

**PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA****Consumer Protection and Safety Division**Agenda ID #7987  
**RESOLUTION TL-19094**  
November 6, 2008**RESOLUTION**

**RESOLUTION EXTENDING THE AUTHORITY GRANTED TO VESSEL  
COMMON CARRIERS TO ADJUST THEIR FARES AND RATES  
WITHOUT SPECIFIC APPROVAL OF THE COMMISSION.**

**SUMMARY**

This resolution extends for an additional year the authority granted originally by Resolution TL-19042 allowing vessel common carriers (VCCs) to adjust their fares and rates without specific Commission authorization. It also increases the authorized "zone of reasonableness" from 20% to 30%.

**BACKGROUND**

By Resolution TL-19042, dated June 9, 2004, we authorized VCCs for a 180-day period to file tariffs with fare and rate adjustments within a zone of reasonableness which had an upper limit of 15% above authorized fares and rates. We acted in response to the requests of VCCs who were seeking relief from rapidly rising fuel costs. We agreed that the approximately 20 licensed VCCs should have a convenient mechanism to quickly adjust their fares and rates to recover their increased fuel costs. Without this special authority any VCC wanting to increase its fares or rates would have to file a formal application with the Commission. The special authority was subsequently extended and expanded as follows:

- Resolution TL-19051, dated December 2, 2004 – One year extension.
- Resolution TL-19066, dated December 1, 2005 – One-year extension and zone of reasonableness expanded from 15% to 20%.
- Resolution TL-19080, dated November 30, 2006 – One year extension.
- Resolution TL-19092, dated November 16, 2007 – One year extension.

The authority is set to expire November 16, 2008.

The Consumer Protection and Safety Division (CPSD) received a letter dated May 27, 2008, from Attorney Daniel F. Reidy on behalf of Blue & Gold Fleet, L.P., Catalina Freight Line, and Harbor Bay Maritime, Inc. requesting to expand the zone of reasonableness to at least 30%. Reidy added Star & Crescent Boat Company to the request in a letter dated July 17, 2008. Attorney Mark E. Hegarty submitted a letter on August 21, 2008, on behalf of Catalina Classic Cruises, Inc. in support of Reidy's request. While the parties ask for an adjustment in the zone of reasonableness as early as possible, at this point it is appropriate to consider the request while we examine whether the special authority should be further extended.

Reidy and Hegarty believe an extension and expansion of the zone of reasonableness to at least 30% is in order due to the increased volatility of the fuel market. They state that VCCs continue to need flexibility in setting their fares and rates to respond to sudden fuel price increases. The attorneys provide cost figures to support their requests, some of which are described below.<sup>1</sup>

Blue & Gold Fleet, L.P.

This carrier operates passenger vessel services between San Francisco and Tiburon, Sausalito, Angel Island, and Alameda/ Oakland. On June 9, 2004, the date Resolution TL-19042 was issued first granting the special authority, Blue & Gold Fleet was paying \$1.32 per gallon for its fuel. By 2007 the price per gallon had jumped to \$2.56 in July and \$2.36 in August. On May 7, 2008, the carrier paid \$3.87 per gallon, a 64% increase over the August 2007 price.

Catalina Freight Line

Catalina Freight Line transports freight between its terminal in Wilmington and Santa Catalina Island. Shortly before the Commission initially granted the special authority in June 2004, the carrier was paying \$1.27 per gallon. On December 1, 2005, when the Commission extended the authority for another year and increased the zone from 15% to 20%, the price was \$1.75 per gallon. The price in August 2007

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<sup>1</sup> Reidy refers to August 2007 prices as a benchmark because he cited them as the most recently available prices in his September 25, 2007, request to extend the special authority for another year.

averaged \$2.28 per gallon, and on May 7, 2008, it was at \$3.67 per gallon, 61% above the August 2007 level.

Harbor Bay Maritime, Inc.

Harbor Bay Maritime operates the Alameda Harbor Bay Ferry Service carrying passengers between Bay Farm Island in Alameda and San Francisco. It purchases fuel delivered by truck to its overnight berth at Pier 48 in San Francisco. Its average fuel price in 2004 was \$1.64 per gallon. For the first eight months of 2007 the price averaged \$2.62 per gallon. In April 2008 the carrier paid an average of \$4.15 per gallon.

