



**FILED**

08-21-09  
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**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Application of RED & WHITE FERRIES, INC. for a Certificate of Public Convenience Necessity to Establish and Operate Scheduled Vessel Common Carrier Service Between Sausalito on the one hand and Fisherman's Wharf Ferry Terminal Pier 43½ on the other hand and to establish a Zone of Rate Freedom.

Application 09-01-016  
(Filed January 27, 2009)

Red & White Ferries, Inc.,

Complainant,

vs.

The Golden Gate Bridge, Highway and Transportation District, a California Special District,

Defendant.

Case 09-03-019  
(Filed March 20, 2009)

**ASSIGNED COMMISSIONER'S SCOPING MEMO AND RULING**

Pursuant to Rule 7.3 of the Commission's Rules of Practice and Procedure (Rules), this Scoping Memo and Ruling sets forth the procedural schedule, assigns the presiding officer, and addresses the scope of this proceeding and other procedural matters following the prehearing conference (PHC) held

July 27, 2009. This ruling is appealable only as to the category of the proceeding under the procedures in Rule 7.6.

**1. Category**

This proceeding consists of two matters, Application (A.) 09-01-016 and Case (C.) 09-03-019, which are now consolidated. Each was preliminarily categorized as a ratesetting proceeding, and the consolidated proceeding is therefore a ratesetting proceeding. The preliminary categorization will not be changed.

**2. Hearing**

This is a contested proceeding in which evidence must be taken on the disputed issues. Consequently, a hearing is necessary.

**3. Presiding Officer**

The presiding officer is Administrative Law Judge (ALJ) Victor D. Ryerson.

**4. Background of the Proceeding**

Applicant Red & White Ferries, Inc. (Red & White) filed A.09-01-016 pursuant to Public Utilities Code section 1007<sup>1</sup> to obtain a certificate of public convenience and necessity (CPCN) to operate a common carrier vessel service between Sausalito and Pier 43½ in San Francisco, and for authority to implement a zone of rate freedom (ZORF) for that service. Red & White subsequently filed C.09-03-019 pursuant to section 562 seeking an order entitling it to use the Sausalito ferry dock, which is controlled by protestant Golden Gate Bridge,

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<sup>1</sup> All statutory references are to the California Public Utilities Code unless otherwise specified.

Highway and Transportation District (GGB), and to fix the terms and compensation for its use of that facility.

Red & White seeks to establish a seasonal ferry service that will primarily provide return transportation for passengers who ride bicycles from San Francisco to Sausalito across the Golden Gate Bridge (and for their bicycles), although the proposal is not specifically limited to providing such service. Red & White also seeks to be able to vary the fare for this service within a range of 30% in order to adjust to changing circumstances on short notice.

## **5. Parties**

Red & White is a regulated vessel common carrier that is not presently engaged in common carriage operations on San Francisco Bay. Protestant Blue & Gold Fleet, L.P. (Blue & Gold) is a vessel common carrier that currently operates ferry service between Sausalito and its dock at Pier 41 in San Francisco. GGB is a public authority that operates ferry service between Sausalito and the Ferry Building at the foot of Market Street in San Francisco. GGB also controls the Sausalito public ferry dock, which is owned by the City of Sausalito and leased to GGB. That dock is used by Blue & Gold's ferry service, as well as by GGB, under the terms of a written agreement between those entities.

## **6. Prehearing Conference**

The ALJ held a PHC on July 27, 2009. All parties appeared and were heard on the matters specified in Rule 7.3. At the conclusion of the PHC, the ALJ announced that the procedural schedule and hearing dates would be established in this scoping memo.

## 7. Issues

As discussed at the PHC, the following issues define the scope of the consolidated proceeding and will govern the admissibility of evidence at the hearing.

