

10/17/91

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Investigation)
of the complaint filed against)
Miller Boat Line, Inc. by)
Randald N. Perry DbA Perry Rentals)

Case No. 91-24-WT-CSS

TRANSPORTATION STAFF FINDINGS

NATURE OF PROCEEDINGS:

1) On January 2, 1991, the Commission received a complaint from Randald N. Perry against Miller Boat Line, Inc. (MBL) alleging that vehicle passage to S. Bass Island was being provided on a discriminatory basis. In addition, Mr. Perry stated that on one occasion he was denied passage of his car entirely.

2) On March 1, 1991, Miller Boat Line filed a request for a dismissal of the complaint on the grounds that the complainant failed to specify a cause of action. In the request for dismissal, Miller Boat Line admitted that it had implemented a policy for transporting vehicles on the weekends due to overcrowded conditions on the island but did not see this practice as "unreasonably" prejudicial because it was based on safety concerns.

3) On March 28, 1991, Randald Perry replied to the motion to dismiss by stating that he felt Miller Boat Line had assumed legislative authority by implementing their policy. He further stated that he did not see how the policy would improve traffic congestion since the major source of the congestion was people, bicycles, and golf carts not automobiles. He reiterated that he still felt that Miller Boat Line had given undue and unreasonable preference to certain classes of traffic.

4) On May 31, 1991, Peter J. Polumbo filed a complaint regarding Miller Boat Line's practice similar to that of Mr. Perry and objecting to the manner in which he was addressed by MBL staff.

5) On June 24, 1991, a Commission entry was issued to: make Mr. Polumbo a party to the existing case, stating that reasonable grounds for the complaint exist and therefore denying the motion to dismiss the complaint, ordering staff to investigate the complaints, and set a public hearing for July 19, 1991.

6) On July 16, 1991, Charles Wenger filed a complaint against Miller Boat Line for charging varying fees to transport his motorcycle to S. Bass Island and eventually denying transportation for his motorcycle entirely.

7) On August 13, 1991, Daniel M. Kover filed a complaint against Miller Boat Line what he felt was unnecessary delay and confrontation when he attempted to take his car to Put-in-Bay. Mr. Kover had reservations at a local motel.

STANDARD OF REVIEW:

Section 4907.02 of the Ohio Revised Code provides the Commission jurisdiction of water transportation companies. It states:

"All duties required of, and penalties imposed upon, a railroad or an officer or agent thereof insofar as they are applicable, are required of and imposed upon express companies, water transportation companies, and interurban railroad companies, and upon their officers and agents.

The public utilities commission has the power of supervision and control of express companies, water transportation companies, and interurban railroad companies to the same extent as railroads."

The standard for service is established in Ohio Revised Code section 4907.24:

"Each railroad shall furnish reasonably adequate service and facilities. The charges made for any service rendered or to be rendered in the transportation of passengers or property, for any service in connection therewith, or for the receiving, switching, delivering, storing, or handling of such property, shall be reasonable and just. Every unjust and unreasonable charge for such service is prohibited."

The Ohio Revised Code, in section 4907.37, provides that:

"No common carrier subject to Chapters to ... 4907 ... of the Revised Code shall make or give undue or unreasonable preference or advantage to a particular person, company, firm, corporation, or locality, or to any particular description of traffic, or subject any particular person, company, firm, corporation, or locality, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect."

STAFF FINDINGS:

Background

Miller Boat Line:

Miller Boat Line has been in existence since 1905 operating a ferry service from Catawba Point in Ottawa County to South Bass and Middle Bass Islands. MBL has four boats which travel daily from approximately April 1 to November 15 of each year, depending on the weather. A smaller, fifth boat is used for special shipping and to supplement the other four during very busy times. MBL owns the docks it uses on Catawba Point and South Bass Island; it leases public dock space on Middle Bass Island.

Miller Boat Line is currently owned and managed by Bill Market, Jr. and Bill Market III. Both owners live on South Bass Island and have for several years. Mr. Market, Jr. purchased Miller Boat Line in 1974. Prior to purchasing MBL, Mr. Market, Jr. was employed by Miller Boat Line, Inc. for 22 years. Beginning with the season of 1984, Bill Market III (Billy Market) took over much of the day to day management of the business.

Miller Boat Line, Inc. provides passage for passengers, cars, recreational vehicles, and through Miller Freight, virtually all the freight transported to South Bass and Middle Bass Islands during the warm weather months. These transported items include food items, construction materials, caskets, supplies for the stores, fireworks, refuse, etc. Miller Boat Line is the only ferry service to S. Bass and Middle Bass Islands which transports bulk freight and vehicles. Exhibit A summarizes the vehicles and passengers transported by MBL during 1990 and 1991 through July 9.

