

ORIGINAL

Decision 82 07 110 JUL 21 1982

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application)
of PACIFIC TOWBOAT AND SALVAGE,)
a corporation, for the issuance,)
pursuant to Section 1007 P.U.)
Code, of a temporary and perma-)
nent certificate of public)
convenience and necessity to)
operate as a water vessel in)
connection with operations in)
the Long Beach and Los Angeles)
Harbors, and to establish rates.)

Application 60411
(Filed March 31, 1981)

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for applicant.

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Attorneys at Law, for Universal
Marine Corp.; and James H. Lyons,
Attorney at Law, for H-10 Water
Taxi Company, Inc.; protestants.

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H. Booth and Carol Pollock, Attorneys
at Law, for San Pedro Marine, Inc.,
interested party.

O P I N I O N

By this application, Pacific Towboat and Salvage (PacTow), a corporation, seeks a certificate of public convenience and necessity, under Public Utilities (PU) Code Section 1007, to conduct vessel common carrier operations in the transportation of passengers and their baggage and/or freight, any item of which does not exceed 15 tons:

1. Between all points in the Los Angeles, Long Beach (LA/LB), San Diego, and Port Hueneme harbor areas, including all docks, wharves, ships, points, and places within these ports; and
2. Between all docks, wharves, ships, points, and places within the LA/LB, San Diego, and Port Hueneme port areas, on the one hand, and, on the other, ships and vessels located at points offshore of the Counties of San Diego, Orange, Los Angeles, and Ventura, excluding, however, those ships and vessels involved in offshore drilling, exploration, and/or production.

PacTow alleges that the public convenience and necessity require its proposed services for the following reasons:

1. Within the past year, PacTow has been requested by several potential customers to provide water taxi and ships' stores/spare parts service in the LA/LB harbor indicated above because the two current operators either lack sufficient equipment or are unable to use it because of equipment failures and breakdowns.
2. H-10 Water Taxi Company, Inc. (H-10), one of the current operators, has very limited stores/spare parts delivery capability. Most of its equipment is restricted to water taxi operations and its boats are older and slower than the equipment which PacTow will use.
3. Complaints from customers have been made about Universal Marine Corp.'s (Universal) (the other current operator) service which also uses boats which are older and slower than PacTow's.
4. Recent studies indicate there has been at least a 9% increase in the average annual growth of ship arrivals and cargo tonnages in the LA/LB harbor in the past few years.

5. PacTow's studies project a 15% to 20% increase in ship arrivals within the next five years.
6. PacTow desires to furnish a complete service to its customers. PacTow now furnishes bunker fuel to many ships making outer anchorage calls in the LA/LB harbor for bunker fuel and PacTow believes it wasteful and inefficient for it not to be able to furnish water taxi and stores/spare parts service to these same customers.
7. While the number of dockings and anchorages has increased and will increase in the LA/LB harbor, there has been little or no growth in the equipment used by current water taxi and ships' stores/spare parts operators in the past five years. Their equipment is inadequate to provide water taxi and ships' stores/spare parts service. Thus, there is a critical need for more service and PacTow prays that the certificate it seeks be granted.

Protests to the application were received from H-10 and Universal. San Pedro Marine, Inc. (San Pedro) filed a protest but later withdrew as a protestant and remained as an interested party.

Following notice, public hearings on the application were held in Long Beach and Los Angeles on November 2, 3, 4, and 5 and December 9, 10, 21, and 22, 1981 before Administrative Law Judge William A. Turkish. The matter was submitted upon the filing of concurrent briefs by the parties on March 1, 1982.

Witnesses testifying on behalf of PacTow were Captain Thomas D. Opatz, president of PacTow; Raynor Tsuneyoshi, vice president of marketing and planning for PacTow; Dave Shofner, manager of Cascade Shipping Company; Captain Emerson E. Chodzko, vice president of Transmarine Navigation Corp.; Duane E. Walsworth, assistant vice president for operations of General Steamship Corp., Ltd.; Paddy D. Sullivan, vice president and terminal manager of Star Terminal Company; Captain William Adam, vice president of Sanko-Kiser (U.S.A.) Corp.; and Captain Nelson Chang, manager of Norton Lilly. Testifying for protestant Universal were Donald M. Budar, its president, and Bernard Brennauer, PacTow's comptroller. Testifying for H-10 was its president, Jeanne M. Seehorn.

PacTow, a wholly owned subsidiary of the Dillingham Corporation, is a marine transportation firm which undertakes towing operations, both commercial and governmental, from the San Francisco Bay area in the north to the Mexican border in the south. Its heaviest operations extend from Santa Barbara to San Diego and are focused within the LA/LB port areas. It performs, on a contractual basis, an entire range of marine services, including vessel dockings and undockings, and the transportation of potable water, derricks, bunker fuel oil, and other commodities.

The following is a summary of the testimony presented by PacTow's six public witnesses, all of whom are executives of various steamship agencies in the LA/LB harbor areas who serve the needs of various ocean-going vessels during their stay in the LA/LB harbor:

1. There has been considerable growth in shipping activity in the LA/LB harbor and continued growth is anticipated for the future.
2. The companies represented by the various witnesses have, in the past, used the services of both H-10 and Universal. Most of the witnesses presently use the services of both, although at least one company uses only H-10 following a misunderstanding with Universal.
3. All of the witnesses have experienced some problems with the services of Universal in the past and at least two witnesses related experiencing some difficulties with the services of H-10 in the past.
4. All the witnesses support the application. The consensus is that it is to their advantage, as ship agents, to have more carriers available to them especially in the LB side of the harbor where the draft is deeper and to which many tankers are limited when they call in the LA/LB harbor.

