

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the proposed increase in rates,)	
fares, and charges filed by CHAMPION'S AUTO)	Case No. T-1294
FERRY, INC.)	
_____)	

At the March 10, 1997 meeting of the Michigan Public Service Commission in Lansing, Michigan.

PRESENT: Hon. John G. Strand, Chairman
Hon. John C. Shea, Commissioner
Hon. David A. Svanda, Commissioner

OPINION AND ORDER

I.

HISTORY OF PROCEEDINGS

On January 17, 1997, Champion's Auto Ferry, Inc., (Champion) filed a proposed tariff that would increase rates for service between Harsens Island and Algonac, Michigan. On February 11, 1997, pursuant to MCL 460.201; MSA 22.91, the Commission issued an order suspending the effective date of the rate increase until March 13, 1997. The Commission also directed that an evidentiary hearing be conducted on February 24, 1997.

Pursuant to due notice, an evidentiary hearing was conducted on February 24, 1997 by Administrative Law Judge Daniel E. Nickerson, Jr. (ALJ). Champion, the Commission Staff (Staff), and the Harsens Island St. Clair Flats Association (Association) participated in the

proceedings. During the course of the hearing, the parties collectively presented 3 witnesses and 12 exhibits, 10 of which were received into evidence. At the conclusion of the hearing, the ALJ issued an oral Proposal for Decision (PFD), which recommended that the rate increase be granted subject to certain conditions.

On March 3, 1997, exceptions to the PFD were filed by the Association. On March 6, 1997, replies to exceptions were filed by Champion and the Staff.

II.

BACKGROUND INFORMATION

Champion provides ferry service between Harsens Island and Algonac, Michigan. Since it was founded in 1937 by Arthur Champion, the grandfather of the present owner, Champion has been an institution for residents and others frequenting Harsens Island. Champion provides service 24 hours per day on a year-round basis for the more than 1,000 permanent residents. However, it experiences its peak usage during the summer when the island's population swells due to the influx of numerous cottage owners and other visitors.

In recent years, Champion has provided ferry service through the use of four vessels. In 1996, Champion transferred the oldest of the vessels, which had been placed in service in 1941, to David Bryson, President and sole owner of Champion, for \$10. Mr. Bryson subsequently sold this vessel to a Canadian company for \$10,000 in Canadian funds. Champion's other three vessels, which were placed in service in 1946, 1967, and 1973, respectively, remain available to transport vessels between Algonac and Harsens Island. In addition, Champion intends to place into service a new vessel that is being acquired to replace the vessel disposed of during 1996.

Champion's current rates are those contained in Tariff M.P.S.C. No. 22, which was approved by the Commission's January 7, 1994 order in Case No. T-1243. In November 1995, Champion began charging rates in excess of those provided for in Tariff M.P.S.C. No. 22. In doing so, Champion argued that it was no longer subject to the Commission's jurisdiction due to its receipt of authority to operate in interstate commerce as a water common carrier that was issued by the now defunct Interstate Commerce Commission. However, in a order dated January 15, 1997 in Cases Nos. T-1288 and T-1289, the Commission determined that Champion was subject to its jurisdiction and that the company had improperly collected excess revenues through the imposition of rates that exceeded those authorized by the Commission. Accordingly, the Commission ordered Champion to refund the excess revenues and further ordered Champion to maintain its existing schedule and to provide the Commission with at least 12 months' advance notice in writing of any proposed termination of service to Harsens Island.

III.

POSITIONS OF THE PARTIES

Champion

Mr. Bryson testified that his company's 1996 preliminary income statement, admitted as Exhibit A-8, revealed that Champion's expenses exceeded its revenues by \$84,000, which severely jeopardizes Champion's ability to remain in business.

Exhibit A-3, which was prepared by Mr. Bryson, is the proposed tariff filed in this matter.

The following chart indicates the extent of the proposed increase in rates¹:

Description of Vehicle	Tariff M.P.S.C. No. 22	Proposed Tariff
Automobiles	\$ 4.75	\$ 5.00
One Axle Trailers	3.50	4.00
Extra Trailer Axles/Per Axle	3.50	4.00
Gasoline Trucks, etc.	20.00	22.00
One Rear Axle Truck.	8.00	10.00
Extra Truck Axles/Per Axle	8.00	10.00
School Bus	2.50	1 commuter ticket (\$4.00)
Book of 20 Commuter Tickets	\$67.50	\$80.00

Mr. Bryson calculated that the proposed rates would result in a revenue increase of \$170,271.25 on an annual basis, as shown in Exhibit A-4. He indicated that a revenue increase of this magnitude is required to offset increased expenses. For example, Mr. Bryson indicated that Champion's general insurance expense increased by \$27,000 during 1996. Additionally, he indicated that Champion was in the process of acquiring a new vessel that will be put into service during the spring of this year. Due to the increases in expenses expected during 1997,

¹Champion did not propose to increase the \$2.00 per round trip fare for motorcycles, motorbikes, and three-wheeled vehicles. Likewise, it did not propose any changes to its \$5.00 rate for dual-wheeled pick up trucks or to its existing policy of providing free transportation to employees and their immediate families, police officers, and all vehicles transported between 6:00 a.m. and 10:00 p.m. on Christmas Day.

