

Decision 90 05 041 MAY 4 1990

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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Certificate of public convenience and necessity of Harbor Carriers, Inc. to operate as a common carrier of passengers by vessel.)	Application 89-10-038 (Filed October 31, 1989)
)	(Petition for Modification of D.89-10-042 and D.89-11-031; filed April 12, 1990)

INTERIM OPINION

Harbor Carriers, Inc. (HCI) is a common carrier of passengers by vessel. By Decision (D.) 89-10-042 dated October 20, 1989, we issued emergency supplemental operating authority enabling HCI to provide emergency temporary ferry service between the San Francisco Ferry Building on the one hand and the Port of Oakland and the Port of Richmond on the other hand. D.89-10-042 provided that the authority shall remain in effect until May 1, 1990 unless otherwise ordered by the Commission. In response to a petition filed by the Commission's Division of Ratepayer Advocates, D.89-10-042 was modified by D.89-11-031 to impose certain conditions and requirements on HCI. D.89-11-031 also allowed HCI to add service to Alameda and Berkeley.

On April 12, 1990 HCI filed a petition for modification of D.89-10-042 and D.89-11-031. HCI states that a subsidy agreement between HCI and the California Department of Transportation (Caltrans) expired on March 23, 1990 and service to Richmond and Berkeley terminated on that date. Service to Alameda and Oakland was continued under a new agreement between HCI and the City of Alameda entered into on March 26, 1990 (Alameda Agreement). The Alameda Agreement refers to funding requests to be made by the City of Alameda and the Port of Oakland to the Metropolitan Transportation Commission (MTC).

By the April 12 petition, HCI seeks an extension of the temporary authority to serve Alameda and Oakland for an indefinite

period up to 12 months from March 26, 1990 and for as long as the full amount of the subsidy funds referred to in the Alameda Agreement is made available and actually paid to HCI on a timely basis. HCI also seeks revocation of the authority to serve Richmond and Berkeley and authorization to terminate the remaining service to Alameda and Oakland upon the terms and conditions of the Alameda Agreement and/or failure to receive the subsidies necessary to economically sustain the service.

HCI alleges the following in support of the requested relief:

"While almost everyone agrees that ferry services on San Francisco Bay are a viable option to decrease vehicular traffic on the Bay Area highways and bridges, and the availability of such services provided a significant benefit following the October 17, 1989 earthquake, it is clear that public subsidies are required for most such services in order to keep the fare levels low enough to entice ridership. However, the sources of subsidy funds are indefinite and uncertain at this time. After an experimental period of almost six months, Caltrans discontinued its subsidy of East Bay ferry services. At the request of Alameda/Oakland, it appears that MTC funding may be available for some period but the HCI has no assurance of the continuation of this funding source for any certain period.

"The whole issue of subsidized ferry services is new and unsettled and neither the cities served (e.g. Alameda) nor the ferry service providers (e.g. HCI) can afford to be locked in to a service obligation for an indefinite period absent the assurance of public subsidies. In the situation of ferry service between San Francisco and Alameda/Oakland, the City of Alameda has negotiated the right to terminate its ferry service agreement if MTC anticipated subsidy funding is not actually funded. It cannot and will not obligate its general fund. In HCI's case, its dedication of service and the equipment and facilities to provide service are contractually limited to actual receipt of

the public subsidy anticipated to be provided by MTC.

"The fact of the matter is that ferry services are very expensive to operate and subsidies are required in order to keep the fare levels actually paid by passengers affordable. HCI requests the Commission's patience and understanding during this unsettled period and until such time as pending legislation to resolve subsidy issues is decided or sources for the continuation of ferry subsidies can be identified for the continuation of services in the future."

HCI notes that its filing was made only a short time prior to the May 1, 1990 expiration date of its supplemental operating authority. HCI states that its filing was delayed due to the "tenuous" nature of the ferry service with the termination of the Caltrans subsidy, eleventh hour negotiations leading to the Alameda Agreement, and its need to consider a jurisdictional issue raised by the City of Alameda in the Alameda Agreement. HCI therefore requests a finding that an unforeseen emergency situation exists requiring immediate Commission action.

Discussion

Based on consideration of the allegations in HCI's petition, we are persuaded that continuation of ferry service between Alameda/Oakland and San Francisco has the potential of providing a significant public benefit. We conclude that HCI's temporary authority to provide that service should be extended beyond the May 1 expiration date and will so provide, with limitations as discussed below.

We are concerned with the process and the sequence of events leading to today's order. The urgency of the need to provide transportation alternatives in the days following the October 17, 1989 earthquake required that we forego our standard procedures in granting emergency temporary authority to HCI. Now, six months later, we are asked to again forego the procedural

requirements that apply to applicants for vessel common carrier authority and grant extended authority to HCI for another 12 months. We appreciate the unsettled nature of the availability of subsidy funding and the difficulty this places on parties, and we take notice of the fact that transportation facilities damaged by the October 17 earthquake have not yet been fully restored to use. Nonetheless, we must also recognize that the current situation does not have the same urgency that prevailed in the days following the earthquake.

