

ORIGINALDecision No. 48700

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Investigation
into the operating rights, operations
and practices of AVALON TRANSPORTATION
CO., a corporation.

Case No. 5455

In the Matter of the Application of
AVALON TRANSPORTATION CO., a corpora-
tion, for authority to increase rates.

Application No. 34031

In the Matter of the Application of
E. J. JACKLIN, J. C. BRUNDAGE,
B. W. RICE, JR., and F. H. WINTER,
co-partners doing business under the
name "Island Transportation Co.," for
a certificate of public convenience
and necessity to operate vessels for
the transportation of passengers for
compensation between points in the
State of California.

Application No. 34289

Clyde Thomas, for Avalon Transportation Co., a corporation; Gordon, Knapp and Gill, by Hugh Gordon, as interested party in Case No. 5455 and for applicant Island Transportation Co., Henry L. Blodgett, for City of Avalon, M. D. Gross, for Seaport Landing, James P. Barnett, for Port Orange, Arthur E. Grunsky, for Balboa Pavilion, interested parties; John Power and Glenn E. Newton, for the Commission's staff.

O P I N I O N

The matters set forth above were consolidated for hearing which was held in Newport Beach on Monday, May 18, 1953. Prior thereto, notice was published in newspapers of general circulation in Newport Beach and Avalon as required by this Commission. There were no protests.

At the termination of the hearing counsel for Avalon Transportation Co., a corporation (hereinafter referred to as Avalon), argued that the Commission was powerless to revoke the operating rights of Avalon inasmuch as the order instituting investigation in Case No. 5455 did not advise the respondent Avalon that the Commission might revoke Avalon's operating rights (granted by Decision No. 38792, Application No. 27236, 46 C.R.C. 402, 1946) if the Commission determined that Avalon had discontinued service without the authorization of the Commission. The applicable statute (Section 1009 of the Public Utilities Code) gives the Commission the power at any time, after notice and an opportunity to be heard, to revoke operating rights. Rule 14 of the Rules of Practice and Procedure of the Commission requires that the order instituting investigation shall indicate the nature of the matter to be investigated and shall be served upon the party being investigated. Inasmuch as Avalon was advised of the purpose of the investigation and was given an opportunity to be heard and was heard as required by the statute and rule referred to above, it cannot complain that any action taken by the Commission is in violation of due process of law. No particular form of notice or method of procedure is required (Dohany v. Rogers, 291 U.S. 362, 369, 74 L. Ed. 904, 912). We conclude that Avalon's claim that it was not afforded due process of law is untenable. ✓

Case 5445. In the Matter of the Investigation into the operating rights, operations and practices of Avalon Transportation Co., a corporation.

This investigation was instituted for the specific purpose of determining whether Avalon had discontinued operations

without authorization of this Commission.

Relative to the discontinuance of operations without the permission of this Commission the following pertinent facts were agreed to by stipulation (Exhibit No. 1):

(1) Avalon, a corporation, was granted a certificate as a common carrier of persons and hand baggage by vessel between Balboa and Avalon on or about March 26, 1946 (Decision No. 38792, 46 C.R.C. 402).

(2) The vessel passenger service between Balboa (Newport Beach) and the City of Avalon was operated by Avalon in the summer of 1946 and 1947; that in 1947 and 1948 service was suspended with Commission approval under Decisions Nos. 40704 and 41963, in Application No. 27236, which decisions authorized such suspension during the years 1947 and 1948 only.

(3) During the year 1949 one Freeland operated a passenger vessel service between Avalon City and Balboa with his own equipment and employees; that said Freeland performed the service under some sort of arrangement with Avalon or its officers, or some of them. Said Freeland did not operate after 1949.

(4) In 1950 one Patterson operated between the same two points, also by arrangement with Avalon or some of its officers. Mr. Patterson also operated with his own equipment and employees. Said Patterson did not operate after 1950.

(5) Since the year 1950 there has been no passenger vessel service operated between Avalon City and Balboa (Newport Beach) by Avalon or anyone purporting to act under the certificated authority of Avalon.

(6) The absence of operation by Avalon under its certificate in 1951, 1952 and 1953 was without any order of the Public

Utilities Commission authorizing such suspension of service.

In addition to these stipulated facts, Avalon's verified application for a rate increase (Application No. 34031) alleges: "In 1945 applicant was granted a certificate of public convenience and necessity by Decision No. 38792, authorizing it to establish a service during the summer months as a common carrier by vessel for passengers between Newport Beach, California, on the mainland, and Avalon, California, on Santa Catalina Island. The service was operated during the first summer, but the cost of operation exceeded the income and the service was operated only occasionally until the corporation exhausted all its finances; and it is at present without any assets whatsoever other than the certificate granted by the Commission."

Appendix E attached to the stipulation (Exhibit No. 1), is a copy of an agreement between Avalon, and Jacklin and Brundage. This agreement recites that Avalon has no vessel or other assets or money with which to operate the passenger service between Newport Beach and Avalon; that Jacklin and Brundage, boat owners, are constructing a steel hull vessel to be named the "Catalina Lady", which vessel they are willing to operate in said service during the summer of 1953 (underlining added) and to advance sufficient money to carry on said service during the summer of 1953.

