

Decision \_\_\_\_\_

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Application of Sea Planes, Incorporated (VCC-85) for approval of the expansion of its Certificate of Public Convenience and Necessity to include non-scheduled service to and from all navigable harbors and coves on Catalina Island to and from Marina Del Rey, Avalon and Two Harbors, all of which points are either along existing authorized routes or within a mile or two.

Application 05-06-026  
(Filed June 9, 2005)

**O P I N I O N****1. Summary**

This decision grants the application of Sea Planes, Incorporated (Sea Planes) to amend its certificate of public convenience and necessity (CPCN) by adding authority to include non-scheduled service to and from all navigable harbors and coves on Santa Catalina Island (Catalina) to and from Marina del Rey on the mainland and the City of Avalon (Avalon) and the Two Harbors area (Two Harbors) on Catalina. A protest by another vessel operator has been withdrawn. Application (A.) 05-06-026 is closed.

**2. Background**

Sea Planes has authority (VCC 85) to operate scheduled passenger vessel service between Marina del Rey on the mainland and Avalon and Two Harbors on Catalina. This includes an intra-island service between Avalon and Two Harbors. It is the only carrier authorized to operate such a scheduled passenger service from Marina del Rey, serving a large geographical area on the

west side of Los Angeles, Hollywood and all points north. The service was authorized in Decision (D.) 01-09-042 and D.04-08-034.

In this application, Sea Planes seeks to expand its service to include non-scheduled service to and from all navigable harbors and coves on Catalina to and from Marina del Rey, Avalon and Two Harbors. All of these points are either along or within a mile or two of Sea Planes' existing routes. Sea Planes explains:

Nearly all of these points are leased to yacht clubs, camps and other organizations for their private use. These organizations maintain facilities such as clubhouses, camping bungalows, guesthouses, boat moorings and picnic areas at these points. Many of them have requested that we provide them with a non-scheduled high-speed passenger ferry service from Marina del Rey to their facility. (Application, at 1.)

Sea Planes service between Marina del Rey and Avalon was authorized in D.01-09-042, and the carrier began service in August 2003. In D.04-08-034, the Commission granted Sea Planes' application to serve Two Harbors as well as Avalon, noting that the Two Harbors area was located along Sea Planes' existing route. Two Harbors service began on August 20, 2004.

In 2004, Sea Planes was operating the Grey Lady II, a 149-passenger, 106-foot catamaran passenger ferry that was on lease. Because of its size, this vessel was not able to serve areas of Catalina that did not have a permanent ferry dock. Since then, Sea Planes states, it has decided not to purchase the Grey Lady II and instead authorized construction of a \$3.6 million vessel, the "Marina Flyer," an 85-foot 149-passenger catamaran ferry that, because of its smaller length and multiple loading capabilities will permit it to dock and off-load passengers and luggage at the smaller docks and floats that exist at many points on Catalina. Before delivery of the Marina Flyer, Sea Planes leased

a high-speed, 149-passenger hydrofoil ferry that the company plans to continue under lease as a back-up vessel during the summer months.

### **3. Public Interest**

Under Pub. Util. Code § 1007, no person or corporation is permitted to operate a vessel for transportation of persons or property for compensation between points in this state without first having obtained from the Commission a certificate declaring that public convenience and necessity require such service.

Sea Planes states that public convenience and necessity will be served by granting it the authority to provide non-scheduled service to and from all points on Catalina. First, it argues, such non-scheduled service already is authorized for other scheduled Catalina passenger ferry operators. Second, only one other carrier, Pacific Adventure Tours (Pacific), operates non-scheduled on-call service to and from Marina del Rey and various Catalina locations, but it does so with a smaller (56-passenger) low-speed vessel. According to Sea Planes, it will offer high-speed service to larger groups at a higher price than Pacific, which will continue to serve cost-conscious smaller groups that accept low-speed service.

Sea Planes asserts that its new high-speed ferry is capable of safely embarking and disembarking passengers at all points on Catalina and that there will be no structural impediment to the proposed expanded service points. The carrier adds that it now is at a competitive disadvantage with other ferry operators, since it must refer passengers to competitors in Long Beach and San Pedro when the passengers seek Catalina landings other than Avalon and Two Harbors. Finally, Sea Planes asserts that, if authorized, its new service will appeal to an entirely new geographic market—those who live in West Los Angeles, the San Fernando Valley, Ventura and Santa Barbara.

#### **4. Protest Withdrawn**

The Sea Planes application was timely protested by Pacific, which sought hearings to further investigate whether the requested new service is already available from other carriers (including Pacific) and whether Sea Planes is financially and operationally ready to serve other points on Catalina. Following Administrative Law Judge (ALJ) Rulings requiring further information from the parties, Pacific and Sea Planes met and conferred and Pacific, on November 2, 2005, withdrew its protest. The application is now uncontested.

#### **5. Discussion**

Marina del Rey is located in the Los Angeles metropolitan area on the Pacific coast between Santa Monica and the Palos Verdes peninsula. It is a short distance from the Los Angeles International Airport (LAX), which can be reached in a few minutes' driving time. Catalina is a popular summer resort area.

Sea Planes' proposed expansion of service to points on Catalina other than Avalon and the Two Harbors area would make Catalina more accessible to residents of the greater Los Angeles area. In view of the immensity of the Southern California market and the limited vessel service from Marina del Rey, we find that Sea Planes' proposed new vessel services would fulfill a public need. Accordingly, we find that public convenience and necessity will be served by the new service proposed in this application.

