

ORIGINAL

Decision 93149 JUN 2 1981

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
HARBOR CARRIERS, INC., a corporation,)
for authorization to suspend operation)
of vessels "on schedule" as a common)
carrier of passengers between San)
Francisco and Sausalito.)

Application 52409
(Petition filed
June 16, 1980)

(For appearances see Decision 92270.)

O P I N I O N

By its petition filed July 16, 1980, Harbor Carriers, Inc. (Harbor Carriers) seeks a further extension of the time in which to inaugurate vessel passenger service between San Francisco and Sausalito pursuant to a certificate of public convenience and necessity granted in Decision 73811 dated March 5, 1968 in Application 49712. As the most recent extension was to expire September 20, 1980 prior to submission of the hearing on Harbor Carriers' current petition, Decision 92270 dated September 16, 1980 extended the period in which Harbor Carriers shall inaugurate its San Francisco-Sausalito service to the date that a final decision is rendered on this petition.

Hearings on the petition were held before an Administrative Law Judge on September 11, November 24 and November 25, 1980, and the matter was submitted upon receipt of concurrent briefs on March 11, 1980.

Background

Decision 73811 dated March 5, 1968 in Application 49712 found that public convenience and necessity require the operation of a vessel passenger service by Harbor Carriers between San Francisco and Sausalito, and between Tiburon and Angel Island. Harbor Carriers

inaugurated the Tiburon-Angel Island service. This application, filed January 20, 1971, sought authorization to suspend operations between San Francisco and Sausalito. The application was consolidated with Case 9098, an investigation by the Commission of the vessel operations of Harbor Carriers; Application 51407, rehearing with respect to the Tiburon-Alcatraz Island service; and Application 52342, the request of Harbor Carriers to suspend its San Francisco-Alcatraz Island operations.

Decision 79143 issued September 8, 1971 in the consolidated proceedings contained the following findings and conclusions pertinent to the issues in this phase of Application 52409.

Findings (Decision 79143)

- "3. Harbor Carriers was authorized to serve between San Francisco and Sausalito by Decision No. 73811, dated March 5, 1968, in Application No. 49712. It has been unable to commence service over said route because of its inability to obtain a landing site at Sausalito. Further attempts are being made to obtain a location and the necessary authority from the City of Sausalito for docking at said city.
- "4. The Golden Gate Bridge, Highway and Transportation District provides passenger service by vessel between San Francisco and Sausalito. The service it performs is primarily a commute service from the Ferry Building in San Francisco.
- "5. Harbor Carriers has had requests from the public for service between San Francisco and Sausalito, and the service it would perform between said points would primarily be for tourists from Fisherman's Wharf in San Francisco."
- "6. The City of Sausalito has experienced problems from the expansion and additions of tourist-oriented businesses and attractions and is concerned that service by Harbor Carriers to Sausalito would aggravate these problems.

* * *

- "10. At such time as Harbor Carriers is able to obtain a landing site at Sausalito and Alcatraz Island is open to the general public, public convenience and necessity will require the services Harbor Carriers has heretofore been authorized by the Commission to provide to Sausalito and to Alcatraz Island.
- "11. Because of the uncertainties that exist as to when, if ever, Harbor Carriers will be able to obtain docking facilities in Sausalito and authority to land at Alcatraz Island, each of the three certificates of public convenience and necessity heretofore granted to it by the Commission to serve said locations should be made subject to the condition that if service is not commenced within one year after the effective date of the order herein, the certificate shall lapse and terminate unless the time is extended by further order of the Commission. This will avoid the undesirable situation of having a certificate to perform a particular service continuing indefinitely when the service has not and cannot be commenced within a reasonable time."

* * *

Conclusion (Decision 79143):

- "3. Application No. 52409 (San Francisco-Sausalito) should be granted for a one-year period only unless the time be extended by further order of the Commission."

The time in which Harbor Carriers shall commence the San Francisco-Sausalito service has been extended from time to time by order of the Commission, the latest being Decision 92270, supra.

Evidence on Need of the Service

Harbor Carriers presented Robert D. Bauerle, a resident and owner of a business located in Sausalito. Bauerle made a survey

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of about 200 of his customers to determine where they were from and their means of reaching Sausalito. The greatest number arrived by automobile, minibus or tour bus from San Francisco. The witness believes added ferry service from Fisherman's Wharf in San Francisco, as authorized to Harbor Carriers, would materially reduce vehicle congestion in downtown Sausalito.

