

**ORIGINAL**

62338

Decision No. \_\_\_\_\_

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of AVALON NAVIGATION  
COMPANY, a California corporation,  
to extend its service and to  
establish rates.

Application No. 43190(Filed March 1, 1961;  
amended March 22, 1961.)

James H. Radcliffe, for Avalon Navigation Company,  
applicant.

Max Eddy Utt, for Santa Catalina Island Company  
and Island Boat Service, protestant.

Ray E. Taylor, for the City of Avalon, protestant.

W. E. Von Kleinsmid, for Avalon Air Transport, Inc.,  
interested party.

Bill Krug, in propria persona, interested party.

Henry E. Jordan, for the Bureau of Franchises &  
Public Utilities, City of Long Beach, interested  
party.

Glenn E. Newton, for the Commission's staff.

O P I N I O N

This application was heard before Examiner C. S. Abernathy at Avalon on March 22, 1961, and at Los Angeles on March 23, 1961; it was submitted on the latter date. Copies of the application and the notice of hearing were served in accordance with the Commission's procedural rules. Protestants are the Santa Catalina Island Company, Island Boat Service, and the City of Avalon.

Applicant is a common carrier by vessel, transporting persons and property between Pierpoint Landing, Long Beach, and the City of Avalon, Santa Catalina Island. It requests authorization to extend its operations to include (1) a passenger sightseeing service from Avalon northerly along Santa Catalina Island to Emerald Bay and

return, and (2) the transportation of persons and property between Avalon and points and places located in various coves from Avalon to and including Emerald Bay. Applicant alleges that no other services as proposed are being provided by any carriers at the present time. It states that it has received requests for such services both from its present patrons and from others who are desirous of viewing the northerly shore of Santa Catalina Island or who have occasion to travel to or from, or to ship to or from, camps and recreational facilities which are located in the coves between Avalon and Emerald Bay.

The services which applicant proposes would be performed on a daily schedule from June 10 to Labor Day of each year and on an on-call basis during the remainder of the year. The fares and rates which it would assess for said services are set forth in Appendices "A" and "B" attached hereto.

Evidence in support of the proposed services was submitted by applicant's president and by its vice president, by two of applicant's employees, by a director of camping for the Boy Scouts of America, and by the operator of a laundry concern at Avalon. Opposing evidence was submitted by a vice president of the Santa Catalina Island Company and by the mayor of the City of Avalon.

According to the record in this matter applicant's operations between Long Beach and Avalon are conducted by means of the motorship, MAGIC ISLE, a vessel of capacity of 270 passengers. Under present operating schedules the vessel arrives at Avalon from Long Beach about noon daily, and leaves for the return trip at about 4:00 p.m. During the four hours between arrival and departure time

the vessel remains idle at Avalon. Applicant would utilize the vessel during this period to provide the services involved herein. The additional costs which would be incurred in the performance of such services are in estimated amounts of \$25 to \$28 per trip, said costs being principally those for fuel and advertising, and for depreciation on an accommodation ladder which would be installed on the MAGIC ISLE. Anticipated revenues from the services range from \$55 to \$60 per trip. Said revenue estimates were developed in part on the basis of a poll which applicant took of its present patrons to ascertain their probable response to an offering of the additional services; in part to expressions of directors of camps and recreational facilities at the various coves for a need for a common carrier service between said coves and Avalon; and in part upon applicant's expectations that the additional services would attract traffic from other sources such as vacationers at Avalon or persons at Avalon having business with the aforesaid camps.

The director of camping for the Crescent Bay Area Council of the Boy Scouts of America testified to the effect that the Crescent Bay Council (which operates in the area in and about Santa Monica) maintains a summer camp on Santa Catalina Island for boy scouts; that the camp has need for regular transportation service to and from Avalon for the movement of personnel, visitors, perishable freight and mail, and that such a service is not now available. He supported the establishment of the services which applicant proposes. In conjunction with the testimony of this witness concerning

need for the proposed services, applicant submitted letters of similar purport which it had received from other organizations maintaining youth camps on Santa Catalina Island.<sup>1</sup> A similar letter from a food purveyor supplying the camps was also submitted. The laundry operator who testified stated that the establishment of the proposed operations would enable him to provide a dry cleaning and laundry service for the various camps. He stated that in the past he had had to discontinue such a laundry service because of the lack of adequate transportation.

