

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Consumer Protection and Enforcement Division RESOLUTION TL-19141
June 8, 2023

RESOLUTION

**RESOLUTION EXTENDING THE AUTHORITY GRANTED TO VESSEL
COMMON CARRIERS BY RESOLUTION TL-19139 TO ADJUST THEIR
FARES AND RATES WITHOUT SPECIFIC COMMISSION APPROVAL**

SUMMARY

This resolution extends for an additional year the authority granted originally by Resolution TL-19139 allowing vessel common carriers (VCCs) to adjust their fares and rates up to 20% within a “Zone of Reasonableness” without specific Commission authorization. This action is being taken in response to the significant increases in fuel prices in California.

BACKGROUND

By Resolution TL-19139, dated June 23, 2022, we authorized VCCs for a one-year period to file tariffs with fare and rate adjustments that fall within a “Zone of Reasonableness” whose upper limit is 20% 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 18 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 current authority is scheduled to expire on June 23, 2023.

Currently, 17 vessel operators hold certificates from the Commission to operate as VCCs pursuant to California Public Utilities Code (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 February 10, 2023 (the letter), Thomas MacBride of the law firm Downey Brand, LLP (MacBride), on behalf of their clients Avalon Freight Services (VCC-91), Blue & Gold Fleet (VCC-77), and Catalina Channel Express (VCC-52), requested "...that the Commission issue a resolution extending the authority issued last year in Resolution TL-19139..." MacBride goes on to state, "Carriers do not seek any modification of the ZORF authorized by Resolution TL-19139. This request only seeks to extend the date of expiration by one year, to June 23, 2024. Carriers seek the extension because the basis for the issuance of Resolution TL-19139 has not materially changed."

The letter also states, "Carriers do not seek an order which could be construed to permit aggregating, "stacking" or "pancaking" the ZORF caps. All that is sought is an order extending the current expiration date of the ZORFs set by TL-19139 by twelve months to June 23, 2024."¹

The letter cites Resolution TL-19139's use of spot market price at Los Angeles for low-sulfur No. 2 diesel fuel published by the U.S. Energy Information Administration as the benchmark for determining the volatility of fuel prices. The letter stated:

Today, the price of Ultra-Low Sulfur CARB Diesel in Los Angeles remains far higher than during the multi-year period reviewed in TL-19139. It has fluctuated between a low of \$2.83 (January 5, 2023) and a high of \$3.61 (January 23, 2023) since the beginning of the year.²

The U.S. Energy Information Administration's Ultra-Low Sulfur CARB Diesel Spot Price for Los Angeles had the average price per gallon between June 30, 2022 (the date TL-19139 was adopted) and March 27, 2023 shows the average price of

¹ Letter, Pgs. 4-5.

² Letter, Pg. 4.

\$3.30 per gallon with diesel ranging from \$2.39 to \$4.62 per gallon.³ In contrast, to in 2015 through 2019 (excluding the pandemic), the average fuel price was \$1.78 per gallon with a maximum price of \$2.52 and a minimum price of \$0.90 per gallon.⁴

Special Authority to Adjust Fares

On June 24, 2022, the Commission adopted Resolution TL-19139 finding that there were significant price increases in diesel fuel and that VCCs use large amounts of fuel in conducting their vessel operations. It also found that the Commission has broad discretion to fashion rules relating to transportation rates in this State.

Between 2004 and 2013, the Commission adopted on an annual basis Resolutions granting VCCs a Zone of Reasonableness allowing VCCs to increase their fares and rates due to fluctuating fuel prices.⁵

Upon the issuance of Resolution TL-19139, six carriers filed updated tariff pages containing a fuel surcharge. [Table 1]

Table 1	
VCC 47	CATALINA PASSENGER SERVICE, INC.
VCC 52	CATALINA CHANNEL EXPRESS, INC.
VCC 77	BLUE AND GOLD FLEET LP
VCC 80	ISLAND BOAT SERVICE
VCC 82	ANGEL ISLAND TIBURON FERRY INC
VCC 91	AVALON FREIGHT SERVICES LLC

³ https://www.eia.gov/dnav/pet/hist/EER_EPD2DC_PF4_Y05LA_DPGD.htm.

⁴ *Ibid.*

⁵ TL-19139, Table 1.

