

Decision 89 07 041

JUL 19 1989

**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
 Hornblower Yachts, Inc. a )  
 corporation, for a Certificate of )  
 Public Convenience and Necessity )  
 Authorizing the Transportation of )  
 Passengers by Vessel to, from and )  
 between the Ports and Harbors of )  
 Los Angeles (San Pedro), Long Beach, )  
 Redondo Beach, Marina Del Rey, Dana )  
 Point, Port Hueneme, Newport Beach, )  
 and between these points, on the one )  
 hand, and Santa Catalina, on the )  
 other. )

Application 88-10-027  
 (Filed October 13, 1988;  
 amended February 3, 1989)

OPINION

Hornblower Yachts, Inc. (applicant) is a California corporation with its principal place of business located in San Francisco, California. It is a certificated vessel common carrier (VCC.59) operating an on-call luxury service/in San Francisco Bay and San Diego Bay, respectively. It also provides exempt loop service out of San Francisco, Newport Beach, Marina Del Rey, and San Diego.

The application requests that a certificate be issued to authorize the operation of "a per capita and on-call charter vessel service to, from and between mainland points and harbors in Southern California, and extending off shore to Santa Catalina Island (service territory)." Exempt loop service is also proposed out of the Port of Los Angeles and Long Beach Harbor.

Applicant operates a fleet of 13 yachts from 48 to 183 feet in length, with passenger capacities from 45 to 1,000. A 14th vessel is under construction at a cost of \$4 million, designed to transport 1,000 passengers. All of the vessels have luxury appointments with salons, dance floor, band stands, full size

galley, bar, observation decks, and assigned stewards and chefs. Some have staterooms for overnight accommodation for 4 to 6 passengers.

Protests were filed by four competitors and the City of Newport Beach, as referred to in the following paragraphs:

1. H. Tourist, Inc. (dba Catalina Cruises),  
filed on November 15, 1988

It operates year round between the Port of Los Angeles (San Pedro) and the Port of Long Beach, and points on Santa Catalina Island, including Avalon. It also operates between points on Santa Catalina Island. Tourist operates five 700-passenger vessels and a 100-passenger vessel in providing this service. It is alleged that the application is too vague and that another passenger carrier is not needed. A public hearing is requested.

2. Catalina Passenger Service, Inc.,  
filed on November 18, 1988

CPS operates daily between Newport Beach and Avalon, Catalina Island from April through November, and on weekends the rest of the year. CPS has recently placed a 500 passenger, high speed, luxury catamaran vessel in service. During July and August it operates at 80% to 90% of capacity. The rest of the year it operates at 50% or less capacity. CPS charges that the application is too vague and that a public hearing should be set. CPS also claimed that applicant had failed to notify CPS of the filing of the application.

3. Catalina Channel Express, Inc. (dba Catalina Express), filed on October 13, 1988

CE operates from San Pedro, Long Beach, Redondo Beach, Dana Point, to Santa Catalina Island. It is alleged that the application is "too vague" and that a public hearing should be scheduled. The protest also challenges a statement in the application that subsidiary companies will be formed to institute and supervise the service proposed by applicant. It is

alleged that the proposed service will not be in the public interest.

4. California Cruisin, Inc. (dba California Cruisin), filed on November 18, 1988

CC conducts a regular ferry service between San Diego and Avalon, on Santa Catalina Island. It alleges that it is the only carrier providing a regular service from San Diego to the island and that there is not sufficient business to support more than one operator. The protest notes that the application does not provide sufficient facts and requests a public hearing.

5. City of Newport Beach, filed on November 18, 1988

The city filed primarily to protest the lack of information in the application. Applicant is already authorized to operate out of Newport Beach, but the city requested additional information on the extent of applicant's proposed service.

An Administrative Law Judge's Ruling was issued on December 13, 1988 to advise applicant that an amended application should be filed within 45 days. Protestants were allowed 30 days from the date the amendment was filed to respond.

