

Decision 99-02-056 February 18, 1999

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Application of Red & White Ferries, Inc., for a Certificate of Public Convenience and Necessity to Establish and Operate Unscheduled Vessel Common Carrier Service Between Navigable Points on the San Francisco Bay, San Pablo Bay, the Oakland Estuary, Suisun Bay and all Navigable Tributaries up to the Sacramento and Stockton Areas and for Interim Operating Authority.

Application of Red & White Ferries, Inc., for a Certificate of Public Convenience and Necessity to Establish and Operate Scheduled Vessel Common Carrier Service Between Richmond on the one hand and San Francisco Ferry Building Pier ½ and Fisherman's Wharf Ferry Terminal 43½ on the other hand.

**ORIGINAL**

Application 97-07-042  
(Filed July 29, 1997;  
amended September 12, 1997)

Application 97-10-020  
(Filed October 1, 1997)

**ORDER ON PETITION FOR MODIFICATION**

**Summary**

Red & White Ferries, Inc.'s (Red & White) Petition for Modification of Decision (D.) 98-02-008 is granted in part and denied in part. Red & White may operate temporary vessel common carrier service during emergencies upon request of the Golden Gate Bridge, Highway and Transportation District (Bridge District). Red & White must file an application if it wishes to pursue its request for authority to offer non-scheduled service at per-person rates.

## **Background**

By D.98-02-008, the Commission granted Red & White a certificate of public convenience and necessity (CPCN) to operate non-scheduled vessel common carrier service on San Francisco Bay, and scheduled service between Richmond and San Francisco. Red & White subsequently withdrew requests for authority to offer non-scheduled water taxi service and transport of property by vessel, and the proceeding was closed by D.98-05-015.

On August 17, 1998, Red & White filed a petition for modification requesting D.98-02-008 and the CPCN it issued be modified to authorize Red & White to provide non-scheduled vessel common carrier service for special events on a per passenger basis, and temporary vessel common carrier service during emergencies affecting the operation of the Golden Gate Bridge or the Bridge District's ferry system. Neither of these authorities was requested in the applications leading to D.98-02-008.

Blue & Gold Fleet, L.P. (Blue & Gold) filed a timely response opposing both requests and asking that the petition be denied or set for hearing.

## **Discussion**

### **Golden Gate Bridge Emergency Service**

Red & White would have the Commission add the following to its tariffs, and a corresponding provision to its CPCN:

#### **Rule 11— Emergency Service**

At the request of the Golden Gate Bridge, Highway and Transportation District ("District"), Carrier may provide temporary scheduled and/or on-call ferry service between San Francisco and points in the North Bay Area during an emergency affecting the operation of the Golden Gate Bridge or of the District's normal ferry service. "Emergency" as used herein shall mean substantial traffic impairments on the Golden Gate Bridge or its approaching roadways, or when vessels regularly used by the District for ferry

service are inoperable or unavailable. In the course of providing emergency ferry service the Carrier may use any of the District's ferry docking facilities as well as its own docking facilities.

The petition included a letter from the Bridge District stating that it did not object.

Blue & Gold raises a number of points. First, it observes that it has held emergency authority for over ten years and has never been required or requested to exercise it. Blue & Gold argues that granting similar authority to Red & White is unnecessary and there has been no showing of public convenience and necessity for doing so. In D.98-02-008, we discussed the major contribution emergency ferry service made in the aftermath of the Loma Prieta earthquake, and the importance of adding the additional ferry capacity Red & White could bring in future Bay Area transportation emergencies (D.98-02-008, pp. 9-10 and Finding #12). That rationale applies as well to the emergency ferry service Red & White would provide in this case. Unless there are compelling reasons to the contrary, we would strongly favor granting Red & White's request for those same reasons.

