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ORIGINAL

Decision No. 89353 SEP 6 1978

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

H-10 WATER TAXI CO., LTD.,

Complainant,

vs.

UNIVERSAL MARINE CORPORATION,  
a corporation,

Defendant.

Case No. 10345  
(Filed June 7, 1977)

Application of Universal Marine Corporation for a certificate of public convenience and necessity to expand operations as a common carrier by vessel in the Los Angeles and Long Beach Harbors.

Application No. 57692  
(Filed November 27, 1977)

James H. Lyons, Attorney at Law, for H-10 Water Taxi Co., complainant and protestant.  
Mark A. Tighe and Warren M. Grossman, Attorneys at Law, for Universal Marine Corporation, defendant and applicant.  
Thomas P. Hunt, for the Commission staff.

### O P I N I O N

Complainant and protestant H-10 Water Taxi Co., Ltd. (H-10) operates water taxis under a vessel certificate of public convenience and necessity granted by D.76436 in A.51342 and amendments thereto pursuant to Section 1007 of the Public Utilities Code (Code). H-10 is in the business of transportation of passengers, baggage, and/or freight and operates generally between all docks, wharves, ships, and points and places within the Los Angeles/Long Beach Harbor, on the one hand, and also between all docks, wharves, ships, points and places, and any of the following, on the other hand: (1) points and places on Santa Catalina Island; (2) ships moored offshore at El Segundo;

(3) ships moored offshore at Huntington Beach; and (4) ships arriving or departing the Los Angeles/Long Beach Harbor.

By its complaint H-10 alleges that Universal Marine Corporation (Universal) is deliberately and flagrantly violating the restrictions contained in its vessel certificate<sup>1/</sup> by operating water taxis to and from ships without utilization of its barge/crane; that Universal has not filed a tariff which has been accepted by the Commission within the 120 days required by D.86732; that the Commission's staff advised Universal to cease and desist water taxi operations that were not in connection with the use of its barge/crane; and that said violations have caused and continue to cause severe financial loss to H-10. It is requested by H-10 that we issue an immediate cease and desist order prohibiting Universal from operating vessel launches absent utilization of its barge/crane, and prohibiting all operations until its tariff is on file with the Commission.

Universal's answer dated July 19, 1977 alleges that it now has filed the appropriate tariff and timetable schedules; and that with regard to H-10's allegation that Universal has deliberately and flagrantly disobeyed the Commission's order, it advises us as follows:

"The Company has always and continues to offer boarding party services for port officials, customs inspectors and the like. Such service is essential because of the work it generates, e.g. barge/crane/tug services, underwater hull cleaning, anchor chain replacement, strike-down labor, rigging crews and many other marine services. We do not categorize our boarding party services as water taxi business; however, we would appreciate the Commission's guidance in this regard and will amend our certificate if necessary."

Universal admits that it rendered water taxi service that was not in conjunction with utilization of its barge/crane. For an affirmative defense Universal alleges that it has only two water taxis whereas H-10 has seven; that H-10's rates are lower than Universal's; and

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1/ "(1) Water taxi service will be offered only to and from ships during a single stay in port when the vessel(s) also receive(s) freight transported on applicant's barges equipped with a crane." Appendix A, D.86732 dated December 7, 1976 in A.56366.

that there has been a considerable increase in vessel arrivals in Los Angeles/Long Beach Harbor in the second quarter of 1977 over the same period in 1976, and therefore H-10 should not be financially disadvantaged.

On July 29, 1977 H-10 filed a motion for a cease and desist order alleging that if the motion is not granted Universal's illegal acts will unavoidably lead to bankruptcy of H-10.

By D.87731 dated August 16, 1977 we issued a temporary restraining order against Universal prohibiting it from conducting operations as a common carrier by vessel which is not performed in conjunction with the transportation of freight by its barge equipped with crane and, restraining water taxi service performed for boarding parties of port officials, customs inspectors, and the like.

On November 17, 1977 Universal filed its A.57692 seeking a certificate of public convenience and necessity under Section 1007 of the Code to conduct vessel common carrier operations in the transportation of passengers and their baggage and/or freight (1) between the ports of Los Angeles and Long Beach, on the one hand, and all docks, wharves, ships, and points and places within the Los Angeles/Long Beach Harbor and (2) between all docks, wharves, ships, and points and places within the Los Angeles/Long Beach Harbor, on the one hand, and on the other hand, marine installations and rigs, ships, and vessels located at points offshore of the counties of Los Angeles and Orange. On December 27, 1977 Universal filed a Request for Expedited Hearing.