Protestants' witnesses testified essentially as follows:

1. There is no need for an additional water taxi carrier in the LA/LB harbor since the authority being sought would duplicate the service currently being furnished by Universal, H-10, and at least three other vessel operators.^{1/}

^{1/} Two recent entrants into the water taxi business, namely, U.S. Water Taxi and Queen's Way Water Taxi Service, operate small lightweight vessel launches which are exempt from Commission jurisdiction because their vessels are under five-ton net register. The other carrier is San Pedro which is primarily a purveyor of lube oil in bulk but also authorized to transport ship stores to be delivered in conjunction with delivery of lube oil in bulk to the same destination.

2. PacTow's 1977-1980 marine exchange summaries of ship arrivals in the LA/LB harbor to support its contention of at least a 9% increase in the average annual growth in the harbor is misleading due to an unusually large increase in ship arrivals between 1977 and 1978. Between 1978 and 1979 there was a 1.2% drop in number of ship arrivals and between 1979-1980 only a 6.5% increase.
3. Although there has been a slow but steady increase in the aggregate amount of harbor business, this increase does not necessarily correspond with levels of water taxi needs. Unforeseen and largely uncontrollable forces, such as weather and the world supply of crude oil, can influence the number of times a ship stops in the LA/LB harbor and, thus, the amount of water taxi service it might generate. Recent changes in customs and/or immigration port clearance requirements have resulted in less need for water taxi boarding party service by these governmental agencies. In the case of Universal, it is estimated that this has resulted in a 30% cut in its boarding party business.
4. The granting of this application will mean a further diversion of the existing traffic which is available in the LA/LB harbor. A diversion of 15% of Universal's existing traffic as a result of PacTow's proposed operation would result in a drop of Universal's net income from \$53,647 to \$3,539. Any higher percentages of diversion would result in a net income loss. If the diversion is substantial enough, Universal believes it could even be driven out of the water taxi business. H-10 believes that its drop in revenues from \$106,199 in the month of July 1981

to \$82,883 in August 1981 and to \$71,834 in September 1981 is due to the diversion of traffic brought on by the inauguration of service by U.S. Water Taxi in late July 1981 and Queen's Way Water Taxi Service in 1981.

5. Universal's vessel fleet is comprised of one 90-foot crane barge, eight 49-passenger and one 30-passenger water taxis with stores capacity ranging from one ton to 20 tons, one tugboat, and one tugboat/supply boat. H-10's fleet is comprised of seven water taxis, some of which are capable of carrying from 6 to 47 passengers depending on whether freight is also carried and one self-propelled freight vessel capable of carrying 25 tons of freight. In addition, H-10 was negotiating the construction of a new boat toward the end of 1981. It is believed by H-10 and Universal that they have sufficient equipment to handle all water taxi demands at the present time and in the foreseeable future as well.
6. PacTow's assertion that it is wasteful and inefficient for it not to be able to furnish water taxi and stores/spare parts services to the same customers that it has been rendering bunker deliveries to does not take into account the actual method of arranging for these services. Ships' stores, spare parts, and other water taxi services are customarily arranged by the ships' agents who husband the ship while it is in port while the arranging for bunker fuel is done in an entirely different manner. The owner of the vessel (not the ship's agent) contacts one of the refineries and arranges for bunker fuel to be transported out to his vessel when it comes to anchor in the harbor. The refinery then arranges with a bunker fuel barge operator to take the bunker fuel out to the vessel. The agent has nothing to do with this. The bunker barge is not equipped to handle stores, spare parts, and personnel. Thus, it is felt that there would be no economy of time or convenience in allowing a bunker barge operator to enter the water taxi business.

The Issues

Universal and/or H-10 believe the salient issues presented for determination in this proceeding to be:

1. Whether the public convenience and necessity require the proposed service;
2. Whether PacTow's stated intention of using bulk liquid barges for the transportation of ships' stores and freight is both unrealistic and dangerous;
3. Whether PacTow's proposal of transporting freight on bulk liquid barges would violate PU Code Sections 238(c) and 532;
4. Whether granting the requested authority would have severe detrimental impact upon the existing certificated carriers and their ability to continue rendering high-quality transportation service;
5. Whether the Commission should restrict any authority granted to PacTow;
6. Whether the proposed operation is financially viable; and
7. Whether the service of existing carriers is unsatisfactory to the Commission and to the public.

PacTow expresses the issues as follows:

1. Is PacTow fit, willing, and able to operate the proposed water taxi service?
2. Does the public convenience and necessity require a grant of authority to PacTow?
3. Will the grant of authority unduly harm existing carriers?

The testimony and exhibits presented by Tsuneyoshi, PacTow's vice president of marketing and planning, are summarized as follows:

1. PacTow has in the past provided, or is still providing, the following services:
 - a. Ship-assist work with tugboats in the LA/LB harbor.
 - b. Transportation of bunker barges carrying bunker fuel to ships at anchor in the harbor.
 - c. Transportation of a potable water barge within the harbor.
 - d. Shoreside services, including the use of a crane or forklift.
 - e. Contractual services for the United States Navy and certain oil companies.
2. For the proposed service, PacTow will provide an "on-call" service 24 hours a day. It now provides 24-hour dispatch service for its current tug and barge operation and the additional traffic contemplated by this application can easily be handled by the existing dispatch staff, equipment, and personnel. PacTow operates a fleet of 13 tugboats, 10 barges, and one crew boat in the LA/LB port complex as well as in San Diego and Port Hueneme. Approximately 75% of the fleet is stationed in the LA/LB harbor.
3. PacTow intends to use an existing crew boat (Pacifico), which it has owned and operated for a number of years, to carry passengers. At the present time the Pacifico is capable of carrying up to 49 passengers. With some modifications it can be reconfigured to carry approximately 3,000 pounds of freight and still carry up to approximately 25-30 passengers when fully loaded with freight. PacTow projects that 75% of its stores and spare parts service will be carried on the Pacifico. It has previously been in operation on a contractual or charter basis but is presently not in service although still certified by the U.S. Coast Guard for the transportation of passengers. PacTow is