Mr. Bryson testified that if the rate increase is not approved, Champion's expenses will likely exceed revenues by at least \$153,000 during 1997.²

Mr. Bryson testified that his concerns about Champion's financial situation led to negotiations with the Staff. The negotiations resulted in a written stipulation that was introduced as Exhibit AS-9. According to Mr. Bryson, the stipulation with the Staff would allow Champion to implement the new rates effective April 1, 1997. However, to obtain the Staff's support for the rate increase, Champion had to agree that it would not increase rates for commuter discount tickets for two years. Additionally, Champion agreed that it would not seek a rate increase for any other rates for one year. The parties further agreed that the rate increases should be predicated upon delivery of Champion's new boat in the spring of 1997 and a pledge by Champion that it will restore the operating assets and service to previous levels, including the use of all four of its boats as required. Champion also agreed that it would withdraw all previous notices of intent to terminate service and that it would abide by the new notice requirements set forth in the Commission's January 15, 1997 order in Cases Nos. T-1288 and T-1289. In addition, Champion and the Staff agreed that the Commission order approving the April 1, 1997 rate increase should provide that the January 15, 1997 order in Cases Nos. T-1288 and T-1289 should be superseded in so far as it relates to the remaining free transportation days that Champion was ordered to provide to repay previous overcharges. Champion and the Staff also agreed that Champion would withdraw the claim of appeal filed with the Michigan Court of Appeals regarding the January 15, 1997 order in Cases Nos. T-1288 and T-1289 within 30 days of the effective date of the rate increase. Moreover, Champion also agreed to withdraw its motion for

²Mr. Bryson's calculation assumed that the rate increase would be in effect for the entire 1997 calendar year.

rehearing in Case No. T-1292 and not to appeal that order to the Court of Appeals. Finally, Champion agreed not to appeal the Commission's order in this proceeding.

The Staff

Thomas R. Lonergan, Director of the Commission's Motor Carrier Division, testified in support of the stipulation between Champion and the Staff. He described his efforts to negotiate a settlement with all parties to this proceeding and he explained the process followed by the Staff to review the accuracy of Champion's representations of its financial condition.

According to Mr. Lonergan, the Staff's review of Champion's 1996 financial data identified certain expenses related to the operation of a ferry at Boblo Island and the payment of certain professional fees that were inappropriate. Mr. Lonergan also testified that the Staff found a depreciation expense that had not been shown on Exhibit A-8. Finally, Mr. Lonergan stated that the Staff also made allowance for inflation adjustments for 1997 and 1998 of 2.6% and 2.8%, respectively, that were based upon predictions regarding the Consumer Price Index for the next two years.

In addition to the Staff's analysis of Champion's financial data, Mr. Lonergan noted that a number of other factors justified the Staff's support of Champion's proposed rate increase. Specifically, Mr. Lonergan stressed that the two-year prohibition on increases in commuter ticket prices could not be accomplished through the contested case process. In addition, he noted that the stipulation calls for Champion to place a new vessel into service during the spring of 1997 and to provide full service through use of four vessels when necessary. He also observed that Champion's agreement to abide by the 12-month notice requirement established by the Commission's January 15, 1997 order in Cases Nos. T-1288 and T-1289 provides protection

against future threats by Champion to terminate or reduce service. Finally, Mr. Lonergan was persuaded that Champion's agreement not to pursue appeals in three separate legal proceedings would be in the best interests of all concerned.

The Association

Fred T. Drob, Treasurer of the Association and a long-term resident of Harsens Island, testified regarding recent changes he perceived in the level of service offered by Champion. According to Mr. Drob, in past years it was normal for Champion's maintenance and mechanical personnel to interrupt their activities to pitch in with the operation of an additional ferry in the event that the arrival of a fuel truck or a tractor-trailer caused a delay. However, Mr. Drob testified that on two occasions in the weeks before the hearing, he observed that Champion's maintenance and mechanical personnel were no longer responding to the arrival of large trucks, which caused those awaiting for the ferry to experience additional delays.

IV.

PROPOSAL FOR DECISION

Noting that MCL 460.201; MSA 22.91 places the burden of proof on Champion to establish that a rate increase is justified, the ALJ found that the evidence offered by Champion and the Staff satisfied that evidentiary requirement. In so doing, he indicated that the Staff's review of Champion's 1996 financial data showed that Champion needs the revenue increase that will result from the approval and implementation of the proposed tariff. Moreover, the ALJ stated that the tariff increase was necessary, reasonable, and in the public interest in light of the conditions contained in the agreement between Champion and the Staff.

V.

EXCEPTIONS

In its exceptions, the Association argues that the rationale underlying the stipulation between Champion and the Staff is flawed. According to the Association, the Staff should not have relied upon Champion's unaudited financial data to determine whether the company is entitled to raise its rates. The Association insists that the Staff has ignored the clear admonitions of the Commission in recent orders regarding Champion's failure to fully disclose its financial circumstances. Arguing that the Commission has indicated that the required adequate disclosure of financial data is a prerequisite for rate relief, the Association maintains that the Staff's reliance upon Champion's unaudited financial information cannot be justified.