After duly published notice hearings were held on the complaint on September 1 and October 5, 1977 in Los Angeles before Administrative Law Judge Bernard A. Peeters. Universal's application was consolidated with the complaint and further hearings were held on February 6, 7, and 8, 1978 in Los Angeles. The matters were submitted subject to the filing of concurrent briefs due on April 26, 1978. The time was subsequently extended to May 1, 1978. The briefs were timely filed and the matters are ready for decision.

On March 10, 1978 Universal filed a petition to modify our temporary restraining order on the grounds it had just learned of the final passage of Assembly Bill 158 which added Subsection (c)<sup>2/</sup> to Section 1007 of the Code. On May 2, 1978 we issued D.88783 which modified our temporary restraining order, as requested, by lifting the restraint on water taxi service performed for boarding parties and declaring that the restraining order does not apply to water taxi service rendered in vessels under the burden of five tons net register. On May 11, 1978 H-10 filed its Petition for Reconsideration and Clarification of D.88783 and on May 12 Universal filed its reply thereto. We shall dispose of H-10's petition in this decision.

The Issues

H-10 sets forth two issues, as follows: (1) Whether Universal's continued illegal operations in violation of an interim certificate, a certificate, and two cease and desist orders should subject it to (a) the injunction of this Commission and (b) punitive sanctions; (2) Whether Universal should be issued a certificate of public convenience and necessity for unrestricted water taxi operations in light of its past conduct before the Commission, the public convenience and necessity to be served, and its unproven financial condition.

Universal categorizes the issues under three headings, as follows: C.10345. (1) Does the evidence demonstrate that respondent has violated the terms of the outstanding cease and desist order? (2) Does the evidence demonstrate that any violations of such cease and desist order were knowingly performed and in flagrant disobedience of the cease and desist order? (3) Viewed in the light of Universal's complete cessation on October 27, 1977, of activities proscribed by the cease and desist order and its representation that it will abide by the terms and restrictions of its outstanding certificate, does

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<sup>2/</sup> "1007 (c) The provisions of this section shall not be applicable to any vessel under the burden of five tons net register. (Added Stats. 1977, Ch. 190.)"

the evidence nonetheless warrant making the cease and desist order permanent? (4) Are the issues embraced in the complaint case mooted by a demonstrated need for the service proposed to be performed under applicant's pending application? A.57692. (1) Does the evidence justify and require a finding that there exists a public need for the service sought to be performed by applicant? (2) Does the evidence demonstrate an inability upon the part of protestant, H-10, to satisfy that need? (3) Does the fact that protestant may experience a loss of patronage were applicant to be granted authority require denial of the application? (4) Is applicant financially fit? (5) Assuming respondent to have violated the terms of the cease and desist order does such fact render it unfit? (6) Does the evidence justify a grant of authority to applicant as sought? Jurisdictional issues. (1) Does the Commission have jurisdiction to regulate vessel operations involving movements between the Los Angeles/Long Beach Harbor and vessels positioned in international waters beyond three miles of the California coastline? (2) Does the Commission have jurisdiction to regulate "boarding party activities" both within the Harbor in international water under circumstances where the vessel utilized is operated on a circular basis both originating and terminating at the same point and without discharging cargo en route?

The Essential Issues

1. Has Universal conducted water taxi operations in violation of the restriction in its certificate and in violation of our temporary restraining order?

2. If the answer to the first issue is in the affirmative were such operations conducted in willful and flagrant disregard of our orders?

3. If the answer to the second issue is in the affirmative what sanctions or penalties should be imposed upon Universal?

4. Should the temporary restraining order be made permanent?

5. Does the public convenience and necessity require the unrestricted certification of water taxi service between points in the Los Angeles/Long Beach Harbor for Universal?

6. Whether the transportation of a boarding party constitutes water taxi operations subject to our jurisdiction?

The Evidence

H-10 presented its complaint and protest through three witnesses, one of whom was called under the provisions of Section 776 of the Evidence Code, and 11 exhibits. H-10's principal witness was its president, Mrs. Jeanne M. Seehorn. She testified (Exh. C-5) that H-10 is located at Berth 84 on the west side of the main channel of Los Angeles Harbor, but is presently in the process of moving to Berth 193 in the east basin of the harbor; and that the main service provided by H-10 throughout its history (which extends over fifty-five years) has been providing water taxi operations to and from ships at anchor in the ports of Los Angeles and Long Beach. H-10 has six water taxis. Four are strictly passenger and two are equipped to carry both personnel and ship's stores. The latter two can carry four and one-half to five tons of ship's stores in addition to personnel. An available seventh vessel is the Ramona, which has a capacity of 40 tons, but is usually loaded only to 25 or 30 tons. All vessels are equipped with a two-way radio; two water taxis are equipped with radar; a third radar has been ordered and will be installed in the near future; all vessels are certified by the U.S. Coast Guard; and H-10 has blueprints for a new boat costing in excess of \$100,000, but is hesitant to commit capital to building it because of the effect of Universal's illegal operations and the amount of time and money spent over the past two years fighting Universal's illegal operations. Mrs. Seehorn stated that one of the principal functions of H-10 throughout its history has been to provide water taxi service for boarding parties. She defined a boarding party as usually consisting of the ship's agent and a customs official and/or an immigration official. The ship's agent arranges for the custom and immigration officials and then telephones H-10 to make arrangements for the water taxi service to the ship when it arrives. Exhibit C-4 is a stipulation entered into by Universal wherein it is admitted by Universal that from

