

Decision No. 91925 June 17, 1980

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Blue & Gold Fleet,)
a California corporation, for a)
certificate of public convenience)
and necessity authorizing)
operation of on-call charter and)
scheduled service by vessel on)
San Francisco Bay.)
_____)

Application No. 59193
(Filed October 11, 1979;
amended November 9, 1979)

Spolter, McDonald & Mannion, by Jerry Spolter,
Attorney at Law, for Blue & Gold Fleet,
applicant.

Loughran & Hegarty, by Edward J. Hegarty,
Attorney at Law, for Harbor Carriers, Inc.;
and Jerry L. Cormack, for the City of
Sausalito; protestants.

Hugh Dougherty, Attorney at Law, for Marin-
Sonoma Commuters Committee; William P. Clecak,
Attorney at Law, for Angel Island Ferry;
and Hanson, Bridgett, Marcus, Milne & Vlahos,
by Joan Cassman, Attorney at Law, for Golden
Gate Bridge Highway & Transportation District;
interested parties.

Richard Brozosky, for the Commission staff.

O P I N I O N

By this application, Blue & Gold Fleet (B&GF), a California corporation, seeks the issuance of a certificate of public convenience and necessity pursuant to Section 1007 of the Public Utilities Code (Code), which would authorize the operation of an on-call charter vessel passenger service between various points on the shoreline of San Francisco Bay. B&GF is also seeking interim authority to operate scheduled ferry service between Sausalito and Pier 39, San Francisco, as well as authority to operate such service between the Ferry Building in San Francisco and Berkeley.

B&GF's current sightseeing operations commenced on May 22, 1979 with vessels departing and returning to Pier 39. Such service is being operated pursuant to the loop exemption to the Code as recognized in Golden Gate Scenic S. S. Line, Inc. v Public Utilities Commission (1962) 19 Cal Reporter 657.

The vessels currently employed in the loop operations are the OSKI and OLD BLUE. These vessels were expressly designed and built for service on San Francisco Bay, are Coast Guard documented, and have a capacity for 400 passengers. It is expected that a third sister vessel, the GOLDEN BEAR, will be added to the service during December 1979.

By its amendment B&GF seeks additional authority to provide scheduled weekday service between the Berkeley Marina and a downtown San Francisco berth in the vicinity of the Ferry Building.

The application was protested by Harbor Carriers, Inc. (HC), the city of Sausalito, and the Marin-Sonoma Commuters Committee.

A prehearing conference was held on January 28, 1980 and a hearing was held on April 21, 1980 in San Francisco. The matter was submitted on April 28, 1980.

The Evidence

B&GF presented its case in chief through eight public witnesses and the general manager of B&GF. Three of the public witnesses testified in support of scheduled service between Berkeley and San Francisco as follows.

Edward A. Green, the Chief Transportation Planner in the San Francisco Department of City Planning, stated that his department supported the application to institute a commuter ferry service between Berkeley and San Francisco. He pointed out that the transportation element of the San Francisco master plan states that ferries and other

water-based transportation on the bay should be encouraged.

A fundamental policy objective of the master plan is to encourage the provision of transit access to the downtown area of the city.

A Berkeley ferry is consistent with this objective. San Francisco's Planning Department, together with the Port of San Francisco and the San Francisco Redevelopment Agency, have proposed a redevelopment of the waterfront area from China Basin to Pier 7. The redevelopment proposal includes plans to construct approximately 2,600 units of mixed income housing in the area, some commercial and recreational facilities including a hotel and restaurants. The State of California also plans to remove the Embarcadero Freeway and reestablish the Ferry Building as a major transit center. Thus a strong Berkeley ferry service would offer an alternate means of transportation for East Bay residents who now use the bridge and freeway.

Dion Lowery, a resident of Berkeley employed in San Francisco, is an active member of the "Save Our Ferry" Committee, a group of volunteers comprised of commuters from the East Bay to San Francisco who utilized the ferry service established on an emergency basis following the closure of the Bay Area Rapid Transit District (BART) Transbay Tube during February 1979. He stated that the committee represents approximately 500 members, all of whom would be vitally interested in seeing ferry service being reestablished between Berkeley and San Francisco. He pointed out that he was familiar with a "log count" which was taken during the period September 26 to October 19, 1979 when HC was operating the ferry on a daily basis. During that time the daily average was 217 passengers. It is his belief that the patronage levels during the past year represent only a small portion of the potential ridership. It is his firm

belief that with proper promotion, better scheduling, reduced commuter time, and a competitive rate structure a daily ferry service would be successful. Finally, he stated that if a certificate for daily scheduled service is granted, the committee and its members would enthusiastically and actively support the service.

