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Decision _____

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ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

HARBOR CARRIERS, INC.,)
Complainant,)
vs)
GOLDEN GATE BRIDGE, HIGHWAY AND)
TRANSPORTATION DISTRICT and)
BLUE AND GOLD FLEET,)
Defendants.)

Case 82-01-02
(Filed January 13, 1982;
amended February 1, 1982)

Edward Hegarty, Attorney at Law, for complainant.
Duane Garrett, Attorney at Law, for Golden Gate
Bridge, Highway, and Transportation District,
and Jerry Spolter and Thomas Mannion, Attorneys
at Law, for Blue & Gold Fleet, defendants.
Leland Jordan, City Attorney, for City of
Sausalito, and Allan Brotsky, for Inlandboatmen's
Union of the Pacific, et al., intervenors.
Philip Scott Weismehl, Attorney at Law, and
Richard Brozosky, for the Commission staff.

SECOND INTERIM OPINION

Background

This complaint concerns various aspects of passenger ferry service between San Francisco and Sausalito. The purpose of this decision is to examine whether a cease and desist order against defendants Golden Gate Bridge, Highway, and Transportation District (District) and Blue & Gold Fleet (Blue & Gold) should be made permanent or vacated.

Complainant Harbor Carriers, Inc. (Harbor) originally commenced this proceeding against the District only, in order for this Commission to determine proper docking fees at the District's terminal in Sausalito under Public Utilities (PU) Code § 562. Hearings on this aspect of the case are completed and this issue will be covered in a later decision.

Then, Harbor learned that Blue & Gold intended to begin ferry service for District under a contract between Blue & Gold and District. On February 1, 1982, Harbor filed a motion for a cease and desist order, and, later the same day, filed an amended complaint naming Blue & Gold as a defendant.

We held a hearing on short notice (PU Code §§ 701 and 1701, Rule of Practice and Procedure 52) on February 3, 1982 and heard the matter on declarations and exhibits, and argument of counsel. (Complainant's declarations were submitted with the motion. Counsel for defendants were given notice by telephone on February 1 and were invited to file declarations and exhibits at the hearing.)

We reviewed the facts in complainant's declaration and exhibits. We also took notice of certain matters of record leading up to this proceeding which are important enough to the understanding of this proceeding that we will repeat them here.

"Harbor, common carrier by vessel as defined in PU Code § 211(b), transports passengers between points on San Francisco and San Pablo Bays under prescriptive operative rights and certificates of public convenience and necessity granted by this Commission. Its authority may be found in Decision (D.) 29778 dated May 24, 1937 and D.86188 dated August 31, 1978. (The latter decision is part of Application (A.) 49712, filed October 5, 1967.)

"D.86188 includes authority for Harbor to transport passengers by vessel between San Francisco and Sausalito. This service has never commenced on a regular basis, and the only times during which Harbor has maintained any service was for brief emergency periods (e.g. strikes which shut down the District's ferry service).

"The start of regular service has been forestalled by Harbor's inability to obtain docking space in Sausalito. The history of this problem is fully covered in the record in A.49712 (see findings in D.79143 and various subsequent decisions which from time to time extended Harbor's deadline to commence service) and in A.52409 (see the summary of the problem in D.93149 issued June 2, 1981). We take official notice of the record in those proceedings. In D.93149 we found that under

conditions imposed by Sausalito the only available landing facility is that operated by District, and that District offered joint use of the facility at \$600,000 per year while Harbor countered with an offer of \$12,000 per year. We stated:

'We have no means to get the City of Sausalito and District to enter into good faith negotiations for a realistic agreement for the use of a landing facility at a reasonable cost to Harbor Carriers. Harbor Carriers' only effective recourse may be through civil court action or to the state legislature.' (Slip opinion, p. 10.)

"Harbor was granted an extension to June 1, 1984 in which to commence service.

"After that decision (and as counsel for Harbor forthrightly stated) Harbor lobbied for legislation to give this Commission special jurisdiction over District, so that matters could be brought to a conclusion. The result was PU Code § 562, effective January 1, 1982 (see Appendix A).

"This complaint was filed subsequent to the effective date of PU Code § 562." (D.82-02-066, pp. 3-4, footnote omitted.)

On February 4, 1982, we issued Decision (D.) 82-02-066, which ordered defendants to cease providing the service or holding it out to the public.

On February 11, Blue & Gold filed a petition for rehearing, requesting immediate dissolution of the cease and desist order.¹ In D.82-03-044 (March 2) we stated:

¹ Blue & Gold also petitioned the California Supreme Court for mandate or review of the decision. Relief was denied without opinion as premature. (SF No. 24399; March 10, 1982.)

"A petition for rehearing of Decision 82-02-066 has been filed by Blue & Gold Fleet. We have carefully considered the contents of the petition. We are of the opinion that good cause for dissolving the cease and desist order in D.82-02-066 has not been shown and the petition for rehearing is denied to the extent that it requests this relief. However, it is also our opinion that D.82-02-066 should be clarified to indicate that the cease and desist order is to be regarded as temporary, pending a further Commission order following an evidentiary hearing on the issue of whether Blue & Gold Fleet's operation carrying passengers by vessel between Sausalito and San Francisco should be the subject of a permanent cease and desist order, or whether the cease and desist order in D.82-02-066 should be vacated. The petition for rehearing is granted to the extent that it requests such an evidentiary hearing. The temporary cease and desist order shall remain in effect until further Commission order."

The evidentiary hearings on the subject were held before Administrative Law Judge Meaney on March 15 and 16. Concurrent briefs were filed on March 23.

Facts

At the hearing, the parties stipulated to certain facts (Tr. 176-179):

1. Blue & Gold is a common carrier by vessel as defined in PU Code § 211(b), engaged in the transportation of passengers under a certificate of public convenience and necessity granted by this Commission in D.91925 dated June 17, 1980.
2. For the purposes of this hearing Blue & Gold is a public utility under PU Code §§ 216 and 562.

