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VIA EMAIL AND FIRST CLASS MAIL

Rachel Peterson, Executive Director
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102
Email: rachel.peterson@cpuc.ca.gov

Re: Resumption of Fuel Surcharge Authorized by Resolution TL-19115 (December 19, 2013)

Dear Ms. Peterson:

On behalf of vessel common carriers regulated by the Commission[1], we write to request that the Commission issue a resolution authorizing VCCs to temporarily increase rates to reflect the recent dramatic rise in the cost of fuel. In support of their request, the carriers present the following:

Past Fuel Cost Surcharge Resolutions

Roughly twenty years ago, in response to letters from several vessel common carriers, the Commission issued Resolution TL-18927 granting a fuel surcharge to all vessel common carriers ("VCCs") authorizing them to temporarily increase fares up to 15% without further authorization from the Commission. That temporary authority was extended by subsequent resolutions to June 30, 2002.[2]

Subsequent extensions of the fuel surcharge were described in Resolution TL-19103 (December 1, 2011) as follows:

> By Resolution TL-19042, dated June 9, 2004, we authorized VCCs for a 180-day period to file tariffs with fare and rate adjustments within a zone of reasonableness which had an upper limit of 15% above authorized fares and rates. We acted in response to the requests of VCCs who were seeking relief from rapidly rising fuel costs. We agreed that the approximately 20 licensed

[1] Specifically, we write on behalf of Avalon Freight Services (VCC-91), Blue & Gold Fleet (VCC-77), Catalina Channel Express (VCC-52), Catalina Classic Cruises (VCC-86), and Catalina Passenger Service, Inc (VCC-47).
[2] See, *Catalina Channel Express*, Decision 04-04-004, footnote 3.

> VCCs should have a convenient mechanism to quickly adjust their fares and rates to recover their increased fuel costs. In December 2004 the special authority was extended for one year and has been extended for additional one-year periods since then. In several instances the level of the zone was adjusted at the same time. It was expanded from 15% to 20% in 2005 and from 20% to 30% in 2008. It was reduced back to 20% in 2009 and most recently was extended for another year at the 20% level by Resolution TL-19100, dated December 16, 2010. The authority is scheduled to expire on December 16, 2011.

Resolution TL-19103 itself extended the 20% fuel surcharge to December 16, 2012.[3]On January 19, 2013, by Resolution TL-19106, the Commission extended the 20% fuel surcharge to December 16, 2013.[4]By Resolution TL-19115 (December 19, 2013), the Commission extended the 20% fuel surcharge to December 16, 2015.[5]

The Commission has not extended the fuel surcharge past December 16, 2015. Vessel common carriers subject to the Commission's jurisdiction ask that it do so now.

Increases in the Cost of Fuel

In TL-19115, the Commission stated that:

> SED advises that a relevant benchmark for fuel commonly used by VCCs is the spot market price at Los Angeles for low-sulfur No. 2 diesel fuel. The table below shows monthly average prices per gallon for that benchmark published by the U.S. Energy Information Administration for the 18-month period April 2012 through September 2013. The figures demonstrate that there has been some volatility in prices.[6]

The figures compiled by SED showed, for example, a 23% increase between June and September of 2012.

The cost of fuel since the expiration of the last fuel cost surcharge has been sustained and, in recent months, dramatic. According to the United States Energy Information Administration, in December of 2015, when the fuel surcharge authorized by Tl-19115 expired, the price of Ultra-low sulphur diesel fuel was roughly $1.12/gallon at the Port of Los Angeles. On March 7, 2022 it reached $3.957/gallon, over triple the December 2015 level. In the 12-month period from March 8, 2021 to March 7, 2022, the price per gallon has increased 102% [7] The price has increased 62% since the end of 2021.[8]