Kathleen H. Seyfarth, a self-employed craftsperson, who lives in Kensington and has offices in San Francisco, commutes on a daily basis to San Francisco from the East Bay. She utilized the emergency ferry service while it was operated and is strongly in favor of such a service being provided on a permanent basis. Miss Seyfarth was very pleased with the service performed by HC and when informed that the company intended to discontinue the service, following the resumption of Bart's Transbay service, she was one of the persons who formed the "Save Our Ferry" Committee for the purpose of working with the city of Berkeley, HC, and interested commuters to continue the ferry service. The committee represents approximately 500 commuters, all of whom are very much interested in ferry service being reestablished on the bay. Miss Seyfarth has for some time been an active supporter and advocate of using ferries as an alternative commuting method. She believes that it is an ideal means of reducing the ever-increasing congestion on the Bay Bridge. Ferries are fuel-efficient and are an environmentally and esthetically pleasant form of transportation. It is also her expectation that if a fare in the range of \$1.00 to \$1.50 one-way were charged, the ridership would be approximately 200 passengers per day. With proper publicity she anticipates an even greater ridership.

The next group of witnesses presented by B&GF were in support of its request for authority to provide point-to-point service between points located on San Francisco Bay and its tributaries. The vice president of sales for San Francisco Hosts, Inc. (Hosts) testified that it is engaged in a variety of services designed particularly for major companies or associations which are conducting their conventions in San Francisco or the Bay Area. Its primary services are in the areas of transportation and coordination of leisure time activities. According to the witness, Hosts handles approximately 90 to 100 conventions during an average year. For example, in 1980 it is stated Hosts will be providing transportation services and coordinating leisure time activities for the National School Boards with 25,000 convention participants, the American Psychiatric Association with 18,000 participants, and the American Chemical Association with 12,000 participants.

The witness stated that Hosts has been limited as to the use of HC's Red and White Fleet which is the only carrier that now can provide the services its clientele desires. Approximately 25 percent of the time Hosts' reservation requests are declined by HC due to the unavailability of any boat to meet Hosts' needs. Even on requests made six months or more in advance HC has advised Hosts that it does not have the boats available because of prior commitments. Such denials of service hurt Hosts' business. Therefore, if Hosts has been unable to arrange the point-to-point vessel charters on particular dates, conventioners eliminate that aspect of the planned leisure time activity, and instead, arrange for a reception at their convention hotel or simply designate that block of time as "free time".

The witness stated that the predominant interest of the groups which Hosts serves is for charters which originate in San Francisco, travel to some other point on the bay, dock for dinner at a shoreside restaurant, and then return to San Francisco. For example, a large number of the conventioners request bay cruises which stop in Sausalito, Tiburon, or along the Oakland Estuary for dinner at one of the restaurants and then return later that evening to San Francisco. Approximately 60 such charters are handled on an annual basis. The witness concluded that, based on Hosts' experience, a large demand presently exists for the point-to-point charter service. It is his belief that there is a sufficient demand to support two carriers. He points out that if there was any active marketing or promotion of the point-to-point charter service a much larger market would be found to exist.

An attorney, whose office is located in Lafayette, testified that on July 4, 1979 he chartered a boat from B&GF for a private party for 220 of his friends. He has also made a reservation for July 4, 1980 for a similar type of charter with B&GF. When asked why he contacted B&GF and engaged its services he stated that he had spoken with HC and was informed that it does not make charter reservations for the 4th of July. He also spoke to Hornblowers in Berkeley and was told it does not have boats large enough for a group of over 200 people, therefore B&GF was the only available charter service that could satisfy his needs. He pointed out that if B&GF was granted the authority it is seeking he would continue to utilize B&GF's services.