3. District is a public agency and a political subdivision of the State of California organized and existing under Streets and Highways (S & H) Code §§ 27000 and following.
4. During September 1981, District issued an invitation for bids to operate a public ferry service between Sausalito and San Francisco.
5. Pursuant to that invitation, Blue and Gold submitted a bid.
6. On January 29, 1982, District accepted Blue & Gold's bid. A true copy of the Agreement executed by District and Blue & Gold (pursuant to the bid) is attached as Exhibit B to Blue & Gold's answer to the complaint herein. [Note: See discussion below.]
7. Blue & Gold performed pursuant to the Agreement commencing February 1, 1982 through February 4, 1982. In performing the service, Blue & Gold furnished the necessary vessel, crew, and other personnel as well as all fuel, oil, materials, supplies, maintenance, and repairs, all as provided in the Agreement.
8. Pursuant to the Agreement, the terminus in Sausalito was District's landing facility in downtown Sausalito and the terminus in San Francisco was Blue & Gold's landing facility at Pier 39.
9. The vessel operated by Blue & Gold is named "Old Blue" and it has a burden of over five tons net register.
10. District provided Blue & Gold with one-way tickets imprinted with the words "Golden Gate Transit" which were sold by Blue & Gold personnel to members of the public desiring to use the service. These tickets were then collected by Blue & Gold from passengers boarding its vessel at Sausalito and Pier 39. Revenues collected by Blue & Gold from the sale of tickets were subsequently turned over to District.

As they appear in the transcript, Stipulations 4 and 6 contain references to copies of documents attached to the declaration of Edward Hegarty and submitted to the Commission in connection with the February 3 hearing. After the stipulation, the following were received into evidence:

Exhibit 17: District's notice inviting sealed bids.

Exhibit 18: "Form of proposal" (prepared by District and circulated with Exhibit 17).

Exhibit 19: "Questionnaire" (also prepared by District in connection with Exhibit 17).

Exhibit 20: Photocopy of executed Agreement between District and Blue & Gold, dated January 29, 1982.

One of the tickets referred to in Stipulation 10 is in evidence as Exhibit 13.

The "over five tons net register" language included in Stipulation 9 clarifies that the vessel involved is as defined in PU Code § 238.

Certain other uncontroverted facts are worthy of note. Under the Agreement, District determined the schedule, and the service actually operated was scheduled. (See Ex. 16.) Tickets were sold at Blue & Gold's ticket booths at Sausalito and Pier 39 in San Francisco. One-way weekday fare was \$2 (adult) or \$1 (seniors, handicapped, and children). District also sold some tickets for the service (Tr. 238, 259).

During the four days of operation Blue & Gold personnel answered telephone inquiries from the public about the service. Eight one-way crossings were made each day, and the daily totals for passengers transported were:

February 1	150 passengers
" 2	105 "
" 3	134 "
" 4	74 "

Under the Agreement, District paid Blue & Gold \$2,958 per day.²

Defendant's Presentation

Blue & Gold does not contend that it needs no certificate, but that its existing certificate covers the service. This argument runs: (1) the certificate contains nonscheduled authority for San Francisco Bay; (2) this authority is charter authority under maritime terminology; (3) the Agreement is a charter, enabling Blue & Gold to perform the service lawfully under its certificate.

Blue & Gold's present certificate was issued on June 17, 1980 in D.91925 (A.59193). Because of extensive argument on what service may be performed under it, we will include its entire text here.

"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-hour notice, for 100 or more persons.

² Harbor's brief ascribes certain motives to District's acts. We have taken notice of certain historical facts in this case (see quotation from D.82-02-066, above) but we did not then, nor do we now, accept Harbor's invitation to consider these alleged motives in reaching any determination.

"II. Scheduled Service

"Between a berth at or near the Ferry Building in downtown San Francisco, on the one hand, and Berkeley, on the other hand.

"Restrictions, Limitations, and Specifications

Blue & Gold Fleet 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."

In D.82-02-066 we found that this certificate did not cover the service performed for District. Blue & Gold challenges that determination because of the language in the decision issuing the certificate and on the basis of testimony at the hearing in this proceeding.

D.91925 includes testimony from customers, or potential customers, concerning problems chartering boats for group activities. Harbor was a protestant to that application, and raised certain issues regarding prescriptive rights, but did not contest that the authority applied for was charter in character.

In the present proceeding, Blue & Gold introduced the testimony of an attorney who is an admiralty specialist who testified that the Agreement was charter in character and of the "nondemise" variety - the owner (Blue & Gold) retains management of the vessel while the vessel is under control or direction of the charterer (District).

From this analysis Blue & Gold argues that the Agreement constitutes the establishment of chartered service as to Blue & Gold even though it is scheduled service for District, and even though, for example, District's "Notice Inviting Sealed Bids" (Ex. 17) contains a proposed schedule (quoted previously), because the Notice Inviting Sealed Bids and the Agreement both stipulate that the actual service is District's.

Defendants also point out that while Blue & Gold sells the tickets at its booths, the tickets are District's; District establishes the fares, all fares accrue to District on a daily basis, and Blue & Gold is paid on a per-day basis for each day of operation, not on a per-passenger basis.

Finally, based on the preceding line of argument, defendants maintain that the service is lawful under PU Code § 562(c).³ Blue & Gold's brief, pp. 9-11, states:

"An analysis of Pub. Util. Code § 562(c), in light of the testimony and documentary evidence now before the Commission, compels the conclusion that subparagraph (c) does not bar the implementation of the contracted service.

" 1.) '...provides passenger-ferry...'

"Blue & Gold, a regulated public utility with respect to its role in the agreement, is not, as the 'owner' in this charter arrangement, providing any 'passenger-ferry' service to the public or to the Bridge District. It is clear from the testimony that the Bridge District, as charterer, is 'operating' the ferry service for which the Blue & Gold vessel is chartered. [Footnote omitted.]

" 2.) '...or other transportation service...'

"Because Blue & Gold is simply chartering a vessel with crew to the Bridge District under the agreement, it would appear to be a fair construction of the foregoing phrase that such an agreement would be encompassed within it and, therefore, subject to the requirement of a certificate for such 'other transportation service.'

³ "The commission shall require that any public utility which provides passenger-ferry or other transportation service for the [Golden Gate Bridge, etc.] district first obtain a certificate of public convenience and necessity [from this Commission] authorizing such operations." The history of PU Code § 562, effective January 1, 1982, is discussed in D.82-02-066, and a copy of the entire section is appended to that decision.

"3.) '...first obtain a certificate of public convenience and necessity...'

"Blue & Gold does in fact hold a certificate from this Commission for nonscheduled service between San Francisco and Sausalito. If Blue & Gold were operating the ferry service rather than the Bridge District as charterer, the existing certificate would not be sufficient; however, Blue & Gold does not collect individual fares, rather it is paid a fixed daily charter hire and conforms to schedules and itineraries set by the Bridge District as the ferry service operator.

"4.) '...authorizing such operations.'

"This phrase modifies the type of certificate required in order to comply with the requirements of the section. Here again, the 'operations' being conducted by Blue & Gold are charters encompassed within 'other transportation service' and pursuant to the authority previously granted by the Commission."

