

STATE OF MAINE  
PUBLIC UTILITIES COMMISSION

Docket No. 2024-00097

July 9, 2024

CASCO BAY ISLAND TRANSIT DISTRICT  
Request for Approval of Proposed Increase  
in Rates in Casco Bay

RECOMMENDED DECISION

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**NOTE:**      **This Recommended Decision contains the recommendation of the Commission Staff. Although the Recommended Decision is in the form of a draft Commission Order, it does not constitute Commission action. Interested persons may file comments or exceptions to this Recommended Decision on or before Tuesday, July 23, 2024.**

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## **I.      SUMMARY**

By this Order, the Commission declines to open a formal investigation into the rates of Casco Bay Island Transit District (CBITD or the District) with respect to CBITD's April 30, 2024, notice of a change to its rate schedules.

## **II.     FACTUAL AND PROCEDURAL BACKGROUND**

On April 30, 2024, Casco Bay filed notice with the Commission of a proposed rate increase to be effective on July 1, 2024. CBITD proposed amending its rate schedules to implement a flat rate for all Regulated Islands,<sup>1</sup> increase both the peak season and off season single round trip fares for all of the Regulated Islands, eliminate

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<sup>1</sup> The Regulated Islands are: Peaks Island, Great Diamond Island, Little Diamond Island, Long Island, Chebeague Island, and Cliff Island and the mainland of Cumberland County. 35-A M.R.S. § 5101.

multi-ticket “commuter books,” lower the rates for 30-day and annual passes, and increase rates for bicycles and domesticated animals.

On May 2, 2024, the Presiding Officers provided notice of CBITD’s filing and provided an opportunity for interested persons to provide comment.

On May 15 and 16, 2024, Andrew J. Doukas filed a 50-ratepayer request for an investigation of the proposed rate change and an objection to the proposed rate change, respectively.<sup>2</sup> Accordingly, on May 20, 2024, the Commission opened a summary investigation pursuant to 35-A M.R.S. § 1303(1) to determine whether sufficient grounds exist to open a formal investigation.<sup>3</sup>

On May 28, 2024, the Presiding Officers extended the comment deadline for interested persons until May 31, 2024, and extended the deadline for CBITD to respond to the ratepayer request for investigation until June 7, 2024.

On June 3, 2024, Mr. Doukas made an additional filing in the Docket.

On June 7, 2024, CBITD filed its response to the ratepayer request for investigation.

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<sup>2</sup> The petitions appear to contain 60 signatures.

<sup>3</sup> The Commission also stated that the rate changes requested by CBITD would go into effect on July 1, 2024, but could be changed or rescinded if the Commission opted to conduct a formal investigation.

On June 11, 2024, Mr. Doukas made an unsolicited filing in the Docket styled as a “rebuttal” to CBITD’s filing.

To date, the Commission has received 36 public comments from non-parties to this proceeding, the overwhelming majority of which support CBITD’s proposed rate changes.

### III. APPLICABLE LEGAL PROVISIONS

CBITD is a public utility subject to the Commission’s jurisdiction. 35-A M.R.S. § 102(7) & (13). CBITD is governed by the terms of unallocated statutory language, as amended, that created CBITD, P. & S.L. 1981, ch. 22, P.L. 1985, ch. 481, § 101, P. & S.L. 2009, ch.3, as well as codified statutory provisions, 35-A M.R.S. §§ 5101-5111.

The Legislature authorized CBITD to furnish waterborne transportation for public purposes in the interest of public health, safety, comfort, and convenience of the inhabitants of the Regulated Islands in Casco Bay and other passengers served by CBITD.<sup>4</sup> P. & S.L. 2009, ch.3. In accordance with statutory requirements, the Commission has adopted rules governing CBITD, for example rules on the authorization and operation of ferries in Casco Bay and on publication and posting requirements for rate changes proposed by CBITD. MPUC Rules, chs. 510 & 560.

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<sup>4</sup> The district of CBITD is comprised of transport between the Regulated Islands of Peaks Island, Great Diamond Island, Little Diamond Island, Long Island, Chebeague Island, and Cliff Island and the mainland of Cumberland County. 35-A M.R.S. § 5101.