South Bass Island:

South Bass Island, which lies 3 miles north of Catawba Point, is 1 1/2 miles wide and 3 miles long. There is a total of 11.92 miles of roadway on the entire island. South Bass Island has approximately 450 year round residents with up to 7,000 summer residents. There are several resorts on the island which are reserved by tourists as much as two years in advance for summer vacations. There is a small marina for docking boats and a public dock available for daytime boat docking only. The island has a state park with 4 cabins available through reservation and 135 campsites available on a first-come first-serve basis. The U. S. Corps of Engineers leases rights to mooring buoys (permanent boat anchors) in Put-in-Bay channel north of the island.

Transportation on the island includes private cars, bicycles, golf carts, taxis, mopeds, and common carrier bus. Some individuals do bring recreational vehicles to the island for use in the state park or on private property. Tours of the island are offered on open trams.

The island government is a potpourri of every government entity. A segment of the island surrounding the bay is Put-in-Bay Village run by a mayor and town council. One inlet of the island is occupied by Perry's Victory and International Peace Memorial owned and operated by the U.S. Government. The South Bass Island State Park is owned by the state of Ohio and operated by the Ohio Department of Natural Resources. A small park near the bay is actually private property run for the public benefit by its own board of trustees. The remainder of the island (the majority of it) and the 7 other islands in Ottawa County comprise Put-in-Bay Township run by 3 elected township trustees. The township has not yet exercised home rule so the administrative responsibilities for the township are shared between the trustees and the Ottawa County Commissioners.

Nature of Complaints

The following summaries of the complaints are drawn from the original notices of complaints, subsequent filings, and staff communication with the complainants.

Randald N. Perry

Mr. Perry was denied the right to take his vehicle and a carload of provisions to S. Bass Island on Friday, August 31, 1990, Labor Day Weekend. The provisions were for his boat moored in Put-in-Bay. The explanation of the denial was that Mr. Perry did not have proof of accommodations on the island and that there were not enough parking spaces on the island for all the vehicles which visitors wanted to take to the island. The representative of MBL even stated that the PUCO was aware of this policy and approved it. MBL's representative at the dock seemed to be unnecessarily abrasive. Mr. Perry felt that it is inappropriate for the boat company to restrict the public right of way to state routes and public facilities. He stated that if such a policy is needed it is the responsibility of a government unit to address the issue. He also pointed out that MBL's policy is not part of its tariff. Mr. Perry asked the PUCO to require passage be provided on a first-come first-serve basis.

Peter J. Polumbo

Mr. Polumbo has been a frequent visitor to S. Bass Island since 1955. He felt that he has been unnecessarily interrogated and berated when he presented himself and his vehicle for passage.

Charles Wenger

Although Mr. Wenger's complaint has not been officially made apart of this case as of the writing of this report, it has been treated as though it were during the investigation and negotiations in order to resolve all known issues as quickly as possible. Mr. Wenger is employed as a carpenter on the island. In May, Mr. Wenger attempted to take a motorcycle across to S. Bass when he was made aware that MBL would not permit motorcycles to be wheeled onto the ferry. Two hours later someone did suggest that he check with Miller Freight about taking the motorcycle across as freight. Over the course of three weeks, Mr. Wenger was charged at least two different rates for transporting his motorcycle on the back of MBL's pickup truck. He was ultimately told that MBL would no longer transport his motorcycle anymore because it was too much hassle. Mr. Wenger also reported very abusive treatment by MBL employees on the dock and in the freight office.

Daniel Kover

Mr. Kover's complaint has also not been officially made part of this case at the writing of this report, but is being addressed for expediency. Mr. Kover presented himself and his vehicle to Miller Boat Lines on Friday, August 2, 1991. He explained to the dock staff that he had a reservation at the Park Hotel. Miller's staff was unnecessarily abrasive and insisted that Mr. Kover should have a written confirmation of the reservation. Mr. Kover explained that he had left it at home. Mr. Kover was denied use of a telephone at the dock even though he offered to put the call on his credit card. Mr. Kover asked to speak to the manager of the boat lines and was told, "I'm as good as you are going to get." Eventually another staff member interceded for Mr. Kover and arranged for the Park Hotel to call the dock.

Miller Boat Line

Miller Boat Line, in their motion to dismiss the original complaint, admitted that they have implemented a policy of limiting the transportation of vehicles to S. Bass on the weekends

and holidays. On the weekends, passage is limited to those 1) who own real property, 2) who are guests of those with real property, 3) who are employed by a business on the island, and 4) who have written proof of accommodation on the island. MBL's motion states that the policy was adopted because of overcrowded conditions on the island which contribute to congestion and public safety concerns. The policy is communicated to the public through a large painted sign at the dock and MBL's printed literature.

