PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Consumer Protection and Safety Division **RESOLUTION TL-19066**
December 1, 2005

RESOLUTION

RESOLUTION EXTENDING AND REVISING THE AUTHORITY GRANTED TO VESSEL COMMON CARRIERS BY RESOLUTIONS TL-19042 AND TL-19051 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 15% to 20%.

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 that fall within a zone of reasonableness whose upper limit is 15% above currently 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. By Resolution TL-19051, dated December 2, 2004, we extended the special authority for one year because fuel costs had not diminished. The authority is scheduled to expire on December 2, 2005.

The Consumer Protection and Safety Division (CPSD) has received letters from Attorneys Daniel F. Reidy and Mark E. Hegarty requesting extension and revision of the special authority. By letters dated September 26 and 29, 2005, Reidy wrote on behalf of five VCCs. He advises that VCCs are experiencing significant and quickly rising fuel prices with rapid fluctuations that present serious pressures on their operating budgets. Reasons cited for the increases are ongoing hostilities in the Middle East, the vast disruptions to the nation's fuel refining and distribution system due to Hurricane Katrina, increasing spikes in fuel prices triggered by Hurricane Rita, and shutdowns of refineries in California.

Reidy's letters include the following information (including supporting documents) for the five VCCs he represents:

<u>Blue & Gold Fleet, Inc.</u>
This carrier operates passenger vessel services between San Francisco and Tiburon, Sausalito, Angel Island, and Alameda/ Oakland. In January 2004, its fuel costs were generally below $1.10 per gallon. On June 9, 2004, the date the Commission issued Resolution TL-19042 authorizing the current special authority, Blue & Gold Fleet was paying $1.52 per gallon. On December 1, 2004, the day before the Commission extended the authority, the price was $1.56 per gallon. The price increased to $1.76 on June 1, 2005, to $2.12 by the end of July, and to $2.73 on September 2. Fuel cost as a percentage of Blue & Gold Fleet's operating costs in 2005 ranged between 18% for the Angel Island service to 24% for the Alameda/Oakland service.

<u>Catalina Freight Line</u>
Catalina Freight Line transports freight between its terminal in Wilmington and Santa Catalina Island. It is able to purchase fuel for its tugs and other vessels at volume discounts. In January 2005, its average cost of fuel was $1.49 per gallon (net of taxes). By July, the monthly average had increased to $1.92, and in August it went to $2.21.

<u>Angel Island-Tiburon Ferry</u>
This is a relatively small carrier that operates on San Francisco Bay between Tiburon and Angel Island. It does not have its own bulk fuel tank so it is unable to take advantage of volume discounts available to

larger carriers. Its fuel costs rose from $1.79 per gallon in mid-August 2004, to $1.91 and $1.96 in October 2004, and to a high of $2.785 on August 30, 2005. On September 7, 2005, the cost was $2.77 per gallon (net of taxes and environmental charges). Fuel costs for this carrier represent the third highest line item of expense, behind payroll costs and insurance costs.

Harbor Bay Maritime

Harbor Bay Maritime operates the Alameda Harbor Bay Ferry Service carrying passengers between Bay Farm Island in Alameda and San Francisco. It receives operating subsidies through the City of Alameda and the Metropolitan Transportation Commission. It purchases fuel delivered by truck to its overnight berth at Pier 48 in San Francisco. The carrier's average cost of fuel in December 2004 was $1.57 per gallon (net of taxes and environmental fees). The cost climbed to as high as $2.04 during July 2005 and hit $2.58 in August 2005. At this highest level, fuel costs would amount to 23.2% of Harbor Bay Maritime's annual operating expenses.

Star & Crescent Boat Company

This carrier conducts a passenger ferry service on San Diego Bay between Downtown San Diego and Coronado. In June 2004 it paid $1.28 per gallon for fuel. By December 2004 the cost averaged $1.44. The cost continued to increase in 2005 to $1.89 in July and $2.58 in August.

