

AUG 11 1988

ORIGINALDecision 88 08 011 AUG 10 1988

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 ISLAND EXPRESS, INC., a California)
 corporation, to transfer to CATALINA)
 CHANNEL EXPRESS, INC., a California)
 corporation, the certificate of)
 public convenience and necessity)
 (VCC-60) authorizing the transporta-)
 tion of passengers and baggage by)
 vessel between Dana Point and Long)
 Beach on the one hand, and Avalon on)
 Santa Catalina Island on the other)
 hand, and to modify that certificate.)

Application 88-03-032
 (Filed March 15, 1988)

OPINION

Applicants Island Express, Inc. (Island Express), a California corporation, and Catalina Channel Express, Inc. (Catalina Express), a California corporation, seek authority pursuant to § 1009 of the Public Utilities (PU) Code to transfer the Island Express certificate of public convenience and necessity (CPC&N) to Catalina Express, and to amend Part II(c) of that certificate to permit the transportation of service to be provided with 149-passenger submerged foil hydrofoil vessels in addition to or in lieu of the "100-passenger HM-221 surface effect ships" which had been authorized in Decision (D.) 85-04-103 issued April 17, 1985. Applicants also seek authority to issue a lifetime pass on Catalina Express vessels to Daniel B. Feinberg and John J. Feinberg and members of their immediate families for free cross-channel transportation between the mainland and Catalina Island as part of the consideration paid by Catalina Express to Island Express in return for the transfer of the certificate. Immediate family means the spouse and children of the holders of the pass.

Notice of filing of the application appeared in the Commission's daily calendar on March 22, 1988. A protest was filed by H. Tourist, Inc. on April 21, 1988.

Applicant Catalina Express presently provides scheduled passenger service as a common carrier by vessel between the Port of Los Angeles (San Pedro), on the one hand, and Avalon and Two Harbors on Santa Catalina Island, on the other hand. Catalina Express also provides non-scheduled (charter) passenger service as a common carrier by vessel between the Port of Los Angeles (San Pedro) and Long Beach, on the one hand, and numerous points on Santa Catalina Island, on the other hand. Its CPC&N for this service was described in Appendix A to D.92391 and amended in D.83-06-038.

In Application (A.) 84-05-112, Island Express sought authority to operate as a vessel common carrier between Dana Point, Santa Monica, and Long Beach, on the one hand, and Avalon on Santa Catalina Island on the other hand. In that proceeding, Island Express proposed to offer scheduled service between Avalon and the three mainland points and to provide the service in high-speed surface effect ships (SES vessels) which would significantly reduce existing transit times. The Commission granted the certificate to Island Express in D.85-04-103 and limited the authorized service to the use of the high-speed vessels proposed by Island Express. Because the SES vessels had not been built, and because such vessels had not previously been built in the United States, we allowed Island Express a period of two years within which to establish the authorized service. In D.87-08-058 dated August 26, 1987 the Commission extended the time in which Island Express might establish service until July 24, 1989, upon the condition that Island Express submit evidence of certain plans, approvals, and agreements regarding the SES vessels by February 26, 1988. By letter dated February 11, 1988 Island Express provided the Commission with evidence that it has submitted its application to

the U.S. Coast Guard to construct the HM-221 SES vessels, had submitted designs and plans to the U.S. Coast Guard, and that Hovermarine International Ltd. had established a U.S. subsidiary to make arrangements for the construction of the HM-221 SES vessels. Island Express has not yet established a service authorized by the Island Express certificate.

Catalina Express is operating scheduled transportation as a common carrier by vessel between San Pedro and Catalina Island since 1981. Catalina Express operates 14 schedules per day from San Pedro to Avalon with boats leaving San Pedro every hour from 7:00 a.m. to 7:00 p.m. during the summer months. Catalina Express alleges that by Summer 1988 it will have available a high-speed vessel with speed and ride characteristics that equal or exceed the SES vessels proposed by Island Express. This new vessel was constructed in Washington state, and is currently undergoing water tests there prior to its delivery to southern California later in 1988.

