

APR 13 1988

Decision 88 04 009 APR 13 1988

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
Catalina Channel Express, Inc., a)
California corporation, or a)
certificate of public convenience)
and necessity authorizing the)
transportation of passengers and)
baggage by vessel between Redondo)
Beach, California on the one hand,)
and Santa Catalina on the other hand.)

Application 87-01-036
(Filed January 26, 1987)

J. Terence Lyons, Attorney at Law, for
Catalina Channel Express, Inc.,
applicant.

Edward J. Hegarty, Attorney at Law, for
H. Tourist, Inc., and Steven Kofahl,
for himself, protestants.

SUPPLEMENTAL OPINIONProcedural History

By Decision (D.) 87-06-061 dated June 24, 1987 we granted a certificate of public convenience and necessity to Catalina Channel Express, Inc. (Express) authorizing operations as a vessel common carrier between Redondo Beach Marina, on the one hand, and Avalon and Two Harbors on Santa Catalina Island (Catalina), on the other hand.

Requests for rehearing of D.87-06-061 were filed by Parker R. Herriott and by Steven Kofahl. Herriott's request was dismissed by D.87-08-029, dated August 12, 1987. Kofahl's request was granted by D.87-09-083, dated September 23, 1987 for the limited purpose of considering the safety and adequacy of the facilities Express plans to use for loading and unloading of passengers at Redondo Beach. D.87-09-083 stayed the ordering paragraphs of D. 87-06-061 until further order.

On July 6, 1987 Express filed a petition for modification of D.87-06-061; and on July 21, 1987 it filed its second petition for modification.

Hearing was held on the Order Granting Limited Rehearing of Kofahl's request before Administrative Law Judge (ALJ) John Lemke in Los Angeles on January 11, 1988. The matter was submitted subject to the filing of transcript, filed January 26, 1988. The Order Granting Limited Rehearing and Express' petitions for modification are consolidated for issuance of a single decision.

Order Granting Limited Rehearing

Express presented its case on rehearing through two witnesses. Gregory Bombard is vice-president and general manager of Express, and is the carrier's chief operating officer. He testified substantially as follows:

1. A building with ample indoor and outdoor passenger waiting room will be available at the docking site. A covered canopy area will shelter passengers waiting outside.
2. A new float 80 feet long and 20 feet wide is being constructed, at which Express' vessel will dock. It is almost identical to one used at the carrier's San Pedro facility, which has adequately accommodated approximately 400,000 passengers annually since 1981, serving the same size vessel.
3. Problems are non-existent with respect to fueling in the vicinity of the proposed docking area. The fueling facility formerly used there has not been operative for several years, and there are no plans to reactivate any such operation.
4. 30-foot ramps will provide easy access between dock and vessel. Float surface and deck are at the same level for passenger comfort and safety.
5. Bombard has entered the harbor channel with a vessel 10 feet longer than the one Express plans to use. He was able to maneuver the vessel without difficulty,

notwithstanding the presence of a shoal warning marker located near the channel center.

6. The Redondo Beach Harbor has been used for several years by sportsfishing vessels the size of the vessel Express plans to operate.
7. Conditions at Redondo Beach Harbor are not nearly as congested as those experienced in Avalon Harbor, where Express has successfully operated for many years without incident.

Bombard also testified that Express expects to commence operations in June 1988, after completion of building improvements and docking facilities.

Gordon McRae, executive vice-president of Charles G. Johnston, Inc., doing business as Redondo Beach Marina, substantiated Bombard's testimony in several respects. He added that there are two large sportsfishing vessels berthed in Redondo Beach Harbor; that often one of them has been tied up at the docking area Express proposes to use, while the other vessel has had to maneuver past the first and done so without difficulty. McRae stated that in his 18 years' experience in the harbor area there has never been a boating accident to the best of his knowledge. He further testified that two boat hoists located in the general area of the docking facility to be used by Express will not interfere with passenger loading/unloading.

Parker Herriott, called as a witness by Kofahl, testified generally that he is concerned about the ability of a vessel as large as the one Express will operate to navigate safely in the harbor channel because of the nearby shoal. He also believes that the generally crowded conditions in the harbor may render the proposed operation unsafe.

Kofahl testified that he was a principal in the operation of Island Passenger Service (Island Service) operating the vessel

Cormorant from approximately the same location at the Redondo Beach Marina Express plans to use. The Cormorant was also 80 feet long. Island Service left Redondo Beach Harbor because it felt the harbor was too small for its boat. The surging of the water, Kofahl testified, and the congested small boat activity all contributed to the decision to leave. Further, Kofahl believes the boat hoist areas are somewhat crowded on certain active days and will present a problem for Express' passengers who are waiting to board its vessel. He conceded that Island Service was using the old float containing a fuel pump mechanism; whereas Express will be using a new float. He also acknowledged that the Cormorant had a higher deck profile than the Express vessel, and carried approximately twice the number of passengers that Express can transport.

