

D. 90-08-044

A. 89-10-038

DECISION NO. _____ CASE NO. _____ APP. NO. _____

Decision 90 08 044 AUG 8 1990**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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

O P I N I O N

By Decision (D.) 90-05-041 dated May 4, 1990, we authorized Harbor Carriers, Inc. (HCI), doing business as Red & White Fleet, to continue providing passenger ferry service between the San Francisco Ferry Building, on the one hand, and the Port of Oakland and the Alameda Gateway area (Alameda/Oakland service), on the other hand. HCI's authority to provide this service was first granted by D.89-10-042 and D.89-11-031 following the October 17, 1989 Loma Prieta earthquake. A more detailed history of this proceeding is recited in the earlier decisions and is not repeated here.

D.90-05-041 was issued in response to a petition for modification filed by HCI on April 12, 1990 in which, among other requests, it proposed continuation of Alameda/Oakland service for a period of up to 12 months. We authorized continuation of the service on an interim basis until August 8, 1990, but required HCI to file an amended pleading to bring its request into conformance with the Rules of Practice and Procedure (Rules). We also directed HCI to post notice of its request in its vessels. Finally, we directed Transportation Division to publish a complete description of the request in the Daily Transportation Calendar in accordance with Rule 15.1, and provided that the 30-day period allowed for responses (Rule 8.3) would commence on the date of such publication.

On May 31, 1990, HCI filed an amendment to Application 89-10-038 as ordered by D.90-05-041. HCI requests a further order extending its authority to provide the Alameda/Oakland service beyond August 8, 1990 and for an indefinite period up to March 28, 1991 or for as long as subsidy funds to be provided under an agreement with the City of Alameda (Alameda Agreement) are made available and actually paid to HCI on a timely basis. HCI also seeks authority to terminate the Alameda/Oakland service upon the terms and conditions of the Alameda Agreement and/or failure to receive the subsidies agreed upon and necessary to economically sustain the service. The relief sought in the amendment is virtually identical to that sought in the April 12, 1990 petition for modification.

Applicant states that it posted notice of the request in its vessels in compliance with our order in D.90-05-041. Notice of the amended application appeared in the Daily Transportation Calendar dated June 5, 1990, in substantial compliance with our order in D.90-05-041. No protest has been received, and the 30-day period allowed for protests has expired.

On June 15, 1990 the Division of Ratepayer Advocates (DRA) filed comments in response to the amended application. DRA does not oppose the request and believes that the extension should be granted without hearing. DRA believes that the Commission should require HCI to file with the Transportation Division certain periodic reports which the Alameda Agreement requires to be filed with the Metropolitan Transportation Commission (MTC). The subject reports include daily passenger counts, farebox revenue receipts, and other information required by the MTC Regional Reporting System for Transit Operations. DRA believes that such a requirement will allow it to obtain data on HCI's Bay Area ferry operations in a standardized format. DRA also states that since the reports are submitted to the MTC in any event, no undue burden would be imposed as a result of the requirement.

Discussion

By its amended application HCI has addressed the concerns we raised in D.90-05-041 about notice and other procedural requirements. No protests have been received, and DRA supports the requested extension of authority. We conclude the amended application should be granted with the revisions discussed below.

We note that HCI requests authority to terminate the service if it does not "receive the subsidies agreed upon and necessary to economically sustain the service". We recognize HCI's concern about the uncertain nature of public subsidy funding of ferry service, and both its and the City of Alameda's desire to avoid being locked into service obligations beyond the terms of assured subsidy funds. We, therefore, agree that HCI should be authorized to terminate the service if the agreed upon funds are not actually received. However, we are concerned that the quoted phrase might be interpreted to mean that HCI could terminate the service without further authorization if it unilaterally determined that subsidies received in accordance with the agreement are insufficient to economically sustain the service. By today's order we make no findings on the amount of subsidies that may be necessary to "economically sustain" the service.¹ Accordingly, we will condition HCI's authority to terminate the service solely on failure to receive the subsidies agreed upon in the Alameda Agreement, without reference to whether such subsidies are sufficient to economically sustain the service.

¹ A pro forma statement of revenues and expenses for the Alameda/Oakland service for the duration of the Alameda Agreement is attached to the application. HCI projects ticket sales of \$699,000 and subsidies of \$690,000 for total revenues of \$1,389,000. Total vessel costs of \$1,197,779 and non-vessel costs of \$307,839 are projected, resulting in an operating margin of (\$116,618). Direct administrative costs are projected to be \$227,000, and allocated general and administrative costs are \$61,000, resulting in net income before taxes of (\$404,618).