The Association next contends that the public will not benefit from the two-year rate freeze on commuter discount tickets. According to the Association, the assurance of two years of guaranteed overcharges attributable to the Staff's acquiescence in Champion's unaudited financial statements is hardly beneficial and extremely questionable. The Association insists that the public should not be required to support the transfer of Champion's assets to Mr. Bryson or to repair the damage done to Champion's balance sheet by the buyout arrangement whereby Mr. Bryson gained sole control over Champion.

The Association also asserts that the mere passage of time, without more, is an insufficient basis for rate relief. Arguing that Champion's costs should have increased at the inflationary rate of 3% per year, the Association maintains that an 18.5% increase in commuter discount tickets significantly outpaces the rate of inflation. The Association maintains that without adequate justification, such a large increase in rates is not in the public interest.

The Association also complains that the stipulation between Champion and the Staff does not protect against costs related to frivolous litigation. Although recognizing that the stipulation obligates Champion not to pursue appeals of recent Commission orders, the Association is concerned that Exhibit AS-9 does not address other actions that are pending in state and federal courts.

Next, the Association maintains that Champion's withdrawal of statements that it intends to discontinue service has little, if any, value. Citing Mr. Bryson's past propensity for issuing threats to discontinue service, the Association maintains that Champion's agreement to withdraw those threats in return for a huge rate increase is entirely inappropriate.

Additionally, the Association is bewildered by the provision in the stipulation that permits Champion to reap the benefit of its prior unlawful overcharges. According to the Association, the Commission's January 15, 1997 order in Cases Nos. T-1288 and T-1289 established that Champion overcharged its customers from November 1995 through April 1996 through the unauthorized imposition of higher fares. The Association stresses that the Commission found that Champion was obligated to refund the overcollections by providing free transportation days during the course of 1997. Because the stipulation between Champion and the Staff relieves Champion of all such future refund obligations, the Association maintains that Champion will be rewarded for its unlawful collection of excess rates. The Association finds this provision to be particularly egregious due to the time, effort, and costs borne by the Association to bring an end to Champion's unauthorized rate increase.

Finally, the Association maintains that Champion profited during 1996 by reducing the level of service without a corresponding reduction in rates. Arguing that the Commission has re-

peatedly noted that a service reduction by Champion would lead to a rate reduction, the Association insists that the Commission should not reward Champion with an unjustified rate increase.

VI.

REPLIES TO EXCEPTIONS

In reply, Champion argues that the Association's exceptions are devoted to complaints about the positions taken by the Staff and do not address any claims of error on the part of the ALJ. Champion submits that the focus of this proceeding should be upon whether the proposed rate increase should be approved. According to Champion, the Association's analysis completely ignores this issue and the uncontroverted evidence presented by Champion and the Staff in support of the rate increase. With regard to this issue, Champion stresses that Exhibit A-8 reveals that Champion experienced a loss of \$83,988 before taxes in 1996 as opposed to having a small profit of \$9,871 in 1995. According to Champion, without a rate increase, it will soon run out of cash reserves and it will eventually be forced out of business. Indeed, Champion stresses that during the course of 1996, Mr. Bryson was required to contribute personally approximately \$53,000 to keep Champion solvent.

Champion maintains that after reviewing its financial records, the Staff became convinced that the proposed increase is necessary and in the public interest. Further, citing Exhibit S-12, Champion insists that the Staff's calculations of its financial situation, which provides only a 5% profit allowance, nevertheless projects revenue shortfalls of \$185,600 and \$201,000 in 1997 and 1998, respectively.

Next, Champion argues that the only evidence presented by the Association, Mr. Drob's personal observations about Champion's service, have no relevance to the proposed rate increase

and should be entirely discounted. Moreover, Champion points out that the Association's failure to present any evidence in opposition to the tariff, when combined with its reliance upon statements and transcript references from prior proceedings, demonstrate that the Association's evidentiary presentation in this proceeding is wholly insufficient to support rejection of the proposed tariff.

Finally, in their separate replies to exceptions, Champion and the Staff both maintain that none of the specific arguments raised in the Association's exceptions have any merit. According to them, the Association's argument that Exhibit A-8 was unreliable because it was unaudited overlooks the representations made by Champion's accountants and ignores the fact that the Staff reviewed the financial documents prior to the hearing. Champion and the Staff also maintain that the Association's argument that the two-year rate freeze on commuter discount ticket prices is baseless because it ignores the obvious public benefit that flows from Champion's inability to increase commuter discount tickets before 1999. Next, Champion and the Staff stress that, despite Champion's efforts to operate efficiently, the fact that the last rate increase occurred more than three years ago constitutes a sufficient basis for the Commission to grant a rate increase that is required for the company to remain solvent. Champion and the Staff also argue that, contrary to the Association's contentions, the rate increase called for in Exhibit AS-9 is necessary to overcome the effects of inflation. Further, they point out that the Association is well aware that the agreement to forego appeals had to be limited to the three matters specifically referenced in paragraph 7 of Exhibit AS-9 because the other matters alluded to by the Association involve entities that are not parties to this proceeding. They also maintain that paragraph 4 of Exhibit AS-9, which concerns withdrawal of previous notices of intent to terminate

