

Decision 89 11 026

NOV 3 1989

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION, OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
BLACK BALL VEHICLE FERRY SYSTEMS, a)
California corporation, for a)
Certificate of Public Convenience)
and Necessity authorizing the)
scheduled transportation, by vessel,)
of trucks and slow moving vehicles)
and their occupants across San)
Francisco Bay between (1) the City)
and County of San Francisco and)
Oakland, Alameda County; (2) the)
City and County of San Francisco)
and Tiburon, Marin County;)
(3) Richmond, Contra Costa County,)
and San Rafael, Marin County;)
(4) Redwood City, San Mateo County,)
and Hayward, Alameda County.)

Application 87-01-006
(Filed January 7, 1987)

In the Matter of the Application of)
BLACK BALL VEHICLE FERRY SYSTEMS, a)
California corporation, for a)
Certificate of Public Convenience)
and Necessity authorizing the)
scheduled transportation, by barge)
of trucks, containers on chassis,)
and slow moving or oversized)
vehicles, without passengers,)
between San Jose, Santa Clara)
County, and Sacramento, Sacramento)
County, with way ports at Fremont,)
Santa Clara County; Redwood City,)
San Mateo County; Hayward, Alameda)
County; City and County of San)
Francisco; Oakland, Alameda County;)
Tiburon, Marin County, Richmond,)
Contra Costa County; San Rafael,)
Marin County; Selby/Crockett, Contra)
Costa County; Vallejo, Solano)
County; Collinsville, Solano County;)
Stockton Area, San Joaquin County;)
Rio Vista, Solano County; and)
Brannan Island, Sacramento County.)

Application 87-02-004
(Filed February 2, 1987)

OPINION

Summary

In the following order we grant the vessel common carrier certificates sought in Applications (A.) 87-01-006 and A.87-02-004. The certificate arising out of A.87-01-006 is subject to a five-year sunset provision; and the certificate arising out of A.87-02-004 is subject to a seven-year sunset provision.

Introduction

Black Ball Vehicle Ferry Systems, Inc. (BBVFS), a California corporation, seeks authority under Public Utilities (PU) Code § 1007¹ to provide ferry services by vessel on the San Francisco Bay and tributary rivers.

In Decision (D.) 89-04-077, an interim opinion addressing BBVFS' A.86-11-042 (Collinsville-Pittsburg ferry service), we granted the vessel common carrier certificate sought by BBVFS. We also withheld action on A.87-01-006 and A.87-02-004 pending the receipt of comments from potentially affected government agencies on the adequacy of regulatory oversight of vessels carrying trucks,

1 § 1007 provides in part:

"No corporation...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.... Every applicant for such a certificate shall file in the office of the commission application and evidence in the form required by the commission. The commission may, with or without hearing, issue the certificate as prayed for, or refuse to issue it, or issue it for the partial exercise only of the privilege sought, or issue it for operation between certain points only, and may attach to the exercise of the rights granted by the certificate such terms and conditions as, in its judgment, the public convenience and necessity require."

trailers, or containers with cargos of hazardous materials. We were uncertain whether there was adequate regulatory oversight of vessels bearing trucks, trailer, or containers carrying cargos of hazardous materials. Our particular concern was the potential for environmental damage, if, due to accident, such a truck, trailer, or container were to fall into the Bay or river waters from a sinking or damaged vessel.

Accordingly, before issuing certificates in A.87-01-006 and A.87-02-004 we requested comments on these proposals from:

<u>Federal Agencies</u>	<u>California Agencies</u>	<u>Regional Agencies</u>
Coast Guard	Dept. of Transportation	Met. Trans. Comm.
Navy	Dept. of Motor Vehicles	Assn. Bay Area Govts.
	Dept. of Fish and Game	G.G. Bridge & Trans.
	Highway Patrol	District
	Off. of Emergency Serv.	Bay Conserv. & Devel.
	Transportation Commission	Commission

These potentially affected government agencies were asked to submit comments by letter to the administrative law judge within 60 days. The comment period expired September 11, 1989. No responses were received from the above-listed agencies. Letters were, however, submitted by BBVFS and Mel Baird. BBVFS urges the Commission to expedite the approval of its applications.

Mel Baird, Professional Engineer, is the Marine Safety Officer for the Washington State Department of Transportation, Marine Division, Washington State Ferries. The Washington State Ferries has a fleet of 25 vessels serving Puget Sound terminals from Tacoma, Washington, to Sidney, British Columbia, Canada. These ferries transport large volumes of truck traffic on their routes, including tanker trucks laden with materials classified as hazardous materials. Baird states: "I cannot find any substantiating documentation of ever having a major incident involving the transport of such cargo by the Washington State Ferries." (Baird's letter is Appendix C.)

The Applications

By A.87-01-006 BBVFS seeks a certificate declaring that the public convenience and necessity (PC&N) require the scheduled transportation of trucks and slow-moving or oversized vehicles and their occupants by vessel across San Francisco Bay between:

1. San Francisco and Oakland;
2. San Francisco and Tiburon;
3. Richmond and San Rafael; and
4. Redwood City and Hayward.

By A.87-02-004 BBVFS seeks a certificate declaring that the PC&N require barge operations for the scheduled transportation of trucks, containers on chassis, and slow-moving and oversized vehicles, without passengers, between San Jose and Sacramento with way ports-of-call at Fremont, Hayward, Redwood City, San Francisco, Oakland, Tiburon, Richmond, San Rafael, Selby/Crockett Area in Contra Costa County, Vallejo, Pittsburg, Collinsville, Stockton Area, Rio Vista, and Brannan Island in Sacramento County.

