

ORIGINALDecision No. 40515

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 WILMINGTON TRANSPORTATION COMPANY,)
 a corporation, for an order author-)
 izing the resumption of certain) Application No. 24757
 service for the transportation of) (7th Supplemental)
 passengers by vessel between Wilming-)
 ton and Avalon at increased fares.)

C. F. Fennema, W. J. Scott, and Gibson, Dunn &
 Crutcher by Woodward M. Taylor, for applicant.

EIGHTH SUPPLEMENTAL OPINION

Wilmington Transportation Company is a corporation engaged in the business of transporting passengers and property by vessel as a common carrier between Wilmington and Avalon, Santa Catalina Island. By its seventh supplemental application in this proceeding it seeks authority to remove the expiration date on certain temporary fares.

Public hearing on the supplemental application was had before Examiner Bryant at Los Angeles on June 11 and 12, 1947. The matter is ready for decision.

The fares in question were published early in 1942 under an order of this Commission which authorized their establishment for the duration of the national emergency then existing. (Decision No. 35019, 44 C.R.C. 36). Service was suspended shortly thereafter as a war measure; partial operations were resumed by barge and small craft in 1945; and steamer service was restored in March, 1946. Supplemental orders authorized applicant to retain the higher fares for a trial period which was scheduled to expire with April 15, 1947. Following a public hearing had in March on applicant's sixth supplemental application, the Commission found that authority to continue the fares on a permanent basis had not been justified, but that denial of the

application in toto (with consequent restoration of the pre-war fares) would require the company to operate at a loss (Decision No. 40153 of April 8, 1947). The expiration date of the temporary fares was extended to July 15, 1947, in order to afford applicant an opportunity to show that such fares as it might propose to maintain thereafter were reasonable and justified. The decision stated that such further showing should include a full disclosure of the contractual or other arrangements with affiliated companies, including a complete explanation of payments to the Santa Catalina Island Company which are claimed as operating expenses of the Wilmington Transportation Company.

By its seventh supplemental application, herein considered, applicant again seeks authority to continue the present passenger fares on a permanent basis. The record includes a detailed explanation of the services performed by the two affiliated companies and of the contracts under which they operate. The stock of Wilmington Transportation Company is wholly owned by Santa Catalina Island Company.¹ The Island Company owns all of Santa Catalina Island, except for properties within the corporate limits of the City of Avalon, of which it owns about half. Under contracts hereinafter referred to, the Transportation Company has the exclusive privilege of landing and receiving passengers and freight on the property of the Island Company. There are two piers within the City of Avalon, one of which is owned by the Transportation Company; the other, suitable only for small craft, is owned by the city. Several common carriers transport passengers in small craft between the municipal pier and the mainland; all other common carriage of passengers and freight to and from Santa Catalina Island is performed by Wilmington Transportation Company. The Island Company owns and operates hotels and other

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In the interest of brevity, Wilmington Transportation Company will be referred to herein as "the Transportation Company"; Santa Catalina Island Company will be referred to as "the Island Company."

accommodations on the island, offers sightseeing and pleasure trips by boat and motor bus, operates a casino, theatres, golf courses and other businesses and attractions on the island, and is engaged in other activities such as furnishing to the City of Avalon its water, electricity, and gas.

Evidence was submitted through exhibits and testimony of the general manager of the Transportation Company, and of the secretary-treasurer of both companies. In addition, an engineer of the Commission's transportation staff submitted an exhibit consisting primarily of an analysis of contract charges assessed by the Island Company as an item of expense to the Transportation Company. His study included an estimated depreciated rate base for the applicant company as of December 31, 1946, and an average rate base for the year 1947. He did not undertake to make adjustments in applicant's operating figures, to make independent estimates of future revenues or expenses, nor to draw conclusions from the figures which he submitted. No one appeared in opposition to the granting of this application.

The secretary-treasurer supplied and explained financial and other data pertaining to operations of both companies. A summary of his revenue and expense figures for the Transportation Company is set forth in the following table:

| | TABLE NO. 1 | | | |
|--|------------------|-----------|-------------|-----------|
| | 1947 (Estimated) | | 1946* | |
| | Passenger | Freight | Passenger | Freight |
| <u>Operating Revenues</u> | \$1,764,250 | \$117,047 | \$1,413,703 | \$102,046 |
| <u>Operating Expenses</u> | 1,464,618 | 194,205 | 1,023,699 | 170,322 |
| <u>Net Operating Revenues</u> | | | | |
| before Contract Charges | 299,632 | (77,158) | 390,004 | (68,276) |
| <u>Contract Charges</u> | 205,695 | - | 283,548 | - |
| <u>Net Income</u> | | | | |
| (before Income Taxes) | 93,937 | (77,158) | 106,456 | (68,276) |
| <u>Net Income from Passenger and Freight Operations Combined</u> | | | | |
| (before Income Taxes) | | \$16,779 | | \$38,180 |

* Includes 10 months of steamer service only.