Blue & Gold points out that its own emergency provision requires that the Bridge District, not the carrier, decide when an emergency exists. If emergency authority is granted, Blue & Gold would have the same condition apply to Red & White. We agree, and Red & White's proposed Rule 11 already addresses that point in words nearly identical to those used by Blue & Gold's CPCN.

Blue & Gold would have Red & White's emergency authority limited to service between San Francisco and Larkspur and Sausalito, the two Marin County points served by the Bridge District's ferries. Where Red & White's Rule 11 refers to service "between San Francisco and points in the North Bay Area," Blue & Gold's corresponding authority refers more specifically to service "between San Francisco and points in Marin County." It is true that there would

be a public benefit to allowing Red & White and the Bridge District maximum flexibility should an emergency occur. It is also the case that "North Bay Area" could be interpreted to encompass areas and routes that are beyond the Bridge District's jurisdiction, e.g., points in Solano and Contra Costa Counties. We will adopt the Marin County geographic limitation in Blue & Gold's emergency authority as sufficiently broad for Red & White.

Blue & Gold also objects to Red & White's proposed definition of "emergency." Blue & Gold asks the Commission to impose the same definition Blue & Gold uses: "Emergency shall mean substantial traffic impairments on the bridge or its approachways, or periods when vessels regularly used by the District for ferry service are inoperable." As Red & White points out in its reply, Red & White has essentially mirrored Blue & Gold's language, the only potentially significant distinction being Blue & Gold's use of "inoperable" versus Red & White's "inoperable or unavailable." We will permit the latter. When an emergency occurs, it makes little difference whether the public need arises because vessels are unavailable or inoperable.

Lastly, Blue & Gold asserts that the request should be denied because Red & White's vessels are slower than those used by the Bridge District. We have already discussed the value of additional ferry capacity in an emergency. The fact that Red & White's vessels may be slower is not a convincing argument for barring them.

Nothing Blue & Gold presents in its response persuades us to deny Red & White emergency authority, nor does Blue & Gold cite what additional evidence it would present at hearing to support its position. No hearing is necessary

#### **Non-scheduled Service at Per-person Rates**

Red & White's current non-scheduled service is provided on an hourly basis. Its CPCN specifically prohibits charging on an individual fare basis.

Red & White's petition asks that this restriction be removed, and that it be authorized to charge individual fares for non-scheduled service provided in connection with special events. It sees a need for ferry service for events such as concerts and festivals that are held at locations not served by scheduled ferry routes or requiring service at times not consistent with an incumbent operator's ferry schedule. The tariff provisions it proposes would not restrict it to serving under those conditions, however. Red & White cites two specific recent events for which it believes charging individual fares would have better met the public's need.

Blue & Gold objects. A recurring theme runs through its opposition: allowing non-scheduled carriers to provide ferry runs at will at per-person rates in competition with carriers who are obligated to provide scheduled service invites mischief and plays havoc with the scheduled providers' orderly operations. According to Blue & Gold, the Commission has rarely granted such authority, and then only under unique circumstances.

In its two applications leading to D.98-02-008, Red & White sought neither emergency authority nor authority to offer non-scheduled service at per-person rates. Unlike emergency authority, however, there is no discussion relating to non-scheduled service at per-person rates in that decision. There is, in fact, little relationship between Red & White's current request and this proceeding other than the fact that D.98-02-008 issued the CPCN which Red & White would now have us expand. Red & White acknowledges as much in its reply at page 13: "Red & White's proposed individual fare on-call service is separate and distinct from Red & White's hourly on-call service." And, were we to grant Red & White's request, the precedent could well have implications affecting other scheduled carriers in the state who have not been noticed and are not participating here. Red & White would have us make a major modification to

D.98-02-008, a modification that would be beyond the scope of the proceeding. If Red & White wishes to pursue its request for non-scheduled service at per-person rates, it should file a new application.

**Public Utilities (Pub. Util.) Code § 311(g)**

The draft decision in this matter was served on the parties and made available for public review and comment for at least 30 days as required by Pub. Util. Code § 311(g)(1). Red & White filed the only comments; there were no replies.

