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Decision No. 90691 AUG 14 1979

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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| In the Matter of the Application of CATALINA PASSENGER SERVICE, INC., a California corporation, for authorization to increase rates of fare for the transportation of passengers by vessel between Newport Beach and Avalon, Santa Catalina Island, California. | Application No. 58776 (Filed April 3, 1979) |

O P I N I O N

Statement of Facts

Lazing away in the Pacific 21 miles off the Los Angeles coast, and visible from the mainland only on rare smog-free days, Santa Catalina Island is the largest of the eight Channel Islands discovered by Juan Rodriguez Cabrillo in 1542. Only 22 miles long and 8 miles wide, and once a base for smuggling and piracy, today its many attractions draw over 750,000 tourists annually. Centered in the diminutive hillside port community of Avalon, its permanent population of 1,700 jumps to over 10,000 on a summer weekend. Attracted by its surrounding pristine blue waters, the equable climate, pure fresh sea air, an unspoiled and ruggedly natural interior, the 50-year old circular 12-story "casino" featuring name bands and a museum, and the unharried lifestyle, visitors flock to Avalon, mostly by ferryboat from Long Beach, San Pedro, and Newport Beach. It is with the ferry service to Catalina from this last-named mainland city that we are here concerned.

On May 25, 1965, by Decision No. 69132 in Application No. 47305, this Commission granted authority to Davey's Locker, Inc. (Davey's), a California corportion, to operate a vessel common carrier passenger service between Newport Beach and Balboa to points and places in Santa Catalina. Service commenced on June 27, 1965. In 1976, for accounting, tax, and other business reasons, the owners of Davey's organized a separate California corporation, Catalina Passenger Service, Inc. (applicant), to take over the operating rights and property involved in the ferry service and to operate it separately from Davey's. By Decisions Nos. 56252 and 86914, dated August 17, 1976 and February 1, 1977, respectively, in Application No. 56275, the transfer was authorized by this Commission, and applicant took over the transportation of passengers and their baggage on a scheduled basis between June 15 and September 15, with "on-call" service the rest of the year; all subject to a minimum of 50 one-way fares. In 1978 applicant completed construction of a specially designed 115-foot long vessel for this service with a Coast Guard licensed maximum capacity of 425 passengers. This vessel, the "Catalina Holiday", is now in service.1/

Present fares were established by Decision No. 85937 dated June 8, 1976 in Application No. 56403. By this application the applicant seeks an approximate 18 percent increase in fares from those presently authorized, as indicated below:

| | Present Fares | Requested Fares |
|---|---|---|
| Adult one way | $ 5.50 | $ 6.50 |
| Adult round trip | 11.00 | 13.00 |
| Child, under 12, one way | 2.75 | 3.25 |
| Child, under 12, round trip | 5.50 | 6.50 |

It is estimated that this increase would produce approximately $63,642 in additional operating revenue.

Applicant provided a consolidated Statement of Income and Expenses for the 12 months ending December 31, 1978. This statement covered its overall operations, regulated and nonregulated, for the year. Overall, it attained a $3,723.14 loss, primarily as the result of a nonoperational income expense item of $32,265.92. However, 93.87 percent of its 1978 revenue is ascribable to operation of its regulated vessel common carrier passenger service and its charter service, while 6.13 percent was derived from other nonregulated activities, including whale-watching and sightseeing loop activities. Deleting nonregulated operations, for 1978 applicant had a net profit before federal and state income taxes of $46,549.

1/ Following the 1977 season and anticipating completion of its new vessel "The Catalina Holiday", applicant sold its old vessel. The new vessel's completion was delayed until after the 1978 season began.

Projecting ahead through 1979, applicant anticipates the same general volume of passenger traffic, but expects that expenses generally will increase from 8 to 10 percent. However, certain major expense items, including depreciation, fuel, uniforms and terminal expense, are expected to sharply escalate much higher. Accordingly, without a fare increase, applicant anticipates a 1979 operating loss from its common carrier vessel operations of approximately $26,000. If granted the requested 18 percent fare increase, it estimates it would attain a pre-tax profit of approximately $23,800 for one year.[2/]

The instant application was filed on April 3, 1979 and was listed on the Commission's Daily Calendar of April 4, 1979. There have been no protests filed. Applicant also complied with the notice requirements contained in Rule 24 of the Commission's Rules of Practice and Procedure. None of the county or city authorities filed a response. In the absence of protest the staff recommends ex parte processing. For these reasons we deem a public hearing unnecessary and have proceeded ex parte.