March 5, 1977 through July 26, 1977, 119 water taxi operations were performed which were not in conjunction with the use of its barge/crane, 89 of which were for boarding parties only; that from September 8, 1977 through October 27, 1977 there were 51 instances of water taxi operations not in connection with the use of the barge/crane of which 23 were for boarding parties only and 2 were for the transportation of Coast Guard personnel without charge; and that Universal does not consider these operations within the Commission's jurisdiction. In support of its claim that Universal's unlawful operations creates a financial hardship, H-10 presented its statement of operations for the first half of 1977 (Exh. C-2). For the first six months operations a profit, after taxes, of \$28,598.55 is shown. For the second quarter of 1977 a loss of \$13,556.24 is shown and for the month of June 1977 a loss of \$6,748.67 is shown. Mrs. Seehorn attributes these losses to the illegal operations of Universal which began in the latter part of March 1977. She pointed out that there was a dramatic change in the number of ships that came into port for short periods of time that did not go to berth which did require service, but it was service that H-10 did not provide. She stated that these were ships that historically were H-10 customers and concludes that this loss of business was an invasion of an existing market by Universal rather than a development of a new market. With respect to H-10's protest to Universal's application Mrs. Seehorn points out that the complaints against H-10 as alleged by Universal seem to fall into three categories: (1) delays or inability to provide water taxi service; (2) Universal is more flexible; and (3) H-10 is reluctant to operate outside the breakwater. It is common knowledge, Mrs. Seehorn says, that in the latter part of November a tremendous backlog of ships began to build up on the Los Angeles/Long Beach Harbor largely because of new import tariffs which were going into effect on January 1, 1978. Another reason for the buildup of ships in the harbor is attributed to the shortage of longshoremen and that the harbor has the largest number of ships awaiting dock space and dock gangs since World War II or the 1958 strike which

lasted 135 days. Also there has been a shortage of port authorities from customs and immigration to service the ships as they arrive, so that even if there were more water taxis available under these circumstances they would not be of much help. Mrs. Seehorn points out that the complaints against H-10 set forth in Universal's testimony all center around one particular day - December 16, 1977. On this day the highest number of ships (14) in her experience arrived at anchorage, and all needed port clearance requiring customs and/or immigration officials of which only three were available during the 24-hour period.

Universal's evidence was adduced through its president, eleven public witnesses, and fifteen exhibits. The president testified that Universal is a multifaceted marine service company capable of meeting all aspects of marine service requirements. Some of the services offered and performed include diving, hose hookup and technical oil derrick support services, vessel hull cleaning, repair work, as well as water taxi service, and transporting personnel and ship's stores. Water taxi operations are conducted primarily with the following equipment:

<u>VESSEL</u>	<u>DIMENSIONS</u>	<u>CAPACITY</u>
(1) "Unimar 01" (Barge/Crane)	30' x 90' with 80' Crane	80 tons 25 tons on crane
(2) "Bluefin" (Tugboat)	65' - 400 horsepower	37 tons
(3) "Bruin" (Tugboat)	45' - 275 horsepower	13 tons
(4) "Liberty" (Water Taxi)	45' x 12' beam 185 horsepower	27 passengers and 3 tons stores
(5) "Wave" (Water Taxi)	45' x 12' beam 185 horsepower	40 passengers outside Harbor 47 inside
(6) "Vega" (Water Taxi)	36' x 10' beam 185 horsepower	6 passengers 2 tons stores
(7) "Hydro I" (offshore boat steel-hulled)	49' x 17' 390 horsepower	49 passengers 8 tons stores



