

Decision 98-12-059 December 17,1998

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Island Navigation Company, Inc., doing business as Catalina Island Water Transportation Co., for Authority to Increase Rates of Fare and for an Ex Parte Interim Order Authorizing the Same.

Application 98-05-037
(Filed May 21, 1998)

INTERIM OPINION

Summary

This decision authorizes Island Navigation Company, Inc. (Island Navigation) to increase and restructure its Santa Catalina Island non-scheduled passenger vessel rates. Island Navigation may, on an interim basis pending further order in this proceeding, provide its ship tendering services at rates to be determined in negotiations with individual oceangoing ship companies. Revised tariffs to reflect these authorized changes, except contract tendering, may be made effective on less than 30 days' notice.

Background

Since 1976, Island Navigation (VCC-43) has been a certificated vessel common carrier engaged in the non-scheduled transportation of persons and hand-baggage between points and places on Santa Catalina Island, between those points and places and vessels offshore, and between the vessels themselves. Under that authority, Island Navigation has provided local Santa Catalina Island transportation services frequently referred to as water-taxi service and/or shoreboat service. In late-1997, we granted Island Navigation additional

authority allowing it to provide scheduled and non-scheduled cross-channel services between Santa Catalina Island points and Dana Point and Long Beach on the mainland. At the time this application was filed, Island Navigation had not yet begun cross-channel service.

Island Navigation characterizes this application as a rate increase for its water transportation services. In addition to requesting higher rates for virtually every service it currently offers, it also proposes to revise the manner in which it determines its rates for some of those services. The proposed revised tariff is included in the application as Exhibit D, with minor typographical corrections as discussed at the prehearing conference. It would:

- (a) increase every currently-effective per-person and per-hour rate for tariff Areas 1 through 6;
- (b) decrease the minimum number of hours chargeable for tariff Area 5;
- (c) increase the rate for tariff Area 7, annual pass;
- (d) establish an alternative minimum charge based on the number of passengers transported for tariff Areas 4, 5, and 6; and
- (e) establish an alternative charging method for tendering service in tariff Area 6.

Island Navigation's current and proposed rate elements and rates are summarized in Appendix A to this decision.

Island Boat Service (Island Boat)(VCC-80) filed a timely protest to the application in its entirety. Island Boat alleges that the application fails to demonstrate the financial necessity for the proposed fare increases or for an *ex parte* grant of the application. Moreover, according to Island Boat, neither the proposed per-passenger rates nor the other proposed new classes of service are authorized by Island Navigation's existing Certificate of Public Convenience and

A.98-05-037 ALJ/JCM/avs *

Necessity (CPCN). Island Boat would have the Commission summarily deny the application or set it for evidentiary hearing.

Protestant Island Boat currently provides non-scheduled tendering service and campsite charter service pursuant to interim authority the Commission granted in Decisions (D.) 97-06-112 and 97-07-004, pending a final decision on whether to make that authority permanent. Both Island Boat and its parent corporation, Santa Catalina Island Company (Island Company), appeared at the prehearing conference held July 13, 1998. In addition to being the major residential and commercial property holder on Santa Catalina Island, Island Company provides water-taxi or shoreboat service using smaller vessels that do not bring it under Commission jurisdiction. Thus both Island Boat and Island Company are competitors to Island Navigation. Their counsel stated at the prehearing conference that Island Company would not seek to raise any new issues but shares Island Boat's concern for those it has raised. Island Navigation and Island Boat have been very much involved in one another's proceedings in the recent past, as well. Island Navigation is a protestant in Island Boat's still-pending Application (A.) 97-03-007 for a CPCN. And Island Boat responded in opposition to Island Navigation's petition to modify D.97-11-027 in the cross-channel proceeding.

In Resolution ALJ 176-2994 dated June 4, 1998, the Commission preliminarily categorized this application as ratesetting, and preliminarily determined that hearings were necessary.

The assigned Commissioner issued his SB 960 scoping ruling on September 23, 1998, confirming the Commission's preliminary categorization of this as a ratesetting proceeding and determining that the Commission may wish to decide some portion of Island Navigation's request *ex parte* and set the remainder for hearing.

Discussion

Island Navigation's requests can be broken down into three sets for purposes of our evaluation: first, topics (a), (b) and (c) above which involve revising specific rates and a minimum charge period, all of which appear in Island Navigation's current tariffs; second, topic (d) which establishes a new, alternative minimum charge within a current tariff; and third, (e), Island Navigation's proposal to establish an alternative charging method for tendering service which it currently provides under other tariff provisions.

Rate Revision

Island Navigation seeks rate revisions that would entail raising every rate and charge shown in its current tariff for Areas 1 through 7, and decreasing the current four-hour minimum charge in Area 5 to two hours.

