

Decision 90 05 087 MAY 22 1990**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of SeaJet Cruise Lines,
 a California corporation, formerly
 named Avalon Express, a California
 corporation, for a certificate of
 public convenience and necessity to
 operate a common carrier service by
 vessel between the Port of San Diego
 and Santa Catalina Island.

Application 90-01-007
 (Filed January 3, 1990)

William A. Turkish, Attorney at Law, for SeaJet
 Cruise Lines, applicant.
Harrigan, Ruff, Ryder & Sbardellati, by
Eleanor L. Blais, Attorney at Law, for
 California Cruisin', Inc., protestant.
Thomas E. Enderle, for the Transportation
 Division.

O P I N I O N

SeaJet Cruise Lines (SeaJet), a California corporation,
 seeks authority under Public Utilities (PU) Code § 1007 to
 establish and operate a scheduled service as a common carrier by
 vessel between San Diego and Avalon, on Santa Catalina Island.

A protest having been filed by California Cruisin', Inc.,
 a duly noticed public hearing was held before Administrative Law
 Judge (ALJ) Orville I. Wright in Avalon on March 28 and 29, 1990,
 and the matter was submitted upon the filing of briefs on April 16,
 1990.

Need for the Service

In Decision (D.) 87-02-025, February 11, 1987, the
 Commission granted a certificate of public convenience to each of
 two corporations which sought to initiate ferry service from San
 Diego to Santa Catalina Island. We take official notice of that
 decision as it sets forth informative summaries of the testimony of
 representatives of both San Diego and Avalon (Santa Catalina

Island) in support of both of the applications then before us. Each of the affected municipalities was desirous of having vessel service to the island from San Diego in order to promote tourism in both localities. Neither of the applicants presented any evidence in opposition to both proposed services being operated in a competitive environment.

The public hearing in the instant case yielded substantially similar expressions of official local government support for vessel service between San Diego and Avalon. It was emphasized that, while the Commission issued two certificates previously, there still was no service. One of the applicants in D.87-02-025 decided not to utilize the granted certificate and the other, protestant California Cruisin', Inc., operated for a time but discontinued service in late 1989. At the time of hearing in this matter there was no vessel transportation between the points sought to be served in this application.

Collaterally, we note that SeaJet has conferred with the Commission's Legal and Transportation Divisions as to whether it may conduct an exempt loop service, taking passengers from San Diego to Avalon and back to San Diego, without carrying persons destined for overnight lodging at the island. Applicant expressed its intention to conduct such a loop service in the absence of objection by Commission staff. If loop service is permissible, it becomes clear that our granting of a certificate in this case will only serve to enhance applicant's load factor by allowing overnight travelers and those not wishing to return directly to San Diego to be boarded.

Applicant's Qualifications

SeaJet is a California corporation wholly owned by its president, W. T. Gurnee (Gurnee) and his wife, Maria L. Gurnee, who guarantee all obligations of the corporation.

A balance sheet dated December 31, 1989, shows cash in bank, together with a certificate of deposit, totaling \$25,000, and no debts.

Gurnee testified that he has acquired a charter to the vessel formerly possessed by protestant, and entities he owns have spent approximately \$230,000 in repairs and upgrades. He claims an equity in the boat of some \$500,000.

All permits required by both San Diego and Avalon have been acquired. The vessel meets Coast Guard standards, is fully operational, and, in fact, was navigated to Avalon from San Diego on the day of the hearing.

Applicant currently employs a general manager, port engineer, ship's captain, full crew, and all necessary support personnel.

Gurnee claims management experience in both marine construction and in transportation services.

A pro forma profit and loss statement projects income of \$1,220,239 for the first year of operation and net profit after taxes of \$66,191 or 5.4%.

Protestant's Showing

Protestant is California Cruisin', Inc., a corporation granted authority to conduct vessel service between San Diego and Avalon in D.87-02-025.

It states that it filed its protest in this matter because of its concerns about the suitability of SeaJet to hold a certificate of public convenience and necessity. Given the actions of Gurnee in the past, according to its brief, protestant was compelled to protest this application to prevent an unfit entity from attempting to drive protestant out of business as a vessel common carrier in the San Diego-Santa Catalina route.

The conclusion of unfitness alleged in its brief, as well as the charges it makes on information and belief in its protest, are unsupported by the evidence.

Protestant's testimony is that, in the fall of 1989, it had more debts than assets, together with a vessel badly in need of extensive repair. In its search for new capital, it negotiated with Gurnee to the end that he either invest in or purchase the company or its assets. Full particulars of protestant's affairs were opened to Gurnee, but the parties were unable to reach an agreement.

Protestant connects these failed negotiations with the fact that its chartered vessel was foreclosed upon by the owner and rechartered to applicant and draws a conclusion that Gurnee acted in bad faith.

Further, protestant admits that it is not currently conducting vessel service, but is attempting to negotiate an arrangement with its creditors to enable it to resume passenger carriage later this year.

Other grounds of the protest are discussed positively in applicant's qualifications.