From the foregoing stipulation, verified application and agreement, we find as a fact that Avalon performed no services between Avalon City and Newport Beach during the years 1951, 1952 and 1953, and that such failure to serve was

without the permission of this Commission and resulted in an abandonment of its operation.

Application No. 34031. In the Matter of the Application of Avalon Transportation Co., a corporation, for authority to increase rates.

For the reason that the Commission has found that Avalon has abandoned its operations, its request for authority to increase its rates will be denied.

Application No. 34289. In the Matter of the Application of E. J. Jacklin, J. C. Brundage, S. W. Rice, Jr., and H. F. Winter, copartners doing business under the name "Island Transportation Co.," for a certificate of public convenience and necessity to operate vessels for the transportation of passengers for compensation between points in the State of California.

These applicants request authority to operate vessels as a common carrier for the transportation of passengers between Newport Beach and Avalon City, Catalina Island, both in the State of California, between April 1 and September 30 of each year, plus on-call service the remainder of the year.

The fares to be collected will be as follows:

One way \$3.40 including tax

Round trip 6.80 including tax

For children under 12 years, the fare shall be \$1.70 one way and \$3.40 round trip, including tax.

10 one-way commuter tickets will be \$14.38, including tax.

50 pounds of hand baggage per person will be carried free.

The partners are now having constructed a ship, the "Island Lady", for use in the service between Newport Beach and

Avalon. This ship is in the water and completed except for minor details. It is a gasoline-powered, steel-hulled vessel 63 feet in length. It has a beam of 18 feet and is 14.05 gross tons or 11 net tons. It will seat 70 passengers and will make the trip one way in about two hours. The partners also have six sport fishing craft capable of carrying eight passengers each between the termini. In addition, one of the partners is the sole owner of the vessel "Vellron", a 100-foot long, 91 gross ton vessel which will be available for the proposed service if needed.

The total value of the vessels owned by the partnership is \$54,000, of which \$30,000 is the value of the "Island Lady." The only indebtedness of the partnership is approximately \$7,200 against the six sport fishing vessels. The "Vellron", owned by one partner, is valued at \$50,000 and is free of encumbrance.

The partners have a working capital of \$5,000.

In Newport Beach, one of the partners has a private landing which will be used by the partnership. In Avalon, the public landing will be used.

The partners are experienced in the operation and handling of sport fishing craft and have made many trips between Newport Beach and Avalon.

From the evidence presented it appears and we find that the applicants have the equipment, financial ability, and experience to enable them to carry on the proposed services.

The evidence shows that the City of Newport Beach, which includes Balboa, together with the adjacent City of Costa

Mesa, has experienced a very substantial growth in population in the past five years and at the present time has an estimated population of over 24,000. In addition to its permanent residents there are many thousands of vacationists who live in the area at various times during the summer season, approximately April 1 to September 30. The City of Avalon has also experienced a substantial growth in recent years and many persons now reside there during the summer months who desire to commute between Avalon and Newport Beach. Many requests have been received by applicants for public transportation between the termini involved, and the volume of such requests is increasing annually. There is no scheduled public passenger vessel service at the present time between the proposed termini.

Upon the evidence presented we find that public convenience and necessity require that E. J. Jacklin, J. C. Brundage, B. W. Rice, Jr. and F. H. Winter, copartners doing business as "Island Transportation Company" be given authority to operate vessels as a common carrier for the transportation of passengers between Newport Beach and Avalon, Catalina Island.

O R D E R

The three matters set forth in the heading having been consolidated for hearing, a public hearing having been held thereon, evidence having been presented and the matters having been submitted,

IT IS ORDERED that the operative right of Avalon Transportation Co., a corporation, granted by Decision No. 38792 on Application No. 27236 (46 C.R.C. 402), authorizing

it to operate a passenger vessel service to, from or between Balboa (Newport Beach) and Avalon, Catalina Island, be, and the same hereby is, revoked and all effective tariffs and time tables are hereby cancelled and annulled.

IT IS FURTHER ORDERED that the application of Avalon Transportation Co., a corporation, for authority to increase its rates be, and the same hereby is, denied.

IT IS FURTHER ORDERED:

1. That a certificate of public convenience and necessity as defined in Section 1007 of the Public Utilities Code, be and it hereby is, granted to E. J. Jacklin, J. C. Brundage, B. W. Rice, Jr., and F. H. Winter, copartners doing business as "Island Transportation Co.," authorizing the establishment and operation of a service as a common carrier for the transportation of persons and hand baggage by vessel between Newport Beach and Avalon, Catalina Island, both in California.

2. That in providing service pursuant to the certificate herein granted, applicants shall comply with and observe the following service regulations:

- (a) Within thirty days after the effective date hereof, applicant shall file a written acceptance of the certificate herein granted.
- (b) Within sixty days after the effective date hereof, and upon not less than five days' notice to the Commission and the public, applicant shall establish

the service herein authorized and file
in triplicate and concurrently make
effective tariffs and time schedules
satisfactory to the Commission.

The effective date of this order shall be twenty days
after the date hereof.

Dated at Los Angeles, California, this
9th day of June, 1953..

[Signature]
President

Justin F. Cramer
Samuel P. Potter
H. E. Mitchell
Commissioners