In addition to the above, Universal also has a 112' x 36' steel barge upon which it is mounting a 100-foot crane which will be capable of lifting 35 tons at a time. The total capacity of this barge will be 120 tons. Finally, Universal has negotiated for the purchase of two additional tugboats and is currently negotiating for the purchase of five more water taxis which will be added to the fleet if and when the authority requested herein is granted. All water taxi vessels have been passenger-certified and all contain modern radar and radio equipment on board. The president, Mr. Budai, also testified that, while he understood the restriction on the water taxi operation contained in its certificate, it is through boarding party arrangements that requests for all of the other marine services offered by Universal are obtained. Therefore, it was felt that the qualification regarding barge/crane operations did not apply to boarding party operations. Although it was realized the distinction drawn on the boarding party operation would be in contention, at 12:00 noon on October 27, 1977 all unauthorized water taxi operations were discontinued. Since that time Universal has been literally besieged with calls from ship's agents, owners, and chandlers requesting water taxi service. Budai stated that the pressure on some companies requesting service has been such that they were forced to utilize San Pedro Marine, Inc., an unauthorized carrier, to perform water taxi service.<sup>3/</sup> Budai points out that in retrospect and after protracted conversations with his lawyers it was a mistake in judgment to perform boarding party operations in contravention of the restriction in the certificate, but that at no time were such operations conducted in flagrant disobedience of the Commission or the law. Rather it was honestly believed there was a valid distinction between water taxi service and boarding party service, and Universal was merely trying to meet the expressed public need for the service.

Generally, the testimony of Universal's public witnesses centered around the service problems they had with H-10, the changing characteristics of marine services required by ships today, the

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<sup>3/</sup> RT 247 and 283.

increased volume of shipping, the shorter period of time in the harbor or at anchor, and the larger size of vessels visiting the port. Among Universal's seven shipper witnesses were the vice president of the largest ship's agency in the world and the president of the second largest ship Chandler in the United States, the largest on the west coast. In addition Universal presented testimony from the director of operations for the Port of Long Beach, the president of the Los Angeles Steamship Association, its certified public accountant, and Mr. Yankovich of San Pedro Marine, Inc. All of the public witnesses have had experience with H-10's service and generally they indicated that it was inadequate in that there was a lack of ability to provide adequate equipment to meet various service requests and the satisfactory performance of the requests it did handle. Fifteen specific instances were testified to wherein H-10 either refused to render service, did not render service as promised, or rendered service in a manner considered inadequate by the witnesses. All of these complaints centered around the latter part of 1977. It was pointed out that a water taxi operator must be able to be responsive and cooperative with respect to the changing needs of the ships' schedules and limited amount of time in which marine service functions can be rendered. This is particularly true because of the increasing level of vessel service requirements reflecting their larger size, expense, and sophistication of modern ships, plus their shortened stays in port. All of the witnesses agreed that harbor traffic generally had increased and specifically that the necessity for water taxi service had increased. Most of the witnesses stated that the increased need for water taxi service is due to the dramatic increase in bunkering and lightering operations in connection with the movement of Alaskan oil. Most of these vessels do not go to berth, but rather anchor either in the Long Beach deep anchorages or outside the breakwater. Such vessels obviously require water taxis for all of their vessel service needs. In this regard the director of Long Beach Port Operations pointed out that the increase in west coast oil traffic would necessitate larger, deeper draft tanker vessels and that this eventuality had already precipitated the redesignation

of areas outside the breakwater as deep draft anchorages. All services required by vessels anchored here will have to be handled by water taxis. The president of the Los Angeles Steamship Association polled his membership (46) with respect to the need of more than one water taxi operation in the Los Angeles/Long Beach Harbor (Exh. A-12). Thirty-two members indicated they favored having another water taxi operator in the harbor, thirteen did not respond, and one had no opinion. Universal's final witness was a certified public accountant who provides it with management advisory and accounting services. He testified to the general financial improvement of all of Universal's operations. He pointed out that the corporation's net worth increased from a negative shareholder's equity of approximately \$28,000 as of September 30, 1977, to a positive \$52,000 as of December 31, 1977; that working capital had improved from a deficit of \$7,000 on September 30, 1977, to a positive \$65,000 on December 30, 1977; and that as of September 30, 1977 Universal's gross revenues were \$1,577,000 on which a net profit of \$209,000 was earned.

#### Discussion

Before discussing the merits of the matter we shall dispose of H-10's Petition for Reconsideration and Clarification of D.88783. Said decision modified D.87731 which is a temporary restraining order (TRO) against Universal. The TRO restricts Universal from performing any water taxi service (operations as a common carrier by vessel), unless it is in connection with the use of its barge/crane. The order also set a hearing date of September 1, 1977 to determine whether the TRO should be made permanent or terminated. An abortive hearing was held on September 1. After several delays for various reasons, hearings were finally held on the complaint and Universal's A.57692 on February 6, 7, and 8, 1978. The matters were submitted on the latter date subject to the filing of concurrent briefs due two weeks after the filing of the last transcript. On March 13, 1978 Universal filed its Petition for Modification of the TRO. By D.88783 dated May 2, 1978, and effective 30 days thereafter, we modified the TRO. On May 22, 1978 H-10 filed its Petition for Reconsideration and Clarification of D.88783.

