PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Consumer Protection and Safety Division **RESOLUTION TL-19042**
June 9, 2004

RESOLUTION

RESOLUTION GIVING VESSEL COMMON CARRIERS TEMPORARY AUTHORITY TO ADJUST THEIR FARES AND RATES WITHOUT SPECIFIC APPROVAL OF THE COMMISSION.

SUMMARY

This resolution gives vessel common carriers (VCCs) temporary authority to adjust their fares and rates without specific Commission authorization. Under this 180-day authority, carriers will be able to increase fares and rates a maximum of 15% from their current fares and rates. This action is being taken in response to the significant increases in fuel prices that have occurred in California.

BACKGROUND

Approximately 20 vessel operators currently hold certificates from the Commission to operate as VCCs pursuant to Pub. Util. Code § 1007 et seq. The majority provide cross-channel transportation of passengers or freight between California mainland points and Santa Catalina Island, or conduct passenger transportation services on San Francisco Bay.

VCCs are required to file tariffs with the Commission showing their fares, rates, and charges. (Pub. Util. Code § 486 et seq.) They generally may increase fares and rates only upon approval of the Commission. (Pub. Util. Code § 454.)

By letter dated April 12, 2004, Attorney Edward J. Hegarty requests authority for Blue & Gold Fleet, L.P., Angel Island-Tiburon Ferry, Inc., Catalina Freight Line, and other VCCs to adjust their passenger fares and freight rates within a "zone of rate reasonableness" whose upper limit is 15% above currently authorized tariff fares and rates to help offset the rapidly increasing cost of diesel fuel. He states that a series of worldwide and domestic circumstances have caused recent rapid and unprecedented diesel fuel cost increases that are expected to last through the summer of 2004 and perhaps longer. VCCs, according to Mr. Hegarty, need immediate rate relief since fuel costs are a major component of vessel operating expenses. As precedent for such relief he cites the special authority that was in effect from April 20, 2000, to June 30, 2002, that allowed VCCs to adjust their fares and rates up to 15%.[1]

The letter includes the following information for the three VCCs Mr. Hegarty represents:

Blue & Gold Fleet, Inc.

Blue & Gold Fleet operates several passenger vessel routes on San Francisco Bay. This includes a commuter ferry service between Alameda/Oakland and San Francisco operated under contract with the City of Alameda and the Port of Oakland. When the prior authority to adjust rates expired on June 30, 2002, Blue & Gold Fleet was paying $0.74 per gallon for diesel fuel. The price increased incrementally during the remainder of 2002 and 2003, but has skyrocketed in 2004. A chart attached to the letter as Appendix 1 shows that on January 2, 2004, the delivered price of fuel was $1.08 per gallon; on April 2, 2004, it was $1.52 per gallon.

Angel Island-Tiburon Ferry, Inc.

Angel Island-Tiburon Ferry, Inc. operates a ferry service between Tiburon and Angel Island. It purchases fuel at a marine fuel dock at the foot of the Hyde Street Pier in San Francisco because it does not have a fuel tank for bulk deliveries. Invoices attached to the letter as Appendix 3 and Appendix 4 show that the carrier's cost of fuel

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[1] The authority to adjust fares and rates was granted to VCCs by Resolution TL-18927, dated April 20, 2000. It was extended by Resolution TL-18944, dated October 5, 2000, and Resolution TL-18974, dated September 20, 2001. The authority expired effective June 30, 2002, pursuant to Resolution TL-18989, dated March 6, 2002.

increased from $1.19 on June 6, 2003, to $1.68 on March 31, 2004, an increase of 41%.

Catalina Freight Line

Catalina Freight Line transports freight between its terminal in Wilmington and Santa Catalina Island. Attached to the letter as Appendix 5 and Appendix 6 are copies of invoices dated January 21, 2004, and March 26, 2004, which show an increase in the cost of diesel fuel from $1.06 to $1.27. The carrier was told that its next purchase would probably show a further $0.20 to $0.30 increase.

Mr. Hegarty advises that under Blue & Gold Fleet's contract to provide commuter ferry service between Alameda/Oakland and San Francisco, various vessel operating costs, including the cost of diesel fuel, are pass-through costs from the carrier to the City of Alameda and the Port of Oakland. He states that a representative of the City of Alameda specifically requested that the Alameda/Oakland Ferry Service operated by Blue & Gold Fleet be included in the letter requesting permission to adjust passenger fares.

The letter asks for relief for the three named VCCs and all other VCCs, except Catalina Channel Express, Inc. (Express). Mr. Hegarty explains that Express is not a party to the letter because it already holds a "competitive route zone of rate freedom," which was most recently authorized by Decision (D.) 04-04-044.[2] While Express is not asking for any additional relief, Mr. Hegarty cites the carrier's experience to further support his request. The delivered price of fuel to Express was $0.90 per gallon in October 2003, $1.20 in February 2004, and $1.66 on April 9, 2004. The carrier will consume well over 2 million gallons of diesel fuel in 2004.

