

Decision \_\_\_\_\_

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

Application of STAR & CRESCENT BOAT COMPANY, a Nevada corporation, doing business as FLAGSHIP CRUISES & EVENTS (VCC-63), for approval to identify itself as a Nevada corporation.

Application 24-03-001

**DECISION GRANTING REQUEST OF STAR & CRESCENT BOAT COMPANY DOING BUSINESS AS FLAGSHIP CRUISES & EVENTS TO CORRECT ITS STATED STATE OF INCORPORATION AS NEVADA**

**Summary**

This decision grants the application of Star & Crescent Boat Company (VCC-63), doing business as (dba) Flagship Cruises & Events (Star & Crescent or Applicant), for approval to correct its stated state of incorporation as Nevada on the Commission’s Transportation Portal and any other relevant database identified by the Commission.

This decision closes the proceeding.

**1. Background**

Applicant is a vessel common carrier (VCC) authorized to transport passengers on San Diego Bay between Coronado Island and the City of

San Diego.<sup>1</sup> Star & Crescent has been continuously operating as a VCC since July 1987.<sup>2</sup> It provides service between the Ferry Landing Market Place (located near the intersection of First Street and B Avenue on Coronado Island) and the Fifth Avenue Landing (located at the foot of Broadway near the San Diego Convention Center) in San Diego.<sup>3</sup> Applicant has sought fare increases from the Commission in the past. The Commission has approved prior fare increases, with the last increase of \$2 approved in August 2021 by Decision (D.) 21-08-028.<sup>4</sup>

On March 4, 2024, Star & Crescent Boat Company (VCC-63), doing business as Flagship Cruises & Events (Star & Crescent or Applicant), filed Application (A.) 24-03-011 seeking approval to correct its stated state of incorporation as Nevada on the Commission's Transportation Portal and any other relevant database identified by the Commission. Specifically, Star & Crescent requested that the Commission resolve the inquiry contained in Ordering Paragraph 6 of D.24-02-016, issued in A.23-05-006, by authorizing and directing Applicant to correct information previously provided to databases maintained by the Commission with respect to Applicant's state of incorporation.

On March 21, 2024, Administrative Law Judge (ALJ) Resolution 176-3543 determined that this Application is ratesetting. On August 29, 2024, a prehearing conference (PHC) was held remotely to address the issues of law and fact,

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<sup>1</sup> Decision (D.) 24-02-016, issued February 15, 2024, at 3.

<sup>2</sup> *Ibid.*

<sup>3</sup> *Ibid.*

<sup>4</sup> *Ibid.*

determine the need for hearing, set the schedule for resolving the matter, and address other matters as necessary. On January 31, 2025, the assigned Commissioner's Scoping Memo and Ruling (Scoping Memo) was issued.

## **2. Issues Before the Commission**

The issue to be determined or otherwise considered is:

1. Whether the Commission should grant Applicant's request for authorization to correct its identification of its state of incorporation on the Commission's transportation portal and any other relevant Commission database.

## **3. Discussion and Analysis**

To give further context for the instant Application, we must first refer to A.23-05-006 in which Star & Crescent sought authority to increase its base fare by \$1 and to establish a Zone of Rate Freedom (ZORF) of plus or minus 15% (the "Fare Increase Application"). On February 15, 2024, the Commission granted the Fare Increase Application in D.24-02-026.

During the course of the Commission's consideration of A.23-05-006, the assigned ALJ issued a ruling dated September 20, 2023 (Ruling) that pointed out that:

Star & Crescent Boat Company, a California corporation (#767124), was incorporated in 1976, but on December 27, 2017 it "merged out" into Star & Crescent Boat Company, a Nevada corporation (#4100126). The California corporation is the "disappearing entity" and the Nevada corporation is the "surviving entity."<sup>5</sup>

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<sup>5</sup> A.23-05-006, ALJ Ruling dated September 20, 2023.

The ALJ directed Star & Crescent to reply to the service list with the following information:

- “1. Was the merger reported?
2. If yes, when?
3. If the Applicant believes that it was unnecessary to report the merger, please elaborate.”<sup>6</sup>

On September 27, 2023, Applicant responded to the Ruling by indicating that the substance of the transaction that occurred in December of 2017 (“Transaction”) was not a “merger” as stated in the Ruling.<sup>7</sup> Applicant explained that the Transaction was not a “merger” as it is commonly understood to be a combination of two separate companies or the acquisition of one company by another.<sup>8</sup> Applicant stated it did not seek a merger partner or to acquire, or be acquired, by another business entity.<sup>9</sup> Rather, Applicant explained that it simply sought to move its state of incorporation to Nevada with no changes to its ownership, officers, or management.<sup>10</sup>

Applicant included a copy of the Agreement of Merger filed with the California Secretary of State on December 27, 2017 as Exhibit A to the instant Application, which sets forth the details of the transaction in which Star & Crescent Boat Company, a California corporation, ceases to exist and the entity is then merged with, and into, Star & Crescent Boat Company, a Nevada

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<sup>6</sup> *Ibid.*

<sup>7</sup> Application, at 3.

