Decision 07-01-006 January 11, 2007

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Catalina Freight Line, Inc., a California Corporation (VCC-58), for Authority to Add Routes and Types of Service on Its Vessel Common Carrier Service Transporting Freight Between Los Angeles Harbor and Santa Catalina Island, California, and for Rate Relief to Amend Its Tariff.	Application 06-03-007 (Filed March 6, 2006)

OPINION GRANTING EXTENDED AUTHORITY

1. Summary

We grant the application of Catalina Freight Line, Inc. (Catalina Freight), a vessel common carrier authorized to transport freight between Los Angeles Harbor and points on Santa Catalina Island (Catalina), to (1) add same-day service with a new 74-foot landing craft, with accompanying rate revisions; (2) serve all of the camps and beaches that surround Catalina, in addition to its current service at Pebbly Beach and Two Harbors; and (3) increase the minimum shipment rate for regular freight delivery from $6 for shipments of 1 to 67 pounds to $11 for shipments of 1 to 100 pounds. We grant the request for a 20% Zone of Rate Freedom (ZORF) rate reduction for the additional services, but we caution applicant that any such rate reduction must be published in its tariff and made available to all customers on an equal basis. This proceeding is closed.

2. Background

Catalina Freight has conducted freight transportation service between Los Angeles Harbor and points on Catalina for 40 years. The company, with 22 full-time employees, transports fuel, foodstuffs, other consumable goods, furniture, machinery and bulk building materials. Applicant does not transport people as passengers on its service.

For its existing service, Catalina Freight operates two tugboats and two barges. The company operates the service Monday through Friday and half a day on Saturday. The current service provides for overnight delivery for most loads delivered by 3:00 p.m., at the company's terminal and berth at Wilmington in Los Angeles Harbor.

3. Procedural History

Catalina Freight filed its application on March 6, 2006. On April 10, 2006, the application was protested by Pacific Maritime Freight, Inc., doing business as Pacific Tug. Pacific Tug objected primarily to Catalina Freight's proposed on-call freight service to the beaches and camps on Catalina. A prehearing conference was conducted on May 24, 2006, followed by a Scoping Memo and Ruling of Assigned Commissioner Bohn. The Scoping Memo noted that both the applicant and the protestant urged that the proceeding be decided on briefs, since the parties differed primarily on questions of policy rather than disputed issues of fact. Accordingly, a briefing schedule was established, and final briefs were filed on July 7, 2006, when the matter was deemed submitted for Commission consideration.

4. Proposed New Services

In its application, Catalina Freight proposes to add the following new services and rates.

4.1 Same-Day Service

Applicant proposes to add as an alternative a regularly scheduled same-day service that would leave Wilmington before 8:00 a.m. and arrive in Avalon by 11:00 a.m. This additional service would use a 74-foot landing craft with crane. The new vessel is to be purchased through the company's subsidiary, Seaway Company of Catalina, and leased to Catalina Freight. The vessel, known as an LCM-8, is a former military craft powered by two 400-hp D-60 diesel engines and is capable of landing on a beach and retracting under its own power.

Applicant states that the same-day delivery is a premium service justifying a rate of 18 cents per pound for most types of cargo, with an $18 minimum for all shipments weighing from 0.1 to 100 pounds. Appliances, furniture and vehicles would be shipped at the rate of 34.6 cents per pound. These rates equate to an 83% premium over the rates for standard freight delivery service. The company also proposes to offer its customers same-day on-call charter service at the rate of $295 per hour plus fuel.

4.2 Service to Camps and Beaches

With its new vessel, applicant proposes to add freight transport to all of the camps and beaches that surround Catalina. Catalina, 76 square miles in size, has numerous shoreline sites available for campers and boaters that are accessible only by water. Organizations that make use of these sites include the Boy Scouts, Girl Scouts, Sierra Club, USC Marine Institute, Catalina Island Camp, Campus by the Sea and YMCA.

4.3 Minimum Delivery Charge

Catalina Freight asks authority to increase the minimum shipment rate for its regular freight delivery into Avalon and Two Harbors from $6 for shipments of 1 to 67 pounds to $11 for shipments of 1 to 100 pounds.