Island Navigation's current rates were established in 1987 based on its fiscal year 1986/87 results of operations. Its most recent unaudited, recorded results, included as application Exhibit B, show regulated revenues and expenses of \$672,083 and \$706,256 respectively, for a net loss of \$34,173 and a 105% operating ratio in the year ending September 30, 1997. It estimates that the increased rates requested in the application would bring in additional gross revenues of \$154,799 annually at 1997 passenger counts. Taking into account known actual, contingent or anticipated expense increases, and assuming that the 1997 passenger counts hold steady, Island Navigation projects a \$230,717 operating loss for its year ending September 30, 1998 with no fare increase, or \$75,918 (a 109% operating ratio) with this increase imputed for the full year (application Exhibit E).

Island Navigation's combined results of operations for water-taxi/shoreboat services and tendering services mask their drastically differing

differing profitabilities. Water-taxi/shoreboat services would have been highly unprofitable but for the success of cruise ship tendering, a subset of those services. Application Exhibit F illustrates the point: when regulated tendering revenue and expense is removed from the recorded 1997 results, water-taxi/shoreboat shows a net loss of \$314,845 (compared to a combined net loss for all services of \$34,173 as noted above), and a 198% operating ratio. Island Navigation has in years past been able to rely on tendering revenues because of its contractual agreement with the City of Avalon to provide the service. Unfortunately for Island Navigation, Avalon began permitting competitive tendering services in mid-1997, and with the Commission's certification of Island Boat in D.97-06-112, Island Navigation's tendering service revenues dropped drastically beginning in August, 1997. Island Navigation anticipates that its operating shortfalls will eventually be offset by revenue generated by its newly-certificated (but not yet initiated) cross-channel services the Commission authorized in D.97-11-027. Nonetheless, its unaudited results provide clear support for the increase it requests.

Island Boat's protest presents two primary allegations concerning the portion of Island Navigation's request that involves raising rates and charges shown in its current tariffs. First, it points out that by D.97-11-027 in the cross-channel proceeding the Commission modified Island Navigation's CPCN to prohibit non-scheduled service on an individual fare basis. That would have put Island Navigation in violation of its certificate for charging the per-person rates appearing in its current tariffs, rates which it now seeks to increase. Pursuant to Island Navigation's Petition to Modify D.97-11-027, we have issued D.98-12-050 revising the CPCN to comport with our intent in issuing it. Charging for non-scheduled, currently-tariffed services on an individual fare basis is no longer an issue.

Next, Island Boat questions whether Island Navigation has demonstrated the financial necessity for increasing rates. In a long series of conjectures, Island Boat states that Island Navigation's financial showing "appears to be incomplete" and "may be misleading," or "may overstate," "might have exaggerated," "could have overstated," etc., various results. Island Boat concludes that "further investigation into the accounting basis for the financial information presented in the Application is clearly necessary," and requests the matter be set for evidentiary hearing.

Island Navigation has made a financial showing that it is experiencing losses at present rates as a result of newly-emerged competition. Those losses are sufficiently great and Island Navigation's showing sufficiently convincing that nothing Island Boat or Island Company have offered to present at hearing would be likely to reverse that conclusion. The rate relief Island Navigation proposes is justified.

Alternative Minimum Charges

Island Navigation currently charges for its non-scheduled services in tariff Areas 4, 5, and 6 on an hourly basis, with a minimum of two or four hours depending on the area. It proposes to add a new, alternative per-person charge element in each area, thus making the rates and rate structures for Areas 4, 5, and 6 identical to those currently in effect for tariff Area 3, but with different minimum hours. The charge for service will, in every case, be the higher of the charges calculated using the per-person or hourly rates.

Island Boat objects to this proposal, again ostensibly on the basis that Island Navigation's CPCN prohibits it from charging for non-scheduled service on an individual fare basis. And, as before, our D.98-12-050 revising Island Navigation's CPCN made charging for non-scheduled services on an individual fare basis no longer an issue. The motivation behind Island Company's

opposition to adding per-person charges was explained by its counsel in the prehearing conference:

The Santa Catalina Island Company, [Island Boat's] parent, provides non-regulated activities. So they operate vessels, in fact, some of the same vessels that Island Boat Service operates. They operate tour services. They operate the shoreboat services in the ... entirety of the rest of the island, including the Two Harbors area and points in between and beyond.

And one of the questions that is raised by this [application] is whether Island Navigation is in fact seeking to operate or, in essence, seeking authority to operate a competing shoreboat service in the remainder of the island.

Historically, they have operated -- been able to serve those portions of the island on an on-call charter basis at per-day and per-hour rates for renting the entire vessel together with crew regardless of the number of people transported.

In this application, they are seeking for per-passenger rates, which while as presently configured perhaps don't make them a terribly economic competitor to the shoreboat service provided by the Island Company, ... a rate-decrease proceeding wouldn't receive the same scrutiny that a rate-increase proceeding would.