The Applicant

BBVFS is a California corporation located in Kenwood, California. A certified copy of its articles of incorporation is attached to the original A.86-11-042. BBVFS does not hold any operating authority, except that granted by D.89-04-077, or conduct any vessel operations under the Commission's jurisdiction. BBVFS was incorporated to facilitate the proposed vessel common carrier operations described in these applications.

The Principals

The principals of BBVFS are:

Captain George G. Roberts, President and Chief Executive Officer

Captain James J. Buckley, Executive Vice President Operations

Sal Bose, Vice President Engineering/Planning

George L. Roberts, Vice President Finance and
Liaison with Trucking Industry

Elizabeth R. Young, Vice President and
Secretary.

David J. Seymour, not a corporate officer, is retained as naval architect/marine consultant. The resumes of the principals and consultant are attached to the applications. Each resume shows impressive credentials and experience.

Recent Legislation

Streets and Highways (S&H) Code § 30352 formerly prohibited ferries from competing with toll bridges. In 1986 the Legislature amended § 30352 to exclude "vessels operated by common carriers providing transportation service subject to the jurisdiction of the Public Utilities Commission" from the definition of "ferry", as used in § 30352. (Stats. 1986, c. 1088, § 1.)

The same legislation amended S&H Code § 30356 to state:

"The provisions and limitations of this article do not prevent the operation of any ferry or other similar means of crossing authorized or permitted by...(b) The Public Utilities Commission." (Id., § 2.)

Finally, the legislation amended § 30800, formerly giving the Department of Transportation exclusive jurisdiction to issue franchises and permits for toll bridges and toll ferries, to state that: "'Toll ferries' do not include vessels operated by common carriers providing transportation service subject to the jurisdiction of the Public Utilities Commission." (Id., § 3.)

Description of Proposed Operations

Alternate Highway Service - A.87-01-006

BBVFS proposes to provide an alternate highway service by scheduled ferry system for trucks, slow-moving or oversized vehicles, and their occupants paralleling the bridges between:
(1) San Francisco and Oakland; (2) San Francisco and Tiburon;

(3) Richmond and San Rafael; and (4) Redwood City and Hayward. The system would be implemented one crossing at a time in order of priority. Each ferry route would require: A terminal at each end; two to four ferries; and a short connecting road to a nearby freeway.

BBVFS alleges that each vehicle ferry will be self-propelled and built or reconstructed to American Bureau of Shipping and United States Coast Guard (USCG) requirements. Each vessel will be able to transport about 100 trucks averaging 45 feet long. The vessels and terminals will be designed to load and unload vehicles at a rapid rate. Vessel speeds will permit each ferry to make one round trip per hour. With a one-way trip averaging only 20 minutes, passenger accommodations will be minimal. The only passengers will be the occupants of the trucks.

The terminals will be, according to BBVFS, as close to the bridge approaches as practical, to provide easy access for trucks and to permit a water route distance of five miles or less. The ferry slips will have adjustable ramps which will permit roll-on-roll-off (RO/RO) operations at all heights of tide, with an appropriate number of slips at each terminal. In addition, there will be three or more acres of property at each terminal to permit traffic lanes for reloading and discharging the ferries.

BBVFS' typical ferry schedule shows two ferries moving in opposite directions at half-hour intervals between each pair of cities during commute hours (0600-0930 and 1600-1930), Monday through Friday.

BBVFS alleges that it will assess and collect fair and reasonable rates and charges. Before beginning operations, BBVFS will file a tariff containing rates, terms, and conditions of its proposed service.

Barge Service - A.87-02-004

BBVFS proposes to begin a scheduled barge service to provide an alternate highway system for trucks, containers on

chassis, and slow-moving or oversized vehicles, without passengers, using the navigable waterways of the San Francisco Bay and River Area, a great inland waterway system that, it alleges, has been underused in the last 40 years. The barges will be propelled by tugs, using push-tow methods that are standard practice on many inland waterways. The system will begin by using 6 of the 17 locations (see above) for which authority is sought. The initial ports of call will be: Redwood City, Oakland, Pittsburg, Collinsville, Stockton, and Sacramento. As the system expands the other terminals will be added as needed.

Under the proposed system a tug and multiple barge tow will depart from Redwood City and Sacramento at the same time. Each barge tow will stop at way ports, on the route, only long enough to drop off barges and/or pick up preloaded barges. A third tug, based in Pittsburg, will be incorporated as a Pittsburg/Collinsville-Stockton feeder service.

A round trip between Sacramento and Redwood City will take less than 24 hours, ensuring on-time departures each day. Arrivals and departures will be scheduled to avoid commuter congestion, as far as possible.

BBVFS alleges that large, powerful tugs, meeting USCG regulations, will propel the multiple barge tow at a speed that will permit the tow to maintain scheduled arrivals and departures. The barges will meet USCG regulations and be of the standard type with RO/RO capability. The dimensions of the tow will at all times permit safe navigation. Each barge will be able to transport about 64 trucks, containers on chassis, and/or trailers, and will be loaded for a single destination. No passengers will be carried.

