

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**Consumer Protection and Safety Division****RESOLUTION TL-19097
November 20, 2009****RESOLUTION**

**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 approval. The authorized "zone of reasonableness" is reduced from 30% 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 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. 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.
- Resolution TL-19094, dated November 6, 2008 - One year extension and zone of reasonableness expanded from 20% to 30%.

The Consumer Protection and Safety Division (CPSD) received a letter dated September 22, 2009, from Attorney Daniel F. Reidy written on behalf of Blue & Gold Fleet, L.P., Catalina Freight Line, Harbor Bay Maritime, Inc., and Star & Crescent Boat Company requesting the Commission to authorize a zone of reasonableness of at least 20% for an additional year. Reidy describes the fuel price increases VCCs have experienced over the past several years, which he supports with tables showing actual prices paid by the four involved operators. The figures go back a minimum of two and as many as six years.

Most of the fuel prices increases cited by Reidy have largely been discussed already in the prior resolutions that authorized and extended the zone of reasonableness. It is well settled that VCCs have in recent years experienced significant volatility in fuel prices. With respect to the past year, figures provided by Reidy show that fuel prices have moderated and volatility, while not insignificant, has decreased. CPSD 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 following are average monthly prices per gallon for that benchmark published by the U.S. Energy Information Administration for the one-year period October 2008 through September 2009:

Oct. '08	Nov. '08	Dec. '08	Jan. '09	Feb. 09	March '09
\$ 2.49	\$2.71	\$2.57	\$1.43	\$1.29	\$1.27
April '09	May '09	June '09	July '09	Aug. '09	Sept. '09
\$1.41	\$1.51	\$1.81	\$1.70	\$1.93	\$1.81

The table demonstrates that prices have fallen from 2008 levels, but that volatility is still present in the market.

DISCUSSION

The special authority granted to VCCs to adjust fares and rates has enabled carriers to respond promptly to sudden increases in fuel prices. In originally authorizing the relief by Resolution TL-19042, we stated that requiring each carrier to file a formal application for an increase when there is a compelling need for immediate relief would not be reasonable. We still believe carriers should have a means to quickly adjust their fares and rates to recover increased fuel costs. Therefore, we will further extend the special authority.

When the authority was extended last year by Resolution TL-19094, the zone of reasonableness was expanded from 20% to 30%. That was done in response to the extraordinary fuel price increases experienced in mid-2008. Given the moderation in prices and volatility that has occurred since the last resolution was issued in November 2008, it appears a reduction in the zone is appropriate. Reidy requests a zone with an authorized upper limit of "at least 20%," which suggests that this level will provide VCCs with sufficient flexibility to adjust their fares and rates under current market conditions. In the circumstances, we believe it is reasonable to extend the special authority for one year and to return the zone of reasonableness to 20%. Carriers may continue to round up increased fares and rates under this authority to the next five cents.

Until last year, two VCCs, Catalina Channel Express, Inc. and Harbor Breeze Corp., were excluded from the special authority because each holds its own zone of rate freedom (ZORF) that allows fare adjustments of up to 20% above base fares.¹ When we extended the zone of reasonableness to 30%, we granted these two carriers an additional 10% of fare flexibility beyond their own ZORFs so they would be in an equal position with other VCCs. Now that the authority is returning to 20%, the additional 10% should no longer be allowed. The two carriers will once again be excluded.

COMMENTS ON DRAFT RESOLUTION

To comply with Pub. Util. Code § 311(g), CPSD commenced publication of a Daily Calendar notice on October 19, 2009, that apprised the public of the availability of this draft resolution and solicited submission of comments by November 9, 2009. A copy of the draft resolution was mailed to Reidy and to every VCC that holds a certificate from the Commission. No comments were received.

¹ 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%.

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 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 and from 20% to 30% by Resolution TL-19094.
3. Resolution TL-19094, dated November 6, 2008, last extended the authority for one year.
4. Volatility in fuel prices continues to 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 return to 20%.
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 excluded from the special authority.
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 20% above currently authorized base fares and rates.

2. Catalina Channel Express, Inc. and Harbor Breeze Corp. are 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 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 20, 2009. 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