The opposition of the Santa Catalina Island Company to establishment of the proposed services was advanced mainly on the grounds that they are not needed. Assertedly, adequate transportation facilities are already available to the camps along the island. As basis for this contention the vice president of the Santa Catalina Island Company who testified on behalf of that company referred to services which are furnished by common carriers by vessel that now operate between the mainland and various island points. He stated also that virtually all of the camps on the island are connected by road with Avalon, and that the camps are thereby enabled to provide their own transportation with vehicles of their own to and from Avalon. With respect to the proposed sightseeing services, he said that a sightseeing service is now being provided between Avalon and the Isthmus (Two Harbors) by the Catalina Operations Company, a subsidiary of the Santa Catalina Island Company, by means of a vessel known as the BLANCHE W.

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<sup>1</sup> Boy Scouts of America, San Gabriel Valley Council; Girl Scouts, Los Angeles Council; Young Mens' Christian Association, Glendale; Catalina Marineros Camp; and Campus by the Sea, Santa Catalina Island.

The mayor of the City of Avalon testified that applicant has not discussed its proposals with the City Council of Avalon, and that not having information concerning the proposals other than that in the application the Council had voted to oppose them. The mayor also opposed the application on the grounds that problems would arise in connection with departures of the MAGIC ISLE from Avalon between the hours of 1:00 and 3:00 p.m. -- a period of time when there is considerable congestion of swimmers and small boats about the Avalon pier. In addition the mayor opposed the proposals for a resulting use that would be made of the Avalon pier as a terminal for the movement of freight.

Discussion, Findings and Conclusions

The services which are proposed in this proceeding are much the same as those that Avalon Navigation Company sought to have authorized by an earlier application, Application No. 42341. By Decision No. 60781 dated September 27, 1960, said application was denied on the grounds that need for the proposed services had not been established; that the costs of the services and the revenues therefrom had not been shown; and that the method to be employed in the loading and unloading of passengers and freight at the various coves also had not been shown.

At the outset of the hearings on this present matter counsel for the protestants Santa Catalina Island Company and Island Boat Service moved for summary dismissal and denial of the application for reasons that the issues which are involved have heretofore been decided with finality and that the further consideration thereof would constitute a flagrant avoidance of the Commission's procedures

and jurisdiction generally. The motion was received by the examiner for referral to the Commission, and the hearings were otherwise continued to a conclusion. This motion is hereby denied. The record is clear that by its showing herein applicant has undertaken to overcome and cure infirmities of its previous presentation, and that further consideration of its proposals, as here submitted, is warranted.

The evidence in this matter is convincing that with certain exceptions establishment of the proposed services is required by public convenience and necessity. First, as to the transportation of persons and property that would be provided on a daily basis between Avalon and the camps and recreational facilities in the coves along the island to and including Emerald Bay, the record is clear that, notwithstanding the contentions of the Santa Catalina Island Company to the contrary, there is a public need for such transportation and that at present common carrier services are not being provided to meet this need. Although said camps and recreational facilities are served by common carriers that operate across the Catalina Channel to and from points on the mainland, it appears that these carriers do not fully meet the transportation needs involved, and that the services which applicant would provide are in the nature of supplementary services which would tend to satisfy the unfilled requirements. With reference to the sightseeing services which are proposed, it appears that such services should also be authorized as a measure for meeting public convenience and necessity therefor. Although the Santa Catalina Island Company contends that a common-carrier sightseeing service between substantially the

same points is now being provided by its subsidiary, the Catalina Operations Company, by means of the vessel, BLANCHE W, it should be noted that the Catalina Operations Company has not heretofore identified its operations in this respect as a common carrier service by the filing of tariffs and reports with the Commission in accordance with the statutory requirements of the Public Utilities Code that apply to common carriers by vessel. Neither is the operating authority under which said service is being provided by the Catalina Operations Company of record with the Commission. In the circumstances it does not appear that the operations which are being conducted by the BLANCHE W should preclude the authorization of the sightseeing services sought herein.