Six RO/RO terminals will be developed for the initial system. Terminals at Redwood City, Oakland, Pittsburg, and Collinsville will be constructed with the ferry terminals at those locations. In those cases, additional RO/RO slips will be constructed at the ferry terminals for barge use only. RO/RO barge

terminals will need to be constructed at Stockton and Sacramento. Barge slips to be constructed at ferry terminals will obtain their use and construction permits concurrently with those of the ferry terminals whenever practical. Barge ports not connected with ferry terminals will obtain those permits separately.

Public Convenience and Necessity

Alternate Highway Service - A.87-01-006

BBVFS alleges that there are no vessel common carriers authorized to provide vehicle ferry service of any kind across San Francisco Bay. It further alleges that the proposed vehicle ferry service will:

- (a) Relieve congestion on bridges, bridge approaches, and roads during commute periods by providing an alternative route for trucks and slow-moving vehicles.
- (b) Provide an alternative highway route for vehicles crossing the San Francisco Bay if a transbay bridge is damaged by an act of God or man-made disaster. The vehicle ferries, capable of transporting the largest trucks and oversized loads permitted to use the highways, together with the associated terminals, will provide San Francisco, Marin, Contra Costa, San Mateo, and Alameda Counties with a fail safe disaster response system.
- (c) Provide an alternate means of moving vehicles across the Bay when a bridge is temporarily closed due to: (1) a major accident, (2) a spill of a known or unknown substance, (3) structural damage to a portion of a bridge, (4) demonstrations, civil disobedience, or terrorism, or (5) other unforeseen mishaps. A crew will be on-call 24 hours/day to respond to any such emergency, if required.
- (d) Reduce bridge road maintenance and repair costs by diverting heavy vehicles to an alternate route, while concurrently

reducing truck operating, maintenance, and repair costs.

- (e) Reduce accidents involving trucks. Quoting the San Francisco Examiner, BBVFS alleges that truck drivers have been increasingly at fault in truck accidents from 43.3% of the time in 1980 to 50% of the time in 1984. Truck accidents involving injuries also rose from 3436 to 4560 last year, i.e. 1985.
- (f) Create the most cost effective system for reducing congestion on Bay Area bridges at less than 5% of the cost of building a new bridge.

Barge Service - A.87-02-004

BBVFS alleges that there are no RO/RO barge common carriers authorized to provide scheduled barge service of any kind on the San Francisco Bay and inland waterway system. It further alleges that the proposed scheduled RO/RO barge service will:

- (a) Relieve congestion on the freeways around the San Francisco Bay and River Area by transporting trucks, containers on chassis, and slow-moving or oversized vehicles by barge.
- (b) Provide an alternate highway route for vehicles crossing the Dumbarton, Vallejo, or Rio Vista Bridges if a bridge is damaged by an act of God or man-made disaster. The proposed barge ports at Redwood City and Fremont will provide an alternate Highway 84; the ports at Vallejo and Selby will provide an alternate Interstate 80; and the ports at Rio Vista and Brannan Island will provide an alternate Highway 12. The terminal RO/RO slips, for which authorization is sought in these applications, will, according to BBVFS, allow for a "Master Disaster Plan" in which 7 of the bridges crossing the San Francisco Bay or associated rivers will be covered by barges and/or ferries equipped to move vehicles, if any of the bridges are closed.

- (c) Provide an emergency route across the south bay, the Carquinez Strait, and the Sacramento River should the Dumbarton, Vallejo, or Rio Vista Bridges be temporarily closed due to: (1) a major accident, (2) a spill of known or unknown substances, (3) structural damage to a part of the bridge, (4) demonstrations, civil disobedience, or terrorism, or (5) other unforeseen damage. The barge port slips will accommodate almost any type of barge operating on the Bay and associated waterways.
- (d) Reduce accidents with trucks.
- (e) Provide a truck diversion plan that can be placed in operation without public funding.
- (f) Reduce highway maintenance and repair costs by diverting heavy vehicles to alternate marine routes.

Environmental Impact

Alternate Highway Service

BBVFS contends that the proposed alternate highway system, using self-propelled barges, will significantly benefit the environment of the San Francisco Bay Area in the following ways:

- (a) The vessels will meet all environmental regulations of the USCG.
- (b) Air pollution from truck exhaust will be reduced, since truck engines will be stopped during the alternate five-mile ferry trip. BBVFS estimates that for the Bay Bridge alone, 30,000 truck miles will be eliminated per commuter day, or nearly 8 million miles annually.
- (c) Commuter vehicles will experience a smoother traffic flow, thus reducing the pollution created by stop-start driving.
- (d) Spillage of materials from trucks accidents will be reduced.

BBVFS believes that it is reasonably certain that the proposed operations will have no significant impact on the environment.

Barge Service

BBVFS contends that the proposed barge service will significantly benefit the environment of the San Francisco Bay and River Area in the following ways:

- (a) Tugs and barges will meet all environmental regulations set by the USCG and other regulatory agencies.
- (b) Pollution of the atmosphere by truck engine exhaust will be greatly reduced because many trucks will be removed from the highways.
- (c) Commuter vehicles will experience less congestion and fewer truck-related accidents, resulting in smoother traffic flow and reduced stop-start driving.
- (d) Fewer truck accidents will reduce cargo spillage that may affect the environment.