confident that certification can also be obtained to permit the transport of freight on the Pacifico. In addition to the Pacifico, PacTow intends to use three of its steel-hulled bunker barges ranging from 195 feet in length to 230 feet in length. Each of the barges is equipped with hydraulic cranes which will permit PacTow the opportunity, in certain cases, to handle a limited amount of stores and spare parts. PacTow also intends to use its potable water barge, which it now uses to provide potable water to virtually all of the ships at anchor in the harbor, to transport stores and spare parts.

4. PacTow is confident that it can receive U.S. Coast Guard certification to permit the handling of stores and spare parts on the water barge and bunker barges, recognizing that there will be restrictions against carrying certain types of flammable, caustic, corrosive, and other types of deck cargoes on the bunker barge that react in an adverse manner with water and petroleum (Exhibits 8 and 11).
5. Although admitting that the steamship agent selects the carrier to handle the stores and spare parts while the selection of the bunker barge company used to transport the bunker fuel is made by the oil company supplying the fuel, the joint handling of stores and spare parts, on the one hand, and bunker fuel, on the other, can easily be coordinated by PacTow's dispatcher because of sufficient time to make all the necessary arrangements.
6. PacTow anticipates charging rates which are competitive with existing carriers and which are compensatory. It anticipates receiving only about 5% to 6% of the entire water taxi market for the LA/LB harbor for 1982. It does not intend to inundate the water taxi market with a large fleet of water taxis. It intends to provide its initial service with only the Pacifico, the three bunker

barges, and the water barge although if the demand for service becomes greater than anticipated, it will purchase additional water taxi equipment in order to meet such demands.

7. The results of a study undertaken by PacTow to determine the potential for market growth for water taxi services in the LA/LB harbor (Exhibit 1, Appendixes C and D) show growth in both number of vessel arrivals and bunker fuel sales since 1976 and based on this study and later information, a 15% to 20% per year growth in water taxi, passenger, and freight market is projected for the next five years.
8. PacTow does not believe its entry in the market will seriously impact existing carriers. Anticipating only six months of operations in 1982 and revenues of only \$230,000, PacTow's share of the market will be relatively small when compared to the large market shares of existing carriers and PacTow's projected total market for 1981 of \$4,208,000, which it developed from a review of the annual reports and recent applications filed by three existing water taxi carriers in southern California.

The unaudited balance sheet of PacTow (Exhibit 1, Appendix A) for the year 1980 and the first six months of 1981 shows total assets of \$13,523,043 and \$13,501,467, respectively, with liabilities for those same periods of \$7,727,705 and \$7,254,363, respectively. Retained earnings were \$5,795,338 in 1980, with net earnings of \$218,424, and retained earnings of \$6,247,104 for the first six months of 1981, with net earnings of \$148,316.

Discussion

This application is filed under PU Code Section 1007 which states, in relevant part, that:

"No corporation or person shall...operate... any vessel...without first having obtained from the commission a certificate declaring that public convenience and necessity require such operation, ... Every applicant for such a certificate shall file in the office of the commission application and evidence in the form required by the commission. The commission may, with or without hearing, issue the certificate as prayed for, or refuse to issue it, or issue it for the partial exercise only of the privilege sought, ...and may attach to the exercise of the rights granted by the certificate such terms and conditions as, in its judgment, the public convenience and necessity require."

The only requirement under PU Code Section 1007 is that public convenience and necessity be shown in order for the certificate to issue. Public convenience and necessity is a test which encompasses a broad view of the needs of the particular class of public concerned, as well as the requirement that the applicant for a certificate establish reasonable fitness and financial responsibility to conduct the proposed service. There is no doubt that PacTow's experience in maritime operations qualifies it as a fit operator of the proposed service. It has experience in operating the bunker barges and water barge which it will use to carry stores and spare parts, and it has experience in operating the water taxi vessel under contract and charter service. Its personnel thus have the required expertise to perform the proposed operation. Likewise, there is no question but that PacTow and its parent organization, Dillingham Corporation, have the financial strength to undertake the proposed service. Both organizations have extensive lines of credit (Exhibit 1).

Six witnesses testified in support of this application. Four were from major steamship agencies operating in the southern California area. The other two were representatives of a major steamship line and a terminal operator, respectively. Each of the witnesses has used PacTow for bunker barge service and ship-assist work and were satisfied with the service. Based upon this experience, each expressed a desire to use the proposed water taxi service of PacTow providing its prices were competitive with the other carriers. Several of the witnesses expressed dissatisfaction with the services of at least one of the existing carriers. The one common thread running through the testimony of the six witnesses was the desirability of having an additional water taxi carrier in the LA/LB harbor available for them to choose from. One witness is convinced there is too much traffic in the LA/LB harbor for existing carriers to handle. Under cross-examination several witnesses were not very specific regarding dates and events when they experienced poor service from the existing carriers, but it must be recognized that the individuals testifying in this proceeding are businessmen who are concerned with the day-to-day activities of administering to the needs of the steamship lines they represent rather than accurate historians of each and every incident of unsatisfactory service they receive from all the service companies they use in the carrying on of their own companies.

