

Decision No. 85938

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
HARBOR CARRIERS, INC., a corporation,
for a Certificate of Public Con-
venience and Necessity, authorizing
an extension of its operating author-
ity so as to authorize it to operate
vessels as a common carrier of
passengers between San Pedro, on the
one hand, and, on the other, Avalon,
Camp Fox, Callager's Beach, Howland
Landing, The Isthmus, Toyon Bay and
White's Landing, on Santa Catalina
Island.

Application No. 55715
(Filed June 2, 1975)

Vaughan, Paul & Lyons, by John G. Lyons, Attorney
at Law, for applicant.

James H. Lyons, Attorney at Law, for M.G.R.S.,
Inc., and Catalina Motor Cruisers, Inc.; and
John G. Stanaland, Attorney at Law, for M.G.R.S.,
Inc.; protestants.

Chalmers Lones, Attorney at Law, for City of
Avalon, and Louis Possner, for City of Long
Beach, interested parties.

John deBrauwere, Attorney at Law, Sheldon
Rosenthal, Attorney at Law, Milton J. DeBarr,
A. L. Gielegghem, and Anna B. Webster, for the
Commission staff.

O P I N I O N

By this application Harbor Carriers, Inc.^{1/} seeks a
certificate of public convenience and necessity to transport passen-
gers and their baggage by vessel, in scheduled and nonscheduled

^{1/} The Long Beach division of Harbor Carriers also is known as Long
Beach/Catalina Cruises.

service, between San Pedro (Los Angeles Harbor), on the one hand, and on the other hand, Avalon, Camp Fox, Gallagher's Beach, Howland Landing, the Isthmus (Two Harbors), Toyon Bay, and White's Landing, on Santa Catalina Island (Catalina). Applicant's San Pedro terminal would be the terminal facility owned by the city of Los Angeles, a portion of which is now used by protestants, M.G.R.S., Inc. (MGRS), and Catalina Motor Cruisers, Inc. (CMC).

Applicant contends that it has received numerous requests to perform transportation between the points involved; that it has the necessary vessel equipment, experience, and financial resources available to provide the proposed service; that service performed by protestants from San Pedro has been inadequate and sometimes nonexistent; and that if the application is granted, applicant will be able to provide better service than protestants, and also will be able to generate new traffic not now being handled between San Pedro and Catalina.

It is the position of the city of Avalon that vessel service of protestants, particularly CMC, is frequently nonexistent and otherwise inadequate and undesirable.

Protestants, MGRS and CMC are affiliated corporations. Both corporations are authorized to provide scheduled common carrier service between San Pedro and Avalon, and nonscheduled common carrier service between San Pedro and points on Catalina. MGRS currently operates the steamship Catalina (approximately 2200 passengers), on one round trip a day during an approximate three-month period during the summer. Protestants formerly operated the 600 passenger Carib Star, which is out of service. CMC operates on a year-round basis. During most of 1975 it operated the 150 passenger Betty Lou, and also smaller substitute and backup vessels.

It is the position of protestants that Harbor Carriers has flooded the Catalina market from Long Beach with far more service than is economically feasible or that public demand requires; that vessels of Harbor Carriers have much unused capacity; that applicant has never made a profit since it commenced Long Beach service in 1969; that applicant survives because of substantial funds provided by unregulated affiliates; and that if Harbor Carriers is authorized to serve San Pedro, the results of the competition will be to take substantial business away from the two existing carriers who have served the public for many years, resulting in their destruction.

Eight days of public hearing were held before Examiner Norman Haley between October 20, 1975, and January 19, 1976. Six sessions were in Los Angeles, and two sessions were in Avalon. Altogether, 25 witnesses testified and 47 exhibits were received. The matter was submitted March 11, 1976, the due date for concurrent briefs.

Presentation of Applicant

Harbor Carriers currently is authorized to provide both scheduled and nonscheduled common carrier passenger service between the Port of Long Beach and the above-named island points, except that only nonscheduled service is performed to Howland Landing, located westerly of the Isthmus. Applicant's present Long Beach terminal and the proposed San Pedro terminal are located approximately six miles apart by land. Applicant now provides service from and to Long Beach with three 700 passenger cruisers and one 110 passenger cruiser.^{2/} Applicant proposes to use one or more of the 700 passenger vessels between San Pedro and Catalina.

^{2/} The three 700 passenger vessels operated by applicant are the Long Beach Prince, Long Beach King, and Long Beach Empress. Applicant also uses the 110 passenger Cabrillo.

Evidence with respect to operating results of applicant's present Long Beach service, and the proposed San Pedro service, was presented through its president, the general manager of the Long Beach division, and the comptroller of Crowley Maritime Corporation (Crowley).^{3/} Exhibit 1 shows results of operation between Long Beach and Catalina for 12 months ending August 31, 1975. Exhibit 1 shows revenues of \$1,508,228, and expenses of \$1,429,635, for an operating ratio 94.8. Rate of return was 2.37 percent on a rate base of \$1,654,590. Exhibit 1 is a function statement reflecting only the Long Beach ferries function of Harbor Carriers. Function statements differ from company accounting statements,^{4/} as explained below.