<sup>8</sup> *Ibid.*

<sup>9</sup> *Ibid.*

<sup>10</sup> *Ibid.*

corporation. Applicant also explained that as a result of the Transaction, all of the assets and liabilities of the California corporation became assets and liabilities of the Nevada corporation, and all of the shareholders of the California corporation became shareholders of the Nevada corporation.<sup>11</sup> Applicant stated that neither the governing board of directors nor the management of Star & Crescent changed, and that Star & Crescent's financial performance was not affected by the Transaction.<sup>12</sup>

Applicant provided the documentation of the reincorporation to the California Secretary of State in late 2017 and filed its Nevada "Certificate of Existence with Status in Good Standing" to the California Secretary of State on January 17, 2018.<sup>13</sup> A copy of that Nevada certificate is attached as Exhibit B to the Application. The California Secretary of State then certified that Applicant, now a Nevada Corporation, was authorized to conduct business in California. The California Secretary of State's certification is reflected on the Secretary of State's website.<sup>14</sup>

### **Reporting to the Commission**

Applicant alleges that it did not formally report the reincorporation to the Commission because it did not result in an acquisition of control governed by Section 854 of the Public Utilities (P.U.) Code. Applicant also alleges that after the reincorporation, the shareholders that controlled Star & Crescent before the

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<sup>11</sup> *Ibid.*

<sup>12</sup> Application, at 3.

<sup>13</sup> *Ibid.*

<sup>14</sup> <https://bizfileonline.sos.ca.gov/search/business>, Entity Number 4100126.

reincorporation continued to control it.<sup>15</sup> Applicant states that the shares of the California corporation's stock were converted to shares of the Nevada corporation's stock but, because the shareholders remained unchanged, control remain unchanged.<sup>16</sup> Applicant argues that P. U. Code Section 854 governs acquisition of control of a public utility.<sup>17</sup> Applicant states that in the instant case, there was no actual acquisition of control of a public utility since the shareholders who controlled Star & Crescent before the transaction were the same ones who controlled the company after the transaction- i.e., they were the same shareholders and did not acquire anything they did not already possess.<sup>18</sup> Moreover, Applicant alleges that no assets were sold, transferred, or encumbered pursuant to P. U. Code Section 851<sup>19</sup>, since the assets held by Star & Crescent continued to be held by Star & Crescent.<sup>20</sup> In addition, Applicant alleges that the

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<sup>15</sup> Application, Exhibit (Exh.) A, Section 2.1(c)

<sup>16</sup> Application, at 5.

<sup>17</sup> *Ibid.*

<sup>18</sup> *Ibid.*

<sup>19</sup> P.U. Code Section 851, subsection (a) states, in relevant part: "A public utility... shall not sell, lease, assign, mortgage, or otherwise dispose of, or encumber the whole or any part of its railroad, street railroad, line, plant, system, or other property necessary or useful in the performance of its duties to the public, or any franchise or permit or any right thereunder, or by any means whatsoever, directly or indirectly, merge or consolidate its railroad, street railroad, line, plant, system, or other property, or franchises or permits or any part thereof, without first having either secured an order from the commission authorizing it to do so...."

<sup>20</sup> Application, at 5.

reincorporation did not result in the acquisition of the capital stock of another carrier pursuant to P. U. Code Section 852.<sup>21</sup>

P. U. Code Section 854 states, in relevant part:

(a) A person or corporation, whether or not organized under the laws of this state, shall not directly or indirectly merge, acquire, or control, including pursuant to a change in control as described in [subparagraphs \(D\) or \(E\) of paragraph \(1\) of subdivision \(b\) of Section 854.2](#), any public utility organized and doing business in this state without first securing authorization to do so from the commission. The commission may establish, by order or rule, the definitions of what constitutes a merger, acquisition, or control activity that is subject to this section. Any merger, acquisition, or control without that prior authorization is void. A public utility organized and doing business under the laws of this state, and a subsidiary or affiliate of, or corporation holding a controlling interest in, a public utility, shall not aid or abet any violation of this Section.

We agree that P. U. Code Section 854 does not apply to the facts of the instant matter. Section 854 is not implicated in this case given that the same

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<sup>21</sup> P.U. Code Section 852 states, in relevant part: “No public utility... shall purchase or acquire, take or hold, any part of the capital stock of any other public utility, organized or existing under or by virtue of the laws of this state, without having been first authorized to do so by the commission.... Every assignment, transfer, contract, or agreement for assignment or transfer of any stock by or through any person or corporation to any corporation or otherwise in violation of any of the provisions of this article is void and of no effect, and no such transfer shall be made on the books of any public utility. Nothing in this section prevents the holding of stock previously lawfully acquired.”