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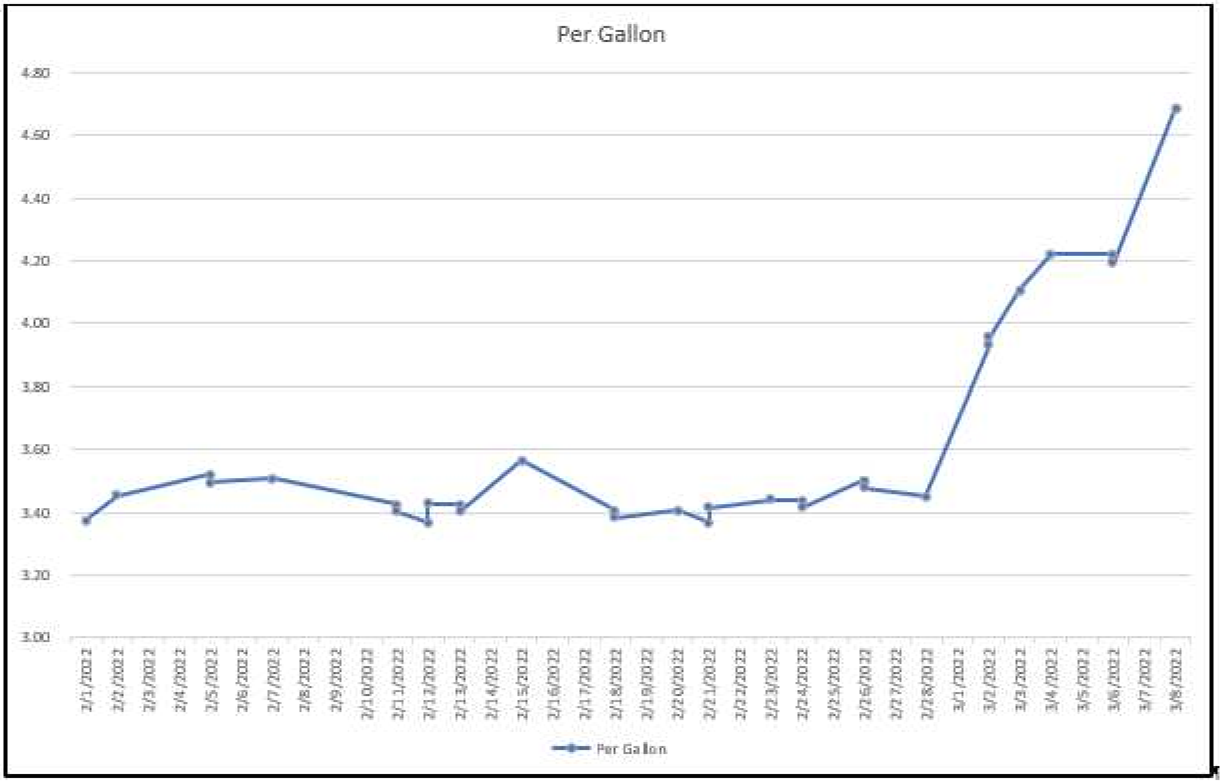
[3] Resolution TL-19103 (December 1, 2011), Ordering Paragraph 1.
[4] Resolution TL-19106 (January 10, 2013), Ordering Paragraph 1.
[5] Resolution TL-19115 (December 19, 2013), Ordering Paragraph 1.
[6] *Id* at page 3.
[7] See, https://www.eia.gov/dnav/pet/hist/eer_epd2dc_pf4_y05la_dpgD.htm
[8] *Id*.

For Catalina Channel Express, California's largest CPUC-regulated vessel passenger carrier, the increases in fuel costs since February 1, 2022 are shown below:



The fuel cost increases reflected in the USEIA site[9] far exceed anything reflected in TL-19115 when TL-19115 authorized a two-year extension of the 20% surcharge. Moreover, given the state of events in the world, the price of fuel is likely to remain very high. A new fuel surcharge is plainly warranted.

