RF/ap

Decision No. 87654 JUL 26 1977 ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the application of CATALINA FREIGHT LINE, a corporation, to increase rates for the transportation of freight between LOS ANGELES HARBOR and CATALINA ISLAND, CALIFORNIA, pursuant to Section 454 of the Public Utilities Code.	Application No. 57357 (Filed May 27, 1977)

Russell, Schureman, Fritze & Hancock, by Carl H. Fritze, Attorney at Law, for applicant.
Charles J. Moore, for Safeway Stores Incorporated; and Burkert Cree, for himself; protestants.
Dennis F. Reitinger, for Island Baggage Service; Harry L. Griffin, for himself; Rudy Piltch, for himself; and Lee Jones, for Purchasing & Stores Department of the County of Los Angeles; interested parties.
George L. Hunt and Robert C. Labbe, for the Commission staff.

INTERIM OPINION

Catalina Freight Line (CFL) is a common carrier of freight by barge between the Port of Wilmington in Los Angeles and Avalon and the Isthmus of Santa Catalina Island. CFL's present commodity rates apply to all classes of freight except for personal effects, uncrated bicycles,[1/] furniture, appliances and accessories, passenger motor vehicles (including pickup trucks), and for empty return containers. The general commodity rates are $2.60[2/] per

1/ $3 per bicycle.

2/ With a $3 minimum charge.

hundredweight (cwt) up to 5,000 pounds, $2.10 per cwt for minimum shipments of 5,000 pounds up to 20,000 pounds, $1.20 per cwt for minimum shipments of 20,000 pounds up to 30,000 pounds, and $1 per cwt for shipments of 30,000 pounds or more. Present rates for furniture, appliances and accessories uncrated, personal effects crated or uncrated, and passenger motor vehicles[3/] (including pickup trucks) are $5[2/] per cwt. Empty return containers from Avalon and the Isthmus are $1 per cwt.[2/] Pursuant to its Rule 11 CFL adds wharfage and other charges to shipments as assessed by the municipally owned Port of Los Angeles (LA) and remits these charges to LA.

CFL seeks authority to eliminate Rule 11 from its tariff and incorporate wharfage charges directly in the rates.

CFL proposes to increase all of the above-mentioned rates and charges except for the $3 minimum charge and the $3 per uncrated bicycle charge by 55 percent. CFL's original pro forma revenue estimate for 1977 (Exhibit 3) shows an increase in revenues of approximately $218,800 (53.5 percent), less wharfage charges of $20,242 which are proposed to be absorbed by CFL, or an effective increase of $198,600 (48.5 percent) without any loss of traffic.

After notice by posting and publication, public hearings on A.57357 were held before Administrative Law Judge (ALJ) Jerry Levander in Avalon on June 30, 1977 and in Los Angeles on July 6, 1977. Notice of filing of the application appeared in the June 2, 1977 issue of the Commission's Daily Calendar. Seven copies of

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3/ These vehicles are transported to Avalon and the Isthmus on Catalina for this rate. The vehicles are transported back to Wilmington without charge in the interest of environmental quality.

the application were served on the City Manager of the city of Avalon and a copy was served upon the California Trucking Association by mail on May 27, 1977. CFL presented three witnesses. The staff and other parties assisted in the development of the record through cross-examination. A public witness testified concerning a petition opposing the application, Reference Item B. The matter was submitted on an interim basis on July 6, 1977.

Areas of inquiry and/or objections raised by the parties and in statements by members of the public included the reasonableness of charges to CFL by its nonutility affiliate Seaway Company of California (Seaway); the reasonableness of charges for terminal facilities, including payments for new and improved Catalina terminal facilities owned by CFL's president; the size of CFL's work force and payroll; insurance costs; a lack of compelling evidence indicating a disasterous financial condition for CFL, which could imperil its continuation of service; and the failure of CFL to comply with Ordering Paragraph 3 of D.86838 dated January 11, 1977 in A.55310, as follows:

> "3. No future rate increases shall be granted Catalina Freight Line, a corporation, unless such an increase is justified by fully setting forth its operational expenses as if the properties rented from non-utility affiliates were owned by Catalina Freight Line, a corporation."