We have concluded that, in the transportation field, public convenience and necessity should be liberally construed, and that competition should be encouraged. We are also inclined to ensure that the fullest range of common carrier service is made available to the public. After reviewing the record here, we are of the opinion that there is sufficient evidence of an expressed public need for the service proposed by PacTow in the LA/LB harbor areas and that the requisite public convenience and necessity have been demonstrated by PacTow.

While there is no current demand for water taxi service in San Diego and Port Hueneme, PacTow expects there will be a demand in the future. PacTow has equipment in those harbors at the present time and wishes to be able to serve that market when the demand for service begins. Since there is no current need for water taxi service in San Diego and Port Hueneme, and no indication if a need will ever arise in those locations, we believe it is premature to seek or grant a certificate for those ports. PacTow can file an application at a later date when the feasibility of establishing and operating a water taxi service in those locations can be determined.

The next issue to be considered is whether granting the requested authority would have severe detrimental impact upon the existing certificated carriers.^{la/} Protestants believe the granting ✓ of the requested authority will have a severe detrimental impact upon the existing certificated carriers and upon their ability to continue rendering high-quality transportation service. In this respect, protestant H-10 contends there is insufficient traffic presently available to adequately support the operation of an additional carrier. H-10 believes this is due, in part, to new procedures and requirements of the Customs Department and Immigration Department that went into effect in early 1981 which resulted in a decrease in the need for water taxi services by those agencies. In addition, two new water taxi services exempt from Commission jurisdiction instituted water taxi service in 1981. One operates in the LB harbor and the other in the LA harbor. According to H-10's president, its revenues dropped sharply in August through December 1981 (Exhibit 20) after the entry of U.S. Water Taxi, an unregulated carrier, in July 1981.

^{la/} We undertake this analysis because of the California Supreme Court's admonition, in Northern California Power Agency v Public Utilities Commission (1971) 5 Cal 3d 370, that we consider anticompetitive issues, and not because of any statutory duty to consider the impact on existing harbor carriers, for there is none.

A great deal of time during the hearing was devoted to testimony of both PacTow and protestants with respect to harbor growth, past and estimated future vessel arrivals in the harbor, annual revenues of existing carriers, estimate of future market share of the business, size and age of equipment, etc., and economic detriment to be suffered by protestants if PacTow is issued a certificate. H-10 did present undisputed testimony that its current traffic growth and revenues declined in the last five months of 1981. However, the reasons were never fully analyzed and whether this was a temporary situation or a trend toward a long-lasting decline in harbor activity is not known. It is possible the sliding revenues of H-10 were brought about by the general economic recession as well as a temporary decline in the sale of bunkering fuel in the LA/LB harbor. H-10 previously experienced a short-term downtrend in traffic when Universal entered the market in 1978. In testimony given in Universal's Application (A.) 57692 filed November 27, 1977 for a certificate of public convenience and necessity, H-10 expressed a fear of loss of patronage from Universal's entry into the market. After suffering a slight drop in net profit shortly after Universal began operations, H-10's revenues recovered; and it has continued to do quite well in the past 3-4 years.

Universal's diversion exhibits are set forth in Appendixes G and H of its Exhibit 13. Universal took its gross revenues from the period October 1, 1979 to September 1980 as a base point of reference for measuring future diversion and then projected what would happen to its gross revenues if it was to suffer a loss in revenue of 15%, 25%, 35%, and 50%.

However, we find no reference in this exhibit to market growth for the last three months of 1980, the 12 months of 1981, or for 1982, the year in question. We do not find it reasonable to assume that Universal will experience the same revenues in 1982 as in the period from October 1, 1979 to September 30, 1980. We also find it difficult to relate the base figures shown by Universal for its passenger water taxi revenue and its barge crane revenue with figures set forth in its annual report for 1980 and in its financial statements accompanying subsequent filings with the Commission. Exhibit 13 shows a base revenue of \$764,061 for passenger service and \$180,754 for the barge crane service for the 12-month period ending September 30, 1980. Although Universal's financial witness testified he obtained the figures from actual invoices during the period, he was unable to explain why he did not rely on the more recent annual report figures and the information contained in the various later pleadings other than to state that the annual reports and financial statements were prepared by the firm's accountant, and he was not aware of exactly what went into those documents. Be that as it may, the annual reports of Universal for the year 1980 show that passenger revenues were \$1,394,274 and the revenues for its barge and crane operations were \$360,512. It is difficult to see how the 12-month revenue figures for October 1, 1979 through September 30, 1980 could so greatly differ from the 12-month figures from January 1, 1980 through December 31, 1980. Universal filed two formal pleadings in 1981. One, A.60418, filed April 3, 1981, was a rate application and showed revenues of \$3,165,869.02 for the nine-month period ending September 30, 1980. The other, A.60904, filed September 15, 1981, a request for authority to issue a promissory note, showed revenues of \$3,763,103.94 for the nine-month period ending June 3, 1981. It would thus appear

that Universal has either grossly understated its overall revenues in its Exhibit 13 on market diversion or it has omitted something in the explanation of the differences. It is interesting that in Case (C.) 10345, filed on June 7, 1977, in a complaint filed by H-10 against Universal, and in A.57692, filed November 27, 1977, in an application for a certificate of public convenience and necessity by Universal, it was alleged by Universal that there had been a considerable increase in vessel arrivals in the LA/LB harbor in the second quarter of 1977 over the same period in 1976 and that H-10 should not be financially disadvantaged by Universal's entry into the market. Yet in the case before us now, Universal sees no growth in the harbor from October 1980 through 1982. Again in C.10693, in a complaint matter filed by Universal against San Pedro on June 20, 1978, and in A.58111, in an application filed by San Pedro on May 19, 1978 for a certificate of public convenience and necessity to enter the common carrier by vessel market in the LA/LB harbor, Universal and H-10 alleged the entry of San Pedro would cause them great financial harm or destruction of business.^{2/} In that consolidated proceeding the president of Universal testified during cross-examination that the requirements for water taxi service in the LA/LB harbor have been increasing and that even after a temporary restraining order against San Pedro was lifted, Universal's business had still been very busy. From the advantage of hindsight, we do not find any financial harm or destruction of business befalling Universal or H-10 from the entry of San Pedro into the market.

