

Decision \_\_\_\_\_

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

In the Matter of the Application of Catalina Red & White Cruises, Inc., a California corporation for a certificate of public convenience and necessity to operate as a vessel common carrier between Long Beach and Los Angeles (San Pedro), California on the one hand and all points and places on Santa Catalina Island on the other hand, and between all points and places at and within three miles of Santa Catalina Island; request for interim operating authority.

Application 01-02-026  
(Filed February 16, 2001)

W. Lee Smith, Attorney at Law, for Catalina Red & White Cruises, Inc., applicant.

Pamela Albers, Attorney at Law, for City of Avalon, Intervenor.

William H. Carder and Phillip C. Monrad, Attorneys at Law, and Peter B. Olney and Stefan Mueller-Dombois, for Protestant.

**OPINION GRANTING CERTIFICATE**

**Summary**

Catalina Classic Cruises is granted a certificate of public convenience and necessity (CPCN) to operate a common carrier vessel between San Pedro and Long Beach on the one hand and Santa Catalina Island on the other hand.

**Background and Procedural History**

Catalina Red & White Cruises, Inc. (Applicant) seeks authority to operate scheduled and non-scheduled passenger vessel service from Long Beach and San Pedro to Santa Catalina Island. Applicant's name changed to Catalina Classic Cruises, Inc. shortly after this proceeding started. A timely protest was filed by Inlandboatmen's Union of the Pacific, Marine Division, International Longshore and Warehouse Union, AFL-CIO (Protestant). City of Avalon petitioned and was granted intervener status in support of Applicant.

Following a prehearing conference, the assigned Commissioner issued a Scoping Memo dated May 30, 2001, setting forth issues to be considered at evidentiary hearings. These evidentiary hearings were held before Administrative Law Judge (ALJ) Sheldon Rosenthal on June 14-15, 2001. The subject matter of the hearings was interim authority for Applicant to operate scheduled service between Avalon, on Santa Catalina Island, and the mainland, so that the impending tourist season traffic might be accommodated. Applicant was already operating non-scheduled service to camps on the island under a charter agreement with an existing carrier.

Following completion of the hearings and a shortened briefing schedule Applicant was granted interim authority to serve Avalon in Decision (D.) 01-09-061. Still to be determined in further proceedings were issues of safety, employee rights, a request for a zone of rate freedom (ZORF), and a request for non-scheduled service.

Further hearings on these issues and a permanent certificate were held on July 11, 2001, and the matter was submitted upon receipt of briefs. Subsequently, Protestant filed declarations asserting various instances of what it claimed to be unsafe operations. Applicant refuted these allegations. The ALJ ruled that hearings should be held on the safety issues contained in Protestant's declarations. After some difficulty in obtaining dates, hearings were set for April 15-16, 2002. Applicant's attorney then filed a motion to be relieved as counsel, and another counsel filed a notice of substitution. At the request of substituted counsel, the evidentiary hearings were rescheduled for May 21-22, 2002.

On May 8, 2002, Protestant filed a withdrawal of objections to the application. As explained in this document, and at the hearing on May 21, 2002, the employment issues had been satisfactorily settled and the safety problems asserted in the declarations had been resolved.

Notice of this matter appeared in the Commission's Daily Calendar on March 5, 2001. In Resolution ALJ-176-3059, dated March 15, 2001, the Commission preliminarily categorized the application as ratesetting. We affirm the categorization of ratesetting.

**Public Convenience and Necessity**

Applicant has asked for scheduled service between Long Beach/San Pedro and Avalon, as well as non-scheduled service between Long Beach/San Pedro and points on Santa Catalina Island. Two large ships, the Catalina King and Catalina Countess, which have recently been refitted by Applicant, will provide this service. Each ship is capable of carrying over 700 passengers. Proposed fare for round-trip service for a two-hour ride is \$28.50, with senior fare (over 55) of \$26 and children fare of \$23. These are fares under which Applicant is presently

operating pursuant to the interim authority granted in D.01-09-061, and are considerably cheaper than fares offered by other carriers using smaller and faster vessels for service to Avalon. There is no dispute of the need for this relatively low-cost fare. There are time slots available at the Port of Avalon for Applicant's vessels.

At the May 21, 2002 hearing, counsel for Applicant specifically agreed to a continuation of the conditions in Ordering Paragraphs 3 and 4 of D.01-09-061. These provisions mandated that no unauthorized passengers be allowed in the wheelhouse of the vessels, and that at least two crewmembers be at the doorway of its vessels and the boarding ramp to ensure safety of the passengers.

### **Zone of Rate Freedom**

Applicants seek a ZORF of 15% above and below its filed tariff rates. It points to *Catalina Channel Express, Inc.*, D.98-12-016, to show that the Commission has extended the concept of ZORF from land transportation to vessels to promote competition. Applicant is accurate in its statements that we encourage competition, and have utilized ZORF as a means of enhancing it. However, Applicant has failed to show that competition exists.

The essence of its case, and the position of the City of Avalon, is that Applicant proposes a unique service. It offers a slow vessel and a much-reduced rate when compared with other cross-channel carriers. Applicant sponsored Exhibit 21, which is a tariff of Catalina Channel Express, Inc. That tariff permits operation of a vessel of less than 19 knots speed for a fare of \$30.50. (Tr. 445-446.) Applicant claims that this is competition justifying a ZORF. We disagree. Applicant's President Nielsen admitted that Catalina Channel Express, Inc. does not actually provide this service and that its fare to Santa Catalina Island on the boats that it does operate is approximately \$41.00. (Tr. 493.) Thus, competition is

theoretical at best. At such time as Applicant can show that there is real competition we will consider an application for a ZORF

**Comments on Proposed Decision**

The proposed decision of the ALJ was mailed to the parties in accordance with Pub. Util. Code Sec 311(d) and Rule 77.1 of the Rules of Practice and Procedure. No comments were filed.