The manager of the tour department of Interstudy, a student travel service, with offices in about ten major cities, supported the sought point-to-point authority. Interstudy's tour department arranges tours for foreign students visiting the United States. Last year the

San Francisco office was responsible for 9,000 foreign students, most of whom were from Japan. The witness stated that on three occasions in August 1979 her organization utilized B&GF's bay cruise for approximately 100 students on each occasion. She was very satisfied with the services and pointed out that in the past they had called HC for bay cruises but its prices were substantially higher than those charged by B&GF so it was not used. The witness stated that they were taking out one group in March and intend to have three to five more tours this summer and intend to utilize B&GF's services.

The next witness was a director of advertising and media relations for the Pacific and Tanforan Racing Associations. This witness has had discussions with the manager of B&GF with respect to the possibility of establishing a ferry charter service which would carry West Bay patrons of Golden Gate Fields racetrack from Pier 39 in San Francisco to the Berkeley Marina in time for the Friday and Saturday races and return them from the Berkeley Marina to San Francisco after the races. It is his opinion that there is a significant number of Golden Gate Fields patrons who reside in the West Bay interested in taking this ferry service if it were offered. It is his estimate that the daily ridership of approximately 200 during the first season and a larger patronage thereafter would be achieved. He stated that Golden Gate Fields would be prepared to advertise and promote this service if it is made available, and that they would provide a shuttle service from the Berkeley Marina to the racetrack for the patrons.

The convention service manager for the San Francisco office of California Leisure Consultants, Inc. (Leisure) also supported the application. This organization has offices in San Diego and Los Angeles as well as in San Francisco. It is engaged in providing

leisure time activities to organizations conducting conventions in the respective cities. It has used HC in the past, but has not used HC in the past four months because B&GF's rates are less and the service of B&GF is much more flexible than that provided by HC. Leisure intends to utilize B&GF's loop charter service at least once a month. The witness has received requests from convention groups for charter service to Sausalito, Tiburon, Larkspur Landing, Jack London Square, Emeryville, and the St. Francis Yacht Club.

B&GF's general manager testified that formerly he was the vice president in charge of operations at Murphy Pacific Marine Salvage Company and that he had formed his own company, the Murphy Tugboat Company, which operated a water taxi business on the bay. These companies ultimately were sold to the Western Tug and Barge Company, a subsidiary of Willamette Western Corporation. From January 1979 he has been engaged in the management of B&GF. His initial duties with B&GF consisted of the design of the vessels and the design and supervision of construction of the docking facilities for the fleet at Pier 39. He described the various safety features of the vessels which the company operates, pointing out that they have all been inspected and approved by the Coast Guard. The maximum capacity of the vessels is 400 persons, including a crew of four persons.

He pointed out that since May 1979 B&GF has boarded over 50 charter groups for cruises of two or more hours. Additionally they have performed at least that number of charters for cruises of less than two hours. The vast majority of charter cruises takes place in the evening hours after 6:00 p.m. Approximately ten percent of the charters are operated during daylight hours. B&GF has a working arrangement with Neptune's Palace Restaurant on Pier 39 which allows it to offer catering services. B&GF assists customers in making contact with Neptune's Palace Restaurant and bills separately for catering services.

The general manager pointed out that B&GF's vessels have operated within the Oakland Inner Harbor as far as the Park Street Bridge and it has also operated within one mile of the shorelines adjacent to Berkeley and the Tiburon Peninsula and through the Raccoon Strait. B&GF has also operated in the vicinities of Mile Rock, Point Bonita, Richardson Bay, the Brothers, Molate Point, Richmond Inner Harbor, and Hunter's Point. B&GF has recently received requests from individuals and groups for charters between different points on the shoreline of San Francisco. Approximately 12 such requests were received. Most often the requests were for services from Berkeley, Alameda, or other East Bay points to the San Francisco waterfront. Some requests were received for charters between Tiburon and San Francisco and Sausalito and San Francisco.

B&GF proposes the following charges for its point-to-point on-call charter service:

For a tour of 2-1/2 hours: \$1,000 minimum charge or \$4.00 per person, whichever is greater.

For a tour of 4 hours: \$1,375 minimum charge or \$5.50 per person, whichever is greater.

For tours in excess of 4 hours, charges are prorated at the rate of \$350 per hour, regardless of the number of persons in the chartering group.