() Indicates loss.

Applicant's expense estimates for the year 1947, as set forth in the table, are in general well substantiated by the evidence. Detailed discussion of applicant's figures is unnecessary except as to certain expense items which are unusual and substantial, and which in our opinion must be modified for purposes of this proceeding.

First, there is the item of \$77,158, representing anticipated net loss from freight operations. The freight is handled principally on the passenger vessels, supplemented by a barge service. The general manager testified that the freight traffic is unable to bear its full share of the transportation cost, and must necessarily be carried at a loss. He stated that it is essential commerce consisting largely of foodstuffs and other supplies transported from the mainland to the island for the use of residents and visitors, and declared that losses which cannot be made up in the freight rates must be recovered through the passenger fares. The company has been reluctant to increase the freight rates, he said, for the reason that any such adjustment would fall principally upon the islanders. He believed that some increase should now be made, however, and said that rate comparisons and other data were being developed with a view to filing in the near future an application seeking the necessary authority from this Commission. No conclusion had been reached concerning the amount of increase to be sought. This witness pointed out that the freight revenues are relatively small in comparison to the total revenue requirements of the transportation company, and asserted that any anticipated adjustment in the freight rates would not affect materially the amount of revenue which must be derived from passenger fares.

In appropriate and limited cases, common carriers performing more than one class of essential service may lawfully maintain rates for one at a level which will suffice to offset unavoidable losses incurred in another. In the instant proceeding, however, it has not

been shown to what extent the freight losses are unavoidable. Whether or not some freight deficiency must be recovered through passenger fares, applicant has not established the justification for assigning to the passenger business the entire amount of the estimated freight loss for the year 1947 under present freight rates. Applicant intends to increase the freight rates in the near future to some extent yet to be determined. In view of the considerable losses assertedly resulting from this class of service, and the absence of competition from other freight carriers which might tend to depress the rates, the increase to be sought may be relatively substantial.² It cannot be presumed that the effect upon passenger revenue requirements would be negligible. Since the record does not indicate to what extent the freight losses may be properly recoverable through adjustment of the freight rates, and since the burden of proof in this proceeding is upon the applicant, we are of the opinion that on this record no part of the anticipated freight loss should be assigned to the passenger fares.

Second, consideration must be given to the items referred to as "contract charges." These items are indeed unique as operating expenses of a common carrier by vessel. They represent payments which applicant makes to the Island Company for the consideration, as set forth in the contract which was received in evidence, "of the exclusive privilege of landing and receiving passengers and freight on the property of the Santa Catalina Island Company."³

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The Island Company would presumably bear a substantial share of any increase in freight rates, since it conducts much of the business on the island.

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The volume of the contract charges is measured by the sum of specified expenditures made by the Island Company for advertising and for developing and maintaining Santa Catalina Island as a place of resort and recreation, plus 80 per cent of applicant's net operating revenue computed after provision for the attraction expenses. As developed in applicant's exhibits, the contract charges for 1946 and 1947 were computed as follows:

| | <u>1947 (Estimated)</u> | <u>1946 (Actual)</u> |
|----------------------------|-------------------------|----------------------|
| Total Attraction Expense | \$138,578 | \$130,703 |
| 80 Per Cent of Net Revenue | 67,117 | 152,845 |
| Total Contract Charges | <u>\$205,695</u> | <u>\$283,548</u> |

The general manager testified that the steamer pier at Avalon is no longer controlled by the Island Company, and he recognized that the City of Avalon extends landing privileges at its municipal wharf to other common carriers. Nonetheless, he believed that the exclusive privilege of landing passengers and freight on the property of the Island Company is a right of considerable value to the Transportation Company, particularly since it was his information that pleasure and health resorts are to be established on the island at points removed from the City of Avalon.

So far as we may judge from this record, the landing privilege is of little or no benefit to applicant in its principal operation, which is between Wilmington and Avalon. Applicant now owns the steamer pier at Avalon, except for a strip at the landward end which it controls as lessee. Applicant maintains fares and freight rates from and to The Isthmus, another point on the island, but that operation is subordinate and will be of minor importance during 1947. The value to applicant of its exclusive landing privilege would appear to lie principally in its possible future application at resorts or other enterprises yet to be developed. Acquisition of the privilege for such purposes may be provident, but the cost thereof, to the extent that the value of the right is related to points not served as a common carrier, should not be charged to the present patrons of the common carrier service. This record affords no basis for allocating any specific portion of the value or of the cost to the common carrier service. Moreover, assuming that a basis for such allocation had been supplied, applicant did not offer evidence from which it can be determined whether the amount of the payments to the Island Company represent reasonable and proper compensation for the exclusive landing privileges which it receives under the contract.

