 1974 applicant and some of the vessel operators identified in Appendix A occasionally transported passengers for compensation and landed them on islands without knowledge that a certificate of public convenience and necessity is required.

19. The record shows that there are groups of prospective patrons that need the type of service proposed by Skipper's to the islands involved.

20. The representatives of groups who testified either have tried available services offered by protestants between Long Beach and Los Angeles Harbor, on the one hand, and Santa Catalina, on the other hand, or are aware of those services and consider none of them to be as satisfactory for their needs as the services proposed by applicant.

21. The services applicant proposes to Santa Catalina differ substantially from the services now provided by protestants.

22. The substantially different services applicant proposes to Santa Catalina would largely constitute new business, and would take little or no business from protestants.

23. Public convenience and necessity require that applicant be authorized to provide on-call (nonscheduled) service for transportation of passengers and baggage from its landing in Los Angeles Harbor to the islands of Santa Catalina, Santa Barbara, Anacapa, San Clemente, San Nicolas, and return, with certain restrictions with respect to transportation to points on the northeasterly side of Santa Catalina to prevent applicant from engaging in regular cross-channel transportation in direct competition with vessel carriers providing that service.

24. In compliance with the order which follows the insurance coverage now carried by each vessel operator in compliance with General Order No. 121-A shall be required to be changed to the coverage required by General Order No. 111-B, with Skipper's to be named as an additional insured, and copies of all such insurance to be maintained by Skipper's.

25. In compliance with the order which follows, Skipper's and the individual vessel operators shall be directed to maintain in effect written agreements giving Skipper's substantially the same degree of control over vessel operators and the individual vessels as provided in the agreements received as Exhibits 17 through 39.

26. With reasonable certainty the project involved in this proceeding will not have a significant effect on the environment.

The Commission concludes that Skipper's should be granted a certificate of public convenience and necessity to transport passengers and their baggage between its landing in Los Angeles Harbor and the islands of Santa Catalina, Santa Barbara, Anacapa, San Clemente, San Nicolas, and return, as specified in the following order.

Skipper's is 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, 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 cancelled 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

IT IS ORDERED that:

1. A certificate of public convenience and necessity is granted to Skipper's 22nd Street Landing, Inc., authorizing it to operate as a common carrier by vessel, as defined in Sections 211(b) and 238 of the Public Utilities Code, on call, between the points and subject to the conditions particularly set forth in Appendix C of this decision.

2. In providing service pursuant to the certificate herein granted, applicant shall comply with and observe the following service regulations. Failure so to do may result in a cancellation of the operating authority granted by this decision.

- (a) Within thirty days after the effective date hereof, applicant shall file a written acceptance of the certificate herein granted. Applicant is placed on notice that, if it accepts the certificate of public convenience and necessity herein granted, it will be required, among other things, to comply with and observe the insurance requirements of the Commission's General Order No. 111-B. Compliance with General Order No. 111-B by applicant will be satisfied if each vessel operator engaged by applicant complies with and observes the insurance requirements of General Order No. 111-B; names applicant as an additional insured; and furnishes applicant with a copy of such insurance.
- (b) Within one hundred twenty days after the effective date hereof, applicant shall establish the service herein authorized and file tariffs and timetables, in triplicate, in the Commission's office.
- (c) 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 establishment of the service herein authorized.
- (d) The tariff and timetable filings made pursuant to this order shall comply with the regulations governing the construction and filing of tariffs and timetables set forth in the Commission's General Orders Nos. 87 and 117.

- (e) Applicant shall maintain its accounting records on a calendar year basis in conformance with the applicable Uniform System of Accounts or Chart of Accounts as prescribed or adopted by this Commission, and shall file with the Commission on or before March 31 of each year, an annual report of its operations in such form, content, and number of copies as the Commission, from time to time, shall prescribe.

3. Applicant and the individual vessel operators shall maintain in effect written agreements giving applicant substantially the same degree of control over vessel operators and the individual vessels as is provided in the agreements received as Exhibits 17 through 39.

4. To the extent not granted herein Application No. 54834 is denied.

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

Dated at San Francisco, California, this 5th
day of AUGUST, 1975.