And, in essence, we think that this is a request for a modification of its certificate to provide a competing service which we're very concerned about. (Prehearing conference transcript, pp. 19-20.)

In approving Island Navigation's otherwise-unremarkable request to apply per-person charge elements in tariff Areas 4, 5, and 6 similar to those currently in effect for Area 3, we are in no sense broadening its CPCN to enable it to provide services that are today prohibited. Rather, Island Navigation will simply be tariffed to collect from customers amounts calculated as the *higher* of those on a per-person basis or hourly basis. Nor does Island Company's concern that Island Navigation may some day seek our authority to decrease its rates to better compete with Island Company's or Island Boat's current or future services cause

us great distress -- we will deal with that possibility if and when it should materialize.

Alternative per-person charge elements in Areas 4, 5, and 6 will either increase or have no effect on charges to those taking service. To the extent that charges are increased, the resulting revenues will help offset Island Navigation's operating losses and are justified.

Tendering Service

Island Navigation states that for many years it has provided regulated tendering service to cruise ship lines, shuttling ship passengers to and from shore under its non-scheduled service tariffs and CPCN and an exclusive contract with the City of Avalon. In mid-1997, the City of Avalon began permitting competitive tendering services, and the Commission certificated Island Boat to provide them beginning in August, 1997 (D.97-06-112 and D.97-07-004). Those decisions permitted Island Boat to perform tendering service at contract rates determined in negotiations with individual ocean-going shipping clients. Island Navigation has not historically enjoyed contracting ability. In this application, it seeks the same freedom to negotiate tendering contracts the Commission granted Island Boat.

Island Boat protests that, while it supports a level playing field, the application does not explicitly request an amendment to Island Navigation's current CPCN:

I think it is true that Island Navigation is seeking two things: Increased flexibility in the way in which they negotiate and provide services that they provide, and an increase in rates.

The term "flexibility," I would submit, is a synonym for the modification of their operating authority.

So while I support wholeheartedly a level playing field in the provision of shoreboat and tendering service at Catalina Island, I think it's important to recognize that this is a ratesetting hearing that is intended to adjust rates for presently existing operating authority. And the applicant hasn't requested modification of their existing operating authority. (Prehearing conference transcript, p. 8.)

Yet, Island Boat also acknowledges that what Island Navigation requests isn't necessarily viewed as a different type of service than is currently provided:

I guess there is a question underlying the request for modification of their authority for the ability to charge on contract rates. And in my mind that isn't necessarily a different type of service than the non-scheduled service that they are providing, but it's a different way, a flexibility, to use [Island Navigation counsel's] term, in the way in which they calculate the fee that the cruise ship company would owe the tendering service for the tendering service.

The certificate of public convenience and necessity that they have presently would require that that service be provided on an hourly or per-day rate. They apparently are asking for flexibility to charge on different bases.

Again, we would be willing to consider those issues in a proceeding for a modification of their authority, but we think a ratesetting proceeding is the wrong place to do that. (Prehearing conference transcript, p. 10.)

Island Boat then went on to express reservations as to how Island Navigation might implement negotiated contract tendering if it were authorized. Island Navigation responded by reiterating that all it seeks is what the Commission has previously granted Island Boat.

The Administrative Law Judge at the prehearing conference declined to require Island Navigation to modify the application as Island Boat requests, holding that it is sufficiently clear and encompassing for its purpose as filed. We agree. Island Navigation is not seeking to provide a new service for which a modification of its CPCN is necessarily required. D.97-06-112 and D.97-07-004

established specific provisions in Island Boat's CPCN requiring it to tariff its tendering terms and conditions and to perform tendering service at contract rates determined in negotiations with individual ocean-going shipping clients. Island Navigation's current tendering service, by contrast, falls under an existing, more general provision in its CPCN that requires it to show the conditions of service but is silent as to the need to tariff rates or to charge hourly or per-day rates. It is Island Navigation's tariffs that currently define its tendering conditions and rates. This is not a certification proceeding in which we need to determine whether the public convenience and necessity support offering a new service or to evaluate Island Navigation's fitness to provide it. The service is already provided, and it is only the method of determining charges that will change. To authorize contract tendering, we need only permit Island Navigation to make tariff modifications as it requests in the application.

In the interests of restoring a level playing field for the two competitors, we will grant Island Navigation the same flexibility to negotiate contract tendering rates that we granted Island Boat. Island Boat's tendering authority was granted on an *ex parte* interim basis in A.97-03-007 (D.97-06-112 and D.97-07-004) pending a final determination on the merits. Among the issues we have been asked to address there is whether negotiated contract tendering should be considered a regulated service. We will likewise grant Island Navigation's authority on an interim basis in this proceeding. The Commission's decision in A.97-03-007 regarding the disposition of Island Boat's interim tendering CPCN may have implications for the corresponding issue in this proceeding.