D.88783 modified D.87731 by lifting the restraint on water taxi service performed for boarding parties. The order also declared that the restraining order does not apply to water taxi service rendered in vessels under the burden of five tons net register, and that in all other respects said decision (D.87731) remains in full force and effect. H-10 seeks a modification which would permit Universal to render water taxi service only in vessels under the burden of five tons net register; and that water taxi service in larger vessels can be rendered only when the vessel also receives freight transported on Universal's barge/crane. It is contended by H-10 that our modification order bypasses a decision on the merits of the complaint and prejudices the case before receipt of the briefs on the matter.

Universal's reply denies that the modification order bypasses a decision on the questions raised by H-10 or establishes a dangerous precedent of prejudging a case. We agree with Universal's assessment of the situation and its argument. A TRO is an unusual and extraordinary measure or remedy. Since it is based upon the pleadings and issued ex parte, it should be used with caution and extreme care. A TRO will issue if it is shown that (a) the petitioner is likely to prevail on the merits of its appeal; (b) the petitioner will suffer irreparable injury without the order; (c) no substantial harm to other interested persons will occur; and (d) the public interest will not be harmed. (Eastern Airlines, Inc. v Civil Aeronautics Board (1958) 261 F 2d 830.) In the same manner the absence of any of the above criteria will warrant the dissolution of the TRO. Here, although a hearing date was set in the TRO, it was aborted and for various reasons was delayed several times. Finally at the hearing (four months after Universal had stopped all water taxi service not in conjunction with its barge/crane and, six months after the issuance of the TRO) it became apparent that the public interest was being harmed by continuing the TRO in full force and effect. We then modified our TRO upon Universal's petition to allow water taxi operations in vessels under five tons net register pursuant to recently enacted Section 1007(c) of the Code and,

to provide water taxi service for boarding parties. Whether the water taxi service for boarding parties, under the modified TRO, was to be performed in vessels under five tons net register only is moot in view of the conclusion we reach later in this decision. We will therefore deny H-10's petition.

Issue 1

Universal admits that it conducted water taxi operations in violation of the restriction in its certificate and in violation of our TRO; therefore, the answer to the first issue is yes.

Issue 2

Did Universal conduct its unlawful operations in willful and flagrant disobedience of our orders? We are of the opinion that Universal was not in willful and flagrant disobedience of our orders. The record shows that Universal has an honest belief that boarding party operations are not standard water taxi service; that some instances of unlawful water taxi operations occurred because of untrained dispatchers, and during the period of time from September 1, 1977 to October 26, 1977, boarding party operations were conducted pursuant to advice from prior legal counsel that the cease and desist order had been lifted.

Issues 3 and 4

Under the circumstances we do not see what purpose would be served by imposing a sanction or penalty upon Universal for its transgressions. The fact that it has had to and did turn away a considerable amount of business between October 27, 1977 and June 1, 1978, the effective date of our order in D.88783 modifying the TRO, a period of seven months, is more than sufficient sanction to have imposed upon Universal. Therefore, the answer to the fourth issue as to whether the TRO should be made permanent is no. As pointed out above, the use of a TRO should be done with extreme caution and care because of the potential harm it can do and the denial of due process if not promptly brought to a determination through a hearing. Furthermore, if it is shown that the petitioner will not prevail, or that the public interest will be harmed, the TRO must be dissolved. Here, because of circumstances, the TRO remained in full force and effect for a period of almost six months (August 16, 1977 to June 1, 1978)

which provided an unwarranted benefit to H-10 to the detriment of the public and Universal. We will dissolve the order in D.88783.

Issue 5

Our answer to Issue No. 5 with respect to the public convenience and necessity is that Universal should be granted an unrestricted certificate to provide water taxi service between points in the Los Angeles/Long Beach Harbor and to points outside the harbor. The record shows that over the last ten years the volume of shipping traffic coming into the harbor and utilizing anchorages outside the harbor breakwater has increased. This general increase is due in large part to the new Alaska oil traffic on the west coast and to the harbor's attractiveness as an economical fuel oil (bunkering) port. The general pattern of increasing numbers of ships coming into the harbor pertains to both vessels going to berth and vessels going to anchor. Additionally, the general increase in the size and number of the vessels coming into the harbor has resulted in a concomitant increase in water taxi operations and other related marine services associated with these ships.