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- 3/ Crowley controls a group of more than 100 companies. Crowley owns all of the stock of Harbor Tug and Barge Company, which in turn, owns all of the stock of Harbor Carriers.
- 4/ Exhibit E to the application and Exhibits 10 and 11 prepared by a financial examiner of the Commission staff contain, among other things, company operating statements developed from the records of Harbor Carriers for the year ended December 31, 1974. These statements show a net loss of approximately \$513,000. The loss is reduced to approximately \$263,000 by federal income tax credit and other adjustments. Exhibit 10 shows a net operating loss of approximately \$255,000 for the first eight months of 1975. Exhibit 11 also reflects from company statements results of operations for the Long Beach division for the year ending December 31, 1974. Exhibit 11 shows operating revenues of \$1,116,177, operating expenses of \$1,685,447, and a net loss of \$569,270.

The comptroller explained that balance sheet and profit and loss statements are prepared for individual companies within the Crowley group. Company accounting statements reflect all of the activities of each individual company, such as Harbor Carriers. Within a single company there are profit centers called functions. There are several functions in Harbor Carriers, which has operations both in northern and southern California. Function statements are managerial cost accounting statements which reflect the allocation of company revenues and expenses to each individual function performed by a company. Crowley uses function statements as its primary financial control tool. Function statements eliminate intercompany profits. For example, the principal intercompany profit item eliminated from the Long Beach function is charter expenses paid to affiliates who own and furnish the 700 passenger vessels.^{5/} Depreciation and insurance expenses, as they relate to the usage of the vessels, are substituted in function statements in lieu of intercompany charters.

In the function statements of Harbor Carriers there are two principal types of costs. These are costs attached to vessels, and administrative costs. Costs attached to vessels, in addition to depreciation and insurance, include such items as wages, benefits, fuel, repairs, and supplies. These costs are charged to the function performed during the month based on a percentage of operating time in which the vessel has been involved during the month. Operating logs are used to compute the applicable percentages. The principal components of district administrative costs are office wages, reservation clerks, cash activities, office space, utilities, and a portion

^{5/} The 110 passenger Cabrillo is chartered from a nonaffiliated company, Island Boat Service.

of Crowley general administrative expenses. For the southern California operation, approximately 90 percent of the vessel and administrative costs are assigned to the Long Beach ferries function. The remaining 10 percent are assigned to an unregulated sightseeing function which utilizes the same vessels and crews.^{6/}

The comptroller also introduced Exhibits 35 through 38. Exhibit 35 is a reconciliation of general ledger to function statements for the year August 1, 1974 to July 31, 1975, showing functional adjustments made to the general ledger. Exhibit 36 is a recap of revenues and expenses from May 20, 1970 to October 31, 1975. Prior to 1974 the Long Beach function reported a net loss before tax. A small profit was reflected for 1974. For the first 10 months of 1975 the Long Beach function showed a profit of \$196,116. Exhibit 37 updates Exhibit 1 to 12 months ending October 31, 1975. Exhibit 38 shows that for the period September 1, 1974 to August 31, 1975 applicant's entire operations, including those in the San Francisco area, resulted in a net operating income of \$11,230.

Protestants called a financial examiner of the Commission staff as a rebuttal witness. He testified relative to an exhibit he prepared concerning applicant's accounting on a company statement basis translated to a function statement basis (Exhibit 46). This document originally was received as Exhibit 11 in Application No. 55714, involving Harbor Carriers' proposed fare increase in the San Francisco Bay area (Decision No. 85723 (1976)). For 12 months

^{6/} The unregulated sightseeing operations at Long Beach are a function of an affiliated company, Golden Gate Scenic Steamship Lines.

ended July 31, 1975, Exhibit 46 shows an operating loss for the entire company of \$537,236 on a company basis, and a loss of \$80,321 on a function basis. The latter figure reflects an increase in net operating income of \$456,915, consisting principally of adjustments for affiliated charters eliminated, depreciation and insurance on vessels, and administrative expense reduction. The conclusions and recommendations in Exhibit 46 are reproduced below:

"Conclusions

The staff of the Finance and Accounts Division, in the examination of Harbor Carriers, Inc. did not attempt to determine the reasonableness of charter costs charged by affiliates. Therefore, the elimination of affiliated charters and the substitution of some ownership costs not already reflected on the books of accounts of Harbor Carriers, Inc. seems appropriate. The other major difference between 'company' and 'function' statements is the reduction of administrative and general expenses to the books of account. The company has reviewed its allocation procedures and based on a time study has adjusted downward administrative expenses applicable to Harbor Carriers, Inc. The staff of the Finance and Accounts Division has not reviewed in any detail the results of the study prepared to allocate district and corporate administrative expenses.

