

ORIGINAL

Decision No. 89471 OCT 3 1978

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the application)
of ISLAND ENTERPRISES, INC. for)
an order eliminating the five-ton)
restriction on the certificate of)
public convenience and necessity)
and for an extension of route)
pursuant to Section 1007 of the)
Public Utilities Code of the)
State of California.)

Application No. 57800
(Filed January 13, 1978)

Houston A. Snidow, Attorney at Law,
for applicant.
James H. Radcliffe, Attorney at Law,
for Island Navigation Company, Inc.,
dba Catalina Island Water Transportation
Company, protestant.
Thomas P. Hunt, for the Commission staff.

O P I N I O N

Island Enterprises, Inc. (IE), a California corporation, now has a certificate of public convenience and necessity (certificate) as a vessel common carrier for the transportation of passengers between anchored vessels and the shore and between certain points on Santa Catalina Island (Catalina). The authority provides that service shall be operated with vessels of less than five tons net register only. IE alleges that it intends to acquire a vessel which exceeds the limit of five tons net register, i.e., a vessel of nine tons net register. It seeks to delete the provision limiting its operation to five tons net register, and also seeks to expand its scope of operation.

Section 1007 of the Public Utilities Code was amended in 1977 by the addition of subsection (c) which provides that it is no longer necessary to have a certificate in order to

operate a vessel under the burden of five tons net register as a common carrier between points in California. Therefore, it is not necessary to consider the request of IE for an extension if its range of operation for its vessels which are under five tons net register, so the application will be limited to IE's request to operate a vessel of five tons or more net register between the points now contained in its authority and between such points that it requests by way of the expansion of its authority.

IE seeks authority to operate a vessel which exceeds five tons net register (Exhibit 5):

- (1) Between all points on Catalina.
- (2) Between points on Catalina and vessels located within five miles of Catalina.
- (3) Between vessels located within five miles of Catalina.

Excluded from the request is the rendering of service within the Two Harbors area^{1/} between vessels and points and places. It also seeks to exclude the area within the city of Avalon inasmuch as that area is more properly served by boats having less than five tons net register.

IE requests that the individual fares and the charter fares for the vessel to be acquired be the same as that authorized for its vessels of less than five tons net register for its authority in effect prior to the amendment of Section 1007 of the Code. For the expanded authority requested it proposes service on an on-call or charter basis at \$37.50 per hour and \$18.75 per hour for waiting time in excess of 15 minutes. On an individual passenger basis the fare proposed is \$4.00 for adults, \$2.00 for children under 12 years, with a \$100.00 minimum charge (Exhibit 4).

IE intends to acquire a vessel named Shirley Ann which has an official No. 2390181, a radio call No. WK 3984, a registered length of 45.1 feet, a breadth of 10.7 feet, a registered depth of 4.35 feet, a gross tonnage of 13.69, and which is nine tons net register.

^{1/} Two Harbors area is described as the waters of Isthmus Cove which is in a line drawn from Blue Cavern Point to Lion's Head and Catalina harbor which is within a line drawn from Pin Rock to Catalina Head.

IE alleges that the vessel is certified by the United States Coast Guard (USCG) to carry 44 passengers within five miles of the coastline, has toilet facilities, and IE states that it has been advised that the capacity of the vessel may be increased to carry in excess of 50 passengers.

IE alleges that its newly acquired equipment will upgrade the service to the public in the area in which it now serves and enable it to serve certain camps presently being served by smaller boats which have no toilet facilities. It alleges that none of the boats serving between the city of Avalon and the isthmus, approximately 14 miles and one-half hour duration, have any toilet facilities. The USCG requires that passenger boats exceeding the one-half hour trip be equipped with toilet facilities.

IE alleges that presently there is no shore boat operation that is equipped with toilet facilities. It states that some of the boat services in the area have toilet facilities but those boats do not operate during the winter season. It alleges that it has the facilities and the employees to serve such area and that it is properly licensed to do so. The boat is enclosed and other shore boats serving the area are open and subject the passengers to inconvenience during rain or rough weather.

By D.84685 dated July 22, 1975, IE was granted a certificate authorizing it to operate as a common carrier by vessel, as defined in Sections 211(b) and 238 of the Public Utilities Code between the points set forth in Appendix A of that decision.

The granting of the authority requested herein was protested by Island Navigation Company, Inc. (INC), dba Catalina Island Water Transportation Company.

After proper notice, a hearing was held in Los Angeles on May 9 and 10, 1978 before Administrative Law Judge James D. Tante. The parties were authorized to provide briefs in the form of letters to the hearing officer on or before May 26, 1978, and the matter was submitted as of that date.

