

Decision 93799

DEC - 1 1981

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application)
of ALASKA TOUR & MARKETING SERVICES,)
INC., doing business as Exploration)
Holidays & Cruises, and Exploration)
Cruise Lines, for a certificate of)
public convenience and necessity to)
provide passenger service as a)
common carrier by vessel between)
San Francisco and points along the)
Sacramento River Delta.)

Application 60824
(Filed August 17, 1981)

O P I N I O N

Applicant Alaska Tour & Marketing Services, Inc., doing business as Exploration Holidays & Cruises, and Exploration Cruise Lines, requests a certificate to provide multiday, sightseeing cruises by vessel for passengers and their baggage on the San Francisco Bay and the Sacramento River beginning and ending at San Francisco/Oakland. Applicant is an Alaska corporation authorized to conduct business in California. The application shows that a copy of the application was served on each water carrier holding authority from the Commission to provide passenger service by vessel in the San Francisco Bay and/or the Sacramento River Delta areas and on county and municipal authorities in the areas involved. No protests to the application have been received.

Applicant asserts that it is a common carrier by water within the meaning of 49 U.S.C. Section 10922, and currently holds authority from the Interstate Commerce Commission (ICC) to provide transportation of passengers and their baggage between ports and points in Washington, Oregon, and Idaho on the Columbia, Willamette, and Snake Rivers, and between ports and points in California, Oregon,

Washington, and Alaska. Applicant currently provides multiday, round-trip, cruise service between various points in the State of Alaska; between various points in the State of Washington, and British Columbia, Canada, originating and terminating in Seattle, Washington; and between various points in the States of Washington, Oregon, and Idaho, along the Columbia and Snake Rivers, originating and terminating in Portland, Oregon.

Applicant proposes to provide multiday sightseeing cruises for passengers and their baggage originating and terminating in San Francisco/Oakland and proceeding along the Sacramento River Delta via Stockton, Walnut Grove/Locke, Sacramento, and Rio Vista. Service will be offered initially during the months of February, March, April, October, November, and December 1982. Passengers may off-board at Stockton to take a land excursion to Lodi to visit a winery; at Sacramento to visit Sutter's Fort, Governor's Mansion, and the new Railroad Museum; and at Rio Vista to sightsee. Those off-boarding will return to the vessel the same day. When the passengers are off-boarded the vessel may secure fuel and provisions for the continuation of the trip. Each of the 49 planned cruises will last four days and three nights. Fares will range from a low of \$387 to a high of \$588 and will include three nights' private stateroom accommodations on the vessel, all meals, and the use of the vessel's facilities and amenities.

Applicant states that it will use one of four specially designed cruise ships from applicant's fleet for the proposed service. The ships accommodate between 62 and 88 passengers, depending on the ship used. All passenger staterooms are on the outside. All rooms have complete private facilities and are equipped with a reading light, dresser, wardrobe, and clothes hanger space, in addition to sleeping accommodations. Each ship has a "Vista View" lounge capable of seating all passengers and is equipped with a piano and a bar with ice maker and has "Vista View" windows throughout. Each ship has an "Explorer" dining room which seats all passengers simultaneously and

serves as a meeting room for audio-visual presentations, card games, and writing room during nonmeal hours. The ships are fully air-conditioned and have four passenger decks.

Discussion

Applicant's proposed service falls within the "loop exemption" established by the California Supreme Court in Golden Gate Scenic S.S. Lines v Public Utilities Commission (1962) 57 Cal 2d 273, 19 Cal. Rptr. 657, and is not subject to regulation by the Commission under the Public Utilities Act (Division I of the Public Utilities (PU) Code). In the Golden Gate Scenic case court held that the operations of a sightseeing cruise vessel which carried passengers around the San Francisco Bay and returned the passengers to the same point at which it picked them up did not constitute "transportation between points in this state" within the meaning of PU Code Section 1007^{1/} and hence did not come within the public utility regulatory jurisdiction of the Commission. All the elements are present in this case which were present in the Golden Gate Scenic case except in this case applicant will allow passengers to temporarily off-board at certain points. Does this latter fact remove applicant's proposed operation from the loop exemption? We think not.

In the Golden Gate Scenic case the court said "'[p]oints', as used in Section 1007, is the equivalent of 'termini' and that [t]erminus...is a word connoting the end of a transportation line". In this case the passenger has reserved a stateroom for the entire loop cruise and in effect lives aboard the vessel for duration of the cruise. When he temporarily off-boards he leaves his baggage and,

1/ PU Code Section 1007 reads in part: "No corporation or person shall begin to operate or cause to be operated any vessel for the transportation of persons or property, for compensation, between points in this state, without first having obtained from the commission a certificate declaring that public convenience and necessity require such operation..."

no doubt, some of his personal belongings on board the vessel. In no sense can the passenger be said to have terminated his trip or to have reached the end of the line, as far as the passenger is concerned, by temporarily off-boarding. Nor can it be said that the vessel has reached a terminus in its cruise in stopping to allow its passengers to temporarily off-board. The vessel departs from each temporary stop with the same passengers who were aboard the vessel when it arrived at the stop-off point. The passenger list never changes during the entire cruise. Only when the vessel has made the loop and arrives back at San Francisco and the passengers and their baggage are discharged for good can the vessel and the passengers be said to have arrived at any terminus.

