

Decision \_\_\_\_\_

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

Application of BALBOA ISLAND FERRY, INC. (VCC-2), a California Corporation, to increase the baseline rates for its vessel common carrier service and to obtain a Zone of Rate Freedom.

Application 24-05-017

**DECISION AUTHORIZING BALBOA ISLAND FERRY, INC. A BASELINE FARE INCREASE AND ZONE RATE OF FREEDOM**

**Summary**

This decision grants Balboa Island Ferry, Inc. the authority to initiate a baseline fare increase pursuant to Public Utilities Code Section 454. This decision also: (1) grants authority to establish a Zone of Rate Freedom; (2) approves the application without the need to prepare environmental documentation; and (3) affirms that the application aligns with the goals of the California Public Utilities Commission’s Environmental and Social Justice Action Plan.

Application 24-05-017 is closed.

**1. Background**

**1.1. Factual Background**

Balboa Island Ferry, Inc. (Applicant) is a vessel common carrier (VCC)

authorized to transport passengers and vehicles by ferryboat between Balboa Island and the Balboa Peninsula, all within the city limits of Newport Beach in Orange County. The Applicant is the sole common carrier providing this service. The Applicant has been providing service on this route since 1919. The Applicant was first granted authority to operate in 1930 by the Railroad Commission in Decision (D.) 22747. The current service (under certificate VCC-2) was authorized in 1959 by this Commission in D.57847. Nearly all the Applicant's revenues are derived from fares and the Applicant does not receive any government subsidies.

The Applicant provides ferry service utilizing three vessels. The vessels are rated to carry 98 passengers and 2 crew without any cars on board or 73 passengers and 2 crew with three cars on board. The majority of ferry passengers are tourists, however, a considerable number of passengers are residents who take the ferry as part of their commute. The crossing is approximately 800 feet. An alternative transportation route is available by using bridges, but using bridges increases the traveling distance by six miles. D.20-02-055 notes that the Applicant has no competing VCC on its route, but there are charter party arrangements and other private vessels that use its route.<sup>1</sup>

The Applicant's current baseline rates were set by D.20-02-055, issued on February 28, 2020.

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<sup>1</sup> See D.20-02-055 at 7-8.

Resolution (Res.) TL-19148,<sup>2</sup> issued on June 3, 2024, extends for an additional year the authority granted originally by Res. TL-19139 (2022) and subsequently extended by Res. TL-19141 (2023) to vessel common carriers that have current applications being adjudicated, allowing them the authority to continue to adjust their fares and rates up to 20% within a “Zone of Reasonableness” without specific Commission authorization until a Decision to their applications has been adopted. Res. TL-19148 noted that Balboa Island Ferry, Inc. will be authorized to continue to use a Zone of Reasonableness until June 23, 2025 since this instant Application was filed before issuance of the Resolution.<sup>3</sup>

## **1.2. Procedural Background**

On May 20, 2024, Balboa Island Ferry, Inc. filed an application to increase the baseline rates for its VCC service and to obtain a Zone of Rate Freedom (ZORF). No protests to the application were filed.

On August 12, 2024, the Commission held a prehearing conference virtually on the Webex platform.

On October 3, 2024, the assigned Commissioner issued a Scoping Memo and Ruling (Scoping Ruling).

## **2. Submission Date**

This matter was deemed submitted upon issuance of the Scoping Ruling on October 3, 2024.

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<sup>2</sup> See Res. TL-19148 at: <https://www.cpuc.ca.gov/-/media/cpuc-website/files/uploadedfiles/cpucwebsite/content/licensing/general/tl-19148-vcc-fuel-surcharge-final-resolution.pdf>

<sup>3</sup> See Resolution TL-19148 at 4-6.

### **3. Jurisdiction**

The Commission has jurisdiction over requests for rate adjustments per Pub. Util. Code Section 454 and Section 491 and for a request for a ZORF per Pub. Util. Code Section 454.2, which the Commission has construed to apply to VCCs. The Application meets the requirements in Rule 3.2 for authority to increase rates.

### **4. Issues Before the Commission**

The Scoping Ruling identified the following issues to be determined:

1. Should the Commission grant the requested increase in base fares?
2. Should the Commission grant the requested ZORF?

### **5. Discussion and Determination of Scoping Issues**

This section will discuss and analyze the issues outlined in Section 4 of this decision.

#### **5.1. Request for Base Rate Increase**

##### **5.1.1. Discussion**

The Applicant requests the authority to increase its base rates. The Applicant states that an increase is required because, in the event the Temporary Fuel Cost Surcharge is not extended next year, the Applicant's current baseline fares will produce an operating loss. The Applicant's proposed baseline fare increase of nearly 60 percent will produce a profit (measured by an "operating ratio") deemed reasonable by the Commission at an operating ratio of 92.9%.<sup>4</sup> The Applicant claims that the 60 percent increase is only a 14 percent increase

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<sup>4</sup> D.20-02-055 notes on p.6 that an operating ratio within the range of 90 – 100% has been considered an acceptable ratio.

from its current fuel surcharge fare authorized by the continuing Resolutions. The Applicant notes that the Consumer Price Index has increased by 20 percent from the time of its last baseline rate approval, and the dramatic rise in inflation has resulted in increases in the Applicant's operating expenses, including labor costs.