^{2/} On June 15, 1982 we granted H-10 a voluntary six-month suspension of its operating authority by Resolution PE-432. The grounds cited by H-10 in seeking this suspension were: increasing competition from unregulated vessels under five-ton net register, inability to negotiate a favorable labor contract, and a general decline in shipping.

Even if protestants had presented convincing evidence of potential diversion from PacTow's entry into the market, we still hold that protection from limited competition is contrary to the public interest. In A.56366, when Universal requested water vessel authority, our response to H-10's claim of future harm from traffic diversion was clear:

"We cannot predict how much additional revenue /Universal/ will be able to divert from H-10. If the diversion is significant, H-10 will be compelled to reduce its fleet and its payroll.

"We should emphasize that such an 'injury' is not one which regulation is intended to prevent. The monopoly which H-10 enjoyed was achieved by default, rather than as a result of a determination that the monopoly would benefit the public. Even where a monopoly or limited competition has been found to be in the public interest, the first line of defense for the carrier thus benefited, lies not in the hearing room, but in the market place. (Decision No. 86732, mimeo, Pages 9-10, Emphasis added.)"

It is well-established that the Commission will not limit carrier entry into the water vessel market simply to protect the interests of existing carriers. We will allow competition whenever to do so is not adverse to the public interest. While we do not necessarily agree that PacTow's projection of 15% to 20% per year growth over the next five years in the LA/LB water taxi and freight market is accurate, we do conclude from the evidence that there will be sufficient growth to support PacTow's entry into the market without serious impact on H-10 and Universal.

Protestant Universal contends that PacTow's proposal of transporting freight on bulk liquid barges would be a violation of PU Code Sections 238(c)^{3/} and 532.

Universal contends that PacTow's proposal of transporting freight on the decks of its bulk liquid barges would require Commission regulation of the underlying bulk liquid transportation because under PU Code Section 238(c) the transportation of bulk liquids is exempt so long as the transportation is "in bulk in tank vessels designed for use exclusively in such service." Universal believes PacTow should lose its statutory exemption for bulk liquid transportation if it is granted the applied for certificate and convert its bulk liquid barges into dual-service vessels for the transportation of freight and bulk liquids. We agree with Universal's analysis of PU Code Section 238(c) insofar as it provides a limited exception to the general regulation of "vessels" providing for-hire transportation services in this State and that transportation of this kind in specially designed tank vessels was unique enough for the Legislature to exempt such transportation from the broad and all-inclusive provisions of PU Code Section 238(a). However, we do not agree with Universal's contention that PacTow's current proposal would destroy any uniqueness of its current bulk liquid transportation operation and therefore constitute a conversion of the vessel into a regular for-hire vessel freight service with the transportation of bulk liquid as an adjunct. This, according to Universal, should cause PacTow to lose its exemption relating to the bulk liquid

^{3/} PU Code Section 238(c) states: "Nothing in this code shall apply to the transportation by water of liquid cargoes in bulk in tank vessels designed for use exclusively in such service."

transportation and bring the entire operation under Commission regulation. We believe the Legislature had in mind the type of vessel which would be carrying the liquid cargoes in bulk rather than whether the vessel would be used exclusively for the transportation of the bulk liquid. The subject matter being exempted is the transportation of liquid cargoes in bulk subject to the condition that it be carried in tank vessels designed for use exclusively in such service. The key element here is the expression designed for use. The barge vessels used by PacTow were designed exclusively for the containment of bulk liquid within its hull. They are in effect floating tanks. They cannot carry anything else but bulk liquid in their hulls as designed.

The barges are not going to be redesigned to carry both bulk liquid and other types of cargo in their hulls. The hulls remain exclusively for the containment of bulk liquids. These barges of necessity have decks upon which are located the pumps and piping necessary to transfer the bulk liquid cargo. The fact that PacTow is able to use some portions of deck space atop these barge vessels to carry a limited amount of ships' stores and spare parts on pallets to the same anchored vessel in the harbor to which it is transporting the bulk liquid (water or bunkering fuel) does not violate the condition for exemption in PU Code Section 238(c) such as to bring the entire operation (bulk liquid and freight) under Commission regulation. Had the Legislature had this intent in mind, it could have added the words "and used" between "use" and "exclusively" so that PU Code Section 238(c) would read as follows:

"Nothing in this code shall apply to the transportation by water of liquid cargoes in bulk in tank vessels designed for use and used exclusively in such service."

Instead the concern centers around the design or configuration of the hull of the vessel to qualify for the exemption.

A reading of PU Code Section 212 along with PU Code Section 238(c) leads us to believe the Legislature intended to prevent freight vessels, which in addition to carrying general cargo in their holds could also transport liquid in bulk either in special tote tanks or special hold compartments, from claiming exemption from Commission regulation under PU Code Section 238(c).

We do not believe the Legislature intended for PU Code Section 238(c) exemption to terminate based on the use of a limited amount of deck space on barge vessels for the contemporaneous transportation of ships' stores and spare parts to the vessels to which the bulk liquid is being delivered. The transportation of ships' stores and spare parts, on the bulk liquid barges, definitely falls within Commission regulatory authority but as to the transportation of the bulk liquid within the hull of the barge, that service is still entitled to the exemption of PU Code Section 238(c). We do not think that the exemption of bulk liquid transportation from regulation was designed to protect water taxi carriers from competition from bulk liquid carriers as contemplated in this application.

