

Decision 03-05-054 May 22, 2003

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Catalina Classic Cruises, Inc., a California corporation, for an extension of its certificate of public convenience and necessity to authorize non-scheduled vessel common carrier service between points at and within three miles offshore of Avalon, Santa Catalina Island and request for interim operating authority to provide the service on or before June 1, 2003.

Application 03-03-036
(Filed March 25, 2003)

O P I N I O N

Summary

Catalina Classic Cruises, Inc. is granted an extension of its certificate of public convenience and necessity to permit it to provide ship to shore and return service to passengers of Royal Caribbean Cruises, Ltd. at Avalon, Santa Catalina Island.

Procedural History

A. Assignment of Proceeding

Catalina Classic Cruises, Inc (CCC) filed this application on March 25, 2003. It appeared on the Commission's Daily Calendar on March 27, 2003. A Protest was filed by Island Navigation, Inc. (INI) on April 28, 2003. INI also filed a response on the same date. CCC responded to the Protest and Response on May 2, 2003.

This matter was originally assigned to Examiner Clark. On May 9, 2003 it was reassigned to Commissioner Michael R. Peevey and Administrative Law Judge Sheldon Rosenthal.

B. Categorization

In Resolution ALJ 176-3110, dated April 3, 2003, this matter was originally categorized as a ratemaking matter and it was preliminarily determined that a hearing was not necessary. Those designations are approved.

C. Background

CCC is a vessel common carrier authorized to transport passengers and their baggage on scheduled service between Long Beach or San Pedro, on the one hand, and Avalon, Santa Catalina Island, on the other hand. It also provides nonscheduled service between Long Beach or San Pedro and points on Santa Catalina Island. Applicant operates two 750-passenger vessels.

Royal Caribbean Cruises, Ltd (RCCL) operates cruise ships that sail between Los Angeles and Mexico and stop at Avalon. The ships of RCCL are too large to berth at Avalon. Smaller vessels have been used to ferry passengers from the ship to the shore. RCCL desires to utilize the large ships of CCC so that this operation can be done more expeditiously, giving their passengers more time to explore Avalon and the rest of Santa Catalina Island. CCC seeks authority to provide this service on an on-call basis. It estimates that the service would be needed every week. The two 750-passenger vessels would be devoted to this service when needed by RCCL. CCC has the expertise and financial ability to perform this service.

INI is a vessel common carrier operating small boats at Avalon. It asserts an exclusive contract with the City of Avalon to provide shore boat taxi service "in Avalon Bay and the City Facilities." It does not dispute the authority

of the Commission to grant this application, but seeks a condition that the service be provided with vessels of at least 500-passenger capacity, thereby alleviating INI's business concern. CCC is unwilling to stipulate to this limitation. CCC posits a situation where one of its large vessels is unavailable due to maintenance. CCC suggests a condition that would prohibit it from operating wholly within Avalon Bay, or operating any service that is subject to the exclusive contract between INI and the City of Avalon.

The City of Avalon urges granting of the CCC application. It indicates that the passengers from RCCL ships are important to the economy of Avalon. Both CCC and the City of Avalon ask that this authority be granted by June 1, 2003.

D. Discussion

It appears that the primary concern of INI is that CCC not disrupt its business within the confines of Avalon Bay. This worry is alleviated by a condition suggested by CCC. We shall adopt it. The other matters raised in INI's Protest and Response were adequately satisfied in the Reply of CCC dated May 2, 2003. A hearing is not necessary. We call attention to Rule 44.4 of our Rules of Practice and Procedure that states,

"The filing of a protest does not insure that an evidentiary hearing will be held."