"Recommendation

The staff of the Finance and Accounts Division is of the opinion that the recast of the general ledger figures of Applicant reflected in supplementary financial records, commonly referred to as 'function' statements are proper records and are usable for ratemaking purposes as a point of reference and subject to further adjustments."

Recent balance sheets for Harbor Carriers are contained in Exhibit E to the application, and in Exhibit 10 and 11 prepared by a staff financial examiner. The balance sheets reflect a deficit of over \$1,000,000. Applicant's president stated that the company had carried on a deficit operation since it commenced Long Beach service in 1970. He explained, however, that Harbor Carriers has access to working capital from affiliated companies, principally Harbor Tug and Barge Company. The witness also is the president of Harbor Tug and Barge Company. He said he does not need a resolution of the board of directors of Harbor Tug and Barge Company before committing that company to advance funds to Harbor Carriers. Exhibit 32 is a balance sheet of Harbor Tug and Barge Company and subsidiaries as of December 31, 1974. It shows retained earnings of \$15,969,000. It also shows current assets of \$7,677,000, compared to liabilities of \$5,430,000.

Exhibit 2 shows projected results of operation for the proposed service from San Pedro for the year ending December 31, 1976. Exhibit 2 shows projected revenue of \$676,198, and expenses of \$639,267, for an anticipated operating ratio of 94.5. The anticipated rate of return would be 2.14 percent on a rate base of \$861,200. The revenue figure of \$676,198 was taken from Exhibit 3 prepared by the Long Beach general manager. Exhibit 3 shows estimated numbers of trips, passengers, and revenue for the proposed San Pedro operations by months and for a projected year ending December 31, 1976. It was estimated for the year that the proposed operation would have 558 trips, transport 95,020 passengers, and produce revenue of \$676,198. The expense figure of \$639,267 in Exhibit 2 was projected from Exhibit 1, based on the estimated number of trips in Exhibit 3. The projected expenses reflect added personnel at San Pedro and increases for salaries, fuel costs, repairs, insurance, and certain administrative costs at the Long Beach terminal.

Since Harbor Carriers commenced service from Long Beach in May 1970, there has been a considerable increase in the number of passengers carried between that port and Catalina. However, the company anticipates that the growth curve will begin to flatten out somewhat. Applicant contends that the Long Beach terminal is relatively limited in size. The proposed service from and to the San Pedro terminal would require a dispatcher or operations manager, an office supervisor, two ticket sellers all year, and one part-time employee during peak periods. No additional docking facilities or personnel would be required at Avalon. The general manager of the Port of Los Angeles testified that there is ample room in the San Pedro terminal for applicant to conduct operations, and that there are adequate parking facilities. The Port of Los Angeles provides MGRS and CMC 30 day month-to-month permits for use of portions of that terminal facility.^{7/} He was certain that applicant would be granted a permit or assignment for terminal space by the Los Angeles Harbor Department if a certificate is granted by the Commission authorizing applicant to provide service from San Pedro.

Applicant proposes initially that one vessel would leave San Pedro at 9:15 a.m., arrive at Avalon at 11:00 a.m., leave Avalon at 4:00 p.m., and return to San Pedro at 5:45 p.m. Applicant proposes to operate additional schedules and assign additional

^{7/} The general manager of the Port of Los Angeles stated that in 1974 MGRS and CMC fell into substantial default with respect to their rent, and have claimed financial difficulties. He said they were losing money and had requested a special rate for docking the steamship Catalina in Los Angeles harbor. He said the Board of Harbor Commissioners had the steamship Catalina under arrest in the spring of 1975 so that they could have something tangible to hold on to until they were able to get the money. However, the arrest of the vessel subsequently was released and the board has withheld lawsuits pending other attempts to collect the monies owed.

equipment to the San Pedro operation, as demand for the service increases. The general manager of applicant's Long Beach division stated that in the winter time one vessel could be scheduled to arrive in Avalon in the morning. Before it returned to San Pedro, it would have ample time to take passengers to other points on Catalina and return to Avalon for the scheduled departure for San Pedro in the afternoon. Exhibit 5 is applicant's proposed summer schedule. Most of the schedules would be directly between San Pedro and Avalon. However, service also would be provided to points on applicant's triangle route (points named in the application, other than Avalon) with a scheduled stop at the Isthmus (Two Harbors). The general manager stated that one 700 passenger vessel could be scheduled to make three round trips between San Pedro and Avalon in the summer.