But applicant declares in its supplemental application that, in evaluating the contract agreements, consideration must be given to the "indubitable facts," among others, that "unless applicant contributes to the cost of maintaining and operating the amusement and recreational enterprises at Catalina and to the cost of attracting masses of patrons thereto, applicant's passenger traffic will be reduced to a point that will render it unable to continue to operate, in that at least 90 per cent of applicant's passenger traffic consists of the patrons who are attracted to said amusement and recreational enterprises by the advertising by the Island Company and applicant." In support of this contention applicant cited an early decision of this Commission in which it was stated that what Wilmington Transportation Company has the right itself to do (in maintaining the Island as an attraction to visitors), it certainly has the right to cause to be done in its behalf by its agent, the Santa Catalina Island Company.⁴ However, the contracts, which must be construed according to their plain terms, do not indicate that the attractions in question are maintained by the Island Company as agent for the Transportation Company. The contracts impose no obligation on the Island Company to maintain any of the specified attractions. The record contains little, if any, evidence that the "attraction expenses" are made on behalf of, or are reasonable and necessary to insure the success of, the Transportation Company. Whatever may have been the circumstances when the original contract was drawn in 1904, or when it was considered by the Commission in 1915, it cannot now be presumed in the absence of affirmative evidence that the maintenance of specified attractions is essential to the success of the Transportation Company, that their continuance is dependent upon the financial contributions of the Transportation Company, and that the costs thereof are reasonable charges to transportation operating expense.

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J. H. Miller et al., vs. Wilmington Transportation Company, (1915)
8 C.R.C. 857.

If certain benefits, rights, services or privileges which may accrue to applicant under the contract contribute to the success of the common carrier operations, it may be appropriate that reasonable compensation therefor be included in the operating expenses. On this record, however, no basis is provided for a finding that any specified portion of the total contract charges is a justifiable operating expense.

With the foregoing exceptions, applicant's expense estimates, as set forth in Table 1, are in general well substantiated by the detailed evidence of record. Table 2 shows the revised estimated results from passenger operations only, assuming that applicant were authorized to maintain the present fares throughout the year. The figures are those submitted by applicant, except that freight losses and contract charges have been disallowed as operating expenses for the purpose of determining passenger fares.

TABLE NO. 2

| | <u>1947 - Estimated</u> |
|--|-------------------------|
| Gross Operating Revenues | \$1,764,250 |
| Loss Operating Expenses | <u>1,464,618</u> |
| Net Operating Revenues | \$ 299,632 |
| Allowance for Federal and State Income Taxes* | <u>124,047</u> |
| Net Income, after Taxes | \$ 175,585 |
| Operating Ratio (Before Income Taxes) | 83.0% |

* Calculated on the basis of current tax rates. Applicant's figures included no provision for Federal or State income taxes.

The net income of \$175,585, measured in terms of a rate base of \$282,784, is equivalent to a rate of return of 62.1 per cent after payment of income taxes.⁵ This, we believe, is clearly a larger net income than has been shown to be necessary or justified.

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The rate base of \$282,784 is that developed by the Commission engineer. It represents the depreciated book cost of the passenger transportation property as of December 31, 1946, plus an allowance for materials, supplies, and working capital. Applicant did not submit rate-base figures in comparable form, but showed that the depreciated book value of properties used in its passenger and freight service at the close of 1946 was only \$211,368. The Commission

(Continued)

It is equally clear from data of record, as summarized hereinafter in Table No. 3, that applicant's passenger operations would result in substantial losses if the supplemental application were denied in toto. The effect of such denial would be to require the Transportation Company to revert to its pre-war "permanent" fares, which have been maintained in the tariff but suspended during the operation of the "temporary" fares herein sought to be retained.⁶ It appears that the permanent fares involved herein would have to be increased about 5 per cent to provide revenues sufficient to meet the adjusted operating expenses, and that an increase of 12½ per cent in the permanent fares would provide a passenger operating

5 Concluded

engineer suggested also the inclusion of an additional \$166,612 in the rate base, representing "proposed additions and betterments." However, he had no information as to the amounts which had been expended for such purposes so far in 1947; he thought that some of the additions might not be made during the year; and several of the planned additions would appear to be chargeable in whole or in part to operating expenses rather than to capital investment, to be consistent with the company's accounting. Applicant did not request, nor undertake to justify, a provision for "proposed additions and betterments." Under the circumstances we conclude that the proposed additions and betterments referred to by the engineer were not sufficiently well established on this record to justify their inclusion in the rate base.