William S. Symons President
Vernon L. Stinson
Robert Paul
Commissioners

Commissioner D. W. Holmes, being necessarily absent, did not participate in the disposition of this proceeding.

APPENDIX A

The vessels and their owners that operate from Skipper's 22nd Street Landing, Inc., and which propose to operate pursuant to Application No. 54834.

<u>Vessel</u>	<u>Owner</u>	<u>Length in Feet</u>	<u>Pas- sengers</u>	<u>Bunks</u>
Betty G.	James Branan	34	19	12
New Long Fin	Donald Ferguson	38	19	14
De Jay One	Dillon Griffith	40	20	14
Mary G.	Floyd M. Rhea	40	20	15
Lison	James D. Frantz	40	25	20
Vaquero	Carl Gassaway	47	21	21
Espada	Herbert Grenot	44	20	14
Holly B.	Glenn A. Ladner	50	25	18
Bandido	Donald Pittman	50	30	25
Westerly	Acker Miestrell Corp.	55	40	26
Jet	Royce Howard	52	36	12
New Hustler II	George Mio	58	33	28
Cortez	Robert Ashley	60	36	30
Mustang	Robert Grohman	65	49	49
Truth	Roy A. Hauser	65	49	44
Indian	William Lovette	62	49	30
Golden Doubloon	Eddie Tsukimura	63	49	32
Peace	Russell A. Izor	65	49	30
Kona Princess	Roy Raynor	63	49	40
Toronado	Roger Hess	75	65	62
Sea Vue	B. R. Wolf Jr.	58	30	0
Sharpshooter	Frank J. Hall	62	46	46
Sportfisher	Donald McLean	64	49	0

APPENDIX B

Hourly Charter Rates

VESSELS UNDER 65 FEET

Operating Time----\$55.00 per hour.

Minimum of three hours inside of Harbor and
four hours outside of the Harbor.

Standby Time----\$20.00 per hour.

Anchor Time----\$50.00 for any 12 hour period or
any part thereof.

VESSELS FROM 65 FEET to 75 FEET

Operating Time----\$75.00 per hour.

Minimum of three hours inside of Harbor and
four hours outside of the Harbor.

Standby Time----\$30.00 per hour.

Anchor Time----\$60.00 for any 12 hour period or
any part thereof.

*SPECIAL SCHOOL RATE---APPLICABLE TO TRIPS ONLY INSIDE LOS ANGELES
HARBOR

\$40.00 per hour with a minimum of 2½ hours.

DEFINITIONS OF OPERATION

"Operating Time"---When boat engines are in operation.

"Standby Time"---When boat engines are not in operation and when
passengers are aboard the vessel.

"Anchor Time"---Any time other than Operating Time or Standby Time
and when passengers are not aboard a vessel.

Prices listed above do not include food, beverage, air or bait.

* Not authorized by this decision.

Skipper's 22nd Street Landing, Inc., by the certificate of public convenience and necessity granted by the decision noted in the margin, is authorized to transport persons and their baggage, on call, between San Pedro (Los Angeles Harbor), and the islands of Santa Catalina, Santa Barbara, Anacapa, San Clemente, San Nicolas, and return, subject to the following conditions:

1. Skipper's 22nd Street Landing, Inc. shall provide in its tariff and timetable for an on-call service.
2. Skipper's 22nd Street Landing shall require each vessel operator to submit to it a printed schedule of the available days and hours of operation of his vessel. The schedules, or any subsequent modifications, shall be posted in the office of Skipper's and be made available for public inspection.
3. Skipper's 22nd Street Landing, Inc. shall provide in its tariff and timetable the following with respect to any trip where passengers are to disembark at one or more points along the northeasterly side of Santa Catalina between Arrow Point on the northwest and Church Rock on the southeast.
 - a. Transportation shall be performed at hourly rates which includes services of vessel, pilot, and crew, regardless of the number of passengers transported. Transportation shall not be performed on an individual fare basis.
 - b. Transportation shall be performed in vessels not over 75 feet in length that are equipped for fishing or diving.
 - c. Transportation shall be performed in vessels that depart from San Pedro only between the hours of 9:00 P.M. and 5:00 A.M.

Issued by California Public Utilities Commission.

Decision No. 84748, Application No. 54834.