Fares proposed in Exhibit B of the application from San Pedro would be comparable to the fares presently in effect out of Long Beach, except certain camp fares which apply to groups of campers traveling to and from designated points on Catalina located westerly of Avalon. The proposed fares are reproduced below:

- 1 Scheduled Service between San Pedro and Avalon, Camp Fox, Gallagher's Beach, Howland Landing, the Isthmus, Toyon Bay, and White's Landing

	<u>One Way</u>	<u>Round Trip</u>
Full fare	\$4.25	\$8.50
Half fare (age 5 through 11)	2.15	4.25
Child (under 5)	.25	.50
Group (minimum 25)	-	7.65
Student and Senior Citizen Groups	-	6.50
Commuter fares (10 rides)	3.00	-

2 Nonscheduled Service to Points on Catalina, other than Avalon, in conjunction with daily scheduled service to Avalon

	<u>One Way</u>	<u>Round Trip</u>
Full fare (minimum 25)	\$4.25	\$8.50
Half fare (minimum 50)	2.15	4.25
Child (under 5)	.25	.50
Group (minimum 50)	-	7.65
Student and Senior Citizen Groups	-	6.50

3 Nonscheduled Service at Hourly Rates

<u>Vessel Passenger Capacity</u>	<u>Charge Per Hour (4-Hour Minimum)</u>
Up to 110	\$100
111 to 700	\$425

According to the general manager of applicant's Long Beach division complaints were received by Harbor Carriers prior to the filing of the application to the effect that service by protestants' steamer and small boats was not satisfactory. He contended that the steamer had been losing passengers for the past 11 years. He said that in operating the proposed service, applicant would not make a point of trying to take more business away from the steamer. He stated that applicant's proposed operation might take some business away from the small vessels operated by CMC. However, he was of the opinion that applicant's proposed service would attract additional passengers to vessel operations out of San Pedro, including the steamer.

The general manager of applicant's Long Beach division introduced Exhibit 6 which shows substantial increases in traffic handled in 1975 over 1974 between Long Beach and Catalina. Exhibits 7 and 8 show southbound trips made and passengers carried by individual vessels of applicant for 11 months of 1974 and 7 months of 1975. Those exhibits also show total southbound passengers carried by protestants between June 1, 1974 and July 31, 1975. Various other statistics relative to past and projected passenger traffic between the mainland and Catalina were introduced by witnesses on behalf of applicant and protestants in Exhibits 19, 20, 21, 22, 23, 39, 40, 41, and 47. Exhibits 29 and 47, prepared by the president of CMC and introduced by applicant's counsel, show the numbers of trips operated and passengers transported by CMC from January 1 to December 31, 1975. These exhibits show that no trips were made by CMC in August 1975 because of its annual maintenance program. In addition, there were 43 other days during 1975 when no vessel was operated by CMC from San Pedro to Avalon. On 12 of these days CMC paid for the passengers to be transported by Air Catalina.

Public witnesses included several passengers who had ridden or been aboard vessels of protestants, and others who had watched loading and unloading operations. In general, the witnesses stated that transportation furnished by MGRS on the steamship Catalina had been good. However, two instances were cited in 1975 when the steamship left people behind on the dock because it was overbooked. The steamer makes only one round trip a day during an approximate three-

month period from June 15 to September 15 each year. People desiring vessel transportation from or to San Pedro on schedules, other than the once-a-day steamer schedules in the summer, must use small boats operated by CMC.^{8/}

During 1974 and about three months of 1975, protestants had operated the 600 passenger Carib Star between San Pedro and Catalina.^{9/} However, that vessel no longer is in service, having been sunk by an explosion on April 11, 1975 while tied to the dock in San Pedro.^{10/} One witness who had ridden the Carib Star characterized it as an old, noisy, slow boat, and said that the ride was not enjoyable. Another witness characterized the accommodations as poor, and stated that the Carib Star was not well maintained. He said that in the rear half of the vessel there was a lot of noise and that it did not provide a comfortable ride. One witness stated that except for accommodations around the bar, seating on the Carib Star was not comfortable. Assertedly, that vessel had experienced mechanical problems which had caused it to miss schedules. It was stated that sometimes the vessel could not be driven in reverse so that it had to be towed out of the harbor at Avalon to open water by the Coast Guard. One witness stated that the Carib Star had provided needed transportation to the island.

^{8/} Air transportation, at higher fares, is available all year from the same San Pedro terminal by Air Catalina (except in bad weather). A former employee of that airline testified that it transports between 70,000 and 75,000 passengers a year, one way, between San Pedro and Avalon.

^{9/} The record shows that protestants made some trips in 1974 with the Cabrillo and the Island Holiday. The record does not show that protestants operated those vessels in 1975.

^{10/} The damaged Carib Star subsequently was raised and placed in a repair yard. The vessel has not been repaired, however, because of disputes concerning liability of the insurance carrier. The vessel is owned by Star Crest Corporation.

Witnesses who testified about the 150 passenger Betty Lou operated by CMC expressed the view that it is undersized and otherwise inadequate as a cross channel transport vessel. It was stated that the Betty Lou does not have inside accommodations for all of the passengers when there is a full load. There are two rows of wooden benches on each side of the vessel which assertedly are uncomfortable. Half of the seating is on an open deck without a spray cloth. Passengers have been seen coming off the boat at Avalon with wet clothes. The record shows that the Betty Lou had serious mechanical problems in 1975, and was out of service from June 29 to mid-September.