Discussion on Order Granting Rehearing

The testimony by Herriott and Kofahl is altogether speculative. Both witnesses assert that they are primarily concerned over the issue of safety. We share that concern. However, the best evidence before us is that presented through Bombard and McRae. Their testimony is convincing that the facilities Express proposes to use on its Redondo Beach schedules are adequate and safe.

Bombard's description of the new float abuilding and of how the same size floats and ramps adequately accommodate 400,000 passengers annually at the carrier's San Pedro terminal, is probative that the loading facilities will be adequate. The absence of any operative fueling facilities in the loading area satisfies us that the docking area will be in no danger from potential fueling accidents. Express has a demonstrated record of safe operations in the crowded Avalon Harbor, more congested than the one here under consideration. Vessels as large as Express' have frequently maneuvered through the channel, showing that the nearby shoal is not a difficult problem to meet. While Redondo Beach Harbor is congested, it is not unduly crowded for the

purposes of Express' proposed operation, and the carrier is willing to deal with the congestion and has the experience to do so.

Based upon the evidence adduced through Bombard and McRae, we will grant the sought certificate of public convenience and necessity. The effective date of our decision will be today, in view of the demonstrated need for the service and of Express' need for an early authorization in order to complete construction of the building and docking facilities.

Kofahl urges that if we grant Express' request, it be on the condition that Express must obtain further Commission approval before using a larger vessel or increasing the number of schedules in its Redondo Beach operation. Express opposes such restrictions.

There are no provisions in the Public Utilities Code, nor in our general orders requiring vessel operators to obtain our authority prior to increasing vessel size or frequency of schedules. While there is ample authority in the Public Utilities Code (Section 701, for example) for allowing the imposition of such restrictions, we do not generally include such when granting these operating authorities. Express appears to have the experience to make the appropriate scheduling and vessel capacity decisions necessary to successfully conduct its business. We should not interfere with such management decisions unless dictated by conditions more imperative than those brought to our attention on this record. It is our purpose in granting this new authority to allow Express the freedom in scheduling necessary to implement its decisions, insofar as they do not unduly affect the rights of other carriers or the public.

Petitions for Modification

D.87-06-061 authorized Express to operate as a vessel common carrier between Redondo Beach Marina, on the one hand, and Avalon and Two Harbors, on the other hand.

Express requests that the certificate pages attached as Appendix A to the decision be amended. Express makes no request

for changes in the Findings of Fact, Conclusions of Law or Order in the decision.

Three requested modifications in the first petition relate to so-called inadvertent errors or ambiguities in the certificate language. The fourth requested modification would eliminate a frequency for service condition. No objection to the requests for modification has been received.

Proposed Modifications

1. Daily Service - Avalon Only

Express alleges that in its application and throughout the hearing, it proposed to operate daily service between Redondo Beach and Avalon during the summer months, and weekend service between Redondo Beach and Two Harbors during the summer months, recognizing that it might increase the frequency or extend the season of either the Avalon or Two Harbors service as demand might indicate. Further, Express states, a reading of D.87-06-061 suggests that it was the Commission's intent to approve the application as presented by Express without any substantial changes in this regard.

However, Express notes, the new language on Second Revised Page 2 of its certificate lumps the Redondo Beach/Avalon route and the Redondo Beach/Two Harbors route together and appears to require a minimum of one round-trip per day to both Avalon and Two Harbors during the summer. Express requests that the new language be modified to provide a separate statement of the Redondo Beach/Avalon route and the Redondo Beach/Two Harbors route in the same way that the Los Angeles/Avalon route and the Los Angeles/Two Harbors route are separately stated in the two preceding paragraphs of the certificate. That is, Express maintains, the daily round-trip schedule requirement for summer operations should apply only to the Redondo Beach/Avalon route, if at all; and further, that if any condition is placed upon the Redondo Beach/Two Harbors route,

it should be for a minimum of two round-trip schedules per week during the summer.

Exhibit "E" included with the application does in fact specify that Express' proposed service should be provided from mid-June through mid-September on a daily basis to and from Avalon, and on Fridays and Sundays to and from Two Harbors. Express' certificate will be modified to reflect its and the Commission's intent in this regard.

