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Decision No. 13608

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

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In the Matter of the Application of  
S. FREDRICKSON for certificate of  
public convenience and necessity to  
operate a power vessel for the trans-  
portation of freight for compensation  
between points upon the inland waters of  
the State of California. )

) Application No. 10041  
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Harry Davids, for applicant.  
E. P. Stoltz for Erikson Navigation Company  
and Estate of John Erikson.  
John S. P. Dean for Bay & River Boat Owner's  
Association.

MARTIN, Commissioner.

O P I N I O N

This is a proceeding, as amended, in which S. Fredrickson as managing owner for the co-partnership of C. Erikson, Executrix, of the Estate of John Erikson, Deceased, Barbara Demming, and S. Fredrickson applies for a certificate of public convenience and necessity authorizing the operation of a power boat called "Mathilda" between various points upon the inland waters of San Francisco, Suisun and San Pablo Bays and tributaries thereto.

A public hearing was held, evidence submitted and the matter is now ready for decision.

No evidence was submitted by the applicant other than the uncontroverted testimony of applicant to the effect that he had been engaged in this class of operation for a period of forty (40) years; that he has only a one-third interest in the power boat "Mathilda" which he has had since its construction in 1905.

This boat was originally a sailing vessel but was later changed to a power boat through the installation of a gasoline engine of 235 horse power. This vessel has been operated by John Erikson one of the co-partners, but recently the managing ownership was transferred from said John Erikson to S. Fredrickson, applicant herein.

The Legislature of 1923, added as an amendment sub-section "D" to Section 50 of the Public Utilities Act, which became effective August 17, 1923, reading in part as follows:-

"(d) No corporation or person, their lessees, trustees, receivers or trustees appointed by any court whatsoever, shall hereafter operate or cause to be operated, any vessel between points exclusively on the inland waters of this state, without first having obtained from the railroad commission a certificate declaring that present or future public convenience and necessity require or will require, such operation, but no such certificate shall be required of any corporation or person which is actually operating vessels in good faith, at the time this act becomes effective, between points exclusively on the inland waters of this state under tariffs and schedules of such corporations or persons, lawfully on file with the railroad commission."

Under the provisions of Section 50 sub-division (d), as hereinabove quoted, the operator of a vessel transferring property for compensation upon the inland waters of this State must secure a certificate of public convenience and necessity from the Railroad Commission before commencing operation. The applicant herein holds no such certificate

nor does he fall within the provisions of the language in the sub-section above quoted that no such certificate shall be required of any corporation or person which corporation or person was operating vessels in good faith at the time that the Act became effective in that the said Fredrickson was not operating a vessel or vessels in good faith, the particular vessel in question being operated at the time by John Erikson, Deceased. It does appear in evidence, however, that among the number of vessels operated by John Erikson there was one; namely, "Mathilda", in which the said Erikson only held a one-third interest, the other interests resting one-third in Fredrickson and one-third in Barbara Demming. The majority ownership has now transferred the managing control of said vessel to applicant, Fredrickson, and it is incumbent upon the said Fredrickson under the provisions of statutory law to secure a certificate to continue in his own name the operation of this craft.

This particular boat; namely, "Mathilda" has been operated as a common carrier of freight for compensation over the inland waters of the State of California for a period of approximately 20 years and should the certificate applied for not be granted it would necessitate the owners of such vessel laying<sup>it</sup> up for an indefinite period or until such time as arrangements might be made to place it in operation under another certificated carrier.

While Section 50 sub-division "d" of the Public Utilities Act does not provide for the transfer of an operative right, it is the belief of this Commission that it was not within the intent of the Legislature under such circumstances as exist in the present instance; namely, through the death

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of an operator of a boat which has been in operation that such boat should be retired from service, for the simple reason that if there was a necessity for the operation of said craft during the period of years last past there is nothing in the evidence to show why such necessity does not continue to exist, and if a certificate is refused in this case and the necessity exists at the present time for a certain tonnage of water craft upon the inland waters then the Commission in retiring from operation an active vessel would merely be inviting an application for the operation of new craft by another carrier.

The Commission in this matter in granting a certificate to Fredrickson for the operation of the "Mathilda" is neither enlarging upon nor decreasing operative rights which existed on August 17, 1923, but merely continuing in status quo an operation in a manner which it deems just and equitable with due regard to the public interest.

We are of the opinion that under the circumstances in this case a certificate should issue, particularly in view of the fact that the Erikson Navigation Company, a corporation, has only been recently granted a certificate to operate such crafts as were retained by the estate as heretofore operated by John Erikson, deceased, (Decision Number 15566, Application 10001).

An Order will be entered accordingly:-

#### O R D E R

A public hearing having been held, evidence submitted and the Commission being fully advised,

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA  
HEREBY DECLARES that public convenience and necessity require the operation by S. Fredrickson, as managing owner for the co-partnership of C. Erikson, executrix of the estate of John Erikson, deceased, Barbara Denning and S. Fredrickson

of a gasoline power boat as more specifically hereinafter set forth as a common carrier of freight upon the inland waters of the State of California limited to the Bays of San Francisco, Suisun and San Pablo and tributaries thereto; and

IT IS HEREBY ORDERED that a certificate of public convenience and necessity be granted subject to the following conditions:-

(1)-That the certificate herein granted authorizes the operation of one (1) vessel only; namely, a gasoline power boat called "Mathilda" with an engine of 235 horse power, constructed of wood, with a length of 79 feet and a beam of 29 feet and a depth of 6.10 feet and tonnage of 73.

IT IS HEREBY FURTHER ORDERED that applicant shall file his written acceptance of the certificate herein granted within a period of not to exceed ten (10) days from date hereof.

IT IS HEREBY FURTHER ORDERED that he shall file within a period of twenty (20) days from date hereof tariff of rates as set forth in Exhibit "B" attached to the application herein, such tariff of rates to hereinafter include whatever supplements that may be issued to said tariff filed as Exhibit "B" and issued in the name of the Bay and River Owner's Association.

The foregoing Opinion and Order are hereby approved and ordered filed as the Opinion and Order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 27<sup>th</sup> day of May, 1924.

H. C. Anderson  
Iwing Martin  
Egerton Sherwin