Regarding the 48-hour advance notice provision in Blue & Gold's certificate, and the 100-passenger limitation, defendants argue that these limitations are for the protection of the holder of the authority, but that so long as Blue & Gold charges a per-boat or a daily rate and not a per-passenger fare, it may waive these limitations. Therefore, so the argument runs, Blue & Gold may contract with District and waive those limitations so long as it does not charge on a per-passenger basis or accept revenues directly from the general public.⁴

⁴ In issuing the certificate in D.91925, the Commission did not discuss its intention in this regard. In the field of motor vehicle charter-party carriers we have assumed that the limitations are for protection of the certificate or permit holder (and to prevent per capita fares from being charged) but we have apparently never decided the question regarding vessels. For purposes of this decision we assume Blue & Gold's nonscheduled authority contains these limitations to prevent unreasonable time demands and to prevent Blue & Gold from charging per-passenger fares. Blue & Gold may apply separately for modification or clarification of its certificate, if it wishes a final determination of this question.

Complainant's Presentation

Harbor, supported by intervenor City of Sausalito, argues (1) PU Code § 562 requires Blue & Gold to have a certificate for the service; (2) assuming the arrangement between District and Blue & Gold to be charter, this is immaterial; and (3) other constitutional and statutory provisions require a certificate even in § 562's absence.

Harbor first maintains that the plain language of § 562(c) (footnote 3) covers the service whether it is charter or not because it is either "passenger-ferry" or "other transportation service". If it is the latter, a specific certificate and not general charter authority for all of San Francisco Bay suffices.

Regarding defendants' charter argument, Harbor maintains that, assuming that the Agreement creates a charter between the parties, the relevant PU Code provisions (or constitutional provisions concerning common carriers, etc.) control, not those definitions established by the parties to the Agreement for their own contractual purposes. The only use of the word "charter" in the PU Code is in connection with motor vehicle charter-party carriers (§§ 5351-5419); otherwise, "charter party" is defined as follows in Civil Code § 1959:⁵

"The contract by which a ship is let is termed a charter party. By it the owner may either let the capacity or burden of the ship, continuing the employment of the owner's master, crew, and equipments, or may surrender the entire ship to the charterer, who then provides them himself."

⁵ There appear to be no relevant cases construing or applying this section, though it was enacted in 1872. It is part of Division Third, Part 4 ("Obligations Arising From Particular Transactions"), Title 5 ("Hiring").

Harbor argues that the section's position in the Civil Code's statutory framework plainly shows that its purpose is defining and regulating obligations between parties to a charter, and not between those parties, on the one hand, and the public, on the other (at least as far as public utility law is concerned).

Finally, complainant analyzes other sections of the PU Code, and certain constitutional provisions, as follows (brief, pp. 21-25):

"Section 211(b) of the Public Utilities Code defines 'common carrier', as pertinent, as:

'Every corporation or person, owning, controlling, operating, or managing any vessel engaged in the transportation of persons or property for compensation between points upon the inland waters of this state or upon the high seas between points within this state...'

"'Vessel' is defined at § 238(a) of the Public utilities Code as including

'...every species of watercraft, by whatsoever power operated, which is owned, controlled, operated, or managed for public use in the transportation of persons or property...'

"The service here in issue was, contrary to Blue & Gold's allegations, offered for public use. This is true regardless of whether the Commission finds Blue & Gold provided passenger-ferry service exclusively for [District] or for the public. As was stipulated herein, [District] is a "public agency and a political subdivision of the State of California" (TR 177). As such, it is included in the definition at § 207 of the Public Utilities Code which provides:

"'Public or any portion thereof' means the public generally, or any limited portion of the public, including a person, private corporation, municipality, or other political subdivision of the State, for which the service is performed or to which the commodity is delivered.' (emphasis added)

"To the extent Blue & Gold provided service for [District] pursuant to its within agreement (Exhibit 20), it, in fact, provided service for the public. This conclusion is further confirmed by § 216(c) of the Public Utilities Code which provides:

'When any person or corporation performs any service or delivers any service or delivers any commodity to any person, private corporation, municipality or other political subdivision of the state, which in turn either directly or indirectly, mediately or immediately, performs such service or delivers such commodity to or for the public or some portion thereof, such person or corporation is a public utility subject to the jurisdiction, control, and regulation of the commission and the provisions of this part.' (emphasis added)

"The effect of these sections is to preclude evasion of this Commission's regulation through the device of allowing other state agencies or subdivisions to privately contract for service which would otherwise be regulated and then, in effect, resell that service to the public. The legislature rather clearly meant to give this Commission sole regulatory power among state agencies over the licensing of public utilities.

". . . In fact, the policy of preventing other state agencies from usurping this Commission's regulatory jurisdiction is so important that it has been incorporated into the Constitution of the State of California, Article XII, § 8, which provides, as pertinent:

'A city, county, or other public body may not regulate matters over which the Legislature grants regulatory power to the Commission...'

" . . . In addition to being offered to the public within the meaning of § 238(a) of the Public Utilities Code, the subject service was also 'owned, controlled, operated or managed' by Blue & Gold within the meaning of that section and § 211. The full extent of Blue & Gold's control and operation of that service is manifest from the facts set forth at pages 6 through 10 supra and in its agreement with [District] (Exhibit 20), which labels Blue & Gold as the 'operator' of the service and established its many obligations, which included providing the vessel, crew and other provisions, supplies, repairs, and insurance and dealing with the public in providing information about the service and selling and collecting tickets. [District's] obligations, on the other hand, were limited to determining schedules and fares, printing tickets and schedules, advertising and promotion of that service, and making contractual payments to Blue & Gold.

"To call [District] the 'operator' of the subject under these circumstances is to fabricate a myth. Blue & Gold clearly operated the service - it physically provided the service and was the sole entity to deal with the public in connection with the service. Its responsibilities and holding out were those of a common carrier, and, as a result, there is nothing unusual about requiring it to have a certificate commensurate in scope with its holding out.

"This certification requirement is contained in § 1007 of the Public Utilities Code which provides, as pertinent, that:

'No corporation or person shall begin to operate or cause to be operated any vessel for the transportation of persons or property, for compensation, between points in this state, without first having obtained from the commission a certificate declaring that public convenience and necessity require such operation...' (emphasis added)

"Clearly, Blue & Gold operated or has caused to be operated a vessel for transportation of persons for compensation between points in California within the meaning of § 1007. As such, it was required to obtain a certificate authorizing 'such operation'. The language of § 1007 is sufficiently broad to encompass transportation by vessel provided under contract with a public agency. The section does not make the artificial distinctions made by Blue & Gold as between the 'operator' and 'provider' of service (TR 135). Under its agreement with [District], Blue & Gold must be found, at minimum, to have caused to be operated a scheduled passenger ferry service."