Some of the parties contend that insufficient notice was given for them to test CFL's showing and that no increase should be granted pending that review.

CFL requested that this increase be handled ex parte and without hearing and that the increase be granted on one day's notice; that if the Commission should deem a hearing is necessary that the relief be granted on an interim basis pending hearing; that if a hearing was necessary, CFL was ready to proceed on the first date available on the Commission's calendar; and that its need for relief is immediate and compelling.

The Commission staff's preliminary review of this application indicated that the relief sought was reasonable.

After the direct testimony of CFL's president on June 30, 1977 and after extensive cross-examination on July 6, 1977, ALJ Levander indicated that CFL's showing indicated the immediate need for the relief sought and requested CFL's attorney to draft an interim order[4/] for this increase, subject to refund. He directed the staff to further review the basis of the requested increase and to prepare and mail copies of a report on the results of its investigation by July 27, 1977 and directed other parties to forward copies of any written material they sought to place in evidence in this proceeding by July 27, 1977. ALJ Levander stated that if this additional evidence indicated a need for further hearings, a hearing would be held in Avalon on August 8, 1977 but if there was no evidence refuting the need for the increase requested, he would cancel the hearing and draft a final order in this matter.

CFL's president testified concerning the proposed rate increases. He described in detail the tug, barge, and other equipment used by CFL, CFL's methods of operation, and the determination of rental costs. The tug, barge, and truck tractors were especially designed for the Catalina service. CFL was set up to provide a more efficient and less labor intensive freight operation compared to the prior freight operation serving Catalina, which was ancillary to passenger vessel operations. CFL's operations are described in detail in D.82995 dated June 18, 1974 in A.53856 and A.54712.

4/ CFL's interim order draft is incorporated in this proceeding as Reference Item D.

CFL has negotiated a separate Teamster contract which involves a no-strike clause because of the necessity for the service involved. The contract recognizes that the Catalina Island situation is different from any other operations. Only two well-trained crew members operate the tug versus four on other tugs. CFL employs 21 persons, of whom ten to 11 are full-time employees.

Service is provided a minimum of twice per week and at the present time service is provided three times a week. During the tourist season the frequency of service is increased and extra barges are run as needed. CFL has never missed a schedule except when weather conditions required delay until the vessel could be operated safely.

The president of CFL explained that CFL leases the tug, barge, three truck tractors, approximately 37 trailers, and three forklifts, for a total of $1,200 per round trip between Wilmington and Catalina, from Seaway. He testified that it takes approximately ten hours for a round trip between Wilmington and Catalina, including loading and unloading time; that a marine surveyor estimated it would cost $180,000 to replace the barge and its estimated current market value is $85,000; that the current estimated replacement cost of the tug was $225,000 and its current market value is $160,000; that he believed these cost estimates which were a year old were very conservative; and that he estimated it would cost at least $150,000 to replace all of the automotive equipment, now worth $50,000, used by CFL.

The Avalon terminal property is leased from CFL's president who in turn leases the property from the Santa Catalina Island Company. A new terminal building was recently constructed on this terminal property. CFL required a new terminal building at Avalon because the old terminal, a former pottery shop, was structurally unsafe for its operations, inadequate, and poorly lighted. It was necessary to traverse two blocks of rough road between the terminal and the barge landing. The new facilities are located adjacent to the barge landing. CFL could not obtain credit for financing new terminal facilities.[5/] CFL's president entered into a new, more favorable 40-year lease on the terminal property for $35,000 per year plus ad valorem taxes to replace a fixed charge of $20,000 plus six percent of revenues over $200,000 plus ad valorem taxes, personally borrowed $100,000 at 1.5 percent over prime, with a 9 percent minimum, and advanced $20,000 of his own funds for terminal construction. He estimates that additional costs of approximately $40,000 would be incurred for fencing the terminal to protect freight, equipment, and structures and to avoid accidents, for electrical work, for grading the parking area, and either paving or applying multiple oil coats on the parking lot. The Avalon terminal rental charged CFL consists of $16,000 in interest plus a pass-through of the other costs for the facilities paid by CFL's president. The $16,000 in interest charges is ten percent of the $160,000 for the new and proposed terminal facilities. CFL contends that these interest charges which are $1,600 above the amount calculated at the nine percent loan rate applied to equity and debt on the facilities are reasonable. CFL's president testified that it now appeared unlikely that the old terminal building could be rented and he had included $4,000 in his revenue estimate for rental income. The new facilities are expected to allow more efficient and safer operations.