The U. S. Coast Guard approved the plans for the new vessel and worked with the boat builders to monitor construction. The new vessel is a hydrofoil passenger vessel, which uses a fully submerged foil design. The design has actually been in use for over 15 years and is well proven. The new vessel is 80 feet in length and will carry 149 passengers in airline-style seating with passenger amenities at least equal to those on Catalina Express's present fleet. The vessel has a cruising speed of 42 to 43 knots which is considerably faster than the 30 to 32 knot cruising speed proposed for the SES vessels by Island Express.

Island Express desires to transfer its certificate to Catalina Express for the following reasons:

Island Express intended to institute the service authorized by its certificate in 1987 with vessels to be constructed by an American shipyard under license to Vosper Hovermarine, Ltd. However the parent company of Vosper Hovermarine, Ltd., suffered considerable

financial difficulties which culminated in the appointment of receivers for the parent company and its subsidiaries. Although considerable efforts were made to reorganize the Vosper Group, the circumstances made it impossible for Island Express to construct the vessels required for the proposed service during the time as planned. Island Express acknowledges that the design and construction of the vessels will take a considerable period of time and that since both Island Express and Catalina Express are convinced that there is a current need for high-speed vessel service between Long Beach and Santa Catalina Island, and since Catalina Express will have a high-speed vessel ready for service in the Summer of 1988, Island Express has agreed to transfer the certificate to Catalina Express.

Catalina Express desires to acquire the Island Express certificate because it has proceeded to build a high-speed vessel such as the Commission determined to be needed in the Catalina transportation market and because the Long Beach terminal point would be much better suited to the operation of a high-speed vessel than the San Pedro terminal point. Catalina Express is ready, willing, and able to provide the high-speed transportation to Catalina which the Commission found necessary in issuing the Island Express certificate. According to Catalina Express, the officials of the Port of Long Beach and the public community tourist industry in the Long Beach area have all requested that Catalina Express acquire the Island Express Certificate.

As part of the consideration for the transfer of Island Express's Certificate, Catalina Express will deliver to Island Express a lifetime pass which will entitle Daniel B. Feinberg and John J. Feinberg, principals for Island Express and members of the immediate family of each of them to free cross-channel transportation on vessels operated by Catalina Express between any port served by Catalina Express on the southern California mainland on the one hand, and any port served by Catalina on Santa Catalina Island on the other hand, subject to a maximum of 30 round-trip fares per

calendar month. Such pass shall remain valid for the life of Daniel B. Feinberg (as to him and members of his immediate family) and the life of John B. Feinberg (as to him and members of his immediate family). Island Express and Catalina Express authorize the issuance of these passes and state that transportation provided by Catalina Express pursuant to this lifetime pass shall be subject to all the laws, rules, regulations, tariffs, taxes, and other restrictions generally applicable to transportation rendered by Catalina Express, except the payment of passenger fares. The users of the pass shall reimburse Catalina for any per capita docking fees, head taxes, or other such out-of-pocket expenses incurred by Catalina Express as a result of the use of the pass. Applicants believe that the issuance of such a pass will not adversely affect the public.

Protest of H. Tourist, Inc., dba Catalina Cruises

H. Tourist presently operates five 700-passenger vessels in providing the Catalina Island service authorized by its certificate. H. Tourist contends the transfer should not be permitted without a public hearing and evidence to demonstrate that present public convenience and necessity require the authorized service. H. Tourist points out that less than one year ago, the present transferee, Catalina Express maintained that the certificate of Island Express should not be allowed to become operative. H. Tourist also alleges that the market conditions of Catalina Island service and the market share of H. Tourist has changed dramatically over the last four years. In its request for a public hearing H. Tourist contends that it would assist in the development of a record demonstrating that it would be contrary to public convenience and necessity and the public interest for the Commission to grant the application. In such hearing H. Tourist contends it would present evidence on the quality and quantity of its present service and demonstrate the detrimental and adverse effect with the granting of this application as requested would

have upon it and the public being served. The Transportation Division staff does not believe that public convenience and necessity is an issue in transfer applications and because no allegations have been made in the protest as to Catalina Channel Express fitness, recommends that the application be granted by ex parte order, since a public hearing is not necessary.

