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Decision 97-07-058 July 16, 1997

**ORIGINAL**

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

In the Matter of the Application of CATALINA CHANNEL EXPRESS, INC., a California corporation, for authority to modify its certificate of public convenience and necessity to operate as a common carrier by vessel in service involving points on Santa Catalina Island.

Application 97-02-006  
(Filed February 5, 1997)

**O P I N I O N**

**Background**

On February 5, 1997, Catalina Channel Express, Inc. (Catalina Express) filed an application seeking modifications to its existing authority to provide service between points on the California mainland and Santa Catalina Island (Catalina Island). Catalina Express requested that the Commission grant these modifications on an expedited, ex parte basis. In its reply to protests filed to the application, Catalina Express clarified its application to specify the modifications it sought:

1. To allow cross-channel scheduled service between San Pedro and Long Beach, and points on Catalina Island in addition to Avalon and Two Harbors; and
2. To remove the 49-passenger limitation currently imposed by the Commission.

Catalina Express further clarified in its reply that it was not seeking authority to provide any type of "water taxi" service, that is, service from boat-to-shore, shore-to-boat, vessel-to-vessel, or vessel-to-shore. Catalina Express also stated that its service from Dana Point will not be affected by these modifications.

Island Navigation Company, Inc., (Island Navigation) filed a protest to the application in which it asserted that Catalina Express had not demonstrated that the public interest required service to other points on Catalina Island, that Catalina Express' authority to provide service between Dana Point and Catalina Island had lapsed, and that Catalina Express was intending to provide water taxi service.

Catalina Adventure Tours, Inc., (Catalina Tours) also filed a protest to the application in which it stated that Catalina Express stands in contempt of the Commission for failing to provide scheduled service from Dana Point to Catalina Island and thus should not be allowed to call on the Commission to modify its operating authority.

The Commission's Rail Safety and Carriers Division also filed a protest to the application in which it contended that the market for cross-channel transportation was saturated, with other carriers experiencing significant operating losses, such that the market could not support additional services, as proposed by Catalina Express.

All of the protestants sought evidentiary hearings on the application.

On May 16, 1997, the assigned Administrative Law Judge served a ruling on the parties which set out proposed resolutions of the issues in this proceeding and requested comment from the parties. On June 9, 1997, protestant Catalina Tours filed its comments in which it accepted the applicant's disavowal of any intent to provide water taxi service, disputed whether applicant's service from Dana Point was properly at issue in dockets A.96-04-013 and A.96-12-030 but acknowledged that a disclaimer in this decision would remove the issue from this docket, and reiterated its arguments regarding contempt.

Protestant Island Navigation also filed comments on June 9, 1997, in which it specifically stated that it did not protest applicant's proposal to provide cross-channel service from Long Beach or San Pedro to points on Catalina Island other than Avalon or Two Harbors. Island Navigation did not state any objection to lifting the 49-passenger limitation for cross channel service but it did object to lifting the limitation for service between points on Catalina Island.

On June 11, 1997, applicant filed its reply to the protestants' responses. On the one remaining issue for which hearings were sought, lifting the 49-passenger limitation for service between points on Catalina Island, applicant offered to remove this request from its application to enable the application to be considered by the Commission on an ex parte basis.

### **Discussion**

In reviewing the application, protests, and reply to the protests, it appears that much of the alarm expressed in the protests arose from the lack of clarity regarding the specific operating authority modifications requested by the Catalina Express. The reply seems to have resolved much of the ambiguity.

**1. *Scheduled Service to Points In Addition To Avalon and Two Harbors***

Catalina Express states that it perceives a market for transportation services from San Pedro or Long Beach to points on Catalina Island other than Avalon or Two Harbors, which do not require passengers to transfer at Avalon or Two Harbors. No protest disputes this market analysis nor alleges any harm that would come to the public from Catalina Express providing such service on a scheduled basis.

**2. *Removal of the 49-Passenger Limitation***

Catalina Express states that this restriction on its operations was imposed by the Commission to satisfy a competitor's interest and that it should now be lifted. No protest disputed this allegation, nor did any protest allege that such a limitation was necessary to protect the public.

The application contained a vessel "fact sheet" setting out some specifications, including maximum number of passengers, for Catalina Express' vessels; most allow up to 149 passengers. The rationale for continuing to impose a 49-passenger limitation is not apparent from this record.

Island Navigation objects to lifting the restriction for service between points on Catalina Island, and requests hearings on this issue. To allow this application to be processed without a hearing, applicant has offered to withdraw its request to remove the 49-passenger limitation.

