

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Consumer Protection and Safety Division

San Francisco, California

Date: March 15, 2007

Resolution TL-19086

R E S O L U T I O N

RESOLUTION TL-19086. ADOPTING JOINT SETTLEMENT AGREEMENT BETWEEN THE CONSUMER PROTECTION AND SAFETY DIVISION AND HARBOR BREEZE CORP., A CALIFORNIA CORPORATION AND ITS PRESIDENT RALPH DANIEL SALAS.

SUMMARY

Pursuant to Article 12 of the Commission's Rules of Practice and Procedure, this Resolution adopts the joint settlement between the Consumer Protection and Safety Division ("CPSD") and Harbor Breeze Corp. ("Harbor Breeze"), a California corporation, and its President Ralph Daniel Salas, without instituting an Order Instituting Investigation or conducting evidentiary hearings. CPSD, Harbor Breeze, and its President agree to a settlement amount of \$5,000.

BACKGROUND

In April of 2006, CPSD received complaints from licensed vessel common carriers that Harbor Breeze was operating as a vessel common carrier ("VCC") of passengers without a valid certificate of public convenience and necessity ("CPCN") in violation of Public Utilities Code Section 1007. CPSD began its investigation of Harbor Breeze in May of 2006 to investigate alleged violations of the Public Utilities Code and the Commission's General Orders.

On May 17, 2006, CPSD informed Salas of the complaints received and CPSD's pending investigation of Harbor Breeze. CPSD also directed Salas to cease and desist all operations related to "unscheduled charter operations" to Catalina Island. Salas stated that he believed his operations were exempt from the Commission's jurisdiction under

the “continuous loop exemption.”¹ CPSD faxed a Cease and Desist letter to Salas on May 17, 2006. Salas’ attorney, Neil Lerner, contacted CPSD the following week to state that Harbor Breeze would comply with the cease and desist order despite their belief that the “continuous loop exemption” applied to Harbor Breeze.

CPSD reviewed the Commission’s “continuous loop exemption” and determined the exemption did not apply to Harbor Breeze’s operations. CPSD then contacted Lerner by facsimile, letter, and telephone to inform him of CPSD’s determination.

Salas and Lerner agreed that Harbor Breeze would not continue operating as a vessel common carrier without first obtaining a VCC certificate. Harbor Breeze applied for a CPCN on May 9, 2006. Other licensed VCC carriers protested the application, which is currently pending.

On September 7, 2006, CPSD issued a Mandatory Records Review request on Harbor Breeze covering April 2006 to the present to determine how many trips Harbor Breeze conducted without a VCC certificate.

CPSD’s review of Harbor Breeze’s records disclosed Harbor Breeze conducted four trips between April 1 and September 7, 2006, as a vessel common carrier without first obtaining a valid certificate from the Commission, in violation of Public Utilities Code Section 1007.

On October 20, 2006, upon completion of CPSD’s review of Harbor Breeze’s records, CPSD met with Salas and Lerner to inform them that CPSD would recommend the Commission impose a \$5,000 fine. On or about November 29, 2006, Lerner and Selina Shek, CPSD’s counsel, conducted a settlement discussion and made an oral agreement on a settlement.

DISCUSSION

Despite Harbor Breeze’s assertions that the “continuous loop exemption” applies to its operations, CPSD has determined that the exemption does not apply to Harbor Breeze’s operations.

¹ In Decision 85-08-038, dated August 7, 1985, the Commission established guidelines for determining when a vessel common carrier service is not subject to Section 1007 because the transportation is performed in a continuous loop rather than from one point to another point.

CPSD's investigation disclosed that Harbor Breeze conducted four for-hire trips between April and September 2006, without a valid VCC certificate, in violation of Public Utilities Code Section 1007.

Pursuant to Article 12 of the Commission's Rules of Practice and Procedure, this Resolution authorizes CPSD and its staff to settle its investigation of Harbor Breeze with Harbor Breeze and Ralph Daniel Salas, its President, without instituting an Order Instituting Investigation or conducting evidentiary hearings. CPSD, Harbor Breeze, and its President agree to a settlement amount of \$5,000.