BBVFS believes that it is reasonably certain that the proposed operations will have no significant impact upon the environment.

Protest of the Town of Tiburon

On February 25, 1987, the Town of Tiburon, a municipal corporation, filed a protest to A.87-01-006 under Article 2.5 of the Rules of Practice and Procedure. Tiburon requests a hearing and asks that "the Commission deny the Application insofar as it proposes to establish a ferry service terminal within Tiburon."

It is not necessary to discuss the factual basis for Tiburon's protest, since BBVFS has agreed to drop the proposed

route between Tiburon and San Francisco from A.87-01-006. BBVFS' concession makes Tiburon's protest moot.²

Although Tiburon did not file a protest as to A.87-02-004 (Barge Service), its concerns would clearly apply to vessel common carrier service, whether performed by self-propelled ferry or by tug and barge. Accordingly, we will also delete Tiburon from the points that may be served by BBVFS pursuant to the certificate granted in A.87-02-004.

Financing

BBVFS intended to finance its initial operations by issuing stock. In A.86-11-042 it sought authority to issue stock, which was granted in D.89-04-077. In November, 1988, the voters in certain Bay Area counties passed Regional Measure No. 1, providing that a percentage of toll bridge revenues be allocated by the Metropolitan Transportation Commission for "transportation projects...which are designed to reduce vehicular traffic congestion" on the Bay Area bridges.

Because of the potential for public funding, BBVFS filed a petition for modification of D.89-04-077 asking that the stock issue be limited to 100 shares. In D.89-07-028 we modified

² Edward J. Hegarty, on behalf of various entities under common control with Crowley Maritime Corporation, including Harbor Carriers, Inc., and Crowley Towing and Transportation Co., expressed interest in A.87-01-006 by letter of January 27, 1987. He did not state what that interest was, did not request a public hearing (although he asked for notices of hearing to be sent to him and stated the view that the matter should be set for hearing), did not take a position on the granting of the application, made no offer of proof, and did not file a pleading. He submitted a similar letter on February 11, 1987, as to A.87-02-004. He sent no letter regarding A.86-11-042. These letters do not constitute protests under Article 2.5 of our Rules of Practice and Procedure, and are, accordingly, entitled to little weight. (Cf. D.84-03-042 in OII 42, where we held that letters of protest do not confer standing to file an application for rehearing.) In any event, we have authority under PU Code § 1007 to issue vessel common carrier certificates "with or without hearing".

D.89-04-077 as requested, giving BBVFS the opportunity to seek public funding through Regional Measure No. 1. If additional funding is needed, BBVFS may seek authority to issue more shares of stock.

Discussion

These applications offer an opportunity to relieve traffic congestion on the major bridges and freeways in the Bay Area. To the extent that trucks and oversized, slow-moving vehicles can be removed from the freeways and bridges during peak traffic hours, other vehicles will experience more freely flowing traffic.

In addition, BBVFS proposes to use a transportation corridor (the San Francisco Bay and associated waterways) that is underused. Moreover, that corridor is free. It requires no condemnation expense with attendant delays, no purchase price, no construction expense, no maintenance expense, and no replacement expense. This corridor will not wear out, and it will not involve the permanent dedication of thousands of acres of valuable land for freeways, interchanges, bridges, and access roads.

With relatively small investments of funds, the public can benefit from an alternative transportation network. Not only will this network be available to trucks and containers on chassis during commute hours, but it will be usable by other vehicles during disasters and other emergencies, involving the breakdown or unavailability of bridges, freeway overpasses, or freeways.

Environmental Issues

Rule 17.1 of the Rules of Practice and Procedure implements the California Environmental Quality Act (CEQA) and the guidelines for implementing CEQA issued by the Office of the Secretary for Resources. The objectives of Rule 17.1 are:

"(b) Objectives.

"(1) To carry out the legislative intent expressed in CEQA...and specifically:

"(2) To ensure that environmental issues are thoroughly, expertly, and objectively

considered within a reasonable time, so that environmental costs and benefits will assume their proper and co-equal place beside the economic, social, and technological issues before the Commission, and so that there will not be undue delays in the Commission's decision making process.

- "(3) To assess in detail, as early as possible, the potential environmental impact of a project in order that adverse effects are avoided, alternatives are investigated, and environmental quality is restored or enhanced, to the fullest extent possible.
- "(4) To achieve an appropriate accommodation between these procedures and the Commission's existing planning, review, and decision-making process." (Rule 17.1(b); emphasis added.)

Rule 17.1(d) requires an applicant to include with the application the Proponent's Environmental Assessment (PEA). In addition:

"The PEA shall be employed by the Commission to quickly focus on any impacts of the project which may be of concern, and may be used as an aid in preparing the Commission's Initial Study to determine whether to prepare a Negative Declaration or an Environmental Impact Report." (Emphasis added.)

Rule 17.1(d)(1) requires different PEAs to be filed, depending upon whether or not it can be seen with certainty that there is no possibility that the project may have a significant adverse effect on the environment. If no adverse effect is anticipated, the PEA should be limited to a statement of this conclusion and any information needed by the Commission to assess the basis for the conclusion. If an adverse effect is anticipated, the PEA shall include all information and studies required by the Commission Information and Criteria List (CI&CL) applicable to the project.