It was the testimony of witnesses concerning the 95 passenger Zumbrota, operated by CMC, that it is totally unacceptable for cross channel transport service. The Zumbrota was stated to be a converted private yacht originally built in 1918. It has an open deck approximately 10 to 15 feet above the water where the wind can sweep across without protection. The cabin can accommodate only about 25 passengers. The Zumbrota has a round bottom and is of narrow beam which causes it to rock; does not have inside accommodations for all passengers carried so that some of them are exposed to the elements; and does not have adequate toilet facilities or facilities for seasick passengers.

Two witnesses testified they sought transportation that had been advertised as being in double-decked vessels with large upper sun decks and glass-enclosed lower decks. They were told that reservations were not needed. When they arrived at the San Pedro terminal it was very crowded. Subsequently they were put on the Zumbrota. It was reported that the accommodations were nothing like those advertised. There was a full load of passengers and the ocean was relatively rough. The witnesses characterized the trip as miserable. Assertedly, there were not enough seats for all passengers, and some stood for almost three hours. It was reported that most of the passengers were ill, and that there was not enough room for them in the cabin.

Catalina businessmen, including owners and operators of various rental units in Avalon, also have received numerous complaints from passengers who have traveled on protestants' cruisers. Most of the Catalina businessmen who testified feel compelled to refer inquiries concerning vessel transportation to applicant's Long Beach operation. They testified that the 700 passenger vessels are very comfortable; that there are adequate accommodations for all passengers; that service is excellent, and that schedules are on time. It was stated that the island's economy is up dramatically from what it was as recently as five years ago. The growth and improvements were attributed to dependable year-a-round service from Long Beach provided by applicant.^{11/} The large cruisers purportedly give people a greater feeling of security than they have on the small vessels operated by CMC, and members of the public have learned that the larger boats operate from Long Beach so they are using them for transportation to the island. It was the request of Catalina businessmen that there should be a level of service in and out of San Pedro that has the quality and dependability of the service in and out of Long Beach.

Businessmen in Avalon have been trying to attract more business off season. Assertedly there is a good possibility of getting increased convention business due, at least in part, to good vessel service provided by applicant from Long Beach. However, from San Pedro there now are only the small boats, the Betty Lou and the Zumbrota, which are insufficient and unacceptable. They testified

^{11/} Other reasons given for increased business on Catalina were people looking for places closer to home for vacation because of high fuel costs and fuel shortages, and increased costs of foreign travel. The number of visitors to the island in 1975 was estimated to be in excess of 350,000. This compared to 250,000 in 1974, and a lesser number in 1973. In addition, there can be as many as 10,000 to 15,000 people on the island in various camps outside of Avalon.

that each year for the last several years information had been circulated to the effect that the steamer would not operate for one reason or another. Although the steamer has operated (except in 1959, 1968, and 1972), the circulation of this information was alleged to have been detrimental to the tourist and convention business. The small boats of CMC, coupled with missed schedules, late schedules, and some problems with reservations, assertedly have discouraged travel agents, convention bureaus, and others trying to arrange vessel transportation via San Pedro.

Presentation of City of Avalon

The city of Avalon called the general manager and two other employees of the Avalon Chamber of Commerce. The Chamber has received numerous complaints concerning transportation on protestants' vessels, particularly the Betty Lou and Zumbrota. Some passengers who have made a trip on those vessels on a rough day have stated that they will not come back to the island again on vessel transportation. Some groups of complainants have been highly distraught when they arrived at the Chamber's office. Some passengers that have requested vessel service from San Pedro assertedly were informed that there was plenty of room on the available boat and that transportation would be furnished on a first come, first serve basis. However, upon arrival at the terminal, passengers have been turned away for lack of space on the boat. Other complaints received by the Chamber have been that protestants' vessels have not run according to schedule. Sometimes departure times were three hours after schedule. In addition, there have been complaints that the steamer had been overbooked at times and that families have had to split up with some members being transported on small boats. The Avalon Chamber of Commerce has never received any complaints about applicant's service from Long Beach.

The assistant harbor master of Avalon was called by the city to testify from the official logs of common carrier vessel arrivals at Avalon. He cited 53 days in 1974 and 10 days in 1975, when no vessel (neither the steamer nor vessels operated by CMC) arrived at Avalon from San Pedro.^{12/} Principal reasons given were mechanical problems, winds, and fog (no radar on the boat). The report disclosed that during the same period one or more of applicant's vessels arrived from Long Beach every day Avalon Harbor was open, including those days when protestants' cruisers could not make the trip because of weather.

A councilman of Avalon, who also is a freight manager for an interstate airline, testified for the city. He stated that he personally would not travel on the Betty Lou or the Zumbrota. He said he liked the steamship Catalina and the Carib Star, when the latter vessel ran. The witness stated, however, that the Carib Star was not too dependable on a daily basis. He said there were many days the vessel did not operate because it did not have 200 passengers. On those occasions smaller boats were used. .

