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Decision 90-02-040 February 23, 1990

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of CRAIG WOLFE doing business as HYDRO MARINE COMPANY for authority to modify its tariff to include volume service discounts.	Application 89-04-008 (Filed April 6, 1989)

ORIGINAL

Craig Wolfe, for himself, applicant.
Jackson, Tufts, Cole & Black, by William H. Booth, Attorney at Law, for San Pedro Marine, Inc.; Robert Bell, for U.S. Water Taxi; and Michael Lanham, for Southern California Ship Services; protestants.
Jim Radcliffe, Attorney at Law, for Catalina Freight Line, interested party.

O P I N I O N

Craig Wolfe (applicant), doing business as Hydro Marine Company, operates out of Long Beach under Commission jurisdiction as a vessel common carrier. He transports passengers and ship supplies between berths in the Long Beach and Los Angeles Harbor, on the one hand, and ships at anchor, on the other hand. He also moves passengers and supplies from and to camps on Santa Catalina Island. He has applied for authority to grant a discount of 4% on the amount owed for service to those who provide from $5,000 to $9,999.99 worth of business in any calendar month, 5% for $10,000 to $14,999.99, and 6% for $15,000 or more in monthly business.

Three protests were filed. Protestants allege that applicant's financial records are inadequate, that the proposed discounts are discriminatory and noncompensatory, and finally that applicant's proposal may siphon business from other operators and complicate the present rate structure.

A hearing was held in Los Angeles on July 27 and 28, 1989 before Administrative Law Judge Edward G. Fraser. Applicant, San Pedro Marine, Inc. (San Pedro), and U.S. Water Taxi presented testimony and documentary evidence. Counsel for Southern California Ship Services made a statement of position for the record. The matter was submitted on oral argument and on concurrent briefs, which have been received.

Applicant's Evidence

Applicant is primarily engaged in transporting work crews and supplies to off-shore oil drilling platforms. He also provides a lift service with several cranes located at his dock, charters boats on varied projects, and moves supplies and passengers during the summer months from Los Angeles and Long Beach Harbors to Santa Catalina Island. He applied for and received authority from this Commission as a vessel common carrier in 1987. The oil drilling platform transportation and crane service are not subject to Commission jurisdiction.

Applicant's vessel common carrier operation involves the transportation of passengers (immigration officials, ship chandlers, steamship personnel, agents, public health service employees, and harbor pilots, etc.), ship crews, and ship supplies between berths in Long Beach and Los Angeles, on the one hand, and ships anchored in Los Angeles Harbor, on the other hand.

Applicant operates a fleet of 4 boats, with 2 more under construction. The fleet flagship is designated as "Hydro I". It is 65 feet long, with an 18-foot beam. It has a capacity of 30 to 45 pallets of supplies, or 49 passengers. If 45 pallets are loaded, only 6 passengers can be accommodated. The next vessel is the "Hydro Transporter". It is also 65 feet long and is licensed to carry 43 passengers. The third entry is the "Hydro Carrier". It is 42 feet long and can transport 8,000 pounds of cargo, with 28 passengers. The fourth boat is the "Hydro Shuttle". It has an overall length of 40 feet, with a capacity of 6,000 pounds of cargo and 28 passengers. All four vessels are twin-engined and have top speeds in excess of 20 knots. The "Hydro Transporter" is chartered to an oil company to serve off-shore platforms. This charter should last another 10 years. It is not presently available for any other type of service. The "Hydro Shuttle" has been in San Francisco on a month-to-month charter since May of 1989. It may terminate at the end of September 1989, or continue past the end of the year. The "Hydro I" and "Hydro Carrier" have been available to transport passengers and supplies on the ship-to-shore operation for the past 8 months. There are also two ships under construction. Both are designed to carry 30 passengers and 6 pallets of ship stores. These vessels should be available in August and September of 1989.

