

**PUBLIC UTILITIES COMMISSION**505 VAN NESS AVENUE
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March 3, 2023

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Ratesetting

TO PARTIES OF RECORD IN APPLICATION 22-01-014:

This is the proposed decision of Administrative Law Judge Gerald Kelly. Until and unless the Commission hears the item and votes to approve it, the proposed decision has no legal effect. This item may be heard, at the earliest, at the Commission's April 6, 2023 Business Meeting. To confirm when the item will be heard, please see the Business Meeting agenda, which is posted on the Commission's website 10 days before each Business Meeting.

Parties of record may file comments on the proposed decision as provided in Rule 14.3 of the Commission's Rules of Practice and Procedure.

The Commission may hold a Ratesetting Deliberative Meeting to consider this item in closed session in advance of the Business Meeting at which the item will be heard. In such event, notice of the Ratesetting Deliberative Meeting will appear in the Daily Calendar, which is posted on the Commission's website. If a Ratesetting Deliberative Meeting is scheduled, *ex parte* communications are prohibited pursuant to Rule 8.2(c)(4).

 /s/ MICHELLE COOKE
Michelle Cooke
Acting Chief Administrative Law Judge

MLC:smt
Attachment

Decision PROPOSED DECISION OF ALJ KELLY (Mailed 3/3/2023)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Avalon Freight Services LLC (VCC-91) For Authorization to Modify Rates for Its Scheduled Vessel Common Carrier Freight Service Between the Port of Los Angeles, California on the one hand, and Avalon on Santa Catalina Island on the other hand.

Application 22-01-014

**DECISION ADDRESSING THE APPLICATION OF AVALON
FREIGHT SERVICES TO MODIFY RATES FOR
SCHEDULED VESSEL COMMON
CARRIER FREIGHT SERVICE**

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**DECISION ADDRESSING THE APPLICATION OF AVALON
FREIGHT SERVICES TO MODIFY RATES FOR
SCHEDULED VESSEL COMMON
CARRIER FREIGHT SERVICE**

Summary

This decision authorizes Avalon Freight Services LLC (VCC-01) (AFS) to make minor revisions in the rates charged for certain specific items such as surfboards and bicycles. This decision also allows AFS to adjust the initial tier in its rate structure to conform to the balance of the tariff as set forth in Section 26 of its tariff. It also allows AFS to add a definition of “manifest” as Section 1.5 of its tariff. This decision declines AFS’ request to modify Section 2.3.b of its tariff.

This decision promotes the Commission’s nine goals set forth in the Environmental and Social Justice Action Plan. There are no safety issues or issues under the California Environmental Quality Act (CEQA) which need to be addressed in this proceeding.

Application 22-01-014 is closed.

1. Background**1.1. Procedural Background**

On January 27, 2022, Avalon Freight Services LLC (VCC-91) (AFS) filed Application (A.) 22-01-014 as required by Ordering Paragraph (OP) Number (No.) 3 of Decision (D.) 19-01-032. This Application seeks to amend Section 2.3.b of its tariff pertaining to alleged improper consolidations of unrelated shipments; to extend the current rates for bicycles to electric bicycles, electric scooters, paddle boards, and surf boards; to adjust the initial tier in the rate structure to conform to the balance of the tariff; and to add a definition of the term “manifest” as Section 1.5 of its tariff. On March 2, 2022, Catalina Beverage Incorporated (CatBev) filed the sole protest in this matter. CatBev’s main concern

with the Application relates to AFS' request to add Section 2.3.b to its tariff. On March 17, 2022, AFS filed a reply to CatBev's protest. On April 27, 2022, the prehearing conference (PHC) was held remotely. At the PHC, AFS and CatBev confirmed that evidentiary hearings would not be necessary in this matter. On June 7, 2022, the assigned Commissioner's Scoping Memo and Ruling (Scoping Memo) was issued.

On March 4, 2022, AFS filed notice of compliance with the Commission's Rules of Practice and Procedure (Rules) 3.2(b).¹ On June 27, 2022, the assigned Administrative Law Judge (ALJ) issued an E-mail Ruling seeking additional information from AFS. On July 20, 2022, the assigned ALJ granted an extension of time for AFS to comply with the June 27, 2022, E-mail Ruling. On August 2, 2022, AFS filed both public and confidential responses addressing the issues set forth in the June 27, 2022 E-mail Ruling.² On November 3, 2022, AFS and CatBev filed Opening Briefs. On November 18, 2022, AFS and CatBev filed Reply Briefs. The matter was submitted on November 18, 2022.