service by Champion, has a benefit to the public because it eliminates any contention that Champion may have already provided such notice. With regard to paragraph 6 of Exhibit AS-9, which concerns abolition of the remaining free transportation days established by the Commission's January 15, 1997 order in Cases Nos. T-1288 and T-1289, Champion and the Staff contend that their agreement to postpone the effective date of the rate increase until April 1, 1997 constitutes a fair trade-off for elimination of the remaining free transportation days. Additionally, Champion and the Staff insist that the Association's dissatisfaction with the one-year moratorium on all other rate increases is not well taken. According to them, the one-year moratorium is a benefit to the public because, absent that provision, Champion would not be prohibited from seeking earlier rate increases. Lastly, Champion and the Staff argue it would not be appropriate for the Commission to reduce rates due to the alleged service reduction claimed by the Association. According to them, although Champion eliminated a vessel from its fleet, it has plans to replace that vessel with a new one in the spring of 1997, which will restore the operating assets and service to previous levels. Accordingly, they request that the Association's exceptions to the PFD be rejected and that the ALJ's recommended rate increase be approved.

VII.

DISCUSSION

After considering the arguments raised by the parties, the Commission finds that the stipulation between Champion and the Staff should not be approved. There are too many unresolved questions about Champion's financial situation to approve a rate increase of the magnitude proposed by Champion on this record, which again does not address several key issues. Nevertheless, the Commission is persuaded that Champion has established a need for additional revenues

to offset the effects of inflation and the purchase of a new vessel. However, due to Champion's failure to address fully important issues concerning its financial situation, as required by previous Commission orders, the Commission finds that the relief should be subject to several conditions.

Over the course of the past four years, Champion has repeatedly attempted to increase its rates. A common thread in each of the Commission orders dealing with Champion's rate requests is the finding that the Commission's evaluation of Champion's financial situation has been "hindered by the unreliability of Champion's financial statements." August 2, 1993 order, Cases Nos. T-1226 and T-1234, p. 16. Indeed, in its December 20, 1996 order in Case No. T-1292, the Commission summarized its concern regarding Champion's refusal to provide detailed information about its financial situation as follows:

For example, in its January 7, 1994 order in Case No. T-1243, the Commission stated that the company's failure to adequately disclose its financial circumstances made it impossible to determine whether the proposed rates were "fully justified by Champion's legitimate cost of providing ferry service." January 7, 1994 order, p. 2. The Commission's position on this issue was reasserted in its March 23, 1995 order in Case No. T-1282, in which the Commission explained how it would perform a cost-of-service analysis for Champion. Most recently, in the Commission's June 5, 1995 order in Case No. T-1283, the Commission reiterated Champion's obligation to provide sufficient documentation in support of its proposed rate increases.

December 20, 1996 order, Case No. T-1292, p. 10.

This case represents a continuation of the troublesome trend recognized in previous cases. In this proceeding, Champion bases its request for rate relief on projections for 1997 that were drawn from actual 1996 data. However, a careful examination of the underlying data evidences several significant flaws and shortcomings in Champion's analysis. First, Champion's 1996 data fail to recognize that the data are based on abnormal weather conditions. Specifically,

during the spring of 1996, Champion was shut down for three weeks due to severe ice flow problems on the north channel of the St. Clair River. There is nothing in the record to suggest that the severe ice flow problems experienced during 1996 occur every year. Rather, the record suggests otherwise.

Exhibit S-12, the Staff's analysis of Champion's revenue and expenses, indicates that the Staff attempted to "normalize" the loss of revenue caused by the 1996 ice flow problems by averaging Champion's 1995 and 1996 revenues. For the reasons discussed below, the Commission finds that Champion's use of nonnormalized data for 1996 and the Staff's attempts to normalize the data are both flawed.

An examination of the record also discloses that Champion and the Staff shared a mistaken conclusion on a crucial issue. Mr. Bryson testified that the Commission ordered Champion to refund \$27,000 during 1997 as a result of the improper increase in rates that was in effect from November 1995 to April 1996.³ The Staff used the same figure in its calculations. Both parties are wrong. The January 15, 1997 order in Cases Nos. T-1288 and T-1289 determined that Champion collected \$45,000 in excess of the revenues authorized by Tariff M.P.S.C. No. 22 from November 1995 to April 1996. That order also established that \$10,000 of the overcollection occurred during 1995 and that the remaining \$35,000 were improperly collected by Champion during 1996. In Cases Nos. T-1288 and T-1289, it was also established that Champion had refunded \$7,080 during 1996, which left \$37,906 to be refunded during 1997 through the provision of free transportation days in accordance with the provisions of that order. Accordingly, it is readily apparent that the parties did not have an accurate understanding of Cham-

³A complete discussion of this issue is contained in the Commission's January 15, 1997 order in Cases Nos. T-1288 and T-1289.

pion's refund obligation and that their error was carried forward in the negotiations that led to the execution of Exhibit AS-9.

The Commission is persuaded, for the purpose of accurately projecting Champion's revenues for 1997, the most appropriate treatment of the 1995-1996 overcollections and the associated refund obligations is to use Champion's actual 1995 and 1996 revenues adjusted for the effects of weather and the improper overcollections.

Beginning with 1995, the Commission finds no evidence to suggest that the revenues collected by Champion during that year were unusually affected by severe ice conditions. Accordingly, a weather adjustment is not appropriate. However, the Commission finds that Champion's actual 1995 revenues of \$1,384,000 should be reduced to \$1,374,000, which reflects the reduction associated with the improper overcollection of revenues from Cases Nos. T-1288 and T-1289.

