Decision **ALTERNATE PROPOSED DECISION OF COMMISSIONER RANDOLPH (Mailed 1/22/2016)**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of AVALON FREIGHT SERVICES, LLC, a limited liability company, for a certificate of public convenience and necessity authorizing service to transport freight by vessel on a scheduled basis between Port of Los Angeles, California on the one hand, and the Santa Catalina Island location of Avalon, on the other hand; and on a nonscheduled charter basis between Port of Los Angeles, California and Avalon, Two Harbors and all points on Santa Catalina Island, and between any points on Santa Catalina Island.	Application 14-10-015 (Filed October 28, 2014)
And Related Matter.	Application 15-01-005

DECISION GRANTING AVALON FREIGHT SERVICES, LLC, AND CURTIN MARITIME CORPORATION CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY

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DECISION GRANTING AVALON FREIGHT SERVICES, LLC, AND CURTIN MARITIME CORPORATION CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY

Summary

In today's decision we grant the individual requests of Avalon Freight Services and Curtin Maritime Corporation for a Certificate of Public Convenience and Necessity (CPCN) to establish and operate scheduled vessel common carrier service transporting freight between the Port of Long Beach and all points on Santa Catalina Island, and between any points on Santa Catalina Island.

These proceedings are closed.

1. Background

1.1. Procedural Background

On October 28, 2014, Avalon Freight Services (AFS) filed Application (A.) 14-10-015 seeking authority to operate scheduled vessel common carrier freight service from the Port of Los Angeles to Avalon, and on a nonscheduled charter basis between the Port of Los Angeles and Avalon, Two Harbors, and all points on Santa Catalina Island, and between points on Santa Catalina Island. On December 9th and 12th of 2014, Catalina Freight Line (CFL) and Curtin Maritime (respectively) filed protests to A.14-10-015. On December 23, 2014, AFS filed replies to the protests of CFL and Curtin Maritime.

On January 8, 2015, Curtin Maritime filed A.15-01-005 seeking authority to provide scheduled vessel common carrier freight service between the Port of Long Beach and all points on Santa Catalina Island, and between any points on Santa Catalina Island. On January 21, 2015, AFS and the Santa Catalina Island Company (SCICo) executed a lease for the premises at Pebbly Beach for the term

of April 1, 2016 to March 31, 2026. On February 6, 2015, CFL filed a protest to A.15-01-005[1] however, CFL now supports Curtin Maritime's request to provide competitive service.[2] AFS filed a response to the Curtin Maritime application on February 12, 2015. As set forth in its response and in more detail below, AFS did not oppose the issuance of a CPCN to Curtin Maritime. AFS did, however, disagree with Curtin Maritime's proposal that the Pebbly Beach facility be used by multiple operators. On February 23, 2015, Curtin Maritime filed a reply to the protest of CFL and the response of AFS.

On March 23, 2015, a joint prehearing conference was held in proceedings A.14-10-015 and A.15-01-005 at the California Public Utilities Commission (Commission) office in Los Angeles. In addition to identifying the issues, confirming the need for hearings, setting the schedule for the proceeding, and confirming the need for public participation hearings, the question of whether or not the two proceedings should be consolidated was addressed at the prehearing conference.

On April 1, 2015, Mayor Ann Marshall requested party status for the City of Avalon. As part of this request, information only status was requested for three City Council members (Cinde MacGuan-Cassidy, Richard Hernandez and

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[1] *See Protest of Catalina Freight Line, Inc. (VCC-058) in Opposition to Application of Curtin Maritime, Corporation for a Certificate of Public Convenience and Necessity to Establish and Operate Scheduled Vessel Common Carrier Service Transporting Freight between Port of Long Beach and all Points on Santa Catalina Island, California, and between any Points on Santa Catalina Island*, filed February 6, 2015, pp. 5-19.

[2] *See* Exh. No. CFL-214, *Direct Testimony of Richard Coffey in Support of Catalina Freight Line, Inc.'s Protests of the Applications of Avalon Freight Services, LLC and Curtin Maritime Corporation*, dated June 14, 2015 ("Coffey Direct"), p. 30, 33.

Joe Sampson), the City Manager (Ben Harvey), the City Attorney (Scott Campbell), and Mayor Pro Tem (Oley Olson). By ruling dated May 28, 2015 Administrative Law Judge (ALJ) Farrar granted the City of Avalon party status. On April 21, 2015, purportedly at the request of the City Council, the Avalon City Manager contacted ALJ Farrar to request that the City of Avalon's party status be rescinded. This request was subsequently withdrawn.

The Assigned Commissioner's Scoping Memo and Ruling Consolidating Proceedings (Scoping Memo) issued on May 28, 2015. In addition to consolidating AFS's and Curtin Maritime's applications into the same proceeding, the Scoping Memo set forth the scope of issues to be addressed, directed that evidentiary hearings be held, and adopted a schedule for the remainder of the Consolidated Proceedings that included a public participation hearing (PPH). The PPH in A.14-10-015 and A.15-01-005 was held in the main dining room of the Catalina Country Club in Avalon on June 8, 2015. The following morning, the ALJ conducted a brief site visit to the freight facility at Pebbly Beach.[3] Evidentiary hearings were held in the consolidated proceeding on July 13-15 in the Commission's Los Angeles offices.[4]

1.2. Factual Background

Santa Catalina Island is located approximately 26 miles off the coast of Long Beach, California. The City of Avalon is the only incorporated city on

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[3] SCICo employees as well as representatives of AFS, CFL, and Curtin Maritime were at the site visit.

[4] On June 16, 2015, Curtin Maritime filed a motion to join SCICo as a necessary party to the consolidated proceeding. On July 1, 2015, SCICo made a special appearance in order to file a response in opposition to Curtin Maritime's motion to join SCICo as a necessary party. On July 9, 2015, by electronic mail, ALJ Farrar denied Curtin Maritime's motion to join SCICo as a necessary party.

Santa Catalina Island. In addition to its approximately 4,000 permanent residents, Santa Catalina Island hosts over one million visitors per year. Because it is an island, food, fuel, water, household goods, vehicles, and other commodities required by residents and visitors must be brought to Santa Catalina Island by freight barge or lander vessel or by air cargo plane.