The Applicant claims that its liability insurance costs are fixed to the passenger seating capacity of the vessel. The Applicant's ridership decreased following the start of the COVID-19 pandemic, but its liability insurance costs did not decrease. The Applicant states that as of January 12, 2023, the California Air Resources Board (CARB) requires the Applicant to use a more expensive renewable diesel fuel than prior years (when it used Ultra-Low Sulfur CARB Diesel fuel). The Applicant claims that CARB regulations for harbor craft require it to convert its vessels to 100 percent zero emission. The Applicant notes it plans to spend \$50,000 in 2024 and \$100,000 in 2025 on these conversions to electric zero-emission vessels.

The Applicant requests to increase its base fares as shown in the table below.

<b>Fare Type</b>	<b>Fares in Effect March 21, 2022</b>	<b>Fares in Effect April 24, 2024</b>	<b>Proposed Fares</b>
Pedestrian – Adult (One-Way)	\$1.50	\$1.75	\$2.00
Pedestrian – Child (One-Way)	\$0.50	\$0.50	\$1.00
Bicycle – Adult (One-Way)	\$1.75	\$2.00	\$2.25
Bicycle – Child (One-Way)	\$0.75	\$0.75	\$1.25

Fare Type	Fares in Effect March 21, 2022	Fares in Effect April 24, 2024	Proposed Fares
Motorcycle/Scooter (One-Way)	\$2.00	\$2.25	\$2.50
Passenger Auto / Truck (One-Way)	\$2.50	\$3.00	\$3.00
Unspecified Vehicle (One-Way)	\$2.50	\$2.50	\$3.00
Vehicle Passenger – Adult (One-Way)	\$1.50	\$1.75	\$2.00
Vehicle Passenger – Child (One-Way)	\$0.50	\$0.50	\$1.00
30 Ride Commuter Card for passenger vehicles or trucks (with driver)	\$54.00	\$64.00	\$64.00

### 5.1.2. Determination

Due to the cost increases affecting multiple aspects of the Applicant's business, the substantial increase in inflation and fuel costs, and costs related to other regulatory requirements, we find the requested fare increase reasonable.

## 5.2. Request for Zone of Rate Freedom

### 5.2.1. Discussion

The Applicant requests a ZORF of up to 20 percent above or below the base rate that will allow it to respond to competitive pressures and changes in costs without regard to the timing of rate relief through an industry wide temporary fuel cost surcharge. The Applicant claims that its history demonstrates it does not use a ZORF as an unbridled vehicle for rate increases. The Applicant notes that it did not raise its rates to the upper limit of the Zone of

Reasonableness authorized under TL-19139 when it increased fares, and has not increased rates since. The Applicant claims that a ZORF is essential to help it remain competitive should operating costs increase and need to increase its fares, or to lower the rates to ensure marketplace competitiveness. The Applicant notes that because most of its ridership comes from tourism, customers are riding the ferry on a discretionary basis and maintaining the right fare balance is crucial to its business.

The minimum and maximum ZORF Fares when applied to the Proposed Base Fare are shown in the table below.

<b>Fare Type</b>	<b>Proposed Base Fares</b>	<b>Minimum 20% ZORF Fare</b>	<b>Maximum 20% ZORF Fare</b>
Pedestrian – Adult (One-Way)	\$2.00	\$1.60	\$2.40
Pedestrian – Child (One-Way)	\$1.00	\$0.80	\$1.20
Bicycle – Adult (One-Way)	\$2.25	\$1.80	\$2.70
Bicycle – Child (One-Way)	\$1.25	\$1.00	\$1.50
Motorcycle/Scooter (One-Way)	\$2.50	\$2.00	\$3.00
Passenger Auto / Truck (One-Way)	\$3.00	\$2.40	\$3.60
Unspecified Vehicle (One-Way)	\$3.00	\$2.40	\$3.60
Vehicle Passenger – Adult (One-Way)	\$2.00	\$1.60	\$2.40

Vehicle Passenger – Child (One-Way)	\$1.00	\$0.80	\$1.20
30 Ride Commuter Card for passenger vehicles or trucks (with driver)	\$64.00	\$51.20	\$76.80

### 5.2.2. Determination

Due to other transportation route alternatives and competition from private vessels, we find the request for a ZORF of 20 percent above and below the base fare is reasonable.

## 6. Compliance with the California Environmental Quality Act

The Commission is obliged to determine whether an application for a base passenger fare increase is subject to environmental review pursuant to the California Environmental Quality Act (CEQA), and we do so here. CEQA requires the lead permitting agency to conduct an environmental review of any “project” for consideration in determining whether to grant the requested authority. CEQA Guidelines Section 15378(a) defines “project” in relevant part as follows:

“Project” means the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, and that is ... [a]n activity involving the issuance to a person of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies.