2. Issues Before the Commission

The issues before the Commission in this proceeding are as follows:

1. Should the general rate case application of AFS be approved, including revisions in the rates charged for certain items such as surfboards, bicycles, furniture, and exercise equipment?
2. Should the Commission grant the request which would allow AFS to adjust the initial tier in its rate structure to conform to the balance of its tariff?

¹ Any future reference to Rules refers to the Commission's Rules of Practice and Procedure, unless stated otherwise.

² On August 2, 2022, AFS also filed a Motion for leave to file the confidential version of its response to the June 27, 2022, E-mail Ruling.

3. Whether the request to make changes to the tariff as shown in Exhibit B to the Application are necessary and whether they should be approved?
4. If the Commission does approve the requested changes, as set forth in Section 2.3.b in Exhibit B of the Application, how will the Commission ensure that AFS is applying the requested changes uniformly? How does AFS define the term “reason to believe?” What documentation will be reviewed to support any “reason to believe” or “a belief based on prior conduct?” What will be the procedure if a party believes that AFS has inappropriately reclassified the entire shipment?
5. Does AFS have any contracts with affiliates, and is AFS paying fair market value for any payments that are paid to affiliates owned by AFS? Including, but not limited to the following: the intention to lease from GBHB; the agreement to pay Hurley Marine Services and Catalina Express for services provided by their respective management, staff, and crew; and the agreement to pay Catalina Express rent for space provided for its proposed freight operations.
6. Did COVID-19 have any impact on AFS’ revenue that the Commission needs to be aware of, and when will AFS submit its updated financials?
7. Does the Application have any impact on the achievement of the Commission’s Environmental and Social Justice (ESJ) Action Plan.
8. Does the Application present any safety or California Environmental Quality Act (CEQA) issues which must be considered?

3. Discussion and Analysis

3.1. Should the General Rate Case Application be Approved?

The Application does not seek any significant change in rates or authorized revenues and was filed primarily to comply with OP 3 of D.19-01-032

which directed AFS to file a general rate case (GRC) within three years of the issuance of D.19-01-032.³ AFS has provided freight services between San Pedro and Avalon on Santa Catalina Island (the Island) since April 1, 2016.⁴ AFS provides this service a minimum of five days a week, and AFS transports everything the residents and businesses need on the Island.⁵ AFS inherited the rate structure from the previous carrier, Catalina Freight Lines Incorporated (CFL), which served the Island for forty years prior to the initiation of service by AFS in 2016.⁶

The CFL rate levels adopted by AFS were set by D.09-08-011. Neither CFL nor AFS have sought to increase this rate structure.⁷ In 2019, AFS' rates were found to be reasonable by D.19-01-032. AFS continues to use the same \$/100 pounds that were used by CFL. They are as follows:

Weight of Shipment (Pounds)	Charges per 100 pounds (except flat)
1-112 ⁸	\$14.85
100-4035	\$13.27
4035-5,000	\$535.41 (flat)
5,001-11,407	\$10.71
11,408-20,000	\$1,221.48 (flat)
20,001-25,065	\$6.10
25,066-30,000	\$1,530.90 (flat)
30,001-500,000	\$5.10

³ D.19-01-032 was issued on January 31, 2019.

⁴ AFS Application at 3.

⁵ *Id.* at 4.

⁶ *Id.* at 2.

⁷ *Id.* at 6.

⁸ As will be discussed below and set forth in Exhibit B of the Application, Section 26 at 21, AFS seeks to correct the boundaries of this rate tier so that it conforms to the other tiers.

Vessel rates are not set on the basis of return on the rate base. Typically, increases are authorized on a showing of increases in operating costs⁹ or reduced revenues at current rates.¹⁰ Here, the Application seeks no increase in authorized rates. AFS experienced a pre-tax operating ratio of 85% in 2019 and 103% in 2020.¹¹ The average pre-tax operating ratio of 94% lies within the range previously found reasonable by the Commission.¹² For 2020, AFS reported an operating ratio in excess of 100% (an operating loss).¹³ In 2021, AFS reported \$109,435 net revenue from water line operations which potentially indicates that the COVID-19 economic impact on AFS has started to improve.¹⁴

As noted above, the Application does not seek to increase rates. The only protest filed in this matter was filed by CatBev, and the primary focus of CatBev's protest pertained to the request to add text to Section 2.3.b of AFS' tariff related to rerating alleged unrelated consolidated shipments which will be discussed later in this decision. Since the Application is not seeking an increase in rates, we approve the GRC.

3.2. Revisions to Rates Charged for Certain Items; Adjustments in the Initial Tier to Conform to the Balance of AFS' Tariff

Among other things, the Application seeks to make changes to the text of the tariff to clarify the rates applicable to personal effects (other than furniture)

⁹ See, D.16-12-050.