H-10, which has not expanded or replaced any of its equipment over the last ten years, has not been able to adequately handle the water taxi service requests which now exist in the harbor. H-10's San Pedro terminal facilities have recently been moved from Berth 84 to Berth 192, which is farther up into the Los Angeles Harbor main channel. This move will require H-10's vessels to travel approximately five miles in a channel wherein vessel speed is restricted to five or six knots, and thereby add ~~approximately double~~ <sup>the</sup> the time it takes Universal to reach the deep water anchorages located in the Port of Long Beach and outside the breakwater. The additional time it <sup>will</sup> takes H-10 to reach the deep water anchorages in the Port of Long Beach and outside the breakwater makes it logistically and economically more advantageous to utilize Universal which is located at Berth 121 in the Port of Long Beach. The testimony of Universal's supporting shipper witnesses detailed at great length the scope of their various operations as ship owners, agencies, and chandler, and the practical importance they all place upon adequate and responsive water taxi service. In their various capacities they all deal with marine service requirements, including water taxi services. All have had experience with H-10's service and Universal's. While there have

been complaints with respect to H-10's service, we do not believe it has been as bad as Universal would have us believe. We are concerned, however, with the fact that there appears to be an increased demand for water taxi service which H-10 has not attempted to meet. H-10's argument that it has plans for another vessel, but hesitated to commit any funds to it because of its fight with Universal, does not impress us. As we said in D.86732, A.56366:

"We cannot predict how much additional revenue it [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 a carrier thus benefited, lies not in the hearing room, but in the market place. If H-10 had made an aggressive effort to identify and serve the full range of public needs, a competitor would have found it difficult to gain a foothold in the market, or to demonstrate a need for a competitive service. We reject H-10's contention that it is entitled, as a matter of right, to protection from competitors."

It is apparent that H-10 insists on protection of its near monopoly in the harbor in spite of our admonition, and is not willing to make the necessary investment to improve its fleet to better meet the needs of commerce and the public. The record clearly shows that there is sufficient business to support another unrestricted water taxi operator. The level of vessel service requirements has greatly increased, reflecting the large size, expense, and sophistication of modern ships, as well as the fact that they now spend less time in port which means that more service operations must be compressed into a shorter period of time, thus placing an added premium on adequate and responsive water taxi service. That there is sufficient business for two water taxi operators in the harbor is demonstrated by the testimony of a subpoenaed witness, Mr. Yankovich of San Pedro Marine, Inc. (San Pedro). It was determined through this witness that

San Pedro had been performing water taxi operations for approximately six months without the requisite authority from the Commission; that the requests for this service came from ship chandlers and agents at the rate of approximately 35 per month involving stores orders averaging approximately 20-30 tons; and that these requests came to San Pedro because there was no other way for the shipper to get the stores to the ship because it was too large for certain boats or was outside the harbor. If H-10 had a sincere desire to fulfill the public needs for water taxi service, or the capability, it would have been unnecessary for the shippers to turn to an unauthorized operator for service during the pendency of the restraint against Universal. We also note that H-10 did not complain of this unauthorized operation as it did of Universal's.

It has been shown that Universal's financial position has improved to such a point that its management advisor and accounting firm verified Universal's ability to operate its water taxi operations profitably and that the general financial condition of all of Universal's operations has improved. The corporation's net worth improved from a negative shareholder's equity to a positive shareholder's equity of \$52,000 on December 31, 1977; working capital improved from a deficit to a positive figure of \$65,000 on December 10, 1977 and the company produced a net income of \$209,000 for the year ended September 30, 1977. We believe that Universal has satisfied the requirement that it has the financial ability to conduct satisfactory, unrestricted water taxi operations in and about the Los Angeles/Long Beach Harbor.

Issue 6

The last issue to be addressed is whether boarding party operations constitute standard water taxi service. Universal is of the opinion that such operations do not constitute water taxi service.



Its contention is not very clear. The definition of the boarding party is not in dispute.<sup>4/</sup> Universal seeks to distinguish boarding party operations from standard water taxi operations on the basis that such operations serve a unique and integral marine service function. Universal argues that after a boarding party run and pursuant to the decision made by the persons after conferring on board ship, a complete picture of the vessel's service requirements becomes apparent. It points out that the service requirements might be for ship's stores and a crew change. However, it might also be for a strike-down gang (a temporary crew to do odd-job work), repair and/or underwater inspection, or cleaning work, all operations which are supplied by Universal but not H-10. Universal pursues this argument further by saying that it is not economical for a ship's agent to have to use two different operators on such a run, such as H-10 to provide the taxi service and Universal to provide the marine services, when Universal can do it all at one time. In effect Universal is arguing that because it provides a range of marine service it should be given a monopoly on the boarding party service in order to obtain this ancillary business and therefore such service is not standard water taxi service subject to our jurisdiction. We do not agree with Universal. Both services involve the transportation of persons and/or property for compensation by vessel between points within California. We have had occasion to rule on this very operation before and concluded that boarding party operations are subject to our jurisdiction and regulation (In re Harbor Carriers, Inc. (1971) 72 CPUC 518, 527-528). To carve out an exception to the statute is not within our power but rather is a matter for the legislature.

