Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Blue & Gold Fleet, L.P., a Delaware Limited Partnership, for Authorization for Passenger Fare Increases on Its Vessel Common Carrier Service on San Francisco Bay Between Tiburon on the One Hand and Authorized Points in San Francisco on the Other Hand.	Application 07-01-006 (Filed January 4, 2007)

OPINION APPROVING RATE INCREASE

1. Summary

This decision approves Blue & Gold Fleet, L.P.'s (Applicant) request for fare increase for its vessel common carrier service between Tiburon and San Francisco (Tiburon/San Francisco service).

2. Background

Applicant is a vessel common carrier (VCC) authorized by the Commission to transport passengers between Tiburon and San Francisco. Applicant has operated this service since 1997 when it took over the services and assets of two other companies, including one operating the Tiburon/San Francisco service since 1980. In addition to the Tiburon/San Francisco service, Applicant offers other services including a ferry service between Sausalito and San Francisco, a short service between Tiburon and Sausalito, and several unregulated services.

The last increase the Commission authorized for the Tiburon/San Francisco service was in 2002 by Decision (D.) 02-09-008. By Application (A.) 07-01-006 filed on January 4, 2007, and amended on February 6, 2007, Applicant is seeking authorization to increase the fares for the Tiburon/San Francisco service as shown in the following table:

Category of Fare	**Current Fares (In $)**				**Proposed Fares (In $)**			
	One-Way		Round-Trip		One-Way		Round-Trip	
	Base Fare	With Surcharge	Base Fare	With Surcharge	Base Fare	With Surcharge	Base Fare	With Surcharge
Adult (Age 12+)	7.25	8.50	14.50	17.00	8.00	9.00	16.00	18.00
Child (Age 5-11)	4.00	4.50	8.00	9.00	4.75	5.00	9.50	10.00
Group Adult	6.75	8.00	13.50	16.00	7.50	8.50	15.00	17.00
Group Child	3.75	4.25	7.50	8.50	4.75	5.00	9.50	10.00
Group Wholesale	6.25	7.25	12.50	14.50	6.75	7.25	13.50	14.50
Short Hop	1.25	1.50			1.75	2.00		
Commuters (20 Tickets)	85.000	100.00			125.00	140.00		

Applicant argues it has been operating the Tiburon/San Francisco service with a deficit in 2005 and 2006, and projects the same for 2007. It seeks an increase in fares to meet the projected cost of operating the ferry service.

Applicant cites three major reasons for the requested fare increase: higher operating cost of the vessels, increases in indirect expenses, and major repair of the vessel, Zelinsky. First, Applicant states the operating cost will rise because of increased hourly wages for the vessel crew, higher employee benefit premiums, and the rising cost of diesel fuel. Second, according to Applicant, the indirect expenses for facilities and marketing will also increase. Applicant explains that in the past, these expenses used to be spread among all of it services, including the ferry service to Alcatraz Island, which Applicant no longer operates. Finally, Applicant states it will incur $750,000 of expenses to repair major structural damage to its vessel Zelinsky. Applicant explains the repairs are needed before the vessel can meet the U.S. Coast Guard requirements for operation. Applicant

did not anticipate these repairs would occur during the life of the vessel and characterizes them as being extraordinary and beyond the scope of repairs due to normal maintenance.

No party filed a formal protest to this application. However, the Commission received several letters from the public both opposing and supporting the application. The Commission also held a Public Participation Hearing (PPH) on April 10, 2007 in Tiburon, California.

On April 17, 2007, the assigned Administrative Law Judge (ALJ) issued a ruling requesting additional information from the Applicant. On April 27, 2007, Applicant filed its response to the ALJ questions. On May 7, 2007 a petition against the 40% fare increase for commuters signed by over hundred petitioners was received by the Commission's Public Advisor's office and was placed in the public comment file for this proceeding.

3. Discussion

In considering the Applicant's request for a fare increase, we balance the public interest in having the service continue and the financial health of the company necessary to sustain operation in order to determine whether the rate increase is reasonable.

From the public input we received on this application, it is clear that the community values this service and cares about the future of its operation. It would be a loss to the community and harmful to Tiburon's economy if the Blue & Gold ferry service was eliminated.