Every assignment, transfer, contract, or agreement for assignment or transfer of any stock by or through any person or corporation to any corporation or otherwise in violation of any of the provisions of this article is void and of no effect, and no such transfer shall be made on the books of any public utility. Nothing in this section prevents the holding of stock previously lawfully acquired.

shareholders controlled Star & Crescent both before and after the reincorporation such that there was no merger, acquisition, control, or change of control of Star & Crescent. That is, there was no actual acquisition of control of a public utility since the shareholders who controlled Star & Crescent before the transaction were the same ones who controlled the company after the transaction.

Ultimately, the shareholders who controlled Star & Crescent after the reincorporation did not acquire any ownership or control of the company that they didn't already possess prior to the reincorporation. Moreover Section 854 states "[t]he commission may establish, by order or rule, the definitions of what constitutes a merger, acquisition, or control activity that is subject to this section." Here, we do not find that Section 854 implicated any merger, acquisition, or control activity as contemplated by the code section.

#### **Identification of Applicant in Applications and Annual Reports**

Applicant acknowledges that it should have identified itself as a Nevada corporation in its post-2017 rate applications in order to comply with Rule 2.1(a)<sup>22</sup> of the Commission's Rules of Practice and Procedure.<sup>23</sup> Applicant states that it should have identified itself as a Nevada Corporation in its Annual Reports to the Commission for 2018 through 2022, and states it inadvertently did not do so largely as a result of its employment of templates, such as Microsoft Word and Microsoft Excel files, and other information employed in pre-2018

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<sup>22</sup> Rule 2.1(a) states: "[t]he exact legal name of each applicant and the location of principal place of business, and if an applicant is a corporation, trust, association, or other organized group, the State under the laws of which such applicant was created or organized."

<sup>23</sup> Application, at 6.



submissions.<sup>24</sup> Applicant further notes that in two post-2017 rate submissions, those templates were updated with then-current operating information but they did not reflect Applicant's incorporation in Nevada.<sup>25</sup>

Applicant was required to have updated its state of incorporation with the Commission in accordance with Rule 2.1(a). Star & Crescent noted that it provided the documentation of the reincorporation to the California Secretary of State in late 2017 and filed its Nevada "Certificate of Existence with Status in Good Standing" to the California Secretary of State on January 17, 2018.<sup>26</sup> The California Secretary of State then certified that Star & Crescent, which became a Nevada corporation, was authorized to conduct business in California.<sup>27</sup> Given that the California Secretary of State authorized Star & Crescent to conduct business in California as a Nevada corporation effective January 17, 2018, it should not have taken Applicant over 6 years to update its state of incorporation with the Commission via the instant Application.

Since Applicant has been continuously operating and conducting business in California, it was required to update its state of incorporation with the Commission on or around the time that it updated this information with the California Secretary of State in January 2018. We are surprised and concerned that Applicant failed to inform the Commission of such a significant change, that occurred more than six years ago, as required. In particular, we note that

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<sup>24</sup> *Ibid.*

<sup>25</sup> *Ibid.*

<sup>26</sup> Application, at 3; Application, Exh. B.

<sup>27</sup> *Ibid.*

Applicant is required to have a valid and accurate Certificate of Public Convenience and Necessity to operate as a VCC before it can even lawfully offer service. Furthermore, just and reasonable rates are dependent upon the truthful and accurate reporting of corporate structure, including a company's state of incorporation.

Continued failure to promptly seek pre-approval of future changes can and likely will result in financial sanctions. Individuals, including both in-house and external counsel to Applicant may also be subject to personal and/or professional sanctions. In the future, Applicant must update the Commission of any changes or updates to its status in compliance with Commission Rules and practice. Nonetheless, we will allow Applicant to update its state of incorporation with the Commission via this decision.

Applicant proposes to correct its identification on the Commission's Transportation Portal and any other relevant Commission database and in any future filing it makes.<sup>28</sup> In addition, Commission staff has updated Applicant's VCC certificate to reflect Nevada as Applicant's state of incorporation, herein attached as Appendix A to the decision. The amended VCC certificate attached as Appendix A is adopted to reflect that Applicant is incorporated in the State of Nevada.

#### **4. Conclusion**

This decision authorizes Star & Crescent to correct its stated state of incorporation as Nevada on the Commission's Transportation Portal and any

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<sup>28</sup> *Ibid.*

other relevant database identified by the Commission. In addition, this decision adopts the amended VCC certificate, attached as Appendix A, to reflect that Star & Crescent is incorporated in the State of Nevada.