The costs of the proposed services appear reasonable in relation to the basis upon which the services would be provided, namely, as increments or additions to applicant's main operations -- those between Long Beach and Avalon. Although applicant's revenue expectations from the services necessarily are a product of judgment, they appear reasonable in the light of the traffic survey which applicant conducted and other factors considered. We therefore conclude that the proposed services have been shown to be compensatory to the extent that they would return the out-of-pocket costs of the services and in addition would make some contribution to the earnings from applicant's operations otherwise.

Applicant's proposed operating procedures for the loading and unloading of passengers and freight at coves where wharves are not available are centered around the use of an adjustable accommodation ladder which would be installed on the MAGIC ISLE to facilitate

the transferral of the passengers and freight from or to floats or skiffs after being brought from, or for further movement to, shore points. Assertedly this method conforms to general maritime practices in instances where direct landing facilities are not available, and is one that has been approved by the Coast Guard.

With respect to the objections to the proposals which were registered by the mayor of the City of Avalon, it appears that departures and return of the MAGIC ISLE from and to the Avalon municipal pier would be generally before and after the hours that, according to the mayor's testimony, the water about the pier is considerably congested with swimmers and small boats. With reference to the use of the pier as a terminal for freight, it appears that the pier is also so used by other common carriers docking there, and that there are no prohibitions against such usage at present.

One matter which has not been touched on heretofore, and which was a subject of some discussion both in this proceeding and in the previous proceeding involving similar proposals by this applicant, deals with permits for the landing of persons and freight on Santa Catalina Island. As set forth in Decision No. 60781, the Santa Catalina Island Company owns all of the island except that within the city limits of Avalon, and requires a permit for landing of passengers or freight outside of Avalon. Assertedly such a permit would not be granted to Avalon Navigation Company. According to the record that has been developed in this proceeding, the transportation of persons and freight to the various camps and recreational facilities which applicant would serve would not, for the most part, require specific permits for the reason that the lease



agreements between the camps and/or recreational facilities and the Santa Catalina Island Company provide for the landing of members, personnel, and visitors of such camps or freight for such camps and recreational facilities without further permits. In instances where permits would be required, it would be the passengers' responsibility, or the shippers' responsibility in the case of freight, to obtain such permits as are necessary.

Upon consideration of the evidence the Commission finds and concludes that:

1. Applicant possesses the ability and equipment to institute and maintain the proposed service;
2. Except as is otherwise provided herein, public convenience and necessity require that the application be granted.

The exceptions which should be made in the granting of this application relate (a) to the services which would be provided on an on-call basis; (b) to the minimums for service, and (c) to the children's fares that would be assessed.

It is obvious that the services which applicant proposes in this matter must be correlated with the services that applicant is now authorized to provide between Long Beach and Avalon. Applicant's cost development of its proposals must be deemed as presupposing such a correlation. Obviously, the proposed services could not be performed at the costs shown unless performed in conjunction with the other services. For this reason, the services between Long Beach and Avalon necessarily fix certain limitations on services that would be established in this matter. Applicant's present operating authority provides that the services between Long Beach and

Avalon shall be performed daily between June 15 and September 15, and that at other times they shall be provided on an on-call basis, subject to a minimum of 20 passengers per trip. In order that the necessary correlation be maintained, the proposed services should be on a daily basis between June 15 and Labor Day, inclusive, and on an on-call basis at other times.<sup>2</sup> The on-call service should likewise be subject to a minimum of 20 passengers per trip; in addition it should be further limited to that which may be performed in conjunction with applicant's other services to or from Avalon. The transportation of freight in on-call service between Avalon and other points on Santa Catalina Island should be limited to that which may be performed with the passenger on-call services hereinafter authorized.

Applicant's fare proposals for children appear ambiguous or incomplete. For example, the round-trip excursion fare for children is designated as one-half of the adult fare. However, the specific fare which is named is more than one-half of the adult fare. Also, in the case of children's fares between Avalon and the various camps and coves, the naming of provisions therefor apparently has been overlooked. Applicant's fare structure generally provides that children from two to eleven years of age, inclusive, will be transported at one-half of the adult fares, and that children under two years of age will be carried free when accompanied by parent or guardian. The same basis of fares will be made applicable to the transportation of children in the services which are authorized below.

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<sup>2</sup> As proposed, the period of time for service on a daily basis along Santa Catalina Island would end with Labor Day.