The manager expects to be able to negotiate licensed agreements for the occasional use of docking facilities at the dock restaurants in Tiburon, Oyster Point Marina, Alameda Naval Air Station, and other points on the shoreline. B&GF also intends to submit a bid to the city of Berkeley for the use of its marina facilities. He pointed out that the charges for the use of docking facilities other than Pier 39 are not included in the charges for the point-to-point on-call services. These would be billed separately and in addition to the charter hire fares.

The major distinctions between B&GF's charter and tour operations and those of other carriers on the bay are: B&GF's vessels are newer than most of HC's vessels and B&GF makes every effort to accommodate the requirements of the chartering party, including cooperation as to catering facilities. In addition, B&GF offers a variety of cruise packages. The Sock Hop is an elaborate buffet on a four-hour bay cruise for rock and roll fans. The Monte Carlo cruise is a four-hour bay cruise which includes an elaborate buffet with casino tables and attendants. The Disco Party package, also offers a four-hour cruise with an elaborate buffet, some music, an announcer, and a light show. The Big Band cruise is a four-hour bay cruise with an elaborate buffet and a live band playing music of the Forties.

B&GF proposes the Berkeley-San Francisco ferry service to operate each weekday with a vessel departing from Berkeley at approximately 7:15 a.m. each morning and a vessel returning from San Francisco, departing at approximately 5:30 p.m. in the evening. B&GF also proposes to carry passengers from Pier 39 to Berkeley on the morning run; however, it is not anticipated that there would be any significant demand for this service at the present time. B&GF proposes, on an interim basis, that the evening commuter run would return from Berkeley with passengers for the Pier 39-Fisherman's Wharf area. A return trip would be scheduled approximately three hours later in order to accommodate those who desire the round trip to San Francisco and return.

The fare structure for the commuter service would be \$1.25 for a one-way ticket for adults; with special rates for senior citizens, children, and the military. Based on the log of recent patronage, referred to above, it is expected that there would be a daily average of approximately 200 round-trip passengers. This level of passengers would substantially cover the operating costs for the service. B&GF is prepared to make a commitment to continue the commuter service regardless of its profitability for at least six months. B&GF feels that providing the commuter service will help promote on-call charter services from the East Bay.

The manager believes that there are docking facilities available in Berkeley since the city of Berkeley intends to put the use of its marina facilities out to bid. B&GF has confirmed its interest in acquiring landing rights at this facility and expects to submit its proposal to the city of Berkeley at the earliest possible date. B&GF has commenced negotiations with the Port of San Francisco and the Golden Gate Bridge Highway & Transportation District (Golden Gate Bridge District) for the use of one of the district's facilities located on Port property. B&GF intends to seek the cooperation of AC Transit in arranging for a feeder bus to and from its central transfer point and BART stations, with schedules to be coordinated with B&GF's arrivals and departures at Berkeley.

Attached to the general manager's prepared testimony is a letter from the vice president of Crowley Maritime Corporation, addressed to the Commission's Director of Transportation, wherein it is stated that HC is not willing nor does it desire to continue the temporary ferry service between San Francisco and Berkeley after the Bart Transbay service is restored, unless the economics change drastically.

The financial statements attached to the general manager's testimony show that for the six months ended December 31, 1979, B&GF had a net income of \$123,848. The balance sheet as of December 31, 1979, shows retained earnings of \$110,430.

Exhibits J, K, and L are various letters sponsored by B&GF's counsel. Exhibit J is a letter dated March 14, 1980 from the San Francisco Bay Conservation and Development Commission (BCDC) addressed to the Public Utilities Commission. The letter points out that there are certain assertions made in B&GF's application with respect to the BCDC that may be misleading. It is stated that B&GF has submitted an application for a permit. It has not been filed nor acted upon because the City and County of San Francisco has not yet issued a local report on the project and the Port of San Francisco has not yet signed the application, both being necessary before BCDC can take any action on the application. Assertedly B&GF's assertion that it has reached an agreement with the BCDC for shoreline facilities is erroneous.