Turning to 1996, the Commission finds that there is abundant evidence in the record to support a determination of the effects of both the overcollection of revenues and the abnormal three-week shut down of service due to ice conditions. The Commission is persuaded that both of the anomalies should be eliminated in order to provide a sound basis for projection of revenues for 1997. To do so, the Commission finds it appropriate to rely on data contained in Exhibits A-4 and A-8.

Exhibit A-8 indicates that Champion's actual revenues for 1996 were \$1,333,000.⁴ However, \$35,000 of that revenue is attributable to the improper overcollections that occurred during 1996. Therefore, the Commission finds that \$35,000 should be backed out of the revenues recorded by Champion during 1996 before normalizing its 1996 revenues for abnormal weather conditions, which results in an overcollection-adjusted revenue for Champion for 1996 of \$1,298,000.⁵

The weather adjustment to Champion's 1996 revenues is based on the fact that Champion's 1996 adjusted revenue of \$1,298,000 was collected over only 344 revenue producing days. Therefore, the mathematical daily average revenue for Champion was \$3,773 during 1996, which comports with the 1995 revenue of \$3,775 calculated on page 24 of the Commission's January 15, 1997 order in Cases Nos. T-1288 and T-1289.

In a normal year, Champion may lose 4 days of revenue due to ice flows rather than 21. Adding back \$64,000 for the 17 days of revenue at \$3,773 per day, reveals that Champion's weather normalized and overcollection-adjusted 1996 annual revenues are \$1,362,000.

Having corrected Champion's 1995 and 1996 revenues for the effects of weather and its illegal overcollections, the Commission is persuaded that it should follow the methodology proposed by the Staff in Exhibit S-12 for determining whether a rate increase of the magnitude proposed in Exhibit AS-9 is appropriate. Averaging Champion's 1995 and 1996 adjusted

⁴In Cases Nos. T-1288 and T-1289, it was established that Champion refunded \$7,000 of its overcollection during 1996. However, because the record is not clear whether Champion's 1996 revenues reflect that refund, the Commission believes an adjustment for that refund should not be made in normalizing Champion's 1996 revenues. Further, the Commission notes that the failure to make this adjustment is favorable to Champion.

⁵A similar result is obtained if the traffic levels indicated in Exhibit A-4 are multiplied by the tariff rates approved in M.P.S.C. Tariff No. 22.

revenues produces an average revenue base of \$1,368,000 prior to adding in the effects of the proposed rate increase.

The next step in the process is to determine the size of the proposed rate increase. Champion calculated that the proposed rate increase added \$170,000 on an annual basis. Champion's calculation is supported by Exhibit A-4. On the other hand, the Staff calculated Champion's proposed rate increase at \$180,000, but did not support its calculation with an exhibit.

An examination of Exhibit A-4 convinces the Commission that the Staff's estimate is more reasonable. Champion's calculations are based upon nonnormalized data. If an adjustment is made to eliminate the abnormal ice flow problems experienced in 1996, as shown on the following table, it is clear that the Staff's determination of the effect of the proposed rate increase is more reasonable.

Classes of Customers	Unadjusted 1996 Sales	Adjusted 1996 Sales	Incremental Rate Increase per Sale	Total Incremental Rate Increase per Class- Unadjusted	Total Incremental Rate Increase per Class- Adjusted
Auto Single Ticket	116,605	122,367	\$0.25	\$29,151	\$30,591
1-axle trailer	5,918	6,210	\$0.50	\$2,959	\$3,105
2-axle trailer	1,326	1,391	\$1.00	\$1,326	\$1,391
3-axle trailer	86	90	\$1.50	\$129	\$135
4-axle trailer	2	2	\$2.00	\$4	\$4
1-axle trailer	4,841	5,080	\$2.00	\$9,682	\$10,160
2-axle trailer	1,712	1,796	\$4.00	\$6,848	\$7,186
3-axle trailer	490	514	\$6.00	\$2,940	\$3,085
4-axle trailer	150	157	\$8.00	\$1,200	\$1,259
Gas Truck	425	446	\$2.00	\$850	\$892
Motorcycle	775	813	\$0.00	\$0	\$0
School Bus	1,013	1,063	\$1.50	\$1,520	\$1,594
Dual Pick-up	1,134	1,190	\$0.00	\$0	\$0
Ticket Book	9,093	9,542	\$12.50	\$113,663	\$119,275
			TOTAL	\$170,272	\$178,677

By adding the Commission's calculation for the base revenues for 1997 of \$1,368,000 to the incremental increase that would result from approval of the rates contained in the proposed tariff filed by Champion of \$179,000 results in a projected 1997 revenue level of \$1,547,000. Therefore, it appears that Champion understated its projected 1997 revenue by \$71,000 on Exhibit A-6.⁶ Although more reasonable, the Staff's projection for Champion's 1997 revenues is

⁶On Exhibit A-6 Champion projected its 1997 revenues to be \$1,476,000.

\$46,000 less than the level that the Commission finds appropriate in light of the evidence contained in this record.