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<sup>4/</sup> "Boarding party" is a technical term in the marine services industry and is used to designate the initial run out to a ship when it comes into port or anchors off the coast. Boarding parties are usually made up of a ship's agent, or owner's representative, a ship's chandler (purveyor), and customs and immigration officials. The immigration officials clear the ship's crew and the agent and chandler work with the ship's master and other officers in ascertaining the ship's service requirements. It is during this initial "boarding party" run that future crew change, provisioning, and repair work requests are worked out (RT 13-15; 71-73; 79-82; 240).

Universal also seeks to exempt boarding party operations on the grounds that such operations are not the transportation of persons or property between two different end-of-the-line termini as defined in Golden Gate Scenic Steamship Lines, Inc. v Public Utilities Commission (1962) 57 C 2d 373, 380. Universal's argument here is misplaced. We have previously distinguished the loop operation upon which Golden Gate is based in Harbor Carriers, Inc. (1973) 75 CPUC 529, 545 wherein we concluded:

- "2. The transportation of passengers by vessel for compensation from a point in California to any other place in California, where some or all of the passengers disembark with the vessel standing by, the same passengers thereafter being returned by that vessel to point of embarkation, constitutes transportation of persons 'between points in this State,' as that term is used in Section 1007 of the Public Utilities Code.
- "3. The decision of the California Supreme Court in Golden Gate Scenic S.S. Lines v Pub. Util. Com'n, 57 Cal 2d 273 [sic] does not remove from the jurisdiction of the Commission authority to require a certificate of public convenience and necessity under Public Utilities Code Section 1007 for transportation described in Conclusion 2."

Here the boarding party vessel departs from Universal's dock and proceeds to the ship where it disembarks the passengers, stands by while the passengers conduct their business aboard ship, embarks the passengers again, and returns to Universal's dock. Thus the facts here square with the facts in the 1971 Harbor Carriers case wherein boarding party operations were determined to be common carriage and a certificate of public convenience and necessity was required before such operations could be lawfully conducted.

In view of our conclusions it is unnecessary to discuss other points argued by counsel.

Findings of Fact

1. On December 7, 1976 the Commission issued D.86732 in A.56366 authorizing Universal to provide water taxi service transporting passengers and their baggage between vessels at anchor and shorepoints in Los Angeles and Long Beach Harbors only to and from ships during a single stay in port when the vessel also received freight transported on Universal's barges equipped with cranes.
2. Universal has filed appropriate timetables and tariffs in accordance with D.86732.
3. D.87731 ordered Universal to cease and desist from providing water taxi service unless it was performed in conjunction with the use of its barge/crane and specifically restricted boarding party operations.
4. From March 5, 1977 through July 26, 1977, 119 water taxi operations were performed by Universal which were not in conjunction with the use of its barge/crane, 89 of which were for boarding parties only. From September 8, 1977 through October 27, 1977, there were 51 instances of water taxi operations by Universal not in connection with the use of its barge/crane, 23 of which were for boarding parties only and 2 of which were for the transportation of Coast Guard personnel without charge.
5. D.88783 modified D.87731 by lifting the restriction insofar as vessels under five tons net register are used and insofar as boarding party operations are concerned.
6. During the period of time March 5, 1977 to October 27, 1977 Universal occasionally performed standard water taxi operations unconnected with its barge/crane operations. Said occasional operations were occasioned by untrained dispatching personnel and barge/crane service order cancellations after regular water taxi service had been rendered.
7. During the period of time September 1, 1977 to October 26, 1977 Universal conducted boarding party operations pursuant to advice from its prior legal counsel that the cease and desist order had been lifted. After substituting legal counsel on October 27, 1977 Universal has not performed any further unauthorized operations.

8. Universal's operations in contravention of the Commission's cease and desist order were occasioned by a good faith disagreement in the legal jurisdiction of this Commission and its prior counsel's mistaken interpretation that the cease and desist order had been lifted.