Warren Glass, president of Sausalito Chamber of Commerce, placed in evidence a resolution of the Chamber supporting Harbor Carriers' service (Exhibit 1). The resolution states that Chamber's support is based, in part, upon the asserted unreliability of District's vessel service and, in part upon the perceived need to increase sight-seeing in Sausalito in order to generate additional business income and business taxes to support the community. Chamber's resolution also states that Harbor Carriers provided safe and adequate service during the period in 1979 that District's vessel did not operate because of a strike.

David Hurley, owner of a goldsmith shop, testified that (1) when District's vessel is not running, business drops; (2) District did not operate the vessel during a prolonged strike in 1979; (3) Harbor Carriers offered reliable service during the strike period; and (4) reliable vessel service is needed by local businesses in Sausalito.

Testimony taking a contrary position was presented by Jonathan Alpers representing the Sausalito Environmental Action Committee (SEAC); Walter Baird, a resident of Sausalito; and Carol Peltz, a Sausalito City Councilwoman. Alpers stated that SEAC has petitioned the City of Sausalito not to increase the frequency and capacity of ferry service for tourists as that organization desires to maintain the residential character of Sausalito and wishes to discourage more tourists or more tourist-oriented

businesses. According to Alpers Sausalito is flooded with tourists entering by private cars, tour buses, and the ferry, making it difficult for residents to conduct business in the downtown area, or to find parking places for their cars.

Baird has lived in Sausalito since the 1940s. He deploras the change in the character of the downtown area from businesses largely serving local residents to tourist-oriented businesses, and wishes to stop the growth of additional tourist activities.

Peltz stated that the electorate of Sausalito is divided into two political groups, the downtown commercial group, and the residential group. Her testimony assertedly is representative of the views of the residents who have no business interests in Sausalito. Peltz stated that residents of Sausalito are concerned with a significant increase in tourism in Sausalito, that tourists cause interference with the use of streets in the downtown section by residents because of pedestrian traffic, and interference with highways leading to the City because of increased vehicular traffic. Assertedly residents are prevented from using downtown streets to shop or conduct banking business because of tourist activity.

Evidence with Respect to Attempts
to Establish the Service

Roy Nichols, general manager of passenger services for the California Division of Crowley Maritime Corporation, Harbor Carriers' parent company, testified with respect to the efforts that Harbor Carriers has made to establish the Sausalito-San Francisco service.

Exhibit 5 is a 7-page summary of the steps taken by Harbor Carriers. That exhibit shows that the State Court of Appeals in Harbor Carriers, Inc. v City of Sausalito (1975) 46 CA 3d 773, 121 Cal Rptr 557 overturned a lower court decision and entered a judgment directing the City to make a downtown site available to Harbor

Carriers for use as a ferry terminal. Thereafter, Harbor Carriers sought a conditional use permit from the City to use the District's landing facility. After many delays and upon meeting conditions imposed by the City and District, a variance was approved on May 15, 1979 by the Sausalito City Council to use the District's vessel landing facility for two trips per week. Negotiations were then begun with District to determine terms and conditions under which Harbor Carriers could use the facility. No agreement was reached with District at the time District's ferry employees went on strike. Pursuant to an agreement with District, Harbor Carriers provided substitute ferry service between San Francisco and Sausalito during the strike period (July 6 through October 21, 1979).

On September 24, 1979, the Sausalito Planning Department recommended approval of a conditional use permit for six round trips per week. District then wrote to the mayor protesting the Planning Commission's approval without a full environmental impact report. After public hearing the Sausalito City Council granted approval of a conditional use permit, requiring among other things, that Harbor Carriers vessels "arrive and depart from the existing [District] ferry terminal at the El Portal Street, Sausalito, California." Negotiations with District were begun again by Harbor Carriers. On January 11, 1980, District offered the use of its Sausalito ferry terminal to Harbor Carriers for a base rental of \$600,000 per year, plus indemnification against revenue losses by District. Harbor Carriers considered the proposed rental fee for use of District's facilities to be excessive. It sought to lease a facility from the City of Sausalito. On November 18, 1980 the City rejected Harbor Carriers' proposal for lease of City facilities, but authorized Harbor Carriers to work with the City's Planning Department for use of other City property. At the time of submission, District had not acted

upon Harbor Carriers' counter offer to pay for shared usage of the District's ferry terminal at a monthly rental cost of \$1,000.