¹⁰ See, D. 09-08-011.

¹¹ Application at 11.

¹² See, D.03-06-019.

¹³ Application at 11.

¹⁴ See, Schedule B of AFS' 2021 Annual Report.

and to extend the current rate for bicycles to electric bicycles, electric scooters, paddle boards, and surfboards. Currently there is a slight discrepancy in Section 26 of AFS' tariff. Currently it states that a shipment of 1-112 pounds will be charged at a rate of \$14.85 per pound. It also states that shipments of 100 to 4035 pounds will be charged a rate of \$13.27, and shipments of 4035-5,000 pounds will be charged a flat rate of \$535.41. AFS requests in its Application the opportunity to correct these discrepancies. AFS also requests the opportunity to provide clarification on the shipment of personal items and to include electric bicycles and other electric items in the definition of "bicycles." Specifically, AFS seeks to make the following changes in Section 26 of its tariff as set forth in the table below:¹⁵

BETWEEN:	AND
Port of Los Angeles, California	The Santa Catalina Island location of Avalon

Rates are in dollars per 100 lbs. unless otherwise indicated and noted with an "*" . Rates are one way unless noted otherwise.		
Commodity	Pounds	Regular Overnight Service
Freight, All Kinds Except As Provided	1 - 112 100 (Minimum Charge)	* \$ 14.85
	100 101 - 4,035	\$ 13.27
	4,035 4,036 - 5,000 (Flat)	* \$ 535.41
	5,001 - 11,407	\$ 10.71
	11,408 - 20,000 (Flat)	* \$ 1,221.48
	20,001 - 25,065	\$ 6.10
	25,066 - 30,000 (Flat)	* \$1,530.90
	30,001 - 500,000	\$ 5.10
	<i>Appliances, Furniture, (indoor or outdoor), Luggage, Electronics, Exercise Equipment, Unrated;</i>	

¹⁵ Text in strikethrough is a deletion, and text in bold italics is an addition.

Personal Effects; Crated Or Uncrated , <i>Commercial or Residential applies to all of the above</i>	
Refrigerated Freight – Frozen Food, Ice Cream, Produce, Meat, Poultry, Fish	\$ 14.93
Large Motor Vehicles: Vehicles In Excess Of 15,000 Lbs., Including Large Trucks And Construction Vehicles (Round Trip)(Flat)	* \$ 3,850.00
<i>Rates are in dollars per 100 lbs. unless otherwise indicated and noted with an “*”. Rates are one way unless noted otherwise.</i>	
Medium Motor Vehicles: Passenger Automobiles, Pick-Up Trucks, And Smaller Trucks And Construction Vehicles Weighing Less Than 15,000 Lbs. (Round Trip)	\$ 25.50
Small Vehicles: Golf Carts, Motorcycles & Scooters (Round Trip)	\$25.50
Horses (Based On 1,000 Lbs.) Per Horse Each Way	* \$ 132.68
Empty Returns (Bread & Milk Trays Only)	\$5.10
Bikes, <i>Electric Bikes, Electric Scooters, Paddle Boards, Surfboards – Per Item Each Way</i>	* \$ 14.85
Kayaks, <i>Canoes – Per item Each Way</i>	* \$ 33.75
Storage Fee After 48 Hours Per Hundred Lbs. Per Day: \$ 0.40 (\$ 6.00 Min)	

There were no protests to the proposed changes to Section 26 of AFS’ tariff. We agree with AFS that it is appropriate to correct the discrepancies as it relates to the various pounds of a shipment. We also agree that it is appropriate for the tariff to provide clarification as to the various personal items such as appliances and luggage. We also approve the addition of electric bicycles and scooters, paddle boards and surf boards to Section 26 of the tariff. We approve the changes to Section 26 as set forth in the table above. To implement the authorized changes to Section 26 of its tariff, AFS shall file revised tariff sheets as set forth in the Ordering Paragraphs of this decision.

3.3. Whether the Request to Make Changes to Section 2.3.b of AFS' Tariff Should be Granted and the Addition of the Term Manifest to the Tariff

AFS seeks to add text to Section 2.3.b to address the belief that shippers are consolidating unrelated shipments to obtain lower rates. It also seeks to add the definition of "manifest" to its tariff.

