

Mailed
JUN 27 1997

Decision 97-06-112 June 25, 1997

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of ISLAND BOAT SERVICE, a corporation for a certificate of public convenience and necessity to operate as an "on call" vessel common carrier between points at and offshore of Santa Catalina Island.

ORIGINAL

Application 97-03-007
(Filed March 5, 1997)

INTERIM OPINION

Island Boat Service (applicant) filed this application on March 5, 1997, to request a certificate of public convenience and necessity (CPCN) authorizing it to provide vessel common carrier service for the transportation of passengers and their baggage and any accompanying supplies between all points and places on and within one mile offshore of Santa Catalina Island, including all ships, docks, wharves, points and places within the above-named areas. The original application seeks our approval to operate three distinctly different services:

- a. nonscheduled, on-call tendering service between cruise ships anchored within one mile of the north shore of Santa Catalina Island, between Arrow Point and Church Rocks, and all points and places on Santa Catalina Island (the "Tendering Service");
- b. nonscheduled, on-call charter service between various coves, campsites, and other points and places on the north shore of Santa Catalina Island, between Arrow Point and Church Rocks, and all points and places on Santa Catalina Island (the "Campsite Charter Service"); and
- c. nonscheduled, on-call charter service between all points and places on Santa Catalina Island (the "Private Charter Service").

On March 14 applicant filed an amendment to its application in which it requested partial interim authority. The specific request states that the applicant seeks immediate approval to provide the Tendering Service and Campsite Charter Service on an interim basis, pending the Commission's decision on the application. Applicant does not seek interim approval of the Private Charter Service. In support of this limited request the amendment to the application provides the following facts:

"Each week, approximately 1,250 cruise ship passengers arrive offshore of Avalon, Santa Catalina Island ready to explore the island. During the past 15 years, Royal Caribbean Cruises, Ltd. (RCCL) alone has transported over 1 million passengers to Avalon.... These regular visits are extremely important to the economy of Santa Catalina Island. RCCL's passengers impact local revenues through their patronage of Avalon businesses as well as through the word-of-mouth promotion for the island generated by their visits. Any interruption of these visits would be devastating to the local economy. ...

"Because there are no docks on Santa Catalina Island large enough to accommodate the cruise ships, RCCL's passengers depend on smaller tendering vessels to shuttle them to and from Avalon for their onshore activities.... Currently, the Santa Catalina Island Company ('SCICo') [the applicant's parent company; footnote omitted] transports cruise ship passengers to the island each week using four small shore boats leased from Doug Bombard Enterprises. (These shore boats are under five tons net register and are not regulated by the Commission.) Unfortunately, the Doug Bombard Enterprises shore boats will no longer be available for tendering services after April 29, 1997. At that time, all of the shore boats must be dry-docked for inspection per United States Coast Guard regulations. After the inspections and any necessary repairs are complete, Doug Bombard Enterprises will return the shore boats to their former activities and will no longer lease them to SCICo for cruise ship tendering operations. Moreover, these shore boats are smaller, slower, and less comfortable than the larger tendering vessels owned by SCICo and available to Applicant for the proposed Tendering Service. The four leased shore boats have a combined capacity of approximately 125 passengers and a top speed of 8 knots, whereas the five vessels available to Applicant can travel at 12 knots and carry approximately 90 passengers each.

"The north shore of Santa Catalina Island, between Church Rocks and Arrow Point, is also home to several private camps operated by youth,

educational, and religious organizations. Many of these campsites, including that operated by Campus by the Sea, can only be accessed by water.... Although many of the camps own their own boats, these boats are too small to be safely used for transporting a large group of campers at one time or inclement weather. Beginning in May 1997, when the summer season begins, these camps will require access to larger vessels for transportation to various all-camp activities. Campus by the Sea, for example, will require transportation for 40-90 passengers between Avalon and its campsite at Gallagher Beach approximately 10-14 times this summer. In addition, camp operators will require larger vessels for transportation in heavy seas, or when bad weather renders previously-scheduled road transportation impracticable.

*"In view of these facts, Applicant seeks interim authorization to provide cruise ship tendering services and campsite charter services using the Company's vessels the *Blanche W.*, the *Ben Weston*, the *IronBound Bay*, the *Moonstone*, and the *Salta Verde*." (pp. 2-3.)*

The original application includes a letter from RCCL supporting the application (Exh. H), which stresses the advantages of the boats which the applicant intends to use in its Tendering Service. The amendment to the application includes a supporting letter from Campus by the Sea (Exh. N) which also stresses the suitability of one of applicant's vessels for its transportation needs.

Two protests were filed in response to the application, both of which request a hearing. These protests were filed, respectively, by the Commission's Rail Safety and Carriers Division (RSCD) and Island Navigation Company, Inc., a competitor of the applicant. Both protests raise issues of alleged violations of Public Utilities (PU) Code provisions by the applicant's corporate parent, and by the applicant on an alter ego theory. Neither protest raises serious questions of fitness or safety.

The applicant recently filed a motion to dismiss the protests and the Tendering Service portion of the application for lack of subject matter jurisdiction. In its response to that motion, RSCD states that it withdraws its protest to the application for the CPCN. This document specifically states that after further investigating the applicant's proposed service and water taxi service currently performed with vessels under five registered tons, "RSCD Staff finds that...safety concerns [raised by the protests] are not

borne out by the data gathered." (P. 2.) RSCD further states that it does not object to a "speedy" grant of interim authority that would allow the applicant to operate a water taxi service, as defined by § 238(a) of the PU Code.