As to the service, rates, and schedules of CBITD, Title 35-A provides that all Casco Bay ferries must “maintain reasonable and adequate service, rates and schedules” to the regulated islands in Casco Bay, 35-A M.R.S. § 5103, and the Legislature has directed the Commission to provide for such “reasonable terms, conditions and limitations” as the Commission “determines necessary to maintain adequate transportation” to the regulated islands in Casco Bay, *id.* § 5101. To that end, CBITD’s rate schedules and terms and conditions must be filed with the Commission, and the Commission may, when warranted, investigate and suspend the operation of any rate schedule and term or condition of service filed with the Commission in accordance with Title 35-A. 35-A M.R.S. § 1303; MPUC Rules, ch. 510, § 3(A).

Title 35-A further specifies ratemaking standards for CBITD and provides for Commission oversight of those standards. For example, the Legislature has expressly authorized CBITD to adopt “reasonable cross-subsidization of rates in order to preserve the affordability of passenger, freight and vehicle transportation for the year-round residents of the affected islands, the financial viability of the district and the viability of the island communities served by the district.” 35-A M.R.S. § 5101-A(1). The Legislature directed that rates “shall to the extent possible reasonably assure sufficient income to meet the cost of service, including, but not limited to,” for example, operating expenses. P. & S.L. 1981, ch. 22, § 8.

As to Commission oversight of rates, the statute provides:

In making decisions that require an evaluation of the rates charged by the Casco Bay Island Transit District, the commission shall allow reasonable cross-subsidization of rates in order to preserve the affordability of passenger and freight services for the year-round residents of the affected islands, the financial viability of the district and the viability of the island communities served by the district. In allowing such cross-subsidization, the commission shall attempt to minimize the potential need for governmental operating subsidies for the operations maintained by the district.

*Id.* § 5101-A(2). As explained by the Commission in a prior proceeding, this means that CBITD has considerable discretion in designing rates, which are not required to be based principally on costs as is the case with other utilities' rates.<sup>5</sup> *Casco Bay Island Transit District, Proposed Increase in Rates and Charges in Casco Bay Due to Steep Increase in Fuel Costs*, Docket No. 2008-00159, Order at 4 (Sept. 17, 2008). As with other locally elected boards that run, for example, quasi-municipal water districts, the Commission typically gives considerable deference to CBITD's consideration of local issues in setting rates.<sup>6</sup> *Id.* at 4-5.

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<sup>5</sup> The Commission has also explained, however, that the cross-subsidization provisions do not authorize the cross-allocation of costs from non-scheduled services to scheduled services. *Casco Bay Island Transit District, Proposed Increase in Rates and Charges in Casco Bay Due to Losses in Seasonal and Tourist Ridership Related Operations-Generated Revenues*, Docket No. 2009-00119, Order at 9-10 (April 1, 2010). Revenues from non-scheduled services such as tours, charters, and cruise services must cover all incremental costs of such services, and any additional revenues from such services may be cross utilized to cover general operating costs. *Id.*

<sup>6</sup> The board of directors for CBITD is comprised primarily of residents and property owners of the regulated islands. P. & S.L. 1981, ch. 22; P. & S.L. 2009, ch.3.

Finally, the Legislature has authorized ratepayers to request that the Commission investigate CBITD's rates. Provided CBITD satisfies the public notice requirements of the Commission's rules, MPUC Rules, ch. 560, CBITD's proposed alterations to its rates and tolls typically go into effect without further action by the Commission. P.L. 1985, ch. 481, § 101. Fifty ratepayers, however, may submit a written request that the Commission investigate a proposed alteration, in which case the Commission shall investigate as prescribed in the Commission's statutory investigative authority. *Id*; 35-A M.R.S. § 1303 (providing the Commission may informally without notice or formally with notice investigate matters related to public utilities).

#### IV. PROPOSED RATE INCREASE

CBITD intends to set a new peak season \$14.00 full price flat rate and off-season full price \$7.20 flat rate for round trip passenger transportation that applies to all of the Regulated Islands. The result of the new flat rate will be an increase in the current full price round trip passenger rate of between \$3.45 and \$6.30 in peak season and between a decrease of \$0.25 and an increase of \$3.20 in the off season depending on the island.<sup>7</sup> The proposed half price flat rate is \$7.00 in peak season and \$3.60 in the off season, resulting in an increase of between \$1.75 and \$3.15 in peak season and between a decrease of \$0.60 and an increase of \$2.90 in the off-season, again