AFS asserts in its Application that the current tariff creates a strong motivation for shippers to obtain lower rates by consolidating unrelated shipments.¹⁶ Currently Section 2.3.b of the tariff provides:

Carrier reserves the right to inspect the Goods and any Merchant's manifest to determine whether any shipment violates the terms of paragraph 3.a. above. If an unauthorized consolidated shipment is tendered to Carrier that is prohibited by this tariff, Carrier may, at its option and without limitation, reject the entire shipment, or re-rate the transportation charges to assess separate tariff rates per 100# for each unrelated individual corporation or person.

AFS seeks authorization to add the following text to Section 2.3.b:

If Carrier has reason to believe, including a belief based on prior conduct of the Merchant at issue, that the contents of a trailer, container or other enclosure proffered as individual shipment by a single Merchant are in fact an unauthorized consolidated shipment by unrelated Merchants, the entire shipment will be rated and charged at \$10.71 per hundred pounds until such time as the Merchant proffering the trailer, container or other enclosure can demonstrate to Carrier that the entire contents of the trailer, container or other enclosure are owned by the Merchant.¹⁷

¹⁶ Application at 2.

¹⁷ *Id.* at Exhibit B.

AFS asserts that the requested changes are necessary because it believes that CatBev is consolidating unrelated shipments and that it is doing so to obtain beneficial shipping rates.¹⁸ AFS asserts that it is only seeking the requested changes to Section 2.3.b to remedy this improper conduct without affecting the reliability and rates of service to the honest shippers which comprise most of its customer base.¹⁹ AFS asserts that the changes are necessary to apprise shippers that AFS may elect to simply rerate any suspicious trailer, container or other enclosure at \$10.71/100 pounds.²⁰

AFS acknowledges that the current tariff already has a remedy that allows it an option to reject the entire shipment or to re-rate the transportation charges to assess separate tariff rates per 100# for each unrelated individual corporation or person.²¹ However, AFS asserts that the current remedy is not practical because it could take approximately 90-120 minutes for it to perform a spot check on CatBev's containers and that this may delay the shipping process and have an adverse impact on other shippers.²²

AFS alludes that requested changes are necessary for it to comply with California Public Utilities Code (Pub. Util.) Sections 453(a), 494, and 532 which require it to strictly enforce its tariff.²³ AFS asserts that it has previously tried to

¹⁸ *Id.* at 9.

¹⁹ *Ibid.*

²⁰ *Id.* at 10.

²¹ AFS Opening Brief at 7.

²² *Id.* at 3 and 8. See also, Reply Brief at 3-4.

²³ Opening Brief at 4-5. Section 453(a) provides that "No public utility shall, as to rates, charges, service, facilities, or in any other respect, make or grant any preference or advantage to any corporation or person or subject any corporation or person to any prejudice or disadvantage." Section 494 provides that, "(n)o common carrier shall charge, demand, collect, or receive a different compensation for the transportation of persons or property, or for any service in

Footnote continued on next page.

enforce its tariff, but CatBev is creative at finding ways to avoid the tariff and that the only way to resolve this is for the Commission to grant its request for the addition of text to Section 2.3.b of its tariff.

CatBev opposes any changes to Section 2.3.b of AFS' Tariff. CatBev argues that AFS is attempting to augment its revenue with the addition of text to Section 2.3b without having to undergo a review of its revenue that is typically required in a rate case.²⁴ CatBev contends that AFS failed to meet the required burden of proof to show that the requested changes to Section 2.3.b are just and reasonable.²⁵ Additionally, CatBev points out that AFS did not submit any testimony to support its request and that AFS agreed that evidentiary hearings were not needed in this proceeding.²⁶ CatBev asserts that AFS allegations are one-sided and that AFS is acting coyly.²⁷

In addition to arguing that AFS has failed to submit the appropriate evidence to meet its burden, CatBev states that there is no proof that it is currently consolidating items it does not own in its shipments.²⁸ CatBev acknowledges that it previously had an occasional practice of accommodating customers' requests to include their items of their property in its shipments via

connection therewith, than the applicable rates, fares, and charges specified in its schedules filed and in effect at the time." Section 532 provides that, "[e]xcept as in this article otherwise provided, no public utility shall charge, or receive a different compensation for any product or commodity furnished or to be furnished, or for any service rendered or to be rendered, than the rates, tolls, rentals, and charges applicable thereto as specified in its schedules on file and in effect at the time..."

²⁴ CatBev Opening Brief at 4.

²⁵ *Id.* at 8.

²⁶ *Ibid.*

²⁷ *Ibid.*

²⁸ *Id.* at 6.

