

Decision No. 84546

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application
of CATALINA MOTOR CRUISERS, INC.,
a California corporation, for
authority to adjust charter rates.

Application No. 54355
(Filed September 27, 1973)

CITY OF AVALON, a Municipal
Corporation,

Complainant,

vs.

CATALINA MOTOR CRUISERS, INC., a
Corporation,

Defendant.

Case No. 9669
(Filed February 21, 1974;
reopened December 10, 1974)

James H. Lyons, Attorney at Law, for
Catalina Motor Cruisers, Inc.,
applicant and defendant.

Chalmers Lones, Attorney at Law, for
City of Avalon, complainant in
C.9669 and interested party in
A.54355.

John deBrauwere, for the Commission
staff.

O P I N I O N

Applicant Catalina Motor Cruisers, Inc. (Cruisers) is a common carrier of passengers by vessel operating generally between the Port of Los Angeles and points and places on Santa Catalina Island pursuant to authority granted in Decision No. 67166 in Application No. 46250, as amended by Decision No. 69131 in Application No. 47465. In addition to operating a daily scheduled service between

San Pedro, city of Los Angeles, and Avalon, Santa Catalina Island, Cruisers also operates a scheduled-daily-restricted service (on-call), nonscheduled-restricted service, and nonscheduled service at hourly rates (charter operations).

By this application Cruisers seeks to increase the hourly rates for charter operations between the Port of Los Angeles and any point on Santa Catalina Island, and to remove their application to specifically named vessels as set forth in Section 22 of its Local Passenger Tariff No. 2, CPUC No. 2. Such rates are subject to a six-hour minimum charge.

Case No. 9669, City of Avalon v Catalina Motor Cruisers, Inc., was consolidated with this application for hearing. Hearing was held in the city of Avalon on May 10, 1974 before Examiner Bernard A. Peeters. The city of Avalon appeared as an interested party in the application matter. Avalon's stated interest in the fare increase was that the charter operations might interfere with the required daily scheduled service of Cruisers. By its complaint Avalon requests an investigation of the existing service to Catalina from San Pedro and requests an order from the Commission that Cruisers provide daily service in accordance with its tariff with sufficient and adequate vessels.

Subsequent to the submission of these matters, Avalon petitioned the Commission to reopen its complaint. Submission was set aside and the complaint reopened for further hearing by Decision No. 83818 dated December 10, 1974. Further hearing was held on January 10, 1975 in Los Angeles. Complainant now seeks revocation of Cruisers' operating authority. The matter was submitted subject to the filing of late-filed exhibits. The exhibits have been filed and the matters are ready for decision.

The Evidence

The Application

Cruisers' proposed and present rates for nonscheduled service for vessels of varying passenger-carrying capacities are:

<u>Passenger Capacity</u>	<u>Charge Per Hour</u>
0- 99	\$ 75.00 Proposed
100-149	100.00 Proposed
150-299	150.00 *
300-499	300.00 *
500-750	400.00 *

Existing Tariff (Effective August 6, 1965)

RATES PER HOUR
(Nonscheduled Service at Hourly Rates)
(See Notes 1 and 2)

<u>Vessel</u>	<u>Passenger Capacity</u>	<u>Rate in Dollars</u>	
		<u>Column A</u>	<u>Column B</u>
"Jericho"	46	\$ 25.00	\$20.00
"Cabrillo"	110	50.00	50.00
"Sportsman"	111	45.00	40.00
	150-299 *	150.00	
	300-499 *	300.00	
	500-750 *	400.00	

Note 1. Rates apply for each 12-hour period or fraction thereof for which the vessel is engaged, subject to a minimum charge equal to that computed at the applicable rate for six hours.

Note 2. Rates do not include taxes and landing fees.

Column A. Rates apply for nonscheduled service under conditions other than those for which special rates apply.

Column B. Rates (special nonscheduled rates) apply for the services of Catalina Motor Cruisers, Inc., equipment, by advance arrangement, for a period of six or more hours each, during four or more days in any period of three consecutive months for transportation between Port of Los Angeles and any point on Santa Catalina Island.

