

hn

89641

NOV 9 1978

ORIGINAL

Decision No. _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application)
of CATALINA PASSENGER SERVICE, INC.,)
a corporation, (a) for authority to)
issue shares of its stock and (b) to)
execute a promissory note and security)
agreement.)

Application No. 58013
(Filed April 20, 1978)
and Amendments
(Filed May 22, 1978 and
September 25, 1978)

O P I N I O N

This application, as amended, by Catalina Passenger Service, Inc. (Catalina) seeks authority to (a) issue a promissory note in the principal amount of \$300,000 in favor of Citizens Bank of Costa Mesa; (b) execute a security agreement in favor of said bank; (c) issue an unsecured note in the principal amount of \$100,000 to Davey's Locker, Inc.; (d) issue 2,124 shares of common stock to the shareholders of Davey's Locker, Inc., and (e) issue an additional 1,961 shares of common stock to two employees of Catalina in accordance with Stock Issuance Agreements.

Catalina is a California corporation which operates a vessel in common carrier passenger service (VCC 47) between Newport Beach, including Balboa, California, and points and places on Santa Catalina Island. Such authority was granted to the applicant's predecessor, Davey's Locker, Inc., by Decision No. 69132, dated May 25, 1965 in Application No. 47305, and was later transferred to Catalina and approved by Decision No. 86252, dated August 17, 1976 in Application No. 56275. The company's balance sheet as of March 31, 1978 is summarized as follows:

| <u>Assets</u> | |
|--|------------------|
| Current assets | \$ 3,520 |
| Investments | 800 |
| Fixed assets, including work in progress, less depreciation | 327,141 |
| Other assets | <u>5,202</u> |
| Total | <u>\$336,663</u> |

| <u>Liabilities and Equity</u> | |
|-------------------------------|------------------|
| Current liabilities | \$128,795 |
| Long-term liabilities | 190,666 |
| Stockholders' equity | <u>17,202</u> |
| Total | <u>\$336,663</u> |

In its application as originally filed on April 20, 1978, Catalina asked for authorization to issue a secured note in the amount of \$300,000, and also to issue 127 shares of common stock. Upon reviewing the application, the staff noted that Catalina had on its books a long-term note payable to Davey's Locker, Inc., in the amount of \$100,000, without benefit of Commission authorization. Moreover, the applicant had never obtained authorization to issue the initial 2,124 shares of stock issued to and currently held by its present owners. Catalina filed first and second amendments to its application requesting approval of the transactions above, which, through inadvertence, had not been authorized previously. Before the first amendment to the application was filed, Catalina issued a secured note for long-term funds to Citizens Bank of Costa Mesa. This note and related encumbrance, as well as the note issued to Davey's Locker, Inc., and the stock certificates issued to date, were all issued without Commission authorization.

A third amendment was filed seeking authority to issue a total of 1,961 shares of common stock to two employees, and withdrawing the original request to issue 127 shares of stock.

The proceeds from the notes were used for construction of the applicant's new vessel, "Catalina Holiday" which replaces its former vessel, "Island Holiday". At the present time the capitalized cost of the new vessel amounts to approximately \$625,000. The ship was put into service on June 10, 1978.

The initial 2,124 shares of stock were issued in exchange for the vessel "Island Holiday" and related operating rights transferred to the applicant from Davey's Locker, Inc. pursuant to the authority granted by Decision No. 86252.

The terms of the notes for which Catalina now seeks authorization are as follows:

The promissory note to Citizens Bank of Costa Mesa would be in the principal amount of \$300,000, would carry an interest rate of 10% per annum, and would be repayable over a period of ten years. The note is to be secured by a first preferred ship's mortgage on the new vessel. The note payable to Davey's Locker, Inc. would be in the face amount of \$100,000 and would be unsecured. Principal and interest at the rate of 10% would be repayable in monthly installments over a period of ten years. The note would contain an agreement from the lender that it will forego any installment when due if at that time Catalina declares in writing that payment of the installment would cause it to be unable to meet its ordinary operating expenses.