The amended application was filed February 3, 1989 and the Protest of the City of Newport Beach was withdrawn on March 9, 1989. None of the other protestants filed a response to the amended application. The amendment specifically delineates the authority applicant is seeking. Service is proposed "to, from and between the Ports and Harbors of Los Angeles (San Pedro), Dana Point, Port Hueneme, Marina Del Rey, Long Beach, Redondo Beach, San Diego, and Newport Beach; and between these points on the one hand, and Santa Catalina Island on the other."

Applicant alleges that the protestant competitors each operate a regularly scheduled ferry-type service (on a daily or seasonal basis) from points on the mainland to Santa Catalina

Island. Applicant is proposing to transport "passengers by vessel in charter and individually ticketed brunch, luncheon, dinner and/or entertainment cruises." It is alleged that the cost of one of applicant's cruises varies from \$24 to \$150 per person, with a normal range of \$60 to \$90 for the most popular outings. Hornblower cruises provide special meals and entertainment, which must be paid for by each passenger, whether part of a group or an individual customer.

A Hornblower brochure is attached to the amended application. It states that Hornblower luxury yachts are available year-round for business or pleasure. The brochure advises that luxury tours are available for 2 to 2,000 passengers, to celebrate birthdays, anniversaries, reunions, confirmations, weddings, or Christmas, and other holidays. It is recommended that business meetings be scheduled on cocktail or dining tours. The brochure suggests that a minimum of 3 hours be scheduled for cocktail cruises, with 4 hours for dining and 5 hours for outings where dancing will be provided. On weekends and evenings, some of the yachts are hired on a 4-hour minimum rental contract. Rentals provided on holidays also cost more than the basic daily rental. The brochure lists the yachts (by name and capacity) based in San Francisco, Los Angeles, Newport Beach, Marina Del Rey, and San Diego. An hourly rental charge is given for each yacht along with the number of passengers who can be accommodated at a "cocktail buffet" or a "seated dinner." A separate page is devoted to a dinner menu, with a wine and champagne list. Other pages list luncheon and dessert menus, along with a recitation of entertainment alternatives: Dancing, gambling, and music or comedy from special entertainment units. The price is itemized on each extra to be provided. Finally, there is a section in the brochure devoted to business cruises and to small groups. The last page lists special gifts which can be ordered to commemorate a cruise. These items include hats, T-shirts, certificates, bosun whistles,

ring buoys, tote bags, coffee mugs, sun visors, and other items. The cost of most items is given in the brochure.

Protestants' rates are recorded as follows:

Adult One-Way Fares to Catalina Island

H. Tourist (Catalina Cruises)	Long Beach or San Pedro to Avalon	\$9.35 Oct.-April \$11.40 May-Sept.
Catalina Passenger Service	Newport Beach to Avalon	\$9.65
Catalina Channel Express	San Pedro to Two Harbors or Avalon	\$13.70
California Cruisin	San Diego to Avalon	\$27.00

Protestants' rates are substantially lower than those proposed by applicant. It seems evident that protestants will only be charging for the transportation provided. In view of the disparity in rates and service, it does not appear that applicant's proposed service would compete directly for protestants' customers. Hornblower will appeal primarily to wealthy or status patrons who seek to be entertained, or to entertain others. A public hearing is not necessary.

Findings of Fact

1. Applicant is a certificated vessel common carrier authorized to operate luxury vessels in on-call service out of San Francisco Bay and San Diego Bay, respectively.
2. Applicant is applying for authority to extend its certificate to include service to, from, and between the ports and harbors of Los Angeles (San Pedro), Dana Point, Port Hueneme, Marina Del Rey, Long Beach, Redondo Beach, San Diego, and Newport Beach, and between these points on the one hand, and Santa Catalina Island on the other hand.
3. Protests were filed and were primarily directed to the vagueness of the initial application.
4. Protestants were allowed 30 additional days to protest the amended application, which was filed under an Administrative

Law Judge's Ruling, and was much more detailed. No amended protests or comments were filed.

5. One protestant withdrew after the application was amended.

6. Applicant will provide a luxury service where rates charged include the cost of gourmet meals, imported wines and delicacies, cocktails, dancing, entertainment, and some overnight accommodations.

7. Protestants' rates are designed to cover a service which only includes the transportation provided. Protestants' rates are much lower than applicant's proposed rates.

