

Decision No. 14676

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA  
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Bay Cities Transportation Company,  
a Corporation.

Complainant.

vs.

E. E. Warren,  
Warren Transportation Company,  
L.M.Bertaud, J.P.Barnacle,  
Harry Hoffman, A.Dixon,  
John Doe and Richard Doe,  
Defendants.

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In the Matter of the Suspension of  
Freight Rates between San Francisco,  
Oakland and Alameda, as set forth in  
Local Freight Tariff No.2,C.R.C.No.2,  
of the Warren Transportation Company.  
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In the Matter of the Application of  
E.E.Warren, doing business under the  
name of Warren Transportation Company  
for a Certificate of Public Convenience  
and Necessity to operate vessels on the  
Inland Waters of the State of California  
between points on the San Francisco  
Water Front and other points on San  
Francisco Bay and Tributaries,including  
the City of Oakland,California.  
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ORIGINAL

CASE NO. 2079

CASE NO. 2084

APPLICATION NO.10841

Douglas Brookman, for E.E.Warren,et al.  
Harvey E.Sanborn, for Bay Cities Transportation Company.

SQUIRES, COMMISSIONER:

O P I N I O N

These three proceedings, involving the same issues,  
were, by stipulation, heard together and will be disposed of in  
one opinion and order.

The Bay Cities Transportation Company, a corporation, by complaint filed December 11, 1924, Case No. 2079, alleges that the defendants, E.H. Warren, Warren Transportation Company, L.M. Bertaud, J.P. Barnacle, Harry Hoffman, A. Dixon, John Doe and Richard Doe, were not operating vessels in good faith between San Francisco and Oakland under tariffs lawfully on file with the Railroad Commission of California prior to August 16, 1923, and that therefore a certain tariff designated Warren Transportation Company Local Freight Tariff No. 2, C.R.C. No. 2, issued December 1, 1924, made effective December 31, 1924 and naming rates for the transportation of freight on San Francisco Bay and its tributaries, and particularly specific rates between the cities of San Francisco, Oakland and Alameda, violate Section 50(d) of the Public Utilities Act. An order is sought from the Commission requiring defendants to cease and desist from continuing the alleged unlawful operations; also an order suspending and cancelling Warren Transportation Company Freight Tariff No. 2, C.R.C. No. 2, insofar as that tariff names rates for the transportation of freight between the city of San Francisco and the cities of Oakland and Alameda.

Case No. 2084 was instituted December 30, 1924 on this Commission's own motion, and in that case there was suspended Items Nos. 11, 12, 18, 20, 34 and 50, naming freight rates between the cities of San Francisco, Oakland and Alameda, published in Warren Transportation Company Local Freight Tariff No. 2, C.R.C. No. 2.

Application No. 10841 was filed February 16, 1925 by E.H. Warren, doing business under the name of Warren Transportation Company, for a certificate of public convenience and necessity to operate vessels between San Francisco and other points on San

Francisco Bay, including the city of Oakland. In that proceeding applicant states that in no way does it concede that it already has not the right to operate vessels between San Francisco and Oakland, but that the application is filed to forestall any technical conclusion of the Commission that it has no legal authority to operate between these communities.

A hearing was had February 25, 1925, and all matters and things having been duly submitted the proceedings are now ready for an opinion and order.

It is the contention of defendant that under the name of E.H. Warren and Warren Transportation Company he has operated vessels on the inland waters of this State since December, 1915. Prior to July 27, 1917, when the Public Utilities Act was amended, it was not necessary for vessels operating between points on the said inland waters to file tariffs, unless the service rendered was regularly performed for compensation over regular routes. Following the amendment of the law many small operators filed tariffs, but it was not until the year 1920, when the Bay and River Boat Owners' Association was organized, that rates were published by practically all of these small irregularly operated vessels. It appears that the defendant, E.H. Warren, became a member of the Bay and River Boat Owners' Association June 1, 1920, when he purchased the boat lines operated by a Mr. Frank Rossi. The tariff of the Bay and River Boat Owners' Association published rates applying only between points on San Francisco Bay and points on San Joaquin and Sacramento Rivers south of Sacramento and west of Stockton. Subsequently Warren withdrew from the Bay and River Boat Owners' Association and published his individual tariff, C.R.C. No. 1, effective May 1, 1923, which tariff

established rates applying to freight transported between points on San Francisco Bay and points on the San Joaquin and Sacramento Rivers south of Sacramento and west of Stockton. This Tariff No.1 was cancelled by Warren Transportation Company Tariff C.R.C. No.2, effective December 31, 1924, which is the tariff in controversy in this proceeding, and particularly in connection with the items naming rates applying to transportation between San Francisco and Oakland.