DISCUSSION

The Commission granted VCCs Special Authority to Adjust Fares in 2000, 2004, and again in 2022 due to the rapidly increasing cost of fuel. The data shows that fuel prices are now significantly higher than prior to 2019.

Allowing TL-19139, the current Resolution granting VCCs a Zone of Reasonableness, to expire during the busy summer season would require the VCCs to file updated tariffs that remove any fuel surcharges. Several VCCs have filed applications to increase their fares, but there is no certainty that Commission Decisions on those applications would be issued by June 23, 2023, the date that the relief granted by Resolution TL-19139 expires.

We believe it is reasonable to extend the authority for VCCs to adjust their fares, due to higher fuel costs, while their applications are being considered by the Commission. After the effective date of this order, VCCs are permitted to file tariffs with fares and rates that are within a "Zone of Reasonableness" whose upper limit is 20% above its authorized fares and rates on June 23, 2022. For VCCs that have been granted a Zone Rate of Freedom (ZORF), the upper limit shall be 20% above the fares and rates in tariffs on file with the Commission on June 23, 2022.

COMMENTS ON DRAFT RESOLUTION

Public Utilities Code § 311(g)(1) provides that this Resolution must be served on all parties and subject to at least 30 days public review. Any comments are due within 20 days of the date of its emailing and publication on the Commission's website and in accordance with any instructions accompanying the notice. Section 311(g)(2) provides that this 30-day review period and 20-day comment period may be reduced or waived upon the stipulation of all parties in the proceeding.

The 30-day review and 20-day comment period for the draft of this resolution was neither waived nor reduced. Accordingly, this draft resolution was emailed to Thomas MacBride, Daniel Reidy, City of Avalon, and all active and suspended vessel common carriers for comments and will be placed on the Commission's agenda no earlier than 30 days from the date of publication on the Commission's daily calendar. No comments were received.

FINDINGS

1. Significant price increases in diesel fuel and gasoline have occurred in California.
2. The Commission adopted Resolution TL-19139 on June 23, 2022, granting VCCs a 20% Zone of Reasonableness to adjust their fares and rates.
3. Avalon Freight Services (VCC-91), Blue & Gold Fleet (VCC-77), and Catalina Channel Express (VCC-52) requested to extend the relief provided by Resolution TL-19139 for one year because the basis for granting it has not materially changed.
4. The Commission has broad discretion to fashion rules relating to transportation rates in this state.
5. In line with Resolution TL-19139, VCCs should continue to be allowed to file tariffs with fare and rate adjustments within a "Zone of Reasonableness" whose upper limit is 20% above its authorized fares and rates that were on file with the Commission on June 23, 2022. For VCCs that have a ZORF, the Zone of Reasonableness shall have an upper limit of 20% of the current tariffed fares and rates that were on file with the Commission on June 23, 2022.
6. The tariff filings authorized by the following order are reasonable and justified.

THEREFORE, IT IS ORDERED that:

1. For one (1) year from June 23, 2023, vessel common carriers (VCCs) are permitted to file, or continue to have on file, tariffs with fares and rates that are within a "Zone of Reasonableness" whose upper limit is 20% above the authorized fares and rates on file with the Commission on June 23, 2022. For VCCs that have been granted a Zone of Rate Freedom (ZORF), the upper limit shall be 20% above the fares and rates on tariffs on file with the Commission on June 23, 2022.

2. VCCs shall be allowed to exercise the action permitted under Ordering Paragraph 1 by making tariff filings pursuant to General Order 117-A that show the percentage surcharge applied on any or all of their tariffed fares and rates within the range authorized.
3. Tariff filings authorized by this resolution shall expire on June 23, 2024, absent further order by this Commission.
4. In addition to posting and filing tariffs, each VCC shall post notices in conspicuous places such as tickets booths, docking stations, information centers, its terminals and vessels, and on the VCC's website explaining the fare changes. Such notices shall be posted at least one day before the effective date of the fare changes and shall remain posted for at least 30 days.
5. The Executive Director shall cause a copy of this resolution to be served on every VCC with an active or suspended operating authority issued by 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 8, 2023.

The following Commissioners voted favorably thereon:

/S/ RACHEL A. PETERSON

RACHEL A. PETERSON
Executive Director

ALICE REYNOLDS
President

GENEVIEVE SHIROMA

DARCIE L. HOUCK

JOHN REYNOLDS

KAREN DOUGLAS

Commissioners