* New rates and service effective November 1973.

One witness, the staff transportation engineer, who prepared a cost analysis of the proposed rates, was presented by Cruisers in support of its application. The engineer's report was adopted by applicant and entered into evidence as Exhibit 1. No other evidence was presented at the original hearing, other than late-filed Exhibit 2 filed May 20, 1974 which was prepared by the staff engineer.

Exhibit 1 shows that Cruisers is associated with several corporations: "all of whom are controlled by a group of essentially the same stockholders and officers." Appendix A of this decision sets forth these corporations and their functions.

Because the intercorporate relationships and common control alleged in Exhibit 1 were not explained, official notice was taken of the annual reports filed with the Commission by the corporations subject to its jurisdiction. The information in Appendix B of this decision was developed from 1973 annual reports. The 1974 reports have not been filed as of this date. Appendix B shows the corporate officers, directors, and stockholders of the three corporations subject to our jurisdiction with their respective holdings in the corporations. No shareholders or directors for Catalina Transportation Company were shown in the annual report.

Appendix B shows that the Stanalands, together, control over 50 percent of the outstanding shares in Cruisers and M.G.R.S., Inc. (MGRS) and that they hold the presidency of the two operating companies and the ownership company.

Among other things, Exhibit 1 sets forth the present operating authority of Cruisers. It shows that daily service to Catalina Island is to be provided by Cruisers only part of the year. During the summer months daily service is to be provided by the SS Catalina.

No estimates of revenues under proposed and present rates were presented, although an opportunity was given Cruisers to correct this at the reopened proceeding. An income statement for 10 months of 1973 for all of Cruisers' operations is set forth in Exhibit 1. This is summarized below:

Income Statement
1/1/73 to 10/31/73

Revenues

Passenger	\$191,080
Charter & Group	36,100
Other Vessels	2,370
Other	<u>660</u>

\$230,210

Expenses

Maintenance & Repair	\$ 35,100
Line Service	115,570
Other Terminal Operations	430
Traffic	1,630
General & Administrative	30,100
Operating Rents - MV Sportsman	3,000
Operating Rents - Non-owned Vessels	40,250
Operating Rents - Terminal	<u>12,390</u>

\$238,470

Net Operating Income

\$ (8,260)

Number of Trips - 998

(Red Figure)

It is stated that from the above information, the staff engineer developed per trip operating costs for specific vessels by allocating expenses on the basis of trips made by the respective vessels in the 10-month period. A further allocation was made for the Sportsman and Cabrillo to their nonscheduled hourly rate operations. A summary of the staff engineer's development of per trip costs follows:

Development of Per Trip Costs
1/1/73 to 10/31/73

	<u>Sportsman</u>	<u>Cabrillo</u>	<u>Sea Vue</u>
1. No. of trips	90	80	86
2. Passenger capacity	111	110	65
	<u>Nonsched.</u>	<u>Nonsched.</u>	<u>Scheduled</u>
3. Expenses	\$13,164	\$12,396	\$11,560
4. Depreciation (as-if-owned)	1,154	1,089	1,102
5. Intercompany expense	<u>2,290</u>	<u>2,230</u>	<u>2,180</u>
6. Total expenses	\$16,608	\$15,715	\$14,842
7. Cost per trip (line 6 ÷ line 1)	\$185	\$196	\$173

Operating expenses were adjusted to include the latest increase in crew wages, company expenses affiliated with crew wages, fuel, and lubricants. Depreciation was assigned on the basis of usage of the respective vessels, as if they were owned by Cruisers.

The staff concluded that the above projected per trip costs for a typical two-hour trip support Cruisers' request for a rate of \$100 per hour for vessels of between 100- and 150-passenger capacity and \$75 per hour for vessels up to 100-passenger capacity.

However, the staff recommended that the application be denied unless Cruisers provides the daily scheduled service required under its certificate, tariffs, and timetables on file with the Commission. Cruisers specifically concurred in this recommendation.

