

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Consumer Protection and Enforcement Division RESOLUTION TL-19139
June 23, 2022

RESOLUTION

**RESOLUTION GRANTING VESSEL COMMON CARRIERS
TEMPORARY AUTHORITY TO ADJUST THEIR FARES AND RATES
WITHOUT SPECIFIC APPROVAL OF THE COMMISSION**

SUMMARY

This resolution gives vessel common carriers (VCCs) a one (1) year temporary authority to increase their fares and rates up to a maximum of 20% from their current fares and rates without specific Commission authorization. This action is being taken in response to the recent, significant increases in fuel prices in California.

BACKGROUND

Eighteen vessel operators currently hold certificates from the Commission to operate as VCCs pursuant to California Public Utilities Code (Pub. Util. Code) § 1007 et seq. The majority provide cross-channel transportation of passengers or freight between California mainland points and Santa Catalina Island or conduct passenger transportation services on San Francisco Bay.

VCCs are required to file tariffs with the Commission showing their fares, rates, and charges (Pub. Util. Code § 486 et seq.). They generally may increase fares and rates only upon approval of the Commission (Pub. Util. Code § 454).

By letter dated March 14, 2022 (the letter), Thomas MacBride of the law firm Downey Brand, LLP (MacBride), on behalf of their clients Avalon Freight Services (VCC-91), Blue & Gold Fleet (VCC-77), Catalina Channel Express (VCC-52), Catalina Classic Cruises (VCC-86), and Catalina Passenger Service, Inc

(VCC-47), requested "...that the Commission issue a resolution authorizing VCCs to temporarily increase rates to reflect the recent dramatic rise in the cost of fuel."¹

MacBride cites previous instances where the Commission granted VCCs special authority to adjust fares without specific Commission approval (Special Authority to Adjust Fares or Special Authority) by resolution to levy a temporary fuel surcharge in response to increasing fuel costs.² MacBride stated that the Commission had not extended the fuel surcharge past December 16, 2015.

The letter cites Commission Resolution TL-19115's use of spot market price at Los Angeles for low-sulfur No. 2 diesel fuel published by the U.S. Energy Information Administration as the benchmark for determining the volatility of fuel prices. The letter stated:

The cost of fuel since the expiration of the last fuel cost surcharge has been sustained and, in recent months, dramatic. According to the United States Energy Information Administration, in December of 2015, when the fuel surcharge authorized by TL-19115 expired, the price of Ultralow sulphur diesel fuel was roughly \$1.12/gallon at the Port of Los Angeles. On March 7, 2022 it reached \$3.957/gallon, over triple the December 2015 level. In the 12-month period from March 8, 2021 to March 7, 2022, the price per gallon has increased 102%³ [sic] The price has increased 62% since the end of 2021 [emphasis MacBride's]⁴

The letter describes how some VCCs that are in a competitive market have been granted a Zone Rate of Freedom (ZORF), which allows them to adjust their fares within a zone set by the Commission, so that they may expeditiously adjust their fares based upon market forces. Past resolutions granting fuel surcharges have

¹ <https://www.cpuc.ca.gov/-/media/cpuc-website/divisions/consumer-protection-and-enforcement-division/documents/tlab/psc-and-vcc/vcc-fuel-surcharge/request-for-vcc-fuel-surcharge-march-2022.pdf>.

² "Special authority to adjust fares without specific Commission approval" is commonly referred to as a "fuel surcharge."

³ See https://www.eia.gov/dnav/pet/hist/er_epd2dc_pf4_y05la_dpgD.htm.

⁴ *Ibid.*

excluded VCCs that were issued ZORFs or granted them a smaller “zone of reasonableness.” The letter cites Commission Decision 04-04-004 that granted a ZORF to Catalina Channel Express, Inc. The letter argued that “[t]he ZORF is intended largely to address competitive issues while the fuel cost surcharge is solely intended to address increases in the cost of fuel.”