Having determined that both Champion and the Staff significantly underestimated the effect that the proposed rate increase would have on Champion's revenues for 1997, the Commission turns to the issue of the reasonableness of the expenses projected by the parties to support the reasonableness of their proposed settlement. Champion derived its 1997 projected expenses by adjusting its 1996 actual expenses of \$1,417,000 for inflation.⁷ By escalating those expenses by 3%, Champion projected its 1997 expenses to be \$1,459,000, as appears on Exhibit A-6.

If the Commission were to accept Champion's projection of its 1997 expenses, it would still mean that the Commission's calculation of Champion's 1997 revenues would exceed Champion's 1997 expenses by \$88,000. However, even a cursory examination of the record demonstrates that not all of Champion's projected expenses should be included in the determination of its rates.

In preparation for the hearing, the Staff was unable to conduct a comprehensive review of Champion's financial data. However, in the brief time allotted for this task, a Staff auditor identified two items totaling more than \$23,000 that the Staff concluded should be disallowed.⁸ The Staff also identified a \$14,000 adjustment associated with depreciation that would have increased Champion's costs. Further, the Staff concluded that Champion's adjusted 1996 expenses should be escalated at an inflation factor of 2.6%, not 3% as proposed by Champion.

⁷Champion position assumes that all of its \$1,417,000 expenses incurred during 1993 were reasonable and prudent.

⁸These expenses included \$13,000 in wages paid for a pilot to operate the vessel transferred to Mr. Bryson at Boblo Island and \$10,000 in lobbying expenses. See Exhibit S-12.

The Commission finds that the adjustments proposed by the Staff are appropriate. However, the Commission is persuaded by a review of the record that the expense levels relied on by Champion and the Staff are still too high.

Exhibit A-8 indicates that Champion's maintenance wages increased from the 1995 level of \$59,500 to \$85,000 for 1996. On cross-examination, Mr. Bryson explained that the dramatic increase in maintenance wages between 1995 and 1996 was attributable to three reasons. First, after transferring one of Champion's vessels into his own name, Mr. Bryson had Champion's employees make repairs to the vessel at Champion's expense. Second, after that vessel was returned to service at Boblo Island, the wages paid to the pilot of the boat were recorded as maintenance wages and charged to the ferry's operation.⁹ Finally, because the vessel was no longer available to serve the needs of Champion's customers, Champion had to hire additional staff to manage the resulting traffic backups. Because Champion has definite plans to place a fourth ferry into service as soon as possible, it is reasonable to conclude that the backups that necessitated the hiring of traffic attendants will not materialize during 1997. In light of these facts, the Commission finds that an additional reduction of \$12,000 should be made to Champion's expenses to remove the effects of the increased costs associated with maintenance performed on the vessel transferred to Mr. Bryson and the costs associated with the traffic attendants.¹⁰

⁹As previously noted, the Staff identified this item as the basis for a \$13,000 disallowance on Exhibit S-12.

¹⁰In its calculations, the Commission used Champion's maintenance wages level for 1995 (\$59,500), which was escalated at the Staff's inflation rate of 2.6% per year to reach a more reasonable level for 1997 (\$63,000) than the level included in Champion's calculations (\$88,000).

The Commission is also concerned about two other major expense items that were covered in the Association's cross-examination of Mr. Bryson. While the record is not well developed on these issues, the Commission is familiar with them through prior rate filings by Champion. One item involves the level of legal expenditures incurred by the company over the past several years. The other item involves payments made pursuant to a covenant not to compete between Champion and Mr. Bryson's mother, Joyce Bryson.¹¹

Although the Staff supported Exhibit AS-9, it is clear that the Staff was uncomfortable with these aspects of Champion's projected expenses. The Staff signaled its trepidations when Mr. Lonergan testified that "now, granted, it is possible to take a position and to perhaps even recommend disallowance of additional expenses, such as in the professional fee area." Tr. 72.

Indeed, a review of the December 20, 1996 order in Case No. T-1292 demonstrates that the Staff took such a position with regard to the disallowance of \$86,000 of professional fees paid by Champion during 1995. Although different legal expenses are involved in this proceeding, the Commission still finds it unlikely that more than \$137,000 for legal and accounting services during 1996 could be found to be reasonable operating expenses. Legal expenses of the magnitude established on this record are remarkable for a company with Champion's historic revenue levels. This is particularly true when the evidence establishes that a great deal of the legal

¹¹In acquiring ownership of Champion in 1992, Mr. Bryson arranged for Champion to use its resources to buy out the stock owned by family members, including his mother. The package of consideration that Mrs. Bryson received for relinquishing her shares includes Champion's assumption of \$286,000 in additional mortgage debt and the forgiveness of \$447,000, plus accrued interest, in loans. Further, Champion incurred the obligation to pay Mrs. Bryson \$42,000 per year for 20 years in exchange for a covenant not to compete. Finally, Champion agreed to provide Mrs. Bryson with an automobile and health insurance. A more complete discussion of the buyout transaction is set forth in the Commission's August 2, 1993 order in Cases Nos. T-1226 and T-1234.

expenditures were necessitated by Champion's clearly improper efforts to raise its rates in violation of Tariff M.P.S.C. No. 22, which were considered in the Commission's January 15, 1997 order in Cases Nos. T-1288 and T-1289. More importantly, the Commission is skeptical that Champion's 1997 legal expenses will approach 1996 levels if the stipulation between Champion and the Staff is approved, as amended. Indeed, an explicit provision of the stipulation calls for Champion to abandon all appellate activities in three separate legal proceedings, which would undoubtedly lead to significant reductions in legal expenditures during 1997.