#### **5. Categorization of Proceeding and Submission**

In Resolution ALJ 176-3543, dated March 21, 2024, the Commission preliminarily categorized this application as ratesetting. The application is unopposed and there are no material issues of fact. In the assigned Commissioner's Scoping Memo and Ruling dated January 31, 2025, we affirmed the category of this proceeding as ratesetting and determined that no hearings would be necessary in this matter. This matter was submitted on January 31, 2025.

#### **6. Waiver of Comment Period**

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Rule 14.6(c)(2) of our Rules of Practice and Procedure, the otherwise applicable 30-day period for public review and comment is being waived.

#### **7. Assignment of Proceeding**

Karen Douglas is the assigned Commissioner and Suman Mathews is the assigned Administrative Law Judge in this proceeding.

#### **Findings of Fact**

1. Applicant is currently authorized to operate as a Vessel Common Carrier (VCC) to transport passengers between Coronado Island and the Ferry Landing Marketplace/ San Diego Convention Center area, wholly within the city limits of San Diego.

2. Applicant changed its state of incorporation from California to Nevada on January 17, 2018.

3. The California Secretary of State certified that Applicant, now a Nevada corporation, was authorized to conduct business as such in California as of January 17, 2018.

4. Although Applicant changed its state of incorporation to Nevada with the California Secretary of State on January 17, 2018, Applicant failed to update its state of incorporation with the Commission until it filed the instant Application on March 4, 2024.

5. Applicant was not required to formally report the reincorporation to the Commission pursuant to P. U. Code Section 854 because the reincorporation did not result in an acquisition of control governed by that code Section.

6. Commission Rule 2.1(a) requires that an applicant before the Commission, if a corporation, trust, association, or other organized group, provide the State under the laws of which such applicant was created or organized.

7. An amended Vessel Common Carrier (VCC) certificate is necessary to reflect that Applicant's state of incorporation is Nevada.

### **Conclusions of Law**

1. It is reasonable to grant Applicant the authority to correct its state of incorporation as Nevada on the Commission's Transportation Portal and any other relevant database identified by the Commission.

2. Applicant's state of incorporation should be changed to Nevada in the Commission's Transportation Portal and any other relevant Commission databases on the effective date of this decision.

3. The amended Vessel Common Carrier (VCC) certificate attached in Appendix A to this decision should be adopted to reflect that Applicant's state of incorporation is Nevada.

4. Applicant should notify the Commission of any changes to its status as it affects the Commission in a timely manner on or around the time such change occurs.

### O R D E R

**IT IS ORDERED** that:

1. Star & Crescent Boat Company (Vessel Common Carrier (VCC)-63), doing business as (dba) Flagship Cruises & Events, is granted approval to correct its stated state of incorporation as Nevada on the Commission's Transportation Portal and any other relevant database identified by the Commission.

2. The amended Vessel Common Carrier (VCC) certificate attached in Appendix A to this decision shall be adopted to reflect that the state of incorporation for Star & Crescent Boat Company, doing business as (dba) Flagship Cruises & Events, is Nevada.

3. Star & Crescent Boat Company (VCC-63), a Nevada corporation doing business as (dba) Flagship Cruises & Events, shall notify the Commission of any future changes to its status as it affects the Commission on or around the time such change occurs.

4. Application 24-03-011 is closed.

This order is effective today.

Dated \_\_\_\_\_, 2025, at Sacramento, California.

# Appendix A

Appendix A Title Page	STAR & CRESCENT BOAT COMPANY  (a Nevada corporation)	First Revised
Replaces		Original Title
Page		

CERTIFICATE  
 OF  
 PUBLIC CONVENIENCE AND NECESSITY  
 VCC – 63  
 TO OPERATE AS  
 A COMMON CARRIER OF PASSENGERS  
 BY VESSEL

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Showing common carrier by vessel operating rights,  
 Restrictions, limitations, exceptions, and privileges.

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All changes and amendments authorized by the Public Utilities Commission of the State of California will be made as revised pages or added original pages.

Issued by California Public Utilities Commission.

Revised by Decision \_\_\_\_\_, Application 24-03-001.

Appendix A STAR & CRESCENT BOAT COMPANY Second  
Revised Page 1

(a Nevada corporation)

Replaces

(VCC – 63)

First Revised

Page 1

Star & Crescent Boat Company, by the certificate of public convenience and necessity is authorized to conduct common carrier services by vessel for the transportation of passengers and their baggage between San Diego Harbor Excursion facilities at the foot of Broadway, and Fifth Avenue Landing, adjacent to the San Diego Convention Center, in the City of San Diego, on the one hand, and The Ferry Landing Marketplace, City of Coronado, on the other hand.

Issued by California Public Utilities Commission.

Revised by Decision \_\_\_\_\_, Application 24-03-001