AFS, but once it become aware that this practice was inappropriate, it discontinued this practice in the summer of 2020.²⁹ AFS asserts that CatBev has failed to provide any proof it has stopped consolidating items it does not own and that the only way to prevent this from continuing to happen is for the Commission to grant the proposed changes to Section 2.3.b.³⁰

CatBev counters the allegation that it failed to present any evidence that it stopped consolidating shipments by noting that AFS proffered a data request to CatBev seeking documentation of CatBev's purchases from Sysco during the period of August 1, 2021 through March 1, 2022, and CatBev complied with this request by producing 1,286 pages of Sysco invoices and 25 pages of bank statements proving that it purchased and paid for the items.³¹

It is evident that the parties have a difficult working relationship. CatBev has alleged that AFS is cynical and that its Application would "make the founding fathers shudder."³² CatBev also states that AFS is behaving coyly and its responses in this matter have been sketchy.³³ AFS counters CatBev's statements by stating that CatBev's behavior is not like its other regular unremarkable customers and that, if CatBev behaved like its other customers, there would be no dispute between the parties.³⁴ AFS also asserts that CatBev has "fine-tuned its methodology for evading the tariff."³⁵

²⁹ *Id.* at 13 and Exhibit CB-1 attached to its Opening Brief.

³⁰ AFS Reply Brief at 7.

³¹ CatBev Reply Brief at 5.

³² AFS Protest at 3 and 5.

³³ CatBev Opening Brief at 8 and 14.

³⁴ AFS Reply Brief at 8.

³⁵ AFS Opening Brief at 6.

Here, the evidence presented fails to establish that the changes to Section 2.3.b are warranted. AFS' current tariff provides that AFS may inspect the goods and manifest to determine if there are any violations and, if there is an unconsolidated shipment, AFS at its option and without limitation can reject the entire shipment or re-rate the transportation charges. We recognize that doing this may take additional time. However, the only evidence presented as to how much time this will take is AFS' statement that it may take 90-120 minutes to do so. Other than its statement, AFS has failed to present any evidence as to how long this will take.

The evidence presented fails to establish that we should grant AFS authority to simply rerate any shipment "it has reason to believe" is an unauthorized consolidated shipment to a rate of \$10.71/100 pounds until such time as the merchant proffering the shipment can prove it owns the entire contents of the shipment. The tariff provides adequate recourse for AFS to address any situations it believes is an unauthorized consolidated shipment.

Here, it is evident that the requested change in the tariff is directed at CatBev. CatBev acknowledges that in the past it occasionally consolidated some shipments but stated in its Opening Brief that it stopped doing this in the summer of 2020. Additionally, the Opening Brief has a verification signed under penalty of perjury by CatBev's President and CEO which asserts the statements in the Opening Brief are true. Based upon this information, we believe that the situation of unconsolidated shipments has been resolved and that the requested addition to Section 2.3.b of the tariff is no longer necessary. However, we place CatBev on notice that, in the future, the Commission will not tolerate any situations where it consolidates any property it does not own in an AFS shipment.

AFS also seeks to add the term “manifest” to Section 1 of its tariff. Specifically, AFS seeks to add the term as Section 1.5 and requests that manifest be defined as: “A document from the merchant giving comprehensive details of the shipment delivered to the carrier.” There was no protest to the request changes to add the term “manifest” as Section 1.5 to AFS’ tariff.

AFS notes that the manifest submitted from CatBev is often devoid of any detail about the contents of the trailer.³⁶ AFS asserts that

CatBev has previously submitted manifests in the past that included entries such as “3 Pallets of Refrigerated Foods”, “1 Pallet of Frozen Food”, “2 Pallets Misc. frozen food products,” or “2 Pallets Misc. dry food products.” More detail would be required by proposed Section 1.5, but it would not be any more than shippers other than CatBev provide today. Typical manifests submitted to AFS list the specific items shipped by brand name (Yoplait, Kikoman), that brand’s product (“Yogurt Vanilla Parfait”, “Milk Soy Organic”), size (32 oz., 4 lb.) and the precise quantity of each such product included on a pallet. CatBev manifests are devoid of any such detail.³⁷

Here, we note that CatBev did not protest the addition of the term “manifest” to AFS’ tariff. Additionally, CatBev raised no issues as it relates to this request in either its Opening or Reply Briefs. We approve the addition of the term “manifest” to Section 1.5 of AFS’ tariff. We believe that having the term “manifest” defined in AFS’ tariff will help to ensure that AFS is fully apprised of what customers are shipping, and this helps AFS ensure that shippers are not consolidating any shipments. To implement the addition of Section 1.5 to its

³⁶ AFS Reply Brief at 7.

³⁷ AFS Opening Brief at footnote 10. *See also*, AFS Reply Brief at 7.

tariff, AFS shall file a revised tariff sheet as set forth in the Ordering Paragraphs of this decision.