Reidy states that the current 15% cap on the zone of reasonableness has proved to be insufficient to cover the rapidly rising costs of fuel. He also maintains that it sometimes creates practical problems for setting and collecting fares. This is because efficient fare collection may dictate setting fares at an even dollar or occasionally a half dollar. The 15% cap may prevent a carrier from rounding up to the next dollar or half dollar, so it may settle for a lower percentage in the interest of efficient fare collection. Reidy requests the Commission to extend the special authority for one year and to revise the zone of reasonableness with a general goal of 20% above base fares. Additionally, he asks that VCCs be allowed to round fares up to the nearest half dollar provided that the adjusted fare is not greater than 25%

above the base fare.

Hegarty wrote on October 3, 2005, on behalf of Catalina Classic Cruises, Inc., which carrier operates a passenger vessel service between the mainland points of San Pedro and Long Beach and Santa Catalina Island. Its primary business is providing non-scheduled service to campers, such as YMCA groups and the "Guided Discovery Program" that focuses on organizing camping groups composed of inner-city youths. The carrier has seen its fuel costs rise from an average of $1.08 in January 2004, to $1.66 in October 2004, and most recently to $2.17 in September 2005.

Hegarty advises that without rate relief Catalina Classic Cruises may not be able to continue its service to the camping community. He urges that at a minimum the Commission extend and revise the temporary surcharge authority as suggested by Reidy. Hegarty believes that a zone of reasonableness of 25% is actually warranted as applied to Catalina Classic Cruises, but that the scheme described by Reidy will enable the carrier to survive until it is able to seek more permanent relief.

DISCUSSION

Unfortunately, the problem of rising fuel prices has grown rather than diminished since we gave relief to VCCs in June 2004. Granting blanket relief to an entire industry may not be an optimum form of rate regulation. Generally, we would prefer that each carrier seek its own relief by documenting its revenues and expenses in a formal application. We recognize, though, that even that process would be somewhat imprecise because fuel prices are a moving target. An advantage to blanket relief is that it can be modified or cancelled with relative ease to respond to changes in fuel prices. Permanent relief granted at a time when fuel prices are at their peak levels would lock in higher fares and rates even if fuel prices were to subsequently drop.

It is clear that VCCs need continued relief. We therefore are favorable to extending the special authority for one year and expanding the zone of rate reasonableness to 20%. We do not believe it is appropriate, however, for carriers to raise their fares and rates up to an additional 5% as Reidy suggests to allow rounding to the nearest half dollar. It is not reasonable to ask the public to pay that much more for carriers to gain asserted efficiencies in fare collection. We will authorize carriers to round fares and rates up to the nearest five cents. Each carrier can then decide whether it wishes to settle for an increase of less than 20% to achieve possible efficiencies in collection.

Some carriers have been granted their own relief through the formal application process in the year since we issued Resolution TL-19051. Those cases are discussed below.

Star & Crescent Boat Company
By Decision (D.) 05-08-025, dated August 25, 2005, Star & Crescent Boat Company was authorized to increase its one-way base fare from $2.00 to $2.50. Both amounts are exclusive of a $0.25 surcharge the carrier has been collecting under authority of Resolution TL-19051. Reidy has documented this carrier's need to continue to participate in the special authority.

Catalina Channel Express, Inc.
This carrier holds its own zone of rate freedom authorizing it to adjust fares up to 15% above and below its base fares. It therefore was specifically excluded from the special authority granted by Resolutions TL-19042 and TL-19051. Catalina Channel Express was recently granted authority to increase its base fares between 10% and 15% by Decision (D.) 05-10-011, dated October 6, 2005. The decision authorized the carrier to continue to apply its zone of rate freedom to the increased fares. The fare increase authorized by D.05-10-011 coupled with the ability to adjust fares up to 15% should give the carrier sufficient flexibility to adjust its fares without any further relief. Therefore, we will continue to exclude Catalina Channel Express from the special authority.

Harbor Bay Maritime
On August 25, 2005, Harbor Bay Maritime filed a formal application to permanently increase fares to or slightly above current fares, which include a 15% surcharge under authority of Resolution TL-19051.[1] The request was granted on October 27, 2005, by D. 05-10-035. It therefore is

[1] Harbor Bay Maritime stated in its application that when the Commission-authorized temporary surcharge expires, it would reduce its fares $0.25 per trip.

not appropriate for the carrier to participate in the full 20% zone of reasonableness. Instead, we will authorize Harbor Bay Maritime a 5% zone of reasonableness.