Applicant is hired when a steamship agent calls to advise that a ship will be at anchor on a particular date, at a stated time. The ship's agent or chandler delivers supplies to applicant's dock to be transported to the ship with the agent, customers, public health officials, and other official guests. Sailor's work contracts frequently stipulate that harbor boats will be available for a stipulated number of round trips, while the ship is anchored. A boat also may make several trips to replenish stores. Fuel is never carried. It is provided by fuel barges, which are equipped to pump the fuel aboard the ship.

Applicant's for-hire rate starts at $100 an hour (one-hour minimum fee) for a boat with an operator and no deck hand, to transport passengers only, within the breakwater. The charge is $125 an hour for a boat carrying cargo with a deck hand required, or $160 an hour for a 3-man crew. Applicant estimated that he handles about 20 customers on service regulated by the Public Utilities Commission (PUC) and that only 2 or 3 would generate sufficient business to qualify for the proposed discounts. He further estimated that there are 50 to 60 customers who employ for-hire boats.

Applicant's service is available on a 24-hour, 7-day-week basis. A dispatcher is always on duty, with a minimum of one (two men) boat crew. Applicant is hopeful that his proposal will generate new business, although he is aware that with the limited number of customers, additional revenue earned by his company would mean less revenue for another boat operator.

The income statement attached to the application covers January 1 to August 31, 1988 (Exhibit 6, page 5). Total sales income is $338,982 and expenses are $279,833 with a net income of $59,149. The statement refers to totals from applicant's combined boat rental and supply services. Applicant's operation as a PUC common carrier vessel is not removed from other income and expense. The statement does not include income from crane rental, yard service, or any other operation which does not concern boat rental or charter.

Pursuant to protestant's request, applicant provided a 1987 PUC Annual Report, 4 Quarterly Reports from 1988, and 2 Quarterly Reports from 1989. The gross intrastate revenue for each period is listed as follows (Exhibit 5):

1987 Report (for entire year)	$ 5,125.00
1988 Report (for first quarter)	2,415.00
1988 Report (for second quarter)	18,550.00
1988 Report (for third quarter)	50,350.00
1988 Report (for fourth quarter)	54,531.25
1989 Report (for first quarter)	26,012.50
1989 Report (for second quarter)	35,081.25

Income from PUC operations for the first 8 months of 1988 was estimated as $53,000 to $56,000. This is one-sixth of applicant's total income for the period. During the first part of 1988 applicant had 5 or 6 employees. Applicant had 12 employees on the date of hearing. Applicant was charged $33,171 in rents during the first eight months of 1988, for his dock, office, and a vacant lot. Depreciation was $63,889 on items which are not clearly identified (Exhibit 6). Notes payable are listed as long-term liabilities and total more than $222,000. It was admitted that substantial interest is owed and possibly a loan carrying fee, but these entries are not listed on the financial record. Applicant estimated that about one sixth of the income of $338,982 previously referred to can be classified as earned from PUC regulated business. The expense of operating as a PUC vessel carrier was also estimated as about one sixth of the $279,833 previously quoted.

The gross income for the first report in 1989 is half that of the last 1988 report. Applicant explained that his competitors had been charging more for service because they had to bring their boats from a dock out of the area to pick up passengers. They eliminated the extra charge in early 1989 and thereby obtained some business from applicant, who was concentrating on oil drilling platform service at the time. Applicant has since recovered a portion of the lost business.

Applicant's gross income from all operations totaled about $843,000 (Exhibit 7) for the 10-1/2-month period from September 1, 1988 through July 13, 1989. Applicant accepted $80,000 as a monthly total for this period and $960,000 for all of 1989. He estimated $520,000 as the 1988 gross and stated he had no totals or financial records for 1987.

Applicant admitted that his Commission-regulated water carrier operation is the least remunerative of his activities. There are only 50 or 60 ship owners who need this service and 3 to 5 boat companies who provide it. All of these companies are represented by local agents who will receive the discounts since they write the checks for the service provided for the steamship operated by an out-of-state owner.