The Commission is also aware that in the past the Staff has taken a position that compensation paid to Mrs. Bryson as part of the buyout transaction was, at a minimum, excessive, and is the proximate cause of any impaired financial position in which Champion may presently find itself.¹² The issues related to the costs arising from Mrs. Bryson's covenant not to compete were specifically deferred by the Commission in Case No. T-1282. By declining to rule on those issues at that time, all costs associated with the covenant not to compete were included in the Commission's computation of the company's projected net operating revenue, which effectively gave Champion the benefit of the doubt on this issue. The Commission directed Champion to present additional evidence regarding the covenant not to compete in its next rate proceeding. It failed to do so.¹³ Despite two additional rate proceedings, Champion has again failed to adequately address this issue.¹⁴

¹²March 23, 1995 order, Case No. T-1282, p. 6.

¹³See June 5, 1995 order, Case No. T-1283, p. 19.

¹⁴Champion should not equate the Commission's failure to disallow costs associated with Mrs. Bryson's covenant not to compete as equivalent to the Commission's approval of those costs.

If the Commission were to determine that 50% of Champion's projected 1997 legal expenditures were either based on its ill-advised effort to raise rates without authorization from the Commission or on legal matters that are to be withdrawn by the terms of the stipulation, Champion's projected 1997 expenses could be reduced by more than \$50,000. In addition, if the Commission were to determine that the Staff's recommended \$29,000 per year disallowance associated with the covenant not to compete, which was made in Case No. T-1282, is appropriate, Champion's projected 1997 expenses would be further reduced. Indeed, granting the full rate request contemplated in Exhibit AS-9 in the face of the known and potential disallowances could result in Champion realizing pre-tax net operating income in excess of \$200,000.

Despite significant reservations regarding Champion's projected 1997 expenses, the Commission nevertheless finds that a rate increase, albeit of a lesser magnitude than that proposed by Champion, is appropriate. Indeed, in its exceptions, the Association stopped short of stating that Champion is not entitled to a rate increase. Rather, the Association focused on whether the full increase set forth in Exhibit AS-9 is justified on this record.

Based on its analysis, the Commission finds that some of the provisions of Exhibit AS-9 should be modified and that additional conditions should be attached to the relief granted by the Commission. First, the Commission finds that the level of the rate increase granted by the Commission should be reduced to a level that would result in Champion's projected 1997 revenues being reduced to \$1,499,000 for 1997. Because the Commission projected Champion's base rates to produce \$1,368,000, the Commission finds a rate increase of \$131,000 is appropriate. Further, the Commission finds that a rate increase of that magnitude can be achieved by one revision to the tariff proposed by Champion in this proceeding. According to the Commis-

sion's calculations, raising the rate for a 20-ticket book of commuter discount tickets from \$67.50 to \$75.00, when combined with the other increases proposed by Champion, approximates the rate increase found reasonable by the Commission on this record.

Although the Commission concludes that the record does not support the full rate increase sought by Champion, it does conclude that the record supports Champion's request for immediate rate relief. It is undeniable that Champion has not had a rate increase in three years. It is also undeniable that Champion has already purchased one new vessel for delivery this spring and has incurred the obligation to pay \$100,000 this year in conjunction with that acquisition.

Because the rate increase granted by this order is not based on a full contested case proceeding, but an examination of documentation supporting a stipulation that was not accepted in its entirety, the Commission finds that in order for the rate increase to be effective, Champion must agree to the following conditions, most of which were incorporated in Exhibit AS-9:

1. Champion must submit a letter accepting the revisions to Exhibit AS-9 without condition or qualification and must submit revised tariff sheets to the Commission no later than March 12, 1997. In the event that Champion agrees to the revisions made by the Commission in this order, Champion may place the newly revised rates into effect on March 13, 1997. If Champion does not do so, its rates shall continue at the levels contained in Tariff M.P.S.C. No. 22.
2. The rate in Champion's new tariff for commuter discount tickets of \$75.00 for a book of 20 tickets. shall not be further increased for 24 months after the tariff becomes effective.
3. All other rates in the tariff shall not be further increased for 12 months after the tariff becomes effective.
4. Any previous notice of intent to terminate service shall be withdrawn.

5. The rates established by this order are specifically predicated upon the delivery and continuing use of a new, fourth boat in the spring of 1997, which will restore the operating assets and service to previous levels, including the use of four boats when required. Additionally, in the event that Champion takes any action to permanently reduce the size of its fleet below four vessels without prior approval of the Commission, it shall immediately reduce its rates to the levels contained in Tariff M.P.S.C. No. 22.

6. Champion shall remain obligated to provide the free transportation days required by the Commission's January 15, 1997 order in Cases Nos. T-1288 and T-1289.

7. The claim of appeal filed with the Michigan Court of Appeals by Champion regarding the Commission's January 15, 1997 order in Case No. T-1288 (the complainant filed by the Association) shall be withdrawn within 30 days of tariff implementation. Champion must further agree not to appeal the Commission's orders in Case No. T-1292 and the order in this proceeding, Case No. T-1294.