Since the Commission has declined to grant AFS' request to add text to Section 2.3.b of its tariff, issue four of the Scoping Memo is now moot and does not need to be addressed in this decision.³⁸

3.4. Fair Market Value for Payments to AFS Owned Affiliates and COVID-19 Impacts on AFS Revenues

Although not included in the Application, the Scoping Memo listed two issues relating to whether AFS was paying fair market value for payments that it made to affiliates owned by AFS and whether there were any remaining COVID-19 impacts on AFS' revenue that the Commission needed to address. On June 27, 2022, the assigned Administrative Law Judge (ALJ) issued an e-mail Ruling requesting that AFS provide the following information:

1. The long-term leases for all of AFS's vessels
2. The Agreement for AFS utilizing the services of some administrative personnel of Catalina Channel Express, Inc. (CCE) for some accounting, payroll, and Human Resources work.
3. The lease that AFS has for the office in the same building as CCE as well as the many land parcels utilized by AFS between its warehouse in San Pedro and the wharf where cargo is loaded to AFS vessels.

³⁸ For reference, issue four of scoping memo states: If the Commission does approve the requested changes, as set forth in Section 2.3.b in Exhibit B of the Application, how will the Commission ensure that AFS is applying the requested changes uniformly? How does AFS define the term "reason to believe"? What documentation will be reviewed to support any "reason to believe" or "a belief based on prior conduct?" What will be the procedure if a party believes that AFS has inappropriately reclassified the entire shipment?

4. The leased warehouse space from CCE in San Pedro that was purposely built for AFS' operations.
5. The long-term lease on a warehouse on Catalina Island owned by Santa Catalina Island Company.

On August 2, 2022, AFS filed its response to the Email Ruling. The Response provided the following documents (1) "The long-term leases for all of AFS's vessels;" (2) "The Agreement for AFS utilizing the services of some administrative personnel of Catalina Channel Express, Inc. (CCE) for some accounting, payroll, and Human Resources work; (3) "The lease that AFS has for the office in the same building as CCE as well as the many land parcels utilized by AFS between its warehouse in San Pedro and the wharf where cargo is loaded to AFS vessels," including "The leased warehouse space from CCE in San Pedro that was purposely built for AFS' operation;" and (4) "The long-term lease on a warehouse on Catalina Island owned by Santa Catalina Island Company."

In its Opening Brief, AFS asserts that to the best of AFS' knowledge, no controversy exists with respect to the payments that it made to AFS-owned affiliates.³⁹ We have reviewed the documents submitted by AFS and are satisfied that there are no issues relating to the payments that AFS has made to affiliates that it owns. We also note that CatBev did not raise any issues concerning the payments made to AFS-owned affiliates.

The Commission requested information from AFS so that it could evaluate whether COVID-19 caused any long-term impact on AFS' revenue. AFS' revenue dropped by 24.5% from 2019 to 2020.⁴⁰ Revenue in 2021 was higher but still

³⁹ AFS Opening Brief at 13.

⁴⁰ *Ibid.*

13.3% less than 2019.⁴¹ For 2020, AFS experienced a pre-tax operating ratio of 103%, an operating loss.⁴² For 2021, AFS experienced a pre-tax operating ratio of 98.1%, a very small profit.⁴³ Based upon this information, we conclude that there are no lingering impacts on AFS' revenue from COVID-19 that we need to address in this decision.

3.3 Alignment with the Commission's ESJ Action Plan

On April 7, 2022, the Commission adopted version 2.0 of its ESJ Action Plan as a comprehensive strategy and framework for addressing ESJ issues in each proceeding. Environmental justice means the fair treatment of people of all races, cultures, and incomes with respect to the development, adoption, and enforcement of environmental laws, regulations, and policies.⁴⁴

The Commission's ESJ Action Plan identifies existing inequities and proposes actions for how the Commission can use its regulatory authority to address health and safety, consumer protection, program benefits, and enforcement to encompass all the industries it regulates, including energy, water, and communications programs. Goal 3 of the Commission's ESJ Action Plan is to improve access to high-quality water, communications, and transportation services for ESJ communities.⁴⁵

AFS transports anything the residents and businesses on the Island need that is too large to be carried as luggage on the cross-channel passenger ferry.⁴⁶ It

⁴¹ *Ibid.*

⁴² *Ibid.*

⁴³ *Ibid.*

⁴⁴ ESJ Action Plan

⁴⁵ *Id.*

⁴⁶ AFS Application at 4.