In the letter, MacBride asks that the Commission grant a 20% ZORF to any VCC that does not have a ZORF with the floor set at the VCC’s current base fare and to increase by 20% in the upper limit of the ZORF of any VCC that currently has a ZORF. MacBride asks that this matter be expedited pursuant to Rule 14.6(6) and cites that between January 28, 2022 and March 14, 2022, the date of his letter, the cost of fuel increased 41%.

Special Authority to Adjust Fares

Due to increasing fuel costs in 1999, the Commission was contacted by several Passenger Stage Corporations (PSCs) asking for relief. Commission Resolution TL-18904, issued on October 21, 1999, found that 25% of PSCs at that time did not have a ZORF that would allow them to easily adjust their fares, and those that did have a ZORF may be at the upper limit of their ZORF.⁵ PSCs were allowed to file a tariff with a “zone of reasonableness” whose upper limit was 15% above their current fares. In the resolution, the Commission stated:

Some PSCs have contacted the Commission’s Rail Safety and Carriers Division ... expressing a need to raise fares due to significant increases in their fuel costs. Generally, carriers advise that they would rather not go through the lengthy process of making formal application for a permanent fare increase, particularly given the possible transitory nature of the higher fuel costs. A formal application would require 30 days’ notice and a specific Commission decision authorizing an increase.

⁵ <https://www.cpuc.ca.gov/-/media/cpuc-website/divisions/consumer-protection-and-enforcement-division/documents/tlab/psc-and-vcc/vcc-fuel-surcharge/tl18904-psc-fuel-surcharge-october-1999.pdf>.

The PSC resolution above was cited in Resolution TL-18927, issued on April 20, 2000, that granted VCCs a “zone of reasonableness.”⁶ The resolution discussed how some PSCs were granted a ZORF pursuant to Pub. Util. Code § 454.2 and in Commission Decision 98-12-016 granted a ZORF to a VCC using its “...broad discretion to fashion rules pertaining to transportation in this state.” The resolution granted VCCs special authority to adjust fares and to file tariffs for 180 days adjusting their fares within a 15% “zone of reasonableness,” except for Catalina Channel Express, Inc., which was authorized to file a tariff within a 15% “zone of reasonableness” above its authorized ZORF.⁷

The authorization to continue the “zone of reasonableness” was extended for one year by Resolution TL-18944 (October 5, 2000) and then for a second year, by Resolution TL-18974 (September 20, 2001), until October 14, 2002.⁸ Due to declining fuel prices, Resolution TL-18989 (March 6, 2002) modified the termination date so that the authority to increase fares expired on June 30, 2002 instead of October 17, 2002. Between June 30, 2002 and June 9, 2004, no special authority was granted.

On June 9, 2004, the Commission issued Resolution TL-19042, granting the request by several VCCs for the ability to raise fares or rates 15% for a 180-day period due to “[s]ignificant price increases in diesel fuel and gasoline...in California” and to the fact that “VCCs use large amounts of fuel in conducting their vessel operations.”⁹ The Commission renewed the Special Authority on ten occasions as shown in Table 1.

⁶ <https://www.cpuc.ca.gov/-/media/cpuc-website/divisions/consumer-protection-and-enforcement-division/documents/tlab/psc-and-vcc/vcc-fuel-surcharge/tl18927-vcc-fuel-surcharge-april-2000.pdf>.

⁷ The “special authority to adjust fares” is commonly referred to as a “fuel surcharge.”

⁸ <https://www.cpuc.ca.gov/-/media/cpuc-website/divisions/consumer-protection-and-enforcement-division/documents/tlab/psc-and-vcc/vcc-fuel-surcharge/tl18944-vcc-fuel-surcharge-october-2000.pdf> and <https://www.cpuc.ca.gov/-/media/cpuc-website/divisions/consumer-protection-and-enforcement-division/documents/tlab/psc-and-vcc/vcc-fuel-surcharge/tl18974-vcc-fuel-surcharge-september-2001.pdf>

⁹ Resolution TL-19042, Findings 1 and 3.