The councilman, as well as the temporary city manager of Avalon, testified concerning recent real estate developments on the island, including completion of additional housing units. They also testified concerning plans for construction of additional units, and improvements in water supply. The temporary city manager produced a rendering of a proposed new vessel terminal facility to be constructed in Avalon Bay (Exhibit 12).

^{12/} Also see City of Avalon v Catalina Motor Cruisers, Inc., Decision No. 84546 (1975).

Presentation of Protestants

The president of CMC introduced and explained Exhibits 19 through 27. According to combined passenger counts, protestants transported 315,192 one-way passengers in 1973; 339,894 in 1974; and 293,306 for nine months of 1975. During the last full year reported (1974) the Carib Star ran every month. Of the total of 339,894 passengers carried, 264,588 were transported on the steamer in the summer, 67,442 were transported on the Carib Star, and 7,884 were transported in other vessels operated by CMC. The average percent filled ratios for the steamer in 1974 and 1975 were 65.40 and 54.92, respectively. For the first seven months of 1975 the average percent filled ratio for CMC was 64.5.

The president of CMC also reproduced passenger counts for Harbor Carriers in 1974 and for seven months of 1975. According to his figures, applicant transported 311,114 one-way passengers (to all Catalina points) in 1975 for an average percent filled ratio of 28.4. For the first seven months of 1975 the ratio was 24.9. The witness used Exhibit 3 to develop a percent filled ratio of 24.3 for applicant's proposed San Pedro operation. He estimated in Exhibit 23 that Harbor Carriers would transport 67.3 percent of total San Pedro passengers if the sought authority is granted. He was of the opinion that if Harbor Carriers transported that many people it would place a severe financial burden on CMC and possibly put the company out of business. He stated that in the winter a very limited number of people go to Avalon. He said that based upon his experience managing the steamship office in 1974, that applicant's proposed service would be devastating to the steamship operation in the summer.

CMC owns no vessels. The president of CMC has a 60 percent partnership interest in the Betty Lou. He said the vessel is being sold to another company. CMC has a gross revenue charter agreement with the owner of the Zumbrota (Exhibit 28). However, the agreement does not require that the owner of that vessel make it available to CMC for any particular time.

CMC has an agreement with Hydrofoil Corporation of America (Exhibit 24) for the latter company to operate the hydrofoil, Victoria (approximately 77 passengers). This agreement does not require that the Victoria be made available for continuous usage under CMC operating authority. CMC also has a gross revenue charter agreement with the owners of the 500 passenger G. T. Avalon (Exhibit 27). This agreement is subject to cancellation on 30 days written notice of either party. CMC has a gross revenue charter agreement with Avanti Charter Boat Service (Exhibit 26) for the operation of a proposed new 350 passenger vessel to replace the Betty Lou. This agreement does not require that such a vessel be made available to CMC for a specified period of time. The president of CMC stated that a hovercraft vessel his company had planned to put into service in 1975 sank while he was on board, and that it is not going to run.

A director of CMC, who also is a vice president in charge of vessel operation and construction of new vessels at Avanti Charter Boat Service, testified on behalf of CMC. He said he has built between 50 and 60 boats, generally of the type depicted in Exhibit 30. These are sports fishing charter boats ranging up to approximately 85 feet in length, and certified by the Coast Guard to carry 49 passengers and a crew of six. Exhibit 31 is a conceptual side view of a proposed 110 foot, 350 passenger vessel, which the company assertedly is designing specifically for operation by CMC between San Pedro and

Catalina. The vessel would have a steel hull and be powered by diesel engines. The estimated cost would be \$800,000. Assertedly, the vessel would be ready for service in 1976. As explained above, Exhibit 26 constitutes the basis for use of the vessel by CMC.

Applicant called the vice president and operating manager of the Crowley California operations in partial rebuttal to protestant's testimony relative to construction of a new 350 passenger vessel for operation in 1976. This witness also is vice president of Harbor Tug and Barge Company. He has had extensive experience in the construction and operation of vessels for use by Harbor Carriers, including those used in the Long Beach operations. In brief, it was his testimony that construction of one of the 700 passenger vessels operated by Harbor Carriers takes at least a year. He was of the opinion that for the proposed 350 passenger vessel to move from design stage to completion, with final Coast Guard certification by June of 1976, would be highly optimistic, if not impossible. He explained that when one passes from the construction of 49 passenger boats in a relatively lenient Coast Guard atmosphere, to vessels of 110 feet and 350 passengers, the circumstances are totally different.

Discussion

The issue here is whether public convenience and necessity require that Harbor Carriers be authorized to transport passengers by vessel between San Pedro and Catalina. Applicant has the necessary vessels, personnel, and available financial resources to perform the proposed service. The Los Angeles Harbor Department is willing to rent applicant necessary terminal facilities at San Pedro.

The record clearly shows that the level of scheduled vessel service provided by CMC between San Pedro and Avalon has been undesirable and insufficient, and upon numerous occasions nonexistent. The record does not show that the steamer service has been inadequate, except for two instances in 1975 when it was overbooked. However, the steamer only operates in the summer, and only makes one round trip a day. Upon all other occasions transportation is performed with the small vessels of CMC which the public does not accept. Protestants did not demonstrate that they have or will have a suitable vessel available on a reasonably permanent basis to operate between San Pedro and Avalon.