Although there is air service to Santa Catalina Island, it is expensive, and virtually all freight service to and from the island is by vessel. Approximately 90 percent of freight delivery to the Island is brought to the Pebbly Beach freight facility, which is located in an industrial section of Avalon south-east of Avalon Bay. The freight facility consists of a concrete docking facility (or, ramp) and a freight operations yard and warehouse owned by SCICo. Eighty-eight percent of the land on Santa Catalina Island is owned by the Catalina Island Conservancy. SCICo owns 11 percent of the remaining acreage on Santa Catalina Island, which includes virtually all of the useable coastline and potential docking points.[5] As noted by the State Lands Commission, the Pebbly Beach facility appears to be the only option available for delivering freight to the island without significant infrastructure investments.[6] All other land ownership (private, City, etc.) amounts to one percent. The parcel of land on which the Pebbly Beach freight

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[5] At least one party in this proceeding alleges that SCICo has refused to allow access to other landing points. (*See* Curtin Maritime Opening Brief at 22.)

[6] In January 2015, the Los Angeles City Harbor Department issued the Final Initial Study/Negative Declaration for Catalina Express's proposed construction and AFS's proposed activities at Berth 95 in the Port of Los Angeles and AFS's proposed freight service to Santa Catalina Island. On June 29, 2015, the State Lands Commission voted to approve Calendar Item No. 98, Termination and Issuance of a General Lease-Commercial Use and Endorsement of Subleases, which was received into evidence in this proceeding as Exhibit CM-104.

facility is located is owned by SCICo.[7] The boundary of the parcel on the waterside is the mean high tide line; the State of California owns the tidal waters and submerged lands below the mean high tide line. SCICo, the "upland owner," holds a lease to the tidal waters and submerged lands below the mean high tide line.

For over 40 years, CFL, a vessel common carrier certified by the Commission to transport freight to and from Santa Catalina Island, has been the exclusive freight operator at Pebbly Beach pursuant to a lease from SCICo and a sublease from SCICo for use of the tidal waters and submerged lands approved by the State Lands Commission. In 2012, SCICo retained Hardesty, LLC to issue a Request for Proposals (RFP) in order to select the freight operator that would assume the exclusive freight operations at Pebbly Beach after CFL's current lease expires on March 31, 2016. Of the proposals received from eight interested operators, CFL, Curtin Maritime, and Catalina Tug & Barge Services, were selected by SCICO as finalists.[8] At the conclusion of its RFP process, on January 15, 2014, SCICO announced its selection of Catalina Tug & Barge Services as the company that would assume the lease and exclusive freight service at the SCICo freight facility at Pebbly Beach beginning April 1, 2016.

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[7] SCICo is also believed to be the largest employer, the largest landholder, and the holder of most of the land leases of the small businesses. (*See* Public participation Hearing Transcript, Vol. 1: Testimony of Avalon Mayor Ann Marshall, at 5, lines 6-7.)

[8] Catalina Tug & Barge Services, a newly formed joint venture between Gregory Bombard of Catalina Channel Express and Harley Franco of Harley Marine Services, is the same entity as AFS.

1.3. The Parties

1.3.1. Avalon Freight Services

AFS is a Limited Liability Corporation (LLC) organized under the laws of the state of Delaware, formed specifically for the purposes for which it seeks a CPCN. AFS asserts that it is owned jointly and equally by Franco and Bombard. However, neither AFS's application nor the organizational chart it was ordered to produce fully convey the complexity and number of interests in AFS. As discussed in more detail below, these interests are particularly relevant to AFS costs and the Commission's ability to determine when and if changes in AFS's tariffs are appropriate.

1.3.2. Curtin Maritime

Curtin Maritime has been operating since 1997. Though Curtin Maritime does not currently provide Commission regulated vessel common carrier services, it provides various forms of non- common carrier vessel services, including offshore tugboat and barge operations, marine affreightment and heavy marine construction services. Curtin Maritime states that it designs, builds, and operates its assets in-house and that it will use its own vessels to provide freight service. According to Curtin Maritime these vessels are not restricted by the tide, because they have a minimum ramp length of twenty feet longer than the barges of the existing operators, and can land at Pebbly Beach at any time of day. Curtin Maritime argues that because this barge and ramp system is not impacted by tides the current operational range at the Pebbly Beach freight facility's landing site could be effectively enhanced.

1.3.3. Catalina Freight Lines

Catalina Freight holds a CPCN from the Commission to transport basic general freight between the Port of Los Angeles and Santa Catalina Island, and it has been providing that service for over 40 years. Catalina Freight has been

using a ramp, yard and warehouse at Pebbly Beach in an industrial area of the City of Avalon as its Santa Catalina Island terminal for its freight transport service under a lease with SCICo and a sublease with SCICo approved by the State Lands Commission.

1.3.4. The City of Avalon

The City Council serves as the City of Avalon's corporate board of directors and is responsible for establishing City policy. The City Council's mission is to represent the citizens of Avalon, make policy decisions, exercise fiscal responsibility and authority, and to serve the best interests of all citizens of Avalon. The City Council works closely with the City Manager to ensure that policy is effectively implemented.[9]

2. Discussion

2.1. Jurisdiction and Authority

The Commission has the authority under jurisdiction conferred upon it by the Constitution of the State of California[10] and by the Pub. Util. Code[11] to make determinations about whether a proposal to provide vessel common carrier service is required by public convenience and necessity. In making this determination, in addition to assessing the applicant's financial and operational fitness, we are obliged to determine whether review pursuant to the CEQA is necessary, whether the applicants' tariff rates are just and reasonable and (including when and how rates can change), and whether the application is

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[9] City of Avalon Website: http://www.cityofavalon.com/content/3180/ .

[10] California Constitution, Article I, sections 9 and 10.

[11] *See* Public Utilities Code, section 1007.

consistent with and indeed furthers Commission policy. We address these issues in the context of the two applications below.