8. Those who seek only transportation between points will use protestants' service.

9. Applicant should attract affluent or status customers who will pay a premium for travel which includes dining, dancing, and cocktails.

10. The service provided by protestants is different from that proposed by the applicant.

11. A public hearing is not necessary.

12. Applicant has the experience, equipment, and personnel with which to inaugurate the proposed service.

13. Applicant has the financial ability to institute and maintain the proposed service.

14. Public convenience and necessity require the service proposed by applicant.

15. Granting the requested extension of service will not adversely affect the operation of protestants.

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

Conclusions of Law

1. The application should be granted.
2. Applicant should be granted a certificate of public convenience and necessity as provided in the ensuing order.

Only the amount paid to the State for operative rights may be used in rate fixing. The State may grant any number of rights and may cancel or modify the monopoly feature of these rights at any time.

ORDER

IT IS ORDERED that:

1. A certificate of public convenience and necessity is granted to Hornblower Yachts, Inc., a corporation, authorizing it to operate as a common carrier by vessel, as defined in PU Code §§ 211(b) and 238, between the points and over the routes set forth in First Revised Page 1 and Original Page 2 of Appendix A, to transport persons, baggage, and/or property, in on-call and charter operations only.

2. Applicant shall:

- a. File with the Transportation Division written acceptance of this certificate within 30 days after this order is effective.
- b. Establish the authorized service and file tariffs and timetables within 120 days after this order is effective.
- c. State in its tariffs and timetables when service will start; allow at least 10 days' notice to the Commission; and make timetables and tariffs effective 10 or more days after this order is effective.
- d. Comply with General Orders Series 87, 104, 111, and 117.
- e. Maintain accounting records in conformity with the Uniform System of Accounts.

- f. Remit to the Commission the Transportation Reimbursement Fee required by PU Code § 403 when notified by mail to do so.

This order becomes effective 30 days from today.

Dated JUL 19 1989, at San Francisco, California.

G. MITCHELL WILK  
President  
FREDERICK R. DUDA  
STANLEY W. HULETT  
JOHN B. OHANIAN  
Commissioners

Commissioner Patrick M. Eckert, being necessarily absent, did not participate.

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

*Victor Weber*  
Victor Weber, Executive Director



Hornblower Yachts, Inc., a California corporation, by this certificate of public convenience and necessity, is authorized as a vessel common carrier to transport passengers and their baggage on \*charter and individual ticketed brunch, luncheon, dinner and/or entertainment cruises as described below.

Charter Service

- A. Between any points on the shoreline of San Francisco Bay and its navigable tributaries.
- B. Between any points on the shoreline of San Diego Bay and its navigable tributaries.
- C.\* From and between the Ports and Harbors of Los Angeles (San Pedro), Dana Point, Port Hueneme, Marina Del Rey, Long Beach, Redondo Beach, San Diego, and Newport Beach; and between these points on the one hand and Santa Catalina Island on the other hand.

Restrictions, Limitations, and Specifications

- 1. No vessel shall be operated in such service unless it has met all applicable safety requirements including those of the United States Coast Guard.
- 2. Service shall be operated on an "on-call" and "charter" basis.
- 3. The term "on-call" as used herein refers to service which is authorized to be rendered dependent on the demands of passengers. The tariffs shall show the conditions under which each authorized "on-call" service will be rendered.
- 4. The term "charter" service as used herein refers to service in which the vessel is engaged, for a specified charge, by a person or group of persons for the exclusive use of said person or group of persons. The tariffs shall show the conditions under which each "charter" service will be rendered.

Issued by California Public Utilities Commission.

\*Revised by Decision 89 07 041, Application 88-10-027.

\*Individual Fare Service

From and between the Ports and Harbors of Los Angeles (San Pedro), Dana Point, Port Hueneme, Marina Del Rey, Long Beach, Redondo Beach, San Diego, and Newport Beach; and between these points on the one hand and Santa Catalina Island on the other hand.

Restrictions, Limitations, and Specifications

No vessel shall be operated in such service unless it has met all applicable safety requirements including those of the United States Coast Guard.

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