Island Navigation requests authority to make its increased rates effective on less than the 30 days' notice set forth in Public Utilities Code § 491 so that it might take advantage of the summer peak season. Although the peak season has now passed, we will do so in recognition of the need to minimize Island

Navigation's ongoing losses. Our staff will need an opportunity to review Island Navigation's revised tendering service tariff and conditions, however, so we will adhere to the 30-day requirement in § 491 for that authority.

Findings of Fact

1. Island Navigation experienced a net loss on its regulated vessel common carrier operations on a recorded basis in the 12 months ending September 30, 1997.
2. Island Navigation would still experience a net loss on its regulated vessel common carrier operations in the 12 months ending September 30, 1998 at the increased and restructured rates authorized in this decision.
3. Authorizing Island Navigation to apply per-person charge elements in tariff Areas 4, 5, and 6 similar to those currently in effect in Area 3 would not enable it to provide services that are today prohibited by its CPCN. Rather, it would permit an alternate method of calculating charges for currently-authorized services.
4. Alternative per-person charge elements in Areas 4, 5, and 6 would either increase or have no effect on charges to those taking service. Where charges are increased, the resulting revenues would help offset Island Navigation's operating losses and are justified.
5. Granting Island Navigation flexibility to negotiate contract tendering rates would help establish a level playing field between competitors. To the extent Island Navigation can more successfully compete, it would have an opportunity to regain revenues to offset its losses.

Conclusions of Law

1. Island Navigation's currently-effective CPCN does not prohibit it from providing non-scheduled vessel common carrier service on an individual fare basis.
2. Island Navigation has shown that the increased and restructured rates authorized in this decision are justified.
3. Island Navigation should be authorized, on an interim basis, to charge for its tendering service at contract rates determined in negotiations with individual ocean-going shipping clients.
4. Island Navigation should be authorized under PU Code § 491 to implement the increased and restructured rates approved in this decision, except those for contract tendering, on less than 30 days' notice.
5. No hearing is required for the authority granted in this interim decision.
6. The order that follows should be made effective immediately so as to help stem the losses Island Navigation is already experiencing.

INTERIM ORDER

IT IS ORDERED that:

1. Island Navigation Company, Inc., (Island Navigation) is authorized to increase its non-scheduled vessel common carrier rates and restructure its rate elements as shown in Appendix A to this decision.
2. Island Navigation is authorized, on an interim basis pending further order in this proceeding, to perform its tendering service at contract rates determined in negotiations with individual ocean-going shipping clients. Island Navigation's tariff shall show the terms and conditions under which the service will be rendered.

A.98-05-037 ALJ/JCM/avs *

3. To implement the authority granted herein, Island Navigation shall file in accordance with General Order 117 Series revised tariff sheets on or after the effective date of this order. The effective date of the revised sheets implementing tendering at contract rates shall be no earlier than 30 days after filing. The effective date for other revised sheets and rates shall be no earlier than 7 days after the date of filing.

4. This proceeding shall remain open pending a final determination regarding Island Navigation's authority to charge for tendering services at negotiated contract rates.

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

A.98-05-037 ALJ/JCM/avs

APPENDIX A

Appendix A
Island Navigation
Current and Proposed Rates and Rate Elements

		Current	Proposed/Adopted
Area 1 Avalon Bay, between any two points within the line connecting Casino and Cabrillo Points	Adults	\$2.00	\$3.00
	Children, 12 & under	1.00	2.00
	Commuter card - 10 adult fares	16.00	20.00
Area 2 Seaward, between a point outside Avalon Bay (½ mile at sea and between Abalone Point and White Rock) to another such point or Avalon Bay	Adults	2.50	3.50
	Children, 12 & under	1.00	2.00
	Commuter card - 10 adult fares	20.00	25.00
Area 3 Seaward, between points one of which is westerly of White Rock and east of White's Landing	Per person	5.00	7.50
	Per hour - 1 hour minimum	95.00 Whichever is greater	150.00 Whichever is greater
Area 4 Seaward, between points one of which is White's Landing or westerly, and Long Point	Per person	-	7.50
	Per hour - 2 hour minimum	95.00	150.00 Whichever is greater
Area 5 Seaward, between points one of which is beyond the foregoing or ½ mile at sea	Per person	-	7.50
	Per hour	95.00 (4-hour minimum)	150.00 (2-hr minimum) Whichever is greater
Area 6 On-call charter - All areas within 3 miles of Catalina	Per person	-	7.50
	Per hour - 4 hour minimum	95.00	150.00 Whichever is greater
	Negotiated tendering		Per rates to be determined in negotiations with individual oceangoing shipping companies which may use the service
Area 7	Annual pass, Areas 1 & 2 only	500.00	700.00

(END OF APPENDIX A)