8. Champion must agree to cooperate fully in a complete audit of its financial records to be conducted by the Staff after the close of its 1997 fiscal year.

9. Champion must agree that the new vessel being delivered in the spring of 1997 is an asset subject to the Commission's jurisdiction that must remain in service at Harsens Island for the duration of its useful life, unless otherwise ordered by the Commission.

The Commission's order approving revisions to the stipulation between Champion and the Staff could bring to a close the protracted litigation between the parties. Approval of the revised stipulation means that rates will increase. However, because the increase is tied to specific conditions, including a rate moratorium, the Commission finds that the increase is reasonable

and in the public interest. Any future rate requests must be accompanied by full disclosure of relevant financial data. To facilitate disclosure, the Commission reaffirms that a Staff audit should be performed as specified in the order. At a minimum, the audit should cover: (1) the profitability and cash flow of Champion's operations, (2) accounting statements of Champion's operations on a fiscal, not tax, basis, and (3) full disclosure of the transactions and consideration used to effect the 1992 buyout transaction.

The Commission FINDS that:

- a. Jurisdiction is pursuant to 1921 PA 246, MCL 460.201 et seq.; MSA 22.91 et seq.; 1939 PA 3, as amended, MCL 460.1 et seq.; MSA 22.13(1) et seq.; 1969 PA 306, as amended, MCL 24.201 et seq.; MSA 3.560(101) et seq.; and the Commission's Rules of Practice and Procedure, as amended, 1992 AACS, R 460.17101 et seq.
- b. The stipulation should be approved, subject to the conditions stated in this order.

THEREFORE, IT IS ORDERED that:

A. The stipulation between Champion's Auto Ferry, Inc., and the Commission Staff, as revised by this order, is approved subject to Champion's Auto Ferry, Inc.'s filing a letter of acceptance and revised tariffs no later than March 12, 1997. In the event Champion's Auto Ferry, Inc., files a letter of acceptance and tariff sheets by March 12, 1997, it may begin charging the higher rates approved by this order on March 13, 1997.

B. In the event that Champion's Auto Ferry, Inc., does not file a letter of acceptance and a new tariff by March 12, 1997, the rates, fares, and charges set forth in Tariff M.P.S.C. No. 22 shall remain in effect until further order of the Commission.

C. The Commission Staff shall conduct an audit of the books, records, and operations of Champion's Auto Ferry, Inc., after the close of the 1997 fiscal year and shall submit a report to the Commission within 30 days of the completion of the audit.

The Commission reserves jurisdiction and may issue further orders as necessary.

Any party desiring to appeal this order must do so in the appropriate court within 30 days after issuance and notice of this order, pursuant to MCL 462.26; MSA 22.45.

MICHIGAN PUBLIC SERVICE COMMISSION

/s/ John G. Strand
Chairman

(S E A L)

/s/ John C. Shea
Commissioner

/s/ David A. Svanda
Commissioner

By its action of March 10, 1997.

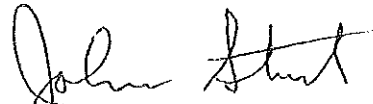
/s/ Dorothy Wideman
Its Executive Secretary

C. The Commission Staff shall conduct an audit of the books, records, and operations of Champion's Auto Ferry, Inc., after the close of the 1997 fiscal year and shall submit a report to the Commission within 30 days of the completion of the audit.

The Commission reserves jurisdiction and may issue further orders as necessary.

Any party desiring to appeal this order must do so in the appropriate court within 30 days after issuance and notice of this order, pursuant to MCL 462.26; MSA 22.45.

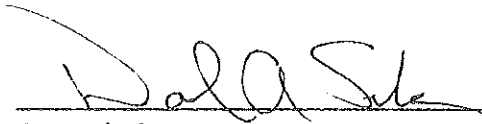
MICHIGAN PUBLIC SERVICE COMMISSION



Chairman

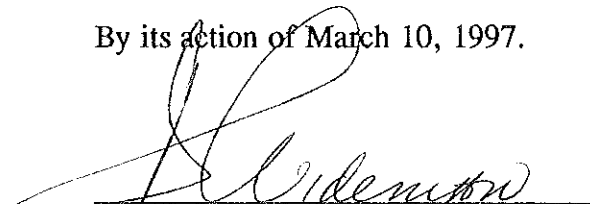


Commissioner



Commissioner

By its action of March 10, 1997.



Its Executive Secretary

PROOF OF SERVICE

File No. T-1294

STATE OF MICHIGAN

ss.

County of Ingham

Case No.

Marjorie A. VanDyke being duly sworn, deposes and says that on the 11th day of March, A.D., 1997, she served a copy of the paper hereto attached upon

See attached list

by depositing the same in the United States Post Office, in the City of Lansing, Michigan, enclosed in an envelope, with postage fully prepaid, plainly addressed and directed as above, said address being the last known business address of said person.

Marjorie A. VanDyke

Subscribed and sworn to before me this 11th

day of March, A.D. 19 97

Jeri Gosford Notary Public, Ingham County, Michigan

My Commission expires June 10, 1997

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