The Commission has published, pursuant to Rule 17.1(d)(3), a CI&CL applicable to all CEQA projects for which Commission approval is required by law. The CI&CL states at page 1, paragraph 2, that:

"Within 30 days after receiving an application, the Commission will advise the applicant in writing whether the application is complete. If an application is deemed incomplete, the Commission will notify the applicant of what additional information needs to be provided. Upon resubmission of an application, a new 30-day review period will begin. All applicants are subject to requirements of this 'Information and Criteria List' regardless of whether all information listed has been provided or included in the application accepted as complete. Any time prior to final approval or disapproval of the project, the Commission may require the applicant to clarify, amplify, or correct the information provided in the application, or supplement such information and criteria list."

The allegations of BBVFS concerning the environmental impact of its proposed operations were brief. We have summarized them above. Based on those allegations, however, it did attempt to invoke the finding that "it can be seen with certainty that there is no possibility that the project in question may have a significant adverse effect upon the environment." (Rule 17.1(d)(1).) There is no evidence in the files that any member of the Commission staff advised BBVFS in writing that its application was incomplete, notified BBVFS that additional information must be provided, or sent BBVFS a copy of the CI&CL.

In view of the delays in this case in implementing our systems for expeditiously handling applications involving CEQA projects, it would be inappropriate and inequitable to delay any further the issuance of the vessel common carrier certificates sought by BBVFS. On the other hand, the allegations of BBVFS concerning the environmental impact of its proposed operations are

insufficient to support the finding that: "It can be seen with certainty that there is no possibility that the project in question will have a significant adverse effect on the environment." We will therefore issue conditional certificates. These certificates will allow BBVFS to move forward with its financing and other plans while the Commission is conducting its initial study.

Accordingly, Commission Advisory and Compliance Division (CACD) will conduct an initial study to determine whether there is a possibility that the proposed ferry services will significantly affect the environment. We will direct CACD to advise BBVFS within 30 days of today whether or not its applications are complete. If CACD deems the applications incomplete, we will direct CACD to advise applicant of what additional information needs to be provided. CACD should provide a copy of the CI&CL to BBVFS and inform it which sections it should complete. When the applicant has filed the additional information with the Docket Office, CACD will expedite its initial study.

We do not prejudge the outcome of the initial study, except to say that it will either: (1) support the finding mentioned above; (2) support a Negative Declaration; or (3) require the preparation of an Environmental Impact Report (EIR).

Pending the completion of the initial study and any other requirements of CEQA, the certificates issued, pursuant to the following order, should be subject to the condition that they may be modified, suspended, or revoked until the initial study is completed and until either a Negative Declaration is issued or an EIR is prepared. If an EIR is prepared and it includes recommended mitigation measures, the certificates may be modified to include those measures as conditions of construction or operation of the vessels or terminals.

Condition on Certificates

PU Code § 1007 authorizes the Commission to impose conditions upon any certificate granted to a vessel common carrier.

To encourage the applicant to begin operations as soon as possible we believe that the certificate granted by the following order should be subject to a sunset provision. Accordingly, the following order will provide: that the authority granted in A.87-01-006 will lapse in five years from the effective date unless BBVFS has commenced operations within that period; and that the authority granted in A.87-02-004 will lapse in seven years from the effective date unless BBVFS has commenced operations within that period.

If these periods prove to be insufficient, BBVFS may file a petition for modification, pursuant to Rule 43 of the Rules of Practice and Procedure, showing good cause why the sunset period should be extended. If circumstances require the filing of such a petition, it should be filed before the lapse of the authority that BBVFS seeks to extend.

Findings of Fact

1. No protest to the application has been received from any public transit operator serving the territory applicant proposes to serve. The protest of the Town of Tiburon is moot. No other protests have been filed. A public hearing is not necessary.

2. The allegations in the applications concerning the environmental effects of the proposed vessel operations do not support the finding that there is no possibility that the activities in question may have a significant effect on the environment.

3. PC&N require the operation of the ferry services proposed in A.87-01-006 and A.87-02-004, except for services to the City of Tiburon.

4. There have been significant delays in implementing CEQA in connection with these applications.

Conclusions of Law

1. Because of the delays in implementing CEQA, the operating authority sought by BBVFS should be granted. However, BBVFS should be ordered not to begin any operations or any construction of

vessels or terminals, pursuant to the operating authority granted below, until the environmental review process is satisfactorily concluded.

2. CACD should be directed to:

- a. Advise BBVFS within 30 days whether its applications are complete, and, if they are not complete, advise BBVFS of the information and studies it should file with the Docket Office or submit to CACD;
- b. Send a copy of the CI&CL to BBVFS and advise it of the sections thereof that it should complete and file with the Docket Office or submit to CACD;
- c. Complete the Commission's initial study as expeditiously as possible, upon the filing or submission of the information and studies required of BBVFS.

3. Pending the completion of the initial study and any other requirements of CEQA, the certificates issued, pursuant to the following order, should be subject to the condition that they may be modified, suspended, or revoked until the initial study is complete and until either a Negative Declaration is issued or an EIR is prepared. If an EIR is prepared and it includes recommended mitigation measures, the certificates should be subject to modification to include those measures as conditions of construction or operation of the vessels or terminals.

4. A.87-01-006 should be granted, except for the San Francisco-Tiburon route. The certificate of PC&N should contain a five-year sunset provision.

5. A.87-02-004 should be granted, except that Tiburon should be deleted as a port-of-call. The certificate of PC&N should contain a seven-year sunset provision.