4.4 Zone of Rate Freedom Discounts

The applicant asks authority to negotiate volume discounts with customers and to offer demonstration runs with the new vessel at reduced prices up to 20% below regular rates to attract customers. The proposal is to charge rates within a Zone of Rate Freedom, or ZORF, as reasonable rates within the existing competitive environment as required under Pub. Util. Code § 454.2.

5. Competitor Protest

In its briefs, Pacific Tug asserts that the public interest could be harmed if the Commission authorizes Catalina Freight to conduct freight service to the beaches and camps on Catalina. Pacific Tug is the only carrier that now delivers freight directly to the camps by landing on the beaches at which the camps are located. It argues that its costs are fixed and that little or no growth in the market is expected. It adds:

> Given the finite market for freight delivery service directly to the beaches and camps on Catalina Island and Pacific Tug's fixed costs of providing freight delivery directly to the beaches and camps on Catalina Island, Catalina Freight Line's proposed service to the beaches and camps – which it projects will result in revenues of approximately $172,000 – will serve only to decrease the revenues with which Pacific Tug covers the fixed costs of its freight delivery services. This circumstance will eventually result in Pacific Tug having to raise its rates in order to cover its fixed costs. (Pacific Tug Reply Brief, at 2.)

Catalina Freight responds that its interviews with camp operators demonstrates that many of them plan expansion of their facilities over the next few years, and that camps and beaches are expecting increased numbers of persons enrolling in their educational and recreational programs, thus suggesting that this market is an expanding one. It states that customers can save money by sharing a delivery trip with other camps and beaches, and that adding another vessel to the market will provide back-up service when the other carrier's vessel is out of operation (as happened in June 2006, when Pacific Tug's landing craft ran aground at a landing point on Catalina). As to rates, Catalina Freight argues that Pacific Tug's practice of charging its hourly rate to include loading and unloading time (in contrast to Catalina Freight's proposed tariff) causes total charges that make competition attractive. The applicant submits affidavits by three camp operators stating that they would probably use the new service if it is authorized.

5.1 Discussion

This Commission has long supported expanded competitive access to Catalina boat service operators. The leading case on fostering competition in the water vessel industry is *Pacific Towboat and Salvage* (1982) Decision (D.) 82-07-110. There, we stated: "It is well established that the Commission will not limit carrier entry into the water vessel market simply to protect the interests of existing carriers. We will allow competition whenever to do so is not adverse to the public interest."

Similarly, in *Application of Catalina Explorer Co. and Application of Island Navigation Company* (1997) D.97-11-027, we said:

> Even though the market appears to be relatively finite, competition for the Catalina service has historically been vigorous, with new entrants appearing from time to time, sometimes successfully and sometimes not. The competitive activity appears to be responsible for the equipment and service improvements which have occurred over the years, and for preventing any unreasonable increase in fare levels. It has also been responsible for differentiating the market into two classes, one of which is distinctly "premium" as compared to the other. (D.97-11-027, at 6.)

In this case, the competition for freight delivery by vessel to the camps and beaches that is likely to follow granting of this application is in line with the

Commission's prior decisions on the competition issue. It appears likely that deliveries of freight to the camps and beaches on Catalina will grow in the future, and the projected market share that Catalina Freight may be able to capture need not cause Pacific Tug irreparable harm.

For these reasons, the protest to the application is denied.

5.2 Proposed New Rates

The proposed rates for Catalina Freight's new services are unopposed and appear reasonable. The application projects that with its proposed rates, use of the landing craft will improve the company's operating ratio from 94.5 to 93.6, and one-third of the expected added income will come from the requested service to the camps and beaches. This projected operating ratio relates favorably to the operating ratios of vessel carrier rates previously approved by the Commission and complies with the Commission's standards for determining whether proposed rates are reasonable. (*See, e.g., Application of Craig Wolfe dba Hydro Marine Company* (1990) D.90-02-040.) We note that applicant's proposed minimum charge of $295 per hour (plus fuel costs) with an eight-hour minimum charge can be split among two or more customers when a coordinated trip along the island coast to two or more camps and beaches can be arranged.