At the same time, the company's financial ability to continue the service is of concern to us. Applicant operated the service with a deficit in 2005 and 2006,

and is operating at a loss at current rates[1], and even with the proposed increase, it would continue to operate at a loss in 2007. Despite the projected loss, Applicant is willing to commit necessary resources to repair Zelinsky and continue operation. At issue then is whether the decision to repair Zelinsky is in the public interest, and additionally, whether the proposed fare increases are reasonable.

With respect to repairing Zelinsky, we are concerned about Applicant's lack of knowledge of such repairs, and Applicant's lack of planning for such unforeseen events. The fact that Applicant was unfamiliar with Zelinsky's unique construction and unaware of the upcoming structural repairs does not justify Applicant's failure to plan or allocate a budget for such unforeseen events. Nevertheless, Zelinsky is now in need of major structural repairs without which the vessel will not be able to operate, and Applicant is faced with either spending a considerable amount of money to repair the vessel, or suspending its operation permanently and replacing it with another boat. The latter option, however, is less desirable. Zelinsky is a high speed vessel that, when in service, provides the Tiburon/San Francisco service with multiple daily trips. Zelinsky's potential replacement (current replacement while being repaired) is a slower boat with less frequent service and inferior operation. Eliminating Zelinsky would be a loss to the community and would not be in the best interest of the riders.

At the same time, we cannot approve the cost to repair Zelinsky without a reasonable assurance that Zelinsky will remain in operation to provide the Tiburon/San Francisco service after the repairs are completed, and that no

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[1] Established in D.02-09-008.

additional major structural repairs are needed in the near future. We are convinced by the record that Applicant will have a strong financial incentive to operate Zelinsky to recover the cots of funding the repair. The record also shows that in 2006, 56% of Zelinsky's operation was spent on the Tiburon/San Francisco service, and by granting the proposed increase we expect this provision of service will continue. In future applications, we will examine Blue & Gold's use of the Zelinsky for Tiburon ferry services to ensure that the repaired vessel remains in service and is not being transferred to one of Blue & Gold's other services. Applicant has also stated that it does not envision any further major structural repairs to Zelinsky beyond those required by the U.S. Coast Guard at this time. The only anticipated repairs in the near future are to enhance passenger comfort and convenience. Given the above, it is reasonable to expect that Zelinsky will be in operation for some time after the structural repairs are made. Under these circumstances, we find it is reasonable to repair Zelinsky.

Having found that the repair is in the public interest, we now determine if the fare increase is reasonable. Applicant receives no subsidy form any local, state or federal sources for this service. Ticket sales are the only source of revenues for recovering the total cost. However, ridership has been declining in 2005 and 2006 and even with a projected increase in 2007, ridership will remain below 2003 levels and at insufficient levels to offset the operating cost of the service. At the PPH, participants suggested adding new late night service to collect more revenues. We have no assurance that this approach will be cost effective given the continual decline in ridership. Moreover, in 2001, a late night service was added, but had to be discontinued due to lack of ridership. We are reluctant to have the company incur potentially additional expenses, causing even a greater deficit, for a service that was not successful in the past.

Applicant has proposed increases to all passenger fares. The proposed fare increases for one way trips are between $0.50 and $2.00 per ticket and $40 for 20 commute tickets (from $100 to $140 with surcharge). Although the proposed increases would place a higher financial burden on commuters, the 20 commuter tickets would still offer a 22% discount to the one way adult fare. We acknowledge that this discount is less than what the riders are currently receiving. However, given that even at this rate the company states it will be operating at a loss, the increase is reasonable.

Finally, a group of citizens submitted a petition requesting Applicant to work with the Town of Tiburon and the Commission on another source of financing approved by the state. We encourage such cooperative efforts. However, we will move forward with the fare increase now to avoid additional financial losses or further delays in repairs. We direct Applicant to file a new application if the negotiations result in any form of a subsidy that would impact Applicant's projected cost or revenues.