Staff's Presentation

The staff observes that the issue is clouded by the Commission's prior decisions which in the staff's opinion use "on call" and "charter" differently. In one decision we used the term "charter service" to cover certain types of proposed ferry service. (Harbor Carriers, Inc . (1971) 74 CPUC 160.) Also, in Harbor Carriers, Inc. v California Inland Pilots Assn. (1971) 72 CPUC 518, 523 we stated that "charter" had several meanings, the common meaning being that exclusive use of the vessel is granted to the charterer, while at other times the word covered instances in which the responsibility of the operation of the vessel is transferred to the charterer. The staff (as the other parties) feels that the key question is the extent of Blue & Gold's certificated authority.

The staff reviewed other (unreported) CPUC cases in which vessel authority has been issued. From these precedents staff concludes that Blue & Gold is performing charter service for District, with District having exclusive use of Blue & Gold's vessel during contract periods although the tickets are sold to the public at large for the transportation.

Having reviewed Blue & Gold's certificate, the staff believes it is difficult to determine conclusively what the Commission intended it to cover. While the Commission has defined "on call" and "charter" in certain cases, no specific definitions were made part of Blue & Gold's certificate. The staff's analysis, in effect, treats "on call" authority as separate and distinct from "charter" authority and concludes:

"If on-call authority was all that was intended then [Blue & Gold] may have the requisite authority to undertake the service for the District. If on-call authority was all that was intended and then the definition used in the certificate cited in the certificates above is applicable, then [Blue & Gold] does not have the requisite authority to enter into a charter agreement with the District."

The staff then analyzed the 100-passenger limitation and the 48-hour provision and concludes that these restrictions were to protect the carrier.

Finally, the staff analyzed PU Code § 562(c) and based on Harbor Carriers, Inc. (1972) 74 CPUC 160 (discussed above) concludes:

- "1. The term 'passenger ferry' refers to the relation of the vessel to the passengers rather than the vessel operator to the passengers;
- "2. The transportation is the District's transportation, i.e., 'transportation service for the District';
- "3. The public utility used for such purpose must have a certificate authorizing it to provide transportation service for the District;
- "4. Carriers with certificates authorizing them to perform charter operations within the geographical boundaries of the District should be considered to possess the requisite certificate to

satisfy 562(c) so long as there are no other conflicts between the terms of their certificates and the service the District wished to have provided." (Brief pp. 20-21.)

Then, however, the Legal Division and the Transportation Division part company. The brief states (p. 21):

"It is the position of the Passenger Operations Branch that the service provided by [Blue & Gold] to the District pursuant to Exhibit 20 is a scheduled service, in fact, regardless of which of the contracting parties controls the specifics of the schedule. Pursuant to the terms of the Exhibit 20 agreement, this service could be provided for a period of up to ten and one half years. (Ex. 20, §§ 4.01, 4.02.)

"It is the position of the Passenger Operations Branch that a long term agreement of this nature, in which [Blue & Gold] provides regular service on a scheduled basis should not be considered as intended within the scope of the [Blue & Gold] nonscheduled on-call service authorized in the certificate.

"The Legal Division does not concur. The agreement appears to be a valid charter. The existence of a schedule [and] length of time potentially involved should not be the determining factor."

Discussion

Summarizing our opinion: (1) the agreement is "charter" between the parties as that term is used in maritime law; (2) regardless of that, the service is "passenger-ferry" under PU Code § 562(c); (3) Blue & Gold, not District, "operates" the service, and also "provides" the service for District; (4) Blue & Gold's service violates PU Code § 562(c) and it may be ordered to cease on that basis; and (5) both Blue & Gold and District may be ordered to cease and desist from providing the service on the basis of other provisions of law. ✓

While the Agreement creates a charter between the defendants, the Agreement cannot be taken as defining the service instituted under it as far as the public is concerned, or under law. Conclusion 4 of D.82-01-02 states:

"The service is not 'charter' as that term is employed in maritime law, and even if it were, state law provisions defining common carrier service would control. (Harbor Carriers, Inc. v Cal. Inland Pilots Assn. et.al., (1971) 72 CPUC 518.)"

To the extent that Conclusion 4 suggests that no charter was created between the parties, it is incorrect. But the purpose of Conclusion 4 was to hold that the service under law and as held out to the public and operated was not charter. That determination is affirmed.

We disagree with the staff that we can read into law separate "on call" and "charter" categories and then examine Blue & Gold's certificate to determine into which category we intended to place Blue & Gold. As Harbor has pointed out, "charter" is used in the PU Code only in connection with motor vehicle charter-party carriers (§§ 5351 - 5149), and otherwise "charter party" is defined in Civil Code § 1959 to define relationships between the contracting parties,⁶ not for explaining the legal relationship between the contracting parties, on the one hand, and the public, on the other hand. ✓

For regulatory purposes, PU Code § 211(b) includes in the definition of "common carrier":

- "(b) Every corporation or person, owning, controlling, operating, or managing any vessel engaged in the transportation of persons or property for compensation between points upon the inland waters of this state or upon the high seas between points within this state, except as provided in Section 212.

⁶ This code section is quoted above.

'Inland waters' as used in this section includes all navigable waters within this state other than the high seas."

The same "between points" language appears in § 1007, which requires a certificate from us for intrastate vessel operation "between points". PU Code §§ 4660 et seq. require adequate liability insurance for "for-hire" vessels, defined by § 4661 as "any vessel, by whatsoever power operated, carrying passengers for hire..." (and enumerating certain exceptions not relevant here).

It bears emphasis that Blue & Gold's certificate, quoted previously, makes no use of the word "charter". It allows "scheduled service" between Berkeley and San Francisco, and "nonscheduled service" for San Francisco Bay and its tributaries (subject to certain restrictions).

The question might arise that if the only specific mention of need for a certificate is in PU Code § 1007, why Blue & Gold sought a certificate for its unscheduled operations, and the certificate which it was issued covered both scheduled and unscheduled service. The code provisions are not the same as for passenger stages. Only service "between points" is required to make a certificate for vessel operations necessary; there is no regular-route or regular-service requirement. Thus Blue & Gold's intention to conduct its nonscheduled service among specific landing points on San Francisco Bay (as is apparent from the record in A.59193) made application for a certificate covering its nonscheduled service necessary.