Harbor Carriers' Exhibit 6 showed that it performed vessel operations between Sausalito and San Francisco in substitution for District's service over a period of 96 days, performing 677 individual runs, and carrying 193,474 passengers.

Nichols presented evidence showing that Harbor Carriers has the vessel equipment and personnel necessary to perform the Sausalito-San Francisco operations.

Exhibit 15 is the text of Resolution 2868 of the City Council of City of Sausalito granting the conditional use permit. The posture of the Council in granting the use permit is stated in its findings, as follows:

"1. The City Council does hereby find that:

"(a) Although the proposal by Harbor Carriers, Inc. is not consistent with the policy of the City of Sausalito since it will be established as a visitor-oriented service rather than provide a commuter service transit facility more consistent with the General Plan, the City of Sausalito is faced with a mandate from the Court of Appeals of the State of California directing the City to make a 'downtown' site available to Harbor Carriers, Inc. for ferry service.

"(b) It is further found that, although all of the findings required in Section 10.935.10 or Ordinance 630 cannot be made, this Conditional Use Permit No. 574 is being issued in accordance with the preemptive jurisdiction of the Public Utilities Commission of the State of California and the Appeals Court decision which requires issuance of this permit.

"(c) It is further found that, inasmuch as there are a minimal number of possible locations for a facility to serve the proposed ferry service by Harbor Carriers, Inc., and inasmuch as the preemptive jurisdiction of the Public Utilities Commission and the Court of Appeals decision requires that the City make a 'downtown' site available, the City Council determines that the Harbor Carriers, Inc. service shall arrive and depart from the existing Golden Gate Bridge, Highway and Transportation District ferry terminal located at the foot of El Portal Street, Sausalito, California."

Stanley Kowleski, manager of District's ferry transit division, testified with respect to District's ferry operations. His testimony shows that District's Sausalito-San Francisco service handles approximately 950,000 passengers per year, producing an annual gross revenue of approximately \$1,400,000. The related costs of service were approximately \$1,800,000. District operates one vessel, the MV Golden Gate, in the Sausalito-San Francisco service. The capacity of the vessel is 596 persons. Exhibit 18 is District's schedule for its Sausalito-San Francisco operations. It provides nine round trips, Monday through Friday, and six round trips on Saturdays and Sundays. Since the strike was over in October 1979, potential passengers were left on the dock only 31 times in more than 6,000 trips, or on only 0.005% of the trips. The witness also described the times that the ferry service did not run because of mechanical failures or need to service the equipment.

Kowleski estimated that 20 to 35% of the patrons of its ferry service have visited Fisherman's Wharf (Harbor Carriers' proposed San Francisco terminal) prior to taking the ferry from District's San Francisco terminal at the Ferry Building. The witness estimated that District would lose about \$600,000 annually if 30% of its patrons were diverted to Harbor Carriers' ferry service

from Fisherman's Wharf. Kowleski testified that such loss, added to District's current total annual deficit from its ferry operations of \$3,900,000, may impair District's financial ability to continue its ferry services.^{1/} Total state and federal subsidies to District were approximately \$760,000 in the 1978-79 fiscal year.

Dale Luehring, District's general manager, testified concerning District's transportation policies. He stated that District has performed ferry service between Sausalito and San Francisco since August 1970. Bus and ferry service was commenced by District in order to reduce automobile congestion on the Golden Gate Bridge. Approximately 42,000 persons commute daily on the Marin County-San Francisco corridor by means of private automobiles, buses, and ferries. The current car count on the bridge is about 21,500 daily. District operates 260 buses and four ferry boats. The district also has 43 vehicles in its van pool program, which transports about 1,500 people daily.

According to Luehring, the corridor bus and ferry services divert about 10,000 to 12,000 people daily from private cars, thus increasing energy efficiency and lessening traffic congestion on the bridge.

Luehring testified that if Harbor Carriers were to operate six round trips per day between Fisherman's Wharf and Sausalito, District's ability to maintain its ferry and bus services would be financially impaired.