**Assignment of Proceeding**

Michael Peevey is the Assigned Commissioner and Sheldon Rosenthal is the assigned Administrative Law Judge in this proceeding.

**Findings of Fact**

1. Applicant proposes to offer scheduled service to Avalon from San Pedro and Long Beach.
2. Applicant proposes to offer non-scheduled service to various points on Santa Catalina Island from San Pedro and Long Beach.
3. Applicant is presently offering both of these services through interim authority and by charter service with another carrier.
4. Applicant will offer service in the Catalina King and Catalina Countess, vessels capable of carrying over 700 passengers.
5. Applicant's service will be slower than that of other carriers presently servicing Catalina Island, but at a lower cost to passengers.
6. The City of Avalon endorses the proposed service of Applicant.
7. A protest concerning the safety of Applicant's operations has been resolved.
8. A protest concerning the employment rights of former crewmembers of the Catalina King and Catalina Countess has been withdrawn.

9. Applicant has agreed to continue the conditions imposed in our interim decision D.01-09-061.

**Conclusions of Law**

1. There is a public need for the service offered by Applicant
2. Applicant has the capability to operate the proposed service and the financial resources necessary to sustain the service.
3. Applicant should be granted a CPCN to operate passenger vessel service on a scheduled basis between Long Beach/San Pedro, on the one hand, and Avalon, on the other hand, and on a non-scheduled basis between Long Beach/San Pedro and Santa Catalina Island.
4. Conditions pertaining to unauthorized passengers in the wheelhouse of Applicant's vessels and crewmembers at the doorways and gangplanks of Applicant's vessels should be continued.
5. Applicant's service will be unique and not competitive with other vessels. Therefore a ZORF is not appropriate and should be denied.
6. Today's order should be made effective immediately.

**O R D E R**

**IT IS ORDERED** that:

1. A certificate of public convenience and necessity (CPCN) is granted to Catalina Classic Cruises, Inc. (Applicant), a corporation, authorizing it to operate as a vessel common carrier (VCC), as defined in Pub. Util. Code § 238, to transport persons and their baggage, between the points and over the routes set forth in Appendix VCC-86, subject to the conditions contained in the following paragraphs.

2. Applicant shall:
  - a. File a written acceptance of this certificate within 30 days after this order is effective.
  - b. Establish the authorized service and file tariffs and timetables within 120 days after this order is effective.
  - c. File tariffs and timetables on or after the effective date of this order. They shall become effective ten days or more after the effective date of this order, provided that the Commission and the public are given not less than ten days' notice.
  - d. Comply with General Orders Series 87, 104, and 111, and 117.
  - e. Maintain accounting records in conformity with the Uniform System of Accounts.
  - f. Remit to the Commission the Transportation Reimbursement Fee required by Pub. Util. Code § 423 when notified by mail to do so.
3. Applicant shall comply with all the rules, regulations, and requirements of the United States Coast Guard.
4. Unauthorized passengers shall not be allowed in the wheelhouse of Applicant's vessels.
5. Applicant shall station at least two crewmembers at the doorway and gangplank of its vessels to assist and safeguard passengers.
6. Applicant is authorized to begin operations on the date that the Consumer Protection and Safety Division mails a notice to the Applicant that its evidence of insurance and other documents required by Ordering Paragraph 2 have been filed with the Commission.
7. The CPCN to operate as VCC-86, granted herein, expires, unless exercised within 120 days after the effective date of this order.





8. Applicant's request for a zone of rate freedom is denied.
9. This proceeding is closed.

This order is effective today.

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

CERTIFICATE  
OF  
PUBLIC CONVENIENCE AND NECESSITY  
AS A VESSEL COMMON CARRIER  
VCC-86

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Showing vessel common carrier operative rights, restrictions,  
limitations, exceptions, and privileges.

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

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Issued under authority of Decision \_\_\_\_\_,  
dated \_\_\_\_\_, of the Public Utilities Commission  
of the State of California in Application 01-02-026.

SECTION I. GENERAL AUTHORIZATIONS, RESTRICTIONS,  
LIMITATIONS, AND SPECIFICATIONS.

Catalina Classic Cruises, Inc., a corporation, by the certificate of public convenience and necessity granted by the decision noted in the foot of the margin, is authorized to conduct common carriage by vessels, for the transportation of passengers, their baggage, and accompanying supplies, between points and places as described in Section II, subject however, to the authority of this Commission to change or modify this authority at any time and subject to the following provisions:

- A. No vessel shall be operated unless it has met all applicable safety requirements, including those of the United States Coast Guard.
- B. Nonscheduled service shall be operated on an "on-call" basis. The term "on-call," as used, refers to service, which is authorized to be rendered dependent on the demands of passengers. The tariffs and timetables shall show the conditions under which each authorized on-call service will be rendered.

SECTION II.

**Scheduled Service**

**Long Beach/Los Angeles – Avalon, Santa Catalina Island**

Between the Port of Long Beach or the Port of Los Angeles (San Pedro), on the one hand, and Avalon, Santa Catalina Island, on the other hand.

**Non-scheduled Service**

**Long Beach/Los Angeles – Santa Catalina Island**

Between the Port of Long Beach or the Port of Los Angeles (San Pedro), on the one hand, and Santa Catalina Island, on the other hand.