Motion to Disqualify

Protestant moved that the Commission disqualify William A. Turkish (Turkish) from serving as attorney for applicant in this proceeding because counsel was the ALJ who authored the proposed decision leading to D.87-02-025. Protestant was concerned that Turkish, in its words, could attempt to argue the Commission's "official" position in D.87-02-025 to protestant's detriment.

As the Commission has no official position apart from the cited decision itself, the ALJ here denied the motion and we affirm the denial.

We see no need to express an opinion as to how the California Rules of Professional Conduct or the American Bar Association Model Rules of Professional Conduct, cited by protestant, might apply to Turkish's representation of applicant in this proceeding.

Motion to Reopen

Protestant has filed a Motion to Reopen Hearing which we entertain as a Petition to Set Aside Submission pursuant to Rule 84, Rules of Practice and Procedure.

Petitioner seeks to amplify the record with the testimony of Robert Capella, currently ship's captain for applicant, whose testimony, it is alleged, will show that "SeaJet has not operated safely and will not operate in a manner that meets the requirements of public convenience and necessity." However, no facts are alleged that will be forthcoming if the witness is called to testify in spite of the ALJ's request that the facts sought to be established be stated in protestant's petition.

We will deny the motion and petition.

Waiver of Proposed Decision

At the close of the hearing, applicant moved to waive the filing of and comment on the proposed decision (Rule 77.1, Rules of Practice and Procedure).

We will grant the motion in this case as it is unopposed and there is no showing that the comment procedure is required in the public interest.

Findings of Fact

1. SeaJet has the ability, experience, equipment, and financial resources to perform its proposed service.
2. Public convenience and necessity require the service proposed by SeaJet.
3. The application of SeaJet is supported by the Cities of San Diego and Avalon and by members of the public.

Conclusions of Law

1. Public convenience and necessity have been demonstrated and a certificate should be granted to SeaJet for authority to operate passenger and baggage transportation by vessel between the Port of San Diego and the Port of Avalon on Catalina.

2. Notice of this matter did not appear on the Commission's public agenda; however, an emergency exists in that prospective overnight visitors to Santa Catalina Island from San Diego during the Memorial Day weekend cannot be transported by SeaJet in the absence of Commission authority which justifies our action today under PU Code § 306(b).

3. Since there is an immediate public need for the service, the order should be effective today.

O R D E R

IT IS ORDERED that:

1. A certificate of public convenience and necessity is granted to SeaJet Cruise Lines, 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 Appendix VCC-68 to transport persons, baggage, and/or property.

2. Because of the need for this service, SeaJet Cruise Lines is authorized to begin operations on the date that the Executive Director mails a notice to applicant that it has evidence of insurance on file with the Commission and that the tariffs and timetable have been accepted.

3. 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 within 120 days after this order is effective.
- c. State in its tariffs and timetables when service will start; allow at least 2 days' notice to the Commission; and make timetables and tariffs effective 2 or more days after this order is effective.
- 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.

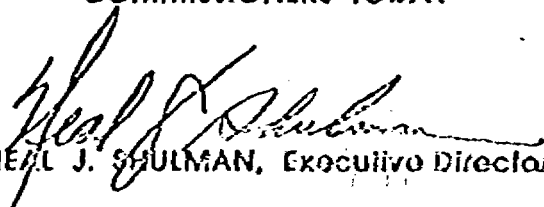
This order is effective today.

Dated MAY 22 1990, at San Francisco, California.

G. MITCHELL WILK
President
STANLEY W. HULETT
JOHN B. OHANIAN
PATRICIA M. ECKERT
Commissioners

Commissioner Frederick R. Duda,
being necessarily absent, did
not participate.

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


NEAL J. SHULMAN, Executive Director

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Appendix VCC-68

SeaJet Cruise Lines

Original Title Page

CERTIFICATE

OF

PUBLIC CONVENIENCE AND NECESSITY

AS A VESSEL COMMON CARRIER

VCC-68

Showing vessel operative rights, restrictions,
limitations, exceptions, and privileges.

All changes and amendments as authorized by
the Public Utilities Commission of the State of California
will be made as revised pages or added original pages.

Issued under authority of Decision 90 05 087, dated

MAY 22 1990 of the Public Utilities Commission of the
State of California in Application 90-01-007.

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Issued by California Public Utilities Commission.

Decision 90 05 087, Application 90-01-007.

SECTION 1. GENERAL AUTHORIZATIONS, RESTRICTIONS, LIMITATIONS,
AND SPECIFICATIONS.

SeaJet Cruise Lines by the certificate of public convenience and necessity granted by the decision noted in the margin, is authorized to transport passengers and their baggage, on a scheduled basis, between San Diego and Avalon along the route described in Section 2, subject, however, to the authority of this Commission to change or modify the route at any time and subject to the following provisions:

- (a) No vessel shall be operated unless it has met all applicable safety requirements, including those the United States Coast Guard.
- (b) When route descriptions are given in one direction, they apply to operations in either direction unless otherwise indicated.

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Appendix VCC-68

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SECTION 2. ROUTE DESCRIPTIONS.

Route 1. SAN DIEGO - AVALON SERVICE

Between the Port of San Diego and Avalon, Catalina Island.

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