

ORIGINALDecision No. 60832

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's
own motion into the operations,
rates, fares, charges and practices
of AVALON NAVIGATION COMPANY, a
corporation.

Case No. 6418

Howard Thuet and Leslie Thuet for Avalon
Navigation Company, respondent.
Vaughan, Brandlin & Baggot by James H. Lyons
for Charles Stillwell, interested party.
Martin J. Porter, for the Commission staff.

O P I N I O N

On February 9, 1960, this Commission issued an order of investigation into the operations, rates, fares, charges and practices of Avalon Navigation Company, a corporation, which is engaged in the business of transporting persons or property by vessel between Long Beach and Avalon on Santa Catalina Island. Pursuant to said order, public hearings were held before Examiner William E. Turpen in Los Angeles on June 16 and July 1, 1960.

The purpose of this investigation is to determine whether the respondent has violated Section 494 of the Public Utilities Code by charging, demanding, collecting, or receiving a different compensation for the transportation of persons or property than the applicable rates, fares and charges specified in its schedules filed and in effect at the time.

Avalon Navigation Company operates the vessel "Magic Isle" between Pierpoint Landing in Long Beach and Avalon on Santa Catalina Island. Its certificate of public convenience and necessity, which

was granted by Decision No. 55329, dated July 30, 1957, and amended by Decision No. 55666, dated October 8, 1957, both in Application No. 38902, provides that regular daily passenger service will be operated during the period June 15 to September 15, and that "on-call" service for 20 or more passengers will be operated for the remainder of the year. Respondent is also authorized to transport property on an "on-call" basis between October 16 and April 15.

Exhibit No. 1 was presented into evidence by a transportation engineer of the Commission's staff as a report of his investigation of respondent. The report included a compilation of data obtained from respondent's daily ticket sales reports at Pierpoint Landing. The report showed that on 51 different days between January 1, 1959, and April 18, 1960, tickets were sold at rates and charges different from those set forth in respondent's tariff on file with the Commission.¹ Most of these ticket sales were to organizations or groups of passengers. Effective May 13, 1959, respondent established in its tariff a special party fare applicable to parties of 50 or more adults. Many of the violations after this date involved the special party fare being granted to groups of less than 50 adults.

Respondent did not deny the accuracy of the data shown in Exhibit No. 1. Respondent's president offered a number of explanations for the fares charged. He said that it was his understanding that Sections 529 and 530 of the Public Utilities Code

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Respondent's Local Passenger Tariff, Cal. P.U.C. No. 1, was incorporated into the record by reference.

permitted charging reduced rates to students, boy and girl scouts groups and similar organizations.² The president also alleged that illegal operations and practices of other parties in the area made it necessary to offer special fares to groups or lose the business.

Section 494 of the Public Utilities Code clearly requires that a common carrier charge no more or no less than the fares and charges specified in its schedules filed and in effect at the time. Sections 529 and 530 permit the establishment of reduced fares in certain instances, but in order to comply with Section 494, such reduced fares must be named in the carrier's tariff. However, it is doubtful that respondent's transportation of students can be construed as "transportation of children attending an institution of learning", or that carrying a group of boy or girl scouts can be construed as "the transportation of persons for charitable or patriotic purposes". Even if such cases were to be disregarded, Exhibit No. 1 includes such groups given fares other than those in the tariff as Sierra Club, Douglas Employees, Young Republicans, Valley Times, Artists Group and Zane Grey Group.

In regard to respondent's allegation that illegal operations and practices of other parties required deviations from its tariff rates, it is well established that violation of the law is not excusable because someone else may also be violating the law.

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Sec. 529. Nothing in this part shall prevent:

- (a) The issue of reduced rate transportation by a common carrier to children attending an institution of learning.

Sec. 530. Every common carrier subject to the provisions of this part may transport, free or at reduced rates:

- (a) Persons for the United States, state, county or municipal governments, or persons or property for charitable or patriotic purposes, or to provide relief in cases of general epidemic, pestilence, or calamity.

The examiner ruled properly in sustaining objections to the receipt of evidence attempting to show violations by other parties. Such evidence is not pertinent to this proceeding. If respondent has knowledge of such conditions, it should properly be brought to the attention of the Commission by the filing of a formal complaint or by other appropriate means.

Based upon the evidence of record we find and conclude that respondent has violated Section 494 of the Public Utilities Code by charging, demanding, collecting or receiving a different compensation for the transportation of persons, as detailed in Exhibit No. 1 in this proceeding, than the applicable fares and charges specified in its Local Passenger Tariff, Cal. P.U.C. No. 1, filed and in effect at the time.

The record in this proceeding leads us to believe that many, if not most, of the violations were due to misinterpretation or misunderstandings of the applicable code provisions by respondent. Nevertheless, ignorance of the law is no excuse. Therefore, in view of all the facts, respondent's certificate of public convenience and necessity will be suspended for a period of five days; however, the imposition of said suspension will be deferred and suspended for a period of one year. During this one year period, respondent's operations will be carefully examined by the Commission to ascertain that it is complying fully with the provisions of its tariffs. If at the end of the one year period the Commission is satisfied that respondent has fully observed the provisions of its tariffs, the suspension will be vacated without further order of the Commission. However, if the Commission finds at any time during the one-year period that respondent is not assessing the fares and charges named

in its tariffs, the five-day period of suspension will be imposed, together with whatever additional penalty the Commission deems necessary. Respondent's attention is drawn to Sections 2107 and 2108 of the Public Utilities Code, which provide that penalties of up to \$2,000 for each violation of provisions of Part 1 of the Code can be assessed, and that every violation is a separate and distinct offense.

It might be appropriate at this time to point out to respondent that it can publish, on statutory notice, in its tariff special group or individual fares for students or other youth organizations; and that the Commission's rules relating to tariffs provide for the filing of special excursion rates on very short notice.

The rules for filing of excursion tariffs should adequately provide respondent a means of providing special fare treatment for special groups without violating its tariff.

O R D E R

Public hearing having been held and based upon the evidence therein adduced,

IT IS ORDERED that the certificate of public convenience and necessity granted to Avalon Navigation Company, a corporation, by Decision No. 55329, dated July 30, 1957, and amended by Decision No. 55666, dated October 8, 1957, both in Application No. 38902, be and it is hereby suspended for five consecutive

days; however, execution of said suspension will be deferred and suspended pending further order of the Commission. If no further order of the Commission is issued affecting said suspension within one year after the effective date of this order, said suspension shall be vacated.

The Secretary of the Commission is directed to cause personal service of this order to be made upon Avalon Navigation Company, and this order shall become effective twenty days after the completion of such service upon the respondent.

Dated at San Francisco, California, this 4th day of October, 1960.

Ernest W. Page
 President

Robert E. Mitchell

William J. Dole

C. J. Fox

Theodore J. Jenner
 Commissioners