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Decision 91-07-049 July 24, 1991

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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Blue and Gold Fleet, a California corporation, to amend its certificate of public convenience and necessity as it relates to providing passenger ferry service between the Port of San Francisco, on the one hand, and the Port of Oakland and the Alameda Gateway Area on the other hand.

ORIGINAL

Application 91-03-053 (Filed May 7, 1991)

OPINION

Blue and Gold Fleet (Blue and Gold or applicant) seeks to modify its certificate of public convenience and necessity to authorize it to operate a ferry service between the San Francisco Ferry Building, the Port of Oakland, and Alameda Gateway. Modification of the applicant's authority will permit Blue and Gold to operate the Alameda/Oakland ferry service which was initiated after the October 17, 1989, Loma Prieta earthquake. Until March 28, 1991, the service was operated by Harbor Carriers, Inc. (HCI), pursuant to authority granted in Decision (D.) 90-08-044 (August 8, 1990).

The ferry service in question has been operating under a subsidy agreement with the City of Alameda (City). See, D.90-05-041, (May 4, 1990), p. 1. The Application states that for the current year the City will contract with Blue and Gold for this operation, and contemplates that HCI's operations will have ended on March 28, the expiration of HCI's current operating authority. Operating authority is therefore required for Blue and Gold to continue ferry operations on this route. The Application is uncontested.

Blue and Gold is a common carrier by vessel, and is currently authorized to transport passengers and their baggage,

including bicycles, in nonscheduled service between any points on the shoreline of San Francisco Bay and its navigable tributaries, and in scheduled service between a berth at or near the San Francisco Ferry Building and Berkeley. It is not presently certificated to operate scheduled service on the Alameda/Oakland route. Nevertheless, applicant is an experienced ferry operator on San Francisco Bay, having operated post-earthquake scheduled service between San Francisco and Berkeley, as well as scheduled service between Alameda Naval Air Station and Hunters Point in San Francisco under contract with the United States Navy.

Blue and Gold proposes to use its three Coast Guard-certified 396-passenger boats to provide the service. Applicant's statement of operations for the fiscal year ending December 30, 1990, shows operating expenses and costs of goods sold totaling \$3,943,935, and revenues of \$4,278,342. Its 1990 net operating income, after adjustments for depreciation and interest income, was \$332,701. The subsidy agreement between applicant and the City of Alameda provides for four subsidy payments of \$181,000 each, payable at three-month intervals, during the one-year term of the agreement.

The Application does not state whether the ferry service will supplant any or all of Blue and Gold's other sources of income, but we presume that the reason for applicant's entering into the contract is to obtain an overall increase in net revenues. The Application also does not state the projected cost of operation, but we presume this issue has been addressed in Blue and Gold's negotiations with the City. Thus it appears that the applicant has the necessary equipment and financial resources to satisfy its anticipated service requirements for the Alameda/Oakland ferry route, and we so infer.

The Application requests that the Commission, in order to preserve service, grant interim authority pending the grant of permanent authority, since the turnover date to Blue and Gold was

March 29, 1991. But when the Application was filed on March 27, there were no unforeseeable circumstances, such as there were after the Loma Prieta earthquake, which would have justified emergency action by the Commission. The deadline has now passed, apparently without incident. Since the service is operated under a contract with a municipality, requires insurance coverage, and specifies fares and other aspects of service, these matters have been addressed through that contractual relationship during the pendency of this proceeding. We therefore grant operating authority nunc pro tunc (i.e., retroactively), effective March 29, 1991. In so doing, we do not endorse this procedure for handling an operating authority application, and we limit its applicability to the instant case.

Blue and Gold's Application was filed two days before the applicant's service was scheduled to begin. This is insufficient advance filing to comport with the Commission's rules and procedures governing the scheduling, calendaring, and preparation of a decision in the normal course in an operating authority case. From our earlier experience with this ferry service we are cognizant of the unusual circumstances under which it was established and continues to operate, but we issue this decision with the admonition that parties must apply for operating authority sufficiently far in advance of any anticipated deadline to permit the Commission to adhere to its procedural timetable.

Authorization for applicant to operate a ferry service between the San Francisco Ferry Building, on one hand, and the Port of Oakland and the Alameda Gateway, on the other, is granted effective as of March 29, 1991. The order is made effective today to prevent interruption of service.

Findings of Fact

1. Blue and Gold is a common carrier by vessel. Under its certificate of public convenience and necessity, Blue and Gold is authorized to transport passengers and their baggage, including

bicycles, in nonscheduled service between any points on the shoreline of San Francisco Bay and its navigable tributaries, and in scheduled service between a berth at or near the San Francisco Ferry Building and Berkeley.