Attorney Daniel F. Reidy submitted a letter dated April 14, 2004, in support of Mr. Hegarty's request. Mr. Reidy represents Harbor Bay Maritime, Inc., a VCC that transports passengers between Alameda and San Francisco. He states that

[2] D.04-04-044 in Application 03-11-004 authorized Express to increase its fares and to make future fare adjustments of up to 15%. Mr. Hegarty represented Express in that matter.

Harbor Bay Maritime paid an average price for diesel fuel, including taxes and environmental surcharges, of $1.10 during April 2003. During December 2003 it was $1.23 per gallon, and on April 5, 2004, it was $1.68 per gallon. Mr. Reidy advises that Harbor Bay Maritime operates its service on a non-profit basis with the assistance of subsidies from public sources of funding obtained with the help of the City of Alameda through the Metropolitan Transportation Commission. Its annual operating budgets are fixed without opportunity to obtain additional subsidies during an operating year. An increase in fare box revenue is the only way available to Harbor Bay Maritime to pay for higher costs of fuel.

DISCUSSION

We first granted VCCs authority to adjust their fares without specific Commission authorization in 2000 in response to significant increases in fuel prices. Those circumstances exist once again. It is undisputed that fuel prices, both for diesel fuel and gasoline, have increased dramatically. Requiring carriers individually to make formal application for a fare or rate increase when the need for immediate relief is so compelling would not be reasonable. Just as in 2000, we believe carriers should have a convenient mechanism to quickly adjust their fares and rates to recover their increased fuel costs.

The special authority we granted to all VCCs in 2000 is similar to the Zone of Rate Freedom (ZORF) authority we have granted to many passenger stage corporations (PSCs) pursuant to Pub. Util. Code § 454.2. This statute refers only to PSCs. However, in the 1998 decision that first granted rate flexibility to Express, we concluded that the Commission has broad discretion to fashion rules relating to transportation rates in this state. (D.98-12-016 in Application 98-04-051.) This would include extending the ZORF concept to vessel common carriers in the absence of express authorization by statute.

We recognize that VCCs do not necessarily operate in a highly competitive environment. There is, however, a degree of competition among the carriers serving Santa Catalina Island, and most of the San Francisco Bay vessel services compete with other modes of transportation. Giving all VCCs authority for 180 days to raise rates up to 15% should not result in unreasonably high rates. The Commission's Consumer Protection and Safety Division will be monitoring fuel prices, and if price changes warrant cancellation or modification of this authority during the 180-day period, we will act accordingly.

COMMENTS ON DRAFT RESOLUTION

To comply with Pub. Util. Code § 311(g), CPSD commenced publication of a Daily Calendar notice on May 7, 2004, that apprised the public of the availability of this draft resolution and solicited submission of comments by May 27, 2004. Copies of the draft resolution were mailed to Edward J. Hegarty, Daniel F. Reidy, and every VCC holding a certificate from the Commission. No comments were received.

FINDINGS

1. Significant price increases in diesel fuel and gasoline have occurred in California.

2. Blue & Gold Fleet, L.P., Angel Island-Tiburon Ferry, Inc., Catalina Freight Line, and Harbor Bay Maritime, Inc. report that they have incurred substantial increases in the price of diesel fuel and request immediate rate relief to recover their increased costs.

3. VCCs use large amounts of fuel in conducting their vessel operations.

4. The Commission has broad discretion to fashion rules relating to transportation rates in this state.

5. VCCs, except Express, should be allowed for 180 days to file tariffs with fare and rate adjustments within a "zone of reasonableness" whose upper limit is 15% above currently authorized fares and rates.

6. Because VCCs may need to respond promptly to changes in fuel costs, there is good cause to authorize them to make tariff filings on one day's notice.

7. The tariff filings authorized by the following order are reasonable and justified.

THEREFORE, IT IS ORDERED that:

1. For 180 days from the effective date of this order, vessel common carriers (VCCs), except Catalina Channel Express, Inc., are permitted to file tariffs with fares and rates that are within a "zone of rate reasonableness" whose upper limit is 15% above currently authorized fares and rates.

2. Tariff filings made pursuant to this order may be made effective upon one day's notice (one day after filing with the Commission).

3. VCCs shall be allowed to exercise the action permitted under Ordering Paragraph 1 by making tariff filings that show a percentage surcharge on any or all of their tariff fares and rates within the range authorized.

4. Tariff filings authorized by this resolution shall expire 180 days after the effective date of this order absent further order by this Commission.

5. The Executive Director shall cause a copy of this resolution to be served on every VCC holding a certificate from the Commission and every other party on the service list to this resolution.

This resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed, and adopted by the Commission at its regularly scheduled meeting on June 9, 2004. The following Commissioners voted favorably thereon:

WILLIAM AHERN
Executive Director

MICHAEL R. PEEVEY
President
CARL W. WOOD
LORETTA M. LYNCH
GEOFFREY F. BROWN
SUSAN P. KENNEDY
Commissioners