Star & Crescent Boat Company

This carrier conducts a passenger ferry service on San Diego Bay between Downtown San Diego and Coronado. It paid per gallon prices of \$1.28 in June 2004, \$2.00 in December 2005, and \$2.42 in December 2006. In June 2008 it was paying \$4.00 per gallon, 71% above the August 2007 price of \$2.34 per gallon.

Catalina Classic Cruises

Catalina Classic Cruises operates a passenger vessel service to Santa Catalina Island from San Pedro and Long Beach. Its primary business is providing nonscheduled service to campers, such as YMCA groups. It paid an average of \$2.17 per gallon in 2006 and \$2.57 in 2007. In June 2008 it paid \$4.40 per gallon.

Reidy requests that carriers be allowed to round increased fares up to the nearest 50 cents rather than five cents as currently authorized. He explains that in some cases crews have to make change on a gangway or a vessel portal, and an adjustment of five cents is not helpful.

**DISCUSSION**

The problem of fuel price volatility addressed in our previous resolutions has increased since we last extended the zone of reasonableness. Using actual examples of carrier fuel costs, Reidy and Hegarty show how their clients have been impacted. CPSD advises that one of the relevant diesel fuel price

benchmarks<sup>2</sup> published by the U.S. Energy Information Administration indicates an average price of \$2.71 per gallon in November 2007 (when we last extended the special authority). The price subsequently rose during the first five months of 2008, reaching a peak of \$4.12. The price dropped significantly in late July and August. On September 15, 2008, it was \$2.78 per gallon.

While the price of diesel fuel may have returned close to its November 2007 level, the 2008 experience demonstrates the very problem we have been trying to address – wild, unpredictable swings in fuel prices. Any number of world events can cause a spike in prices. Political or military conflicts or natural disasters (such as recent Hurricanes Gustav and Ike) can suddenly restrict the supply of crude oil or refinery capacity and send energy prices spiraling upward.

We acknowledged in previous resolutions that granting blanket relief to an entire industry may not be an optimum form of rate regulation. It is preferable to have each carrier seek its own relief by documenting its revenues and expenses in a formal application for a rate increase. We noted, however, that even that process lacks precision because fuel costs (a major component of VCC operating costs) can fluctuate so greatly. Blanket relief has the advantage that it can be modified or cancelled with relative ease to respond to changes in fuel prices.

VCCs provide a valuable public service. Some communities (Santa Catalina Island in particular) would suffer greatly if dependable VCC service were not available. We therefore wish to ensure these carriers' continued economic viability. The special authority will be extended for another year. Reidy's and Hegarty's requests to expand the zone of reasonableness will also be granted. While they ask for a zone of "at least 30%," we believe that 30% is adequate. Actually, we would prefer not to broaden the zone that much. However, we must face the realities of the fuel market and the legitimate need of VCCs to quickly recover increases in fuel prices, some of which occur virtually overnight. Most VCCs are well established companies that have served their customers for many years. To our knowledge, they have acted responsibly in the past under the special authority, and we expect they will continue to do so in the future. In the event there are reported abuses, we will not hesitate to act swiftly to deal with them.

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<sup>2</sup> Spot market price at Los Angeles for low-sulfur No. 2 diesel fuel.

We will not, though, grant the request to allow carriers to round increased fares up to the nearest 50 cents. We denied a similar request in Resolution TL-19066. Our concern was the impact rounding would have on VCC fares that are of relatively low amounts.<sup>3</sup> Rounding up 35 or 40 cents on these fares can have a significant effect percentage-wise. In Resolution TL-19066 we said it was not reasonable in these cases to ask the public to pay a considerably higher fare just so carriers can gain asserted efficiencies in fare collection. We left it up to each carrier to decide whether it wished to settle for a rate increase less than the full percentage allowed under the special authority to achieve possible efficiencies in collection. That remains our position.

