PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Consumer Protection and Safety Division **RESOLUTION TL-19094**
November 6, 2008

R E S O L U T I O N

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

SUMMARY

This resolution extends for an additional year the authority granted originally by Resolution TL-19042 allowing vessel common carriers (VCCs) to adjust their fares and rates without specific Commission authorization. It also increases the authorized "zone of reasonableness" from 20% to 30%.

BACKGROUND

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 VCCs should have a convenient mechanism to quickly adjust their fares and rates to recover their increased fuel costs. Without this special authority any VCC wanting to increase its fares or rates would have to file a formal application with the Commission. The special authority was subsequently extended and expanded as follows:

- Resolution TL-19051, dated December 2, 2004 – One year extension.
- Resolution TL-19066, dated December 1, 2005 – One-year extension and zone of reasonableness expanded from 15% to 20%.
- Resolution TL-19080, dated November 30, 2006 – One year extension.
- Resolution TL-19092, dated November 16, 2007 – One year extension.

The authority is set to expire November 16, 2008.

The Consumer Protection and Safety Division (CPSD) received a letter dated May 27, 2008, from Attorney Daniel F. Reidy on behalf of Blue & Gold Fleet, L.P., Catalina Freight Line, and Harbor Bay Maritime, Inc. requesting to expand the zone of reasonableness to at least 30%. Reidy added Star & Crescent Boat Company to the request in a letter dated July 17, 2008. Attorney Mark E. Hegarty submitted a letter on August 21, 2008, on behalf of Catalina Classic Cruises, Inc. in support of Reidy's request. While the parties ask for an adjustment in the zone of reasonableness as early as possible, at this point it is appropriate to consider the request while we examine whether the special authority should be further extended.

Reidy and Hegarty believe an extension and expansion of the zone of reasonableness to at least 30% is in order due to the increased volatility of the fuel market. They state that VCCs continue to need flexibility in setting their fares and rates to respond to sudden fuel price increases. The attorneys provide cost figures to support their requests, some of which are described below.[1]

<u>Blue & Gold Fleet, L.P.</u>
This carrier operates passenger vessel services between San Francisco and Tiburon, Sausalito, Angel Island, and Alameda/ Oakland. On June 9, 2004, the date Resolution TL-19042 was issued first granting the special authority, Blue & Gold Fleet was paying $1.32 per gallon for its fuel. By 2007 the price per gallon had jumped to $2.56 in July and $2.36 in August. On May 7, 2008, the carrier paid $3.87 per gallon, a 64% increase over the August 2007 price.

<u>Catalina Freight Line</u>
Catalina Freight Line transports freight between its terminal in Wilmington and Santa Catalina Island. Shortly before the Commission initially granted the special authority in June 2004, the carrier was paying $1.27 per gallon. On December 1, 2005, when the Commission extended the authority for another year and increased the zone from 15% to 20%, the price was $1.75 per gallon. The price in August 2007 averaged $2.28 per gallon, and on May 7, 2008, it was at $3.67 per gallon,

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1 Reidy refers to August 2007 prices as a benchmark because he cited them as the most recently available prices in his September 25, 2007, request to extend the special authority for another year.

61% above the August 2007 level.

Harbor Bay Maritime, Inc.
Harbor Bay Maritime operates the Alameda Harbor Bay Ferry Service carrying passengers between Bay Farm Island in Alameda and San Francisco. It purchases fuel delivered by truck to its overnight berth at Pier 48 in San Francisco. Its average fuel price in 2004 was $1.64 per gallon. For the first eight months of 2007 the price averaged $2.62 per gallon. In April 2008 the carrier paid an average of $4.15 per gallon.

Star & Crescent Boat Company
This carrier conducts a passenger ferry service on San Diego Bay between Downtown San Diego and Coronado. It paid per gallon prices of $1.28 in June 2004, $2.00 in December 2005, and $2.42 in December 2006. In June 2008 it was paying $4.00 per gallon, 71% above the August 2007 price of $2.34 per galloon.

Catalina Classic Cruises
Catalina Classic Cruises operates a passenger vessel service to Santa Catalina Island from San Pedro and Long Beach. Its primary business is providing nonscheduled service to campers, such as YMCA groups. It paid an average of $2.17 per gallon in 2006 and $2.57 in 2007. In June 2008 it paid $4.40 per gallon.

Reidy requests that carriers be allowed to round increased fares up to the nearest 50 cents rather than five cents as currently authorized. He explains that in some cases crews have to make change on a gangway or a vessel portal, and an adjustment of five cents is not helpful.

DISCUSSION

The problem of fuel price volatility addressed in our previous resolutions has increased since we last extended the zone of reasonableness. Using actual examples of carrier fuel costs, Reidy and Hegarty show how their clients have been impacted. CPSD advises that one of the relevant diesel fuel price benchmarks[2] published by the U.S. Energy Information Administration indicates

[2] Spot market price at Los Angeles for low-sulfur No. 2 diesel fuel.

an average price of $2.71 per gallon in November 2007 (when we last extended the special authority). The price subsequently rose during the first five months of 2008, reaching a peak of $4.12. The price dropped significantly in late July and August. On September 15, 2008, it was $2.78 per gallon.