2. Scheduled Service During the Winter

Express professes that it sought authority to operate scheduled service between Redondo Beach and Avalon/Two Harbors, and that the service proposal presented during the hearing was for daily scheduled service to Avalon during the summer and weekend scheduled service to Two Harbors during the summer, with the possibility of extending scheduled service into some or all of the balance of the year as future conditions might warrant. Express believes that this intent was recognized by the Commission in the opinion - paragraph 4 on page 3 of D.87-06-061. However, Express observes, the new language on Second Revised Page 2 of the certificate provides for minimum scheduled service during the summer and adds, "On-call service may be performed throughout the balance of the year." In fact, Express notes, Express desired the option of providing scheduled service throughout the balance of the year, as conditions may warrant. It suggests that if a condition describing frequency of service is placed in the certificate, the quoted language be changed to read, "Schedules may be operated in other months in the carrier's discretion as demand may indicate."

D.87-06-061 states on page 3 that Express' intent was to have the option of providing service, other than during the summer, if there is sufficient demand. There was no objection to this particular request. The certificate should be amended to reflect this condition, especially in light of our discussion supra.

concerning our willingness to allow Express the scheduling flexibility necessary to implement its management decisions.

3. Redondo Beach vs Redondo Beach Marina

Express notes that in its application it sought authority to operate between Redondo Beach, on the one hand, and Catalina, on the other hand. It refers us to Exhibit 7 and the testimony of certain witnesses that the harbor at Redondo Beach includes several marina facilities, each operated by private firms. These include Redondo Beach Marina, King Harbor Marina, Port Royal Marina, and Portofino Marina.

The new language on Second Revised Page 1 and Second Revised Page 2 of the certificate specifies "Redondo Beach Marina" rather than simply Redondo Beach as a terminal. Express requests that the certificate be modified by substituting "Redondo Beach" in place of "Redondo Beach Marina." We concur. The certificate should be modified to reflect the name of the community served. Express requested authority to serve Redondo Beach. The name "Redondo Beach Marina" could change, thereby causing confusion and uncertainty concerning Express' operative rights.

4. Removal of Frequency Condition

Express believes that a minimum frequency condition in its certificate is unnecessary in connection with the Redondo Beach authority. However, the applicant states it is willing to accept the certificate with minimum service requirements.

In the Catalina transportation market, the carrier maintains, such conditions requiring minimum levels of service are usually intended to guarantee that there is transportation between the mainland and Catalina on a year-round basis, and that the carrier that enjoys the opportunity for profitable summer operations also bears the burden of serving the public during the winter. For this reason, Express notes, its certificate conditions its authority between Los Angeles and Catalina on the operation of daily service to Avalon and five-day per week service to Two

Harbors throughout the year. However, Express alleges, the frequency restriction in the Redondo Beach authority is unnecessary for two reasons: first, the frequency restriction in its Los Angeles authority guarantees that it will provide year-round transportation between the mainland and Catalina; and second, a frequency restriction limited to the summer months is merely an unnecessary regulation.

Express believes it is worth noting that the certificate of Catalina Cruises (VCC-46, Pages 1 and 2, Exhibit 20 at the hearing on this application) contains a restriction requiring minimum schedules only as to its Long Beach route, and there is no frequency restriction as to either its Los Angeles (San Pedro) route or its San Diego route. Thus, the restriction at one of Catalina Cruise's mainland terminals guarantees year-around service between the mainland and Catalina. Therefore, as to Express, the carrier argues, the existing restriction requiring minimum schedules at Los Angeles would continue to serve the same function, and no restriction on the Redondo Beach route would be necessary.

In D.87-06-061 we found a need for the new service from Redondo Beach. Such a finding based on this record contemplates a minimum level of scheduled service, since it is already at one minimum of a sort, being required only during the summer months. Notwithstanding our remarks supra concerning scheduling freedom, there can be such a thing as too much flexibility when the needs of the public utilizing the particular service are considered. For purposes of this proceeding it appears more appropriate to require a minimum level of service during the limited portion of the year in which service will be performed, especially in view of Express' willingness to accept the certificate with this condition.

By its Second Petition for Modification of D.87-06-061, filed July 21, 1987, Express brings our attention to an apparent inadvertent error made in restating a portion of the carrier's authority on the certificate pages attached to the decision. On

Second Revised Page 2 of the certificate attached as Appendix A to D.87-06-061, Section II entitled Nonscheduled Service is stated as follows:

"Between Berth 95-96 in the Los Angeles Harbor and the Queensway Hilton Hotel, on the one hand, and Avalon and Two Harbors on Santa Catalina Island, on the other hand."

Express contends that this Section II Nonscheduled Service should read as follows:

"Between Berth 95-96 in the Los Angeles Harbor and the Queensway Hilton Hotel, on the one hand, and all points on Santa Catalina Island, on the other hand."