Applicant operates a 14-passenger van as a licensed charter-party carrier under PUC authority. This authority was obtained as a favor to applicant's customers, who prefer to deal with one man for all crew transportation. Transportation is only provided for ship's crews, agents, and other steamship employees. Public service is neither offered nor provided.

Applicant transports passengers and freight under contract to/and from several commercial camps on Santa Catalina

Island. Campers and hikers who bring their packs and food are also carried. The camps prefer this service which delivers at their dock. Other boat operators will operate only to the regular commercial docks, which require a final haul by truck to the camp location. Applicant will not discount the rates charged for this transportation.

Applicant argued that his proposal is no different than allowing tour directors to grant individual discounts to stimulate business. Applicant maintains that no reasonable person would oppose a discount of 4 or 5% granted to a few who provide the largest volume of business.

Protestants' Evidence

The president of San Pedro testified for the company.

San Pedro has existed since the early 1970's. It hauls lubrication oil to ships at anchor, or docked in the harbor. Passengers and stores are transported to and from ships at anchor. The same family has provided this service for 58 years.

Protestant's three boats include an oil cargo boat with a crane and two 65-foot passenger boats that also carry stores. These boats operate from the San Pedro dock, which has a crane and forklift to expedite the loading process. San Pedro obtained a certificate as a PUC vessel carrier in the early 1980's, authorizing the transportation of lubrication oil, passengers, and stores to ships at anchor in the Los Angeles/Long Beach Harbor.

San Pedro's PUC tariff provides for a minimum boat rental of $150 an hour. If additional crew members are required, the hourly rate is increased. The boat with a crane rents for a minimum of $187.50 per hour. These rates have been in effect since 1984, when San Pedro petitioned the Commission for an increase in the rates charged for its service. The increase was $10 an hour and San Pedro was required to separate its PUC revenue and expense from the rest of its operation to include the service of a certified public accountant and a complete financial report. It was a long process and an expensive one. Costs have increased since 1984, especially insurance and labor. Labor cost averages from 50 to 75% of total gross income. San Pedro currently earns a monthly gross of $50,000 from PUC regulated service.

When San Pedro first provided boat service, its rates were the highest in the harbor. Two other competitors charged much less, but they were out of business within 8 months. San Pedro experienced a loss in income about the third quarter of 1988 when applicant started to operate at a rate of $100 an hour, which is less than San Pedro charged in 1982 ($142). An estimated 20 to 40% of available business was temporarily lost, but it has all been recovered.

Steamship agents who call want immediate and prompt service. They expect the service to be provided after a single telephone call with no further contact needed. They do not canvass a list of boat providers in the hope of obtaining a cheaper hourly rate. The critical statistic is the recent decrease in the water taxi business. In the last year (1988/89) stores hauling income is down 40% and passenger carrying about 5%.

The witness noted that applicant's Exhibit 6, page 5, shows a total sales income of $338,982 for the first 8 months of 1988. Wages are listed at $54,170 and insurance at $24,016. These totals seem far too low. In San Pedro's opinion, wages should be at least 50% of sales.

The witness stated that hauling passengers and stores to anchored ships is a $2 million a year business. Fifteen percent of this business goes to PUC boats, the remainder to unregulated water taxis.

The owner/manager of U.S. Water Taxi testified for protestant.

He has owned the water taxi since 1981. There are now 4 boats with a 5th under construction. Two of the boats are 39 feet long and two are 45 feet in length. The boats are all under "the burden of 5 tons net register" and therefore not subject to PUC control or jurisdiction (Public Utilities (PU) Code § 238). The "5 ton net register" classification refers to the interior capacity of a vessel by volume, not weight. Larger vessels will qualify under this provision if their interior cargo carrying capacity is restricted by intention or design.