Upon the Commission's approval of this Resolution and the attached Settlement Agreement, Harbor Breeze will pay the Commission \$2,500 and within 30 calendar days, will pay the remaining balance of \$2,500. Payments must be made payable to the order of the Commission and delivered to CPSD Transportation Enforcement Supervisor, Suong T. Le, 505 Van Ness Avenue, San Francisco, CA 94102.

If Salas or Harbor Breeze violate or fail to comply with any provision of the Settlement Agreement, the Commission's rules and regulations, or any Commission judicial decision, CPSD will petition to initiate a Commission proceeding for purposes of, but not limited to, imposing fines and penalties pursuant to Public Utilities Code Section 2107.

COMMENTS

Public Utilities Code section 311(g) (1) generally requires that draft resolutions be served on all parties and subject to at least 30 days public review and comment prior to a vote of the Commission. Section 311(g) (3) provides that this 30-day period may be reduced or waived pursuant to Commission adopted rule.

The 30-day comment period for this resolution has been waived in accordance with the provisions of Rule 14.6(c)(2). Rule 14.6(c)(2) provides that in an uncontested matter where the decision or resolution grants the relief requested, the Commission may waive or reduce the comment period for a draft resolution and on proposed decisions issued in proceedings in which no hearings were conducted. Here, the parties (CPSD and Harbor Breeze) have stipulated to waive the comment period. Thus, pursuant to Rule 14.6(c)(2), we waive the review and comment period on this Resolution.

FINDINGS

1. In April of 2006, CPSD received complaints from licensed vessel common carriers that Harbor Breeze was operating as a vessel common carrier of passengers without a valid VCC certificate in violation of Public Utilities Code Section 1007.

2. On May 17, 2006, CPSD informed Harbor Breeze's President of the complaints received and CPSD's pending investigation of Harbor Breeze.
3. On May 17, 2006, CPSD directed Harbor Breeze to cease and desist all "unscheduled charter operations."
4. Harbor Breeze asserted that the "continuous loop exemption" applied to its operations.
5. CPSD determined the "continuous loop exemption" did not apply to Harbor Breeze's operations.
6. On May 9, 2006, Harbor Breeze applied for a VCC certificate with the Commission.
7. On September 7, 2006, CPSD issued a Mandatory Records Review request on Harbor Breeze covering April 2006 to September 2006.
8. CPSD's investigation disclosed that Harbor Breeze conducted four for-hire trips between April 1 and September 7, 2006, without a valid VCC certificate in violation of Public Utilities Code Section 1007.
9. Harbor Breeze's application for a CPCN is still pending.
10. CPSD agreed to settle its investigation of Harbor Breeze with Harbor Breeze and its President, Ralph Daniel Salas, without instituting an Order Instituting Investigation or conducting evidentiary hearings.
11. CPSD, Harbor Breeze, and its President agree to a settlement amount of \$5,000.

THEREFORE IT IS ORDERED that:

1. The Consumer Protection and Safety Division ("CPSD"), Harbor Breeze, and its President, Ralph Daniel Salas, have agreed to settle CPSD's investigation of Harbor Breeze without instituting an Order Instituting Investigation or conducting evidentiary hearings.
2. Upon approval of this Resolution, Harbor Breeze will pay the Commission \$2,500 and pay the remaining balance of \$2,500 within 30 calendar days thereafter.

This Resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed and adopted at a conference of the Public Utilities Commission of the State of California held on March 15, 2007; the following Commissioners voting favorably thereon:

/s/ STEVE LARSON

STEVE LARSON
Executive Director

MICHAEL R. PEEVEY
President
DIAN M. GRUENEICH
JOHN A. BOHN
RACHELLE B. CHONG
TIMOTHY ALAN SIMON
Commissioners