2.2. The CPCN Applications

2.2.1. The Need for CEQA Review

The protest filed by CFL identified possible CEQA issues. CFL's protest of both the AFS and Curtin Maritime applications cited the need for CEQA review related to planned fleet expansion. With regard to AFS, CFL's protest states:

> The Application lacks sufficient information about the planned open sea vessels and the island lander vessel and their potential environmental impacts upon the fragile marine habitats along the shores of Santa Catalina Island. Since the Applicant's proposed vessels will be different from those currently used by Catalina Freight Line for its current freight transport service to and from Santa Catalina Island, involving factors such as the expected use of larger boats, larger engines, and more fuel usage, it is not legally sufficient to presume that the potential environmental impacts of the Applicant's new vessels would be the same or equivalent to the actual environmental impacts of the current vessels transporting freight to and from points on Santa Catalina Island.[12]

The above statement refers to AFS's plans to build a second, larger barge to operate in addition to the one it plans to initially use to ship freight to and from Avalon.[13] Similarly, CFL argues that the Curtin Maritime, Application:

> [D]iscloses that the Applicant needs to expand its fleet beyond its existing vessels described there to include another tugboat and barge, and there is no showing that the existing vessels or

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[12] CFL Protest to AFS CPCN Application at 27-28.

[13] At 4 of its CPCN Application AFS states: "In addition, Applicant is building a second barge/landing craft with motive power that has been designed specifically to meet Applicant's requirements. The second barge/landing craft will be 150' in length with a beam of 50'."

> the new vessels can deliver freight by water to the camps and other sites on Santa Catalina Island other than the Pebbly Beach landing facility without adverse environmental effects on the fragile marine habitats along the shores and beaches of Santa Catalina Island.[14]

Though it identified CEQA as a possible issue in its protests of the AFS application, CFL now concludes that the issue of CEQA review is not ripe for resolution at this time. According to CFL, with respect to the AFS application, "[n]o information has surfaced so far in these Consolidated Proceedings about the proposed expansions of the vessel fleets of the applicants or about their freight deliveries to non-dock locations on Santa Catalina Island that suggests that further environmental review is required to comply with the Commission's CEQA review policies."[15] Consistent with CFL's argument on this point, as noted elsewhere herein, while the proceeding record is replete with discussion going to the consistent amount of freight shipped to and from Avalon, now and in the foreseeable future, at no point did either AFS or Curtin Maritime offer any evidence going to their fleet expansion plans.

We therefore conclude that a California Environmental Quality Act review is not required because it can be seen with certainty that approval of the application will not have a significant adverse effect on the environment. However, while the record allows us to conclude that CEQA review is not prompted by either the AFS or Curtin Maritime plans to serve the existing need at Avalon, the record before us dictates that we reserve judgment about the need

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[14] CFL Protest to Curtin Maritime Application at 6-7.

[15] CFL Opening Brief at 21. CFL makes no mention of the need for CEQA review related to the Curtin Maritime application.

for CEQA should AFS's or Curtin Maritime's attempt to expand their service plans.

2.2.2. Financial Fitness

2.2.2.1. AFS

CFL raises several issues about AFS's financial fitness. Among other things, CFL questions AFS's vessels lease agreements, Management services agreements, Rental agreements, and operating budget. While relevant to our overall inquiry, these concerns go to and are best addressed in our discussion of AFS affiliate structure and tariffs below. More pertinent here is CFL's complaint that AFS's operating budget and Pro Forma Income Statement are inaccurate estimates. However, as AFS points out, as a new company its financial statement will necessarily be projections.

In the general sense, AFS's showing of financial capability is more than sufficient to satisfy our traditional standards. As set forth in the AFS application, the Bombard and Franco families will rely on their personal assets to fund the venture in conjunction with bank loans to finance equipment or facilities. In support of its application AFS provides a reference letter from John Bakker, Senior Vice President of City National Bank, which concludes that the Bombard and Franco family's personal financial statements show that their personal resources far exceed the financial requirements to start-up and operate Avalon Freight Services, LLC. This same letter establishes that City National Bank is prepared to provide the needed bank credit for the purchase of vessels and other on-dock equipment as necessary for AFS to fulfill its freight service obligations.[16]

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[16] *See* AFS Application Exhibit "O".

2.2.2.2. Curtin Maritime

As noted by CFL, Curtin Maritime furnished most of its financial information to the Commission as confidential and under seal.[17] However, in the non-confidential financial information provided on the record and in the testimony of Martin Curtin in the evidentiary hearing, CFL found no obstacles or complications that cause it to question the financial fitness of Curtin Maritime to become a certified vessel common carrier.[18] Our review of Curtin Maritime's confidential documents and hearing testimony is consistent with CFL's assessment. We find the financial information provided by Curtin Maritime sufficient to establish its financial fitness for the requested CPCN.

2.2.3. Operational Fitness

2.2.3.1. AFS

CFL raises four questions about the operational fitness of AFS. First, according to CFL, AFS is not yet ready to begin operations. Specifically, according to CFL, AFS "does not yet have a general manager nor any full-time employees, … it does not yet have any vessels ready to operate, and … it has not yet purchased its land-based equipment for staging freight at the terminals."[19] CFL goes on to argue that "Avalon Freight itself is not yet in operations at all as a freight transporter, so it has no track record or experience in freight management logistics."[20] We believe CFL sets the bar too high. As AFS observes, the Commission should not require an applicant

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[17] CFL Opening Brief at 18.

[18] CFL Opening Brief at 18-19.

[19] CFL Opening Brief at 19.

[20] CFL Opening Brief at 19.

to operate unlawfully to accrue the several years' worth of experience before granting a CPCN to continue the same operation. Instead, with regard to operational fitness, the Commission looks to the operational experience and history of the applicant's principals and other enterprises. Consistent with this approach, AFS presented several witnesses that provided detailed testimony going to the experience of the principals of AFS, the preparation of safety and operations manuals, and the availability of significant human and, if necessary, vessel resources from Harley Marine Service (HMS).[21]

CFL's subsequent two issues are similarly problematic. CFL's assertion that AFS has been unclear about whether the company will successfully negotiate a labor contract with provisions to address strikes or work stoppages, fails to take into account AFS's acknowledgement that it is still negotiating its labor contracts. We are not inclined to judge operational fitness on the basis of timely, ongoing contract negotiations. CFL's final concern, that AFS "will try to hire employees away from Catalina Freight in advance of its April 1, 2016 target date to commence operations, which if accomplished could cripple Catalina Freight's ability to share use of the Pebbly Beach site and stay in business past April 1, 2016" [22] appears to asks the Commission to encourage competition in vessel freight shipping services while limiting competition for vessel freight shipping personnel. Neither the record of the proceeding nor any precedent identified by CFL inclines us to parse our policy favoring competition in this manner. We therefore conclude that AFS has shown itself to possess the operational fitness required to obtain a CPCN.

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[21] AFS Opening Brief at 2.