We concur with the staff recommendation.

Rule 8.2 of the Commission's Rules of Practice and Procedure provides that the filing of a protest does not insure that a public hearing will be held and that the content of the protest is determinative. Since this is an application to transfer a certificate, and the transferee's fitness is not disputed; therefore, there is no need for a public hearing. Accordingly, the application to transfer the certificate of public convenience and necessity from Island Express to Channel Express should be granted and the protest of H. Tourist should be denied.

Findings of Fact

1. Island Express, Inc. seeks to transfer its certificate of public convenience and necessity (VCC-660) authorizing transportation of passengers and baggage by vessel between Dana Point and Long Beach on the one hand and Avalon on Santa Catalina on the other hand to Catalina Channel Express, Inc.
2. The transferee's fitness is not in dispute in this transfer proceeding.
3. A public hearing is not required in this proceeding.

Conclusions of Law

1. No allegations of unfitness of the recipient certificate have been raised, and the application should be granted.
2. The protest of H. Tourist, Inc. should be denied.

3. Only the amount paid to the state for operative rights may be used in ratefixing. The state may grant any number of rights or may cancel or modify the monopoly feature of these rights at any time.

ORDER

IT IS ORDERED that:

1. Island Express, Inc. may sell and transfer the operative rights specified in the application to Catalina Channel Express, Inc. This authorization shall expire if not exercised within 60 days of the date of the effective date of this order.

2. Purchaser shall:

- a. File with the Transportation Division written acceptance of the certificate and a copy of the bill of sale or other transfer document within 30 days after transfer.
- b. Amend or reissue seller's tariffs. Tariffs shall not be effective before the date of transfer, nor before 10 days notice is given to the Commission.
- c. Comply with General Orders Series 87, 104, 111, and 117.
- d. File an annual report of seller's operations for the period from the first day of the current year to the date of transfer.
- 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. When the transfer is completed, and on the effective date of the tariffs, a certificate of public convenience and necessity (CPC&N) is granted to Catalina Channel Express, Inc., a

corporation, authorizing it to operate as a common carrier by vessel, as defined in PU Code § 211(b) and § 238, between the points and over the routes set forth in the attached Third Revised Page 2 to Appendix A of D.93291, to transport persons, baggage, and/or property.

4. The CPC&N granted by D.85-04-103 is revoked on the effective date of the tariffs.

5. Part II(c) of Appendix A of the CPC&N (VCC-60) is amended as follows:

- c. The authorized service may be provided with 149-passenger submerged foil hydrofoil vessels in addition to or in lieu of 100-passenger HM-221 Surface Effect ships.

6. The issuance of the pass provided for in paragraph 4 of the transfer agreement between Island Express, Inc. and Catalina Channel Express, Inc. is authorized.

This order becomes effective 30 days from today.

Dated AUG 10 1988, at San Francisco, California.

STANLEY W. HULETT
President

DONALD VIAL
FREDERICK R. DUDA
G. MITCHELL WILK
JOHN B. OHANIAN
Commissioners

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



Victor Weiss, Executive Director

PB

Appendix A
(D.93291)

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

Third Revised Page 2
Cancels
Second Revised Page 2

*I. Scheduled Service (continued)

Between the Queensway Hilton Hotel in Long Beach and Dana Point Harbor, on the one hand, and the City of Avalon, on Santa Catalina Island, on the other hand.

- a. A minimum of one round trip per day shall be operated throughout the year between Long Beach and Avalon, and between Dana Point and Avalon.
- b. The authorized service may be provided with 149-passenger submerged foil hydrofoil vessels in addition to or in lieu of 100-passenger HM-221 Surface Effect Ships.

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.

*Added by Decision 88 08 011, Application 88-03-032.