Modification of Rates and Zones of Rate Freedom

In *Catalina Channel Express, Inc*, the Commission held that it "may lawfully exercise discretion to allow a vessel common carrier to establish a ZORF under Article XII, Section 4 of the California Constitution and Section 701 of the Public Utilities Code." It noted that, "(t)aken together, California Constitution Article XII, Section 4 and PU Code § 701 grant the Commission broad discretion to fashion rules relating to transportation rates in the State which are unorthodox by comparison to traditional cost-of-service regulation."[10]

Past fuel surcharges authorized by the Commission have (1) authorized carriers to implement a zone of rate freedom ("ZORF") setting the upper end of the ZORF at 20% above its previously authorized rates but (2) excluded carriers operating under a previously existing ZORF that

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[9] *Id*.

[10] *Catalina Channel Express, Inc* Decision No. 98-12-016,1998 Cal. PUC LEXIS 868*6.

authorized ZORF increases of 20% ("ZORF Carriers") . The Commission should not, however, exclude ZORF carriers from the fuel cost surcharge sought here.

First, many carriers have already exercised their authority to increase rates to near the cap of the ZORF to account for earlier fuel increases. Excluding those carriers from the new fuel cost surcharge would leave them without recourse to quickly recover the sharply increased cost of fuel that has taken place over the last 12 months and, in particular, since the end of 2021.

Second, many ZORF increases have been implemented for reasons unrelated or only partially related to fuel costs. In *Catalina Channel Express, Inc.* Decision 04-04-004 (April 1, 2004) the Commission stated why it awarded a ZORF to Catalina Channel Express as follows:

> The Commission extended the ZORF concept to VCCs in the 1998 decision that authorized Applicant's ZORF. We concluded that authorization of ZORFs is consistent with our policy of relying upon competition to regulate the transportation marketplace, where competition exists between substantially similar established carriers. We found that Applicant's cross-channel passenger transportation services operated in competition with services provided by substantially similar VCCs, and that a ZORF of up to 10% above or below Applicant's authorized fares would be fair and reasonable. At times since then we have seen considerable volatility in the price of fuel, a major expense item for VCCs. As a consequence, for a period of over two years we authorized all VCCs to adjust their fares up to 15% without further authorization from the Commission. [Citing Resolution TL-18927, dated April 20, 2000][11]. In view of the current level of competition in the cross-channel market and recent instability in the price of fuel, Applicant's request to expand its ZORF from 10% above and below to 15% above and below its baseline fares is reasonable.

Note that fuel cost and competitive issues are addressed separately. The ZORF is intended largely to address competitive issues while the fuel cost surcharge is solely intended to address increases in the cost of fuel.

The fuel cost surcharge sought here, 20% for one year, should be implemented by permitting all VCCs that do not operate under a ZORF to establish a temporary ZORF with a floor set at the carrier's current rate and a cap set at 20% above that rate until the expiration of the fuel cost surcharge sought herein.

Carriers that currently operate under a ZORF should be permitted to temporarily increase the cap of their ZORF by 20% until the expiration of the fuel cost surcharge sought herein.

Request for Expeditious Consideration

Payment for most vessel transportation takes place at the time of the transportation. Passenger carriers in particular have no realistic opportunity to recover increased rates retroactively.

[11] Res. TL-18927 was the first Commission resolution authorizing a fuel cost surcharge.

Memorandum accounts, common to energy and water ratemaking, are largely non-existent in the transportation sector. Accordingly, expeditious consideration of this request is essential if carriers are to be given a realistic opportunity to recover the sharply increased cost of fuel of which the carriers are apprised on an almost weekly basis by their respective fuel suppliers.

Pursuant to Rule 14.6(6), the affected carriers ask that any resolution approving a fuel cost surcharge be placed on the Commission's agenda immediately upon preparation since it would be providing "relief based on extraordinary conditions in which time is of the essence." Since January 28, 2022 the cost of fuel has increased by 41% or 5.9% per week. Put another way, at the projection reflected by the USEIA site, a delay of one month for comments would mean that carriers would bear another fuel cost increase of over 26% without any ability to recover it.

Thank you for your consideration of this request.

Sincerely,

DOWNEY BRAND LLP

Thomas MacBride

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