9. There is a public need for vessel common carrier service in the Los Angeles/Long Beach Harbor area which is not being adequately met.

10. During the period October 27, 1977 to June 1, 1978 when Universal was performing water taxi operations only in connection with its barge/crane, the demands for water taxi service were such that shippers resorted to San Pedro, an unauthorized vessel operator.

11. H-10, although aware of the unauthorized operations of San Pedro, did not complain to the Commission or take other action to have the situation corrected.

12. H-10 experienced a loss in revenue during the period Universal was conducting unauthorized operations. Such losses are not beyond the control of H-10 and do not constitute the threat of bankruptcy due to the competition from Universal as alleged.

13. The cease and desist order contained in D.87731 as modified by D.88783 should be vacated.

14. Vessel traffic and tonnage in the Los Angeles/Long Beach Harbor area has experienced steady growth over the last ten years and will continue to grow.

15. A significant portion of this growth is due to the increased incidence of oil tanker bunkering and lightering operations which are now being performed in the Los Angeles/Long Beach Harbor. Such operations are usually done at anchor as opposed to coming into berth thereby necessitating water taxi service.

16. H-10 has not expanded or replaced any of its equipment over the last ten years and has not been able to adequately handle the vessel service requests which now exist in the Los Angeles/Long Beach Harbor area.

17. H-10 has not been as responsive as Universal in meeting customer service requirements.

18. H-10's San Pedro terminal facilities have recently been moved from Berth 84 to Berth 192, which is farther up into the Los Angeles main channel. This move will require H-10's vessels to travel farther and at a slower rate of speed than Universal's and will result in an approximate doubling of the time it would take H-10 to reach the deep water Long Beach anchorage and positions outside the breakwater.

19. Universal currently utilizes seven vessels in the local marine service operations including a steel-hulled, offshore boat which is considered by customers to be safer and better suited for vessel operations outside the harbor breakwater.

20. All of Universal's vessels are in good condition and are equipped with modern radio and radar equipment. Only two of H-10's vessels are equipped with radar.

21. Universal is financially able to perform the proposed operations.

22. The public convenience and necessity require the granting of the certificate to operate unrestricted water taxi operations between all docks, wharves, ships, and points and places within the Los Angeles/Long Beach Harbor, on the one hand, and, on the other hand, all ships, vessels, marine installation, and rigs located within the Los Angeles/Long Beach Harbor and the offshore inland waters of the counties of Los Angeles and Orange.

23. The relief requested in the complaint should be denied.

#### Conclusions of Law

1. Boarding party operations are subject to the jurisdiction of the Commission.

2. Universal should be granted an unrestricted certificate to perform water taxi operations between points and places in the Los Angeles/Long Beach Harbor, and between Los Angeles/Long Beach Harbor, on the one hand, and points and places offshore of Los Angeles and Orange Counties, on the other hand.

3. Universal's unauthorized water taxi operations were not conducted in a willful and flagrant manner.

4. Neither further sanctions nor a penalty against Universal are warranted under the circumstances.

5. Due to the unusual circumstances of this case and the prolonged duration of our restraining order, this order should be made effective upon the date of issuance.

6. The relief requested in the complaint should be denied and the outstanding cease and desist order lifted.

7. This proceeding is not subject to the California Environmental Quality Act nor to our Rule 17.1.

O R D E R

IT IS ORDERED that:

1. The cease and desist order in D. 87731 as modified by D.88783 is terminated.

2. The relief requested in H-10 Water Taxi Co., Ltd.'s complaint and its Petition For Reconsideration and Clarification of D.88783 is denied.

3. Appendix A of D.86732 is amended by incorporating First Revised Page 1, attached hereto, in revision of Original Page 1.

The effective date of this order is the date hereof.

Dated at San Francisco, California, this 16th day of SEPTEMBER, 1978. ✓

Robert Bateman  
President  
William J. Gurnea  
Vernon L. Stanger  
Charles D. Thole

Commissioners

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

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

Universal Marine Corporation, by the certificate of public convenience and necessity granted by Decision No. 86732, as modified by the decision noted in the margin, is authorized to conduct vessel common carrier operations in the transportation of passengers and their baggage and/or freight between (1) all docks, wharves, ships, and points and places within the Los Angeles/Long Beach Harbor, on the one hand, and on the other hand, all ships, vessels, marine installation, and rigs located within the Los Angeles/Long Beach Harbor and, (2) all docks wharves, ships, points and places within the Los Angeles/Long Beach Harbor, on the one hand, and on the other hand, marine installations and rigs, ships, and vessels located at points offshore of the counties of Los Angeles and Orange, subject to the following condition:

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.

By Decision No. 89353, Application No. 57692.