

ALJ/JCM/tcg

Mailed 3/4/99

Decision 99-03-011 March 4, 1999

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Red and White Ferries, Inc.
(VCC-81) for a Certificate of Public Convenience
and Necessity to Establish and Operate Vessel
Common Carrier Service between San Francisco
and Alcatraz Island.

Application 98-10-020
(Filed October 16, 1998)

OPINION

Summary

This decision authorizes Red & White Ferries, Inc., (Red & White) to establish and operate vessel common carrier service between San Francisco and Alcatraz Island, conditioned upon Red & White's obtaining corresponding authority from the United States Secretary of the Interior.

Background

In Decision (D.) 98-02-008, the Commission certificated Red & White to provide vessel common carrier service for the nonscheduled transportation of passengers and their baggage between navigable points on San Francisco Bay and vicinity, and scheduled service between Richmond and San Francisco. It has not yet begun its Richmond/San Francisco service. Red & White affiliate Fisherman's Wharf Bay Cruise Corporation presently provides nonregulated charter and San Francisco Bay sightseeing tour service under the name Red & White Fleet. More recently, Red & White was certificated to provide scheduled service between San Francisco and the aircraft carrier USS Hornet docked in Alameda (D.98-09-003).

Ferry service between San Francisco and Alcatraz is currently provided by Blue & Gold Fleet, L.P., under an exclusive, long-term contract with the United

States Secretary of the Interior (Secretary). Red & White intends to submit a proposal to the Secretary following expiration of the current Blue & Gold contract on December 31, 1998. Should it be successful, it will need Commission approval of tariff and certificate of public convenience and necessity (CPCN) changes. By filing this application beforehand, it seeks to avoid having to request authority *nunc pro tunc*, which has caused the Commission concern where contracts were involved in the past (see, e.g., D.91-07-049, and D.94-07-066). And to deal with the possibility that it may not be successful, Red & White suggests, "...it may be appropriate for the Commission to condition the grant of the requested CPCN on the applicant being selected by the Secretary."

Notice of the application appeared in the Commission's Daily Calendar on October 20, 1998, and Red & White provided notice to others as required in the Commission's Rules of Practice and Procedure, Rule 21(k). The Commission has received no protests or responses.

Discussion

Alcatraz is federally held as part of the Golden Gate National Recreation Area, and administered by the National Park Service under the Department of the Interior. In D.85-06-105 (*Re Harbor Carriers, Inc.*, 18 CPUC 2d 110), the Commission fully considered the issues surrounding SF/Alcatraz ferry service and acknowledged certain limitations on the state's jurisdiction. In summary, Congress has granted the Secretary broad authority over Alcatraz, but the Commission retains the power to act in areas that do not conflict with the Secretary's authority or interfere with his ability to carry out the authority delegated to him by Congress. In Blue & Gold's current contract, the Secretary has specified many of the details of Alcatraz ferry service such as the facilities to be used and the rates to be charged. Blue & Gold's tariffs merely state that it shall provide at least two trips per day in each direction from June 1 through

September 10 each year, and its CPCN is similarly worded. Blue & Gold's tariffs contain no rate information for scheduled service to and from Alcatraz. Red & White's proposal to implement similar provisions is consistent with the Commission's authority under *Harbor Carriers*. The actual schedule for Red & White's SF/Alcatraz service would be established in consultation with the Secretary.

In initially certificating it to provide vessel common carrier service (D.98-02-008), the Commission intended that Red & White would reintroduce competition into the regulated market for point-to-point ferry services on San Francisco Bay following Blue & Gold's purchase of most of the assets and operations of the former Red and White Fleet, Inc. (no direct relation to applicant Red & White Ferries, Inc.). Thus, Red & White's request in this application is an anticipated next step. Under the Secretary's current practice of limiting Alcatraz service to one contract provider, and given that ferry service is the only available mode of travel available to the visiting public, the public convenience and necessity clearly requires the service.

Red & White states that SF/Alcatraz service would be operated under the supervision of the same personnel and employing the same vessels the Commission previously found suitable for scheduled service in D.98-02-008 and D.98-09-003. Likewise, it represents that its financial qualifications and affiliate relationships are unchanged. Our previous conclusions of suitability from those decisions can thus be extended to this application as well. Red & White is fit to provide SF/Alcatraz scheduled vessel common carrier service.

Red & White's suggestion to deal with the possibility that it may not be chosen as the new service provider is sensible. Red & White will be conditionally authorized to provide SF/Alcatraz scheduled ferry service. If and when it is

selected by the Secretary, it must file the tariffs it proposes in the application and accept the revised CPCN page attached to this decision as Appendix A.

Senate Bill (SB) 960 and SB 779 Considerations

In Resolution ALJ 176-3002 (October 22, 1998), the Commission preliminarily categorized this as a ratesetting proceeding, and preliminarily determined that hearing would not be necessary. There are no material facts in dispute, no protests have been received, and there is no known opposition to granting the full relief requested. We conclude that it is not necessary to disturb our preliminary determinations.

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Public Utilities (PU) Code § 311(g)(2), the otherwise applicable 30-day period for public review and comment is being waived.

Findings of Fact

1. Red & White is operationally and financially fit to provide SF/Alcatraz scheduled vessel common carrier service.
2. Red & White's proposal to implement limited tariff and CPCN provisions similar to those now in place for the current SF/Alcatraz service provider, should Red & White be selected as the new provider, is reasonable and consistent with the Commission's authority under *Harbor Carriers*.
3. There is no known opposition to granting the relief requested in the application, and no need to hold a hearing.

Conclusions of Law

1. Congress has granted the Secretary broad authority over Alcatraz, but the Commission retains the power to act in areas that do not conflict with the Secretary's authority or interfere with his ability to carry it out.

2. The public convenience and necessity require that Red & White offer SF/Alcatraz ferry service if it is successful in obtaining authority from the Secretary to do so.

3. The Commission having found that a hearing is not needed, the rules and procedures of Article 2.5, SB 960 Rules and Procedures, do not apply to this proceeding pursuant to Rule 6.6.

4. This is an uncontested matter in which the decision grants the relief requested. The otherwise applicable 30-day period for public review and comment should be waived as permitted by PU Code § 311(g)(2).

5. The order that follows should be made effective immediately.

O R D E R

IT IS ORDERED that:

1. Red & White Ferries, Inc., (Red & White) is authorized to provide scheduled vessel common carrier service between San Francisco and Alcatraz Island upon its selection to do so by the United States Secretary of the Interior (Secretary), imposing such fares and according to such terms and conditions as the Secretary may require.

2. To implement the authority granted in this decision, Red & White shall, as soon as possible after learning that it has been selected by the Secretary but in no case later than five days after receiving the Secretary's final approval, file with the Commission's Rail Safety & Carriers Division:

a. Written acceptance of this authority and the corresponding revised certificate of public convenience and necessity page set forth in Appendix A to this decision.

b. Revised tariffs as proposed in the application, in accordance with the Commission's General Order 117 Series.

3. The authority granted in this decision shall expire if not exercised within six months from the effective date of this decision, or upon final selection by the Secretary of a carrier other than Red & White, whichever occurs sooner.

4. The 30-day period for public comment and review of this decision is waived.

5. Application 98-10-020 is closed.

This order is effective today.

Dated March 4, 1999, at San Francisco, California.

RICHARD A. BILAS
Président
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.

***San Francisco - Alcatraz Island**

Commencing from San Francisco, then over the San Francisco Bay waters to Alcatraz Island.

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 99-03-011, Application 98-10-020.