6. Because of the lack of opposition to these applications and the delays in issuing these certificates, the following order should be effective immediately.

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 (CPCN) is granted to Black Ball Vehicle Ferry Systems, Inc. (BBVFS) authorizing it to operate as a common carrier by vessel between the city pairs and over the routes set forth in Appendix A, to transport trucks and oversized and slow-moving vehicles and their drivers. This certificate shall lapse 5 years from the effective date of this order, unless before that date: (a) BBVFS establishes service and files tariffs and timetables; or (b) BBVFS files a petition for modification seeking an extension of the certificate, in which case the certificate shall continue in force until further order of the Commission.

2. A CPCN is granted to BBVFS authorizing it to operate as a common carrier by vessel between San Jose, in the south, and Sacramento and Stockton, in the north and east, and way ports of call in between, as those points and routes are more fully set forth in Appendix B, to transport trucks, truck trailers, and containers on chassis. This certificate shall lapse 7 years from the effective date of this order, unless before that date: (a) BBVFS establishes service and files tariffs and timetables; or (b) BBVFS files a petition for modification seeking an extension of the certificate, in which case the certificate shall continue in force until further order of the Commission.

3. Commission Advisory and Compliance Division (CACD) is directed to:

- a. Advise BBVFS within 30 days whether its applications are complete, and, if they are

not complete, advise BBVFS of the information and studies it should file with the Docket Office or submit to CACD;

- b. Send a copy of the Commission Information and Criteria List to BBVFS and advise it of the sections thereof that it should complete and file with the Docket Office or submit to CACD;
- c. Complete the Commission's initial study as expeditiously as possible, upon the filing or submission of the information and studies required of BBVFS.

4. Pending the completion of the initial study and any other requirements of California Environmental Quality Act, the certificates issued, pursuant to ordering paragraphs 1 and 2, may be modified, suspended, or revoked until the initial study is complete and until either a Negative Declaration is issued or an Environmental Impact Report (EIR) is prepared. If an EIR is prepared and it includes recommended mitigation measures, the certificates may be modified to include those measures as conditions of construction or operation of the vessels or terminals.

5. BBVFS shall not to begin any operations or any construction of vessels or terminals, pursuant to the operating authority granted above, until the environmental review process is satisfactorily concluded.

6. BBVFS shall:

- a. Submit to the Transportation Division written acceptances of these certificates within 30 days after the effective date of this order.
- b. 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.

- c. Comply with General Order (GO) Series 87, 104, 111, and 117.
 - d. Maintain accounting records in conformity with the Uniform System of Accounts.
 - e. Remit to the Commission the Transportation Reimbursement Fee required by Public Utilities Code § 403 when notified by mail to do so.
7. BBVFS shall file the reports required by GO Series 24.
8. BBVFS is assigned VCC-67 in connection with the certificates issued in this proceeding. The number shall appear in the caption of all original pleadings and in the title of pleadings filed in existing cases with this Commission.
9. The application is granted as set forth above.
- This order is effective today.
- Dated NOV 3 1989, at San Francisco, California.

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

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

Wesley Franklin

WESLEY FRANKLIN, Acting Executive Director

ALJ/RTB/vdl

Appendix A BLACK BALL VEHICLE FERRY SYSTEMS, INC. Original Page 1
(VCC-67)

Alternative Highway Service

CERTIFICATE

OF

PUBLIC CONVENIENCE AND NECESSITY

Showing vessel common carrier operative rights, restrictions,
limitations, exceptions, and privileges applicable thereto.

All changes and amendments authorized by
the Public Utilities Commission of the State of California
will be made as revised pages or added original pages.

Issued under authority of Decision 89 11 026, dated
-NOV 3 1989, of the Public Utilities Commission of the
State of California, in Applications 87-01-006 and 87-02-004.

Appendix B **BLACK BALL VEHICLE FERRY SYSTEMS, INC.** Original Page 2
(VCC-67)

Barge Service

**SECTION 1. GENERAL AUTHORIZATIONS, RESTRICTIONS, LIMITATIONS,
AND SPECIFICATIONS.**

Black Ball Vehicle Ferry Systems, Inc. (BBVFS), by the certificate of public convenience and necessity granted by the decision noted in the margin, is authorized to transport by vessel trucks, containers on chassis, and slow-moving or oversized vehicles, without passengers, between San Jose and Sacramento with way ports-of-call at Fremont, Hayward, Redwood City, San Francisco, Oakland, Richmond, San Rafael, Selby/Crockett Area in Contra Costa County, Vallejo, Pittsburg, Collinsville, Stockton, Rio Vista, and Brannan Island in Sacramento County, subject to the following provisions:

- (a) The service shall be scheduled.
- (b) Operations may begin with service to less than the full list of ports-of-call.
- (c) Long-haul service shall be operated Monday through Friday. Stockton Feeder Service between Pittsburg and Collinsville, on the one hand, and Stockton, on the other hand, shall be operated Monday through Friday.
- (d) Before commencing service, BBVFS shall file tariffs and timetables.
- (e) BBVFS shall commence service between some of the listed ports-of-call no later than 7 years after the effective date of the decision granting this certificate.

Issued by California Public Utilities Commission.

Decision 89 11 026, Applications 87-01-006 and 87-02-004.