The functional accounting procedures utilized by applicant relative to its Long Beach ferries function were not shown on the record to have produced understated or otherwise improper costs or results. We relied on applicant's function statements in its recent fare increase proposals in Application No. 55714 (Decision No. 85723). The Commission has relied many times on similar cost accounting procedures, particularly in transportation, warehouse, and water company proceedings, where adjustments in an applicant's expenses were necessary to eliminate certain intercompany transactions of affiliates. Exhibits 1 and 37, disclose that Harbor Carriers' Long Beach operations have been profitable in the recent past. Exhibit 2 demonstrates that the proposed San Pedro operations reasonably can be expected to be profitable.

Public convenience and necessity require establishment of applicant's proposed service, subject to two restrictions for the purpose of partially protecting protestants' services. One restriction would be that applicant provide scheduled service on each trip, one way, to at least one island point sought in the application, other than Avalon. The other restriction would be that applicant's vessels be required to depart a reasonable time before and after the steamship schedules, whenever the steamship is in operation.

It is reasonable to assume initially, at least, that applicant's new San Pedro service will attract (1) some passengers that otherwise would have used applicant's existing Long Beach service; (2) some entirely new passenger business; and (3) some of protestants' business. However, new business attracted to San Pedro eventually should benefit protestants, particularly if CMC is able to upgrade its service.

Findings

1. Applicant provides scheduled common carrier vessel service for transportation of passengers and their baggage between Long Beach, on the one hand, and on the other hand, Avalon, Camp Fox, Gallagher's Beach, the Isthmus (Two Harbors), Toyon Bay, and White's Landing, on Santa Catalina Island.

2. Applicant provides nonscheduled common carrier vessel service for transportation of passengers and their baggage between Long Beach and the island points named in Finding 1, plus Howland Landing.

3. Applicant proposes to provide scheduled and nonscheduled common carrier vessel service for transportation of passengers and their baggage between San Pedro, on the one hand, and, on the other hand, the island points named in Finding 1, plus Howland Landing, as an extension of its present operations.

4. Applicant currently provides transportation between Long Beach and Catalina with three 700 passenger vessels and one 110 passenger vessel. One or more of the 700 passenger vessels would be used for the proposed San Pedro service.

5. Protestant, MCRS, provides scheduled common carrier vessel service for transportation of passengers and their baggage between San Pedro and Avalon during an approximate three-month period in the summer, using the steamship Catalina (approximately 2200 passengers). During the remainder of the year the steamer sits idle at the dock in San Pedro.

6. Protestant CMC is authorized to provide scheduled common carrier vessel service for transportation of passengers and their baggage between San Pedro and Avalon during 12 months of the year. CMC uses the Betty Lou (150 passengers) and smaller substitute and backup vessels.

7. Protestants MGRS and CMC are authorized to perform non-scheduled common carrier vessel service between San Pedro and points on Catalina.

8. Applicant is the only vessel common carrier authorized to provide scheduled service between the mainland and points on Catalina, other than Avalon.

9. The point on Catalina of principal concern to applicant and protestants is Avalon.

10. The MGRS steamship Catalina makes one round trip per day between San Pedro and Avalon during the period approximately from June 15 to September 15 each year. Otherwise, members of the public desiring transportation between San Pedro and Avalon are required to ride the small vessels operated by CMC, or fly via Air Catalina (at higher fares).

11. The record shows that summer service on the steamship Catalina has been adequate, insofar as it is supplied on a once-a-day basis in the summer.

12. The record shows that the service of CMC is inadequate. The CMC service is not satisfactory to a substantial portion of the traveling public.

13. The Betty Lou and the Zumbrota operated by CMC do not have seating facilities indoors for all passengers when there is a full load. The Zumbrota does not have adequate toilet facilities.

14. The damaged 600-passenger Carib Star, formerly operated by protestants between San Pedro and Avalon, will be out of service for an indefinite period of time.

15. CMC vessels have had mechanical breakdowns, and on many days in 1974 and 1975, no CMC vessel operated between San Pedro and Avalon.

16. The record, including Exhibits 24, 25, 26, and 27, does not show that protestants will have a suitable vessel available on a regular basis for a specified period of time, so that the public will be assured of adequate all-year service between San Pedro and Avalon.

17. The public needs assurance in future years that if the steamship Catalina does not operate (as in 1959, 1968, and 1972) that there will be adequate vessel service between San Pedro and Avalon.

18. One or more vessels operated by applicant arrived at Avalon from Long Beach every day Avalon Harbor was open between January 1, 1974 and September 28, 1975, including those days when protestants' vessels did not operate because of adverse weather conditions.

19. With daily scheduled service available throughout the year in 700 passenger vessels between Long Beach, Avalon, and other island points, the public does not generally accept the Betty Lou and other small vessels which are operated between San Pedro and Avalon.