Discussion

As noted earlier, applicant provides vessel common carrier passenger service as well as charter, whale-watching and sightseeing operations. At this point in time only the first-named has been deemed to come within our jurisdiction.[3/] In 1978 these four components of applicant's business respectively produced 91.25, 2.62, 3.37, and 2.76

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2/ Later derived expense data, particularly as concerns the cost of diesel fuel, makes it doubtful that this profit level will be realized without offsetting economies in other expenses.

3/ Our jurisdiction over the common carrier operations between Newport Beach and Avalon is derived from Section 211(b) of the Public Utilities Code which states in relevant part "Common Carrier" includes:

> "Every corporation or person, owning, controlling, operating, or managing any vessel engaged in the transportation of persons or property for compensation between points upon the inland waters of this State or upon the high seas between points within this State...."

On the other hand, charter, whale-watching, or sightseeing activities, wherein passengers embark and disembark at the same point; the transportation merely being in a "loop" for sightseeing or excursion purposes, is exempted from Commission jurisdiction (Golden Gate Scenic S.S. Lines v PUC (1962) 19 C. Rptr. 657).

percent of applicant's revenue. The latter two activities account for only a small portion of its expense whereas passenger and charter together involve almost all aspects including direct operation of applicant's vessel, The Catalina Holiday, and account for all of certain expenses and the bulk of the remainder. The charter operation, while growing, is run as an out-of-pocket adjunct of the common carrier vessel passenger operation.

Taking the common expenses and applying to them a factor of 93.87 percent (representing the passenger-charter portion), and the expenses exclusively passenger-charter, we obtain a derived combined passenger-charter operating result for 1978. Then, factoring out the percentage attributable to charter from appropriate expense items, we obtain a statement of operations for the regulated common carrier vessel operations. It is set forth below in Table A.[4/] From this base, applicant prepared 1979 projections (1) using the existing fare level, and (2) using a fare level including the requested fare increase, but applying known or anticipated increases to each expense item, and adjusting each item to reflect only that share allocated to the common carrier vessel operation. A comparison of these operating results appears next as Table A:

4/ In preparing a 1979 projection, applicant used a factor of 92.4 percent, reflecting the growing role of whale-watching and sightseeing operations in his overall business volume. The expense items involved include: Advertising, Bad Checks, Fuel, Misc-incidentals, Payroll-boat crew, Repair and Maintenance, Supplies, Payroll Taxes, Terminal Expense, and Uniforms.

TABLE A

Catalina Passenger Service, Inc.

Operating Statements

| | Actual 1978 At Existing Rates | 1979 At Existing Rates | 1979 At Projected Rates |
|---|---|---|---|
| **Revenue** | | | |
| Passenger Opr. | $349,589 | $349,589 | $413,231 |
| **Expenses** | | | |
| Advertising | 9,896 | 14,891 | 14,505 |
| Amortization | 110 | 110 | 110 |
| Auto Expense | 565 | 1,412 | 1,412 |
| Bad Checks | 456 | 449 | 446 |
| Comm. on Tickets | 88 | 88 | 88 |
| Depreciation | 33,465 | 54,410 | 54,410 |
| Discounts-Banks | 1,468 | 1,468 | 1,733 |
| Dues/Subscriptions | 10 | 10 | 10 |
| Fuel | 20,641 | 37,312 | 37,387 |
| Insurance-General | 22,744 | 25,018 | 25,018 |
| Insurance-Group | 329 | 657 | 657 |
| Legal/Accounting | 5,996 | 6,596 | 6,596 |
| Misc.-Incidentals | 7,382 | 7,993 | 7,936 |
| Payroll-Boat Crew | 36,883 | 39,935 | 39,648 |
| Promotional | 5,205 | 5,726 | 5,726 |
| Rent-Ticket Booth | 490 | 618 | 618 |
| Repair/Maint. | 22,378 | 24,230 | 24,056 |
| Salaries | 33,864 | 37,250 | 37,250 |
| Supplies | 4,891 | 5,296 | 5,258 |
| Taxes-Franchise | 1,214 | - | - |
| Taxes-Payroll | 6,544 | 6,853 | 6,803 |
| Telephone | 95 | 191 | 191 |
| Terminal Expense | 54,232 | 68,942 | 82,661 |
| Travel Expense | 3,947 | 2,000 | 2,000 |
| Uniforms | 1,143 | 5,389 | 5,350 |
| Wharf Tax | 29,004 | 29,004 | 29,004 |
| Mooring | - | 504 | 504 |
| Total Expenses | $303,040 | $376,352 | $389,377 |
| Operating Profit | 46,549 | (26,763) | 23,854 |
| Operating Ratio | 86.7% | 107.7% | 94.2% |
| Profit Margin | 13.3% | (7.7)% | 5.8% |