[22] CFL Opening Brief at 21.

2.2.3.2. Curtin Maritime

Catalina Freight acknowledges that, in its view Curtin Maritime has adequate managerial qualifications and sufficient high-quality vessels to provide freight transport service to Santa Catalina Island.[23] Both AFS and CFL express concern over whether Curtin Maritime will have made sufficient arrangements for land-based and waterside facilities for a Mainland Terminal facility.[24] We agree with Curtin Maritime that it has adequately addressed this issue. As explained by Curtin Maritime:

> If the Commission grants Curtin Maritime's CPCN, it will operate freight transportation services out of its existing facilities at 1500 Pier C Street at the Port of Long Beach, where it controls the waterside of the terminal. … [F]reight can be loaded at this location with minimal modifications. Indeed, since a significant portion of the freight will be loaded directly from trucks to the vessels, there is no need for a large warehouse - it could even be a movable structure.

While Curtin Maritime's approach for land-based and waterside facilities may differ from the more traditional approaches taken by CFL and AFS, there is nothing to suggest that it is infeasible, and indeed, it is consistent with Curtin Maritime's generally more innovative thinking. We therefore conclude that Curtin Maritime has shown itself to possess the operational fitness required to obtain a CPCN.

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[23] CFL Opening Testimony at 21, citing Exhibit CFL-214: Direct Testimony of Richard Coffey, at 30, A.25 and A.26.

[24] *See* CFL Opening Brief at 21, and AFS Opening Brief at 12-13.

3. Just and Reasonable Rates and Tariffs

3.1. Curtin Maritime

The existing tariff rates for freight service to Santa Catalina Island are the Commission approved, market- based rates used by CFL. Curtin Maritime proposes to use these same tariff rates for its first five years of operation. Though it withdrew its protest to the Curtin Maritime application, CFL argues that since Curtin Maritime's proposed rates are not based on Curtin Maritime's projected costs and revenues, they are not necessarily just or reasonable. According to CFL, if Curtin Maritime's operating costs during its first five years of operation turn out to be much higher than those incurred by it in recent years, and Curtin Maritime's revenues do not cover the operating costs, Curtin Maritime will not be able to hold to the current CFL rates and will have both need and justification to seek a substantial rate hike.

CFL's criticism ignores Curtin Maritime's stated preference to operate in a zone of rate freedom (which allows rates to be lowered in response to competition) rather than adopt the rates that are currently in effect.[25] For the reasons set forth below we believe Curtin Maritime's suggestion that it be allowed to operate in a zone of rate freedom is consistent with Commission policy favoring competition, and likely to lead to lower rates provided there is sufficient competition. With this in mind, we find Curtin Maritime's rates and tariffs just and reasonable.

[25] Curtin Maritime Opening Brief at 17-18.

3.2. AFS

3.2.1. Inaccurate Rates

CFL alleges two problems with AFS's proposed rates. First, according to CFL, AFS's rates aren't based on identified costs and have indeed been shown to have been based on inaccurate figures.[26] Second, according to CFL, AFS has been unable to show that its projection of a total of seven million dollars in first year operating revenues is reasonable since the source (SCICo's consultant firm Hardesty during the RFP process) of the information was highly inaccurate.[27] Here CFL ignores the fact that AFS based its rates on the current Commission approved CFL rates, and to the extent that its operating revenues are overstated, AFS has agreed to maintain them for a period of two years before seeking Commission review.

3.2.2. Frustration of the Regulatory Process

Both CFL and Curtin Maritime take issue with AFS's proposed tariffs and affiliate agreements, and argue that AFS has positioned itself to go to the Commission with justification for a significant rate hike.[28] In addition to the unidentified cost noted above, CFL points out that, concurrent with the lease for the Pebbly Beach facility, AFS and SCICo entered into a Freight Services Agreement which, among other things, provides for:

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[26] CFL Opening Brief at 17-18.

[27] According to CFL, the estimates provided to Hardesty were overstated by approximately $1.4 Million due to the inadvertent inclusion of operating costs as revenues. (*See* CFL Opening Brief at 23.)

[28] CFL Opening Brief at 22.

> (a) cross-channel service a minimum of five (5) days per week; (b) a minimum number of vessels; and (c) regular fuel service to Southern California Edison, the Avalon fuel dock, the SCICo fuel station, and to SCICo itself.[29]

In addition to requiring that AFS not apply to the Commission for a tariff rate increase for a period of two years after the commencement date of the Avalon facility lease, the AFS Freight Services Agreement with SCICo also provides that AFS will not file any application with the Commission for a tariff rate increase without SCICo's prior written approval. Moreover, the AFS's Freight Services Agreement with SCICo was entered into after AFS agreed to entered into a profit sharing agreement with SCICo, and comes in addition to AFS's plans to lease vessels from GBHF Leasing (jointly owned by Bombard and Franco), to enter into a management services agreement with HMS (owned by Franco) for interim or future services provided by HMS employees, and an agreement to sublease warehouse space from Catalina Express (owned by Bombard).[30]

AFS responds to these criticisms as follows. First, AFS asserts that it has "willingly provided the Commission with information regarding the transactions it plans to undertake with HMS, Catalina Express, and GBHF Leasing."[31] However, while AFS provided information about its intent to use the

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[29] CFL Opening Brief at 6.

[30] Specifically, AFS has or plans to: 1) Lease vessels owned by GBHF Leasing, an affiliated company formed by Gregory Bombard and Harley Franco; 2) Pay Harley Marine Services and Catalina Express for the services provided by their respective management staff and crew; and 3) Pay Catalina Express rent for space provided for its proposed freight operations. (*See* AFS Reply Brief at 8, CFL Opening Brief at 16-17, and Curtin Maritime Opening Brief at 18-19.)

[31] AFS Reply Brief at 8-9.

vessels, facilities, and possibly personnel owned by its principals, AFS's agreements with SCICo were only brought to the surface by CFL and Curtin Maritime and the parties to the proceeding were not able to agree about which of the principals' businesses were or were not AFS affiliates.

Second, AFS points out that CFL also does business with one or more of its majority owner's unregulated affiliates.[32] AFS goes on to speculate that CFL's charging its affiliate a below tariff rate might explain CFL's questionable reported revenues.[33]

Third, AFS asserts that questions going to its affiliate relationships, if relevant at all, are premature. According to AFS "[t]he reasonableness of any costs borne by AFS (including payments to affiliates) are determinations that will be made by the Commission in a rate proceeding."[34] In addition, according to AFS, affiliate transactions are commonplace among regulated utilities, so much so that the Commission promulgated rules to govern the transactions between energy, telecommunications, and water utilities.[35]

We find that AFS's responses skirt the issue.