Supporting statements filed with the motion also point out that there is limited parking on the island and that without restricted passage vehicles park on side streets and resident's lawns. The statements also insist that there is adequate transportation on the island making additional automobiles unnecessary. MBL's motion state that MBL determined that the overnight accommodation requirement was a rational basis of distinguishing which cars needed to be transported because those with overnight accommodations would have a place to park their vehicles. MBL argues that since their basis of preference is tied to public safety that the preference is not unreasonable.

On July 9, 1991, Transportation staff made a site visit to Catawba Point and South Bass Island to view Miller Boat Line facilities and practices. Questions were directed to Billy Market. Mr. Market emphasized that MBL's primary consideration for making any policy was not island safety but rather the limited capacity of the boats to transport vehicles back from the island when people wanted to leave.

Mr. Market explained that while people take vehicles over to S. Bass every day and in large numbers on Friday and Saturday, the most desired return time is Sunday afternoon or Monday afternoon of a holiday weekend. MBL uses its two largest boats for passage to and from S. Bass Island. These boats can take an average of 17 cars maximum per trip. The vehicle capacity is established by the U.S. Coast Guard and diminishes with the increased number of passengers on the boats.

On a Friday or a pre-holiday morning, MBL begins to ask those taking their vehicles to S. Bass Island when they expect to return. The company keeps a count of the number of vehicles which expect to return on Sunday (or a holiday Monday). Once the S. Bass Island State Park has reached its capacity, MBL limits vehicle transportation to those classes specified in its motion to dismiss until a count of 325 vehicles expected to return on Sunday is reached. MBL does not feel it is discriminating against the

public because the capacity limitation is applied to all vehicles once the 325 count is reached. Even if an island resident wants passage on Friday or Saturday with a return on Sunday, the vehicle is refused. A resident or a member of the public who wants passage on Saturday but who expects to return on Monday or Wednesday or some other day except Sunday will be transported.

Through discussion with Billy Market, staff explained that any concerns the Markets have about the traffic problems and congestion on the island need to be dealt with separately from their function as the ferry owner and manager.

PUCO staff also questioned the courtesy of the MBL staff in its public relations effort with passengers. MBL admitted that at least one staff member had developed a serious problem in relating to passengers, and that a substantial portion of complaints could be about the manner in which the passengers were treated by this individual. MBL stated that this individual has been reassigned to work not involving the public and will not be assigned to work the dock again.

With regard to the motorcycle complaint, MBL explained that it has not permitted motorcycles to be wheeled on to the ferries for several years. The company had an incident some years ago in which a child was injured because of a falling motorcycle. Since that time, the company has required motorcycles to be on the back of a truck or in a trailer. Transporting a motorcycle is troublesome for the company because a motorcycle must be manually loaded on the back of the pickup truck and this process takes 3 to 4 people. After discussion, MBL did understand that they could set a reasonable charge for loading freight, including the extra effort to manually load a 500 pound motorcycle, but MBL could not refuse to take the freight because that freight took more work.

Discussions with MBL were followed by a meeting with many of the Put-in-Bay officials. Present at this meeting were the Put-in-Bay township trustees, Ottawa County Commissioners, the Put-in-Bay village mayor, the Ottawa County Engineer, and representatives of the local police and fire departments. The local representatives expressed their support for the policies of Miller Boat Line and shared with staff the plethora of health and safety problems that the island had as a result of the visitors and congestion on the island. They encouraged the PUCO to allow Miller to limit vehicle traffic to assist with limiting the island problems. Staff expressed appreciation for what must be continual headaches for the island officials, but explained to the all of the officials that the solutions to problems on the island needed

to be addressed by them. Staff explained that a common carrier can certainly cooperate with local government, but that it cannot be a substitute for local government action.

Resolution Attempt

Discussions with complainants and MBL after the site investigation suggested that all issues had or could be resolved except that of the criteria by which MBL would decide which vehicles would be permitted to be transported to the island on the weekends and holidays. MBL's counsel requested a pre-hearing conference for the morning of July 19, 1991.

MBL and its counsel, Mr. Perry, staff and its counsel and hearing officer Dick Bulgrin attended the pre-hearing conference. At this conference, MBL again acknowledged that it is giving preference to certain classes of vehicles which it is transporting to the island. MBL reiterated that the need to limit the number of vehicles transported to the island was based on the limitation of the boats to bring the vehicles back to Catawba Point on Sundays or holiday Mondays. The classes of vehicles the company specified in its policy were picked because it was felt that these vehicles were needed on the island for reasons other than sightseeing. That is, the vehicles were on the island to transport luggage, recreational gear, groceries, etc. Because the criteria mirrored Mr. Perry's circumstances, MBL admitted that Mr. Perry was treated unfairly in his situation.