Two VCCs, Catalina Channel Express, Inc. and Harbor Breeze Corp., were previously excluded from the special authority because each holds its own zone of rate freedom that allows fare adjustments of up to 20% above base fares.<sup>4</sup> Since we are extending the zone of reasonableness to 30%, it is appropriate to allow these two carriers an additional 10% of fare flexibility so they will be in an equal position with other VCCs.

### **COMMENTS ON DRAFT RESOLUTION**

To comply with Pub. Util. Code § 311(g), CPSD commenced publication of a Daily Calendar notice on October 6, 2008, that apprised the public of the availability of this draft resolution and solicited submission of comments by October 27, 2008. A copy of the draft resolution was mailed to Reidy and Hegarty, and to every VCC that holds a certificate from the Commission. Comments were filed on \_\_\_\_\_.

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<sup>3</sup> Examples are Star & Crescent Boat Company's base fare of \$3, Balboa Island Ferry Company's base fares of \$1 for pedestrians and \$2 for vehicle and driver, and reduced fares for children and seniors published by Blue & Gold Fleet and Harbor Bay Maritime.

<sup>4</sup> Harbor Breeze Corp.'s ZORF was authorized by D.07-06-026. D.06-12-022 authorized Catalina Channel Express, Inc. to expand its existing ZORF from 15% to 20%.

**FINDINGS**

1. In response to significant increases in fuel prices, the Commission by Resolution TL-19042 granted VCCs authority for 180 days to adjust their fares and rates within a “zone of rate reasonableness” which had an upper limit of 15% above authorized fares and rates.
2. The authority granted by Resolution TL-19042 has been extended several times, and the zone of reasonableness was expanded from 15% to 20% by Resolution TL-19066.
3. The special authority, last extended by Resolution TL-19092, is scheduled to expire November 16, 2008.
4. High and volatile fuel prices continue to significantly impact the VCC industry.
5. The authority to adjust fares and rates should be further extended for one year from the effective date of this resolution.
6. The zone of reasonableness should be expanded from 20% to 30%.
7. Carriers should be allowed to continue rounding fares and rates increased under this authority to the next five cents.
8. Catalina Channel Express, Inc. and Harbor Breeze Corp. should be allowed to participate in this special authority to the extent they may adjust their fares and rates up to 10% above the fares and rates permitted under their existing zones of rate freedom.
9. Because VCCs may need to respond promptly to changes in fuel costs, there is good cause to authorize them to make tariff filings on one day's notice.
10. The tariff filings authorized by the following order are reasonable and justified.

**THEREFORE, IT IS ORDERED** that:

1. Except as noted below, the special authority permitting vessel common carriers (VCCs) to file tariffs with fares and rates that are within a “zone of

reasonableness” is further extended for one year and is revised to allow fare and rate adjustments of up to 30% above currently authorized base fares and rates.

2. Catalina Channel Express, Inc. and Harbor Breeze Corp. are authorized to adjust their fares and rates up to 10% above the fares and rates permitted under their zones of rate freedom.
3. Tariff filings made pursuant to this order may be made effective upon one day’s notice (one day after filing with the Commission).
4. VCCs shall be allowed to exercise the action permitted under this resolution by making tariff filings that show a percentage surcharge on any or all of their tariff fares and rates within the range authorized.
5. Fares and rates increased under this authority may be rounded up to the next five cents.
6. Tariff filings authorized by this resolution shall expire one year after the effective date of this order absent further order by this Commission.

7. The Executive Director shall cause a copy of this resolution to be served on every VCC holding a certificate from the Commission and every other party on the service list to this resolution.

This resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed, and adopted by the Commission at its regularly scheduled meeting on \_\_\_\_\_.  
The following Commissioners voted favorably thereon:

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PAUL CLANON  
Executive Director

**PUBLIC UTILITIES COMMISSION**

505 VAN NESS AVENUE  
SAN FRANCISCO, CA 94102-3298



October 6, 2008

TO: PARTIES THAT MAY HAVE AN INTEREST IN DRAFT RESOLUTION TL-19094 EXTENDING THE AUTHORITY GRANTED TO VESSEL COMMON CARRIERS TO ADJUST THEIR FARES AND RATES WITHOUT SPECIFIC COMMISSION APPROVAL.