Exhibit K is a letter from HC's counsel dated April 7, 1980 addressed to the assigned Administrative Law Judge (ALJ) with respect to B&GF's application. The letter states that HC was vitally concerned about the proposed San Francisco-Sausalito service and the withdrawal of this portion of the application. A review of the proof submitted with the remainder of the application led HC to the conclusion that it will not at this time submit responsive evidence. Also, HC did not request cross-examination relative to the public testimony and suggested that the ALJ recommend that a certificate of public convenience and necessity, in conformity with the evidence, be issued effective upon B&GF's prior receipt of a permit to operate from the BCDC. If a certificate in conformity with the evidence is recommended, HC will not further pursue its protest to the application.

Exhibit L is a letter dated April 15, 1980, from the attorney for B&GF. This letter summarizes the recent developments in this proceeding. It points out that B&GF's withdrawal of that portion of proposed service relating to a Sausalito-San Francisco ferry operation has resulted in withdrawal of the Marin-Sonoma Commuters Committee's protest. It also states that no communication has been received by B&GF from the Golden Gate Bridge District or the city of Sausalito. The concerns of these organizations may have been resolved by B&GF's withdrawal of the Sausalito aspect of the application. It further points out that negotiations are currently being carried on with Milton McDonogh of Tiburon-Angel Island Ferry, which are expected to result in a stipulation for the withdrawal of that carrier from further participation in the proceeding. B&GF recognizes that BCDC approval will be necessary to commence operations as requested, and is continuing with all necessary steps to achieve this approval. B&GF has submitted a specific application to BCDC encompassing the tour boat activity. B&GF is informed that the action required by the San Francisco Planning Committee prior to the formal filing of its application with BCDC has now been completed. Copies of the relevant documents with respect to this matter are attached to the letter. ✓

The staff participation in this proceeding consisted of the drafting of a proposed certificate. During the hearing, the parties and the staff jointly made certain changes to what all parties agreed would be an acceptable certificate for the Commission to grant. ✓

The issue whether HC had prescriptive operative rights to the ports of Sacramento and Stockton was set to be briefed. Further investigation showed that the operative rights of HC are contained in two decisions attached to Exhibit K (D.88188 and D.65450). We take official notice of these decisions. We note that the prescriptive rights that HC has acquired from the Harbor Tug and Barge Company, confirmed in Decision No. 29778, dated May 24, 1937, are as follows:

"A general launch, barge, tug and towboat business in 'on-call' service for the transportation of passengers between points on the San Francisco and San Pablo Bays and for the transportation of property between points on San Francisco, San Pablo and Suisun Bays and for the transportation of property in lots of not less than 100 tons between all other points involved in the proceeding."

It would appear that the prescriptive rights which HC obtained did not include the transportation of passengers and/or property to or from the Ports of Sacramento and Stockton.

There is no necessity for a discussion of the evidence since there are no issues to be resolved.

Findings of Fact

1. B&GF has the experience, equipment, and personnel with which to inaugurate the proposed service.
2. B&GF has the financial capability to reasonably carry out the sought for operative authority.
3. Before B&GF can commence operations other than the "loop service", it must obtain authority from various governmental agencies having control over the docks, ports, and places on San Francisco Bay and its tributaries.

4. Public convenience and necessity require that a certificate be granted to B&GF as applied for in its amended application.

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

6. Marin-Sonoma Commuters Committee withdrew its protest to the application.

7. B&GF entered into a stipulation with Milton McDonogh, dba Angel Island Ferry, that it would not interfere with his operations.

8. With the withdrawal of B&GF's request for authority to provide scheduled service to Sausalito and the lack of further participation by the city of Sausalito and the Golden Gate Bridge District, it can be reasonably inferred that the protest of the city of Sausalito is no longer relevant, and the Golden Gate Bridge District has no further interest in the matter. ✓

9. HC has no objection to the granting of the application to the extent provided in the order.

Conclusions of Law

1. B&GF should be granted a certificate of public convenience and necessity as provided in the ensuing order.

2. B&GF must obtain all necessary permits from BCDC and other governmental agencies before service can be instituted under the authority granted herein.

3. The authority granted herein should be conditioned so that it will expire if said permits from other governmental agencies are not acquired within a reasonable time.

4. The order should become effective on the date of issuance in order that service can be instituted to meet the summer tourist season.