It was further recommended by the staff that when satisfactory daily scheduled service is being provided, the application should be granted subject to (1) a minimum charge time of four hours and (2) the charge to be computed to the nearest quarter hour.

Subsequent to the reopened proceeding, Cruisers submitted late-filed Exhibit 3, with the examiner's permission, in further support of its application. Exhibit 3 shows that since 1964 there has been a 56 percent increase in charter revenues and that crew wages have increased approximately 94 percent and fuel increases approximately 57 percent over the period.

The Complaint

The evidence on the complaint shows that Cruisers did not provide daily service between San Pedro and Avalon during the months of January, February, March, and April of 1974. There were 45 days during which no service was performed. In March there were 12 consecutive days of no service. There was testimony that this lack of daily service strands passengers on the island. Their only recourse to return to the mainland is to utilize the seaplane service or the boat service from Long Beach which is provided by another company. Passengers are not only inconvenienced but are subjected to additional costs in the form of motel accommodations, an additional fare to return to the mainland via another carrier, and the necessity to find other transportation to return to San Pedro to pick up their automobile parked at Cruisers' terminal. While the record is not clear whether these abandoned passengers received refunds from Cruisers, it is clear that many passengers did not receive satisfactory treatment by Cruisers and resorted to the Avalon Chamber of Commerce for some sort of satisfaction. Efforts by the Chamber with defendant to resolve the problem met with little or no satisfaction.

As of May 10, 1974, defendant was not providing daily service. However, daily service has been provided by the MV Carib Star since March 1974, which is operated by MGRS, one of the companies affiliated with defendant. As of June 16, 1974 daily service was provided by the SS Catalina in accordance with MGRS's certificate. Defendant's requirement to provide daily service started again after the SS Catalina stopped running sometime around September 15, 1974, when, at the option of MGRS, the MV Carib Star would provide daily service subject to a minimum of 200 passengers. Daily service to Avalon from San Pedro was started by defendant with a leased vessel, the Betty Lou, on or about September 27, 1974 (Exhibit 3).

At the original hearing defendant pointed out that its future prospects were bright. A new president had just been appointed. Negotiations were under way to acquire three marine Hovercrafts for the trans-channel operation. Since negotiations were not completed defendant agreed to provide a copy of the contract for the record as a late-filed exhibit. The exhibit has not been filed.

At the hearing, January 10, 1975, another new president appeared and testified, a Robert D. Filson who had been appointed on January 7, 1975. Filson had entered into a gross-revenue-charter agreement on September 27, 1974, as an individual majority owner of the Betty Lou, with John G. Stanaland acting on behalf of defendant.

Filson stated that he is an experienced boat operator and has started active promotion of defendant's service. He has plans for the construction of a new conventional type of boat and the necessary financing as an individual, for its construction. It is his intention to lease this boat to defendant when it is completed this fall. Filson also testified that he is negotiating to buy an interest in defendant and hopes to buy all of the corporation's stock when it is for sale.

While there was considerable discussion with respect to the condition of the Betty Lou and its suitability for passenger service, Exhibit 2 shows that it meets the United States Coast Guard requirements. Complainant submitted late-filed Exhibit 5 consisting of five pictures of the Betty Lou which purport to show the condition of the vessel. Complainant produced evidence showing that there were some interruptions in daily service with the Betty Lou due to weather and mechanical conditions and that the MV Carib Star, owned by MGRS, was used to provide daily service when there were sufficient passengers to justify its use.

Complainant Avalon took the position that defendant cannot be relied upon to provide dependable daily service with suitable vessels for passenger comfort and convenience between San Pedro and Avalon. Complainant asks that the Commission revoke defendant's certificate and thus open the way for a more reliable operator to perform the service.

Discussion

The Application

The hourly rates sought to be increased have been in effect since 1964. While we recognize the fact that the general level of wages, fuel, and other operating costs has increased since then, the burden is upon an applicant to quantify such increases and demonstrate its effect upon its operations. It is required of an applicant, in rate increase proceedings, to provide a summary of earnings for the test period upon which it bases its justification for an increase (Rule 23(e) of the Rules of Practice and Procedure). Such summary should show the amount of gross revenue produced under present and proposed rates, among other things. Cruisers did not provide such information. It relies solely on the fact its expenses have increased substantially since 1964 without quantification, and on the staff report (Exhibit 1).