As an initial matter, absent a protest, carrier rate increases, such as are at issue here, are typically afforded less stringent review (such as is provided by the advice letter process).[36] Moreover, because Avalon is an island it is difficult to

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[32] CFL does not dispute this contention.

[33] AFS Opening Brief at 5-7.

[34] AFS Reply Brief at 8.

[35] AFS Reply Brief at 8, citing D.93-12-019; D.06-12-029, and D.11-10-034.

[36] Fears of retribution were voiced at the public participation hearing and identified as making such protests unlikely. (*See* Public Participation Hearing Transcript, Vol. 1: Testimony of Mayor Ann Marshall, at 16, lines96-18.)

compare and ascertain the reasonableness of the costs of services AFS has agreed to procure/provide to its affiliates with those offered elsewhere. Most problematic however is AFS's claim to have "willingly provided the Commission with information regarding the transactions it plans to undertake with HMS, Catalina Express, and GBHF Leasing."[37] Rather than the fact of its affiliate relationships, about which AFS has at best been only minimally forthcoming,[38] the issue here is the Commission's ability to ascertain the reasonableness of costs between AFS and its affiliates.

Whether by design or default, the complexity and nature of AFS' affiliate relationships complicates Commission tariff review of AFS' costs and income. Simply put, if we are unable to obtain financial information from AFS's affiliates it would be possible for AFS (through its affiliates) to game the Commission's rate review process. Specifically, because the AFS principals own and/or have control over business (i.e. fuel, storage, docking facilities, etc.) that they have obligated AFS to rely on, which appear to be outside the Commission's jurisdiction, AFS has or may be saddled with costs, the reasonableness of which the Commission has limited ability to ascertain. That many of these costs relate

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[37] AFS's statement that "the absence of formal regulations governing the relationships between vessel common carriers and their affiliates does not mean the affiliate relationships do not have to be open, above-board, and reasonable in the eyes of the Commission,"(AFS Reply Brief at 8) appears to serve to establish that there are no formal regulations governing the relationships between vessel common carriers and their affiliates as much as to make clear that the regulated carrier must be open, above-board, and reasonable in the eyes of the Commission.

[38] The fact that AFS has a profit sharing agreement with SCICo, that it needs to have SCICo approval prior to any rate request, and other aspects of AFS's affiliate agreements were first introduced at hearings and are not included in the AFS CPCN application.

to services provided in Santa Catalina Island's unique circumstances further compromises the Commission's ability to ascertain their propriety.[39]

AFS suggests that the Commission's experience dealing with affiliate transactions somehow mitigates this problem.[40] Our affiliate transaction rules are generally intended to prohibit a regulated entity from paying more or less to its affiliates for goods or services than to a third party.[41] Here, because SCICo (itself an interested party and arguably an affiliate) insists on having only one freight shipper, and Santa Catalina Island is uniquely situated, there are no third parties for comparison; it will be difficult to ascertain whether the costs for goods and services received or provided are reasonable.

Rates derived from costs and income that cannot be subjected to full and meaningful review cannot be deemed either just or reasonable. Therefore, due to the inter-related structure of AFS and SCICo, we will require that a full and detailed explanation of all the transactions between AFS and SCICo be explained whenever AFS seeks a rate increase. Should AFS seek a rate increase based on

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[39] AFS's application was less than wholly clear about its affiliates and contractual relationships. AFS's application did not include a copy of its (draft or final) lease agreement with SCICo or acknowledge (let alone set forth the terms of) its contractual agreements with other Bombard or SCICo affiliates. AFS then failed to abide by the ALJ's directive to provide a joint organizational chart showing its affiliate relations. AFS attributes this failure to other parties' refusal to agree with its view of AFS's structure (rather than submit a joint chart showing the areas of agreement and disagreement AFS submitted its own chart).

[40] AFS Reply Brief at 8.

[41] Our affiliate transaction rules are most prevalent in energy and telecommunications regulation. No party identifies an instance where these rules have been extended to a vessel freight carrier and AFS neither argues that our affiliate transaction rules are controlling nor says how they may be useful.

any increase costs imposed by SCICo., AFS will be required to identify those costs as well as demonstrate the reasonableness of those costs.

While we focus our discussion on the transactions between AFS and SCICo, the Commission needs a clear financial picture in order to protect the shipping public from potentially artificial costs. Therefore, we make explicit that all affiliate transactions of AFS need to reported and explained when AFS seeks a rate increase. We require this full explanation of all affiliate transactions whenever AFS seeks a rate increase as a condition of the CPCN for AFS.

3.2.3. Market Impacts and Commission Policy on Competition

That Commission policy favors competition in the area of transportation is well established. Indeed, as noted by AFS, in *Pacific Towboat and Salvage* we concluded that "... in the transportation field, public convenience and necessity should be liberally construed, and that competition should be encouraged" and determined to "ensure that the fullest range of common carrier service is made available to the public."[42] This policy was reiterated and the policy reaffirmed in *Antone Sylvester Tug* wherein we stated, "[T]he Commission has previously favored greater competition in certificating vessel services, and will continue to apply that policy."[43]

Consistent with the decisions above, no party to this proceeding disputes that, as a general matter, Commission policy favors greater competition in certificating vessel services. Equally uncontested here is the question of whether

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[42] *Pacific Towboat and Salvage*, 1982 Cal. PUC LEXIS 1247, [*15] (1982).

[43] *Antone Sylvester Tug*, 1999 Cal. PUC LEXIS 717, [*12] (1999).

the Commission may impose conditions on any CPCN it grants.[44] Rather, with regard to the Commission's policy favoring competition, the dispute in this proceeding focuses on under what circumstances the Commission should impose conditions on a CPCN, as a means to foster greater completion.[45] Specifically, CFL and Curtin Maritime cite *Pacific Towboat and Salvage* and other decisions to argue that Commission policy favors competition, and that conditions should be placed on the AFS CPCN in furtherance of this policy.[46] In contrast, AFS distances itself from this interpretation of *Pacific Towboat and Salvage* on claims that, to the extent Commission policy does favor competition, there are clear exceptions to this policy that are controlling here.[47]

Where AFS cited *Pacific Towboat and Salvage* in its application for the proposition that Commission policy favors competition,[48] in response to CFL's and Curtin's reliance on this decision for the same proposition, AFS now claims that *Pacific Towboat and Salvage* is a dated decision, wherein the Commission merely "paid lip service to the virtue of competition while protecting existing carriers by restricting the operating authority of the applicant."[49] Instead, AFS

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[44] *See* AFS Reply Brief at 19, CFL Opening Brief at 14-15, and Curtin Maritime Opening Brief at 24.