The protestant INC is a common carrier by vessel engaged in the transportation of persons and hand baggage between points and places on Catalina, and in providing passenger water taxi service. The operations are conducted pursuant to a certificate granted by D.86044 dated June 29, 1976 in A.56067 and modified by D.87850 dated September 13, 1977 in A.57460.

Exhibit 1, Naval Architect Survey dated May 10, 1976; Exhibit 3, IE's financial statement; Exhibit 4, a document showing the present tariff of IE and the changes requested; Exhibit 5, the certificate of public convenience and necessity requested by IE; Exhibit 6, the protestant's financial statement; Exhibit 7, Notice of Change of Status; and Exhibit 8, the Commission staff report; were received in evidence. Exhibit 2, Coast Guard Rules and Regulations for small passenger vessels, was marked for identification and not received in evidence. At the request of IE, the Commission took official notice of Section 177.30-5 (toilet facilities) of Exhibit 2.

The regulation referred to in Exhibit 2 provides generally, that vessels shall be provided with toilets and washbasins when operating on runs of more than thirty minutes.

INC set forth as the bases for its protest that at all times since the granting of its certificate it has operated under such certificate; no public convenience or necessity is alleged or can be shown for the granting of the certificate as requested; the public convenience and necessity are presently being more than adequately served at reasonable rates; and a grant of a certificate enlarging the operative rights of IE as requested would result in a duplication of service and a diversion of business and profits from INC which, in the service territory involved, is now and has been marginal.

The Evidence

Paul Koetz is president and chairman of the board of

directors of Catalina Management Services, Inc., which is presently developing a campground at Parson's Landing, primarily as a wilderness camping area and for road and backpacking. It presently has no dock or wharf facilities, but it is within one-quarter mile of Emerald Bay which has such a facility.

He testified that Parson's Landing is approximately five miles from the isthmus which is 13 miles from Avalon, for a total distance by water of 18 miles from Avalon. He stated that it is very difficult to get from either of those places to Parson's Landing by road or trail on land.

He testified that he has had one group of approximately 100 persons come to his camp, that the booking was done by Island Odyssey Travel Agency, and that the group was transported by Harbor Carriers, dba Catalina Island Cruisers, a certificated carrier, to the isthmus and from there to Parson's Landing by private yachts.

He testified that he intends to build a pier at his facility but does not know what type of pier it will be. He stated that during the period June 1 to October, he hopes to have 100 to 150 people at his facility at all times, and that after October 1 he intends to be open only on weekends.

He testified that he anticipates a need for services directly to the isthmus and from Avalon to the isthmus, but he knows of no reason why certificated services such as Island Boat Service at Catalina; Harbor Carrier, dba Catalina Island Cruises, at San Pedro; Harbor Carriers, dba Catalina Cruises, at Long Beach; Doug Bombard Enterprises at Catalina; Davey's Locker at Newport Beach; H-10 Water Taxi at San Pedro; INC; or IE could not perform the required services.

Georgia Grace Wyatt is marketing and public relations director for Catalina Island Odyssey, a travel coordinator. Her company is the booking agency for the campground at Parson's

Landing. She arranged for transportation to the isthmus via the certificated carrier and for the transportation by yachts to Parson's Landing as set forth above.

She stated that Island Boat Service has two boats, the Blanche W and the Toyon, which are usually used all day and are unavailable for transportation of passengers to Parson's Landing.

She stated that she anticipates that there will be 100 to 150 persons per day visiting Parson's Landing during the period of June to October 1. She stated that the people would be mostly in groups of 40 to 45 and many would travel from Newport Beach to Avalon and arrive too late to have transportation to the isthmus.

She testified that if IE is granted the authority requested, there will be additional business available for IE, including special cruises which are not now available, such as trips from Avalon or the isthmus (referred to as Two Harbors) to one or more of the coves on the island.

She stated that Avalon and the isthmus are on the near side of the island in relation to the mainland, and the far side of the island is referred to as the windward or weather side, where the sea is quite rough. She stated that there are no piers on the windward side of the island, except at Two Harbors at the isthmus.

She testified that a boat operated by Davey's Locker arrives from the mainland at Avalon at 11:30 a.m., leaves Avalon for the mainland at 4:30 p.m., and does not go to the isthmus during the period that it is at Avalon, which she referred to as "down time."

She testified that during the last six months she has had calls requesting travel to points on the island and no boats were available. She had inquiries concerning groups of as many as 100 persons coming from the mainland including one, consisting

of 50 people from the city college at Long Beach, who desired to go to the Marine Biology Laboratory during November or December of last year. She stated that it was a one-day trip and the Monarch, a camp boat, which operates from San Pedro to Avalon every day, weather permitting, may have been available to take this group to Catalina, but may not have been available to return the group to the mainland.

