

Decision 88 12 012 DEC 9 1988

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

So. Cal Ship Services,
Jones Tug & Barge, Inc.,
Long Beach Marine, Inc.,
Marine Express,
San Pedro Marine, Inc.,
U.S. Water Taxi,

Complainants,

vs.

Hydro Marine, Inc.,

Defendant.

Mailed

DEC 9 1988

Case 88-06-033
(Filed June 21, 1988)

OPINION

Summary of Complaint

So. Cal Ship Services, Inc., Jones Tug and Barge, Long Beach Marine, Inc., Marine Express, San Pedro Marine, Inc., and U.S. Water Taxi (complainants) filed this complaint on June 21, 1988.

Complainants allege that Hydro Marine Co. (defendant) did not properly notice potential competitors of defendant's proposed vessel common carrier service, Application (A.) 87-01-001, and, that defendant's tariff is unrealistic, ambiguous, and destructive to other certificated and non-certificated carriers within the Los Angeles and Long Beach Harbors.

Complainants request that the Commission issue a cease and desist order and hold a public hearing to investigate these allegations.

Summary of Answer to Complaint

Defendant denies complainants' allegations. First, defendant represents that notice was properly provided. According to defendant, notice of the proposed service exceeded the

Commission's Rules of Practice and Procedure (Rules) Rule 15.1 notice requirement, which requires the application to be noticed in one issue of the Commission's Daily Calendar.

Defendant represents that A.87-01-001 was noticed in the Commission's Daily Calendar four times; once when docketed, once to correct a listing error, and twice to reflect amendments to the application to satisfy concerns of two of defendant's competitors, Harbor Tourist and Catalina Express.

Second, defendant represents that its tariff is not unrealistic or ambiguous. Defendant believes that its application included sufficient financial data to demonstrate that defendant could operate profitably at its proposed rates.

Discussion

Complainants assert that they were not aware of defendant's proposed operation because of an "apparent change" in the Rules which relieved defendant from the responsibility of notifying potential competitors. Complainants assert that "even if they would have read the Daily Calendar, that they would not have necessarily been advised of the true nature of the Defendants intentions because of the misleading nature of the notice."

The apparent change in the Commission's Rules, cited by complainants, occurred more than four years prior to defendant's application. On May 4, 1982 the Commission signed Resolution ALJ-147 which implemented a Daily Transportation Calendar (calendar) and established the calendar as the only notice to potentially affected competitors in transportation certification and permit matters, which includes vessel carriers such as defendant. Complainants acknowledged that defendant's application was noticed in the calendar and potential competitors were noticed.

Complainants' misleading calendar notice allegation is not valid according to defendant. Defendant states that the Commission, not the defendant, provides the caption for the calendar. Further, there is not enough room in the calendar to

completely describe all routes included in the application. According to defendant, a prudent competitor would have requested a copy of defendant's application after reading the words "carrier by vessel" and "points in LA/Lng Bch harbors". Defendant itself requests copies of the applications of all vessel carrier proceedings listed in the calendar.

We will dismiss the improper notice allegation because notice was provided as required by Rule 15.1. Complainant's allegation of misleading notice on the calendar is without merit because complainants did not read the calendar on a timely basis. However, we will request the Director of the Commission's Transportation Division to review the procedures used to list transportation matters in the calendar and to make changes, if warranted, to conform to the notice requirement implemented with Resolution ALJ-147.

The remaining allegation questions the reasonableness of defendant's tariff and its impact on other certificated and non-certificated carriers. This allegation is based on complainants' assertion that defendant did not provide a pro-forma cash flow statement, and on complainants' belief that defendant subsidizes regulated service. This subsidized service includes the use of non-regulated service revenues for defendant's regulated business and the use of the same vessels for regulated business and non-regulated business at different rates.

Although Rule 21 does require a vessel common carrier service applicant, such as defendant, to provide a statement of financial ability, the Rule does not require a pro-forma cash statement. Consistent with Rule 21, defendant made a showing in its application that it had the financial ability to render the proposed service (cf. Findings of Fact No. 1 of Decision 87-05-014). We found that defendant complied with the financial requirement of Rule 21; therefore, the need for a pro-forma cash statement is moot.

Complainants have not made any showing that defendant subsidizes its regulated business with non-regulated business. The simple assertion that vessels are used both for regulated business and non-regulated business at different rates is not a basis to hold a hearing. D.87-05-014 recognizes that defendant proposed to use an existing vessel used for non-regulated business for its regulated business. The regulation of one aspect of defendant's business does not require defendant to charge regulated rates to its non-regulated business. Complainants' allegation is not supported and should be dismissed without prejudice.

Findings of Fact

1. Resolution ALJ-147 implemented a Daily Transportation Calendar and established the calendar as the only notice to potentially affected competitors in transportation certification and permit matters, which includes vessel carriers.

2. Complainants acknowledge that notice of defendant's application appeared in the calendar.

3. Complainants did not read the calendar on a timely basis.

4. The Commission, not the defendant, provides the caption for the calendar.

5. D.87-05-014 found that defendant had the financial ability to render its proposed service.

6. The Rules of Practice and Procedure do not require defendant to provide a pro-forma cash flow statement.

7. D.87-05-014 recognizes that defendant proposed to use an existing vessel used for non-regulated business in its regulated business.

8. The regulation of one aspect of defendant's business does not require defendant to charge the regulated rate to its non-regulated business.

Conclusions of Law

1. The improper notice allegation should be dismissed because notice was provided as required by Rule 15.1.

2. The misleading calendar notice allegation is without merit and should be dismissed because complainants did not read the calendar on a timely basis.

3. The pro-forma cash flow statement allegation is without merit and should be dismissed because the Rules of Practice and Procedure do not require defendant to provide such a statement.

4. Complainants' cross-subsidization allegation is based on unsupported beliefs without any other showing and should be dismissed without prejudice.

ORDER

IT IS ORDERED that:

1. The complaint in Case 88-06-033 is dismissed without prejudice for failure to raise a claim in the pleadings of sufficient merit to require hearing.

2. The Director of the Transportation Division shall review the procedures used to list transportation matters in the Daily Transportation Calendar and shall make changes, if warranted, to conform to the notice requirement implemented with Resolution ALJ-147, dated May 4, 1982.

3. A copy of this opinion shall be sent to the Director of the Transportation Division.

This order is effective today.

Dated DEC 9 1988, at San Francisco, California.

STANLEY W. HULETT
President
DONALD VIAL
FREDERICK R. DUDA
C. MITCHELL WILK
JOHN B. OHANIAN
Commissioners

I CERTIFY THAT THIS DECISION
WAS APPROVED BY THE ABOVE
COMMISSIONERS TODAY.



Victor Weisser, Executive Director

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