[45] Curtin Maritime urges us to require SCICo to allow multiple carriers to use its docking facility through eminent domain and other legal avenues. As we decline to embark on such an undertaking we need not address AFS's arguments opposing this approach.

[46] Curtin Maritime also argues that the Commission can and should require SCICo to allow multiple freight shippers to use its Pebbly Beach facility.

[47] AFS Reply brief at 15-19.

[48] AFS CPCN Application at 13.

[49] AFS Reply Brief at 15-16.

cites *Harbor Bay Maritime* for the proposition that competition is not favored by the Commission where it will not result in better service to the public. According to AFS:

> *Harbor Bay Maritime* goes on to state that "whether or not prospective competition . . . is consistent with the public interest is an issue of fact which the Commission must resolve" when considering a CPCN."[50]

In effect, rather than simply challenge whether the conditions proposed by CFL and Curtin Maritime would foster competition, AFS argues that the Commission policy favoring competition is inapplicable here because competition would not benefit the public interest.

In an attempt to show that competitive freight shipping to Santa Catalina Island will not better serve the public interest, and the conditions requested by CFL and Curtin Maritime should not be imposed on its CPCN, among other things, AFS states:[51]

- Competition would likely interfere with the provision of basic services.[52]
- "The record in this proceeding does not show that lower rates will result from open competition at Pebbly Beach." [53]
- "[P]rice competition is not an expected benefit of open

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[50] AFS Reply Brief at 16.

[51] Though in many instances AFS discusses competition in the context of the shared use of the Pebbly Beach facility, AFS does not distinguishable these effects from those impacting Santa Catalina Island as a whole. Indeed, because as noted above the Pebbly Beach facility is for all intents and purposes the only freight facility on Santa Catalina Island, any distinction drawn in this regard would likely be a distinction without a difference.

[52] AFS Reply Brief at 17.

[53] AFS Opening Brief at 28-29 and 33-35; AFS Reply Brief at 16.

access to Pebbly Beach."[54]

- "The record also does not support CFL and Curtin's claims that competition will result in better service to the public."[55]
- "On this record, there is no basis for concluding that the supposed benefits of 'competition' will inure to the shippers."[56]
- "No party to this proceeding has presented credible evidence that the operational, logistical, and economic issues arising from shared use at Pebbly Beach are offset by any tangible net benefit to freight shippers."[57]
- "Curtin and CFL have failed to provide sufficient evidence that open competition at Pebbly Beach will benefit the public in any manner."[58]
- "Curtin and CFL ignore the practical implication of their proposed "open competition" at Pebbly Beach: in order to survive, all carriers trying to compete there (which might be greater in number than the three carriers that participated in this proceeding) will have to cut costs. Cutting costs means reduced maintenance, less frequent inspections, and less- qualified crews and management; the safety and reliability of the freight operations will be compromised."[59]

As an initial matter, AFS appears to take *Harbor Bay Maritime* out of context. Indeed, immediately prior to the sentence AFS relies upon, *Harbor Bay Maritime* notes, "[d]estructive economic warfare among carriers is secondary to the needs *of* the public and will not, by itself, constitute a basis for denial of the

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[54] AFS Reply Brief at 16 citing RT 3:399 (lines l2-18).

[55] AFS Reply Brief at 16.

[56] AFS Opening Brief at 35.

[57] AFS Reply Brief at 19.

[58] AFS Reply Brief at 19.

[59] AFS Reply Brief at 22.

certificate. Indeed, contrary to AFS prior intimations, Harbor Bar Maritime cited with approval *Pacific Towboat and Salvage's* determination that in general, "[p]rotection from limited competition is contrary to the public interest" and "[t]he Commission will not limit carrier entry into the water vessel market simply to protect the interests of existing carriers."[60] Thus, rather than stand for the proposition that competition is not favored by the Commission where that competition will not result in better service to the public, both *Pacific Towboat and Salvage* and *Harbor Bay Maritime* confirm that the Commission "will allow competition whenever to do so is not adverse to the public interest" even if such competition is adverse to the carriers' interests.[61]

Thus, while we are not persuaded by AFS's claims that the economics of Santa Catalina Island freight shipping cannot support three freight companies, we are sensitive to AFS's arguments related to safety, reliability, and the need to ensure that basic services are provided.

Therefore we will grant CPCNs to both AFS and Curtin Maritime. We recognize that Curtin Maritime does not have docking rights secured. We encourage SCICo and Curtin Maritime to enter into negotiations to allow Curtin Maritime the use of the landing facility. We note that Curtin Maritime has indicated that its ships are not as dependent upon the tides as other shippers. This flexibility creates the possibility for SCICo and Curtin Maritime to avoid congestion at the Pebbly Beach facility while allowing for opportunities that may be mutually beneficial.

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[60] *Harbor Bay Maritime* at 10, citing *Pacific Towboat and Salvage* at 484.

[61] *Harbor Bay Maritime* at 10, citing *Pacific Towboat and Salvage* at 484.

3.3. Conclusion

We grant the AFS application for a CPCN subject to the condition that AFS submit a full and detailed explanation of its affiliate transactions whenever it seeks a rate increase, including an explanation of SCICo's and AFS's other affiliates' finances as they relate to transactions with AFS, and/or a demonstration that a requested rate increase falls within the range of an approved independent index. We also grant, the Curtin Maritime CPCN application as it satisfies the Commission's standards for a CPCN and is consistent with Commission policy favoring competition. We recognize that Curtin Maritime will need to secure landing rights in order to use its CPCN.

4. Comments on Alternate Proposed Decision

The Alternate Proposed Decision of Commissioner Randolph in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. AFS, Curtin Maritime, and CFL timely filed Opening and Reply Comments on February 11 and February 16 respectively.