We will, however, place a restriction on PacTow's use of its bunkering barge vessels to the carrying of stores and spare parts only in those instances where they are being delivered to an anchored vessel in conjunction with a delivery of bunker fuel to the anchored vessel at the same time.

We next consider Universal's contention that PacTow's proposed rate structure is preferential and violates the fair rate provisions of PU Code Section 532.^{4/}

Citing Pacific Gas and Electric Company (1920) 18 CRC 201, Universal contends that PU Code Section 532 has as its primary policy the uniformity of public utility rates to eliminate discrimination and preference. It contends the language of PU Code Section 532, prevents utilities from offering lower rates only to customers who also use a "contemporaneous service" provided by the utility. With this proposition we agree. Universal believes that PacTow's current proposal entails exactly what PU Code Section 532 was designed to prohibit because under PacTow's proposed rate structure, there could be four different rates for the transportation of the same commodity moving between the same points. While it is true, according to the record, that there could be four different rates for the transportation of the same commodity between the same points, we do not find the same factual or parallel situation here as existed in Pacific, supra, nor do we agree that PacTow's proposed tariff rates are preferential or discriminatory.

^{4/} PU Code Section 532 provides in relevant part:

"Except as in this article otherwise provided, no public utility shall charge, or receive a different compensation... for any service rendered...than the rates, ...and charges... specified in its schedules...in effect at the time, nor shall any public utility engaged in furnishing or rendering more than one...service, charge, ...or receive a different compensation for the...combined, or contemporaneous furnishing... of two or more...services, than the aggregate of the rates, ... or charges specified in its schedules...in effect at the time, applicable to each such...service when separately furnished..."

In Pacific, the utility furnished steam for heating purposes as well as electric service to customers in the Cities of San Francisco and Oakland. It maintained five different rate schedules: Schedule C, which fixed the rates to be charged certain consumers in San Francisco for straight steam heating service; Schedule B, which fixed the rates to be charged consumers in Oakland for straight steam heating service; Schedules A and D, which fixed rates for certain consumers in San Francisco which were less than the charges fixed by Schedule C and contingent upon the consumer being also an electric consumer of Pacific; and a special contract rate applying to certain consumers in both San Francisco and Oakland, there being no regularity in the rate, but in all cases the service being conditional on the consumer taking electric service and the amount charged was less than that fixed under Schedules A, B, C, and D. It is well to note that in Pacific all the steam heating consumers were receiving exactly the same character of service and the delivery system was identical. In addition, the regular scheduled rates were not only not producing a reasonable return, but the evidence seemed to indicate that the low heating rate provided in the special contracts involved a direct out-of-pocket loss which Pacific assumed. As a matter of fact, for its entire calendar year Pacific's revenues from the sale of steam were insufficient to meet even its direct operating expenses.

We do not find PacTow's proposed schedule of rates to be discriminatory or preferential. PacTow presented a comprehensive cost justification to demonstrate that its proposed rates would be compensatory (Exhibit 11, revised). A large part of the evidentiary showing was devoted to this area and PacTow made several revisions in its cost breakdown exhibit after several

flaws were discovered during cross-examination. The final revision submitted, however, did not alter the fact that the rates were compensatory. Not only are the proposed rates of PacTow compensatory, but they also appear to be competitive with competing carriers.

PacTow's proposed rates, which Universal believes to be discriminatory and preferential, relate to their intended use of the water barge and bunkering barge for the transport of stores and spare parts. Universal questions the fact that PacTow proposes various rates depending on the type of equipment used rather than the hourly rates charged by Universal. Thus, while it is true that a shipper could have four rates available to it for the movement of one load, he has the option of choosing the equipment which will be used for the movement. Thus, while in the Pacific case the Commission found discrimination in rates between consumers receiving the same character of service, that is not the case here. The character of the service to be offered by PacTow to its customers is not the same for all - the rate structure is based entirely upon the type of equipment used to transport the stores and spare parts. Its varying rates are predicated upon the basic cost of the service being provided and is consistent with our policy of favoring ratesetting to reflect more accurately the different costs associated with different services. In the Pacific case the Commission held that Pacific could not charge a different rate for the contemporaneous furnishing of both steam heat and electricity than the aggregate of the rates applicable at the time to each such commodity.

The cost of each unit of steam heat and each unit of electricity furnished by Pacific was the same for all consumers. In other words, there was no basis for charging some consumers one rate for steam heat and a lesser rate to other consumers who contemporaneously also purchased electricity from Pacific. Here, however, there are great differences in the cost of operating various pieces of equipment which PacTow intends to use in its proposed service. The discriminatory and preferential rates alleged by Universal relate to the lower stores and spare parts "per bin" rates for customers who also retain PacTow's barges for the contemporaneous transportation of potable water or bunker oil in bulk. This is contrasted with the higher "hourly" rates using the same barges for those customers needing only freight service, without bunker oil or potable water. However, Universal is reminded that the cost of transporting stores and spare parts freight on a barge already going to an anchored vessel to deliver bunker fuel or potable water are the incremental costs associated with the loading and unloading of these stores and spare parts, while the cost of using the same tugboat and barge to transport stores and spare parts only is a great deal higher and thus must be recovered through higher rates. However, since we will restrict the use of PacTow's bunker fuel barges to the carrying of stores and spare parts only to those vessels to which PacTow is contemporaneously delivering bunker oil, it will eliminate any question of varying rates for the same service.