Enclosed is *draft* Resolution TL-19094 of the Consumer Protection and Safety Division (CPSD). It will be on the November 6, 2008, Commission meeting agenda. The Commission may then vote on this resolution or it may postpone a vote until later.

When the Commission votes on the resolution, it may adopt all or part of it as written, amend or modify it, or set it aside and prepare a different resolution. Only when the Commission acts does the resolution become binding on the parties.

Interested parties *may* submit comments on the draft resolution. An original and two copies of the comments, with certificate of service, should be submitted to:

Paul Wuerstle, Manager  
CPSD - Transportation Enforcement Branch  
Public Utilities Commission  
505 Van Ness Ave., 2<sup>nd</sup> Floor  
San Francisco, CA 94102

CPSD must *receive* comments by October 27, 2008. Parties must serve a copy of their comments on all persons on the Service List attached to the draft resolution on the same date that comments are submitted to CPSD.

Comments shall be limited to five pages in length. They shall focus on factual, legal or technical errors in the proposed resolution.

Replies to comments may be submitted within five days after comments are submitted and shall be limited to identifying misrepresentations of law or fact contained in the comments of other parties. Replies shall not exceed five pages in length and shall be submitted and served in the same manner as comments.

Very truly yours,

/s/

PAUL WUERSTLE, Manager  
Transportation Enforcement Branch  
Consumer Protection and Safety Division

SERVICE LIST

Parties making comments to draft Resolution TL-19094 of the Consumer Protection and Safety Division must serve a copy of their comments to all of the parties on this Service List on the same date that the comments are submitted to the Division.

Daniel F. Reidy Attorney at Law 3701 Sacramento Street #386 San Francisco, CA 94118-1705	Ron Hoffman, CEO Sea Planes Incorporated 13737 Fiji Way, Suite C2 Marina Del Rey, CA 90202	H.S. Beek, President Balboa Island Ferry Company, Inc. 410 South Bay Front Balboa Island, CA 92662
Catalina Passenger Service, Inc. 400 Main Street Balboa, CA 92661	Tom Jankovich San Pedro Marine P.O. Box 670 San Pedro, CA 90733	Karen D. Spencer, Controller San Diego Harbor Ferry P.O. Box 120751 San Diego, CA 92112
Stephen K. Brimhall, Pres. Harbor Bay Maritime 1141 Harbor Bay Parkway Alameda, CA 94501	Ron Duckhorn, President Blue and Gold Fleet, L.P. Pier 41 Marine Terminal San Francisco, CA 94133	Cheryl Allison Island Boat Service P.O. Box 2375 Avalon, CA 90704
Gregory E. Bombard, V.P. Catalina Express Berth 95 San Pedro, CA 90731	So. Cal. Ship Services 971 S. Seaside Ave. Terminal Island, CA 90731	Anne Marie H. Pastoral Catalina Freight Line Berth 184 Wilmington, CA 90744
Jeffrey Wayne Stickler, CEO Island Enterprises, Inc. 4101 Long Beach Blvd. Long Beach, CA 90807	Thomas A. Nielsen, President Catalina Classic Cruises, Inc. 2385 Shelter Island Drive San Diego, CA 92106	Ted Griffith Sr., President Pacific Maritime Freight, Inc. P.O. Box 12787 San Diego, CA 92112
Donn S. Dill, President Catalina Explorer 517 Calle De Soto San Clemente, CA 92672	Mary McMillan Westar Marine Services Pier 50, Shed C San Francisco, CA 94107	Steven A. Kofahl, Pres. Pacific Adventure Cruises, Inc. 23444 Gilmore Street West Hills, CA 91307
Thomas C. Escher, Pres. Red and White Ferries, Inc. Pier 43 ½, The Embarcadero San Francisco, CA 94113	Hornblower Yachts Pier 3, Ferryboat Santa Rosa San Francisco, CA 94111	Milton McDonough, Pres. Angel Island-Tiburon Ferry, Inc. P.O. Box 1231 Tiburon, CA 94920
Dan Salas, CEO Harbor Breeze Corp. 235 Broadway, Suite 610 Long Beach, CA 90802	Mark E. Hegarty Attorney at Law 419 Main St., Suite 201 Placerville, CA 95667	