

Decision 97-06-103 June 25, 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 Clipper, LLC, a Nevada corporation, and for Catalina Clipper, LLC to provide a Letter of Credit to secure transfer of the leasehold interest.

ORIGINAL

Application 97-03-038
(Filed March 24, 1997)

O P I N I O N

Summary

In this decision we approve the application of Catalina Cruises, Inc. (Cruises or seller) to transfer its certificate of public convenience and necessity (CPCN) and sell, assign, or otherwise transfer property, including a leasehold interest, to Catalina Clipper, LLC (Clipper or buyer), and to effectuate other actions necessary for Clipper to become the new owner and operator of common carrier vessel service now operated by Cruises. We find that the transaction is not adverse to the public interest, and that Clipper is fit to operate the service as its new owner.

Cruises is a California corporation which has been providing passenger vessel service to, from, and between points on Santa Catalina Island for approximately 26 years. Formerly operating under the name H. Tourist, Inc.,¹ Cruises is a wholly owned subsidiary of Crowley Marine Services, Inc., which in turn is wholly owned by Crowley Maritime Corporation. Seller currently holds authority from this Commission to provide service as a common carrier of passengers, mail, and periodicals by vessel

¹ The company changed its name in 1992, giving due notice to this Commission.

Footnote continued on next page

between the Port of Los Angeles (i.e., San Pedro) and the Port of Long Beach, and points on Santa Catalina Island, including Avalon and Two Harbors. It also holds authority to operate between other points on Santa Catalina Island.

Clipper is a Nevada corporation qualified to transact business in California. It was very recently formed for the specific purpose of acquiring Cruises' Catalina service operation. Its principal, Ray Handy, is currently president of Fun Zone Boat Co., Inc. (Fun Zone), which for many years has operated harbor tour and charter vessels at its Newport Beach location. Fun Zone currently operates five boats with a total passenger capacity of 596.

Under the transaction described in the application Cruises will sell or transfer, and Clipper will buy, substantially all of the assets currently utilized by Cruises to operate its mainland - Santa Catalina service, as well as the operating rights to do so. Upon conveyance Clipper will assume responsibility for operating the service with the vessels now operated by seller. Its proposal calls for operating daily year-round service with these vessels, and at a later time to add service with higher-speed vessels for which passengers would pay more for passage. In practical effect, Clipper at this time proposes only to step into Cruises' shoes as owner and operator of the service as it is now operated.

A schedule of the assets to be transferred in this transaction is set forth in the application.² The principal property to be transferred consists of the three 700-passenger vessels and one 141-passenger vessel that are currently employed to provide the cross-channel service; the CPCN; the barges which are used as passenger-loading platforms and tie-up facilities; and other miscellaneous equipment, supplies, and inventory. In addition the transaction includes assignment or transfer of seller's Long Beach terminal lease, and the water permit which allows access to the Long Beach terminal basin.

² See Appendix F to the application.

The purchase price for these assets is \$1,250,000 (cash). The original cost of the major fixed assets to be transferred is \$5,456,122, and the book value as of November 30, 1996 is \$968,638. As part of the sale and purchase, Cruises will assign its right, title, and interest in and to an office lease covering occupancy and use of the present Catalina Landing terminal facility in Long Beach. Clipper will assume the obligations of that office lease by executing an assignment and assumption agreement, and buyer will provide seller with a letter of credit to secure that assignment and assumption. Clipper will secure the line of credit with assets unrelated to this transaction.

A substantial majority of Cruises' employees belong to a collective bargaining unit, the Inland Boatmen's Union of the Pacific. Under the terms of an agreement with that union, Clipper has agreed to hire those employees upon consummation of the purchase of Cruises' assets. The average crew employee's experience in passenger vessel operations involving Santa Catalina Island is 15 years.

Under Cruises' operation, the historic high point of ridership on the cross-channel service was 1981. Since that peak the service has suffered a significant decline in ridership, and Cruises has been operating the service at a loss for the past several years.³ This is reflected in the financial statements which were furnished as part of the application. Under the service pattern planned by Clipper, the company forecasts a total profit of \$644,047 for the period from April 30, 1998, through March 31, 1999, its first full year of operation.