Table 1. Special Authority to Adjust Fares 2004-2015¹⁰

Reso.	Eff. Date	Amount	Period
TL-19042	6/9/2004	15%	180 days
TL-19051	12/2/2004	15%	1 year
TL-19066	12/1/2005	20%	1 year
TL-19080	11/30/2006	20%	1 year
TL-19092	11/16/2007	20%	1 year
TL-19094	11/6/2008	30%	1 year
TL-19097	11/20/2009	20%	1 year
TL-19100	12/16/2010	20%	1 year
TL-19103	12/1/2011	20%	1 year
TL-19106	1/10/2013	20%	1 year
TL-19115	12/19/2013	20%	2 years

On December 16, 2015, Resolution TL-19115, the last resolution granting the Special Authority, expired.¹¹ Commission Executive Director Tim Sullivan, in a letter to Daniel Reidy (an attorney for several VCCs), wrote that the cost of West Coast No. 2 Ultra Low Sulfur Diesel fuel had dropped about 40% between September 2014 and February 2016 and that the US EIA Short Term Energy Outlook projected that fuel prices would not significantly rise in the near future.¹² Executive Director Sullivan wrote:

As your letter states, one option is to file an Application with the Commission to request an increase in their rates. Another option is to request an increase of their Zone of Rate Freedom Authority (ZORF). Either way, any request for a fuel surcharge or increase in rates requires justification.

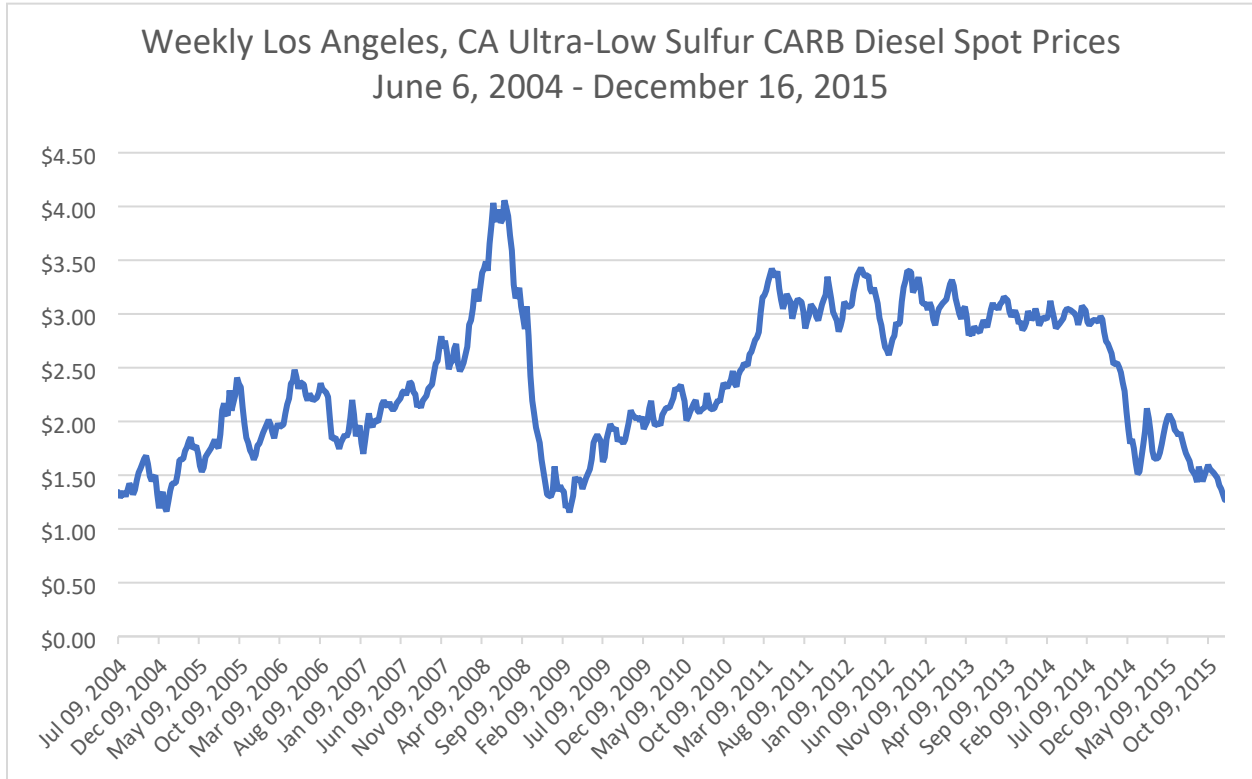
¹⁰ <https://www.cpuc.ca.gov/regulatory-services/licensing/transportation-licensing-and-analysis-branch/passenger-stage-corporation-and-vessel-common-carrier>.