The facilities used by CFL at Wilmington are leased from the Los Angeles Harbor Department. CFL's president testified that LA was increasing the cost of facilities used by CFL at Wilmington.

5/ Its net worth is currently about $33,000, its unpaid bills exceeded $50,000, and it has $19,000 in cash.

A witness for the Los Angeles Harbor Department testified that LA desired to change the method of assessment of rental charges. At present costs for the Wilmington facilities are assessed separately for wharfage, dockage, and rent. In 1976 wharfage was $17,992.90, dockage was $6,269.75, and rent was $7,044.00, a total of $31,306.65. Wharfage was increased in January 1977 and would be further increased on July 1, 1977. At the January 1, 1977 charges wharfage would amount to $20,242.12 per year. Rents were also increased in 1977. The Los Angeles Harbor Department witness explained that LA desired a new fixed total charge of $44,892, which is higher than existing wharfage, dockage, and rent in lieu of further interim increases made at irregular intervals over the next five-year period. The proposed lease would also have an option for renewal for an additional five years. The rental charge would be renegotiated at the expiration of the first five-year period. The new method of assessing rent will save clerical time both for the Los Angeles Harbor Department and for CFL.

This proposal would increase LA's total charges from the $31,306 paid in 1976 to $44,892 per year and CFL would include the wharfage charges of $20,242 (using January 1977 charges) in its expenses rather than add them to its customers' freight bills.

In arriving at the rental CFL pays Seaway for the transportation equipment, CFL's president testified that he determined what other tug owners charge for similar service; that the prevailing rate is $225 per hour for a tug alone (Exhibit 15); and that he believed this amount could be reduced slightly if a number of charters were tendered. He stressed this was for the tug alone compared to the $1,200, or $120 per hour, CFL pays to Seaway for the tug, barge, and all of the automotive equipment owned by Seaway. He stated that Seaway is charging CFL substantially less for the tug service than it could get on the open market.

Finding 10 of D.82995, June 18, 1974 states:

"The rental of $95 per hour that CFL pays Seaway for the tugboat, barge, and automotive equipment owned by Seaway is below the market rental for the tugboat alone. The equipment rental of $95 per hour is not in excess of a reasonable cost to CFL for ratemaking purposes."

Since 1973 Seaway increased the rental charges to $1,200 per round trip between Wilmington and Avalon. Exhibit 9 lists the increased fuel, labor, insurance, and maintenance costs incurred since 1973, which averages $290 per trip, and contrasts it with the increase in the rental charge of $250 per trip.

CFL's financial and other operating data, including increases in labor expense, terminal expense, and certain other elements of costs were detailed in the application and supported at the hearings. CFL submitted several additional exhibits at the hearings including updated estimates reflecting increases in levels of expenses incurred since filing the application .