In Harbor Carriers, Inc. (1952) 74 CPUC 160, Conclusion 4, we reached a similar conclusion in respect to a proposed one-day vessel sightseeing operation between the Port of Long Beach and points on Santa Catalina Island, including the City of Avalon. However, on reconsideration we reversed that conclusion and held that the operation was within the scope of PU Code Section 1007 (75 CPUC 529). In that case there were passenger vessel common carriers regularly operating point-to-point between the Port of Long Beach and Avalon under Commission authority who performed same-day round-trip transportation between those points for the general public, including many persons who booked a one-day round-trip passage merely to enjoy the ride on the water and to sightsee on the island for a short time. Conclusion 4 of the first Harbor Carriers decision was reversed because of the Commission's being overly concerned for the peace of mind of point-to-point water carriers who were indisputedly within its regulatory jurisdiction rather than the result of its legal analysis:

"The arguments of the parties are convincing that the construction of Public Utilities Code Section 1007 contained in Conclusion 4 of Decision 80478 would inject uncertainty into vessel common carrier passenger operations throughout the State." (75 CPUC 529 at p. 542.)

Today, fiscal, budgetary, and personnel restraints placed on the Commission require that we take a closer look at our regulatory activities to ensure that we are not expending our time and money in regulating a business which may have some effect on a business within our regulatory sphere but which is in actuality, outside of that sphere. Such is the case here. Applicant's proposed operation is outside of the sphere of the Commission's jurisdiction and we should not impose public utility regulation on it.

While applicant is not a water carrier subject to our public utility jurisdiction it does intend to operate a for-hire vessel in this State and in so doing is required to abide by the insurance requirements set out in PU Code §§ 4660-4669 prior to commencing operations. PU Code § 4660 defines a for-hire vessel operator as one who operates a "for-hire vessel for the transportation of persons for compensation in this State" and PU Code § 4663 requires such person to obtain liability insurance to cover such operation. Unlike PU Code § 1007 which defines a water carrier coming within our public utility jurisdiction as one who engages in "transportation...between points in this state" (emphasis supplied), PU Code § 4660 refers only to "transportation...in this State". We think the omission in PU Code § 4660 of the words "between points" is meaningful and that the liability insurance requirements were meant to apply not only to operators of vessels over whom we have public utility jurisdiction but also to those operators of passenger vessels in this State over whom we do not have public utility jurisdiction, the applicant being in the latter category.

Findings of Fact

1. Applicant proposes to provide multiday sightseeing cruises for passengers and their baggage on the San Francisco Bay and

Sacramento River. The cruises will originate and terminate at San Francisco or originate and terminate at Oakland.

2. Each cruise will last four days and three nights.
3. Fares to be charged will include three nights' private stateroom accommodations on the vessel, all meals, and the use of the vessel's facilities and amenities.
4. During the cruise the vessel will dock at four locations to allow passengers to temporarily off-board to go sightseeing for several hours.
5. During the passenger off-boarding period the crew may secure provisions or fuel for the ship from local sources.
6. After sightseeing at the four off-boarding locations all passengers who off-boarded will return to the vessel to continue the cruise.
7. No new passengers will be picked up at any of the four temporary off-boarding locations.
8. No passengers will permanently leave the cruise at any of the four off-boarding locations except in case of emergency.
9. Fares for the cruises will range from a low of \$387 to a high of \$588 depending on the accommodation requested.
10. Applicant's proposed operation involves operations over a loop, returning the passengers to the point of departure after they view or visit points of interest.
11. Applicant intends to operate a for-hire vessel.

Conclusions of Law

1. Applicant's proposed operations do not constitute "transportation...between points in this state" within the meaning of PU Code § 1007.
2. The application should be dismissed.
3. Applicant's operations come within the scope of PU Code §§ 4660 through 4669 and therefore must abide by the insurance procurement and filing requirements of Commission General Order 121-A before commencing operations. ✓

O R D E R

IT IS ORDERED that:

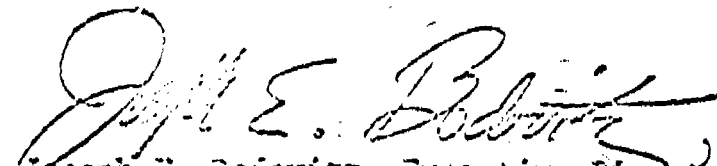
1. Application 60824 is dismissed.
2. Alaska Tour & Marketing Services, Inc. shall not commence the proposed operations unless and until it has satisfied the insurance requirements set out in Commission General Order 121-A.

This order becomes effective 30 days from today.

Dated DEC 1 1981, at San Francisco, California.

JOHN E. BRYSON
President
RICHARD D. GRAVELLE
LEONARD M. GRIMES, JR.
VICTOR CALVO
PRISCILLA C. GREW
Commissioners

I CERTIFY THAT THIS DECISION
WAS APPROVED BY THE ABOVE
COMMISSIONERS TODAY.


Joseph E. Bodovitz, Executive Director