¹¹ <https://www.cpuc.ca.gov/-/media/cpuc-website/divisions/consumer-protection-and-enforcement-division/documents/tlab/psc-and-vcc/vcc-fuel-surcharge/tl19115-vcc-fuel-surcharge-december-2013.pdf>.

¹² <https://www.cpuc.ca.gov/-/media/cpuc-website/divisions/consumer-protection-and-enforcement-division/documents/tlab/psc-and-vcc/vcc-fuel-surcharge/request-for-vcc-fuel-surcharge-march-2016.pdf>.

Data from the US Energy Information Administration for the *Los Angeles, CA Ultra-Low Sulfur CARB Diesel Spot Price* shows that the spot price is volatile.¹³ This has been the case historically, not just currently. Chart 1 shows the Weekly *Los Angeles, CA Ultra-Low Sulfur CARB Diesel Spot Prices* during the period of Special Authority in Table 1.

Chart 1



From April 27, 2012 through April 25, 2022, fuel prices ranged from a low of \$0.57 per gallon to \$4.44 per gallon with an average price of \$2.12 and a standard deviation of \$0.66. Chart 2 shows weekly CARB diesel spot prices from April 27, 2012 through December 27, 2021, and Chart 3 shows daily CARB diesel spot prices from March 4, 2020 to June 13, 2022.

¹³

https://www.eia.gov/dnav/pet/hist/LeafHandler.ashx?n=PET&s=EER_EPD2DC_PF4_Y0_5LA_DPG&f=W.

