

Decision No. 89205 AUG 8 - 1978

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of CALIFORNIA LAUNCH SERVICE
CORP. for authority to amend its certificate
of public convenience and necessity granted
in Decision No. 88141, Application No. 57467
to delete the restriction to use of vessels
of less than five (5) tons net register or,
in the alternative, for a new certificate of
public convenience and necessity authorizing
the provision of a water vessel common
carrier service on San Francisco Bay pursuant
to Section 1007 of the California Public
Utilities Code.

Application No. 57799
(Filed January 13, 1978)

Brobeck, Phleger, & Harrison, by Robert N. Lowry,
Attorney at Law, for applicant.
Vaughan, Paul & Lyons, by John G. Lyons, Attorney
at Law, for Harbor Carriers, Inc., protestant.
Thomas Enderle, for the Commission staff.

O P I N I O N

Applicant's operating authority as a water vessel common carrier service was purchased from Murphy Tugboat Company, under the authority of Decision No. 88141 dated November 22, 1977 in Application No. 57467. Applicant started to provide service under the Murphy certificate on December 22, 1977, thirty days after the effective date of the decision. The certificate includes a clause restricting the holder thereof to the use of vessels having a burden of less than five (5) net tons. Section 1007 of the Public Utilities Code was amended effective January 1, 1978 (Statutes 1977, Chapter 190) to exempt from certificate requirements "any vessel under the burden of five tons net register". Applicant has applied herein to either have its certificate amended by deleting the restriction, or to have a new certificate issued without the restriction. Applicant has emphasized that any operator can now lawfully use vessels of less than five tons net register without a certificate, as a result of

the recent amendment to Public Utilities Code Section 1007. A protest was filed by Harbor Carriers, Inc., and a public hearing was held on April 24, 1978 in San Francisco before Administrative Law Judge Fraser. Documentary evidence and testimony was presented by applicant and the protestant. A Commission staff representative assisted in developing the record.

Applicant's charter vessels bring crewmen, pilots, and repairmen to and from vessels anchored in San Francisco Bay. A witness described the term "net register tons" as an artificial measure which limits the usable space in the interior of a vessel. Each ton is the equivalent of 100 square feet of space. All of applicant's vessels will have a greater passenger carrying capacity if the restriction is removed. The present capacity is approximately 20 passengers on the craft which provides the principal service. A witness for applicant testified that as many as 20 passengers may wish to leave or be transported to a single ship. In this instance applicant's vessel would load its capacity at the first stop and be unable to pick up or deliver at the other ships. This would necessitate having a standby vessel, or calling in a competitor, who may not be able to provide service on short notice. If the restriction is lifted the capacity of the principal carrier will be increased to more than 30 passengers after interior bulkheads are moved or removed. Use of a large vessel with a small passenger capacity would require inefficient use of fuel, since the craft would be required to make extra trips at an increased fuel expenditure because of its reduced carrying capacity.

Protestant argued that applicant does not require authority to haul more than 20 passengers, since charters are usually for 15 or less, that protestant has four vessels with a capacity of 49 passengers (per unit) and has never been able to keep them half full on charters, and that applicant has not shown a need to transport 20 or more passengers.

The Legislature removed vessels of this burden from Commission regulation and applicant will be seriously prejudiced if limited in its certificate to using vessels anyone else can operate without applying for any authority from this Commission.

Findings

1. Applicant purchased a water vessel common carrier certificate from Murphy Tugboat Company on November 22, 1977.
2. The certificate included a clause which restricted the holder thereof to the use of vessels having a burden of less than five (5) tons net register, which seriously reduced the passenger carrying capacity of all of applicant's vessels.
3. Effective January 1, 1978 the State Legislature amended Section 1007 of the Public Utilities Code to exempt from certificate requirements "any vessel under the burden of five tons net register".
4. All water taxis should be altered to carry the maximum number of passengers so that each taxi can transport all who are ready to leave at each point to be served.
5. Public need requires the removal of interior walls, bulkheads, or other restrictions to increase the passenger-carrying capacity of applicant's vessels and the weight from "less than five (5) tons net register" to the maximum safe allowance prescribed.
6. Public convenience and necessity require that applicant be authorized to increase the passenger capacity of its vessels and that the restriction be removed from applicant's certificate.

Conclusions

1. A restriction on the size of vessel to be used becomes ineffective when the law is changed to remove the only size vessel authorized from Commission jurisdiction.
2. The restriction should be removed from applicant's certificate.
3. The certificate should be reissued without the restriction.

O R D E R

IT IS ORDERED that:

1. The restriction in the certificate of public convenience and necessity transferred to applicant by Decision No. 88141 dated November 22, 1977 in Application No. 57467, which limits applicant to vessels having a burden of less than five (5) net tons is deleted and canceled.

2. The certificate will be reissued in its original form less the deleted restriction.

The effective date of this order shall be ^{72nd} ~~thirty~~ days after the date hereof.

Dated at San Francisco, California, this 8th day of AUGUST, 1978.

Robert R. Rasmussen
President

Virginia L. Sturgeon
Robert D. Smith

Commissioners

Commissioner William Symons, Jr., being necessarily absent, did not participate in the disposition of this proceeding.

Commissioner Claire T. Dedrick, being necessarily absent, did not participate in the disposition of this proceeding.

Appendix A
(Dec. 88141)

CALIFORNIA LAUNCH SERVICE CORP.
(A California corporation)

First Revised Page 2
Cancels
Original Page 2

SECTION 1. GENERAL AUTHORIZATIONS, RESTRICTIONS, LIMITATIONS
AND SPECIFICATIONS.

California Launch Service Corp., by the certificate of public convenience and necessity granted by the decision noted in the margin, is authorized as a vessel common carrier to transport passengers, baggage and express between vessels in, and points along, San Francisco Bay, as described in Section 2, subject to the following conditions: *

- (1) No vessel shall be operated unless it has met all applicable safety requirements, including those of the United States Coast Guard.

Issued by California Public Utilities Commission.

*Amended by Decision No. 89205, Application No. 57799.