The income statement in Exhibit 1 shows a net operating loss of \$8,260 for the first 10 months of 1973 while the profit and loss statement for the first six months of 1973, appended to the application, shows a net operating loss of only \$540.61. The \$7,719.39 difference requires some explanation. Cruisers offered no explanation or reconciliation of this difference, nor did the staff.

The staff computed per trip charges for three different vessels used by Cruisers in 1973 and concluded that the projected cost to Cruisers would be \$185 per one-way trip for the MV Sportsman and \$196 per one-way trip for the MV Cabrillo, in nonscheduled

operations. The projected one-way operating cost for the vessel Sea Vue was \$175. Placing these costs on a comparable basis with the proposed hourly rates shows that for a vessel of 100- to 150-passenger capacity the costs per hour amount to \$92.50 and \$98, for an average of \$95.25. The sought hourly rate is \$100. For a vessel with less than 100-passenger capacity the hourly cost amounts to \$86.50, whereas the sought hourly rate is only \$75.

The staff substituted ownership costs for the actual lease costs because of the interrelationship of Cruisers, MGRS, and other affiliated corporations. While it is proper to substitute ownership costs for lease costs where affiliated companies transact business among themselves, because of the danger there may not be arm's-length bargaining for the lease, such substitution must include all of the ownership costs, not depreciation alone as was done here. At the examiner's request, Table 2 of Exhibit 1 was recalculated using the actual lease costs (Exhibit 2). The resulting average cost per hour for the MV Sportsman and MV Cabrillo is \$99.25.

While there are infirmities in Exhibit 1, it has been demonstrated that an increase in the hourly rates is justified. The record is incomplete with respect to the amount of gross revenue to be generated from the proposed rates and whether they will recover all of the costs plus a reasonable profit.

Appendices A and B showing the intercorporate relationships and control raise questions with respect to intercorporate transactions, such as: vessel leases, expense allocations, and shifting responsibility for daily service due to the divided authority to provide daily service between Cruisers and MGRS. Because it is discretionary with management to operate the MV Carib Star on a daily basis, if there are 200 or more passengers, there is a gap between the time the SS Catalina stops its summer operations and the time Cruisers is required to provide daily service.

The staff partially dealt with the common control and affiliated companies' problem by substituting ownership for lease costs in its development of trip costs. Exhibit 2 shows that if lease costs had been used the per trip cost would have averaged \$98.50 rather than \$95.25 under the substituted ownership cost. Thus, inferentially, the staff states that the leasing of vessels from Cruisers' affiliated company is not the result of arm's-length bargaining and therefore would result in excessive costs to be borne by the ratepayer if lease costs were used in setting rates. No evidence was presented on this or other areas of potential problems inherent in affiliated relationships.

The Complaint

Complainant's original request for relief was that the Commission institute an investigation into defendant's existing service and order the defendant to provide daily service in compliance with its tariff. At the reopened proceeding complainant requested that the Commission revoke defendant's certificate.

To the extent that Exhibit 1 in the application pointed out the fact that there has been a lack of daily service, showed the interrelationship and control of the various companies associated with defendant, and recommended that the sought increase in rates be denied until daily service was resumed, complainant's initial request for an investigation has been provided.

With respect to complainant's request that defendant's certificate of public convenience and necessity be revoked, it did not bear its burden of clearly and convincingly showing that defendant is unfit and incapable of living up to its obligations as a public utility.

The fact that there has been a lack of daily service intermittently over a three- or four-month period, in and of itself does not justify the revocation sought, nor does the fact that the Betty Lou may not provide the comforts and conveniences the complainant would like to have in the service.

The evidence shows that defendant is aware of the deficiencies in its service and condition of its vessels and is in the process of doing something constructive about correcting them. The appointment of two new presidents within the past year, each with a positive plan and action to acquire new vessels, demonstrates that defendant is actively pursuing its goal to insure daily service with new and more attractive vessels.