The 1,961 shares of new common stock proposed by the third amendment to the application are to be issued to two employees over a period of ten years in accordance with Stock Issuance Agreements, attached to the amended application as Exhibits E and F. The agreements establish an estimated present-day fair market value of \$34.27 per share of stock and grant the issues the right to purchase a stated number of shares annually at the present-day value.^{1/} The application states that both issues are desirous of continuing their employment with Catalina and of gaining an ownership interest in the business. If all of the shares provided for by the agreements are issued, the applicant will realize proceeds of \$67,203.47, and the two employees will hold 48% of the total shares outstanding. The controlling interest of Catalina would remain with the present stockholders.

Catalina has supplied the staff with projected income statements for the years 1978 and 1979. The statements indicate that cash flow from the "Catalina Holiday" operation will be adequate to meet the company's debt service requirements. In 1979, the first full year of operation for the new vessel, cash available for debt service is expected to total \$122,128, while debt service requirements are expected to be \$63,876.

The Transportation Division has reviewed the application and the amendments thereto and agrees with the Finance Division that the authority requested should be granted.

^{1/} The book value per share as of March 31, 1978 was \$8.10.

After consideration the Commission finds that:

1. Catalina inadvertently issued 2,124 shares of its \$10 par value common stock in exchange for property without receiving authority from this Commission. The issuance of these shares is void under Section 825 of the Public Utilities Code.
2. Catalina inadvertently issued two long-term promissory notes in the amounts of \$100,000 and \$300,000, and encumbered carrier property, without receiving authority from this Commission. The notes and the encumbrance document are void under Sections 825 and 851 of the Public Utilities Code.
3. The issuance of common stock, as proposed in the second and third amendments to the application, and the issuance of promissory notes, are for proper purposes.
4. The proposed Stock Issuance Agreements would not be adverse to the public interest.
5. The proposed encumbrance of property would not be adverse to the public interest.
6. The money, property or labor to be procured or paid for by the notes and stock herein authorized are reasonably required for the purposes specified herein, which purposes are not, in whole or in part, reasonably chargeable to operating expenses or to income.

On the basis of the foregoing findings we conclude that the application should be granted. There is no known opposition and there is no reason to delay granting the authority requested. A public hearing is not necessary.

In issuing our order herein, we place Catalina and its shareholders on notice that we do not regard the number of shares outstanding, the total stated value of the shares, nor the dividends paid, as measuring the return it should be allowed to earn on its investment in plant, and that this authorization is not to be construed as a finding of the value of the company's stock or property nor as indicative of the amounts to be included in proceedings for the determination of just and reasonable rates.

O R D E R

IT IS ORDERED that:

1. Catalina Passenger Service, Inc., on or after the effective date hereof and on or before March 31, 1979, may issue 2,124 shares of its \$10 par value common stock to replace the 2,124 shares previously issued without authority from this Commission.
2. Catalina Passenger Service, Inc., on or after the effective date hereof and on or before March 31, 1979, may issue two promissory notes in the aggregate principal amount of not exceeding \$400,000, and may execute and deliver a first preferred ship's mortgage. The instruments shall replace corresponding documents which were issued and executed without authorization from the Commission, and shall be in substantially the same forms as those attached to the amended application as Exhibits A and D.
3. Catalina Passenger Service, Inc., on or after the effective date hereof, may issue not exceeding 1,961 shares of its \$10 par value common stock substantially in accordance with its Stock Issuance Agreements, attached to the amended application as Exhibits E and F.

4. Catalina Passenger Service, Inc., shall file with the Commission a report, or reports, as required by General Order No. 24-B, which order insofar as applicable is hereby made a part of this order.

5. This order shall become effective when Catalina Passenger Service, Inc. has paid the fees prescribed by Sections 1904(b) and 1904.1 of the Public Utilities Code, which fees total \$978.

Dated at San Francisco, California, this 9th day of NOVEMBER, 1978.

Robert Bateman
President
William Quinn
Vernon L. Stiegel
Joseph D. Havel
Laure J. Debra
Commissioners