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<sup>7</sup> Prior to the proposed increase, the least expensive round-trip journey was to Peaks Island (\$7.70 peak; \$4.10 off season) and the most expensive was Cliff Island (\$11.55 peak; \$7.45 off season). The other Regulated Islands fell between those price points with islands closer to Portland being less expensive.

depending on the island.<sup>8</sup> In addition, CBITD is proposing to eliminate so called “commuter books” of five discounted tickets and, in lieu of commuter books, is proposing to lower the prices of 30-day, 90-day, and annual unlimited ride passes, both full and half price, and make those passes flat-rate for all islands. By way of example, CBITD is proposing a \$48 peak season 30-day pass, a decrease of \$34.50 for Peaks Island and \$77.15 for Cliff Island, and a \$432 annual pass, a decrease of \$474.95 for Peaks Island and \$944 for Cliff Island.<sup>9</sup> CBITD is also proposing slight increases in the rates for single ride round-trip transportation of bicycles and domesticated animals.<sup>10</sup>

## V. DISCUSSION

CBITD has undertaken a major update of its passenger rate structure; a rate structure that the District had not updated for 15 years. In so doing, the District has prioritized rates for residents, commuters, and other frequent ferry users over rates for tourists and other less frequent users. The information provided by CBITD, shows that the District comprehensively examined its revenue, expenses and prospects for grants and other funding, and modeled these factors along with an analysis of passenger

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<sup>8</sup> CBITD makes half-price tickets available to seniors 65 and older, children aged 5 to 13, and disabled persons. CBITD does not charge for children under 5 years old.

<sup>9</sup> Because annual passes are valid for an entire year, there are no peak or off-season versions of these passes.

<sup>10</sup> CBITD is proposing to include one bicycle and/or one domesticated animal in the 30-day, 90-day, and annual passes. CBITD previously had an add-on charge for these items for these passes.

purchasing behavior, inflation, and a comparison to other ferry systems. This process resulted in the new rates described in Section IV above.

In addition, the information filed shows that in implementing the rate increase, CBITD followed all applicable statutes and Commission rules with regard to public notice and public participation. There does not appear to be any dispute on this point. Further, the Commission has received numerous public comments regarding CBITD's rate increase, and the vast majority of those comments support the increase.

The petitioners who oppose the rate increase argue that the new rates unfairly discriminate against visitors and less frequent ferry users and, in so doing, violate CBITD's statutory authority. The petitioners point to language in the District's charter that requires the District to account for the needs of inhabitants of the Regulated Islands as well as "other passengers served by the [D]istrict." P. & S.L. 2009, ch. 3, § 1. The petitioners, however, gloss over additional language in Maine law that not only directs the District to "preserve the affordability of passenger, freight and vehicle transportation for the year-round residents of the [Regulated Islands], the financial viability of the [D]istrict and the viability of the island communities served by the [D]istrict," but also specific statutory language that permits the District to reasonably cross-subsidize the affordability of rates of "year-round residents of the [Regulated Islands], the financial viability of the [D]istrict and the viability of the island communities served by the [D]istrict" with the rates for other passengers. 35-A M.R.S. § 5101-A(1), (2).



The petitioners also point to the ability of the District to obtain grants and other government funding as a way to offset the need for a rate increase for infrequent ferry users. The District explains in its submissions that it does pursue such grants and government subsidies, but that it anticipates that these funding sources to be less robust in the future. Further, the petitioners again gloss over specific statutory language that directs the Commission, in reviewing the District's rates, to "attempt to minimize the potential need for governmental operating subsidies for the operations maintained by the [D]istrict." *Id.* § 5101-A(2).

Given the above, the Commission concludes that CBITD's rates were implemented pursuant to and in accordance with applicable statutes and regulations. Further, the Commission concludes that CBITD has reasonably exercised the broad discretion provided to it by the Legislature and that its new rate structure balances the financial needs of the District and the interests of all of the District's passengers within the bounds of that discretion.

## **VI. CONCLUSION**

For the reasons discussed in this Order, the Commission concludes sufficient grounds to warrant a formal investigation into the reasonableness of CBITD's rate increase do not exist and the Commission declines to further investigate this matter.

Dated at Hallowell, Maine, this 9<sup>th</sup> Day of July, 2024

Respectfully Submitted,

/s/ Jody McColman

/s/ Amy Mills

Presiding Officers

David Braley

Director, Telephone and Water Utilities Industries

Michael Johnson

Jason Marco

Commission Staff