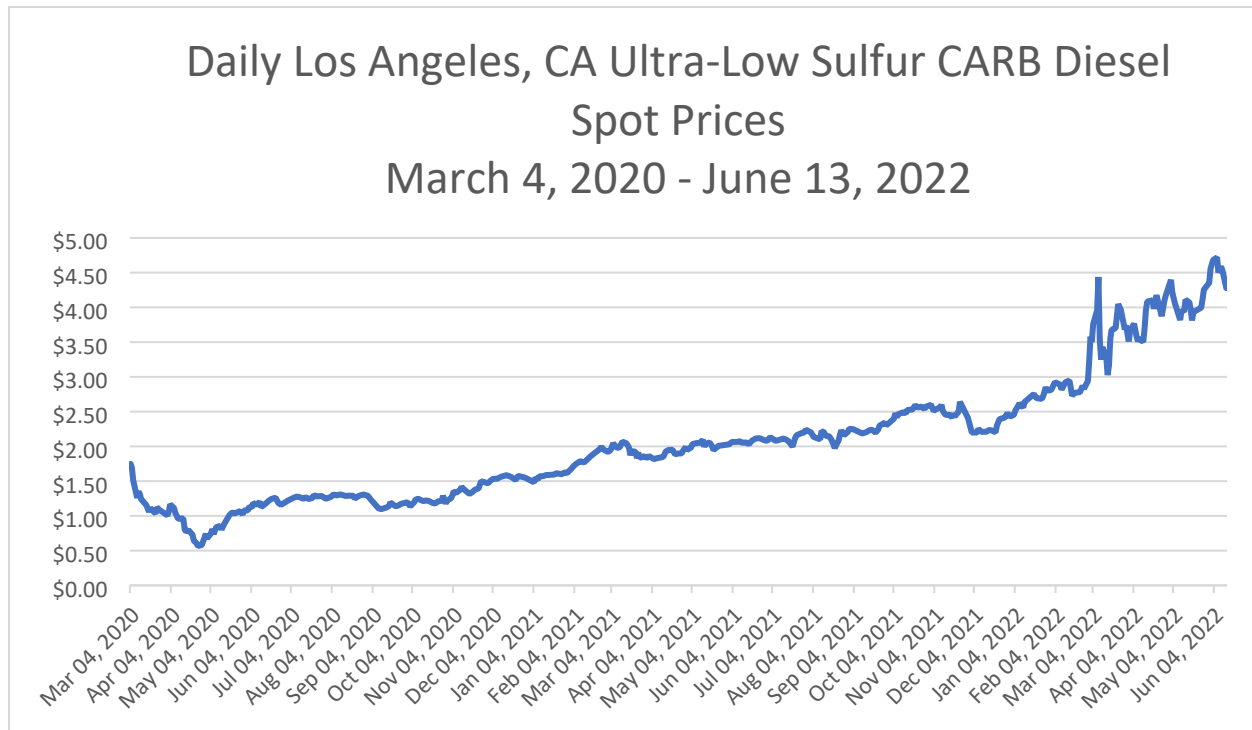
Chart 2



On March 4, 2020, Governor Newsom issued a Proclamation of a State of Emergency due to the threat of the COVID-19 pandemic.¹⁴ By April 24, 2020, fuel prices decreased to \$0.57 per gallon. Fuel prices steadily increased to \$2.87 per gallon on February 24, 2022. By March 8, 2022, fuel peaked at \$4.44 per gallon before declining to \$3.03 a week later. Since March 8, 2022, fuel prices have been highly volatile with an average price of \$3.96 per gallon and reaching a 35 year high of \$4.72 per gallon on June 6, 2022.

¹⁴ <https://www.gov.ca.gov/wp-content/uploads/2020/03/3.4.20-Coronavirus-SOE-Proclamation.pdf>

Chart 3



DISCUSSION

The Commission granted VCCs Special Authority to Adjust Fares in 2000 and again in 2004 due to the rapidly increasing cost of fuel. As MacBride stated, fuel increased 102% during from March 8, 2021 to March 7, 2022, and 62% in the two and a half months prior to MacBride sending his letter.¹⁵ It is not disputed that fuel prices have increased dramatically.

Requiring VCCs to make individual applications for fare or rate increases when the need for immediate relief is compelling would not be reasonable. Just as in 2000 and 2004, carriers should have a convenient mechanism to quickly adjust their fares and rates to recover their increased fuel costs. In addition, a Special Authority to Adjust Fares will protect passengers and shippers by ending any fare or rate increase when fuel prices subside, and the Special Authority is no longer needed.

¹⁵ *Ibid.*

The Special Authority to Adjust Fares granted to all VCCs in 2000 and 2004 is similar to the ZORF authority granted to many PSCs pursuant to Pub. Util. Code § 454.2. This statute refers only to PSCs. However, in the 1998 decision that first granted rate flexibility to Catalina Channel Express, Inc. (VCC-52), the Commission concluded that it has broad discretion to fashion rules relating to transportation rates in this state (D.98-12-016 in Application 98-04-051). This includes extending the ZORF concept to VCCs in the absence of express authorization by statute.

We recognize that VCCs do not necessarily operate in a highly competitive environment. There is, however, competition among the carriers serving Santa Catalina Island and most of the San Francisco Bay where vessel services compete with other modes of transportation. Giving all VCCs temporary authority for one (1) year to raise rates up to 20% should not result in unreasonably high rates. The Commission's Consumer Protection and Enforcement Division will monitor fuel prices and, if price changes warrant cancellation or modification of this authority during the one (1) year period, will act accordingly. VCCs may need to respond promptly to changes in fuel costs, and there is good cause to authorize them temporarily to make tariff filings on two days' notice. Because we believe that this Special Authority to Adjust Fares is a temporary measure, granting the Special Authority on the currently tariffed fare or rate, regardless of the presence of a ZORF, will provide equal benefit for all VCCs.

