

ORIGINAL

Decision 93151 JUN 2 1981

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of BLUE & GOLD FLEET, )  
a corporation, for authorization )  
to modify scheduled service by )  
vessel between San Francisco and )  
Berkeley. )

Application 60060  
(Filed November 5, 1980;  
amended March 12, 1981)

Jerry Spolter and Thomas P. Mannion, Attorneys  
at Law, for applicant.  
Elizabeth Johnson, Attorney at Law, and Richard N.  
Lerner, for Save our Ferry Committee, interested parties.  
Lynn Theilacker Carew, Attorney at Law, and  
Richard Brozosky, for the Commission staff.

INTERIM OPINION

By Decision (D.) 91925 dated June 17, 1980 in Application (A.) 59193, the Commission authorized Blue & Gold Fleet (Blue & Gold), a California corporation, to conduct a common carrier service by vessel between a berth at or near the Ferry Building in San Francisco and Berkeley. Blue & Gold was required to provide one scheduled trip in each direction on weekdays during peak commuter hours.

In this application Blue & Gold seeks to modify its certificate to authorize it to provide only intermittent service. when, in its opinion, public demand will support the service. The stated reason for Blue & Gold's proposed change in operations is the losses sustained in providing the service. These losses are evidenced by Exhibit C, attached to the application, a Statement of Operations and Breakdown of Direct Cost, showing a direct loss of \$14,915.72 in the first nine weeks of service (August 6, to October 3, 1980).

By letter dated December 16, 1980, the chief counsel of the California Department of Transportation (Caltrans) informed Blue & Gold that it was operating its service without a franchise from Caltrans in violation of the Streets and Highways Code and demanded that the

service be discontinued. On December 31, 1980, Blue & Gold ceased operating its scheduled service.

Public hearing was held February 20, 1981, before Administrative Law Judge Robert T. Baer. After discussions both on and off the record the parties agreed that by March 13, 1981, Blue & Gold would file an amended application and that the hearing would be adjourned to March 23, 1981.

On March 12, 1981, Blue & Gold filed an amendment to its application. Blue & Gold now alleges that an overriding statutory impediment<sup>1/</sup> prohibits further operation of scheduled service and that its certificate should be amended to provide for permissive rather than mandatory service, conditioned on the approval of Caltrans.

Public hearings reconvened on March 23, 1981, at which time staff announced that it had stipulated with Blue & Gold regarding a temporary disposition of this proceeding. After discussions both on and off the record, staff and Blue & Gold agreed that they would reduce their stipulation to writing and file it later. The hearings were then adjourned to a date to be set.

On April 13, 1981, a written stipulation, Exhibit 1, signed by counsel for Blue & Gold and staff, was submitted.

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<sup>1/</sup> Streets and Highways Code §§ 30352 and 30353 prohibit ferries from competing with bay toll bridges when revenue bonds are outstanding on such bridges. Staff stipulated orally that such bonds were outstanding (Tr.22).

Blue & Gold and the staff stipulated that:

1. Hearing on A.60060, filed by Blue & Gold with the California Public Utilities Commission on November 5, 1980, including the amendment to A.60060 filed on March 12, 1981, be continued for a period not exceeding the earlier of (i) successful completion of Blue & Gold's negotiations with Caltrans pursuant to Streets and Highways Code § 30356, or (ii) 18 months from the effective date hereof.
2. During the time period described in paragraph 1 of this stipulation, Blue & Gold's certificate for Berkeley scheduled service (D.91925, Appendix A, II) will be suspended without prejudice, provided, however, that the Commission may, if it deems appropriate and necessary, schedule additional hearings on the issue of public convenience and necessity once the Blue & Gold/Caltrans negotiations have been completed successfully.
3. If the Blue & Gold/Caltrans negotiations are not completed successfully within 18 months from the effective date hereof, Blue & Gold's certificate for Berkeley scheduled service (D.91925, Appendix A, II) and tariffs on file with the Commission for the Berkeley scheduled service shall expire, unless extended by the Commission.
4. During the time period described in paragraph 1 of this stipulation, Blue & Gold agrees to provide to the Commission staff written status reports, relative to the progress of its negotiations with Caltrans. Said written reports, detailing procedural and time frame information only, shall be made at 90-day intervals, beginning 90 days from the effective date hereof.

5. As used herein, the term "effective date" refers to that date on which a Commission order approving this stipulation becomes effective.

The Save Our Ferry Committee (Committee), an organization of ferry riders interested in the continuation of scheduled service by Blue & Gold, did not sign the written stipulation. However, the Committee's spokesman was present at the public hearing on March 23 at which the terms of the stipulation were discussed extensively. The Committee expressed no opposition to the terms of the stipulation. Rather, it merely abstained from endorsing or approving it (Tr.32).

#### Findings of Fact

1. There is no opposition to the temporary disposition of this proceeding proposed by staff and Blue & Gold.
2. The suspension of Blue & Gold's certificate as it relates to scheduled service is in the public interest.

#### Conclusions of Law

1. The stipulation should be approved.
2. Blue & Gold's certificate as it relates to scheduled service should be temporarily suspended.
3. Blue & Gold's certificate as it relates to scheduled service, and its corresponding tariff provisions, should expire 18 months from the effective date of the following order if within that time the Blue & Gold/Caltrans negotiations have not been completed successfully.
4. Blue & Gold should inform the staff quarterly in writing of the progress of the negotiations in the manner described in the stipulation. Blue & Gold should also send a copy of such progress report to the Committee.

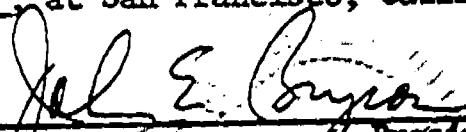
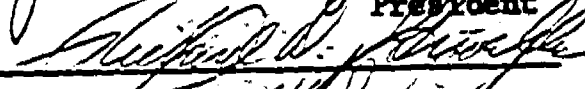
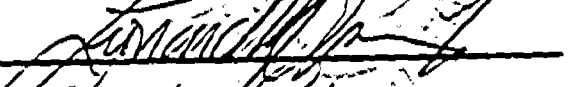

INTERIM ORDER

IT IS ORDERED that:

1. The stipulation is approved.
2. Blue & Gold Fleet's certificate as it relates to scheduled service is suspended for a period of 18 months from the effective date of this order.
3. Blue & Gold Fleet's certificate as it relates to scheduled service, and the corresponding tariff provisions, shall expire 18 months from the effective date of this order, if within that time the Blue & Gold Fleet/Department of Transportation negotiations have not been completed successfully.
4. Blue & Gold Fleet shall inform the staff quarterly in writing of the progress of the negotiations in the manner described in the stipulation and shall send a copy of such report to Save Our Ferry Committee.

This order becomes effective 30 days from today.

Dated JUN 2 1981, at San Francisco, California.

  
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President  
  
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Commissioners

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