

**PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA****Consumer Protection and Enforcement Division      RESOLUTION TL-19148****May 30, 2024****RESOLUTION**

RESOLUTION EXTENDING TO SPECIFIC VESSEL COMMON CARRIERS THE AUTHORITY GRANTED BY RESOLUTION TL-19141 TO ADJUST THEIR FARES AND RATES WITHOUT SPECIFIC COMMISSION APPROVAL

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**SUMMARY**

This resolution extends for an additional one year the authority granted originally by Resolution TL-19139 (2022) and subsequently extended by Resolution TL-19141 (2023) to vessel common carriers that have current Applications being adjudicated, allowing them the authority to continue to adjust their fares and rates up to 20% within a “Zone of Reasonableness” without specific Commission authorization until a Decision to their Applications has been adopted. 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 Vessel Common Carriers (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 VCCs licensed at the time 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 and wait for a Decision to be issued. In a 1998 decision that granted fare and rate flexibility to Catalina Channel Express, Inc. (VCC-52), the Commission concluded that it has broad discretion to fashion rules relating to transportation fare and rates in this state (D.98-12-016 in

Application 98-04-051). By Resolution TL-19141, the Special Authority was extended by one year. It is scheduled to expire on June 23, 2024.

Currently, 14 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).

Since adoption of TL-19139 in 2022, the Commission has received eight tariff updates from VCCs that had their fares and/or rates adjusted to incorporate the Special Authority. All eight VCCs subsequently filed formal applications to adjust their fares and/or rates to allow those adjusted fares to continue after the Special Authority expires.<sup>1</sup> Table 1 lists the VCCs that filed tariff updates pursuant to TL-19141.

| <b>Table 1</b> |                                  |
|----------------|----------------------------------|
| VCC-2          | BALBOA ISLAND FERRY              |
| VCC-47         | CATALINA PASSENGER SERVICE, INC. |
| VCC-52         | CATALINA CHANNEL EXPRESS, INC.   |
| VCC-63         | STAR & CRESCENT BOAT COMPANY     |
| 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      |

As of May 23, 2024, four of the VCCs have had Decisions issued on their applications. Four VCCs shown in Table 2 currently have active applications pending resolution.

| <b>Table 2</b> |        |                                  |
|----------------|--------|----------------------------------|
| A.23-02-017    | VCC-52 | CATALINA CHANNEL EXPRESS, INC.   |
| A.23-11-013    | VCC-91 | AVALON FREIGHT SERVICES LLC      |
| A.24-05-016    | VCC-47 | CATALINA PASSENGER SERVICE, INC. |
| A.24-05-017    | VCC-2  | BALBOA ISLAND FERRY              |

By letter dated February 1, 2024 (the letter), Thomas MacBride of the law firm Downey Brand, LLP (MacBride), on behalf of 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-19141..." MacBride goes on to state, "Carriers do not seek any modification of the [Zone of Reasonableness] authorized by Resolution TL-19139 and TL-19141. This request only seeks to extend the date of expiration by one year, to June 23, 2025. Carriers seek the extension because the basis for the issuance of TL-19139 and TL-19141, related to the cost of fuel, has not materially changed."<sup>2</sup>

The letter also states, "Carriers do not seek an order which could be construed to permit aggregating, 'stacking' or 'pancaking' the [Zone of Reasonableness] caps. All that is sought is an order extending the current expiration date of the [Zone of Reasonableness] set by TL-19139 (and extended by TL-19141) by twelve months to June 23, 2025."<sup>3</sup>

## **DISCUSSION**

The Commission granted VCCs Special Authority to Adjust Fares in 2000, 2004, and again in 2022 and 2023 due to the rapidly increasing cost of fuel. The data shows that fuel prices are now significantly higher than prior to 2019.

Allowing the current Resolution TL-19141 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. Four VCCs have active

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<sup>2</sup> Letter, Pg. 2.

<sup>3</sup> Letter, Pg. 6.

applications to increase their fares, but there is no certainty that Commission Decisions on those applications will be issued by June 23, 2024 – the date that the relief granted by Resolution TL-19141 expires.

We believe it is reasonable to extend the authority for VCCs with pending applications 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 maintain on 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 file with CPUC 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**

Pub. Util. 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 is neither waived nor reduced. Accordingly, this draft resolution was emailed to Thomas MacBride, Bryce M. Cullinane, Connor Trafton, City of Avalon, and all active and suspended vessel common carriers for comments and was placed on the Commission's agenda no earlier than 30 days from the date of publication on the Commission's daily calendar.

Bryce M. Cullinane, counsel for Balboa Island Ferry and Catalina Passenger Service, Inc., submitted comments requesting that this resolution be amended to allow an additional 30-days from the effective date of this resolution for VCCs to file an application. Since the submittal of the comments, however, both Balboa Island Ferry and Catalina Passenger Service, Inc., have filed applications and will be authorized to continue to use a Zone of Reasonableness. At this time, each VCC that filed a tariff utilizing the Zone of Reasonableness has filed an Application to maintain the increased fares and rates. As a result, there is no

longer any need to extend the deadline to file applications for VCCs that want to maintain their Zone of Reasonableness.

### FINDINGS

1. In Resolutions TL-19139 and TL-19141, the Commission found that 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. Resolution TL-19141 was adopted on June 8, 2023, extending the authority to VCCs to exercise the Zone of Reasonableness until June 23, 2024.
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-19141 for one year because the basis for granting it has not materially changed.
4. Avalon Freight Services (VCC-91) Balboa Island Ferry (VCC-2), Catalina Channel Express (VCC-52), and Catalina Passenger Service (VCC-47) have pending applications currently being adjudicated by the Commission.
5. The Commission has broad discretion to fashion rules relating to transportation rates in this state.
6. In line with Resolution TL-19139, VCCs that have pending applications filed with the Commission prior to the issuance of this Resolution should continue to be allowed to maintain 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.

7. A VCC should not be able to continue to benefit from the Zone of Reasonableness once a Decision has been issued for its Application.
8. 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, 2024, vessel common carriers (VCCs) that have pending Applications for fare and/or rate increases as of the effective date of this Resolution are permitted maintain 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 up until a Decision has been issued on their Application for a fare and/or rate increase.
3. Tariff filings authorized by this resolution that are still in effect shall expire on June 23, 2025, absent further order by this Commission.
4. 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 May 30, 2024.

The following Commissioners voted favorably thereon:

/S/ Rachel Peterson

RACHEL A. PETERSON  
Executive Director

ALICE REYNOLDS  
President

DARCIE L. HOUCK  
JOHN REYNOLDS  
KAREN DOUGLAS

Commissioners

Commissioner Matthew Baker being absent, did not participate in the vote on this item.