AFS's opening comments supports the APD in its granting of a CPCN to AFS. The balance of the comments takes issue with the language describing the level of cooperation provided by AFS and with the possibility to "game" the system in future proceedings. Additionally, AFS terms its arrangements with SCICO as not being in an affiliate relationship. While we understand there may be differences of opinion on how to describe the level of cooperation put forth by AFS, we decline to make any changes as this subjective description does not rise to an error or fact of law. Similarly, while the arrangement that AFS and SCICO may be better described as a strategic alliance or some other term, we decline to make any change to the idea of affiliate transactions. We consciously choose to

keep the idea of affiliate transactions because that is the model we will use when AFS applies for a rate increase. We have much experience with affiliate transactions in the energy, telecommunications, and water industries and will apply that experience to freight vessel service for Catalina Island.

The opening comments of Curtin Maritime seek three specific changes to the Alternate Proposed Decision. (1) the APD should direct that access to the facilities owned by the State and those dedicated to utility service be provided under equal terms and conditions for all maritime freight providers approved by the Commission; (2) the APD should make a new finding of fact recognizing that the State Lands Commission (SLC) has deferred execution of SCICO's lease for the submerged lands at the Pebbly Beach docking facility pending a decision from the Commission in this proceeding, and the Commission directs that any SLC leases to the Pebbly Beach docking facility must include all Commission-certificated service providers; and (3) the APD should make a new finding of fact that a failure of AFS/SCICo to provide access to the dock and upland utility warehouse facilities on equal terms and conditions to all Commission-certificated service providers is an exercise of market power by SCICo. Curtin Maritime fails to understand the bounds of this Commission's authority. We are obligated to look at a vessel applicant's financial and operational fitness. We must determine if CEQA work must be undertaken. We also look at whether the applicant's tariff rates are just and reasonable. Finally, we look to whether the application is consistent with and indeed furthers Commission policy. Notably absent from this review is any review of a private owner's dock and/or warehouse facilities. SCICo is not an applicant before this Commission nor is it regulated by this Commission. The three specific requests of Curtin Maritime go beyond the scope

of our authority in our regulation of vessel service. We therefore decline to make any of the changes suggested by Curtin Maritime.

CFL's opening comments covers a variety of topics. Notably, however, is that CFL also seeks the Commission to require SCICo to offer shared use of the Pebbly Beach Docking Facility. As noted in the prior paragraph, this Commission does not have the authority to issue orders to a non-regulated private owner of land. Some of the other issues that CFL raises do require clarification. CFL currently holds VCC-58. This decision does nothing to infringe upon that CPCN. Similar to Curtin Maritime, we encourage CFL and SCICo to enter into negotiations to use the landing facility. Again, we recognize that CFL will need to secure landing rights in order to continue using its CPCN. One last issue that requires clarification is CFL's request for a ZORF. Without commenting on the merits of that request, we find that it is outside of the scope of the combined proceedings. Should CFL wish to pursue a ZORF, it is encouraged to file an application.

The reply comments of AFS address the general issue that the status quo is maintained—in other words, a single provider of freight will serve Catalina Island as has been the case for over 40 years. The comments also address specific comments raised by other parties. AFS states that its costs are not difficult to comprehend. AFS cites the mainland and SCICo rents as clearly known. AFS goes on to say that it will make a full and detailed showing of all its affiliate transactions. The next set of specific comments deal with the SLC's role as distinct from this Commission's role. Additionally, AFS takes issue with Curtin Maritime's claim that SCICo's facilities have been dedicated to utility service. AFS states that SCICo has not dedicated any of its facilities (private land, ramp, and freight yard) to the public. AFS claims that any such taking of Pebbly Beach

for shared access amounts to eminent domain which is beyond the scope of this Commission's jurisdiction.

The reply comments of Curtin Maritime criticize AFS's attempt to modify the language in the Alternate Proposed Decision. Its other two issues focus upon AFS's level of cooperation when describing affiliate transactions. Curtin Maritime describes the efforts of AFS as an "unwillingness to be transparent." Related to the issue of affiliate transactions is the claim by Curtin that AFS's costs are uniquely difficult for the Commission to evaluate.

CFL's reply comments reiterate its proposal to open the Pebbly Beach docking facility to shared use. CFL also repeats its request for a ZORF which as noted above is outside the scope of the combined proceedings. CFL opposes all of AFS's proposed modifications. Finally, CFL questions the proposed Findings of Fact by Curtin Maritime as being outside the evidentiary record.

5. Assignment of Proceeding

Liane M. Randolph is the assigned Commissioner and Darwin E. Farrar is the assigned ALJ in this proceeding.

Findings of Fact

1. There currently exist a CPCN holder to provide carrier freight service to Santa Catalina Island.

2. The AFS application satisfies Commission requirements related to financial fitness.

3. AFS's and Curtin Maritime's applications were consolidated into the same proceeding on May 28, 2015.

4. Approximately 90 percent of freight delivery to the Island is brought to the Pebbly Beach freight facility, which is located in an industrial section of Avalon south-east of Avalon Bay.

5. The freight facility consists of a concrete docking facility (or, ramp) and a freight operations yard and warehouse owned by SCICo.

6. SCICo owns 11 percent of the remaining acreage on Santa Catalina Island, which includes virtually all of the useable coastline and potential docking points.

7. The Pebbly Beach facility is the only option available for delivering freight to the island without significant infrastructure investments.

8. For over 40 years, CFL, a vessel common carrier certified by the Commission to transport freight to and from Santa Catalina Island, has been the exclusive freight operator at Pebbly Beach pursuant to a lease from SCICo and a sublease from SCICo for use of the tidal waters and submerged lands approved by the State Lands Commission.

9. On January 15, 2014, SCICo announced that Catalina Tug & Barge Services (subsequently renamed Avalon Freight Services) would provide exclusive freight service at the SCICo freight facility at Pebbly Beach beginning April 1, 2016.

10. No information was presented in the proceeding about the proposed expansions of the vessel fleets by either applicant or about freight deliveries to non-dock locations on Santa Catalina Island that would suggests that further environmental review is required.

11. It can be seen with certainty that approval of the application will not have a significant adverse effect on the environment.

12. The record before us does not allows us to conclude that CEQA review is not necessary before either the AFS or Curtin Maritime attempts to expand their service plans.