^{1/} Subsequent to the conclusion of the hearings, District announced that it is sharply curtailing its Larkspur ferry service because of high operating costs. The Larkspur ferry service incurred the preponderance of District's 1978-1979 operating deficit.

Discussion

The issue of public convenience and necessity was decided in prior decisions (See Finding 10 of Decision 79143 and Finding 3 of Decision 73811) and, therefore, is not now an issue.

Similarly, the record confirms our prior findings that Harbor Carriers has the ferry equipment, personnel, San Francisco Terminal, and financial resources to initiate the Sausalito-San Francisco service. In fact, Harbor Carriers actually operated for a period of four months in 1979.

The record establishes that the only impediment to inaugurating service on a permanent basis is Harbor Carriers' inability to acquire docking facilities at Sausalito. The record clearly establishes that Harbor Carriers has made all reasonable attempts to acquire such a facility. However, it has been frustrated by the City of Sausalito and District. City does not want the service because it would bring in more tourists, contrary to the policy of a segment of voters and councilmen in Sausalito. Similarly, District does not welcome competition from Harbor Carriers, as it believes such competition will substantially reduce its revenues. District has effectively stopped that competition by placing an exorbitant price on the use of its Sausalito landing facilities by Harbor Carriers.^{2/}

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

✓ 2/ The \$600,000 landing fee is approximately 43% of District's annual Sausalito-San Francisco ferry revenues of \$1,400,000, and also approximates District's annual loss of revenue if Harbor Carriers operates a vessel service between San Francisco and Sausalito.

Year-to-year extensions of time in which the San Francisco-Sausalito service must be inaugurated by Harbor Carriers are burdensome to the parties and to the Commission. We will grant a further extension of time for a period of three years. If the problems associated with inauguration of the service cannot be resolved in that time, no resolution may ever be achieved.

We affirm the ruling of the Administrative Law Judge excluding the Torrey Report from receipt in evidence, as the report bears on the issue of public convenience and necessity, and as the person sponsoring the exhibit had no first hand knowledge of the facts stated therein, and did not participate in its preparation.

Findings of Fact

1. Inauguration of vessel passenger services between Sausalito and San Francisco by Harbor Carriers is contingent upon Harbor Carriers' obtaining a suitable landing facility at Sausalito.

2. Under conditions imposed by the City of Sausalito, the only available landing facility is that operated by District and used in District's Sausalito-San Francisco ferry service.

3. District has offered joint usage of that facility to Harbor Carriers at an annual fee of \$600,000. That amount is 43% of the total annual revenues from District's Sausalito-San Francisco ferry operations. That fee also approximates the annual revenue loss District expects if Harbor Carriers operates vessel service between Fisherman's Wharf and Sausalito.

4. Harbor Carriers has made a counter offer for the use of District's facility at a fee of \$1,000 per month, or \$12,000 per year.

5. Harbor Carriers has exercised due diligence in attempting to obtain a landing facility at Sausalito.

6. A reasonable prospect exists that Harbor Carriers and District can reach agreement for the use of District's landing

facility at Sausalito, or that Harbor Carriers and the City of Sausalito may reach agreement for the use of City property for a landing facility.

Conclusions of Law

1. Public convenience and necessity are not an issue in this proceeding, having been decided in prior proceedings.

2. The time in which Harbor Carriers must inaugurate its Sausalito-San Francisco vessel before its certificate of public convenience and necessity lapses and expires should be extended for a period of three years.

O R D E R

IT IS ORDERED that:

1. Harbor Carriers, Inc. is granted an extension of time to June 1, 1984 within which it shall commence the common carrier passenger service by vessel between San Francisco and Sausalito referred to in Ordering Paragraph 3 of Decision 79143 dated September 8, 1971 in this proceeding.

2. If service under its certificate is not commenced by June 1, 1984, the certificate of public convenience and necessity issued to Harbor Carriers, Inc. in Decision 73811 in Application 49712 shall lapse and expire.

This order becomes effective 30 days from today.

Dated JUN 2 1981, at San Francisco, California.

John E. Grew
President
Richard D. Grew
Priscilla C. Grew
Victor Cabre

Commissioners

Commissioner Priscilla C. Grew, being necessarily absent, did not participate in the disposition of this proceeding.