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Decision 92-06-058 June 17, 1992

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
Harbor Bay Maritime, Inc., a )  
California Corporation, for a )  
Certificate of Public Convenience )  
and Necessity to Operate as a Vessel )  
Common Carrier of Passengers on )  
San Francisco Bay Between Alameda )  
and San Francisco. )

**ORIGINAL**

Application 91-03-058  
(Filed March 27, 1991)

**ORDER MODIFYING DECISION (D.) 92-03-040**  
**AND DENYING REHEARING**

An application for rehearing of D.92-03-040 has been filed by the Alameda/Oakland Committee for Aquatic Transit (Committee). In D.92-03-040 the Commission granted Harbor Bay Maritime, Inc. (Harbor Bay) a Certificate of Public Convenience and Necessity (CPCN) to operate scheduled and unscheduled ferry services between its terminal facility on Bay Farm Island in Alameda and its dock at Ferry Plaza in San Francisco, as requested in Application 91-03-058.

We have carefully considered all of the allegations in the application and are of the opinion that rehearing should be denied. The decision should, however, be modified to add a conclusion of law and ordering paragraph as provided below, relating to the issue of mootness.

The allegations set forth by the Committee in its application for rehearing are largely repetitive of its arguments asserted during the proceedings and in its closing brief. Inasmuch as we have previously discussed these arguments in detail in D.92-03-040, we summarized them only briefly in this order.

The first argument set forth by the Committee in its application relates to a Motion for a Cease and Desist Order filed by the Blue and Gold Fleet during the proceedings.

This motion requested that the Commission order Harbor Bay to cease and desist from operating complimentary promotional tours which it had started during the summer of 1991. Harbor Bay filed a response to the motion, contending, inter alia, that the operation fell within the so-called "loop charter exemption" of Public Utilities Code Section 1007. In D.92-03-040 the Commission concluded that the motion was moot, in light of the order granting to Harbor Bay an unrestricted certificate to operate the scheduled and unscheduled service.

The Committee now asserts that the decision is in error by failing to rule on the "loop charter" defense. This argument is entirely groundless. Blue and Gold never sought a declaratory opinion as to the definition of "loop charter". The only relief sought in the motion was an order to prohibit Harbor Bay from operating the promotional tours without authority. Once the Commission granted authority to Harbor Bay to operate the service, the motion became moot. The question as to the lawfulness of the demonstration service was no longer a justifiable issue and no other issues remained to be resolved. We now reaffirm the conclusion that the motion was moot and add to the original decision both a conclusion of law and ordering paragraph addressing this point.

The next argument asserted by the Committee concerns the issue of competition, which we have already discussed at length in D.92-03-040. The application for rehearing attempts to rehash policy arguments which have already been examined. The Committee also attempts to introduce new evidence on this issue in violation of our Rules of Practice and Procedure (See Rules 77 and 84). Whether prospective competition from a new carrier is consistent with the public interest is an issue of fact which the Commission resolved in determining that a CPCN should be granted. Since this finding is supported by substantial evidence, as summarized in detail in D.92-03-040, it is now final.

No other argument raised on rehearing warrants specific discussion.

Therefore, IT IS HEREBY ORDERED:

1. Conclusion of Law No. 4 is added to the decision to state:

"The Motion for a Cease and Desist Order filed by Blue and Gold is moot, in light of the CPCN granted to Harbor Bay in these proceedings."

2. Ordering Paragraph No. 3 is added to the decision to state:

"The Motion for a Cease and Desist Order filed by Blue and Gold is hereby denied."

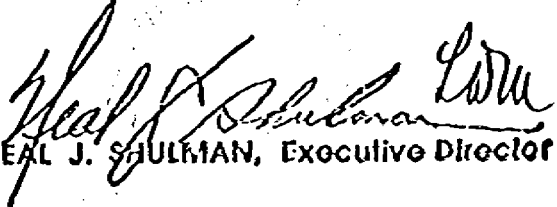
3. Rehearing of D.92-03-040, as modified herein, is denied.

This order is effective today.

Dated June 17, 1992 at San Francisco, CA.

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

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

  
NEAL J. SHULMAN, Executive Director