She testified that Davey's Locker is also known as Catalina Passenger Service Company, and has a new boat which will carry 450 passengers.

In the last six months she has had inquiries, with respect to from two to 20 people, concerning trips around the island, and she stated that the larger boats can circumnavigate the island in approximately three-and-a-half hours, but she did not ask anyone to accommodate these persons as she knew of no one who was available to do so.

She further testified that she had never had a request for transportation between Avalon Bay and the isthmus that went unfulfilled. For transportation to the weather side of the island past Emerald Bay, she has had numerous inquiries and in each instance had decided that it would be impractical to make the necessary arrangements. Her requests have been from parties who desire to be transported so that they might be able to engage in scuba diving or sightseeing.

Douglas A. Bombard is president of Doug Bombard Enterprises, dba Catalina and Cove Agency and Catalina Mooring Services. He is an operator of shore boats, has been in the business 22 years, and is familiar with the Catalina coastline. He testified that shore boats are not suited for service between Avalon and the isthmus, as it takes approximately one hour and twenty minutes for a shore boat, when loaded, to make the trip between those two points. He stated that there is a market for

water taxi boats to operate between Avalon and the isthmus. He stated that a few years ago the larger boats were available for service between those two points, but at present the larger boats are usually busy and are not now available for such service. He stated that the Toyon usually operates as a glass bottom boat and the Blanche W operates as a sightseeing boat for trips to Seal Rock and for observing flying fish. He stated that Harbor Carriers' boats make runs between Avalon and the isthmus. In the winter, such runs are on Friday evenings and Sunday afternoons, and the boats go between San Pedro, the isthmus, and Avalon, but this same company has a daily trip between San Pedro and Avalon.

He testified that H-10 Water Taxi Company has operated taxi service to the camps in the past but probably does not intend to do so in the future. He stated that Davey's Locker occasionally runs a charter group to Avalon or the isthmus from Newport Beach. He stated that Harbor Carriers' boats probably cannot serve the demands of campers between Avalon and the isthmus and the various camps because of its schedules and because its boats are larger and have larger minimum charges.

The witness testified that it is easier to get to the mainland than to Avalon from the isthmus. He stated that a water taxi is usually 45 to 50 feet in length and a shore boat is usually approximately 27 feet in length. He stated that there is a real transportation difficulty for individuals or small parties seeking to travel between the isthmus and Avalon and that in excess of 95 percent of his patrons to the isthmus are transported directly to and from the mainland.

James Houston Snidow is president of IE and has been operating the company for approximately three-and-one-half years. IE has six boats under five tons net register.

The boat for which IE seeks the present authority is the Shirley Ann, a 48-foot water taxi, built in 1939, with a

fully enclosed wheel house and powered by two diesel engines. It is currently certified by the USCG to carry 49 passengers five miles offshore from Point Fermin to Dana Point, California, and to circumnavigate Catalina Island within a 5-mile radius and five miles offshore. Exhibit 1 is a survey of the Shirley Ann, but it now has two new engines which were installed after the survey.

The after two-thirds of the Shirley Ann is enclosed by plexiglass or canvas and it has a modern toilet.

The witness stated that it is 12 nautical or 14 statute miles from Avalon to the isthmus and would take the Toyon or the Blanche W one hour to make the trip. He stated that some smaller passenger boats for hire usually take more than one hour for the trip.

The witness stated that Exhibit 3 properly reflects the financial statement of IE for the year ended December 31, 1977. That exhibit shows an operating loss for the year in the amount of \$13,441.00. There was no evidence as to what impact, if any, the extended service area requested by IE would have on its business. He testified that the fare for the new vessel of \$72 per hour was based on computations of what it would take to run the vessel together with his observation of the activities of other vessels. He testified that he intends to charge \$37.50, not \$72 per hour as set forth in the application, but he had no explanation or any computations to support the reduction in fare. He did not know what portion of his revenues of \$81,640 for 1977 was derived from activities in Newport Harbor, Seasport, or with Universal Marine. However, he estimated that 93 to 94 percent of his revenues were from business in Avalon Bay.

He stated that there were only 10 points on Catalina proposed by IE to be served with its new vessel, only one of which was beyond the isthmus area, which area is specifically

excluded from the authority sought herein. He attributed his 1977 operating loss to the fact that there were too many carriers competing in the Catalina area.

Jeffrey W. Stickler is president of INC, the protestant. He has been associated with shore boat and water taxi service in and around Catalina for approximately eight years, the last two of which have been with INC.

