

Decision No. 11812

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

-000-

ORIGINAL

In the Matter of the Application of)
 HARBOR TUG AND BARGE COMPANY,)
 a corporation, for a certificate of) Application No. 11,710
 public convenience and necessity and)
 for authority to issue stock.)

Dunne, Brobeck, Phlegar and Harrison,
 by Gregory C. Harrison, and
 George E. Crothers, for Applicant.

BY THE COMMISSION:

O P I N I O N

Applicant, Harbor Tug and Barge Company, a Delaware corporation, asks for a certificate declaring that present and future public convenience and necessity require and will require operation by applicant of a general launch, barge and tow boat business including the launch, barge and tow boat business now owned and operated by the American Dredging Company and Henry C. Peterson, Incorporated, also for permission to issue \$600,000. of stock (\$500,000. 7% cumulative preferred and \$100,000. of common).

A public hearing upon the above entitled application was held before Examiner Fankhauser on November 9th, 1925, at which time the matter was duly submitted and is now ready for decision.

At the outset we are confronted with the proposition whether or not applicant, admittedly a foreign corporation, can be permitted to carry on a public utility business in this state. Section 26 of the Public Utilities Act provides as follows:-

"No foreign corporation, other than those which by compliance with the laws of this state are entitled to transact a public utility business within this state, shall henceforth transact within this state any public utility business, nor shall any foreign corporation which is at present lawfully transacting business within this state henceforth transact within this state any public utility business of a character different from that which it

is at present authorized by its charter or articles of incorporation to transact, nor shall any license, permit or franchise to own, control, operate or manage any public utility business or any part or incident thereof be henceforth granted or transferred, directly or indirectly, to any foreign corporation which is not at present lawfully transacting within this State a public utility business of like character; provided, that foreign corporations engaging in commerce with foreign nations or commerce among the several states of this union may transact within this state such commerce and intrastate commerce of a like character."

Applicant's position is that it falls within the proviso of the above Section by reason of the fact that it is to engage in interstate and foreign commerce, and that therefore it will be entitled to transact intrastate commerce of a like character to such interstate and foreign commerce.

The certificate of public convenience and necessity herein requested is for authority to engage in the following:

- (1) A general towage business consisting in towing
 - (a) ships, barges and craft of all descriptions in and about the waters hereinbefore described between points within the State of California and elsewhere;
 - (b) Ocean-going steamships engaged in interstate and foreign commerce to and from docks, wharves, dry docks and points of destination on the arrival of said steamships to and their departure from San Francisco and between points in and about the said Bay of San Francisco;
- (2) The rendition of salvage service of every description;
- (3) The chartering or rental of launches, barges, tow-boats and other craft to others;
- (4) The transportation of goods on barges owned by your petitioner and towed by your petitioner's tugs
 - (a) Between points on the Pacific Coast involving, in some cases, voyages beyond the three-mile limit and over foreign waters;
 - (b) From steamships engaged in interstate and foreign commerce, from ships tackle to Bay Points and elsewhere, on bills of lading to destinations reached by your petitioner;
 - (c) From Bay points to ships engaged in interstate and foreign commerce where the company's shipments will initiate transportation to other states or abroad;
 - (d) Between points within the state of California.
- (5) The transportation of passengers to and from ships departing for points abroad and to other states and from ships arriving from abroad and other states, including both passengers thereof and the crews thereof; also the transportation of passengers in Coastwise traffic involving voyages on the high seas and beyond the three-mile limit and also between points within this state, but upon no regular route in any case, and only upon special request and by special contract.

(6) The transportation of crews of vessels of war of the United States of America and of other countries and other ships and vessels of the United States Navy and other departments of the government of the United States between such war and other vessels and the shore and, in general, in transportation of property of the government of the United States.

(7) The coaling and fueling of ships, particularly those engaged in interstate and foreign commerce and in coaling and fueling vessels of war and other vessels of the United States government."

The proviso of Section 26 clearly signifies that a foreign corporation engaged in interstate and foreign commerce may as a matter of right also engage in intrastate commerce of a like character with such interstate and foreign commerce, and, therefore, the granting or denying of a certificate of public convenience and necessity for such intrastate commerce is not within our power. The application for a certificate of public convenience and necessity in so far as it relates to these operations should, therefore, be dismissed for want of jurisdiction.

However, as set forth in the petition and as disclosed by the record the applicant desires to take over and carry on the business heretofore conducted by the American Dredging Company and Henry C. Peterson, Incorporated, and the application for a certificate of public convenience and necessity requests authority to transact this business. Both of these companies are public utilities operating under the jurisdiction of this Commission and have rate schedules on file which permit them to engage in a general launch and barge business. Applicant's petition requests that it be authorized to conduct a general launch, barge and tow boat business on the inland waters of this state without regard to its operations involving commerce with foreign nations and commerce among the several states. Inasmuch as it is a foreign corporation, as to these operations which are not of a like character with the interstate and foreign commerce to be carried on by applicant, the application for certificate of public convenience and necessity

should also be dismissed for want of jurisdiction. There is an absolute prohibition under Section 26 forbidding foreign corporations from carrying on operations of this character.

In view of our conclusion that the application for a certificate of public convenience and necessity should be dismissed for want of jurisdiction, and further in view of the fact that applicant is a foreign corporation, we believe that the application for permission to issue stock should also be dismissed. An order will be entered accordingly.

O R D E R

Harbor Tug and Barge Company, a foreign corporation, having made application for a certificate of public convenience and necessity to carry on a general launch, barge and towboat business in the State of California, and also for permission to issue stock, a public hearing having been held thereon and the matter having been submitted, and the Commission being of the opinion that application should be dismissed,

IT IS HEREBY ORDERED that the above entitled application be, and the same is hereby, dismissed.

Dated at San Francisco, California, this 29th
day of December, 1925.

W. A. Brundage
Chairman
Edward A. [unclear]
Leon Whitell
Commissioners