Red & White generally restated and reargued its position in support of offering non-scheduled service at per-person rates. Red & White's comments cite no factual, legal, or technical errors that persuade us to revise the decision as drafted.

**Findings of Fact**

1. Authorizing Red & White to provide temporary service between San Francisco on the one hand and points in Marin County on the other during emergencies affecting the operation of the Golden Gate Bridge or of the District's normal ferry service would provide an important public benefit.

2. Red & White's request for authority to operate non-scheduled service at per-person rates would entail a major modification to D.98-02-008 that would be beyond the scope of this proceeding.

**Conclusions of Law**

1. The public convenience and necessity require that Red & White be authorized to provide vessel common carrier service between San Francisco on the one hand and points in Marin County on the other hand during emergencies affecting the operation of the Golden Gate Bridge and/or the Bridge District's normal ferry service.

2. Red & White's petition for modification of D.98-02-008 is not an appropriate vehicle for considering its request for authority to offer non-scheduled services at per-person rates. Red & White should file an application if it wishes to pursue that request.

3. No hearing is required.

IT IS ORDERED that:

1. Red & White Ferries, Inc.'s (Red & White) petition to modify Decision (D.) 98-02-008 is granted in part and denied in part as set forth below.

2. Red & White is authorized to provide emergency vessel common carrier service as delineated in Appendix VCC-81, Second Revised Page 2 to Red & White's certificate of public convenience and necessity, attached to this decision.

3. As a condition of this grant of authority, Red & White shall, within 30 days after the effective date of this order, file with the Commission's Rail Safety & Carriers Division written acceptance of the revised certificate of public convenience and necessity and tariff modifications to implement it. The modified tariffs shall become effective 10 days after filing.

4. Red & White's request to modify D.98-02-008 to authorize non-scheduled service at per-person rates is denied. Red & White shall file an application if it wishes to pursue that authority.

5. Application (A.) 97-07-042 and A.97-10-020 are closed.

This order is effective today.

Dated February 18, 1999, at San Francisco, California.

RICHARD A. BILAS  
President  
HENRY M. DUQUE  
JOSIAH L. NEEPER  
Commissioners

SECTION I. GENERAL AUTHORIZATIONS, RESTRICTIONS, LIMITATIONS,  
AND SPECIFICATIONS (concluded).

\*d. Emergency Service

At the request of the Golden Gate Bridge, Highway and Transportation District (District), carrier may provide temporary scheduled and/or non-scheduled service between San Francisco and points in Marin County during an emergency affecting operation of the Golden Gate Bridge or of the District's ferry service. "Emergency" as used herein shall mean substantial traffic impairments on the Golden Gate Bridge or its approaching roadways, or when vessels regularly used by the District for ferry service are inoperable or unavailable. In the course of providing emergency ferry service the carrier may use any of the District's ferry docking facilities as well as its own docking facilities.

SECTION II.

A. Scheduled Service

Richmond - San Francisco

Commence from Richmond Harbor, in the City of Richmond, then over the San Francisco Bay waters to the vicinity of the San Francisco Ferry Building and to Fisherman's Wharf Pier, San Francisco.

This route authorizes the transportation of passengers and their baggage between the Ferry Building and Fisherman's Wharf.

San Francisco - USS Hornet

Commence from the aircraft carrier USS Hornet docked in Alameda, then over the San Francisco Bay waters to San Francisco Ferry Building Pier ½ and Fisherman's Wharf Ferry Terminal Pier 43 ½, San Francisco.

B. Non-Scheduled Service

Between navigable points on the Bays of San Francisco, San Pablo, and Suisun, Oakland Estuary, and all navigable tributaries northerly to the Sacramento and Stockton areas.

Issued by California Public Utilities Commission.

\*Revised by Decision 99-02-056, Applications 97-07-042 and 97-10-20.