Mr. Filson, defendant's current president, was confident that he will have a new vessel to go into service by this fall. In the meantime, he has leased his vessel, the Betty Lou, to defendant and is providing daily service with it. The vessel had been recently painted, although defectively. It will be repainted as soon as there is time available from providing daily service.

While the Betty Lou may not be the most desirable vessel the complainant would prefer to have in service, the photographs submitted as late-filed Exhibit 5 do not show the vessel to be unsuitable for passenger service; it meets with United States Coast Guard's approval for passenger service.

On balance, we believe that complainant has a justifiable cause, but the relief sought is out of proportion to the offense. We will therefore deny the relief sought. We will, however, require defendant to file monthly reports showing that daily service has been provided without interruption in accordance with its filed timetables. If there are interruptions in service, defendant will be required to set forth the dates on which daily service was not conducted and the reasons therefor. A detailed record of complaints from passengers will be required to be kept by defendant and a monthly report thereon will be required. Such report should show the date, name, and address of complainant, the nature of the complaint, and its disposition. Defendant will also be required to report on the progress of the plans for the construction of a new boat for the service.

Findings

1. Cruisers' projected one-way trip operating costs are based upon an allocation of estimated costs.
2. For vessels of less than 100-passenger capacity, the projected operating costs exceed the proposed hourly charge. For vessels of more than 100-passenger capacity the projected operating costs are slightly lower than the proposed hourly charge.
3. Cruisers did not provide a summary of earnings as required by our rules, thus, the gross revenue requirement cannot be determined.
4. Cruisers adopted the staff's recommendation to deny the increase until daily service is reestablished and to have rates computed to the nearest quarter hour and be subject to a four-hour minimum charge.
5. Cruisers' various operating expenses have increased by 57 to 98 percent since 1964.
6. An increase in the hourly charter rates for vessels with a passenger capacity up to 100 and from 100 to 149 is necessary to offset increased operating costs.
7. Based upon the number of trips per vessel in Exhibit 1, and two hours per trip, it is estimated that the proposed rates should produce an increase in gross revenue of \$23,920.
8. It is not possible to determine whether the proposed rates will be sufficient to cover all costs and provide a profit.
9. Defendant provided only intermittent daily service during the months of January, February, March, and April of 1974.
10. Daily service was being provided by MGRS with the MV Carib Star from March 1974 until June 16, 1974 when the SS Catalina went into operation.
11. Daily service was reinstituted by defendant on September 27, 1974 with the Betty Lou, a leased vessel.

12. There were some interruptions in daily service with the Betty Lou due to weather and mechanical conditions.

13. The United States Coast Guard's certification of the MV Sportsman has been withdrawn.

14. The only vessel owned by Cruisers, the hydrofoil Victoria, is inoperable due to major repairs being required.

15. The intermittent cessations of daily service, without a long-standing pattern being established, is not sufficient ground to revoke Cruisers' certificate of public convenience and necessity.

16. A sufficient pattern of lack of dependable daily service has been established so that Cruisers should be required to file monthly reports with the Commission setting forth the days on which daily service was not provided, the reasons therefor, the number of passengers inconvenienced, and whether or not a refund or other settlement was made with the passenger, and the reason therefor.

17. A daily log of passenger complaints should be kept setting forth the date, name, and address of complainant, nature of the complaint, and its disposition. A monthly report of the complaints should be filed with the Commission.

18. Monthly progress reports with respect to the construction of a new vessel should be submitted by Cruisers.

Conclusions

1. An increase in the hourly charter rates subject to a minimum four-hour charge and computed to the nearest quarter hour is justified.