transports fuel for Southern California Edison’s electric generation plant, fuel for the City of Avalon’s fuel dock, gasoline for the shoreside gas stations as well as groceries and other necessities for the Island’s grocery stores, restaurants, and hotels.⁴⁷ In addition, AFS transports non-potable water (and has the capability of transporting potable water), vehicles, and household and personal items such as couches, televisions, and bicycles.⁴⁸ AFS is also prepared to transport emergency vehicles and other equipment to the Island, for Los Angeles County Fire and Sheriff, in the event of a fire or other emergency.⁴⁹

AFS strives to maintain customer satisfaction by transporting freight efficiently and safely.⁵⁰ All of AFS’ marine vessels exceed all state and federal standards for air quality emissions and efficiencies.⁵¹ AFS vessels allow for transportation of freight or the evacuation of residents if the need arises that meets the Environmental Protection Agency Tier 3 emission standards.⁵²

As noted above, AFS transports nearly everything that is needed by the businesses and residents of the Island. Ensuring that residents of the Island, many of whom may be part of the ESJ community, have access to reliable and environmentally friendly transportation of goods and services helps to further the Commission’s ESJ goals. Additionally, AFS’ vessels can transport emergency equipment to the Island if the need arises, and they can assist in evacuating the residents if that becomes necessary. Therefore, we conclude that a

⁴⁷ *Ibid.*

⁴⁸ *Ibid.*

⁴⁹ *Ibid.*

⁵⁰ [About Us – Avalon Freight Services](#)

⁵¹ *Id.*

⁵² *Ibid.*

approval of this Application will help promote and further the Commission's ESJ Action Plan goals.

3.5. Safety

Prior to approving this Application, the Commission must ensure that there are no safety issues or concerns present. The Application proposes no significant changes in AFS' rates or operations.⁵³ AFS does not transport passengers.⁵⁴ AFS' operations are subject to the rules, regulations, and requirements of the United States Coast Guard.⁵⁵ We conclude that there are no safety issues raised in the Application that we need to address.

3.6. CEQA Review is Not Required for This Transaction

One issue in the Scoping Memo is whether there are any CEQA issues that the Commission needs to address. When AFS was first certified by the Commission for the San Pedro-Avalon route, the Commission concluded that no review under CEQA was required.⁵⁶ Nothing in the Application seeks to expand its service area or proposes construction of new facilities on land. Therefore, we conclude that CEQA review is not required for this Application.

4. Motion for Confidential Treatment

On August 11, 2022, AFS filed a Motion for Confidential Treatment of its August 2, 2022, Response to the assigned ALJ's June 27, 2022, E-mail Ruling requesting information relating to payments that AFS makes to affiliates that it owns. AFS' response contained exhibits with confidential information and AFS requests confidential treatment of these documents. These exhibits are Exhibits

⁵³ Opening Brief at 14.

⁵⁴ *Ibid.*

⁵⁵ *Ibid.*

⁵⁶ D.16-02-024 at 10.

1.a-1.c; Exhibit 2; Exhibit 3.a; and Exhibit 4. Exhibit 1.a, 1.b, and 1.c contain the charter rate for the three AFS Vessels *Two Harbors*, *Lucy Franco*, and *Catalina Provider* (respectively). Exhibit 2, which is an opinion letter from Windes Audit/Tax/Advisory dated October 14, 2021, with respect to the reasonableness of the process employed for allocating percentages of certain common costs borne by Catalina Channel Express (CCE) and AFS. AFS seeks to redact the employee names, salaries, and the hourly rate employed for the payment from AFS to CCE and the specific amount allocated. Exhibit 3.a are the office and warehouse leases in San Pedro between CCE and AFS. Exhibit 4 is the warehouse lease for the facility located in Avalon between AFS and Santa Catalina Island Company.

Commission Rules 11.4 and 11.5 address Commission rules respecting confidential materials. Rule 11.4 addresses a request to seal documents that have been filed while Rule 11.5 addresses sealing all or part of an evidentiary record. In addition, General Order (GO) 66-D provides definitions and guidance regarding public and confidential records provided to and requested from the Commission.

AFS requests that Exhibits 1.a, 1.b, 1.c, 2, 3.a, and 4 be kept confidential because they contain confidential information. The Commission received no objection to the request for confidential treatment. We have granted similar requests for confidential treatment and do so again here in limited fashion. We therefore authorize the confidential treatment as set forth in the ordering paragraphs of this decision.

5. Conclusion

This decision authorizes AFS to make minor revisions in the rates charged for certain specific items such as surfboards and bicycles. This decision also allows AFS to adjust the initial tier in its rate structure to conform to the balance

of the tariff as set forth in Section 26 of its tariff. It also allows AFS to add a definition of “manifest” as Section 1.5 of its tariff. This decision declines AFS’ request to modify Section 2.3.b of its tariff.