Blue & Gold Fleet is placed on notice that operative rights, as such, do not constitute a class of property which may be capitalized or used as an element of value in rate fixing for any amount of money in excess of that originally paid to the State as the consideration for the grant of such rights. Aside from their purely permissive aspect, such rights extend to the holder a full or partial monopoly of a class of business. This monopoly feature may be modified or canceled at any time by the State, which is not in any respect limited as to the number of rights which may be given.

O R D E R

IT IS ORDERED that:


1. A certificate of public convenience and necessity is granted to Blue & Gold Fleet, a corporation, authorizing it to operate as a common carrier by vessel, as defined in Sections 211(b) and 238 of the Public Utilities Code, between the points and over the routes set forth in Appendix A of this decision.
2. Said certificate shall become effective when Blue & Gold Fleet has obtained the requisite permits from the San Francisco Bay Conservation and Development Commission, the City and County of San Francisco, the city of Berkeley, and the Golden Gate Bridge Highway & Transportation District.
3. The certificate granted in paragraph 1 above shall expire within one year from the date of this order if the permits and authorizations required by the governmental authorities referred to in paragraph 2 above are not obtained within the prescribed period.
4. In providing service pursuant to the authority granted by this order, applicant shall comply with the following service regulations. Failure to do so may result in a cancellation of the authority.

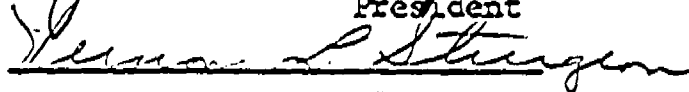
- (a) Within thirty days after the effective date of this order, applicant shall file a written acceptance of the certificate granted. Applicant is placed on notice that if it accepts the certificate it will be required, among other things, to comply with the insurance requirements of the Commission's General Order No. 111-Series.
- (b) Within one hundred twenty days after the effective date of this order, applicant shall establish the authorized service and file tariffs and timetables, in triplicate, in the Commission's office.
- (c) The tariff and timetable filings shall be made effective not earlier than ten days after the effective date of this order on not less than ten days' notice to the Commission and the public, and the effective date of the tariff and timetable filings shall be concurrent with the establishment of the authorized service.
- (d) The tariff and timetable filings made pursuant to this order shall comply with the regulations governing the construction and filing of tariffs and timetables set forth in the Commission's General Orders Nos. 87-Series and 117-Series.

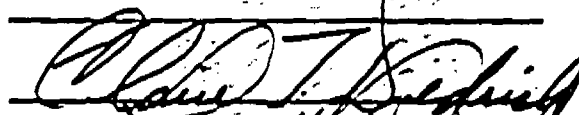
- (e) Applicant shall maintain its accounting records on a calendar year basis in conformance with the applicable Uniform System of Accounts or Chart of Accounts as prescribed or adopted by this Commission and shall file with the Commission, on or before March 31 of each year, an annual report of its operations in such form, content, and number of copies as the Commission, from time to time, shall prescribe.

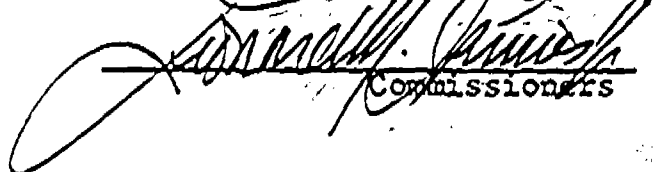
The effective date of this order is the date hereof.

Dated JUN 17 1980, at San Francisco, California.



President






Commissioners

Commissioner Richard D. Gravello, being necessarily absent, did not participate in the disposition of this proceeding.

Blue & Gold Fleet, a corporation, by this certificate of public convenience and necessity, is authorized to conduct common carriage by vessels, as prescribed below, for the transportation of passengers and their baggage including bicycles.

I. Nonscheduled Service

Between any points on the shoreline of San Francisco Bay and its navigable tributaries.

Restrictions, Limitations, and Specifications

Transportation of passengers and baggage shall be conducted as an on-call service, on 48 hours notice, for 100 or more persons.

II. Scheduled Service

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

Restrictions, Limitations, and Specifications

Blue & Gold Fleet shall provide one scheduled trip in each direction every weekday. This service will operate during peak commuter hours in the direction of the peak commuter flow.

Issued by California Public Utilities Commission.

Decision No. 91925, Application No. 59193.