13. AFS's showing of financial capability is sufficient to establish its financial fitness for the requested CPCN.

14. The financial information provided by Curtin Maritime establishes its financial fitness for the requested CPCN.

15. AFS possesses the operational fitness required to obtain a CPCN.

16. Curtin Maritime possesses the operational fitness required to obtain a CPCN.

17. The existing tariff rates for freight service to Santa Catalina Island are the Commission approved, market- based rates used by CFL.

18. Curtin Maritime's suggestion that it be allowed to operate in a zone of rate freedom is consistent with Commission policy favoring competition, and likely to lead to lower rates provided there is sufficient competition.

19. Because the City of Avalon is on an island it is difficult to compare and ascertain the reasonableness of its freight shipping costs of service.

20. AFS has been only arguably forthcoming about its affiliate relationships.

21. The complexity and nature of AFS' affiliate relationships complicate Commission tariff review of AFS costs and income.

22. The complexity created from AFS's affiliates make it possible for AFS (through its affiliates) to game the Commission's rate review process.

23. AFS's principals own and/or have control over business that they have obligated AFS to rely on, which appear to be outside the Commission's jurisdiction.

24. AFS has or may be saddled with costs (by its affiliates and owners), the reasonableness of which the Commission has limited ability to ascertain.

25. No party identifies an instance where our affiliate transaction rules have been extended to a vessel freight carrier.

26. AFS neither argues that our affiliate transaction rules are controlling nor says how they may be useful.

27. Granting a CPCN to an organization whose structure and affiliate relationships obfuscates whether the costs for goods and services received and/or provided is reasonable, requires a condition on that CPCN for additional reporting.

28. No party to this proceeding disputes that, as a general matter, Commission policy favors greater competition in certificating vessel services.

29. Claims that safety, reliability, and the need to ensure that basic services are provided will be compromised, argue against the Commission policy favoring competition.

30. Commission policy allows the granting of a CPCN to AFS with the condition that AFS fully explain its affiliate transactions. This report needs to identify and explain any increase costs imposed by SCICo.

31. Curtin Maritime's entry into the vessel freight shipping market at Santa Catalina Island will not adversely impact the public interest.

Conclusions of Law

1. The AFS application satisfies Commission requirements related to managerial fitness.

2. The AFS application satisfies Commission requirements related operational fitness.

3. The Commission should not require an applicant to operate unlawfully to accrue several years' worth of experience before granting a CPCN to continue the same operation.

4. Granting a CPCN to a vessel freight shipping company that complicates meaningful regulatory review of its costs and income requires a condition for additional reporting of those affiliate transactions.

5. Rates derived from costs and income that cannot be subjected to full and meaningful review cannot be deemed either just or reasonable which necessitates the additional reporting of affiliate transactions from AFS. This report should contain an identification and explanation of any increased costs imposed by SCICo.

6. The Curtin Maritime application satisfies Commission requirements related to financial fitness.

7. The Curtin Maritime application satisfies Commission requirements related to managerial fitness.

8. The Curtin Maritime application satisfies Commission requirements related operational fitness.

9. Commission policy favors competition where it will not lead to adverse public interest impacts.

10. The Commission has the authority under jurisdiction conferred upon it by the Constitution of the State of California and by the Public Utilities Code to make determinations about whether a proposal to provide vessel common carrier service is required by public convenience and necessity.

11. AFS is a Limited Liability Corporation (LLC) organized under the laws of the state of Delaware, formed specifically for the purposes for which it seeks a CPCN. AFS asserts that it is owned jointly and equally by Franco and Bombard.

12. The City Council is the unit of authority for establishing policy within the City of Avalon.

13. Catalina Freight holds a CPCN to transport basic general freight between the Port of Los Angeles and Santa Catalina Island, and it has been providing that service for over 40 years.

14. A California Environmental Quality Act review is not required at this time.

15. A California Environmental Quality Act review may be required if any party seeks to expand its service fleet.

16. CEQA review is not required at this time because it can be said with certainty that approval of the Curtin Maritime application will not have a significant adverse effect on the environment.

17. With regard to operational fitness, the Commission looks to the operational experience and history of the applicant's principals and other enterprises.

18. We are not inclined to judge operational fitness on the basis of ongoing contract negotiations where such negotiations are not untimely.

19. Our affiliate transaction rules generally relate to energy and telecommunications regulation, and do not address common freight vessel carrier regulations.

20. Granting a CPCN to an organization whose structure and affiliate relationships complicates whether the costs for goods and services received or provided is reasonable requires additional reporting of those affiliate transaction.

21. The Commission may impose conditions on any CPCN it grants.

22. Commission policy favors competition whenever to do so is not adverse to the public interest, even if such competition is adverse to carriers' interests.

23. We are unwilling to act in furtherance of greater competition where such competition is likely to result in carriers taking actions with the result that the safety and reliability of the freight operations will be compromised.

O R D E R

IT IS ORDERED that:

1. The Avalon Freight Services, LLC, (AFS) application for a certificate of public convenience and necessity authorizing service to transport freight by vessel on a scheduled basis between Port of Los Angeles, California on the one hand, and the Santa Catalina Island location of Avalon, on the other hand; and on a nonscheduled charter basis between Port of Los Angeles, California and Avalon, Two Harbors and all points on Santa Catalina Island, and between any points on Santa Catalina Island is granted with the condition that it report on its affiliate transactions. AFS shall make a full and detailed showing to allow this Commission to make a determination of what constitutes reasonable costs. This reporting of affiliate transactions shall be made whenever AFS seeks a rate increase. AFS shall identify those costs charged by SCICo as well as demonstrate the reasonableness of those costs.

2. A certificate of public convenience and necessity is granted to Curtin Maritime Corporation authorizing it to establish and operate scheduled vessel common carrier service transporting freight between the Port of Long Beach and all points on Santa Catalina Island, California, and between any points on Santa Catalina Island.

3. The freight rates for Avalon Freight Services, LLC (AFS), and Curtin Maritime Corporation (Curtin Maritime) are set at Catalina Freight Lines currently tariffed rates. Additionally, AFS and Curtin Maritime shall be allowed to establish a zone of rate freedom for the services it provides to Santa Catalina Island. The zone of rate freedom is capped at the current Catalina Freight Lines currently tariffed rates.

4. Applications (A.) 14-10-015 and A.15-01-005 are closed.

This order is effective today.

Dated _____, at San Francisco, California.