

857C1

ORIGINAL

Decision No. _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

H-10 WATER TAXI CO., LTD,

Complainant,

vs.

UNIVERSAL MARINE, a corporation,

Defendant.

Case No. 10076
(Filed March 26, 1976)

Application of UNIVERSAL MARINE CORPORATION to operate a ship provisioning operation and crew launch in Long Beach and Los Angeles Harbors, and to establish rates.

Application No. 56366
(Filed March 29, 1976)

James H. Lyon, Attorney at Law, for H-10 Water Taxi Co., Ltd., complainant.
Don H. Goss, Attorney at Law, for Universal Marine, defendant in C.10076 and applicant in A.56366.
John E. deBrauwere, for the Commission staff.

INTERIM OPINION

Complainant holds a certificate of public convenience and necessity to operate as a common carrier by vessel for passengers and freight between points and places in the Los Angeles-Long Beach Harbor area. Its verified complaint alleged that on or about January 2, 1976 defendant commenced to operate a water taxi service in the Los Angeles-Long Beach Harbor between Pier E, Berth 121 in Long Beach and ships arriving at, departing from, and at anchorage

in the harbor and at moorings in Huntington Beach without operating authority from this Commission all in violation of Section 1007 of the Public Utilities Code. The complaint also alleges that the operations of defendant are causing a severe financial loss to complainant.

Complainant requested an order requiring defendant to cease and desist from operating as a common carrier by vessel.

Defendant has filed an application seeking either a holding that it is not a common carrier, or in the alternative, that it be granted a certificate of public convenience and necessity (A.56366 filed March 29, 1976). It further requested temporary operating authority. Based on the verified complaint, a temporary cease and desist order (D.85656) was issued on March 31, 1976. A hearing to determine whether such order should be continued in effect was held on April 12, 1976 before Examiner Gilman in Los Angeles. The examiner ruled that such hearing was of limited scope, intended only to give the Commission guidance whether, or in what manner, the competitive relationship between the parties should be restricted pending full hearing and final disposition of both the application and complaint.

The principal officers in both complaint and defendant testified, as did the staff representative. The operations of both applicant and defendant are generally competitive, providing ship-to-shore movement for personnel and ship's stores (as opposed to ship's freight) in the Long Beach-Los Angeles Harbor using comparatively small

motor vessels. Complainant has vessels capable of carrying larger quantities of freight, but they are both presently in dry dock. Defendant has a barge which can carry large loads of ship's stores when towed by tug. The barge has a large capacity crane which can place the loads at any convenient place on the deck of any ship.

Based on the evidence received at the hearing, we find that:

1. Defendant now performs two different services:
 - a. A taxi operation using leased power boats, carrying both passengers and small quantities of freight.
 - b. A freight operation, using a towed barge with crane, to carry large loads of ship's stores from shore to anchored vessels.
2. Complainant's present operations compete with the operations described in Finding 1.a.
3. Complainant presently has no operational vessel designed for or capable of carriage or handling of large quantities of freight in a single trip. It has always relied on ship's booms to lift freight from all of its vessels, and such booms are of limited capacity and cannot place the freight conveniently at all points on the receiving ship's deck.
4. Ships have been rescheduled to Los Angeles-Long Beach Harbor to pick up ship's stores in reliance on the continued availability of the services provided by defendant's barge. The barge operation provides a uniquely useful service to the public.
5. If the services of the barge are not available, many of the operations scheduled to be performed by the barge will be

transferred to other harbors, causing a rescheduling of ship's itineraries and a substantial delay and expense to the public.

6. Members of the public have relied on the continued availability of the barge and its crane.

7. If defendant is authorized to use the barge only for loads of 15 tons or over tendered at the same time, only a minimum amount of traffic will be diverted from complainant.

8. An order preventing defendant from performing useful services for the public which are not directly competitive with any service presently offered by complainant would serve no public purpose, would be inequitable, and would provide only limited protection to complainant.

9. Public convenience and necessity require the issuance to applicant of an interim certificate to transport property by vessel as set forth in the order below.

We conclude that:

1. We should act to preserve the fullest range of common carrier services to the public pending litigation herein, and should not restrain an applicant from performing services not directly competitive with those performed by the existing certificated carrier if the public will benefit thereby.

2. Defendant should be granted a temporary certificate of public convenience and necessity to operate its barge for loads of 15 tons and over tendered at the same time.

3. In all other respects the cease and desist order should continue in effect until further order of the Commission.

4. The complaint and application should be consolidated.

INTERIM ORDER

IT IS ORDERED that:

1. These proceedings are consolidated.
2. Applicant is hereby granted an interim certificate of public convenience and necessity authorizing it to operate as a common carrier by vessel as defined in Sections 211(b) and 238 of the Public Utilities Code to transport freight under contract with ship's agents by barge from shore to ship in Long Beach and Los Angeles Harbors, provided that each trip is under exclusive contract with one single ship's agent, who should have tendered at one time at least 15 tons of freight destined to one or more ships.
3. The interim certificate shall be effective until further order of the Commission.
4. In all other respects the order set forth in Decision No. 85656 shall remain in full force and effect.

The effective date of this order is the date hereof.

Dated at San Francisco, California, this 16th
day of APRIL, 1976.

President
William J. Quinn
Yerning L. Stulgen
Ukon

Commissioners

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

Commissioner Robert Batimovich, being necessarily absent, did not participate in the disposition of this proceeding.