Express notes that the old language ("Avalon and Two Harbors on Santa Catalina Island") was changed to read "all points on Santa Catalina Island" in D. 83-09-098, dated September 30, 1983 in. Application (A.) 82-07-64; that its nonscheduled service was not at issue in the instant proceeding.

Express is correct with respect to its second petition for modification. The certificate attached as Appendix A to D.87-06-061 will be amended accordingly.

In accordance with Public Utilities Code Section 311, as amended by Assembly Bill 3383, the ALJ's proposed decision was mailed to appearances on March 8, 1988. Comments were received from Express, pointing out a discrepancy in the certificate attached to the decision. The discrepancy has been remedied.

Findings of Fact

1. The testimony of Express witnesses Bombard and McRae is probative that the facilities Express will use in Redondo Beach Harbor for loading and unloading passengers will be safe and adequate.

2. Express has the experienced necessary to safely operate its vessel in the congested conditions sometimes experienced in Redondo Beach Harbor.

3. It is unnecessary to impose any restrictions concerning changes in scheduling, or increases in vessel capacity, upon the operations Express will perform between Redondo Beach and Catalina.

4. Modification of D.87-06-061 in accordance with the petitions for modification filed by Express will give proper effect to our intent in this proceeding. However, it is reasonable to require that Express provides a minimum level of scheduled service between Redondo Beach and Avalon/Two Harbors.

Conclusions of Law

1. The application should be granted.

2. D.87-06-061 should be modified in accordance with Express' first and second petitions for modification, as indicated in the body of the decision and as set forth in the attached revised appendix pages.

3. The effective date of this decision should be today.

SUPPLEMENTAL ORDER

IT IS ORDERED that:

1. A certificate of public convenience and necessity is granted to Catalina Channel Express, Inc., a corporation, authorizing it to operate as a common carrier by a vessel, as defined in Public Utilities (PU) Code §§ 211(b) and 238, between the points and over the routes set forth in the attached revised pages to Appendix A of D.93291 and 86-03-038, to transport persons and their baggage.

2. Applicant shall:

- a. File with the Transportation Division written acceptance of its certificate within 30 days after this order is effective.

- b. Establish the authorized service and file tariffs and timetables as soon as practicable.
- c. State in its tariffs and timetables when service will start and allow at least 10 days' notice to the Commission.
- d. Comply with General Orders Series 87, 104, 111, and 117.
- e. Maintain accounting records in conformity with the Uniform System of Accounts.
- f. Remit to the Commission the Transportation Reimbursement Fee required by PU Code § 403 when notified by mail to do so.

3. The ordering paragraphs of Decision 87-06-061 are rescinded.

4. The petitions for modification are granted to the extent set forth in this decision.

This order is effective today.

Dated APR - 8 1988, at San Francisco, California.

STANLEY W. HULETT
President
FREDERICK R. DUDA
G. MITCHELL WILK
JOHN B. OHANIAN
Commissioners

Commissioner Donald Vial, being necessarily absent, did not participate.

I CERTIFY THAT THIS DECISION
WAS APPROVED BY THE ABOVE
COMMISSIONERS TODAY.

Victor Weiss
Victor Weiss, Executive Director

Appendix A CATALINA CHANNEL EXPRESS, INC.
(a California corporation)
(VCC-52)

Third Revised Page 1
Cancels
Second Revised Page 1

Catalina Channel Express, Inc., a California corporation, by this certificate of public convenience and necessity, is authorized to conduct common carriage by vessels for the transportation of passengers and their baggage between Berth 95-96 in the Los Angeles Harbor and the Queensway Hilton Hotel, Long Beach, and Redondo Beach, on the one hand, and Avalon and Two Harbors on Santa Catalina Island, on the other hand, as described below:

I. Scheduled Service

Between Berth 95-96 in the Los Angeles Harbor, on the one hand, and Avalon, Santa Catalina Island, on the other hand, subject to the following conditions:

- a. One schedule will be operated in the afternoon daily at 4:30 p.m. leaving Berth 95-96 in the Los Angeles Harbor to Avalon, Santa Catalina Island.
- b. No schedules will be operated leaving Berth 95-96 in the Los Angeles Harbor destined for Avalon, Santa Catalina Island with a departure time within one-half hour before or after the scheduled departures of H. Tourist, Inc. on file with this Commission on June 18, 1981.

Issued by California Public Utilities Commission.

Revised by Decision 88 04 009, Application 87-01-036.