All parties to the conference raised several questions and alternative means by which passage would be offered to vehicles on some basis closer to first-come first-served. Each solution, however, raised other issues of technical feasibility, extreme cost, or undue hardship on residents for whom the ferry is a lifeline. It was suggested that perhaps the most practicable solution was for MBL to include vehicles of those who owned mooring buoys as an additional class of permitted vehicles in their stated policy and just being more sensitive to the need for individual consideration in other circumstances, for example, for the handicapped. Counsel for all parties agreed to prepare a stipulation to this effect and present it to the hearing officer.

On July 31, 1991, staff and its counsel met with Mr. Wenger to address the specific issues of his complaint. The explanations and solutions offered to Mr. Wenger did not seem to satisfy him. It was suggested that Mr. Wenger talk to Billy Market directly when he went to Put-in-Bay the next day. Mr. Wenger arrived the next day when Mr. Market was on a boat. When Mr. Market called back to the dock, Mr. Wenger had departed. Mr. Wenger has not communicated with Mr. Market or the Transportation staff since.

RECOMMENDATION

While on the surface Miller Boat Line policies have the appearance of discriminating against the general public, in practice MBL seems to be doing an adequate job of balancing the needs of a very complex clientele. After considerable discussion with Billy Market during the site visit and the pre-hearing conference, staff feels that practices have been established primarily to resolve the transportation problems of moving a variety of vehicles and thousands of people to and from South Bass Island. The company has added boats to its fleet, extended travel hours, etc., to accommodate an ever growing demand for ferry service. As issues relating to specific traffic were raised, Mr. Market was reasonably willing to explore changes in the company's practices.

Staff continues to have only one concern. These complaints have been resolved or negotiated because Billy Market was willing to discuss the problems. The passengers, or potential passengers, must always have the right to ask for Mr. Market if they feel there is a problem. They should never be told that they do not have the option of asking for the manager and settling what would otherwise be small problems in an expedient fashion.

Staff, therefore, recommends accepting the stipulation as signed by the parties to this case.

ADDITIONAL COMMENTS

1) Throughout this investigation a great deal of the discussion centered on island congestion: problems making emergency runs, parking limitations, rowdiness of visitors, highway safety concerns for some vehicles used on the island, and the like. Staff is not unsympathetic to the issues discussed with officials, residents, and frequent visitors to the island. South Bass Island is feeling the growing pains of its own success. However, staff continues to take the position that such issues are more properly the jurisdiction of the island government structure. Given the complex nature of the government on this small island, resolving these issues is not going to be an easy one.

There do appear to be some alternatives for Put-in-Bay, however. Home rule is available for the township portion of the island if it incorporates. Other possibilities include setting up a Regional Council of Government or a Port Authority. The provisions and limitations of each are spelled out in the Ohio Revised Code. Staff encourages island residents to pursue their concerns about island safety and congestion with their local officials through these legal means.

2) As this investigation continued more individuals came forward with their own version of problems similar to those filed in this case. Staff is concerned that normal Commission procedure for advertising legal hearings may be inadequate in this circumstance. Notices of hearings are published in local papers or in the papers of the nearest larger community of the county. As was clear throughout this investigation, the local residents of S. Bass Island are very happy with the service from Miller Boat Lines. In each instance where complaints were filed with this Commission, the complainant lived elsewhere in the state and was visiting S. Bass Island casually. There is, therefore, concern that other complainants existed and were not as aware of the correct process for addressing their questions. Staff suggests the need for broader communication when cases of this nature are being reviewed.

report prepared by Fran Netting, Chief, Economic Analysis
Transportation Department October 17, 1991

Exhibit A

Miller Boat Line, Inc.
Schedule of Sales
June 1 - Labor Day, 1990
June 1 - July 9, 1991

	Adult 1990	Adult 1991	Children 1990	Children 1991	Cars 1990	Cars 1991	Oth.Veh. 1990	Oth.Veh. 1991
Monday-Thursday To S. Bass	534 3798 1518	611 2667 592	27 398 199	24 230 82	112 247 182	138 297 96	1 25 11	5 25 9
Monday-Thursday From S. Bass	319 2307 1066	596 2010 561	9 333 136	15 219 97	82 516 187	133 253 89	2 24 8	3 25 7
Friday-Sunday To S. Bass	896 4497 2706	671 3628 1070	50 559 248	50 340 96	26 405 197	91 355 91	1 62 16	4 42 11
Friday-Sunday From S. Bass	367 4747 1994	939 3792 1062	15 357 172	56 338 94	52 342 194	101 292 95	4 49 19	8 56 13