2. Blue and Gold is experienced as a ferry service operator on the San Francisco Bay.

3. Blue and Gold presently has equipment and financial resources sufficient to operate a ferry service between San Francisco, Alameda Gateway, and the Port of Oakland, in accordance with the schedules filed as a part of its application.

4. HCI was authorized to operate, and did in fact operate, the ferry service between the San Francisco Ferry Building, Alameda Gateway, and the Port of Oakland, through and including March 28, 1991. HCI operated this service under the terms of a subsidy agreement between the carrier and the City of Alameda, pursuant to authority granted in D.90-08-044 (August 8, 1990), which expired on March 28, 1991.

5. For the year beginning March 29, 1991, Blue and Gold is obligated to operate the Alameda/Oakland ferry service under a subsidy agreement with the City.

6. Blue and Gold does not currently have operating authority to operate this ferry service, and authority must be granted to the applicant nunc pro tunc, effective March 29, 1991, to provide for continuity of authorized ferry operations.

7. Notice of this application was published in the Commission's Daily Calendar on March 28, 1991, and in the Daily Transportation Calendar on March 29, 1991.

Conclusions of Law

1. Blue and Gold's certificate of public convenience and necessity should be amended to authorize it to operate the ferry service which is the subject of this application.

2. The authority granted in the order herein should be granted nunc pro tunc from March 29, 1991, to prevent interruption of the service.

ORDER

IT IS ORDERED that:

1. The certificate of public convenience and necessity granted to Blue and Gold Fleet (applicant), a corporation, authorizing it to operate as a common carrier by vessel, as defined in PU code §§ 211(b) and 238, between the points and over the routes set forth in Appendix A, is amended by Second Revised Page 1 which cancels First Revised Page 1, ~~NUNC PRO TUNC~~ from March 29, 1991, to transport persons and their baggage.

2. Applicant shall:

- a. File with the Transportation Division written acceptance of this amendment within 30 days after this order is effective.
- b. Establish the authorized service and file tariffs and timetables within 120 days after this order is effective, if it has not already done so.
- c. Accept for transportation all tickets for the Alameda/Oakland ferry service issued by HCI prior to March 29, 1991, for not less than six months from that date, and post notice in a prominent location in each vessel used in providing the service, at least thirty days in advance, when such tickets will no longer be honored.
- d. State in its tariffs and timetables when service will start or has started.
- e. Comply with General Orders Series 87, 104, 111, and 117.
- f. Maintain accounting records in conformity with the Uniform System of Accounts.
- g. Remit to the Commission the Transportation Reimbursement Fee required by PU Code § 403 when notified by mail to do so.

3. Applicant shall comply with all the rules, regulations, and requirements of the United States Coast Guard, including applicable Vessel Traffic System requirements, in the operation of the services authorized in paragraph 1.

This order is made effective today to prevent any interruption of service.

Dated July 24, 1991, at San Francisco, California.

PATRICIA M. ECKERT
President
G. MITCHELL WILK
JOHN B. OHANIAN
DANIEL Wm. FESSLER
NORMAN D. SHUMWAY
Commissioners

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


NEAL J. SHULMAN, Executive Director

Appendix A
(D.91925)

BLUE & GOLD FLEET
(a California corporation)

Second Revised Page 1
Cancels
First Revised Page 1

Blue & Gold Fleet, a corporation, by this certificate of public convenience and necessity, is authorized to conduct common carriage by vessels, as prescribed below, for the transportation of passengers and their baggage including bicycles.

I. Nonscheduled Service

Between any points on the shoreline of San Francisco Bay and its navigable tributaries.

Restrictions, Limitations, and Specifications

Transportation of passengers and baggage shall be conducted as an on-call service, on 48 hours notice, for 100 or more persons.

II. Scheduled Service

A. Between San Francisco Ferry Building vicinity and Berkeley.

Restrictions, Limitations, and Specifications

Carrier shall provide one scheduled trip in each direction every weekday. This service will operate during peak commuter hours in the direction of the peak commuter flow.

*B. Between San Francisco Ferry Building vicinity, on the one hand, and Port of Oakland and Alameda Gateway area, on the other hand.

III. Emergency Service

At the request of the Golden Gate Bridge, Highway and Transportation District (District), carrier may provide temporary scheduled and/or non-scheduled service between San Francisco and points in Marin County during an emergency affecting operation of the Golden Gate Bridge (Bridge) or of the District's ferry service. "Emergency" shall mean substantial traffic impairment on the Bridge or its approachways, or periods when vessels regularly used by the District for ferry service are inoperable. In conducting such emergency service, carrier may use its own docking facilities in San Francisco and any or all of the District's ferry docking facilities in San Francisco and Marin County.

Issued by California Public Utilities Commission.

*Added by Decision 91-07-049, Application 91-03-053.