Another issue raised by Universal is that PacTow's intention of using bulk liquid barges for the transportation of ships' stores and freight is both unrealistic and dangerous. Universal points out that there would be no saving of time or money or number of phone calls since the ships' agents do not

now arrange for bunker barges. This is done by the oil company or broker providing bunker oil to the ship. Essentially, the agents would merely be substituting their freight transportation arrangements with PacTow instead of making the same arrangements with one of the currently operating water taxis, according to Universal and H-10. While this was not denied by PacTow, it is confident that the coordination necessary between the loading of the bulk liquid at the oil company dock for delivery to ships at anchor and the loading of ships' stores and spare parts on the same barge at PacTow's dock poses no problem. Inasmuch as PacTow is currently in the marine business and has 24-hour dispatching, it is in a better position of determining the feasibility and practicability of coordinating freight transportation and bulk liquid transportation on barges. Furthermore, since PacTow has revised its load factor for the Pacifico upward from its initial estimates, and now projects that 75% of its stores and spare parts service will be carried on the Pacifico,^{5/} it will result in less coordination being necessary for the use of its barges in carrying bulk liquid and freight on the same barge. We believe PacTow has the necessary marine experience to handle freight and bulk liquid transportation together.

With respect to any dangers posed by the transportation and handling of anything combustible, flammable, or caustic on the deck of a barge carrying thousands of barrels of bunker oil, PacTow is aware of U.S. Coast Guard regulations which provide that certain types of flammable commodities should not be carried on board bunker barges and does not see this as an impediment to

^{5/} The exact weight limitations will not be known until PacTow is ready to commence service and has undertaken a stability test to satisfy U.S. Coast Guard certification requirements.

providing a viable and efficient stores and spare parts service on its bunker barges. PacTow intends to ascertain exactly which commodities should not be transported by bunker barge and will pass this information on to the shipping public to ensure that customers understand that these particular commodities cannot be carried on the bunker barges. PacTow's vice president testified that there was ample time for PacTow to learn whether a particular mix of stores and spare parts contains flammable materials and if this condition exists, the transportation of these could then be handled either by the water barge or by the Pacifico. Protestants contend that the loading and unloading of stores onto and off the metal barge decks pose a serious danger because of potential sparks from metal coming in contact with metal. According to testimony, however, PacTow intends to take all necessary and proper safety measures to minimize, if not completely eliminate, such risk, including the building and placing of a wooden deck over the metal barge deck area being used to carry the stores and spare parts. In addition, PacTow will load and unload stores and spare parts independently from the loading and unloading of the bunker fuel itself. Exhibit 17, a letter from the commanding officer of the U.S. Coast Guard's Marine Safety Office for the LA-LB areas, states that PacTow's bunker barges are already certificated for the carriage of deck cargo but must comply with various standards of safety issued by various agencies who share the responsibilities for a safe operation. In addition, the captain praised the abilities of PacTow's marine personnel and concluded, from his experience with PacTow, that PacTow is staffed with highly professional seamen who are fully aware of the responsibilities of their profession. We conclude from all the evidence that the proposed operation of using bunker barges for the transportation of ships' stores and spare parts can be carried out in a safe manner.

Finally, in considering the last issue as to whether the service of the existing carriers is unsatisfactory to the Commission and to the public, suffice it to say that, aside from the complaints expressed against both protestants by the six shipper witnesses, the consensus was the desirability of having an additional vessel common carrier in the harbor available to them. From this viewpoint, we conclude that the service of the existing carriers is unsatisfactory. No other issues require discussion.

Findings of Fact

1. PacTow has extensive experience in marine operations, including previous experience in water taxi service.
2. PacTow currently is engaged in towing operations from the San Francisco Bay area in the north to the Mexican border in the south. It also performs, on a contractual basis, vessel dockings and undockings and the transportation of potable water, derricks, bunker fuel oil, and other commodities.
3. There is a demand for PacTow's services in the LA/LB harbor to transport passengers, ships' stores and spare parts between its terminal in the harbor, and vessels at anchor inside and outside the harbor breakwater.
4. PacTow has the ability, experience, equipment, and financial resources to perform the transportation of passengers, ships' stores, and spare parts to ships at anchor in the LA/LB harbor.

5. PacTow's proposed service of carrying a combination of passengers and/or stores and spare parts on the Pacifico and of stores and spare parts on the deck of its potable water barge and on the deck of its three bunker fuel barges is feasible, safe, and responsive to the demand for this service, provided the Pacifico receives U.S. Coast Guard certification and PacTow satisfies all safety requirements in its proposed operation of carrying stores and spare parts upon the deck of its bunker fuel barges.

6. The LA/LB harbor has shown steady growth in the past and it is expected that this growth will continue in the future.

7. It can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.

8. The granting of a restricted certificate of public convenience and necessity to PacTow will not cause irreparable harm to Universal or to H-10; by Resolution PE-432, issued on June 15, 1982, H-10 was authorized to suspend its operations for six months.

9. PacTow's proposed rate schedules are competitive and compensatory.

10. There is a public need for an additional vessel common carrier water taxi service in the LA/LB harbor.

11. PacTow's proposed transportation of ships' stores and spare parts on the decks of its water and bunkering fuel barges is not in violation of PU Code Section 238(c).

12. As a result of granting a certificate of public convenience and necessity to PacTow, its transportation of bulk liquids in tank vessels or barges, designed exclusively for such use, remains exempt from regulation by this Commission under PU Code Section 238(c).

13. There is no current demand for water taxi service in San Diego and Port Hueneme, and there is no reasonable expectation that such demand will arise in the near future.

14. The public convenience and necessity require the granting of the certificate to conduct common carrier vessel operations in the transportation of passengers and their baggage and/or freight, any item of which does not exceed 15 tons, between all points in the LA and LB harbor areas, including all docks, wharves, ships, points, and places within the harbor areas.