While the price of diesel fuel may have returned close to its November 2007 level, the 2008 experience demonstrates the very problem we have been trying to address—wild, unpredictable swings in fuel prices. Any number of world events can cause a spike in prices. Political or military conflicts or natural disasters (such as recent Hurricanes Gustav and Ike) can suddenly restrict the supply of crude oil or refinery capacity and send energy prices spiraling upward.

We acknowledged in previous resolutions that granting blanket relief to an entire industry may not be an optimum form of rate regulation. It is preferable to have each carrier seek its own relief by documenting its revenues and expenses in a formal application for a rate increase. We noted, however, that even that process lacks precision because fuel costs (a major component of VCC operating costs) can fluctuate so greatly. Blanket relief has the advantage that it can be modified or cancelled with relative ease to respond to changes in fuel prices.

VCCs provide a valuable public service. Some communities (Santa Catalina Island in particular) would suffer greatly if dependable VCC service were not available. We therefore wish to ensure these carriers' continued economic viability. The special authority will be extended for another year. Reidy's and Hegarty's requests to expand the zone of reasonableness will also be granted. While they ask for a zone of "at least 30%," we believe that 30% is adequate. Actually, we would prefer not to broaden the zone that much. However, we must face the realities of the fuel market and the legitimate need of VCCs to quickly recover increases in fuel prices, some of which occur virtually overnight. Most VCCs are well established companies that have served their customers for many years. To our knowledge, they have acted responsibly in the past under the special authority, and we expect they will continue to do so in the future. In the event there are reported abuses, we will not hesitate to act swiftly to deal with them.

We will not, though, grant the request to allow carriers to round increased fares up to the nearest 50 cents. We denied a similar request in Resolution TL-19066. Our concern was the impact rounding would have on VCC fares that are of relatively low amounts.[3] Rounding up 35 or 40 cents on these fares can have a significant effect percentage-wise. In Resolution TL-19066 we said it was not reasonable in these cases to ask the public to pay a considerably higher fare just so carriers can gain asserted efficiencies in fare collection. We left it up to each carrier to decide whether it wished to settle for a rate increase less than the full percentage allowed under the special authority to achieve possible efficiencies in collection. That remains our position.

Two VCCs, Catalina Channel Express, Inc. and Harbor Breeze Corp., were previously excluded from the special authority because each holds its own zone of rate freedom that allows fare adjustments of up to 20% above base fares.[4] Since we are extending the zone of reasonableness to 30%, it is appropriate to allow these two carriers an additional 10% of fare flexibility so they will be in an equal position with other VCCs.

COMMENTS ON DRAFT RESOLUTION

To comply with Pub. Util. Code § 311(g), CPSD commenced publication of a Daily Calendar notice on October 6, 2008, that apprised the public of the availability of this draft resolution and solicited submission of comments by October 27, 2008. A copy of the draft resolution was mailed to Reidy and Hegarty, and to every VCC that holds a certificate from the Commission. No comments were received.

FINDINGS

1. In response to significant increases in fuel prices, the Commission by Resolution TL-19042 granted VCCs authority for 180 days to adjust their fares

[3] Examples are Star & Crescent Boat Company's base fare of $3, Balboa Island Ferry Company's base fares of $1 for pedestrians and $2 for vehicle and driver, and reduced fares for children and seniors published by Blue & Gold Fleet and Harbor Bay Maritime.

[4] Harbor Breeze Corp.'s ZORF was authorized by D.07-06-026. D.06-12-022 authorized Catalina Channel Express, Inc. to expand its existing ZORF from 15% to 20%.

and rates within a "zone of rate reasonableness" which had an upper limit of 15% above authorized fares and rates.

2. The authority granted by Resolution TL-19042 has been extended several times, and the zone of reasonableness was expanded from 15% to 20% by Resolution TL-19066.

3. The special authority, last extended by Resolution TL-19092, is scheduled to expire November 16, 2008.

4. High and volatile fuel prices continue to significantly impact the VCC industry.

5. The authority to adjust fares and rates should be further extended for one year from the effective date of this resolution.

6. The zone of reasonableness should be expanded from 20% to 30%.

7. Carriers should be allowed to continue rounding fares and rates increased under this authority to the next five cents.

8. Catalina Channel Express, Inc. and Harbor Breeze Corp. should be allowed to participate in this special authority to the extent they may adjust their fares and rates up to 10% above the fares and rates permitted under their existing zones of rate freedom.

9. 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.

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

THEREFORE, IT IS ORDERED that:

1. Except as noted below, the special authority permitting vessel common carriers (VCCs) to file tariffs with fares and rates that are within a "zone of reasonableness" is further extended for one year and is revised to allow fare and rate adjustments of up to 30% above currently authorized base fares and rates.

2. Catalina Channel Express, Inc. and Harbor Breeze Corp. are authorized to adjust their fares and rates up to 10% above the fares and rates permitted under their zones of rate freedom.

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

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

5. Fares and rates increased under this authority may be rounded up to the next five cents.

6. Tariff filings authorized by this resolution shall expire one year after the effective date of this order absent further order by this Commission.

7. 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 November 6, 2008. The following Commissioners voted favorably thereon:

PAUL CLANON
Executive Director

MICHAEL R. PEEVEY
President
DIAN M. GRUENEICH
JOHN A. BOHN
RACHELLE B. CHONG
TIMOTHY ALAN SIMON
Commissioners