In reviewing this issue, we have assumed that Catalina Express is fully adhering to the letter and spirit of all safety regulations imposed by proper maritime authorities, including the United States Coast Guard. The Commission regards passenger safety as one of its highest priorities; it insists on full and complete

compliance with all safety regulations and will not hesitate to take prompt and decisive action to ensure such compliance.

**3. Service From Dana Point**

In responding to the protests of Island Navigation and Catalina Tours, Catalina Express stated that the modifications to this application do not affect service between Dana Point and points on Catalina Island. Catalina Express' authority to provide service between Dana Point and Catalina Island is the subject of currently pending Commission dockets, A.96-04-013 and A.96-02-030.

Any actions taken in this docket do not affect service between Dana Point and Catalina Island. All Dana Point issues will be resolved in these or other dockets, including any sanctions the Commission may find to be supported by the record.

**4. Conclusion**

Based on the above analysis, no disputed factual issues remain which would require evidentiary hearings, nor are any substantial legal issues apparent. Therefore, the modifications to the operating authority of Catalina Channel Express shall be granted on an ex parte basis as set out above.

**Findings of Fact**

1. Notice of this application appeared in the Daily Calendar on February 7, 1997.
2. Three protests were filed.
3. All issues raised by the protestants have been resolved through written pleadings filed in this docket, with the exception of lifting the 49-passenger limitation for service between points on Catalina.
4. Applicant has agreed to withdraw its request for a modification of its operating authority to lift the 49-passenger restriction for service between points on Catalina.
5. No disputed issues of fact remain.
6. The requested CPCN modification should be granted.

**Conclusions of Law**

1. The issue of whether applicant is in contempt of the Commission for actions regarding service from Dana Point is not properly before the Commission in this docket.
2. The Commission should not take any action in this docket which may affect resolution of any issues involving service between Dana Point and Catalina Island.
3. Ex parte consideration of this application is consistent with law and Commission policy.

**O R D E R**

**IT IS ORDERED that:**

1. The certificate of public convenience and necessity granted to Catalina Channel Express, Inc. (applicant), a corporation, authorizing it to operate as a vessel common carrier, as defined in Public Utilities (PU) Code §§ 211(b) and 238, to transport persons and their baggage between the points and over the routes set forth in Appendix A of Decision 93291, as amended, is further amended by replacing First Revised Page 4 with Second Revised Page 4 and adding Original Page 5. Second Revised Page 4 and Original Page 5 are attached to this decision.
2. Applicant shall:
  - a. File a written acceptance of this certificate within 30 days after this order is effective.
  - b. Establish the authorized service and file tariffs and timetables within 120 days after this order is effective.
  - c. State in the tariffs and timetables when service will start; allow at least 10 days' notice to the Commission; and make timetables and tariffs effective 10 or more days after this order is effective.
  - 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. No action taken in this proceeding shall have any effect on applicant's service between Dana Point and points on Santa Catalina Island.

4. The application is closed.

This order is effective today.

Dated July 16, 1997, at San Francisco, California.

P. GREGORY CONLON

President

JESSIE J. KNIGHT, JR.

HENRY M. DUQUE

JOSIAH L. NEEPER

RICHARD A. BILAS

Commissioners

SECTION II. Scheduled Service (Continued)

Avalon - Two Harbors, Santa Catalina Island

- G. Between Avalon and Two Harbors, both points on Santa Catalina Island.

Long Beach/Dana Point - Two Harbors, Santa Catalina Island

- H. Between the Queen Mary landing in Long Beach and Dana Point Harbor, on the one hand, and Two Harbors, Santa Catalina, Island, on the other hand.

\*Los Angeles or Long Beach Harbors - Santa Catalina Island

- I. Between the Los Angeles or Long Beach Harbors and all points on Santa Catalina Island.

Issued by California Public Utilities Commission.

\*Revised by Decision 97-07-058, Application 97-02-006.

SECTION III. Nonscheduled Service (Formerly on First Revised Page 4)

- A. Los Angeles/Long Beach - Santa Catalina Island  
Between Berth 95-96 in the Los Angeles Harbor and the Queen Mary landing in Long Beach, on the one hand, and all points on Santa Catalina Island, on the other hand.

- Santa Catalina Island  
B. Between any points on Santa Catalina Island, provided that no vessel shall carry more than 49 passengers to any one location, other than Avalon and Two Harbors.

Issued by California Public Utilities Commission.

\*Revised by Decision 97-07-058, Application 97-02-006.