5.3 ZORF Rate Reduction

The Commission has authority under Pub. Util. Code § 454.2 to establish a ZORF rate for any passenger stage transportation service that is operating in competition with other passenger transportation service if the competition, together with the authorized zone of rate freedom, will result in reasonable rates and charges for the passenger stage transportation service. The Commission extended the ZORF concept to vessel common carriers in D.98-12-016 in response to a Catalina Channel Express request for ZORF authority for its vessel passenger service.

In 2001, Catalina Freight requested authority to establish a ZORF of 30% above and 20% below its tariff rates for its regular freight transport service between Long Island and Catalina. In D.02-10-004, the Commission denied the application because it found that the applicant had failed to demonstrate that it operates its service in competition with substantially similar vessel freight transportation service.

In this application, Catalina Freight has cured the deficiencies in its 2001 application, showing in detail the competitive services and rates of freight delivery offered by Pacific Tug (and, to some extent, by Catalina Flying Boats) and by showing that, even with a 20% discount, its ZORF hourly charter rate ($236) would still be higher than that of Pacific Tug ($195). Moreover, the testimony of applicant's chief executive officer establishes that applicant intends any ZORF reduction to be temporary in order to build business.

We note, however, that applicant seeks authority "to negotiate" volume discounts with customers "and to offer demonstration runs with the new vessel at reduced prices up to twenty percent…" It is important that applicant understand that the ZORF authority we authorize today will allow the carrier to publish reduced rates in its tariff that will be charged to <u>all</u> customers, not simply with those customers with whom it "negotiates" such rates. To grant the ZORF request in the manner set forth in this application suggests that a carrier could engage in selective rate discounts by charging below-cost rates as a means of capturing business from another carrier. Such rates would not be "reasonable," as required by law.

Finally, we take official notice that all vessel common carriers except Catalina Channel Express have had temporary authority to raise or lower their fares within a "zone of reasonableness" (essentially a ZORF) to offset increases in fuel prices. (Resolution TL-19066.) Initially, this zone was set at 15%, but on

December 1, 2005 it was expanded to 20%. This authority is scheduled to expire December 1, 2006, unless extended by the Commission

6. Environmental Review

The Commission is required to comply with the California Environmental Quality Act (CEQA), Pub. Res. Code § 21000 *et seq.,* when it acts as the lead agency or as a responsible agency in making determinations on matters that can be construed as "projects" under CEQA. (*Application of Hornblower Yachts, Inc.,* D.89-11-019.) CEQA compliance can be demonstrated by a finding that it can be seen with certainty there is no possibility the project in question may have a significant adverse effect on the environment.

Applicant has demonstrated here that most of the service routes will be over open ocean waters, and the landing vessel at camps and beaches will be slowed when landing to minimize wave action. No docks or other facilities will be constructed for the new service, and no sensitive habitats will be disturbed. The LCM-8 landing craft that Catalina Freight will use for its proposed new services will be outfitted with engines that comply with the Tier 2 air quality standards set by the California Air Resources Board and the U.S. Environmental Protection Agency for air quality in the South Coast Air Management District.

As we have found in the past in similar applications, we conclude that the record establishes that there is no possibility the activity in question here may have a significant adverse effect on the environment. (*See, e.g., Applications of Antone Sylvester Tug Service and Pacific Maritime Freight,* D.03-07-018; *Application of Island Express, Inc.,* D.85-04-013.)

7. Comments on Proposed Decision

The proposed decision of the Administrative Law Judge (ALJ) in this matter was mailed to the parties in accordance with Section 311 of the Public

Utilities Code and Rule 14.2(a) of the Commission's Rules of Practice and Procedure. No comments were filed.

8. Categorization of the Proceeding

By Resolution ALJ 176-3169, on March 15, 2006, the Commission preliminarily categorized this proceeding as "Ratesetting." By Scoping Memo and Ruling of Assigned Commissioner dated June 26, 2006, that categorization was confirmed and a schedule of briefings in lieu of hearing was authorized.

9. Assignment of Proceeding

John A. Bohn is the assigned Commissioner and Glen Walker is the assigned Administrative Law Judge for this proceeding.