(Red figure)

Our Administrative Law Judge (ALJ) addressed extensive questions to applicant pertaining to certain individual expense items, seeking justification for changes from 1978 to 1979 which appeared to have exceeded tho general average increase. Our judge obtained the following information: Advertising expense is up 47 percent, attributable to the fact that the new vessel was available for only half of 1978 and the free publicity attendant upon its completion and inauguration into service is no longer available. In 1979 the full expense is applicable. Auto expense is up almost 150 percent because of the necessity to have and use a pickup to chase down and deliver repair and maintenance parts for the vessel as needed and avoid shutdowns. Depreciation expense in 1979 is significantly higher (by 62 percent) because the new vessel, uncompleted until June 1978, accounted for less than a full year's depreciation in 1978. Bank Discounts are up 18 percent to reflect the additional cost to applicant from increased use of Visa and Mastercharge cards by passengers to pay fares. Fuel Expense initially was up 59 percent over 1978, but this proved to be a substantial miscalculation in light of current events. Since the application was filed prices outstripped this markup. In July 1978 diesel fuel sold for 41½ cents per gallon; early in July 1979 it reached 66 cents per gallon. Applicant amended its estimate to $38,387 in late July (and last word was that after August 1, 1979 the price will go to 72.9 or 73.9 per gallon). Payroll and Salaries, both substantial items, are up 8.2 percent and 10 percent, respectively, to allow for the cost of wage and benefit increases necessary to retain experienced crew and other personnel. Terminal expense is by contract with Davey's and represents a percentage of gross (in 1978 the contract called for 15 percent, in 1979 20 percent, and in 1980 25 percent). We are informed this is reasonable in this area where wharfage is at a premium. While we have no information or basis to challenge the method or level of this expense at this time, applicant is placed on notice that in any subsequent proceeding this contract will be an issue and applicant will be called upon to present evidence to justify the method and amount involved. Uniform expenses are up 370 percent to pay the cost of new uniforms for stewardesses to be employed aboard the new vessel. Travel expense, on the other hand, is down 50 percent reflecting the lessened need, with completion of applicant's new vessel, for travel formerly required to obtain clearances, licenses, approvals, etc.

On balance, we find that the projected items of expense listed have been justified and present a reasonably accurate estimate of expenses to be incurred in 1979. The sole substantial exception is the fuel expense item - a major problem in our economy today. However, it is clear that applicant is in need of, and from an economic viewpoint has justified its need for, additional immediate revenue to meet anticipated legitimate increases in expenses.

Contrasting the requested fare levels with those charged by other carriers in the area who provide not dissimilar service from the mainland to Catalina from other points, we note the following:

TABLE B
Catalina Passenger Service, Inc.
Comparison of Fares

| Carrier | Route | One-Way Distance | Fare Established | Round Trip Adult | Round Trip Child |
|---|---|---|---|---|---|
| Catalina Pass. Serv. | Newport Beach | 31 miles | - | $13.00 | $6.50 |
| Harbor Carriers | Long Beach | 25 miles | 1979 | 12.00 | 6.00 |
| Avalon Navig. Co. | Los Angeles | 23 miles | 1965 | 7.50 | 3.75 |
| Catalina Motor | San Pedro | 23 miles | 1976 | 8.00 | 3.80 |
| MGRS, Inc. | Los Angeles | 23 miles | 1975 | 11.00 | 5.65 |

One final item remains. This Commission recognizes that inflation is one of the most serious economic problems facing our nation today, and accordingly on January 30, 1979 by Resolution No. M-4704 we announced our support for the President's anti-inflationary program. The President's Council on Wage and Price Stability (Council) has acknowledged that some companies face special circumstances which make application of the Council's price deceleration standard inequitable. For example, companies whose prices have not changed over the past few years may require special consideration. Applicant here, with its price (or fare structure) being unchanged since June 1976, comes within this category.[5/] For such instances the Council's profit margin limitation standard is a more appropriate measure of compliance.

The profit margin limitation standard essentially requires that (1) the profit margin (the ratio of income before taxes to sales) for the test (or program) year be no larger than the average, or the best two of the last three calendar years prior to 1978 (1975 to 1977); and (2) test (or program) year net revenue before income tax (or profit) not exceed the base year (here 1978) profits by more than 6.5 percent, plus any percentage growth in physical volume from the base year to the program year (here 1978 to 1979).