Although D.91925 in A.59193 did use the phrase "on call charter vessel passenger service" to describe Blue & Gold's application, this language when read in light of the record in A.59193 must be taken as descriptive of what service Blue & Gold intended to offer to the public (i.e. how it would contract with groups, etc.) and not as a statement of the legal authority sought. Indeed, the application itself (while it uses the above-quoted phrase in the caption), states in the body text relative to "on call service":

"Applicant proposes to operate an oncall [sic] service available to groups [of] one hundred or more persons, on forty-eight-hour prior notice, between various existing docking facilities on San Francisco Bay and its navigable tributaries, including any such points on the shorelines of the twelve counties adjacent to San Francisco Bay and its tributaries.

"The service would generally operate directly from these points to the Pier 39 docking facilities currently in use, although deviations for sightseeing purposes would be likely from time to time pursuant to the request of the chartering group."

In sum, while we issued authority of the nonscheduled variety which Blue & Gold could employ to solicit charter business from groups, we did not, from any statutory standpoint, issue "charter authority", because neither the PU Code nor relevant constitutional provisions (Cal. Const. Art. XII) provide for such a category for vessels. The word "charter" is not used in the Findings, Conclusions, or Order in D.91925. That decision shows that in response to Blue & Gold's request for "on-call" authority, it was given a certificate allowing it to operate certain "nonscheduled" service and that, at least on the record in A.91925, the Commission used those two terms interchangeably.

This analysis is consistent with Harbor Carriers, Inc. v Cal. Inland Pilots Assn. (1971) 72 CPUC 518, 526, in which we stated that so long as a passenger vessel operation is between points on the inland waters of California for compensation, a certificate is required, and there is no exemption for charter boats, nor can an exemption be created.

The staff also cites Harbor Carriers, Inc. v Cal. Inland Pilots Association, 72 CPUC 518 and Harbor Carriers, Inc. (1972) 74 CPUC 160. This was a strongly protested application for Harbor to operate "on call" between Dana Point, on the one hand, and Port Heuneme and Santa Catalina Island, on the other hand. The application was denied. The opinion distinguished "ferry service" from "excursion" service which stops at a regular point, to discharge passengers, by relying on the testimony of public witnesses and the applicant's own statement, and citing no authority for such distinction. We find this discussion not helpful here and do not consider it to be an authoritative disposition of questions relating to the term "ferry service".

After briefs were received, supplemental briefs were requested on whether we had ever allowed charter authority to be used under contract to establish regular service. We see nothing in the authorities mentioned by Blue & Gold which would change the result. Passenger bus cases cited (except for In Re Crary (1966) 65 CPUC 545, Greyhound Lines, Inc. v Santa Cruz Travel Club (1966) 65 CPUC 559, and Lavelle v Japan Air Lines, D.92455, C.10732, December 2, 1980) are applications in which we granted certificates to persons or companies not owning bus equipment so they could use the certificates to charter buses and run regular routes. Crary and

Greyhound are equally inapposite. In Lavelle we specifically held that an uncertified company could not rely on the motor vehicle charter-party authority of bus companies it hired to run regular routes. Blue & Gold incorrectly cites the practice of doing so, discussed in Lavelle, as "previously approved". That decision's discussion actually demonstrates that it was previously ignored. We agree with Harbor's analysis of CPUC cases on this subject.

In any event, we must add to the preceding discussion an analysis of the service under the recently enacted PU Code § 562(c). This section, unlike the other previously discussed, uses the term "passenger-ferry".

What sort of service was Blue & Gold's under this section? Clearly, it was passenger-ferry service. PU Code § 562(c) does not define the term, nor have the parties offered any special legislative definition for our consideration. The plain language definition therefore controls. (Cal Jur 3d, Statutes, § 123.) Funk & Wagnalls Standard College Dictionary, 1972 edition, defines "ferry" as "A boat or other craft used in conveying people, cars, or merchandise across a river or other narrow extent of water; also, the point of embarkation on either shore," and, "Conveyance across a narrow extent of water by or as by boat or other craft; also, the legal right entitling an individual or group to engage in such conveyance for a fee." (Certain other meanings are listed). The first meaning listed in Random House Dictionary (unabridged version, 1967) is: "A commercial service with terminals and boats for transporting persons, automobiles, etc. across comparatively narrow body of water". (None of the definitions specifically includes or excludes a fixed schedule.)

Since the service, under law and to the public, was clearly "passenger-ferry", no discussion of PU Code § 562(c)'s phraseology "other transportation service" is necessary.

But assuming the service to the public, and under PU Code § 562(c), is "passenger-ferry", may it be operated under the Agreement without first obtaining a certificate from this Commission?

Defendant's arguments (reviewed extensively above) fail when the realities are examined. Blue & Gold does not simply provide a boat, a master, a crew, etc. to District so that District can operate the service, nor does the use of District's tickets, the setting of schedules by District, or payment on a per diem basis make District, rather than Blue & Gold, the operator.

Funk & Wagnalls Standard College Dictionary (1972 ed.) defines "operate" (omitting specialized meanings) as:

"To act or function, especially with force or influence; work."

"To bring about or produce the proper or intended effect."

"To control the working of, as a machine."

"To manage or conduct the affairs of:
to operate a business." (Emphasis by the editors.)

"To bring about or cause; effect."

According to the dictionary, the word is derived from operatus, past participle of the Latin verb operari (to work) and ultimately from opus or operis (work). The dictionary further defines "operator" as the synonym of "doer", and "doer" as "one who acts or performs, an agent."

Then in plain English, Blue & Gold "works" or "does" or "operates" the ferry service; District does not. The terms "operate" and "provide" are of course not mutually exclusive; Blue & Gold clearly "provides" the service for District under PU Code § 562, but that does not mean that, at the same time, Blue & Gold does not "operate" it.⁷

⁷ Blue and Gold concedes in its brief (quoted previously) that if it operated the service its existing certificate would not be sufficient under PU Code § 562(c).

While the preceding discussion and analysis is sufficient to support a permanent cease and desist order against Blue & Gold under PU Code § 562(c),⁸ we must analyze certain provisions of law to determine whether the order should be continued against District. Also, defendants have stated on this record that they believe PU Code § 562 is unconstitutional private legislation and discriminatory against District, and that they may challenge it in court.⁹

We agree with Harbor's analysis concerning relevant provisions of the California Constitution and PU Code sections other than § 562 (see quotation from Harbor's brief, above) and with Harbor's contention that Blue & Gold and District may be ordered to cease and desist from holding out to the public and providing passenger ferry service on the basis of the law in this State prior to enactment of PU Code § 562.