While we seek to preserve ferry service between the East Bay and San Francisco, we also seek to preserve the rights of all parties. This can best be accomplished if the substance of our Rules of Practice and Procedure (Rules) is observed in this situation. Accordingly, we will provide that the extension of HCI's authority granted by today's order shall remain in effect for approximately 90 days or until further order of the Commission. We intend to further address HCI's request at our regularly scheduled meeting of August 8, 1990. This will provide adequate time for proper notice to parties, response by any interested party, and further action by the Commission as appropriate.

Additionally, we will require HCI to file an amended pleading which brings its request in conformance with the requirements of the Rules as they apply to applicants for vessel common carrier authority (including Rules 17.1 and 21). To assure proper notice to the public and in accordance with Rule 15.1, we will direct our Transportation Division to publish a complete description of HCI's request in the Daily Transportation Calendar upon the filing of HCI's amended pleading. We will also require HCI to post notice of its request on its vessels to ensure that patrons of the ferry service are properly notified. The 30-day period allowed for responses (Rule 8.3) shall commence on the date of publication of notice in the Daily Transportation Calendar.

Today's order extending the authority applies only to the service to Alameda and Oakland. Thus, HCI's request for revocation of authority to serve Richmond and Berkeley is unnecessary, since D.89-10-042, as modified by D.89-11-031, specifically provided for expiration of the authority on May 1, 1990 unless otherwise ordered by the Commission.

It is not necessary to find that an unforeseen emergency situation exists as requested by HCI. Public Utilities Code § 306(b) provides that no item of business shall be added to the meeting agenda subsequent to the required notice in the absence of an unforeseen emergency situation. However, this order was listed as Item No. 11 on the agenda for the Commission's regularly scheduled meeting of May 4, 1990 (Public Agenda No. 2805, mailed April 24, 1990).

Findings of Fact

1. D.89-10-042, as modified by D.89-11-031, provided that HCI's emergency supplemental operating authority shall remain in effect until May 1, 1990 unless otherwise ordered by the Commission.

2. A subsidy agreement between HCI and the Caltrans expired on March 23, 1990 and ferry service to Richmond and Berkeley terminated on that date.

3. Ferry service to Alameda and Oakland was continued under a new agreement between HCI and the City of Alameda entered into on March 26, 1990.

4. Continuation of ferry service between Alameda/Oakland and San Francisco has the potential of providing a significant public benefit.

Conclusions of Law

1. HCI's temporary authority to provide service between Alameda/Oakland and San Francisco should be extended as provided in the order.

2. An extension of HCI's authority to serve Alameda/Oakland for approximately 90 days or until further order of the Commission will provide adequate time for proper notice to parties, response by any interested party, and further action by the Commission as appropriate.

3. The rights of all parties can best be preserved if the substance of our Rules are observed.

INTERIM ORDER

IT IS ORDERED that:

1. D.89-10-042, as modified by D.89-11-031, is further modified to provide that the emergency supplemental operating authority granted to Harbor Carrier, Inc. (HCI) to serve Alameda and Oakland (Ordering Paragraph 1, subparagraphs (a) and (c)) is extended to August 8, 1990 or until further order of the Commission. ✓

2. HCI shall file an amended pleading which brings its request into conformance with the requirements of the Rules of Practice and Procedure as they apply to applicants for vessel common carrier authority (including Rules 17.1 and 21). HCI shall post notice of its request on each vessel used in providing the service authorized by Ordering Paragraph 1, and shall include proof of such posting with the amended pleading required by this ordering paragraph.

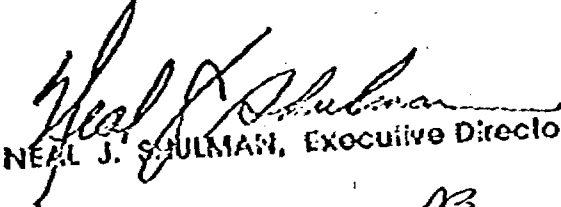
3. Upon the filing of HCI's amended pleading in accordance with Ordering Paragraph 2, Transportation Division shall publish a complete description of HCI's request in the Daily Transportation Calendar in accordance with Rule 15.1. The 30-day period allowed for responses (Rule 8.3) shall commence on the date of such publication.

This order is effective today.

Dated MAY 4 1990, at San Francisco, California.

G. MITCHELL WALK
President
FREDERICK R. DUDA
STANLEY W. HULETT
JOHN B. O'HANIAN
PATRICIA M. ECKERT
Commissioners

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


NEAL J. SCHULMAN, Executive Director

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