He has smaller boats than applicant and is required to charge more for his service. Applicant's rates are the lowest in the harbor. In the opinion of U.S. Water Taxi, the evidence indicates that applicant's PUC regulated operation is not self-supporting.

Discounted rates have been applied to senior citizens or youth groups. They benefit from the reduced rate when they pay for the transportation. Applicant's proposal is different. A steamship company pays for the service through its local agent and the latter receives the discount by check or a credit on sums owed. If the agent reimburses the steamship company for the discount it will require additional accounting and record keeping by both parties. Since applicant has admitted that only 2 or 3 of his customers would qualify to receive a discount, it seems that the principal benefit therefrom will be realized by applicant.

Protestants emphasize that applicant's financial records are so fragmentary that income and expense from PUC regulated operation cannot be determined, much less separated from applicant's other activity. There is no basis for authorization of applicant's proposed discounted rates. Protestants also allege that the discounts would be unlawful rebates, granted to a few as a reward for providing a large volume of business. Protestants argue that the discounts are not being returned to those who pay for the boat service (steamship companies), but to agents who may decide not to forward the amounts collected.

Discussion

This proceeding is solely a rate application. Although the protestants have taken the opportunity to criticize the applicant's fitness to serve and compliance with Commission rules and regulations, those issues are not relevant to this rate application.

Applicant has requested that the Commission authorize the adoption of a discounted rate to benefit only those who provide a minimum of $5,000 in business every month. This is a special rate, applicable only to those who provide a large volume of business. It would be classified as a new rate and is subject to PU Code § 451, which requires that all rates charged by public utilities be just and reasonable. In making its determination on whether the rate is reasonable the Commission must weigh the cost of providing the service and the anticipated revenue. (Union Rock Co. vs AT&SF Railway Co. (1925) 27 CRC 285, 296.) The Commission must also consider a utility's expenses, fixed costs, overhead, depreciation, and interest expense. (Tank Truck Operators Association (1936) 40 CRC 221.)

A rate may be unreasonable because it is too low just as in the case where it is too high. (AT&SF Railway Co. (1940) 43 CRC 25.) The burden of establishing reasonableness firmly rests on applicant, and not on the Commission or the protestants. (Citizens Utilities Co. (1953) 52 CPUC 637; Southern Counties Gas Co. (1960) 58 CPUC 27.)

In the present situation the proper standard for determining whether a rate is too low is that a rate contribute to a vessel common carrier's profitability. In terms familiar to the transportation industry, the carrier's operating ratio must be less than 100%.

As the protestants point out, applicant's financial exhibits are fragmentary and incomplete. No separate data is provided for PUC regulated service. All boat operations are combined in a single income statement. Applicant did not provide an accounting witness to authenticate the available records, and there is some doubt that all expenses were properly entered on the income and expense columns. Interest on notes payable, insurance expense and wages are of particular concern. Protestants allege that the applicant's PUC operations are losing money and are supported by the applicant's other services.

As part of this argument, protestants allege that the carrier's income statement should include the applicant's salary draw against net income. In the present circumstance we do not agree. Salary draw for sole proprietors is not treated the same as employee wages. If all of the applicant's business were regulated, then imputing some return to the applicant, either through salary draw as an expense item or through an operating ratio of less than 100%, might be a requirement for rates to be reasonable. However, in this case the regulated business is a small fraction of overall business, and a less stringent standard is appropriate.

Protestants' claims that the requested volume discount is discriminatory have no merit. Offering volume discounts to large customers is a conventional business practice based on reduced costs due to allocation of fixed costs over an increased sales base. As well, the application should not be denied because the volume discounts would go to steamship agents. Local agents deliver goods to the applicant's dock, the applicant provides services at the agents' request, the applicant serves invoices on the agents, and the agents in turn pay for the services. Conventional utility practice makes the agent the utility customer. Contractual agreements among shipping companies and their agents are beyond the Commission's jurisdiction. Any conflicts between Commission practice and maritime law are irrelevant to this application.