20. Exhibits 1 and 37 show that applicant's present service between Long Beach and Catalina is profitable. The functional accounting methods utilized in developing these exhibits were reasonable accounting methods for the purposes of this proceeding.

21. Exhibit 2 shows that applicant's proposed service between San Pedro and Catalina would be profitable.

22. Applicant possesses the ability and experience, and has financial resources available to perform the proposed service.

23. Substantially all of the services applicant proposes to provide from the San Pedro terminal are now provided by it from the Long Beach terminal located somewhat more than five miles to the east. However, applicant's proposed service would compete more directly in the same market utilized by protestants, and would take some of their business.

24. Public convenience and necessity require that applicant be authorized to provide scheduled and nonscheduled vessel service between San Pedro and the sought points on Catalina, subject to the restrictions identified in Finding 25.

25. Protestants' existing regular passenger traffic can be protected by restricting applicant's scheduled service so that (1) a stop will be made on each trip, one way, at one or more of the Catalina points sought in the application, in addition to Avalon, and (2) whenever the steamship Catalina operates between June 15 and September 15 of each year no vessel operated by applicant shall be scheduled to depart either San Pedro or Avalon less than one hour before, or less than one-half hour after the steamship is scheduled to depart from the same port.

26. There is no evidence in this record to find, with the restrictions identified in Finding 25, that applicant's proposed service will weaken protestants' to the point of jeopardizing their continued services.

27. The proposed fares in Appendix B to the application are justified. However, in no event shall they be less than fares from and to Long Beach in effect at time service is commenced from San Pedro.

28. It can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.

The Commission has carefully reviewed the entire record in this matter and concludes that Harbor Carriers, Inc., should be granted a certificate of public convenience and necessity to transport passengers and their baggage in scheduled and nonscheduled service between San Pedro, on the one hand, and on the other hand, Avalon, Camp Fox, Gallagher's Beach, the Isthmus, Toyon Bay, White's Landing, and Howland Landing, subject to the conditions in the order.

Harbor Carriers, Inc., 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 Harbor Carriers, Inc., authorizing it to operate as a common carrier by vessel, as defined in Sections 211(b) and 238 of the Public Utilities Code, between the points and subject to the conditions particularly set forth in Original Page 3 to Appendix B of Decision No. 82560 in Application No. 54499, attached hereto and made a part hereof.

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.
- (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 shall publish fares for scheduled and nonscheduled service from and to San Pedro, pursuant to this order, which are no lower than comparable fares between Long Beach and the same points sought to be served on Catalina in effect at the time service from and to San Pedro is commenced.

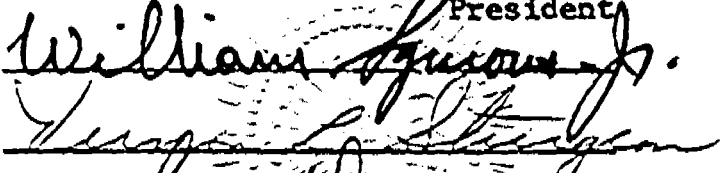
4. In all other respects Decision No. 82560 shall remain in full force and effect.


5. To the extent not granted herein, Application No. 55715 is denied.

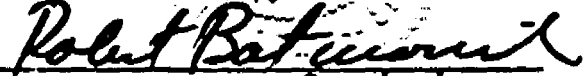
The effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco, California, this 8th day of JUNE 7, 1976.



President






Commissioners

Port of Los Angeles (San Pedro) Operations

Harbor Carriers, Inc., a corporation, by the certificate of public convenience and necessity granted by the decision noted in the margin, is authorized to conduct common carrier services by vessel, as described below, for the transportation of passengers and their baggage:

I. Scheduled Service

Between the Port of Los Angeles, on the one hand, and the following points in Santa Catalina Island, on the other hand:

1. Avalon. 2. Gallagher's Beach, 3. Toyon Bay,
4. White's Landing, 5. Camp Fox, 6. The Isthmus,
7. Howland Landing.

Restrictions, Limitations, and Specifications:

- (a) All vessels departing San Pedro for Avalon in scheduled service shall make a stop at one or more of the other points listed above on either the outbound or return trip.
- (b) Whenever the steamship Catalina is operated in scheduled service between June 1 and September 30 of each year, no vessel operated by Harbor Carriers shall be scheduled to depart from San Pedro directly for Avalon, or depart from Avalon directly for San Pedro, less than one hour before, or less than one-half hour after the steamship Catalina is scheduled to depart from the same port.

II. Nonscheduled Service

Between Port of Los Angeles, on the one hand, and the following points in Santa Catalina Island, on the other hand:

1. Avalon, 2. Gallagher's Beach, 3. Toyon Bay,
4. White's Landing, 5. Camp Fox, 6. The Isthmus,
7. Howland Landing.

Issued by California Public Utilities Commission.

Added by Decision No. 85938, Application No. 55715.