ALJ/RTB/vdl

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Decision 89 11 026, Applications 87-01-006 and 87-02-004.

APPENDIX C
Page 1

RE: A.87-01-006 AND A.87-02-004

Mel Baird, P.E.
Marine Safety Officer
Washington State
Ferries
1517 Corbet Drive
Bremerton, WA. 98312

Administrative Law Judge Robert T. Baer
505 Van Ness Avenue, Room #5114
San Francisco, California 94102

Honorable Robert T. Baer:

I am the Marine Safety Officer for the Washington State Department of Transportation, Marine Division, Washington State Ferries. Our fleet consists of 25 vessels servicing Puget Sound terminals from Tacoma, Washington to the South and Northerly to Sidney, British Columbia, Canada.

I have been requested to provide factual information regarding the transport of hazardous materials as cargo on board our vessel fleet.

the Washington State Ferries transports large volumes of truck traffic on its routes including tanker trucks laden with materials classified as hazardous materials. All materials carried as cargo must meet all requirements specified in Title 49, Code of Federal Regulations. Trucks transporting hazardous materials are required to present their shipping manifest to the terminal representative or vessel deck officer for examinations, when it is ascertained that the cargo can be transported on a passenger carrying vessel, a certificate of transport vehicle loaded with hazardous material inspected at terminal prior to movement over ferries is filled out and signed. A copy of this certificate is forwarded to the Marine Safety Officer where it remains on file for 3 years.

Those cargos not permitted on passenger carrying vessels are transported on freight-only sailings and no passengers are permitted on such sailings.

I cannot find any substantiating documentation of ever having a major incident involving the transport of such cargo by the Washington State Ferries.

Additionally, Title 33, Code of Federal Regulations, Subpart M, requires that vessels carrying hazardous materials as cargo must carry a certificate of financial responsibility (water pollution) form CG-5358-10 issued by the U.S. Coast Guard. In the Puget Sound region, the primary agency for oversight

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inspections of oil and other hazardous materials spills is the U.S. Coast Guard. The USCG is also the oversight agency for the carriage of such cargos.

The best defense against mishaps which lead to such spills is to equip vessels with the latest "state of the art" radar systems, tracking of vessels by U.S. Coast Guard vessel traffic service, maintaining bridge to bridge communications, and manning vessels with highly skilled, competent and professional ship's officers and crew members.

Sincerely,
Mel Baird

MB:jma
JdgBacr

cc: Captain George G. Roberts,
President, Black Ball Vehicle Ferry Systems, Inc.
P.O. Box 1066
Kenwood, California 95452

(END OF APPENDIX C)

route between Tiburon and San Francisco from A.87-01-006. BBVFS' concession makes Tiburon's protest moot.²

Financing

BBVFS intended to finance its initial operations by issuing stock. In A.86-11-042 it sought authority to issue stock, which was granted in D.89-04-077. In November, 1988, the voters in certain Bay Area counties passed Regional Measure No. 1, providing that a percentage of toll bridge revenues be allocated by the Metropolitan Transportation Commission for "transportation projects...which are designed to reduce vehicular traffic congestion" on the Bay Area bridges.

Because of the potential for public funding, BBVFS filed a petition for modification of D.89-04-077 asking that the stock issue be limited to 100 shares. In D.89-07-028 we modified D.89-04-077 as requested, giving BBVFS the opportunity to seek public funding through Regional Measure No. 1. If additional funding is needed, BBVFS may seek authority to issue more shares of stock.

2 Edward J. Hegarty, on behalf of various entities under common control with Crowley Maritime Corporation, including Harbor Carriers, Inc., and Crowley Towing and Transportation Co., expressed interest in A.87-01-006 by letter of January 27, 1987. He did not state what that interest was, did not request a public hearing (although he asked for notices of hearing to be sent to him and stated the view that the matter should be set for hearing), did not take a position on the granting of the application, made no offer of proof, and did not file a pleading. He submitted a similar letter on February 11, 1987, as to A.87-02-004. He sent no letter regarding A.86-11-042. These letters do not constitute protests under Article 2.5 of our Rules of Practice and Procedure, and are, accordingly, entitled to little weight. (Cf. D.84-03-042 in OII 42, where we held that letters of protest do not confer standing to file an application for rehearing.) In any event, we have authority under PU Code § 1007 to issue vessel common carrier certificates "with or without hearing".

Discussion

These applications offer an opportunity to relieve traffic congestion on the major bridges and freeways in the Bay Area. To the extent that trucks and oversized, slow-moving vehicles can be removed from the freeways and bridges during peak traffic hours, other vehicles will experience more freely flowing traffic.

In addition, BBVFS proposes to use a transportation corridor (the San Francisco Bay and associated waterways) that is underused. Moreover, that corridor is free. It requires no condemnation expense with attendant delays, no purchase price, no construction expense, no maintenance expense, and no replacement expense. This corridor will not wear out, and it will not involve the permanent dedication of thousands of acres of valuable land for freeways, interchanges, bridges, and access roads.

With relatively small investments of funds, the public can benefit from an alternative transportation network. Not only will this network be available to trucks and containers on chassis during commute hours, but it will be usable by other vehicles during disasters and other emergencies, involving the breakdown or unavailability of bridges, freeway overpasses, or freeways.