Exhibits 6 and 8 show the charge of $1,200 per trip for the tug, barge, and automotive equipment would increase to $1,460 per trip on an as-owned basis using the original cost of the equipment and to $1,830 per trip at current costs for the equipment. The repair yard used by CFL closed down because of its loss of workmen's compensation insurance and the dramatic increase in costs for such insurance under the Federal Longshoremen's and Harbor Workers Compensation Act (Exhibit 12). CFL anticipated its costs would increase due to its need to go to a more distant repair yard and to the increased costs, including workmen's compensation insurance costs, a different repair yard would incur. CFL did not obtain new repair cost estimates for the barge and the tug. Exhibit 7 substitutes as owned costs for charter rates to CFL and projects a net loss of $86,216 assuming a ten percent drop in volume. The loss would be $3,836 assuming no reduction in volume. CFL also submitted a summary of the principal cost factors on which it relies to justify the proposed increases. These are summarized below:

	Old Costs	New Costs
Workmen's Compensation Insurance	$ 4,000.00	$60,000.00
Los Angeles Harbor Department Facilities	31,306.00	44,892.00
Catalina Terminal Facilities	44,000.00	78,000.00
General Liability Insurance	4,930.00	13,495.00
Teamsters - Wages per hour	5.95	6.82
Welfare per month each	94.41	120.36
Charter Cost per Trip (Tug, Barge, & Rolling Stock)	1,100.00	1,200.00

The principal item of increased cost is that of workmen's compensation insurance as a result of the Longshoremen's and Harbor Workers Act which increased CFL's costs by approximately $56,000 per year.[6/] CFL's president also stated that his broker obtained quotes from 40 insurance companies and he obtained quotes from two other brokers who advised him that they could not offer lower cost insurance.

At the hearings CFL introduced updated figures for its profit and loss statement, January 1 through March 31, 1977. The principal changes were in insurance, which increased from $6,362.53 to $13,805.30 and operating rents from $36,661 to $38,961. Giving consideration to these items would increase first quarter losses for 1977 from $9,289.59 to $19,032.36. The first quarter results also reflect a $1,200 refund on insurance premiums paid in 1976.

6/ Workmen's compensation insurance costs for non office personnel equal 67¢ per dollar of payroll.

CFL submitted a revised profit and loss estimate (Exhibit 4) as of June 30, 1978 giving effect to the proposed increases. This exhibit shows a projected loss of $53,690 and an operating ratio of 110 percent, based upon a projected ten percent decrease in volume of freight. Assuming no loss of volume, CFL would show a profit of $28,690 and an operating ratio of 95.4 percent. CFL's president testified that he projected the loss of revenue because of airline competition and a decline in tourism brought about by the highly publicized water shortage on the island; that the water shortage has caused a moratorium on construction on Catalina Island for 1977, which results in a loss in building material shipments by CFL; that CFL's traffic volume dropped in late June this year and he expects a continuing decline; that a freight airline transported approximately one million pounds of freight in 1976 and projected two million pounds of freight in 1977; and that most passenger airline service to Catalina has recently stopped due to the planes being grounded by the FAA and he believed the loss of the airline passenger would have adverse effects on the economy of the island because airline passengers stayed on the island longer than boat passengers and generated more freight traffic.

CFL's president testified that he believes the simplified rate structure now in effect results in economies as CFL is not required to hire personnel skilled in rate classifications to rate freight bills; that increased costs are applicable to all freight and, accordingly, a general increase is proposed; that CFL is constantly facing increasing costs some of which, such as the price of diesel fuel and casualty insurance, occurred only shortly before the hearings in Avalon; and including retroactive increases (i.e., workmen's compensation insurance, see Exhibit 14).

CFL's profits and losses for the years 1966 through 1976 are listed as follows:

1966	-	($ 1,047)
1967	-	$12,571
1968	-	$ 2,116
1969	-	$ 5,036
1970	-	$ 492
1971	-	($10,982)
1972	-	($21,693)
1973	-	$13,642
1974	-	$14,099
1975	-	$21,442
1976	-	($ 8,510)

The necessity for further hearings will be determined after the proposed exhibits are reviewed. However, because of CFL's obvious financial distress, we will authorize an increase in rates on an interim basis. CFL requested final submission of the proceeding on July 6 contending that all interested parties had full opportunity to be heard. CFL also contended that its current financial situation is such as to preclude any possible refund. CFL stipulated to certain additional changes in its tariffs namely deletion of the reference in Rule 3 to "wharfage" as part of its rates (after the new contract with LA is effective) and elimination of a superseded reference footnote in its Local Freight Tariff No. 4.

