



BRITISH COLUMBIA
FERRY COMMISSION

ORDER
NUMBER: 11-01B

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IN THE MATTER OF
Section 45.1 of the *Coastal Ferry Act*, S.B.C. 2003, c. 14
And
BCFS' Drop Trailer Service
British Columbia Ferry Services Inc. Request for Reconsideration and
Variance of the Quarterly Application of the Minimum Allowed Average Tariff
Dated February 23, 2011

BEFORE: Gord Macatee, Commissioner, on October 31, 2011

DETERMINATION

Order 11-01A and Subsequent Proceedings

On February 7, 2011 the Commissioner issued Order 11-01A under s. 45.1 of the *Coastal Ferry Act*, and a non-confidential version entitled Order 11-01 (referred to together as the "Order"). Pursuant to s. 45.1(2)(b), the Order set a minimum allowed average tariff (MAAT) for the drop trailer service of British Columbia Ferry Services Inc. (BCFS) on its major routes, to commence April 1, 2011.

In the drop trailer proceedings, BCFS filed reply submissions dated December 8, 2010 in which it stated at page 38 its belief that "there is sufficient evidence on the record for the Commissioner to make any necessary determination pursuant to section 45.1(2)(b)". BCFS requested the opportunity to provide further submissions if an order were to be made under s. 45.1(2)(a).

The Order requires BCFS to report quarterly to the Commissioner within 60 days of the end of each quarter: (a) the quarterly total revenue from its drop trailer tariff on the major routes and (b) the number of vessel-feet occupied (lane feet occupied by drop trailers and their hostler units). BCFS is to ensure that the amount (a) divided by (b) shall not be less than the MAAT.

The Order further provides that when the drop trailer volume exceeds a specified rate of vessel-feet per year, or at the discretion of the Commissioner, the minimum tariff shall be re-set in light of experience with actual costs and drop trailer traffic volumes.

The Order is currently under appeal by Seaspan Ferries Corporation (Seaspan) on various grounds.

BCFS sought a reconsideration of the Order by writing on February 23, 2011. In Memorandum 43 the Commissioner partially granted the reconsideration to correct a calculation error and an incorrect assumption. However, the Commissioner stated that he was not prepared to consider submissions on the methodology used in arriving at the figures in the Order. BCFS did not appeal this ruling by the Commissioner on the scope of the reconsideration.

BCFS Reconsideration Request

BCFS has filed its first quarterly report, covering April 1 to June 30, 2011.

On September 30, 2011 BCFS filed with the Commissioner a request for reconsideration of the methodology for calculating the quarterly report. BCFS submits that the Order should be varied to reflect a quarterly calculation based on a four-quarter trailing average. BCFS also proposed transitional implementation that would allow for compliance to be assessed based on data as it is accumulated throughout 2012.

BCFS argued that a reconsideration should be granted because the approach to evaluating compliance with the MAAT had not been the subject of submissions by the participants to the drop trailer proceedings, and that the proper implementation of the MAAT is a new principle that has arisen as a result of the Commissioner's decision to adopt the MAAT.

On the merits of the reconsideration request, BCFS' main argument is that the practical result of using a single quarter's experience to assess compliance with the MAAT is that BCFS cannot set its annual service prices to achieve the MAAT without running the risk that changes in traffic and customer mix within a particular quarter could cause non-compliance in that quarter. It must therefore leave a significant margin on its annual fixed prices to account for fluctuations in volume and mix within the year.

Seaspan and Van Isle Barge Services (VIBS) were both provided with copies of the BCFS submissions. Seaspan responded in writing on October 14, 2011 opposing the reconsideration request on the grounds that it should not be brought while the Order is under appeal; the issue was not raised by BCFS in its earlier reconsideration request; BCFS has not alleged any errors of fact; and BCFS has not alleged new facts or changed circumstances.

BCFS replied in writing on October 17, 2011. BCFS noted that the appeal does not stay the Order, referring to s. 51 of the *Coastal Ferry Act*. BCFS also argued that its experience with the MAAT has revealed a shortcoming in the way in which compliance with the MAAT is to be determined going forward, and that addressing this shortcoming falls within the Commissioner's ongoing role as regulator.

Determination

The Commissioner has determined that he will not reconsider the Order, at this time, for the following reasons:

1. The Commissioner has discretion to reconsider the MAAT formula to deal with errors, oversights, changes in circumstances, and in light of experience over time with actual costs and drop trailer traffic volumes.
2. BCFS' request for reconsideration is not based on an error or oversight. The only alleged change in circumstances is that BCFS' experience with the MAAT has revealed a shortcoming. However, there has been only limited experience with applying the formula. Therefore, the conditions do not presently exist to warrant a reconsideration.
3. The pending appeal is another factor which the Commissioner has considered. It is premature for a reconsideration to take place on only one aspect of the MAAT while the appeal is pending. Depending on the outcome of the appeal, the reconsideration may be futile.

The Commissioner therefore declines to hear the BCFS reconsideration request at this time. BCFS may renew its request once Seaspan's appeal of the Order has been concluded.

DATED in Victoria, in the Province of British Columbia, this 31st day of October, 2011.

BY ORDER



Gord Macatee
British Columbia Ferries Commissioner