Of particular interest is PU Code § 216(c), quoted above in the excerpt from Harbor's brief. This section clearly demonstrates the Legislature's intent not to allow any political subdivision of this State¹⁰ to become its own regulator of public utilities.

⁸ While other subsections of § 562 concern District, § 562(c) is directed against "any public utility".

⁹ The legality of the section was not argued before us because we no longer have the jurisdiction to make such determinations. (Cal. Const. Art. III, § 3.5.)

¹⁰ Of which District is one under S&H Code §§ 27500 et seq. Nothing in these sections can reasonably be construed to place District in a special category regarding PU Code § 216(c) or any other sections discussed above relative to political subdivisions.

The Question of Emergency Ferry Service

We have reviewed defendants' contentions concerning emergency service, not discussed previously. What were the contractual arrangements District made during periods of substantial bridge traffic impairment, or when its own boats were laid up?

The evidence demonstrates that during such periods, District contracted on a charter basis with vessel carriers holding nonscheduled authority from this Commission to run regularly scheduled passenger ferry service. (Ex. 10; Tr. 158.)

Defendants essentially contend that the contracts for those periods were legally no different from that which is the subject of this proceeding. The Commission neither objected to such conduct nor issued any temporary authority to cover the service. Why, then, have we enjoined Blue & Gold's present service when the law does not distinguish between emergency and nonemergency service? Have we not, until now, established that District may act as it did in the present situation?

Harbor argues that these services were provided:

"...on a sporadic basis to either temporarily replace or supplement [District's] regular service during periods of emergency or of [District's] inability to service. Thus, they are quite distinguishable from Blue & Gold's subject service, the purpose of which was to provide an entirely new service which would permanently supplement [District's] service for a period of up to ten years." (Brief, p. 32; emphasis added.)

In the past we have held that omissions on the part of the Commission do not set a precedent under which later violations of law will be permitted. In Avalon Navigation Company (Case 6418, D.60832, 1960, unreported) we stated:

"In regard to respondent's allegation that illegal operations and practices of other parties required deviations from its tariffs rates, it is well established that violation of the law is not excusable because someone else may be violating the law."

Assuming the merit of Harbor's factual distinction,¹² it is not buttressed by Harbor's citation of any legal rationale by which we can distinguish between emergency and nonemergency service, or temporary or permanent passenger ferry authority. Independent research fails to develop any relevant constitutional or PU Code provision under which we can sensibly make such distinction. Legal construction is stretched to the breaking point for us to employ PU Code § 701¹³ to interpret other more specific provisions to mean what they do not say, or to hold that § 701 generally overrides other code provisions in an emergency.

¹¹ Cf. criminal law cases in California which hold that selective enforcement is only a defense if defendant can establish deliberate invidious discrimination by prosecutorial authorities (People v Superior Court (Brown) (1980) 111 CA 3d 948; Griffin v Municipal Court (1977) 20 Cal 3d 300.)

¹² Exhibit 20's initial period is for six months, with District having the option to extend the term for up to five additional periods of two years each.

¹³ "The commission may supervise and regulate every public utility in the State and may do all things, whether specifically designated in this part or in addition thereto, which are necessary and convenient in the exercise of such power and jurisdiction."

Finally, even assuming that prior to enactment of PU Code § 562(c) we could distinguish emergency water transportation for District from regularly scheduled ferry service operated under ordinary conditions, this new section has closed that avenue, because, if the transportation is not "passenger-ferry", it is "other transportation service", both of which require a certificate for "such operations". (See footnote 3.) The answer to the problem is not to overlook the present situation but to deal with it properly.

We believe that under PU Code § 701, cited previously, we may take the step of issuing revisions to the certificates of Harbor and Blue & Gold which will authorize emergency service.¹⁴ These revisions are appended to this decision and are effective immediately. Any other passenger vessel carrier with nonscheduled or charter authority for San Francisco Bay is invited to request similar treatment in a separate application.

This action on our part is necessary to prevent confusion over legality of emergency service under PU Code § 562(c) and other provisions of law. It also disposes of the problems pointed out in Blue & Gold's brief, which criticizes our cease and desist order as overbroad.

In this regard, the language of the order will also be changed to clarify that it is not intended to interfere with occasional and irregular group charter service by either Harbor or Blue & Gold.

¹⁴ Harbor already holds a certificate for Sausalito-San Francisco service, but we will broaden it for emergencies to include scheduled or nonscheduled service, or both. Blue & Gold will be granted similar authority. Each carrier will be authorized to land in San Francisco at its own dock or at District's. "Emergency" shall mean "substantial traffic impairment on the bridge or its approachways, or periods when boats regularly used for ferry service are inoperable."

Conclusion

We conclude that the cease and desist order should be made permanent, with certain modifications. Because of the technical problems with our present cease and desist order pointed out to us by Blue & Gold, the order in this decision will take effect immediately. As discussed, we should immediately authorize certain emergency authority for the protection of the public.

Since we have entered a modified order, we shall state that we consider this decision final for rehearing and judicial review purposes (PU Code § 1731-1767). All points raised on rehearing are disposed of.

Findings of Fact

1. The stipulated facts in the opinion section of this decision are true and are made part of this finding as if fully set forth.
2. Under the Agreement, District determined the ferry service schedule, and the service actually operated by Blue & Gold was scheduled.
3. Tickets were sold at Blue & Gold's ticket booths at Sausalito and San Francisco. One-way weekday fare was \$2 (adult) or \$1 (seniors, handicapped, and children). District also sold some tickets for Blue & Gold's service.
4. During the four days of operation, Blue & Gold personnel answered telephone inquiries from the public about the service.
5. Eight one-way crossings were made each day, with daily totals as listed in the opinion section of this decision.
6. Under the Agreement, District paid Blue & Gold \$2,958 per day.
7. Unless our cease and desist order is continued in effect, defendants intend to reestablish and hold out to the public the service described in the preceding findings.

8. There are periods when emergency ferry service is essential because of substantial disruption to traffic on the Golden Gate Bridge or its approachways, or due to inability to operate boats normally used in passenger ferry service between Larkspur or Sausalito, on the one hand, and San Francisco, on the other hand. During such periods in the past, private vessel carriers with nonscheduled San Francisco Bay authority from this Commission have operated under contract with District between those points.

Conclusions of Law

1. From February 1, 1982 to and including February 4, 1982, Blue & Gold operated, (and "provided" as that verb is used in PU Code § 562(c)) passenger-ferry service for District without first obtaining a certificate of public convenience and necessity for such operations.