Environmental Issues

Rule 17.1 of the Rules of Practice and Procedure implements the California Environmental Quality Act (CEQA) and the guidelines for implementing CEQA issued by the Office of the Secretary for Resources. The objectives of Rule 17.1 are:

"(b) Objectives.

"(1) To carry out the legislative intent expressed in CEQA...and specifically:

"(2) To ensure that environmental issues are thoroughly, expertly, and objectively considered within a reasonable time, so that environmental costs and benefits will assume their proper and co-equal place beside the economic, social, and

technological issues before the Commission, and so that there will not be undue delays in the Commission's decision making process.

- "(3) To assess in detail, as early as possible, the potential environmental impact of a project in order that adverse effects are avoided, alternatives are investigated, and environmental quality is restored or enhanced, to the fullest extent possible.
- "(4) To achieve an appropriate accommodation between these procedures and the Commission's existing planning, review, and decision-making process." (Rule 17.1(b); emphasis added.)

Rule 17.1(d) requires an applicant to include with the application the Proponent's Environmental Assessment (PEA). In addition:

"The PEA shall be employed by the Commission to quickly focus on any impacts of the project which may be of concern, and may be used as an aid in preparing the Commission's Initial Study to determine whether to prepare a Negative Declaration or an Environmental Impact Report." (Emphasis added.)

Rule 17.1(d) (1) requires different PEAs to be filed, depending upon whether or not it can be seen with certainty that there is no possibility that the project may have a significant adverse effect on the environment. If no adverse effect is anticipated, the PEA should be limited to a statement of this conclusion and any information needed by the Commission to assess the basis for the conclusion. If an adverse effect is anticipated, the PEA shall include all information and studies required by the Commission Information and Criteria List (CI&CL) applicable to the project.

To encourage the applicant to begin operations as soon as possible we believe that the certificate granted by the following order should be subject to a sunset provision. Accordingly, the following order will provide: that the authority granted in A.87-01-006 will lapse in five years from the effective date unless BBVFS has commenced operations within that period; and that the authority granted in A.87-02-004 will lapse in seven years from the effective date unless BBVFS has commenced operations within that period.

If these periods prove to be insufficient, BBVFS may file a petition for modification, pursuant to Rule 43 of the Rules of Practice and Procedure, showing good cause why the sunset period should be extended. If circumstances require the filing of such a petition, it should be filed before the lapse of the authority that BBVFS seeks to extend.

Findings of Fact

1. No protest to the application has been received from any public transit operator serving the territory applicant proposes to serve. The protest of the Town of Tiburon is moot. No other protests have been filed. A public hearing is not necessary.

2. The allegations in the applications concerning the environmental effects of the proposed vessel operations do not support the finding that there is no possibility that the activities in question may have a significant effect on the environment.

3. PC&N require the operation of the ferry services proposed in A.87-01-006 and A.87-02-004.

4. There have been significant delays in implementing CEQA in connection with these applications.

Conclusions of Law

1. Because of the delays in implementing CEQA, the operating authority sought by BBVFS should be granted. However, BBVFS should be ordered not to begin any operations or any construction of

vessels or terminals, pursuant to the operating authority granted below, until the environmental review process is satisfactorily concluded.

2. CACD should be directed to:

- a. Advise BBVFS within 30 days whether its applications are complete, and, if they are not complete, advise BBVFS of the information and studies it should file with the Docket Office or submit to CACD;
- b. Send a copy of the CI&CL to BBVFS and advise it of the sections thereof that it should complete and file with the Docket Office or submit to CACD;
- c. Complete the Commission's initial study as expeditiously as possible, upon the filing or submission of the information and studies required of BBVFS.

3. Pending the completion of the initial study and any other requirements of CEQA, the certificates issued, pursuant to the following order, should be subject to the condition that they may be modified, suspended, or revoked until the initial study is complete and until either a Negative Declaration is issued or an EIR is prepared. If an EIR is prepared and it includes recommended mitigation measures, the certificates should be subject to modification to include those measures as conditions of construction or operation of the vessels or terminals.

4. A.87-01-006 should be granted, except for the San Francisco-Tiburon route. The certificate of PC&N should contain a five-year sunset provision.

5. A.87-02-004 should be granted. The certificate of PC&N should contain a seven-year sunset provision.

6. Because of the lack of opposition to these applications and the delays in issuing these certificates, the following order should be effective immediately.

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Black Ball Vehicle Ferry Systems, Inc. (BBVFS), by the certificate granted by the decision noted in the margin, is authorized to transport by self-propelled vessel trucks and oversized and slow-moving vehicles, and their occupants, across San Francisco Bay between: San Francisco and Oakland; Richmond and San Rafael; and Redwood City and Hayward, subject to the following provisions:

- (a) The service shall be scheduled.
- (b) The service shall be operated at frequent intervals during commute hours (0600-1000 and 1600-2000), Monday through Friday, and may be operated at other intervals and during other hours on Saturdays, Sundays, and holidays, as may be specified by timetable.
- (c) The service shall be limited to trucks and oversized or slow-moving vehicles, except during emergencies. BBVFS shall specify by tariff how and by whom the service may be used during emergencies.
- (d) Before commencing service, BBVFS shall file tariffs and timetables.
- (e) BBVFS shall commence service on at least one of the three authorized routes no later than 5 years after the effective date of the decision granting this certificate.

Issued by California Public Utilities Commission.

Decision _____, Applications 87-01-006 and 87-02-004.