We would also like to speak to a comment that was raised at the PPH. Several speakers expressed the desire to have another ferry operator, who receives public funding to subsidize its operations, to either open a new ferry route to Tiburon or to take over Blue & Gold's Tiburon ferry service.[2] One individual at the PPH stated that state law prohibited publicly subsidized ferry systems from competing with privately funded ferry businesses. Although this issue was not raised in the formal record of this proceeding, we would like to

[2] As previously mentioned, unlike most ferry boat operators, Blue & Gold does not receive any public subsidies, and therefore, it must charge its passengers the full cost of operating its business.

address it here as it appears to be an issue of vital importance to the people served by Blue & Gold's Tiburon ferry service.

While we did not find a state law that is exactly on-point,[3] there is a federal statute that, in practice, may protect the interest of private enterprise from competition from publicly funded enterprises.[4] 49 USCS § 5323 appears to be relevant to public ferry operators who are recipients of funds from the Federal Transit Administration. While the statute is not a bar per se to engaging in competition, it requires the United States Secretary of Transportation to make certain findings in conjunction with grant applications that seem to protect the interest of private enterprise. In practice, this statute may prevent a state or local governmental authority from buying a private ferry operator because of the stringent requirements that must be met.

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[3] California Government Code section 37931.2 is related to this issue, but only applies to toll-free ferry systems.

[4] This federal statute provides, in relevant part: "(1) In general. Financial assistance provided under this chapter to a State or a local governmental authority may be used to acquire an interest in, or to buy property of, a private company engaged in public transportation, for a capital project for property acquired from a private company engaged in public transportation after July 9, 1964, or to operate a public transportation facility or equipment in competition with, or in addition to, transportation service provided by an existing public transportation company, only if—(A) the Secretary determines that such financial assistance is essential to a program of projects required under sections 5303, 5304, and 5306 [49 USCS §§ 5303, 5304, and 5306]; (B) the secretary determines that the program provides for the participation of private companies engaged in public transportation to the maximum extent feasible; and (C) just compensation under State or local law will be paid to the company for its franchise or property. (2) Limitation. A governmental authority may not use financial assistance of the Untied States Government to acquire land, equipment, or a facility used in public transportation from another governmental authority in the same geographic area." (49 U.S.C.S., § 5323.)

Thus, federal law may limit the ability of publicly subsidized ferry systems to compete with privately funded ferry businesses. However, this Commission cannot resolve this matter because we cannot change, nor do we administer, federal law. The Tiburon community will need to appeal to other forums or de3vise a new creative solution to resolve this issue.

4. Categorization and Need for Hearing

In Resolution ALJ-176-3185, dated January 11, 2007, the Commission preliminarily determined that the category of this proceeding is ratesetting, and that hearings are not necessary. We affirm those determinations today.

5. Comments on Proposed Decision

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Section 311 (g)(2) of the Public Utilities Code and Rule 14.6(c)(2) of the Commission's Rules of Practice and Procedure, the otherwise applicable 30-day period for public review and comment is waived.

6. Assignment of Proceeding

John A. Bohn is the assigned Commissioner and Maryam Ebke is the assigned ALJ in this proceeding.

Findings of Fact

1. Applicant has been operating the Tiburon/San Francisco service at a loss in 2005 and 2006 and will continue to do so in 2007, even with the proposed increase.

2. Eliminating Zelinsky would be a loss to the community and would not be in the best interest of the riders.

3. We have reasonable assurance that Zelinsky will be in operation after the structural repairs are completed.

4. The proposed fare increases are reasonable.

5. No formal protest to the application has been filed.

6. An evidentiary hearing is not necessary.

Conclusions of Law

1. The application should be granted.

2. Because this rate increase is necessary to decrease projected losses, the decision should be effective immediately.

O R D E R

IT IS ORDERED that:

1. Blue & Gold Fleet, L.P., a Delaware Limited Partnership, (Applicant), is authorized to establish the increased fares as proposed in the application.

2. To implement the increases authorized in this order, Applicant shall, on or after the effective date of this order, file revised tariff pages in accordance with General Order 117-Series. The revised pages and the fares listed in them shall be made effective no earlier than 10 days after the date of filing.

3. Applicant shall inform the public of the increased fares and their effective date by posting notice in its terminals and vessels. Such notice shall be posted at least 10 days before the effective date of the fare changes and shall remain posted for at least 30 days.

4. This authority shall expire unless exercised within 90 days after the effective date of this order.

5. Application 07-01-006 is closed.

This order is effective today.

Dated _____, at San Francisco, California.