Findings of Fact

1. The applicant is financially and operationally fit to operate the services proposed in this application.

2. There is a public need for the proposed services.

3. Under its proposed new rates, applicant's projected operating ratio relates favorably to the operating ratios of vessel carrier rates previously approved by the Commission.

4. Applicant operates in competition with other transportation services and an authorized zone of rate freedom will result in reasonable rates for the transportation services.

Conclusions of Law

1. The Commission has long supported expanded competitive access to Catalina boat service operators.

2. The projected operating ratio adjusted for the proposed new services complies with the Commission's standards for determining that the proposed rates are reasonable.

3. The application should be granted with respect to the new services and new rates requested, subject to conditions set forth in the Ordering Paragraphs and in the Certificate of Public Convenience and Necessity.

4. The application for a 20% ZORF for the additional services should be granted, subject to the conditions set forth in applicant's revised tariffs.

5. The protest to the application should be denied.

6. It can be seen with certainty that there is no possibility the project in question may have a significant adverse effect on the environment.

O R D E R

IT IS ORDERED that:

1. The Certificate of Public Convenience and Necessity (CPCN) of Catalina Freight Line, Inc. (Applicant) that authorizes it to operate as a vessel common carrier, as defined in Pub. Util. Code §§ 211 and 238, to transport freight, is amended to include (a) premium same-day service and (b) authority to serve all camps and beaches that surround Santa Catalina Island.

2. The Consumer Protection and Safety Division (CPSD) shall amend Applicant's CPCN (VCC-58) to include the additional services authorized by Ordering Paragraph 1.

3. Applicant is authorized (a) to increase the minimum shipment rate for regular freight delivery from $6 per shipments of 1 to 67 pounds to $11 for shipments of 1 to 100 pounds and (b) to establish rates at the level described in the application for the new same-day service.

4. To implement the rates authorized by Ordering Paragraph 3, Applicant shall, on or after the effective date of this order, file revised tariff pages in accordance with General Order 117-Series. The revised tariff pages shall be made effective no earlier than 10 days after the date of filing.

5. Applicant's request for authority to establish a Zone of Rate Freedom (ZORF) of 20% below its authorized rates is granted to the extent set forth in this order.

6. Applicant may make changes within the ZORF by filing revised tariff pages on not less than 10 days' notice to the Commission and to the public. The tariff pages shall show between each pair of service points the current rate to be charged and the authorized maximum and minimum rates under the ZORF.

7. In addition to filing revised tariff pages, Applicant shall post notices explaining rate changes in its terminals. Such notices shall be posted at least 10 days before the effective date of the rate changes and shall remain posted for at least 30 days.

8. The protest to the application by Pacific Maritime Freight, Inc., doing business as Pacific Tug, is denied.

9. It can be seen with certainty that there is no possibility that the project in question may have a significant adverse effect on the environment.

10. Applicant shall:

a. File a written acceptance of the amended CPCN within 30 days after this order is effective;

b. Establish the authorized service and file tariffs within 180 days after this order is effective;

c. Comply with General Orders Series 104, 111, and 117; and

d. Remit to the Commission the Transportation Reimbursement Fee required by Pub. Util. Code § 403 when notified by mail to do so.

11. Applicant may not operate any service approved in this order until arrangements have been made for any parking or docking facilities or procedures required to operate the service, and until any required approvals have been obtained from local authorities with jurisdiction to regulate such arrangements and facilities.

12. Applicant shall comply with the rules, regulations, and requirements of the United States Coast Guard.

13. Applicant is authorized to begin operations on the date that CPSD mails a notice to Applicant that its evidence of insurance and other documents required by Ordering Paragraph 10 have been filed with the Commission.

14. The amended CPCN to operate as a vessel common carrier (VCC-58), which is granted herein, shall expire unless exercised within 180 days after the effective date of this order.

15. The application is granted as set forth above.

16. Application 06-03-007 is closed.

This order is effective today.

Dated January 11, 2007, at San Francisco, California.

MICHAEL R. PEEVEY
President
DIAN M. GRUENEICH
JOHN A. BOHN
RACHELLE B. CHONG
Commissioners