There was evidence introduced to the effect that when business was offered service had been rendered between San Francisco and Oakland, but there was no testimony to show that such service was lawful and in compliance with tariffs on file with the Commission, as required by the Public Utilities Act. Defendant, it seems, recently operated a vessel between San Francisco and Oakland through an arrangement with the Alameda Transportation Company, whereby the former furnished the service, collected the latter Company's published rates, and retained such moneys as its compensation. This manner of handling traffic under tariffs published by another company is, of course, not a lawful operation. It also appears the operations were conducted, under proper tariff authority, for a number of months in 1922 and 1923, between San Francisco, Napa and Vallejo. The evidence indicates that this service was abandoned because it proved unprofitable.

An exhibit was introduced by complainant showing that defendant had made a number of trips, October 16 to December 3, 1924, from San Francisco to the Parr Terminals and transported some 635 tons during those three months, using a vessel under contract to purchase, which was later returned to the owners.

A witness for the defendant testified that the principal steamship companies in San Francisco had been solicited and that they had offered substantial tonnage as soon as the Warren Trans-

portation Company was competent to furnish a proper service. This evidence was met by complainant's witnesses, who maintained that the Bay Cities Transportation Company was rendering satisfactory service and that the tonnage, in all probability, could not and would not be secured by the Warren Transportation Company. This apparent conflict on the essential point involved in the case need not, I think, be reconciled. Public convenience and necessity must be shown by direct testimony. It cannot be assumed to exist because of the statement of one or several persons that if certain facilities are offered they will utilize them. In all cases the burden is on the applicant to show public necessity, and if there is a substantial conflict in the evidence it must be resolved against him. This is required in order that the Commission may ascertain clearly from the record that public necessity does actually exist.

Washington et al. vs. Fairchild, 224 U.S. 510.

The record fails to show that defendant at any time has rendered a regular service between San Francisco and Oakland, if we except the illegal service performed for the Alameda Transportation Company. It is clear that no tariffs were on file authorizing defendant to perform this or any other service between those points on August 16, 1923, as required by amended paragraph (d) Section 50, of the Public Utilities Act. Freight Tariff No. 1, C.R.C. No. 1, by its terms is purely a river tariff, effective between points on the bay on one hand and points on the Sacramento and San Joaquin Rivers on the other hand.

I conclude and find, therefore, that neither E.H. Warren nor Warren Transportation Company was actually operating vessels in good faith between San Francisco, Oakland and Alameda August 16, 1923 under tariffs lawfully on file with the Railroad Commission and, therefore, had no authority without a certificate of public

convenience and necessity to publish in its Tariff C.R.C.No.2, effective December 31,1924, any rates covering transportation between San Francisco, Oakland and Alameda.

The items in Warren Transportation Company Tariff C.R.C.No.2, under suspension in Case No.2084, applying between San Francisco, Oakland and Alameda, having been published without legal authority, defendants should be required to cancel such items in their tariff on or before the 30th day of March, 1925.

No satisfactory evidence having been presented that there is public convenience and necessity for the operation by E.H.Warren, doing business under the name of Warren Transportation Company, of a freight service between San Francisco, Oakland and Alameda, application No.10841 should, therefore, be dismissed without prejudice.

In these proceedings the Commission is not called upon, and I do not assume here to pass upon, the legality of any of defendants' operating rights to points other than those between San Francisco, Oakland and Alameda.

I recommend the following form of order.

#### O R D E R

These proceedings having been duly heard and submitted by the parties, full investigation of the matters and things involved having been had and basing its order on the findings of fact and conclusions contained in the opinion, which said opinion is hereby referred to and made a part hereof,

IT IS HEREBY ORDERED that E.H.Warren, doing business under the name of Warren Transportation Company, cease and desist

from the operation of vessels as a common carrier between San Francisco, Oakland and Alameda.

IT IS HEREBY FURTHER ORDERED that E.H. Warren cancel, on or before March 30, 1925, all rates contained in Warren Transportation Company Tariff No. 2, C.R.C. No. 2, applying between San Francisco, Oakland and Alameda.

IT IS HEREBY FURTHER ORDERED that Application No. 10841 be dismissed without prejudice.

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 17<sup>th</sup> day of March, 1925.

H. B. Burdige  
C. L. Seavey  
Egerton Shore  
W. J. Squires  
E. J. Squires  
Commissioners