In connection with the operating authority hereinafter granted, Avalon Navigation Company is hereby placed on notice that operative rights, as such, do not constitute a class of property which may be capitalized or used as an element of value in rate fixing for any amount of money in excess of that originally paid to the State as the consideration for the grant of such rights. Aside from their purely permissive aspect, such rights extend to the holder a full or partial monopoly of a class of business over a particular route. This monopoly feature may be modified at any time by the State, which is not in any respect limited as to the number of rights which may be given.

O R D E R

Public hearings having been held, and based on the evidence therein adduced,

IT IS ORDERED:

1. That a certificate of public convenience and necessity be, and it hereby is, granted to Avalon Navigation Company, a corporation, authorizing it to operate as a common carrier by vessel, as defined in Sections 211(b) and 238 of the Public Utilities Code,
  - a. Using the motor vessel MAGIC ISLE, or some other vessel at least equal thereto,
  - b. Between the points and over the routes as set forth in Appendix "C" attached hereto and by this reference made a part hereof.
2. In providing service pursuant to the certificate herein granted, Avalon Navigation Company shall first install, and thereafter maintain, on said motor vessel MAGIC ISLE (or on such other vessel operated in accordance with the certificate herein granted)

an accommodation ladder to facilitate the embarkation or disembarkation of passengers, their baggage, and freight at points along Santa Catalina Island to and from which service is provided under the aforesaid certificate; in the installation, maintenance, and operation of said accommodation ladder Avalon Navigation Company shall comply with all regulations of the United States Coast Guard applicable to the installation and use of accommodation ladders in the circumstances the aforesaid service will be provided.

3. As conditions for providing service pursuant to the certificate herein granted, Avalon Navigation Company shall comply with the following service regulations:

- a. Within thirty days after the effective date hereof, applicant shall file a written acceptance of the certificate herein granted. By accepting the certificate of public convenience and necessity herein granted, applicant is placed on notice that it will be required, among other things, to file annual reports of its operations and to comply with and observe the insurance requirements of the Commission's General Order No. 111. Failure to file such reports, in such form and at such time as the Commission may direct, or to comply with and observe the provisions of General Order No. 111, may result in a cancellation of the operating authority granted by this decision.
- b. Within one hundred twenty days after the effective date hereof and on not less than five days' notice to the Commission and to the public, it shall establish the service herein authorized, and shall file in triplicate, and concurrently make effective, tariffs and timetables satisfactory to the Commission.


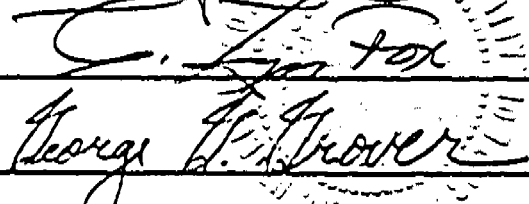
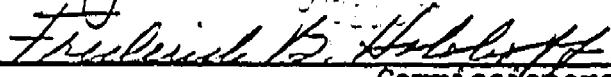
4. In providing service pursuant to the certificate herein granted, Avalon Navigation Company shall not charge or assess rates and fares greater in volume or effect than those set forth in

Appendices "B" and "D" attached hereto and by this reference made a part hereof unless otherwise so authorized by subsequent order of the Commission.

5. That the certificate of public convenience and necessity granted in paragraph 1 of this order supersedes the certificate of public convenience and necessity granted by Decisions Nos. 55329 dated July 30, 1957, and 55666 dated October 8, 1957, in Application No. 38902, which certificate is hereby revoked, said revocation to become effective concurrently with the effective date of the tariff filings required by paragraph 3 b hereof.

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

Dated at San Francisco, California, this 25<sup>th</sup> day of July, 1961.

  
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President  
  
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George F. Hoover  
  
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Commissioners

Commissioner Everett C. McKeage, being necessarily absent, did not participate in the disposition of this proceeding.

