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Decision 97-01-034 January 23, 1997

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 CATALINA CRUISES, INC., a California)
 corporation, to transfer its)
 certificate of public convenience)
 and necessity (VCC-46) to operate)
 as a common carrier by vessel and)
 to sell, assign, or otherwise)
 transfer property, including a)
 leasehold interest, necessary or)
 useful in the performance of its)
 common carrier by vessel service,)
 to CATALINA CHANNEL EXPRESS, INC.,)
 a California corporation, or its)
 designee, and for CATALINA CHANNEL)
 EXPRESS, INC. to provide a Letter of)
 Credit to secure transfer of the)
 leasehold interest.)

ORIGINAL

Application 96-02-034
(Filed February 16, 1996)

O P I N I O N

Background

Catalina Cruises, Inc. (seller or Catalina Cruises), a California corporation, sought authority in this proceeding under §§ 851 et. seq. and 1009 of the Public Utilities Code to sell, transfer, assign, or otherwise dispose of various of its assets, including its certificate of public convenience and necessity (CPCN) to operate as a common carrier by vessel (VCC-46) and property otherwise necessary or useful to conduct common carrier service, to Catalina Channel Express, Inc. (buyer or CCE).

CCE joined in the application, seeking authorization to acquire seller's assets and CPCN. CCE stated that it would use the purchased assets to expand its existing common carrier by vessel service conducted under its authority by CPCN issued by the Commission in File No. VCC-52.

Protests to the application were filed by Inlandboatmen's Union of the Pacific (IBU) and by the Catalina Island Association, a group of Catalina Island residents (protestants).

Duly noticed hearings before an administrative law judge (ALJ) were held in Los Angeles on April 25 and 26, 1996. The matter was submitted upon the filing of the transcript. Briefs were filed by applicants and IBU.

In submitting the application for decision the ALJ denied protestants' requests for discovery of records of Catalina Cruises, for further public participation hearings on Catalina Island, and for time to employ an expert to evaluate the effect of the proposed transfer on the Catalina Island transportation market.

A Proposed Decision of ALJ Wright was mailed on June 21, 1996, and the matter was initially placed on the Commission's agenda of August 2, 1996, and held for consideration at further agendas.

An Assigned Commissioner's Ruling was issued on September 26, 1996, withdrawing the Proposed Decision and ordering further public participation hearings and evidentiary hearings in order to further develop the record on the effect of the proposal on competition, and the need for safety or other safeguards.

By letter dated October 9, 1996, Edward J. Hegarty, counsel for Catalina Cruises, requests dismissal of the application. The reason for the request is that the agreement between Catalina Cruises and CCE expired on October 30, 1996, and CCE decided not to agree to an extension of that date. According to Hegarty, the Assigned Commissioner Ruling would cause a significant delay in final disposition of this matter that is also not acceptable to Catalina Cruises.

Discussion

The Assigned Commissioner Ruling indicates a concern that the record is not adequate for the Proposed Decision to reach the conclusions it reached, and notes that this matter was treated as

an emergency which resulted in compressed hearings. The Assigned Commissioner Ruling indicates that the emergency no longer exists, and further hearings are appropriate to insure that we fully develop the record on the effects on competition, and that we have carefully considered the need for safety or other safeguards.

However, since the applicants no longer wish to proceed, we will dismiss the application as requested.

Findings of Fact

1. The Proposed Decision was withdrawn and further hearings were ordered by Assigned Commissioner Ruling.

2. Applicants request dismissal of the application due to the delay that would result from further hearings.

Conclusion of Law

This application should be dismissed.

O R D E R

IT IS ORDERED that:

1. Application 96-02-034 is dismissed.
2. This proceeding is closed.

This order is effective 30 days after today.

Dated January 23, 1997, at San Francisco, California.

P. GREGORY CONLON
President
JESSIE J. KNIGHT, JR.
HENRY M. DUQUE
JOSIAH L. NEEPER
RICHARD A. BILAS
Commissioners