INC presently operates two vessels, both of which were specifically conceived and constructed for the Avalon-Catalina Service. The vessels have a capacity of 39 and 49 passengers, respectively. The latter, with a light load, can run from Avalon to the isthmus in 30 minutes, but with a full load and baggage would take 45 minutes. He stated that by making a stop between Avalon and the isthmus, each part of the trip would be less than one-half hour so toilet facilities would not be required.

INC's financial statement for the year ended December 31, 1977 (Exhibit 6) shows a net profit for its certificated service for the year in the amount of \$4,283. The witness testified that the shore boat revenues at Catalina are in the amount of \$41,216 of which \$800 constituted revenues beyond Long Point, approximately \$10,400 from the service between West Harbor and the isthmus, and the balance from services in Avalon Bay and West Harbor with about 85 percent being West Harbor revenues.

He testified that as a certificated carrier, INC is authorized to provide certificated services as a vessel common carrier between vessels, between vessels and shore points, and between all points and places on Catalina.

He testified that there are presently six carriers authorized and certificated to provide service to the area requested by IE, including INC. The additional carriers are: Harbor Carriers, dba Catalina Island Cruises (San Pedro); Harbor Carriers, dba Long Beach Catalina Cruises (Long Beach); Davey's

Locker (Newport Beach); Island Boat Services (Catalina); H-10 Water Taxi (San Pedro); and Doug Bombard Enterprises (Catalina). He stated that there is daily service for larger groups (purportedly those which IE intends to serve) between Avalon and the isthmus, and further service provided by Catalina Island Cruises. He stated that Island Boat Service with two vessels is available on call or for charter, that H-10 Water Taxi, Davey's Locker, and Catalina Island Cruises provide direct service from the mainland to points and places on Catalina by charter, and that IE is available for smaller parties in the same area.

He testified that he does not know of nor has he heard of any need or request for additional service, that within the last year he has had two or three requests for transporting passengers to the weather side of the island, and that the service provided by Harbor Carriers from Avalon to other points and places on Catalina is excellent and more than adequate. He stated that it is his company's practice to refer larger parties to Catalina Island Cruises for such service and that the fares of that company are reasonable. He testified that the service to the operating area requested by IE is presently more than adequate and that his big boat sets on the mooring 60 percent of the time. He stated that the granting of the application to IE would have a detrimental effect on INC's operation and income.

The witness testified that when and if landing facilities become available at Parson's Landing, any or all of the presently certificated carriers could provide service to that point.

He testified that since December 1977, his company's vessels have been enclosed from weather and sea in a manner similar to the vessel of IE except that his vessels have a hard top rather than a soft top or canvas as does the Shirley Ann.

The witness testified that for individuals or small parties his company could provide service in the operating area

in question in less than half the time and for less than half the fare proposed to be charged by IE. His larger vessel is certificated for 49 passengers.

In the staff report (Exhibit 8) the staff recommends that the application should be granted as sought.

DISCUSSION

Applicant is proposing to operate a vessel exceeding five tons net register. It is noted that the Public Utilities Code has been recently amended to exempt all vessels "under the burden of five tons" from common-carrier certification requirements. Unless another governmental body has assumed jurisdiction over these recently deregulated vessels and has imposed barriers to entry, applicant--and anyone else for that matter--is able to compete fully against protestant as long as their vessels are "under the burden of five tons net" and have insurance on file with the Commission. Only because applicant proposes to use a nine-ton vessel does it require and consequently seek a certificate from the Commission.

Under the circumstances, there does not appear to be any greater threat of competition to protestant by authorized use of applicant's nine-ton vessel than by a multitude of exempt boats. Denying the application would not banish applicant from protestant's vicinity but, instead, limit its operation to the use of such exempt vessels. To deny the application would, in effect, allow the same level of competition with use of smaller, less adequate vessels lacking lavatory facilities. It appears that the public stands to gain the use of a superior vessel, equipped with enclosed decks and lavatory^{2/} for year-round shore boat service, if the sought application is granted.

^{2/} Department of Transportation Coast Guard Rules and Regulations for Small Passenger Vessels, 46 C.F.R. 177.30-5, requires that vessels transporting 49 passengers or less on runs longer than 30 minutes be fitted with a toilet.

FINDINGS

1. IE now has a certificate as a vessel common carrier for the transportation of passengers in vessels of less than five tons net register.

2. Section 1007 of the Public Utilities Code was amended in 1977 by the addition of subsection (c) which provides that it is no longer necessary to have a certificate in order to operate a vessel under the burden of five tons net register as a common carrier between points in California. Therefore, IE is no longer required to have a certificate to operate its boats of less than five tons net register.