COMMENTS ON DRAFT RESOLUTION

Pub. Util. Code § 311(g)(1) provides that this Resolution must be served on all parties and subject to at least 30 days of public review and comment prior to a vote of the Commission. Pub. Util. Code § 311(g)(2) provides that this 30-day period may be reduced or waived "in an unforeseen emergency..."

The Commission Rules of Practice and Procedure also provide for public review and comment to be waived or reduced in an "unforeseen emergency situation." "Requests for relief based on extraordinary circumstances in which time is of the essence" justify such action (Commission Rule 14.6(a)(6)). "Unusual matters that cannot be disposed of by normal procedures if the duties are to be fulfilled" also qualify for such expedited treatment (Commission Rule 14.6(a)(8)).

Accordingly, due to the extraordinary nature of the increasing fuel costs, the 30-day comment period was reduced to 10 days pursuant to these authorities. In order to better disseminate the directives in this Resolution, it was served on Thomas MacBride, Daniel Reidy, City of Avalon, and all active and suspended vessel common carriers.

No comments on the proposed Resolution were received.

FINDINGS

1. Significant price increases in diesel fuel and gasoline have occurred in California.
2. Avalon Freight Services (VCC-91), Blue & Gold Fleet (VCC-77), Catalina Channel Express (VCC-52), Catalina Classic Cruises (VCC-86), and Catalina Passenger Service, Inc (VCC-47) report that they have incurred substantial increases in the price of diesel fuel and request immediate rate relief to recover their increased costs.
3. VCCs use large amounts of fuel in conducting their vessel operations.
4. The Commission has broad discretion to fashion rules relating to transportation rates in this state.
5. In line with prior Commission actions, VCCs should be allowed for one (1) year to file tariffs with fare and rate adjustments within a "zone of reasonableness" whose upper limit is 20% above currently authorized fares and rates. For VCCs that have a ZORF, the "zone of reasonableness" shall have an upper limit of 20% of the current tariffed fares and rates that are on file with the Commission.
6. Because VCCs may need to respond promptly to changes in fuel costs, there is good cause to authorize them to make tariff filings on two (2) days' notice.

7. The tariff filings authorized by the following order are reasonable and justified.

THEREFORE, IT IS ORDERED that:

1. For one (1) year from the effective date of this order, vessel common carriers (VCCs) are permitted to file tariffs with fares and rates that are within a "zone of reasonableness" whose upper limit is 20% above currently authorized fares and rates. For VCCs that have been granted a Zone Rate of Freedom (ZORF), the upper limit shall be 20% above the fares and rates on tariffs currently filed with the Commission.
2. Tariff filings made pursuant to this order may be made effective upon two (2) days' notice (two days after filing with the Commission).
3. VCCs shall be allowed to exercise the action permitted under Ordering Paragraph 1 by making tariff filings that show the percentage surcharge applied on any or all of their tariffed fares and rates within the range authorized.
4. Tariff filings authorized by this resolution shall expire one (1) year after the effective date of this order absent further order by this Commission.
5. In addition to posting and filing tariffs, each VCC shall post notices in conspicuous places such as tickets booths, docking stations, information centers, its terminals and vessels, and on the VCC's website explaining the fare changes. Such notices shall be posted at least one day before the effective date of the fare changes and shall remain posted for at least 30 days.
6. The Executive Director shall cause a copy of this resolution to be served on every VCC with an active or suspended operating authority issued by 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 June 23, 2022.

The following Commissioners voted favorably thereon:

/s/ RACHEL PETERSON

RACHEL A. PETERSON
Executive Director

ALICE REYNOLDS
President

CLIFFORD RECHTSCHAFFEN
GENEVIEVE SHIROMA
DARCIE L. HOUCK
JOHN R.D. REYNOLDS
Commissioners