

Decision 98-12-050 December 17, 1998

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

In the Matter of the Application of ISLAND NAVIGATION COMPANY, INC., a California corporation doing business as CATALINA ISLAND WATER TRANSPORTATION CO., (VCC-43), to amend its certificate of public convenience and necessity and to extend its operating authority to include the transportation of persons and baggage by vessel between Dana Point and Long Beach, California, on the one hand and all points and places on Santa Catalina Island on the other hand.

**ORIGINAL**

Application 96-04-013  
(Filed April 9, 1996)

**DECISION ON PETITION OF ISLAND NAVIGATION COMPANY, INC.,  
FOR MODIFICATION OF DECISION 97-11-027**

Island Navigation Company, Inc. (petitioner) has asked the Commission to modify the final sentence of Section I.b. of Appendix A of Decision (D.) 97-11-027. Inasmuch as petitioner's proposed modification reflects our intent at the time we issued D.97-11-027 we will grant the petition.

In D.97-11-027 we addressed two applications for authority to establish new common carrier vessel services between points on the California mainland, on one hand, and Santa Catalina Island, on the other. As part of that decision we authorized the petitioner to operate scheduled service between Long Beach and Santa Catalina Island, and nonscheduled service between Dana Point and Santa Catalina Island. Although our order had the effect of modifying petitioner's certificate of public convenience and necessity (CPCN) to add the

new services, we did not address petitioner's local Santa Catalina Island services in in any respect.

D.97-11-027 adopted an alternate decision sponsored by two Commissioners in lieu of the proposed decision (PD) of the administrative law judge (ALJ). The alternate differed from the PD in that it permitted more liberal entry into the cross-channel market, and any changes to the appended CPCNs were intended only to accomplish that purpose. Whereas Appendix A to the PD, which sets forth the formal language of the CPCN, properly described the conditions and limitations of services which would have been granted if that version had been adopted, certain language was added to alternate Appendix A to limit the terms for providing nonscheduled service, creating an ambiguity in the description of the petitioner's pre-existing operating authority. It is this ambiguity which the petitioner now seeks to correct here.

The petition is opposed by Santa Catalina Island Company (SCICo.), on the grounds that the newly inserted language in Appendix A could be interpreted to expand the petitioner's authority to operate local Catalina Island water taxi services. However, as we have noted, our intent in issuing D.97-11-027 was only to enlarge petitioner's authority to add new scheduled and nonscheduled cross-channel services. The controversial language, a restriction against operating the latter on an individual fare basis, was inserted to prevent petitioner from competing impermissibly with operators of scheduled service.

Petitioner suggests that we remedy this ambiguity by inserting language in Appendix A to make it clear that the limitation refers specifically to its newly authorized cross-channel service, thus leaving its prior operating authority unaffected. This is rational solution to the problem, reflecting exactly what we intended without broadening our inquiry to include the issue of what the petitioner was permitted to do under its longstanding authority to operate water

taxi service. If there is a serious issue about the extent of that authority, SCICo may raise it by filing a formal complaint with the Commission, but not by bootstrapping our language that was not included for that purpose.

We will grant the petition for modification .

### **Findings of Fact**

1. Petitioner is vessel common carrier which has been authorized to operate local nonscheduled vessel services between and among points onshore and offshore of Santa Catalina Island since 1976.

2. In D.97-11-027, we authorized the petitioner to operate scheduled vessel service between Long Beach and Santa Catalina Island, and nonscheduled service between Dana Point and Santa Catalina Island.

3. The Commission did not intend to alter petitioner's existing authority to operate local nonscheduled vessel services by issuing D.97-11-027. The sole purpose of that decision was to authorize the operation of new cross-channel services between mainland points and Santa Catalina Island by applicants who did not previously possess such authority.

4. D.97-11-027 amended Section II.B. of Appendix A of petitioner's operating authority by adding the following descriptions of nonscheduled services which the petitioner is permitted to operate:

2. \*Dana Point - Santa Catalina Island  
Between Dana Point and all points and places on Santa Catalina Island.

3. \*Long Beach - Santa Catalina Island  
Between Long Beach and all points and places of Santa Catalina Island.

5. D.97-11-027 also revised Section I.b. of Appendix A of petitioner's operating authority. As adopted in that decision, Section I.b. now states:

Nonscheduled service shall be operated on an "on-call" or "charter" basis. The term "on-call", as used herein, refers to service which is authorized to be rendered dependent on the demands of passengers. The term "charter," as used herein, refers to service in which the vessel is engaged, for a specified charge, by a person or group of persons for the exclusive use of said person or group of persons. The tariffs shall show the conditions under which each authorized "on-call" or "charter" service will be rendered and the transportation shall not be performed on an individual fare basis.

6. Inclusion of the final sentence of Section I.b. creates an ambiguity with respect to the local services authorized to be operated by the petitioner. This ambiguity can be eliminated by inserting a specific reference to the nonscheduled cross-channel services authorized by D.97-11-027 to differentiate them from the previously authorized local services.

7. Modification of D.97-11-027 as specified in the preceding paragraph will reflect the Commission's intent with respect to that decision.

#### **Conclusion of Law**

The petition for modification of D.97-11-027 should be granted.

**O R D E R**

**IT IS ORDERED that:**

1. The final sentence of Section I.b. of Appendix A to Decision 97-11-027 of this Commission shall be amended to read as follows:

The tariffs shall show the conditions under which each authorized "on-call" or "charter" service will be rendered and the transportation authorized in Sections II.B.2. and II.B.3. shall not be performed on an individual fare basis.

2. Application 96-04-013 is closed.

This order is effective today.

Dated December 17, 1998, at San Francisco, California.

**RICHARD A. BILAS**

President

**P. GREGORY CONLON**

**JESSIE J. KNIGHT, JR.**

**HENRY M. DUQUE**

**JOSIAH L. NEEPER**

Commissioners