

Decision 89 11 019 NOV 3 1989

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
Hornblower Yachts, Inc., a corporation,)
for a Certificate of Public Convenience)
and Necessity Authorizing the)
Transportation of Passengers by Vessel)
to, from and between the Ports and)
Harbors of Los Angeles (San Pedro),)
Long Beach, Redondo Beach, Marina Del)
Rey, Dana Point, Port Hueneme, Newport)
Beach, and between these points, on)
the one hand, and Santa Catalina)
Island, on the other.)

Application 88-10-027
(Filed October 13, 1988;
amended February 3, 1989)

ORDER GRANTING REHEARING OF DECISION 89-07-041

H. Tourist, Inc., dba Catalina Cruises (Catalina Cruises) and Catalina Channel Express, Inc., (Catalina Express) have filed applications for rehearing of Decision 89-07-041, in which we granted Hornblower Yachts, Inc. (Hornblower), a certificate of public convenience and necessity to operate as a vessel common carrier providing an on-call, charter and individual fare service to, from and between the ports and harbors of Los Angeles (San Pedro), Dana Point, Port Hueneme, Marina Del Rey, Long Beach, Redondo Beach, San Diego and Newport Beach, and between these points on the one hand, and Santa Catalina Island on the other hand.

Catalina Channel Express and Catalina Cruises allege in their applications for rehearing that Hornblower's October 13, 1988 application and February 3, 1989 amendment do not satisfy the proper statutory requirements for vessel common carrier applications for certificate of public convenience and necessity. They further contend that Decision 89-07-041 is inconsistent, jeopardizes year-round transportation in the affected areas and

will impermissibly interfere with local jurisdiction over important aspects of Hornblower's proposed service.

We have carefully considered all of the allegations of error raised in the applications filed by Catalina Channel Express and Catalina Cruises¹ and conclude that their arguments have merit. The authority granted to Hornblower by Decision 89-07-041 was stayed until October 10, 1989. Our delay in considering the applications, however, resulted in Decision 89-07-041 becoming effective. Therefore, we shall order a rehearing of Decision 89-07-041, and in doing so, will immediately suspend all operating authority granted to Hornblower in Decision 89-07-041. Hornblower is hereby directed to file a completely amended application for a certificate of public convenience and necessity in accordance with our discussion below.

We shall take this opportunity to advise Hornblower and other vessel common carriers that all applicable regulatory requirements must be adhered to in all applications for certificate of public convenience and necessity for authority to operate vessel common carriers. Therefore, it is essential that in its amended application Hornblower comply with, among other things, the mandatory provisions of rule 21 of the Commission's Rules of Practice and Procedure. In the application and amendment at issue herein, Hornblower failed to comply with the requirements of subsections (b), (d), (e), (f), and (g) of rule 21, despite an interim ruling that Hornblower amend its application specifically

¹ Catalina Cruises' application for rehearing consisted of two introductory pages and 12 pages copied directly from Catalina Express' application. This "piggybacking" of Catalina Express' arguments by Catalina Cruises is an unwarranted burden on the Commission. Under circumstances such as this the better practice for parties to a common action alleging identical issues of legal error on rehearing is to file joint applications. We urge Catalina Cruises, as well as other applicants, to do so on future occasions.

to comply with rule 21. Furthermore, upon review and reflection, we believe that a dispute exists as to issues of material fact which can only be resolved through a public hearing. These disputed facts include, among other things, the proposed routes to be traveled by Hornblower's yachts, the number of vessels Hornblower intends to utilize, the difference between Hornblower's proposed vessels and competitors' vessels, as well as the precise nature of Hornblower's proposed operation. Finally, we note that Hornblower's application was not processed correctly under the provisions of the California Environmental Quality Act (CEQA). Failure to follow correct CEQA procedures constitutes further error and CEQA requirements must be adhered to when Hornblower files an amended application.

In summary, Hornblower's October 13, 1988 application was defective and the defects were not adequately cured by the February 1989 amendment. Further, CEQA procedures were not properly followed and, finally, a public hearing is necessary to resolve issues of material fact. Accordingly, it appears to us that the most appropriate procedure is to grant rehearing of Decision 89-07-041. In doing so, we shall suspend immediately any and all authority granted to Hornblower by Decision 89-07-041 and order Hornblower to file a completely amended application for certificate of public convenience and necessity.

THEREFORE, for good cause appearing,

IT IS HEREBY ORDERED:

1. That the applications of Catalina Channel Express, Inc., and H. Tourist, Inc., dba Catalina Cruises for rehearing of Decision 89-07-041 are granted.
2. That all authority granted to Hornblower Yachts, Inc., by Decision 89-07-041 is hereby suspended, effective immediately.
3. That Hornblower must file as part of the rehearing process, a completely amended application for certificate of public convenience and necessity for its proposed vessel common carrier

service in accordance with all requisite procedures including those discussed above.

4. That the Executive Director shall serve a copy of this order on the parties to Application 88-10-027.

This Order is effective today.

Dated: NOV 3 1989, at San Francisco, California.

G. MITCHELL WILK
President
FREDERICK R. DUDA
STANLEY W. HULFET
JOHN B. OHANIAN
PATRICIA M. ECKERT
Commissioners

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

Wesley Franklin

WESLEY FRANKLIN, Acting Executive Director