Conclusions of Law

1. Transportation by water of liquid cargoes in bulk in tank vessels or barges, designed for use exclusively in such service, remains exempt from Commission regulation under PU Code Section 238(c), notwithstanding the fact that freight may also be concurrently transported upon the decks of these vessels or barges.

2. The transportation by water of freight upon the deck of an exempt vessel or barge is subject to regulation by the Commission.

3. PacTow should be granted a certificate of public convenience and necessity to perform common carrier vessel operations in the transportation of passengers and their baggage and/or freight between all points in the LA and LB harbor areas, including all docks, wharves, points, and places within this harbor area and to ships at anchor inside and outside the LA/LB harbor.

4. PacTow's proposed rates are just, reasonable, and nondiscriminatory.

5. The following order should be effective today given the public need for the proposed service.

6. PacTow should be restricted as follows:
 - a. Only the Pacifico may be used for the transportation of passengers and their baggage and/or freight.
 - b. PacTow may use its water barge for the transportation of freight either in conjunction with the transportation of potable water or not.
 - c. Bunker barges may be used by PacTow for the transportation of freight carried upon the decks, providing the transportation is in conjunction with a shipment of bunker fuel, both being delivered to the same destination at the same time.

7. PacTow should not be granted authority to operate as a common carrier by vessel between all docks, wharves, ships, points, and places within the San Diego and Port Hueneme port areas, on the one hand, and to ships and vessels located at points offshore of the Counties of San Diego, Orange, Los Angeles, and Ventura, on the other hand, inasmuch as no current or future need for the service has been shown.

Only the amount paid to the State for operative rights may be used in rate fixing. The State may grant any number of rights and may cancel or modify the monopoly feature of these rights at any time.

O R D E R

IT IS ORDERED that:

1. A certificate of public convenience and necessity is granted to Pacific Towboat and Salvage, a corporation, authorizing it to operate as a common carrier by vessel, as defined in PU Code Sections 211(b) and 238, between the points and places and subject to the restrictions set forth in Appendix A of this decision, to transport passengers and their baggage and/or freight.

2. Applicant shall:

- a. File with the Commission written acceptance of this certificate 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.
- c. State in its tariffs and timetables when service will start; allow at least 10 days' notice to the Commission; and make timetables and tariffs effective 10 or more days after this order is effective.
- d. Comply with General Orders Series 87, 104, 111, and 117.

3. The request for authority to operate as a common carrier by vessel between all points within the San Diego and Port Hueneme harbor areas and between all docks, wharves, ships, points, and places within the San Diego and Port Hueneme port areas, on the one hand, and, on the other, ships and vessels located at points offshore of those port areas is denied.

- e. Maintain accounting records in conformity with the Uniform System of Accounts.

This order is effective today.

Dated JUL 21 1982, at San Francisco, California.

JOHN E. BRYSON
President
RICHARD D. GRAVELLE
VICTOR CALVO
PRISCILLA C. GREW
Commissioners

Commissioner Leonard M. Grimes, Jr.,
being necessarily absent, did not
participate.

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


Joseph E. Bodovitz, Executive Director

T/ctb /iy

Appendix A

PACIFIC TOWBOAT AND SALVAGE
(a corporation)

Original Title Page

CERTIFICATE
OF
PUBLIC CONVENIENCE AND NECESSITY
VCC-55

Showing common carrier by vessel operative rights,
restrictions, limitations, exceptions, and privileges.

All changes and amendments as authorized by the Public Utilities
Commission of the State of California will be made as revised pages
or added original pages.

Issued under authority of Decision S2 07 110, dated JUL 21 1982
of the Public Utilities Commission of the State of California, in
Application 60411.

Pacific Towboat and Salvage, a corporation, by the order contained in the decision noted in the margin, is granted a certificate of public convenience and necessity to operate as a common carrier by vessel for the transportation of passengers and their baggage and/or freight, any item of which does not exceed 15 tons, between all points in the Los Angeles and Long Beach harbor areas, including all docks, wharves, points, and places within this harbor area and to ships at anchor inside and outside the Los Angeles-Long Beach harbors, subject to the following conditions:

1. Only the crew boat PACIFICO may be used for the transportation of passengers and their baggage and/or freight.
2. Pacific Towboat and Salvage may use its water barge for the transportation of freight either in connection with the transportation of potable water or not.
3. Bunker barges may be used by Pacific Towboat and Salvage for the transportation of freight carried upon the decks, providing the transportation is in conjunction with a shipment of bunker fuel, both being delivered to the same destination at the same time. ✓

Issued by the California Public Utilities Commission.

Decision 82-07-110, Application 60411.

Pacific Towboat and Salvage, a corporation, by the order contained in the decision noted in the margin, is granted a certificate of public convenience and necessity to operate as a common carrier by vessel for the transportation of passengers and their baggage and/or freight, any item of which does not exceed 15 tons, between all points in the Los Angeles and Long Beach harbor areas, including all docks, wharves, points, and places within this harbor area and to ships at anchor inside and outside the Los Angeles-Long Beach harbors, subject to the following conditions:

1. Only the crew boat PACIFICO may be used for the transportation of passengers and their baggage and/or freight.
2. Pacific Towboat and Salvage may use its water barge for the transportation of freight either in connection with the transportation of potable water or not.
3. ^{•3} ~~The use of~~ bunker barges may be used by Pacific Towboat and Salvage for the transportation of freight carried upon the decks, providing the transportation is in conjunction with a shipment of bunker fuel, both being delivered to the same destination at the same time.

Issued by the California Public Utilities Commission.

Decision 82 07 110, Application 60411.