Appendix A CATALINA CHANNEL EXPRESS, INC. Third Revised Page 2
 (a California corporation) Cancels
 (VCC-52) Second Revised Page 2

Between Berth 95-96 in the Los Angeles Harbor, on the one hand, and Two Harbors, Santa Catalina Island, on the other hand, subject to the following conditions:

A minimum of one round-trip schedule per day for a minimum of five days per week will be operated throughout the year.

Between Redondo Beach, on the one hand, and Avalon, Santa Catalina Island, on the other hand, subject to the following conditions:

A minimum of one round-trip schedule per day will be operated daily between June 15 and September 15. Schedules may be operated in other months in the carrier's discretion as demand may indicate.

Between Redondo Beach, on the one hand, and Two Harbors, Santa Catalina Island, on the other hand, subject to the following conditions:

A minimum of two round-trip schedules per week will be operated between June 15 and September 15. Schedules may be operated in other months in the carrier's discretion as demand may indicate.

II. Nonscheduled Service

Between Berth 95-96 in the Los Angeles Harbor and the Queensway Hilton Hotel, on the one hand, and all points on Santa Catalina Island, on the other hand.

Issued by California Public Utilities Commission.

Revised by Decision 88 04 009, Application 87-01-036.

Second Revised Page 2 of the certificate attached as Appendix A to D.87-06-061, Section II entitled Nonscheduled Service is stated as follows:

"Between Berth 95-96 in the Los Angeles Harbor and the Queensway Hilton Hotel, on the one hand, and Avalon and Two Harbors on Santa Catalina Island, on the other hand."

Express contends that this Section II Nonscheduled Service should read as follows:

"Between Berth 95-96 in the Los Angeles Harbor and the Queensway Hilton Hotel, on the one hand, and all points on Santa Catalina Island, on the other hand."

Express notes that the old language ("Avalon and Two Harbors on Santa Catalina Island") was changed to read "all points on Santa Catalina Island" in D. 83-09-098, dated September 30, 1983 in Application (A.) 82-07-64; that its nonscheduled service was not at issue in the instant proceeding.

Express is correct with respect to its second petition for modification. The certificate attached as Appendix A to D.87-06-061 will be amended accordingly.

Findings of Fact

1. The testimony of Express witnesses Bombard and McRae is probative that the facilities Express will use in Redondo Beach Harbor for loading and unloading passengers will be safe and adequate.

2. Express has the experienced necessary to safely operate its vessel in the congested conditions sometimes experienced in Redondo Beach Harbor.

3. It is unnecessary to impose any restrictions concerning changes in scheduling, or increases in vessel capacity, upon the operations Express will perform between Redondo Beach and Catalina.

4. Modification of D.87-06-061 in accordance with the petitions for modification filed by Express will give proper effect

to our intent in this proceeding. However, it is reasonable to require that Express provides a minimum level of scheduled service between Redondo Beach and Avalon/Two Harbors.

Conclusions of Law

1. The application should be granted.
2. D.87-06-061 should be modified in accordance with Express' first and second petitions for modification, as indicated in the body of the decision and as set forth in the attached revised appendix pages.
3. The effective date of this decision should be today.

SUPPLEMENTAL ORDER

IT IS ORDERED that:

1. A certificate of public convenience and necessity is granted to Catalina Channel Express, Inc., a corporation, authorizing it to operate as a common carrier by a vessel, as defined in Public Utilities (PU) Code §§ 211(b) and 238, between the points and over the routes set forth in the attached revised pages to Appendix A of D.93291 and 86-03-038, to transport persons and their baggage.
2. Applicant shall:
 - a. File with the Transportation Division written acceptance of its certificate within 30 days after this order is effective.
 - b. Establish the authorized service and file tariffs and timetables as soon as practicable.
 - c. State in its tariffs and timetables when service will start and allow at least 10 days' notice to the Commission.
 - d. Comply with General Orders Series 87, 104, 111, and 117.

- e. Maintain accounting records in conformity with the Uniform System of Accounts.
- f. Remit to the Commission the Transportation Reimbursement Fee required by PU Code § 403 when notified by mail to do so.

3. The ordering paragraphs of Decision 87-06-061 are rescinded.

4. The petitions for modification are granted to the extent set forth in this decision.

This order is effective today.

Dated _____, at San Francisco, California.

Appendix A CATALINA CHANNEL EXPRESS, INC.
(a California corporation)
(VCC-52)

Third Revised Page 2
Cancels
Second Revised Page 2

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Between Berth 95-96 in the Los Angeles Harbor and the Queensway Hilton Hotel, on the one hand, and Avalon and Two Harbors on Santa Catalina Island, on the other hand.

Issued by California Public Utilities Commission.

Revised by Decision _____, Application 87-01-036.