Comments on Draft Decision

Pursuant to Rule 77.7(f)(9), the Commission may determine on its own motion, that public necessity requires reduction or waiver of the 30-day period for public review and comment:

"'Public necessity' refers to circumstances in which the public interest in the Commission adopting a decision before

expiration of the 30-day review and comment period clearly outweighs the public interest in having the full 30-day period for review and comment. 'Public necessity' includes, without limitation, circumstances where failure to adopt a decision before expiration of the 30-day review and comment period would place the Commission or a Commission regulatee in violation of applicable law, or where such failure would cause significant harm to public health or welfare. When acting pursuant to this subsection, the Commission will provide such reduced period for public review and comment as is consistent with the public necessity requiring reduction or waiver."

Findings of Fact

1. CCC is a vessel common carrier providing passenger service to the City of Avalon.
2. CCC seeks nonscheduled authority to provide service between points at and within three miles offshore of Avalon so as to transport passengers from cruise vessels of RCCL to and from Avalon.
3. RCCL's cruise vessels are too large to dock at Avalon.
4. Use of these CCC 750 passenger vessels will expedite transfer of passengers from RCCL's vessel to and from Avalon.
5. The City of Avalon supports this application.
6. The application is protested by INI, which operates ship-to-shore service with smaller vessels than would CCC.
7. CCC agrees to a condition in any authority granted that states:

"Water taxi short boat service shall not be provided between vessels or between vessels and short points wholly within Avalon Bay nor shall service be provided that is subject to the currently effective exclusive water taxi franchise agreement between the City of Avalon and Island Navigation, Inc., doing business as Catalina Island Water Transportation Co."

8. Avalon and CCC ask that this authority be expedited and granted by June 1, 2003.

Conclusions of Law

1. Public convenience and necessity require the grant of this application.
2. It is unreasonable to restrict CCC's service to vessels of over 500-passenger since either of the larger vessels expected to be used by CCC may be unavailable because of maintenance.
3. The application should be conditioned as proposed by CCC.
4. A hearing is not necessary.
5. Here, we find that public necessity requires that we waive the public review and comment period, so that CCC may provide service by June 1, 2003.

O R D E R

IT IS ORDERED that:

1. The certificate of public convenience and necessity (CPCN) granted to Catalina Classic Cruises, 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 and over the routes set forth in Appendix VCC-86 of Decision 02-10-037, is amended by replacing Original Page 3 with First Revised Page 3, subject to the conditions contained in the following paragraphs.
2. Applicant shall:
 - a. File a written acceptance of this certificate within 30 days after this order is effective.
 - b. Establish the authorized service and file tariffs and timetables within 120 days after this order is effective.

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- c. File tariffs on or after the effective date of this order. They shall become effective 10 days or more after the effective date of this order, provided that the Commission and the public are given not less than 10 days' notice.
 - d. Comply with General Orders Series 87, 104, 111, and 117.
 - e. Maintain accounting records in conformity with the Uniform Systems of Accounts.
 - f. Remit to the Commission the Transportation Reimbursement Fee required by Pub. Util. Code § 423 when notified by mail to do so.
3. Applicant shall comply with the rules, regulations, and requirements of the United States Coast Guard.
4. Applicant is authorized to begin operations on the date that the Consumer Protection and Safety Division mails a notice to Applicant that its evidence of insurance and other documents required by Ordering Paragraph 2 have been filed with the Commission.
5. The CPCN to operate as VCC-86, granted herein, expires unless exercised within 120 days after the effective date of this order.
6. The certificate granted herein is conditioned as follows:
- “Water taxi short boat service shall not be provided between vessels or between vessels and short points wholly within Avalon Bay nor shall service be provided that is subject to the currently effective exclusive water taxi franchise agreement between the City of Avalon and Island Navigation, Inc., doing business as Catalina Island Water Transportation Co.”

7. The Application is granted as set forth above.
8. This proceeding is closed.

This order is effective today.

Dated May 22, 2003, at San Francisco, California.

MICHAEL R. PEEVEY
President
CARL W. WOOD
LORETTA M. LYNCH
GEOFFREY F. BROWN
SUSAN P. KENNEDY
Commissioners