Buyer projects that by adding one or more high-speed vessels to the existing fleet, it will be better suited to grow in the existing marketplace. Its plans with respect to the vessels to be acquired are to survey them, improve the seating and other accommodations, modernize them, and (after the 1997 summer peak season) improve their stabilization systems for greater passenger comfort. The company intends to adopt

³ The application states that Crowley Maritime Corporation, seller's parent, independently decided to exit the passenger vessel business in California, and has recently done so with respect to vessel services on the San Francisco Bay as well. See Decision 97-06-066 (June 11, 1997.)

a two-tiered fare structure under which the basic adult round-trip fare would be \$23.00 on the former Cruises' vessels, and \$33.00 on the high-speed boats when they enter cross-channel service.

Although Island Navigation Company, Inc., a potential competitor,¹ initially protested this application and requested an evidentiary hearing, it recently withdrew that protest. We therefore treat this application as an ex parte matter.

Because this application only seeks authority to sell and transfer the existing service to a new entity, the sole question before us is whether such action would be adverse to the public interest. We conclude that it would not. As a new affiliate of an established local vessel operator, Clipper is well suited to assume the public service obligations of Cruises. It is an experienced passenger vessel operator in the local recreational market. It has conducted a reasonable analysis of the economic potential for the service it plans under its proposed operation, intends to make significant improvements in the vessels now used in the service, and will inherit a competent and experienced work force. We will approve the application and permit the sale, purchase, and transfer of assets as proposed.

Findings of Fact

1. Cruises is certificated to provide service as a common carrier by vessel of passengers, mail and periodicals between the Port of Los Angeles and the Port of Long Beach, on the one hand, and points on Catalina Island, on the other hand, and between points on Santa Catalina Island.

2. Clipper is a Nevada corporation in good standing which is qualified to do business in California. Clipper is an affiliate of Fun Zone, which is an experienced operator of harbor tour charter vessels located on Newport Beach. Clipper was organized for the specific purpose of purchasing and operating the common carrier

¹ Island Navigation Company, Inc., currently has an application pending before the Commission for authority to institute cross-channel services.

vessel services of Cruises, and substantially all of the assets presently utilized by Cruises to provide those services.

3. Clipper is financially fit to perform the common carrier vessel services presently operated by seller.

4. Clipper is operationally fit for perform the common carrier vessel services which are currently operated by seller.

5. Under the terms of the agreement between Cruises and Clipper, Clipper has agreed to hire the crew employees now employed by Cruises to provide the services which are the subject of the application. Cruises' average crew employees experience in passenger vessel operations involving Santa Catalina Island is 15 years.

6. There is no protest to the application, and there is no need for a formal evidentiary hearing in this proceeding.

Conclusions of Law

1. The proposed transfer and associated transactions which are the subject of the application are in the public interest.

2. All of the transactions should be authorized.

3. The application should be granted.

4. No public hearing should be held.

5. Only the amount paid to the State for operative rights may be used in rate fixing. The State may grant any number of rights and may cancel or modify the monopoly feature of these rights at any time.

O R D E R

IT IS ORDERED that:

1. Catalina Cruises, Inc. (seller) may sell and transfer the operative rights and property specified in the application to Catalina Clipper, LLC (buyer). As part of this approved transaction, buyer may provide a letter of credit to secure the assignment and assumption of a leasehold interest at the Long Beach ferry terminal. This authorization

shall expire if not exercised by September 25, 1997, or within such additional time as the Commission may authorize.

2. Buyer shall:

- a. File with the Commission staff written acceptance of the certificate and a copy of the bill of sale or other transfer document within 30 days after transfer.
- b. Amend or reissue seller's tariffs. The tariffs shall not be effective before the date of transfer, nor before five days' notice is given to the Commission.
- c. Comply with General Orders Series 87, 104, 111, and 117.
- d. File an annual report of seller's operations for the period from the first day of the current year to the date of transfer.
- e. Maintain accounting records in conformity with the Uniform System of Accounts.
- f. Remit to the commission the Transportation Reimbursement Fee required by Public Utilities.(PU) Code § 403 when notified by mail to do so.

3. When the transfer is completed, and on the effective date of the tariffs, a certificate of public convenience and necessity (CPCN) is granted to buyer, a limited liability company, authorizing it to operate as a common carrier by vessel, as defined in PU Code §§ 211(b) and 238, between the points and over the routes set forth in Appendix VCC-79, to transport persons, baggage, and property.

4. The CPCN initially granted by Decision 85-05-094 is revoked on the effective date of the tariffs.

This order is effective today.

Dated June 25, 1997, at San Francisco, California.

P. GREGORY CONLON

President

JESSIE J. KNIGHT, JR.