APPENDIX "A" TO DECISION NO. 62338

Proposed Fares (a)

Round-trip Excursion Fares (b)

Between Avalon and Emerald Bay:

Per adult .....	\$ 1.59
Children less than 12 years of age, per child .....	.90

One-Way Fares

Between Avalon and:

Gallagher's Cove	\$ .68
Toyon Bay	.68
White's Landing	.82
Empire Landing	.91
Isthmus (Two Harbors)	1.00
Fourth of July Cove	1.09
Cherry Cove	1.09
Emerald Bay	1.25

- (a) Fares exclusive of federal transportation taxes.
- (b) Excursion fares do not include stopovers at points en route, including Emerald Bay.

End of Appendix "A"

APPENDIX "B" TO DECISION NO. 62338

Proposed Freight Rates

Weight of Shipment (in pounds)		Rate in Cents per Shipment between Avalon and						
		<u>Gallagher's Cove</u>	<u>Toyon Bay</u>	<u>White's Landing</u>	<u>Empire Landing</u>	<u>Isthmus (Two Harbors)</u>	<u>Cherry Cove</u>	<u>Emerald Bay</u>
More than	But not more than							
0	10	80	80	85	95	100	105	110
10	20	85	85	90	100	105	110	115
20	40	90	90	95	105	110	115	120
40	60	95	95	100	110	115	120	125
60	80	105	105	110	120	125	130	135
80	100	115	115	120	130	135	140	150

End of Appendix "B"

Avalon Navigation Company, a corporation, by the certificate of public convenience and necessity granted in the decision noted in the margin, is authorized to transport passengers, their baggage and freight using the motor vessel MAGIC ISLE or some other vessel at least equal thereto, as follows:

1. Between Pierpoint Landing in the City of Long Beach, on the one hand, and the City of Avalon on Santa Catalina Island, on the other hand, subject to the following conditions:
  - a. Between June 15 and September 15 of each year, applicant shall transport passengers and their baggage only, and shall operate said service on a regular daily schedule.
  - b. Between September 15 and October 15, and between April 16 and June 14 of each year, applicant shall transport passengers and their baggage only on an "on-call" basis.
  - c. Between October 16 and April 15 of each year applicant shall transport passengers, their baggage and freight on an "on-call" basis.
  - d. Applicant shall operate the "on-call" service authorized in subparagraphs b and c above whenever twenty or more persons request transportation and may operate for a lesser number of passengers.

Issued by California Public Utilities Commission.

Decision No. 6233S, Application No. 43190.



2. Between the City of Avalon, Santa Catalina Island, on the one hand, and points and places located on said island northward to and including Emerald Bay, on the other hand, for the transportation of passengers, their baggage and freight, and in a sight-seeing service by vessel from the City of Avalon northward along Santa Catalina Island to Emerald Bay and return to the City of Avalon for the transportation of passengers and their baggage, subject to the following conditions:
  - a. Between June 15 and Labor Day of each year, service shall be provided on a daily basis.
  - b. During other times of the year, service shall be provided on an "on-call" basis subject to a minimum of twenty passengers (or twenty paid fares) per trip.
  - c. Such "on-call" service shall be limited to the transportation of passengers, their baggage and only that freight which may be performed in conjunction with the transportation of passengers.
  - d. Such "on-call" service shall be limited to only that which may be performed in conjunction with other transportation service which Avalon Navigation Company provides between Long Beach and Avalon.

End of Appendix A

Issued by California Public Utilities Commission.

Decision No. 62338, Application No. 43190.

Authorized Fares (a)

Round-trip Excursion Fares (b)

Between Avalon and Emerald Bay

Per Adult (c)

\$1.59

Per Child (d)

\$.80

One-Way Fares

	<u>Per Adult (c)</u>	<u>Per Child (d)</u>
Between Avalon and:		
Gallagher's Cove	\$ .68	\$.34
Toyon Bay	.68	.34
White's Landing	.82	.41
Empire Landing	.91	.46
Isthmus (Two Harbors)	1.00	.50
Fourth of July Cove	1.09	.55
Cherry Cove	1.09	.55
Emerald Bay	1.25	.63

- (a) Fares exclusive of federal transportation taxes.
- (b) Excursion fares do not include stopovers at points en route, including Emerald Bay.
- (c) Adult fares apply for the transportation of adults and children of 12 years of age or older.
- (d) Child's fares apply for the transportation of children 2 years of age or older but less than 12 years of age. Children of less than 2 years of age will be transported without charge when accompanied by parent or guardian.

End of Appendix "D"