We are also concerned about possible inconvenience to the public if immediate termination of the service is allowed with inadequate notice. We note that HCI's tariff filing for this service (attached to the amended application as Appendix 5) states that the service is subject to cancellation on two days notice upon failure of the City of Alameda to provide subsidy funds. In our view, five days is the bare minimum reasonable amount of time for notice to the public for termination of a commuter service, and we will make provision for such notice in the order. We will also require HCI to provide notice of termination with the Commission and to post prominent notice on each vessel used in providing the service.

In reviewing the terms of the current authority we note that the Oakland service is authorized between the hours of 0600 and 0100, while the Alameda service is limited to the hours of 0600 to 1000 and 1600 to 2000. This limitation on the Alameda service appears to be inconsistent with HCI's intended operations. The schedule attached to the amended application as Appendix 4 indicates that Alameda/Oakland service is combined, and that operations are intended during midday as well as commute periods. We will therefore provide that Alameda service is authorized during the same hours as the Oakland service.

We will not by this order require HCI to automatically submit reports to the Transportation Division as requested by DRA. We recently denied a DRA request for an order requiring AT&T Communications of California, Inc. to report on cost savings associated with billing and collection expense which would enable DRA to monitor the ratemaking effects of AT&T's billing and collection expense and determine whether cost savings have been reflected in rates (D.90-07-020 dated July 6, 1990). In doing so we observed that under existing statutes governing reporting by utilities (Public Utilities Code §§ 314, 581, and 584), DRA has more than ample authority to request needed information and compel

a utility to provide it. We reiterate our concern about creating an incorrect inference that DRA must obtain a Commission order before requesting (and receiving) information from a utility.

Findings of Fact

1. HCI was authorized by D.90-05-041 to continue providing Alameda/Oakland service on an interim basis.

2. Applicant posted notice of the request in its vessels in compliance with our order in D.90-05-041, and notice of the amended application appeared in the Daily Transportation Calendar dated June 5, 1990.

3. No protest was received within the 30-day period allowed for such filings.

4. DRA believes that the extension should be granted without hearing.

5. HCI has addressed the concerns about notice and other procedural requirements that we raised in D.90-05-041.

6. In our view the public may be unduly inconvenienced if the Alameda/Oakland service is terminated on less than five days' notice.

7. Applicant has the financial ability, facilities, equipment, experience, and personnel to render the proposed service.

Conclusions of Law

1. The amended application should be granted as provided in the following order.

2. HCI should be authorized to terminate the Alameda/Oakland service on not less than five days' notice if the agreed upon subsidy funds are not actually received.

3. This order should be made effective on the date it is signed to enable continuity of the service.

O R D E R

IT IS ORDERED that Decision (D.) 89-10-042, as modified by D.89-11-031 and D.89-05-041, is further modified to provide that the emergency supplemental operating authority granted to Harbor Carriers, Inc. to serve Alameda and Oakland is continued in effect until March 28, 1991 and as more particularly set forth in Appendix A.

This order is effective today.

Dated AUG 8 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 THIS DAY

Neal J. Sullivan
NEAL J. SULLIVAN, Executive Director
PO

APPENDIX A

HARBOR CARRIERS, INC.
SUPPLEMENT TO
CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY
VCC-13
TO OPERATE AS A COMMON CARRIER OF PASSENGERS BY VESSEL
EMERGENCY SUPPLEMENTAL OPERATING AUTHORITY

1. Harbor Carriers, Inc. (HCI) is authorized to provide emergency temporary scheduled and/or unscheduled service between:

- (a) San Francisco Ferry Building vicinity and the Port of Oakland between the hours of 0600 and 0100.
- (b) (Expired)
- (c) San Francisco Ferry Building vicinity and the Alameda Gateway area between the hours of 0600 and 0100.
- (d) (Expired)

2. For the above-described service, HCI is authorized to file and/or maintain on file revised page(s) in its Local Passenger Tariff No. 11, Cal P.U.C. No. 12 at a one-way fare level of \$5.00 (sold on a round-trip basis only), provided that such page(s) shall reflect the inclusion of all operating subsidies and show the net actual fare being charged after subsidy.

3. HCI shall comply with all rules, regulations, and requirements of the United States Coast Guard, including applicable Vessel Traffic System requirements, in the operation of the services authorized above.

4. This authority shall remain in effect until March 28, 1991 unless otherwise ordered by the Commission.

5. HCI is authorized to terminate the above-described service prior to March 28, 1991 upon the terms and conditions of a certain agreement between HCI and the City of Alameda, entered into effective March 26, 1990 and entitled "Agreement for Alameda/Oakland Ferry Services", and/or failure to receive the subsidies agreed upon. HCI shall not terminate the service on less than five days' notice to the Commission and the public. Such notice shall be prominently posted on each vessel used in providing the service.

Issued by California Public Utilities Commission.

Decision 90 08 044, Application 89-10-038.

(END OF APPENDIX A)