2. From February 1, 1982 to and including February 4, 1982, Blue & Gold operated, and District caused to be operated, a privately owned vessel over five tons net register for the transportation of persons, for compensation, on an individual fare basis between points in this State, to wit, San Francisco and Sausalito, without first obtaining a certificate of public convenience and necessity from this Commission, in violation of PU Code § 1007.

3. Blue & Gold's certificate issued in D.91925 does not provide for such operation.

4. Blue & Gold is a private corporation which, from February 1, 1982 to and including February 4, 1982, owned and managed a system for the transportation of people by water, on a regularly scheduled basis between points in this State, to wit, San Francisco and Sausalito, as a common carrier and a public utility unlawfully and without first having obtained proper authority from this Commission. (Cal. Const. Art. XII, § 3; PU Code § 1007.)

5. District has no legal right or power under PU Code § 562(c), or § 216, or any other provision of law, to contract independently of Commission regulation with a private individual or corporation for ferry service between San Francisco and Sausalito, or between or among any other points, nor to regulate independently the rates, tariffs, schedules, conditions, or standards of service of such private individuals or corporations performing such service.

6. The Agreement is a "charter" between the parties to it as that term is employed in maritime law, but this conclusion does not change the nature of the service to the public under PU Code §§ 562(c), 1007, or other provisions of state law.

7. Even without analyzing the history of Harbor's attempts to commence its San Francisco-Sausalito ferry service, the plain language of PU Code § 562(c) prohibits District from entering into the type of arrangement it has made with Blue & Gold and allowing Blue & Gold to commence the ferry operations which are the subject of this decision. However, the history of which we have taken official notice additionally supports our conclusions that, under PU Code § 562(c), the Blue & Gold service is unlawful.

8. Since PU Code § 562(c) states that this Commission "shall require that any public utility which provides passenger ferry or other transportation service for the district first obtain a certificate of public convenience and necessity authorizing such operation" (emphasis added), the Commission has an affirmative, nondiscretionary duty to enjoin unlawful ferry transportation service

provided for District, upon sufficient proof of its existence, and no irreparable injury to any other public utility need be pleaded or proved.¹⁵

9. We should order defendants to cease and desist permanently from operating, causing to be operated, or providing the service without proper authority from this Commission.

10. Public convenience and necessity require immediate modification of the certificates of Harbor and Blue & Gold to provide for emergency passenger ferry service between Sausalito or Larkspur, on the one hand, and San Francisco, on the other hand, when such service is made necessary by substantial traffic disruption on the Golden Gate Bridge or its approachways, or when boats normally used for this purpose cannot be operated.

SECOND INTERIM ORDER

IT IS ORDERED that:

1. Defendants, and each of them, shall permanently cease and desist from operating, providing, controlling, or managing privately owned vessels for the transportation of persons between San Francisco and Sausalito, or between or among any other points within the State without first obtaining, on behalf of defendant Blue & Gold Fleet, a certificate of public convenience and necessity for such operations.

2. Defendants, and each of them, shall cease and desist permanently from holding out such service to the public and from advertising or promoting such service as available for public use without first obtaining a certificate for it on behalf of Blue & Gold Fleet. ✓

¹⁵ The qualification to this conclusion expressed in D.82-02-066 still applies but is not restated here because this present decision is issued after full hearings on the issues.

3. Under PU Code § 562(b), defendant Golden Gate Bridge, Highway, and Transportation District is ordered to cease and desist permanently from permitting defendant Blue & Gold Fleet, or any other private vessel operator, to use its Sausalito dock as a terminus for any passenger ferry operation between points in this State, unless a certificate for such operation has first been obtained from this Commission. This ordering paragraph does not apply to occasional and irregular group for-hire service. ✓

4. Harbor Carriers, Inc.'s certificate of public convenience and necessity is modified by amending Appendix A of D.82560 to add Original Page 4 (attached).

5. Blue & Gold Fleet's certificate of public convenience and necessity is modified by amending Appendix A to D.91925 by replacing Original Page 1 with First Revised Page 1 (attached).

6. This order is final with respect to the cease and desist order which applies to the defendants; this proceeding remains open pending a final decision on proper docking fees. Rehearing of D.82-02-066 is completed by this order.

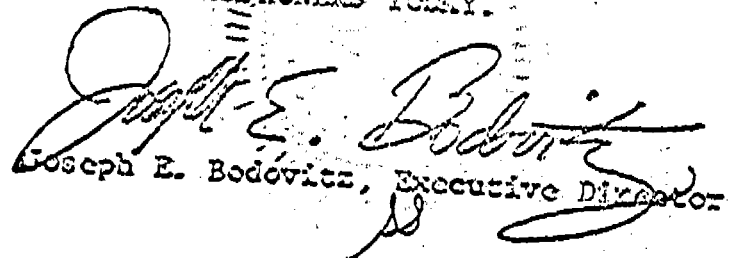
This order is effective today.

Dated JUL 7 1982, at San Francisco, California.

RICHARD D. GRAVELLE
LEONARD M. GRIMES, JR.
VICTOR CALVO
PRISCILLA C. CREW
Commissioners

Commissioner John E. Bryson,
being necessarily absent, did
not participate.

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


Joseph E. Bodovitz, Executive Director

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

Between a berth at or near the Ferry Building in downtown San Francisco, on the one hand, and Berkeley, on the other hand.

Restrictions, Limitations, and Specifications

Blue & Gold Fleet 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.

***III. Emergency Service**

At the request of the Golden Gate Bridge, Highway and Transportation District, Blue & Gold Fleet 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 or of the Golden Gate Bridge, Highway and Transportation District's ferry service. "Emergency" shall mean substantial traffic impairment on the Golden Gate Bridge or its approachways, or periods when vessels regularly used by the Golden Gate Bridge, Highway and Transportation District for ferry service are inoperable. In conducting such emergency service, Blue & Gold Fleet may use its own docking facilities in San Francisco, and any or all of the Golden Gate Bridge ferry docking facilities in San Francisco and Marin County.

Issued by California Public Utilities Commission.

82 07 022

*Added by Decision _____, Case 82-01-02.

*H. San Francisco - Marin County Emergency Service

At the request of the Golden Gate Bridge, Highway and Transportation District, Harbor Carriers, Inc. 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 or of the Golden Gate Bridge, Highway and Transportation District's ferry service. "Emergency" shall mean substantial traffic impairment on the Golden Gate Bridge or its approachways, or periods when vessels regularly used by the Golden Gate Bridge, Highway and Transportation District for ferry service are inoperable. In conducting such emergency service, Harbor Carriers, Inc. may use its own docking facilities in San Francisco, and any or all of the Golden Gate Bridge ferry docking facilities in San Francisco and Marin County.