HENRY M. DUQUE

JOSIAH L. NEEPER

RICHARD A. BILAS

Commissioners

CERTIFICATE
OF
PUBLIC CONVENIENCE AND NECESSITY
AS A VESSEL COMMON CARRIER
VCC-79

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

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.

Supersedes authority heretofore granted to
H. Tourist, Inc., and its successor, Catalina Cruises, Inc.,
by D.85-05-094, as amended.

Issued under authority of Decision 97-06-103, dated
June 25, 1997, of the Public Utilities Commission of
the State of California in Application 97-03-038.

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

This certificate supersedes all vessel common carrier operative authority granted to Catalina Cruises, Inc., and its predecessor, H. Tourist, Inc.

Catalina Clipper, LLC, a corporation, by the certificate of public convenience and necessity granted by the decision noted in the foot of the margin, is authorized to conduct common carriage by vessels, for the transportation of passengers and their baggage, newspapers, periodicals, and mail, between the points as described in Sections II and III, subject to the following provisions:

- a. No vessel shall be operated unless it has met all applicable safety requirements, including those of the United States Coast Guard.
- b. Nonscheduled service shall be operated on an "on-call" basis. The term "on-call", as used, refers to service which is authorized to be rendered dependent on the demands of passengers. The tariffs and timetables shall show the conditions under which each authorized on-call service will be rendered.

Issued by California Public Utilities Commission.

Decision 97-06-103, Application 97-03-038.

SECTION II. Scheduled Service

A. Long Beach - Los Angeles

Between any points on and along the shoreline of Long Beach.

This service shall not include the transportation of mail, newspapers, and periodicals.

B. Los Angeles Harbor - Santa Catalina Island

Between the Port of Los Angeles (San Pedro) or the Port of Long Beach, on the one hand, and the following points on Santa Catalina Island, on the other hand:

Avalon	Camp Fox	Gallagher's Beach
Howland Landing	The Isthmus (Two Harbors)	
Toyon Bay	White's Landing	

Restrictions, Limitations, and Specifications:

In transporting mail, newspapers and periodicals:

- a. Service shall be provided following the same schedules and using the same vessels as are used by carrier in providing its scheduled passenger vessel services between the authorized points.
- b. Carrier shall only accept for transportation those shipments which are tendered to it at its terminal facilities at Long Beach, Los Angeles (San Pedro) or Avalon and which are destined to one of said terminal facilities.

Issued by California Public Utilities Commission.

Decision 97-06-103, Application 97-03-038.

SECTION II. Scheduled Service (concluded)

- B. Avalon - Two Harbors, Santa Catalina Island
Between Avalon and Two Harbors (Isthmus Cove), serving the intermediate points of Gallagher's Beach, White's Landing, Toyon Bay, and Camp Fox.

Restrictions, Limitations, and Specifications:

1. Service at intermediate points shall be conducted on a flag stop basis with advance notice to the carrier. Advance notice shall be defined in the carrier's tariffs and timetables. Daily service shall be provided during the period June 1 to September 15 of each year. Friday and Sunday service shall be provided during the period September 16 to November 30 and March 1 to May 31 of each year. Schedules shall be correlated to carrier's published arrival and departure times for service between Long Beach or Los Angeles (San Pedro) and Avalon.
2. Mail, newspapers, and periodicals shall not be transported.

SECTION III. Non-Scheduled Service

1. Los Angeles Harbor - Santa Catalina Island
Between the points shown in Section II B.

Restrictions, Limitations, and Specifications:

In transporting mail, newspapers and periodicals:

- a. Service shall only be provided in conjunction with and using the same vessels used by carrier in providing its non-scheduled passenger vessel services between the authorized points.
- b. Carrier shall only accept for transportation those shipments which are tendered to it at its terminal facilities at Long Beach, Los Angeles (San Pedro) or Avalon and which are destined to one of said terminal facilities.

Issued by California Public Utilities Commission.

Decision 97-06-103, Application 97-03-038.

SECTION III. Non-Scheduled Service (concluded).

2. Santa Catalina Island

Between all points on the coast of Santa Catalina Island.

Restrictions, Limitations, and Specifications:

- a. Transportation shall be performed at hourly rates which includes services of vessel, pilot, and crew, regardless of the number of passengers transported. Transportation shall not be performed on an individual-fare basis.
- b. This service shall not include the transportation of mail, newspapers, and periodicals.

3. Long Beach Harbor

Between any points on and along the shoreline of Long Beach Harbor.

This service shall not include the transportation of mail, newspapers, and periodicals.

Issued by California Public Utilities Commission.

Decision 97-06-103, Application 97-03-038.