The pending motion and surviving protest indicate that this proceeding is not yet ready to be resolved on its merits. However, we recognize the exigent need for approval of the requested interim services, now that the summer season has arrived. We are persuaded, based upon facts of record in numerous previous Commission proceedings, that this is a critical period for the Santa Catalina Island economy, and that our failure to act affirmatively could undermine the livelihood of those who are a part of it, as the applicant claims. Weighing this against the absence of harm to the public interest if we grant interim relief, we conclude that we must act affirmatively at this time.

We will grant the relief sought in the amendment to the application. The authority we grant in our order is interim in nature, and will be in effect only until the application is decided on its merits or otherwise finally resolved. The interim authority granted herein is also subject to modification or rescission by subsequent order in this proceeding, and the proceeding will remain open so that we may consider fully the issues of jurisdiction raised by the motion to dismiss, and the issues of unlawful conduct and unfair competition raised by the protests.

Findings of Fact

1. Applicant is a wholly-owned subsidiary of Santa Catalina Island Company (SCICo), the major commercial property owner on Santa Catalina Island. SCICo owns eight pleasure boats which it will lease to the applicant if applicant is permitted to operate them in the services for which it requests authority.
2. There is an immediate need for the services which applicant requests interim authority to operate.
3. Two protests have been filed in this proceeding. There is a pending motion to dismiss the portion of the application pertaining to the Tendering Services and the two

protests. These pending aspects of the proceeding are not susceptible of immediate resolution.

4. If we fail to grant the requested interim relief, serious economic harm could result to the residents and businesses on Santa Catalina Island, and the public interest could be adversely affected thereby, pending prompt resolution of the merits of this proceeding.

5. No harm to the public interest will occur if we grant the interim relief requested by the applicant, pending prompt resolution of the merits of this proceeding.

Conclusion of Law

Applicant's request for authority to provide the Tendering Service and the Campsite Charter Service described in its application should be approved. This approval should remain in effect only until a final decision is effective and concludes this proceeding.

INTERIM ORDER

IT IS ORDERED that:

1. A certificate of public convenience and necessity is granted to Island Boat Service, a corporation (applicant), 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-80, to transport persons, baggage, and property, but only with respect to the following services described in the application.

- a. nonscheduled, on-call tendering service between cruise ships anchored within one mile of the north shore of Santa Catalina Island, between Arrow Point and Church Rocks, and all points and places on Santa Catalina Island (the "Tendering Service"), and
- b. nonscheduled, on-call charter service between various coves, campsites, and other points and places on the north shore of Santa Catalina Island, between Arrow Point and Church Rocks, and all points and places on Santa Catalina Island (the "Campsite Charter Service").

2. Applicant shall:

- a. File with the Commission staff written acceptance of this certificate within 5 days after this order is effective.
- b. Establish the authorized service and file tariffs and timetables (as pertinent) within 10 days after this order is effective.
- c. State in its tariffs and timetables (as applicable) when service will start.
- d. Comply with General Orders Series 87, 104, 111, and 117.
- e. Maintain accounting records in conformity with the Uniform System of Accounts.
- f. Remit to the Commission the Transportation Reimbursement Fee required by PU Code § 403 when notified by mail to do so.

3. The authority granted herein is interim authority only, and shall expire not later than the date that the Commission's final order becomes effective in Application 97-03-007.

4. The authority granted herein is subject to modification or rescission by subsequent order in this proceeding.

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

T/MM

Appendix VCC-80

Island Boat Service
(a corporation)

Original Title Page

CERTIFICATE
OF
PUBLIC CONVENIENCE AND NECESSITY
AS A VESSEL COMMON CARRIER
VCC-80

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.

Issued under authority of Decision 97-06-112, dated
June 25, 1997, of the Public Utilities Commission of
the State of California in Application 97-03-007.

SECTION I. GENERAL AUTHORIZATIONS, RESTRICTIONS, LIMITATIONS,
AND SPECIFICATIONS (continued).

Island Boat Service, a corporation, by the interim certificate of public convenience and necessity granted by the decision noted in the foot of the margin, is authorized to conduct common carrier services by vessels, for the transportation of passengers and their baggage and property, between points as shown in Section II, subject to the following conditions:

- 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 terms and conditions under which services will be rendered.
- c. "On-call" service shall be performed at hourly or per diem rates which include the services of vessel and crew, regardless of the number of passengers transported. Transportation shall not be performed on an individual fares basis.
- d. This interim certificate shall expire on the effective date of the Commission's final order in Application 97-03-007.

Issued by California Public Utilities Commission.

Decision 97-06-112, Application 97-03-007.

SECTION II. Non-Scheduled Service.

- A. Ship-to-Shore (Tendering Service)
Between cruise ships anchored within one mile of the north shore of Santa Catalina Island, that is between Arrow Point and Church Rocks, and all points and places on Santa Catalina Island.
- B. North Shore Santa Catalina Island (Campsite Charter Service)
Between various coves, campsites, and other points and places on the north shore of Santa Catalina Island, that is between Arrow Point and Church Rocks, and all points and places on Santa Catalina Island.

Issued by California Public Utilities Commission.

Decision 97-06-112, Application 97-03-007.