Issued by California Public Utilities Commission.

*Added by Decision 82 07 022, Case 82-01-02.

Decision 82 07 022

JUL 7 - 1982

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

HARBOR CARRIERS, INC.,)

Complainant,)

vs)

GOLDEN GATE BRIDGE, HIGHWAY AND)
TRANSPORTATION DISTRICT and)
BLUE AND GOLD FLEET,)

Defendants.)

Case 82-01-02
(Filed January 13, 1982;
amended February 1, 1982)

Edward Hegarty, Attorney at Law, for complainant.
Duane Garrett, Attorney at Law, for Golden Gate
 Bridge, Highway, and Transportation District,
 and Jerry Spolter and Thomas Mannion, Attorneys
 at Law, for Blue & Gold Fleet, defendants.
Leland Jordan, City Attorney, for City of
 Sausalito, and Allan Brotsky, for Inlandboatmen's
 Union of the Pacific, et al., intervenors.
Philip Scott Weismehl, Attorney at Law, and
Richard Brozosky, for the Commission staff.

SECOND INTERIM OPINIONBackground

This complaint concerns various aspects of passenger ferry service between San Francisco and Sausalito. The purpose of this decision is to examine whether a cease and desist order against defendants Golden Gate Bridge, Highway, and Transportation District (District) and Blue & Gold Fleet (Blue & Gold) should be made permanent or vacated.

Complainant Harbor Carriers, Inc. (Harbor) originally commenced this proceeding against the District only, in order for this Commission to determine proper docking fees at the District's terminal in Sausalito under Public Utilities (PU) Code § 562. Hearings on this aspect of the case are completed and this issue will be covered in a later decision.

conditions imposed by Sausalito the only available landing facility is that operated by District, and that District offered joint use of the facility at \$600,000 per year while Harbor countered with an offer of \$12,000 per year. We stated:

'We have no means to get the City of Sausalito and District to enter into good faith negotiations for a realistic agreement for the use of a landing facility at a reasonable cost to Harbor Carriers. Harbor Carriers' only effective recourse may be through civil court action or to the state legislature.' (Slip opinion, p. 10.)

"Harbor was granted an extension to June 1, 1984 in which to commence service.

"After that decision (and as counsel for Harbor forthrightly stated) Harbor lobbied for legislation to give this Commission special jurisdiction over District, so that matters could be brought to a conclusion. The result was PU Code § 562, effective January 1, 1982 (see Appendix A).

"This complaint was filed subsequent to the effective date of PU Code § 562." (D.82-02-066, pp. 3-4, footnote omitted.)

On February 4, 1982, we issued Decision (D.) 82-02-066, which ordered defendants to cease providing the service or holding it out to the public.

On February 11, Blue & Gold filed a petition for rehearing, requesting immediate dissolution of the cease and desist order.¹ In D.82-03-044 (March 2) we stated:

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¹ Blue & Gold also petitioned the California Supreme Court for mandate or review of the decision. Relief was denied without opinion as premature. (SF No. 24399; March 10, 1982.)

"Applicant proposes to operate an oncall [sic] service available to groups [of] one hundred or more persons, on forty-eight-hour prior notice, between various existing docking facilities on San Francisco Bay and its navigable tributaries, including any such points on the shorelines of the twelve counties adjacent to San Francisco Bay and its tributaries.

"The service would generally operate directly from these points to the Pier 39 docking facilities currently in use, although deviations for sightseeing purposes would be likely from time to time pursuant to the request of the chartering group."

In sum, while we issued authority of the nonscheduled variety which Blue & Gold could employ to solicit charter business from groups, we did not, from any statutory standpoint, issue "charter authority", because neither the PU Code nor relevant constitutional provisions (Cal. Const. Art. XII) provide for such a category for vessels. The word "charter" is not used in the Findings, Conclusions, or Order in D.91925. That decision shows that in response to Blue & Gold's request for "on-call" authority, it was given a certificate allowing it to operate certain "nonscheduled" service and that, at least on the record in A.91925, the Commission used those two terms interchangeably.

This analysis is consistent with Harbor Carriers, Inc. v Cal. Inland Pilots Assn. (1971) 72 CPUC 518, 526, in which we stated that so long as a passenger vessel operation is between points on the inland waters of California for compensation, a certificate is required, and there is no exemption for charter boats, nor can an exemption be created.

Examination of certain other opinions cited on the subject in the staff brief discloses the following:

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1. Doug Bombard Enterprises, etc., cited as 80 CPUC 123 (1976), is unreported. The decision concerns "grandfather" authority and contains no relevant discussion of "on call" or "charter" problems.

2. Catalina Channel Express, cited as 81 CPUC 294, is unreported. Referring to D.86914, this is a one-page supplemental order revising a schedule. D.86252, the preceding decision in the same application, is an ex parte order with no detailed discussion.
3. Catalina Channel Express (too new to be reported), is cited as D.93299, July 7, 1981. This decision is an order of dismissal in a bus matter. (No application number was cited.)
4. Harbor Carriers, Inc., D.73811 (cited as 73 CPUC 160, 1972) is unreported and the file is in State Archives.
5. Harbor Carriers, Inc., D.80806 (cited as 74 CPUC 529, 1979) was located at 75 CPUC 529. It is unreported and the file is in State Archives.

The staff also cites Harbor Carriers, Inc. v Cal. Inland Pilots Association 72 CPUC 518, ~~discussed previously, and,~~ finally, Harbor Carriers, Inc. (1972) 74 CPUC 160. This was a strongly protested application for Harbor to operate "on call" between Dana Point, ^{on the one hand} to Port Hueneme, ^{on the other hand} and Santa Catalina Island. The application was denied. The opinion distinguished "ferry service" from "excursion" service which stops at a regular point, to discharge passengers, by relying on the testimony of public witnesses and the applicant's own statement, and citing no authority for such distinction. We find this discussion not helpful here and do not consider it to be an authoritative disposition of questions relating to the term "ferry service".

After briefs were received, supplemental briefs were requested on whether we had ever allowed charter authority to be used under contract to establish regular service. We see nothing in the authorities mentioned by Blue & Gold which would change the result. Passenger bus cases cited (except for In Re Crary (1966) 65 CPUC 545, Grayhound Lines, Inc. v Santa Cruz Travel Club (1966) 65 CPUC 559, and Lavelle v Japan Air Lines, D.92455, C.10732, December 2, 1980) are applications in which we granted certificates to persons or companies not owning bus equipment so they could use the certificates to charter buses and run regular routes. Crary and