Applicant, in response to the ALJ's request, reported that its profit margins for calendar years 1975-76-77 were 1.3 percent, 0.5 percent, and 10.7 percent, respectively. Taking the average of the two best years we obtain 6.0 percent as the limitation. Applicant, as we see from the projection obtained in Table A for 1979 at projected rates, can anticipate a 1979 profit margin of 5.8 percent - within the first test of the profit margin limitation standard.

Turning to the second test of this standard, we note that the 1979 profit anticipated can be no more than 6.5 percent larger than the 1978 profit, plus any percentage growth in physical volume 1978 to 1979. There is no anticipated growth in physical volume over last year, according to applicant, and the 1978 profit was $46,549; a figure larger than the $23,854 profit before taxes anticipated in 1979. Therefore applicant also meets the second test under the profit margin limitation standard, and would be in compliance with the President's anti-inflationary program.

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5/ Indeed, the Catalina circumstances to some degree approach the situation in the Teleprompter Manhattan case before the Council recently. In that instance the Council determined that the circumstances did not fit their standards and that the appropriate rate relief applicable would best be left to the judgment of the state regulatory body. In Teleprompter the company had no appropriate base year data, was operating at a loss, and had had no increase over a long period. Having just made a substantial investment in cable TV hookups, the company was finally now in a position to market its heavy investment. The Council determined that the company should not suffer from close rate restraints. (Teleprompter Manhattan Cable TV (Dec. 5/22/79).)

In view of all the foregoing we conclude that the existing fare structure is at this time unjust and unreasonable, and that the proposed and requested fare structure as set forth by applicant in its application would be just and reasonable, and should be authorized. Because of the shortness of the remaining season, the fare increase will be authorized upon signing of the following order.

Findings of Fact

1. Applicant's present fares were established June 8, 1976 by Decision No. 85937.

2. Applicant's revenues and expenses both increased substanially in 1978 after completion and introduction into service of its new specially constructed vessel "The Catalina Holiday".

3. Results of operations figures for a 12-month period ending December 30, 1978 were presented by applicant to reflect its most recent 12-month period prior to submission of this application. These results show that applicant's 1978 operations under Commission jurisdiction were conducted at a profit before taxes of $46,549, reflecting an operating ratio of 86.7 percent.

4. Applicant presented information which demonstrates that results of operations for a test year ending December 31, 1979, reflecting substantially higher expenses, would show that operation at existing fares would result in an operation's loss of $26,763 with an operating ratio of 107.7 percent for the year. This indicates that applicant is in immediate need of additional revenues, and that existing fares are unjust and unreasonable at this time.

5. By the instant application applicant seeks a general fare increase of 18.8 percent.

6. Notice of the filing of the application for a fare increase appeared in the Commission's Daily Calendar of April 4, 1979, and the requisite notices provided for under provisions of Rule 24 of the Commission's Rules of Practice and Procedure were sent. There were no protests filed to the proposed fare increase and the staff of the Commission recommends ex parte proceedings.

7. The proposed fare increase is estimated to produce additional annual revenue of $63,642, resulting in an estimated operating profit of $23,854 and producing an operating ratio before taxes of 94.2 percent.

8. The increased fares requested by applicant are justified and would be both just and reasonable at this time.

9. Under present conditions and practices, applicant's allocation of a percentage of certain of its operating expense to nonregulated operations is reasonable, and the amounts so allocated in this proceeding are reasonable and justified.

10. The increased fares sought under this application would produce profit levels which are in compliance with the profit margin limitation standards issued by the Council on Wage and Price Stability and therefore comply with the President's anti-inflationary program.

11. The shortness of the Catalina summer season, coupled with sharply increased expense levels being incurred, requires that there be no delay in effectuating any fare increase authorized.

Conclusions of Law

1. A public hearing is unnecessary.

2. The proposed fare increase should be authorized.

## O R D E R

IT IS ORDERED that:

1. Catalina Passenger Service, Inc. is authorized to establish the increased fares proposed in Application No. 58776. Tariff publications authorized to be made as a result of this order may be made effective not earlier than five days after the effective date of this order on not less than five days' notice to the Commission and to the public.

2. This authority shall expire unless exercised within ninety days after the effective date of this order.

3. In addition to the required posting and filing of tariffs, applicant shall give notice to the public by posting in its vessel and terminals a printed explanation of its fares. Such notice shall be posted not less than five days before the effective date of the fare changes and shall remain posted for a period of not less than thirty days.

The effective date of this order is the date hereof.

Dated AUG 14 1979, at San Francisco, California.

John E. Bryson
President

Vernon L. Sturgeon

Claire T. Dedrick

Leonard M. Grimes, Jr.
Commissioners

Commissioner Richard D. Gravelle, being necessarily absent, did not participate in the disposition of this proceeding.