Exhibit 4 shows increases in estimated expenses from $417,685 for the year ended December 31, 1976 to $599,310 for the projected year ended June 30, 1978, an increase of $181,625 (43.5 percent). The principal increases are increases in rents of $88,700 (50.0 percent) which includes absorption of wharfage charges in CFL's expenses and the above described charges in terminal charges, an increase of $71,316 (562.3 percent) in all classes of insurance costs, and an increase of payroll taxes of $21,273 (12.8 percent).

CFL estimates that its operating expenses would increase by $32,526 if it rather than Seaway had originally acquired the tug, motor vehicles, and vans and if it directly leased the barge from a nonaffiliated company compared to its lease arrangement with Seaway. CFL's estimates (Exhibits 6 and 7) include $25,000 for general administrative expense and miscellaneous items, which require further explanation. Assuming, that this entire item is disregarded Seaway's charges to CFL are reasonable.

Findings

1. CFL's present rates and charges in its Local Freight Tariff No. 4 and the pass-through of wharfage charges in its Rule 11 do not provide revenues sufficient to enable CFL to cover the expenses of performing the common carrier vessel operations here involved. CFL's expenses would increase on an as-owned basis.

2. CFL is in urgent need of additional revenue to offset the increases in operating costs it has experienced.

3. The estimates of operating results of CFL under the proposed rates, assuming no loss in volume and increased expenses, should be adopted on an interim basis.

4. CFL should be authorized to establish on an interim basis the increased rates and charges and other provisions contained in Exhibit 2 (Exhibit B to the application), Local Freight Tariff No. 4, with the footnote correction described above, to cancel its Rule 11, and to delete the word "wharfage" from its Rule 3. This increase should be subject to refund to the extent that the final order in this proceeding requires CFL to file lower rates and charges than are authorized herein.

5. The increase in rates of $218,826 authorized herein, reduced by elimination of wharfage charges of $20,242, result in a net rate increase of $198,584 (48.5 percent) for the year ending June 30, 1978.

Conclusions

1. CFL should be authorized to increase its rates pursuant to its request, with the modifications to its rates and rules described in Finding 4 herein, on an interim basis. Permanent rate relief should be considered at a later date. We also conclude that the interim rates should be subject to a refund provision in the event the final level of rates and charges differs from the interim rates and charges authorized herein.

2. The need for further hearings in this proceeding should be determined after the submission of proposed exhibits by the staff and other parties. A final order in this proceeding should be made after that determination and after further hearings, if necessary.

3. Rates should be effective on the date this decision is signed because of the urgent need for additional revenue.

INTERIM ORDER

IT IS ORDERED that:

1. Subject to the condition set forth below, Catalina Freight Line, a corporation, is authorized to establish on an interim basis the increased rates and charges contained in Exhibit B to the application, with the modifications to its rates and rules described in Finding 4 herein.

Condition:

The increased rates herein authorized and the proceeds therefrom are subject to modification, or refund with interest at the rate of seven percent per annum to the extent that any part thereof is not found justified by a subsequent decision in this proceeding. Prior to exercising the authority granted herein applicant shall inform the Commission in writing that it accepts this condition. Catalina Freight Lines shall maintain adequate records to facilitate any refund required by the Commission.

2. Tariff publications authorized to be made as a result of the order herein shall be filed not earlier than the effective date of this order and may be made effective not earlier than one day after the effective date of this order and on not less than one day's notice to the Commission and to the public.

3. The authority granted herein shall expire unless exercised within sixty days after the effective date of this order.

The effective date of this order is the date hereof.

Dated at San Francisco, California, this 26th day of JULY, 1977.

We concur only because this rate order is made subject to refund.
Richard D. Gravelle
Robert Batinovich
Vernon L. Sturgeon

Robert Batinovich
President
William Symons, Jr.
Vernon L. Sturgeon
Richard D. Gravelle
Commissioners

Commissioner Claire T. Dedrick, being necessarily absent, did not participate in the disposition of this proceeding.