- a. Whether there is a need for the proposed service and, if so, what is the specific nature of the need?
  - (1) Who would be served?
  - (2) When is the service required?
  - (3) Why is the service needed?
  - (4) Is the current need unserved and, if so, to what extent? If it is not currently served, will it remain so if the CPCN application is not granted?
  - (5) Are there options to fulfill the need apart from the service proposed in the application?
- b. What effect, if any, will the proposed service have upon the protestants?<sup>2</sup>
- c. What conditions or limitations, if any, should be placed upon the service if the applicant's proposal is approved?
- d. What, if any, issues pertaining to viability and reliability of the service are presented under the proposal?
  - (1) Financial fitness of the applicant.
  - (2) Operational fitness of the applicant.

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<sup>2</sup> At the PHC, Red & White argued that this is not a legitimate issue, and directed the Commission's attention to the following quote from Application of Red & White Ferries, Inc., Decision 98-02-008, 1998 Cal. PUC LEXIS 313 (Cal. PUC 1998): "To certificate Red & White does not require a finding that Blue & Gold provides poor service, or that Red & White's market entry will have *no detrimental effects* on Blue & Gold." (Italics added here.) We agree that such strictly limited findings are not required, but in the interests of giving parties an opportunity to be heard, we will allow evidence on the degree of competitive harm into the record.

- (3) Revenue projections and other business plan considerations pertaining to sustained reliability of the service.
- (4) Fare structure considerations (basic fare and ZORF)
- e. Use of GGB-controlled docking facility in Sausalito pursuant to section 562.<sup>3</sup>
  - (1) Necessity for applicant's use of GGB dock versus availability or construction of alternative facilities.
  - (2) The contractual relationship between the City of Sausalito and GGB with regard to the docking facility, and its impact, if any on this proceeding.
  - (3) Reasonable compensation for use of GGB dock.
  - (4) Terms and conditions of use, including schedule slots and frequencies.
  - (5) Cost of construction of additional facilities, if any.
  - (6) Need for capital improvements, if any.
  - (7) Additional leasing and rental considerations.
  - (8) Maintenance requirements and costs.
- f. Environmental effects and mitigation requirements, if any.

## **8. Procedural Schedule**

- a. The cutoff date for completion of discovery is August 31, 2009.
- b. The evidentiary hearing (EH) is set for November 16 through 20, 2009, at 10:00 a.m. in the Commission's Courtroom, State Office Building, 505 Van Ness Avenue, San Francisco, California. A separate hearing notice has been served.
- c. Parties shall serve initial prepared testimony and copies of proposed exhibits on other parties and the ALJ no later than October 30, 2009.

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<sup>3</sup> No issues are presented with respect to docking arrangements in San Francisco, as Red & White has its own docking facility there.

- d. Parties shall serve responsive prepared testimony and stipulations of uncontested facts and issues (including stipulations of exhibits that may be admitted without further proof) no later than November 10, 2009.
- e. Any motions *in limine* shall be filed and served no later than the close of business November 13, 2009.
- f. Prehearing (trial) briefs will be permitted, but are not required, and are limited to a maximum of 10 pages in length.
- g. The post-hearing briefing schedule and submission date will be determined at the conclusion of the EH.
- h. The presiding officer's decision will be issued no later than 90 days after submission of the proceeding, and the target resolution date will be 30 days thereafter.
- i. In addition to the formal procedural schedule established above, two public participation hearings will be held at 1:30 p.m., September 15, 2009, in the Commission's Courtroom, State Office Building, 505 Van Ness Avenue, San Francisco, California, and at 7:00 p.m., September 22, 2009, in the City Hall Council Chambers, 420 Litho Street, Sausalito, California.
- j. In no event will the Commission's decision be issued later than the prescribed resolution date, January 3, 2011.

**IT IS SO RULED.**

Dated August 21, 2009, at San Francisco, California.

/s/ TIMOTHY ALAN SIMON  
Timothy Alan Simon  
Assigned Commissioner

**INFORMATION REGARDING SERVICE**

I have provided notification of filing to the electronic mail addresses on the attached service list.

Upon confirmation of this document's acceptance for filing, I will cause a Notice of Availability of the filed document to be served upon the service list to this proceeding by U.S. mail. The service list I will use to serve the Notice of Availability of the filed document is current as of today's date.

Dated August 21, 2009, at San Francisco, California.

/s/ SANDRA M. JACKSON

Sandra M. Jackson