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The temporary and permanent adult fares are as follows:

| | Temporary Fares (Now in effect and sought to be retained) | Permanent Fares (Under suspension during life of Temporary Fares) |
|------------------------------|--|--|
| One Way..... | \$2.47 | \$2.00 |
| Round Trip..... | 4.28 | 3.50 |
| Special parties, round trip: | | |
| 30 to 99 adults..... | 3.76 | 3.00 |
| 100 or more adults..... | 3.09 | 2.50 |

(Not shown, and not involved in this application, are commutation fares, fares between Avalon or Wilmington and The Istanus, and freight rates.)

revenue of about \$56,000 after payment of income taxes. The figures may be summarized as follows:

TABLE NO. 3

| | 1947 (Estimated) | |
|--|------------------------|---------------------------------------|
| | <u>Permanent Fares</u> | <u>Permanent Fares Increased 12½%</u> |
| Revenues from Passenger Operation | | |
| Passenger | \$1,347,000 | \$1,510,000 |
| Other | 50,000 | 50,000 |
| Total Revenue | \$1,397,000 | \$1,560,000 |
| Operating Expense | 1,465,000 | 1,465,000 |
| Net Operating Revenues | (68,000) | 95,000 |
| Allowance for Federal and State Income Taxes | | 39,000 |
| Net Income from Passenger Operations | (68,000) | 56,000 |
| Operating Ratio (Before Income Taxes) | 104.9% | 93.9% |
| Rate of Return (After Income Taxes) | Loss | 19.8% |

 Indicates loss.

(Note: The figures in this table have been developed from applicant's adjusted revenue and expense estimates for 1947, and assume 12 months of operation at the fares indicated in the column headings. Allowance has been made for the fact that commutation fares and fares from and to The Isthmus are not involved, and will remain unchanged.)

Based upon careful consideration of all of the facts and circumstances of record, including the estimate contained in Table No. 3, we conclude that an increase of 12½ per cent in the permanent fares herein involved as set forth specifically in the order which follows, has been shown to be necessary and justified. To that extent the seventh supplemental application in this proceeding will be granted; in other respects it must be denied.

Since the fares hereinafter authorized are somewhat lower than those which have been provided in applicant's tariff since 1942, and which have been applied since operations were resumed in 1945,

it may not be axiss to point out that this is nevertheless an application proceeding in which the burden of proof was upon the applicant. The "temporary" fares were established and maintained without the full showing necessary to justify their application as permanent fares. In this proceeding Wilmington Transportation Company was under the necessity of establishing, by a full affirmative showing, that whatever fares it proposed to maintain higher than the pre-war "permanent" fares were fully justified within the meaning of Section 63(a) of the Public Utilities Act. Our conclusions herein are without prejudice to such fare or rate proposals as applicant may initiate in the future.

As hereinbefore indicated, it is possible that upon a more complete record some part of the expenses disallowed herein would be shown to be proper charges to operating expense. The expiration date of the present fares will be extended from July 15 to September 15, 1947, in order that applicant may be afforded a timely opportunity to introduce any further evidence which it considers necessary to proper disposition of this proceeding.

O R D E R

Public hearing having been had in the above entitled Seventh Supplemental Application, full consideration of the matters and things involved having been had, and the Commission being fully advised,

IT IS HEREBY ORDERED that

(1) Wilmington Transportation Company be, and it is hereby authorized to establish and to assess for transportation performed.

between Wilmington and Avalon, Santa Catalina Island, on not less than one (1) day's notice to the Commission and to the public, the following increased adult fares:

| | |
|--|--------|
| One-way trip ticket | \$2.25 |
| Return trip ticket | 3.95 |
| Special Party Fares: | |
| Parties of 30 to 99 adults, inclusive, per adult ticket | 3.40 |
| Parties of 100 or more adults, per adult ticket | 2.80 |

(2) The increased adult fares established under the authorization herein granted shall be subject to the same tariff limitations and restrictions as applicant currently maintains for like classes of tickets.

(3) The expiration date of the authority granted by Decision No. 38437, as amended, in this proceeding, be and it is hereby further extended to ~~August~~ ^{September} 15, 1947; and that tariff filings made pursuant to the authority herein granted may be made effective on not less than one (1) day's notice to the Commission and to the public.

IT IS HEREBY FURTHER ORDERED that in all other respects the Seventh Supplemental Application in this proceeding be and it is hereby denied.

This order shall become effective on the date hereof.

Dated at San Francisco, California, this 8th day of July, 1947.

Harold Huls
James F. Cassin
Wm. H. Howell
C. J. [unclear]
[unclear]
Commissioners