Protestants' claims that applicant's rates may take business away from other carriers are immaterial to this application. We encourage fair competition in transportation markets, and the vessel common carriage market is not protected by statute from loss of business due to the rate practices of competitors, as long as rates are just and reasonable.

The reasonableness of the rate request before us reduces to the issue of whether the rates contribute to the carrier's profit. The protestants have not shown convincingly that the applicant's PUC operations are being subsidized. The record is simply inadequate to make a finding on profitability. Rather than deny the application because the applicant has not met his burden of proof, we will leave the application open for 30 days from the effective date of this decision, to allow the applicant to rehabilitate his financial showing, if he chooses to make the effort.

Applicant may amend his January 1 to August 31, 1988 income statement or provide more recent credible information to show: (1) PUC-jurisdictional income and expenses, including interest expense, (2) the cost allocation scheme used to separate jurisdictional from non-jurisdictional expenses, (3) supporting evidence for insurance expense, and (4) supporting evidence for wages, including labor hours, boat operation hours, direct labor expense, average hourly wages, and wage adders such as Social Security, disability insurance, workers compensation, unemployment insurance, health care, vacation and holidays, retirement, etc.

Proposed Decision

On December 15, 1989 the Administrative Law Judge's proposed decision on this matter was filed with the Docket Office and mailed to all parties of record pursuant to Rule 77 of the Commission's Rules of Practice and Procedure. No comments were received. However, we have revised the proposed decision to allow the applicant to file further information, and to resolve other issues.

Findings of Fact

1. Applicant is a vessel common carrier who holds a certificate authorizing the transportation of passengers and stores between the Los Angeles and Long Beach Harbors, on the one hand, and ships anchored in said harbors, on the other hand. Authority is included to transport passengers and supplies to and from Santa Catalina Island.

2. Most of applicant's operation is not subject to Commission regulation, including serving off-shore oil drilling barges, providing crane operators for the barges, providing crane (lifting) service to boats in the harbor, and other minor functions.

3. Applicant has applied for authority to discount rates to be charged customers who provide more than $5,000 in monthly business. A maximum of 3 clients would be able to qualify for the discounted rate.

4. The discounts are 4% for $5,000 plus, 5% for $10,000 plus, and 6% for $15,000 plus per month.

5. Three protests were filed to request that the application be denied.

6. A maximum of 60 ship owners anchor vessels in the harbor, accommodated by 3 (PUC) regulated vessel carriers with about 15% of the business, and nonregulated water taxis with about 85% of the business.

7. Few ship owners provide sufficient business to qualify for the proposed discounts. Those who do may reject the proffered discounts by continuing to hire vessel operators they have found reliable in the past.

8. There was no testimony from ship owners or their agents.

9. The financial exhibits placed in evidence by applicant are fragmentary and incomplete. The exhibits were not authenticated by an accountant.

10. Applicant has not met his burden of proof to demonstrate that the proposed rates will contribute to profitability.

11. It is reasonable to allow the applicant more time to file additional information in support of the application, and to allow all parties to comment on any additional information forthcoming.

Conclusions of Law

1. Applicant has not shown that the proposed rates are fair and reasonable as required by PU Code § 451.

2. Granting of volume discounts based on cost of service is not prohibited by PU Code § 453.

3. This application should be left open to allow applicant an additional 30 days from the effective date of this decision to file additional information. All parties should be allowed 30 days to comment on any additional information forthcoming.

ORDER

IT IS ORDERED that:

1. Within 30 days from the effective date of this decision the applicant may at his option file with the Commission and all parties the additional financial information discussed herein.

2. All parties may within 30 days of the mailing date of applicant's additional information file written comments with the Commission and all other parties.

3. If applicant does not file the additional information within 30 days, then the application is denied and the proceeding is closed.

This order becomes effective 30 days from today.

Dated February 23, 1990, 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

Neal J. Shulman

NEAL J. SHULMAN, Executive Director

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