

Decision 97-06-052 June 11, 1997

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Island Navigation Company, Inc.,)
Complainant,)
vs.)
Catalina Channel Express, Inc.,)
Defendant.)

ORIGINAL

Case 97-03-050
(Filed March 31, 1997)

O P I N I O N

Procedure

Island Navigation Company, Inc. (Island Navigation) complains, upon its information and belief, that Catalina Channel Express, Inc. (Catalina Express), a certificated vessel common carrier (VCC), intends to commence carriage of passengers, baggage, and other personal property between Dana Point, Orange County, and Avalon, Santa Catalina Island without possessing or first obtaining from the Commission a valid certificate of public convenience and necessity (CPCN) authorizing such service as required by § 1007 of the Public Utilities (PU) Code.

Island Navigation further alleges that the commencement of and provision by defendant of Dana Point/Avalon VCC service will injure complainant and unlawfully stifle competition in the Dana Point/Avalon VCC market. Thus, Island Navigation (1) moves the Commission for the immediate issuance of a cease and desist order directing that defendant cease and desist from promoting and/or providing Dana Point/Avalon VCC service and (2) seeks an order from the Commission declaring that any Commission authority which defendant may once have held for Dana Point/Avalon service is no longer valid and ordering that defendant seek and obtain from the

Commission a presently valid CPCN for Dana Point/Avalon VCC service before it commences such service.

Catalina Express, answering the complaint, admits that it announced its intent to commence a VCC service between Dana Point and Avalon but denies that it would, or intended to, do so without possessing a CPCN as required by PU Code § 1007. For this reason, defendant alleges that the matter of issuance of a cease and desist order to prevent unlawful Dana Point/Avalon service by Catalina Express is moot.

Further answering the complaint, defendant alleges that it has a valid CPCN for Dana Point/Avalon vessel transportation service and denies that the commencement of and provision of such service will injure complainant and unlawfully stifle competition. The answer sets forth 11 affirmative defenses purporting to show that Catalina Express has a valid CPCN for Dana Point/Avalon service and that the public interest would best be served if Catalina Express, rather than Island Navigation, were authorized to serve that transportation market.

Official Notice

As alluded to in the pleadings, the Commission takes official notice of the following communications.

On March 26, 1997, Catalina Express submitted tariffs and timetables to the Commission designed to authorize defendant to initiate Dana Point/Avalon service on April 25, 1997. Staff of the Rail Safety and Carriers Division notified defendant by letter of a number of deficiencies in the proposed filings which made them unacceptable to the Commission. Staff's three-page letter of April 10, 1997 specifies Commission requirements for defendant to initiate passenger vessel service between Dana Point and Avalon.

Staff's letter calls defendant's attention to the fact that Decision (D.) 92-06-010, effective June 3, 1992, required defendant to file tariff and timetable between Dana Point and Avalon within 120 days from the effective date of the decision or

on or before October 1, 1992. Staff notes that tariff and timetable pages must cite Commission or statutory authority for any changes, and no authority is cited for defendant's proposed late-filing of tariff pages or timetables.

Discussion

The pleadings and staff correspondence show that Catalina Express holds a CPCN to provide certain VCC service between Dana Point and Avalon. However, before it may initiate vessel service between those points, it must obtain further Commission authority.

The required further Commission authority is set forth by staff in its letter to defendant dated April 10, 1997 of which we have taken official notice. If Catalina Express elects to seek a change or expansion of its underlying authority, whether by petition for modification or by application, we will then consider the merits of such request. We here express no opinion on Dana Point/Avalon vessel service as that matter is being considered in Application (A.) 96-02-020 and A.96-04-013 where both complainant and defendant are parties.

As the Commission's Rail Safety and Carriers Division has advised that it will not accept defendant's tariff and timetable in the absence of further Commission authorization, there is no necessity for a cease and desist order preventing Dana Point/Avalon service. The question is moot and the complaint should be dismissed.

Findings of Fact

1. Island Navigation complains that Catalina Express intends to commence carriage of passengers, baggage, and other personal property between Dana Point, Orange County, and Avalon, Santa Catalina Island without possessing or first obtaining from the Commission a valid CPCN authorizing such service as required by PU Code § 1007.

2. Catalina Express denies the allegation and affirmatively alleges that it will not provide Dana Point/Avalon service unless authorized to do so by the Commission.

3. The Rail Safety and Carriers Division has advised that it will not accept defendant's tariff and timetable in the absence of further Commission authorization.

Conclusion of Law

The complaint is moot and should be dismissed.

ORDER

IT IS ORDERED that:

1. The complaint is dismissed.
2. This docket is closed.

This order becomes effective 30 days from today.

Dated June 11, 1997, at San Francisco, California.

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