This decision promotes the Commission’s nine goals set forth in the ESJ Action Plan. There are no safety issues or issues under the CEQA Act which need to be addressed in this proceeding.

6. Comments on Proposed Decision

The proposed decision of ALJ Gerald Kelly in this matter was mailed to the parties in accordance with Section 311 of the Pub. Util. Code and comments were allowed under Rule 14.3 of the Commission’s Rules of Practice and Procedure. Comments were filed on _____ and reply comments were filed on _____.

7. Assignment of Proceeding

Genevieve Shiroma is the assigned Commissioner and Gerald F. Kelly is the assigned ALJ in this proceeding.

Findings of Fact

1. AFS filed its Application on January 27, 2022.
2. AFS seeks to amend Section 2.3b of its tariff to address alleged improper consolidations of unrelated shipments; to extend the current rates for bicycles to electric bicycles, electric scooters, paddle boards; and surf boards in Section 26 of its tariff; to add other specific personal items to Section 26 of its tariff; to adjust the initial tier in the rate structure to conform to the balance of its tariff in Section 26 of its tariff; and to add a definition of “manifest” as Section 1.5 of its tariff.
3. The term “manifest” may help ensure that AFS is fully apprised of what customers are shipping.

4. Currently there is a slight discrepancy in Section 26 of AFS' tariff and it is appropriate to correct this discrepancy.

5. AFS's current tariff provides adequate remedies related to alleged improperly consolidated shipments and adding Section 2.3.b to AFS' tariff is not necessary as there is already an adequate remedy.

6. CatBev filed a Protest to the Application on March 2, 2022. CatBev's Protest primarily concerned the requested changes to Section 2.3b relating to alleged improper consolidations of shipments.

7. The Application is not subject to CEQA as it can be seen with some certainty that there is no possibility that the Application in question may have any effect on the environment.

8. The Application helps further the Commission's ESJ Action Plan policy goals.

9. There are no safety issues presented in the Application that need to be addressed.

Conclusions of Law

1. The proposed request to add the term "manifest" as Section 1.5 to AFS' tariff should be granted.

2. The proposed request to amend Section 2.3b of AFS' tariff should be rejected.

3. The proposed request to amend to Section 26 of AFS tariff should be granted.

4. AFS' Motion for confidential treatment of Exhibits 1.a, 1.b, 1.c, 2, 3.a, and 4 in its August 2, 2022, response to the assigned ALJ's Email Ruling requesting additional information should be granted.

5. This proceeding should be closed.

O R D E R**IT IS ORDERED** that:

1. Avalon Freight Services LLC (VCC-91) is authorized to add the term “manifest” to its tariff as Section 1.5.
2. Avalon Freight Services LLC (VCC-91) is not authorized to make the requested changes to Section 2.3.b of its tariff.
3. To implement the tariff changes authorized in this order, Avalon Freight Services LLC (VCC-91) shall, on or after the effective date of this order, file revised tariff pages in accordance with General Order 117-Series. The revised pages shall be made effective no earlier than 10 days after the date of filing.
4. The August 2, 2022 confidential prepared version of Avalon Freight Services LLC (VCC-91) response to the June 27, 2022 *Email Ruling Requesting Additional Information* of Avalon Freight Services LLC (VCC-91) (AFS) consisting of confidential versions of Exhibit 1.a, 1.b, and 1.c pertaining to the charter rates for AFS vessels *Two Harbors*, *Lucy Franco*, and *Catalina Provider* (respectively); Exhibit 2, an opinion letter dated October 14, 2021 from Windes Audit/Tax/Advisory pertaining to the reasonableness of allocating percentages of certain common costs borne by Catalina Channel Express (CCE) and AFS; Exhibit 3.a pertaining to the office and warehouse leases in San Pedro between CCE and AFS; and Exhibit 4 pertaining to the warehouse lease between CCE and AFS for the Avalon Warehouse are granted confidential treatment for a period of five years from the date of this order. During this five-year period, this information may be viewed by Commission staff, the assigned Commissioner and staff, the assigned Administrative Law Judge (ALJ), the Assistant Chief ALJ, and the Chief ALJ, or any others which parties have agreed to in writing or as ordered by a court of competent jurisdiction. If AFS believes that it is necessary

for this information to remain under seal for longer than five years, AFS may file a motion providing a justification for a further extension at least 30 days before the expiration of the five-year period granted by this order.

5. Today's decision is effectively immediately.
6. Application 22-01-014 is closed.

This order is effective today.

Dated _____, at San Francisco, California