2. The revocation of Cruisers' certificate of public convenience and necessity sought by complainant is not justified.

O R D E R

IT IS ORDERED that:

1. Catalina Motor Cruisers, Inc. is authorized to establish the increased rates as set forth in Appendix C. Tariff publications authorized to be made as a result of this order shall be filed not earlier than the effective date of this order and may be made effective not earlier than ten days after the effective date of this order on not less than ten days' notice to the Commission and to the public.
2. The authority shall expire unless exercised within ninety days after the effective date of this order.
3. Cruisers shall file monthly reports, as set forth in Findings 16, 17, and 18, going back to the month of April 1975. Such reports shall be filed no later than ten days after the month being reported.
4. Avalon's requested revocation of Cruisers' certificate of public convenience and necessity is denied.
5. The authority granted by this order is subject to the express condition that applicant will never urge before this

Commission in any proceeding under Section 734 of the Public Utilities Code, or in any other proceeding, that this opinion and order constitute a finding of fact of the reasonableness of any particular rate or charge. The filing of rates and charges pursuant to this order will be construed as a consent to this condition.

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

Dated at San Francisco, California, this 17th
day of JUNE, 1975.

Vernon L. Sturgeon
President
William Lyndon P.
San Diego
Leonard Ross
Power & Co.
Commissioners

APPENDIX A

Catalina Transportation Company - Owner-lessor of SS Catalina and MV Sportsman. Operator of parking lot concessions at San Pedro terminal.

Catalina Terminals, Inc. - Lessee of one terminal building at San Pedro from the Los Angeles Harbor Department.

Channel Concessions Corp. - Operator of food and drink concessions aboard SS Catalina.

M.G.R.S., Inc. - Operator of SS Catalina.

Avalon Navigation Company - A dormant corporation due to the sale of the MV Magic Isle.

Catalina Motor Cruisers, Inc. - Owner and operator of the hydrofoil vessel Victoria which is inoperable due to major repairs required. Operator and lessee of MV Sportsman. The U.S. Coast Guard withdrew this vessel's certification for safety reasons. Lessee of other motor vessels from time to time, such as: "Cabrillo", "G.T. Avalon", "Sea Vue", "Island Holiday", and "Betty Lou" during 1973.

APPENDIX B

		<u>Catalina Motors Cruisers, Inc.</u>		
<u>Position</u>		<u>Dir.</u>	<u>Shares</u>	<u>Percent</u>
Pres.:	John G. Stanaland	X	396.1375	15.846
V.P.:	Eddie Edwards	X		
Sec.:	Donald W. Crouthamel	X		
	Richard Shug	X	156.750	6.27
	E. M. Dillhoefer		150.000	6.00
	Mitchell B. Howe		150.000	6.00
	Thomas A. Gregory		792.275	31.69
	Jack/Carolyn Stanaland		458.700	18.348
	Thomas G. Stanaland		396.1375	15.846

M.G.R.S., Inc.

Pres.:	John G. Stanaland	X	56,621	15.30
V.P.:	R. Kenneth Houp	X		
Asst.				
Sec.:	R. Kenneth Houp			
	Richard Shug		23,452	6.34
	Thomas A. Gregory		113,242	30.61
	Jack/Carolyn Stanaland		78,064	21.11
	Thomas G. Stanaland		56,621	15.30
	D. Patrick Athern		30,000	8.10
	Lloyd L. Bosley		2,000	0.54
	Robert B. Sprague		10,000	2.70

Catalina Transportation Company

Pres.:	Carolyn Stanaland
V.P.:	Ernest F. Dodson
Sec.:	Charles Taylor

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APPENDIX C

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Cancels Fifth Revised Page 9

Cal. P.U.C. No. 2
CATALINA MOTOR CRUISERS, INC.
Berth 95-96, San Pedro, California

* * *

SECTION 22(c)

CHARTER RATES PER HOUR
(Nonscheduled Service at Hourly Rates)
(See Notes 1 and 2)

<u>Passenger Capacity of Vessel</u>	<u>Rates in Dollars</u>
0- 99	\$ 75.00
100-149	100.00
150-299	150.00
300-499	300.00
500-750	400.00

Note 1. Rates apply for each 12-hour period or fraction thereof (computed to the nearest one quarter hour), subject to a minimum charge equal to that computed at the applicable rate for four hours.

Note 2. Rates do not include taxes and landing fees.

Issued:

Effective:

(c) Change authorized on 10 days' notice by Decision No. _____.