The Applicant's proposed round trip passenger base fare increase will not change its VCC service, and therefore will not result in a direct physical change to the environment or a reasonably foreseeable indirect physical change in the environment. Accordingly, the proposed base passenger fare increase is not a "project" and is, therefore, not subject to environmental review pursuant to CEQA.

**7. Compliance with Commission's Environmental and Social Justice Action Plan**

On April 7, 2022, the Commission adopted version 2.0 of its Environmental and Social Justice (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. 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.

Though the Balboa Island Ferry primarily serves tourists, we note that the ferry service provides an alternative means of transportation that may be more

cost and time effective than using other transportation options.<sup>5</sup> As ESJ communities around Newport Beach may also benefit from the ongoing availability of transportation from inland to Balboa Island, we conclude that approval of this Application will help promote and further the Commission's ESJ Action Plan goals.

## **8. Summary of Public Comments**

Rule 1.18 allows any member of the public to submit written comment in any Commission proceeding using the "Public Comment" tab of the online Docket Card for that proceeding on the Commission's website. Rule 1.18(b) requires that relevant written comment submitted in a proceeding be summarized in the final decision issued in that proceeding. No relevant written comment was submitted in this proceeding.

## **9. Conclusion**

We grant the base rate increase and ZORF as requested by Balboa Island Ferry, Inc.

## **10. Procedural Matters**

This decision affirms all rulings made by the Administrative Law Judge and assigned Commissioner in this proceeding. All motions not ruled on are deemed denied.

## **11. Waiver of Comment Period**

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Pub. Util. Code §311(g)(2) and Rule

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<sup>5</sup> We further note that the Applicant is in the process of converting its fleet to 100 percent zero emission.

14.6(c)(2), the otherwise applicable 30-day period for public review and comment is waived.

## **12. Assignment of Proceeding**

Darcie L. Houck is the assigned Commissioner and Eric Fredericks is the assigned Administrative Law Judge in this proceeding.

### **Findings of Fact**

1. The Applicant is currently authorized to operate as a VCC to transport passengers and their baggage between Balboa Island and the Balboa Peninsula, wholly within the city limits of Newport Beach. The Applicant provides the only ferry service to and from Balboa Island.

2. The Applicant's current fares were authorized by D.20-02-055.

3. The Applicant does not receive any public subsidy funding.

4. Currently, the Applicant primarily provides service to tourists.

5. Due to increased operating expenses, increased expenditures to comply with environmental regulations, and loss of ridership following the COVID-19 pandemic, the Applicant may operate at a loss in future years without approval of the instant Application.

6. A ZORF of 20 percent will permit the Applicant flexibility to adjust rates due to market forces and would have a minimal impact on the affordability of fares.

7. Commission Res. TL-19148 allowing for a 20 percent fuel surcharge is due to expire in June 2025.

8. The proposed round trip passenger base fare increase does not have the potential for resulting in either a direct physical change in the environment, or a

reasonably foreseeable indirect physical change in the environment because granting the fare increase does not change the service. Therefore, the fare increase is not subject to environmental review pursuant to CEQA.

9. The Applicant's request aligns with the Commission's ESJ Action Plan.

### **Conclusions of Law**

1. Based on cost increases in the Applicant's operations, capital expenditures, maintenance, and labor and continuing impacts on ridership from the COVID-19 pandemic, Applicant has a need to increase its base fares as prescribed by Pub. Util. Code Section 454 and Rule 3.2.

2. The Applicant should be granted a 20 percent ZORF to have needed flexibility to adjust fares as needed as prescribed by Pub. Util. Code Section 454.2.

3. The expiration of Commission Res. TL-19148 will disallow the Applicant continued implementation of a 20 percent fuel surcharge.

4. A.24-05-017 should be closed.

### **O R D E R**

#### **IT IS ORDERED** that:

1. Balboa Island Ferry, Inc. is authorized to establish the increased base fares proposed in Application 24-05-017.

2. To implement the increases authorized in this decision, Balboa Island Ferry, Inc. shall, on or after the effective date of this decision, file revised tariff pages in accordance with General Order 117-Series. The revised pages and the fares listed in them shall be made effective no earlier than 10 days after the date of filing.

3. Balboa Island Ferry, Inc. is authorized to establish a Zone of Rate Freedom of 20 percent above and below the proposed base fare.

4. Balboa Island Ferry, Inc. may make changes within the Zone of Rate Freedom by filing amended tariffs on not less than 10 days' notice to the Commission and to the public. The tariff shall include the authorized maximum and minimum fares and the fare to be charged between each pair of service points.

5. Balboa Island Ferry, Inc. shall inform the public of the increased fares and their effective date by posting notice on its terminals and vessels. Such notice shall be posted at least 10 days before the effective date of the fare changes and shall remain posted for at least 30 days.

6. This authority shall expire unless exercised within 90 days after the effective date of this decision.

7. Application 24-05-017 is closed.

This order is effective today.

Dated \_\_\_\_\_, 2025, at San Francisco, California