#### **6. Operational Fitness**

Sea Planes has operated vessel service to and from Catalina since August 2003, and its application includes a copy of the purchase agreement with Kitsap Catamarans, LLC, for the construction of a new 149-passenger high-speed catamaran. The vessel is being built to Sea Planes specifications and will meet all

applicable Coast Guard and other standards. We find that Sea Planes is operationally fit to operate the proposed vessel service.

## **7. Financial Fitness**

Sea Planes asserts that it is financially fit to perform the service applied for in this application, and it expects that this service will be profitable. Sea Planes is currently operating its scheduled services from Marina del Rey, Two Harbors and Avalon and has chartered vessels until the arrival of its new vessel. The company states that financing of the new vessel is in place through additional investment by equity holders, a Small Business Administration loan and a loan from a Santa Barbara bank.

Sea Planes states that the frequency of its proposed non-scheduled service will depend upon customer demand, but it adds that inquiries about such service have been sufficient to justify this application. Rates will be determined pursuant to the size of the group that contracts to have the vessel take them to or pick them up at one of the Catalina points. The rates will be consistent with the rates set forth in Sea Planes' tariff on file with the Commission.

Sea Planes has made a sufficient showing that it has the ability to generate capital adequate to operate this proposed service. Financial fitness was earlier demonstrated in D.04-08-034. Under these circumstances, we grant Sea Planes' request to waive the requirement of Rule 21 of the Rules of Practice and Procedure with respect to a financial showing.

## **8. Conclusion**

We will approve Sea Planes' request for authority to operate the service proposed in this application, subject to the conditions set forth in our Order.

## **9. Uncontested Matter**

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Pub. Util. Code § 311(g)(2), the otherwise applicable 30-day period for public review and comment is being waived.

## **10. Categorization and Need for Hearings**

In Resolution ALJ 176-3155 dated June 30, 2005, the Commission preliminarily categorized this proceeding as ratesetting and preliminarily determined that hearings were not necessary. Based on the record, the Commission concludes that a public hearing is not necessary; thus, the preliminary determinations in ALJ 176-3155 will not be altered.

## **11. Assignment of Proceeding**

John Bohn is the Assigned Commissioner and Glen Walker is the assigned ALJ for this proceeding.

## **Findings of Fact**

1. Sea Planes has operating authority (VCC 85) to operate vessel common carrier service between Marina del Rey on the mainland and Avalon and Two Harbors on Catalina.
2. There is a public need for the expansion of service proposed by Sea Planes in this application.
3. Sea Planes is operationally fit to provide the service.
4. Sea Planes is financially fit to provide the service.
5. A protest to the application has been withdrawn.

## **Conclusions of Law**

1. Sea Planes' application to amend its certificate of public convenience and necessity as set forth in the application should be approved, subject to terms and conditions set forth in the Order.

2. Application 05-06-026 should be closed.

## O R D E R

### IT IS ORDERED that:

1. The certificate of public convenience and necessity (CPCN) of Sea Planes, Inc. (Applicant), a corporation, authorizing it to operate as a vessel common carrier (VCC), as defined in Pub. Util. Code § 238, to transport persons and their baggage, between the points set forth in Appendix VCC-85, is amended by replacing Original Page 1 with First Revised Page 1 and First Revised Page 2 with Second Revised Page 2, subject to the conditions contained in the following paragraphs.

2. Applicant shall:

- a. File a written acceptance of this amendment to its certificate within 30 days after this order is effective.
- b. Comply with General Orders Series 87, 104, and 111, and 117.
- c. Maintain accounting records in conformity with the Uniform System of Accounts.
- d. Remit to the Commission the Transportation Reimbursement Fee required by Pub. Util. Code § 423 when notified by mail to do so.
- e. Comply with all lawful local land use ordinances and regulations, and all lawful ordinances and regulations governing the use of harbors and docking facilities.

3. Applicant shall comply with all the rules, regulations, and requirements of the United States Coast Guard, including applicable Vessel Traffic System requirements, in the operation of the service authorized in Ordering Paragraph 1.

4. The amendment of Applicant's CPCN to operate as a Vessel Common Carrier granted herein will expire unless exercised within two years of the date

of this decision, and does not alter the terms and conditions under which Applicant's other services must be established.

5. The Application is granted as set forth above.
6. Application 05-06-026 is closed.

This order is effective today.

Dated \_\_\_\_\_, at San Francisco, California.

Appendix VCC-85

Sea Planes, Inc.  
(a corporation)

First Revised Page 1  
Cancels Original Page 1

SECTION I. GENERAL AUTHORIZATIONS, RESTRICTIONS, LIMITATIONS,  
AND SPECIFICATIONS.

Sea Planes, Inc., a corporation, by the certificate of public convenience and necessity granted by the decision noted in the foot of the margin, is authorized to conduct scheduled and \*non-scheduled common carrier service by vessel, for the transportation of passengers and their baggage, between the points described in Section II, subject to the following conditions:

- a. No vessel shall be operated unless it has met all applicable safety requirements, including those of the United States Coast Guard.
- b. The tariffs and timetables shall show the conditions under which each authorized scheduled and \*non-scheduled service will be rendered.
- c. Scheduled service on Routes 1 and 2 described in Section II may be combined.

Appendix VCC-85

Sea Planes, Inc.  
(a corporation)

Second Revised Page 2  
Cancels First Revised Page 2

SECTION II. SERVICE POINTS.

Scheduled Service

- (1) Between Marina del Rey, on the one hand, and Avalon and Two Harbors on Santa Catalina Island, on the other hand.
- (2) Between Avalon and Two Harbors on Santa Catalina Island.

\* Non-Scheduled Service

Between Marina del Rey, Avalon, and Two Harbors, on the one hand, and all navigable harbors and coves on Santa Catalina Island, on the other hand.