3. IE seeks a certificate to operate a vessel of five tons or more net register between the points heretofore contained in its authority and between such points that it requests by way of the expansion of its authority at and near Catalina as set forth in its application and modified at the time of hearing.

4. Granting the application will not adversely impact the present level of competition existing for transportation of passengers between anchored vessels and the shore and between certain points on Catalina.

5. Granting the application will benefit the public by providing use of a superior vessel equipped with enclosed decks and lavatory as required by Coast Guard regulations for year-round shore boat service.

The Commission concludes that the application of IE for a certificate of public convenience and necessity to operate a vessel which exceeds five tons net register at and above Santa Catalina Island as requested by IE, and subsequently modified, should be granted.

O R D E R

IT IS ORDERED that:

1. A certificate of public convenience and necessity is granted to Island Enterprises, Inc., a corporation, authorizing it to operate as a common carrier by vessel, as defined in Sections 211(b) and 238 of the Public Utilities Code, between the points and over the routes set forth in Appendix A of this decision.

2. In providing service pursuant to the authority granted by this order, applicant shall comply with the following service regulations. Failure so to do may result in a cancellation of the authority.

- (a) Within thirty days after the effective date of this order, applicant shall file a written acceptance of the certificate granted. Applicant is placed on notice that if it accepts the certificate it will be required, among other things, to comply with the insurance requirements of the Commission's General Order No. 111-Series.
- (b) Within one hundred twenty days after the effective date of this order, applicant shall establish the authorized service and file tariffs and timetables, in triplicate, in the Commission's office.
- (c) The tariff and timetable filings shall be made effective not earlier than ten days after the effective date of this order on not less than ten days' notice to the Commission and the public, and the effective date of the tariff and timetable filings shall be concurrent with the establishment of the authorized service.

- (d) The tariff and timetable filings made pursuant to this order shall comply with the regulations governing the construction and filing of tariffs and timetables set forth in the Commission's General Orders Nos. 87-Series and 117-Series.
- (e) Applicant shall maintain its accounting records on a calendar year basis in conformance with the applicable Uniform System of Accounts or Chart of Accounts and shall file with the Commission, on or before March 31 of each year, an annual report of its operations in such form, content, and number of copies as the Commission, from time to time, shall prescribe.

The effective date of this order shall be thirty days after the date hereof.

Dated at San Francisco, California, this 3rd day of OCTOBER, 1978.

Abstain:
Richard D. Gavelle

Robert Baldwin
President
William J. Jones
Vernon L. Stegeman

Clair T. Daniels
Commissioners

APPENDIX A

ISLAND ENTERPRISES, INC.

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CERTIFICATE
OF
PUBLIC CONVENIENCE AND NECESSITY

Showing vessel common carrier operative rights, restrictions, limitations, exceptions, and privileges applicable thereto.

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 No. 89471,
dated OCT 3 1978, of the Public Utilities Commission
of the State of California, in Application No. 57800.

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

Island Enterprises, Inc., by the certificate of public convenience and necessity granted by the decision noted in the margin, is authorized to operate a vessel common carrier to transport passengers and their hand baggage in a "water taxi shoreboat service" (1) between all points on Catalina Island; (2) between points on Catalina Island, on the one hand, and vessels located within five (5) miles of Catalina Island, on the other; and (3) between vessels located within five (5) miles of Catalina Island, subject to the following conditions:

- (a) This service is a supplement to the operation of vessels under five (5) tons net registry for which no certificate of public convenience and necessity is required.
- (b) No vessel shall be operated unless it has met all applicable safety requirements including those of the United States Coast Guard.
- (c) Service shall be operated on an "on-call" and "charter" basis.
- (d) The term "on-call", as used herein, refers to service which is authorized to be rendered dependent on the demands of passengers. The tariffs and time-tables shall show the conditions under which each authorized "on-call" service will be rendered.

Issued by California Public Utilities Commission.

Decision No. 89471, Application No. 57800.

- (e) The term "charter" service, as used herein, refers to service in which the vessel is engaged, for a specified charge, by a person or group of persons for the exclusive use of said person or group of persons. The tariffs shall show the conditions under which each "charter" service will be rendered.
- (f) Service shall not be rendered within the Isthmus area between any vessels, points, and places.
- (g) The Isthmus area is described as the inland waters of Isthmus Cove which is within a line drawn from Blue Cavern Point to Lion's Head and Catalina Harbor which is within a line drawn from Pen Rock to Catalina Head.

Issued by California Public Utilities Commission.

Decision No. 89471, Application No. 57800.