CPSD will continue to monitor fuel prices, and if price changes warrant cancellation or modification of the authority during the one-year period, we will act accordingly (as we did in 2002 when we cancelled a previous special authority prior to its scheduled expiration).

COMMENTS ON DRAFT RESOLUTION

To comply with Pub. Util. Code § 311(g), CPSD commenced publication of a Daily Calendar notice on November 1, 2005, that apprised the public of the availability of this draft resolution and solicited submission of comments by November 21, 2005. Copies of the draft resolution were mailed to Reidy, Hegarty, and every VCC holding a certificate from the Commission.

Comments were filed by Reidy on November 14 and 21, 2005, on behalf of Harbor Bay Maritime and Angel Island–Tiburon Ferry, respectively. Harbor Bay Maritime takes issue with being held to only a 5% zone of reasonableness. It argues that its recently approved request for a fare increase was not a typical application in the sense that its purpose was solely to meet a 40% farebox recovery ratio mandated by the Metropolitan Transportation Commission. The application was not based on rising costs of various line items in the carrier's operating budget, such as employee salaries and benefits, insurance premiums, and vessel maintenance, and specifically was not based on an effort to recover increased fuel costs. Harbor Bay Maritime also points out that under its operating agreement with the City of Alameda, the Alameda City Council must approve any increases in passenger fares and that such determinations can only be made after a noticed public hearing before the Council.

Under the circumstances, we are agreeable to authorizing the full zone of reasonableness to Harbor Bay Maritime. The considerable involvement of the City of Alameda in the development and approval of the carrier's fare structure should serve to keep passenger fares at a reasonable level under this special authority. We are troubled, however, that the carrier feels compelled to seek the full 20% zone of reasonableness so soon after receiving approval to increase fares.[2] Of course, we also continue to be concerned about the problem of fuel price volatility, its impact on VCCs, and what our response should be. It therefore may be appropriate for the Commission to undertake a comprehensive examination of the manner in which we regulate VCC fares and rates. All VCCs are placed on notice that such an examination might occur in the upcoming year.

Angel Island-Tiburon Ferry reiterates Reidy's original request that to facilitate fare collection, carriers should be authorized to round adjusted fares up to the nearest half dollar or even dollar, provided that the adjusted fare is not more than 25% above the base fare. Angel Island-Tiburon Ferry's practice is to collect fares on board the vessel rather than operate an on-shore ticket booth. While we are sympathetic to the need of VCCs to recover their increased fuel costs, we do not believe it is reasonable to adjust fares up to an additional 5% just to simplify fare collection. We will authorize rounding of fares up to the next 5 cents.

FINDINGS

1. In response to significant increases in fuel prices, the Commission by Resolution TL-19042 granted VCCs, except Catalina Channel Express, Inc., authority for 180 days to adjust their fares and rates within a "zone of rate reasonableness" whose upper limit is 15% above currently authorized fares and rates.

2. The authority granted by Resolution TL-19042 was extended to December 2, 2005, by Resolution TL-19051.

3. The problem of rising fuel prices has grown since we issued Resolutions TL-19042 and TL-19051.

4. The authority to adjust fares and rates should be further extended for one year from the effective date of this resolution and revised to allow fare and rate adjustments within a 20% zone of reasonableness.

[2] We should note that the decision granting the increase was issued approximately 60 days after the application was filed, so our action was timely and based on relatively current information .

5. Carriers should be allowed to round fares and rates increased under this authority to the next five cents.

6. Catalina Channel Express, Inc. should continue to be excluded from the special authority.

7. 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.

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

THEREFORE, IT IS ORDERED that:

1. Except as noted below, the temporary authority granted by Resolutions TL-19042 and TL-19051 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 20% above currently authorized base fares and rates.

2. Catalina Channel Express, Inc. is not authorized to participate in this special authority.

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 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.

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 December 1, 2005. The following Commissioners voted favorably thereon:

STEVE LARSON
Executive Director

MICHAEL R. PEEVEY
President
GEOFFREY F. BROWN
SUSAN P. KENNEDY
DIAN M. GRUENEICH
JOHN A. BOHN
Commissioners