

Decision No. 12219

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

In the Matter of the Application  
of Crowley Launch & Tug Boat Company,  
a corporation, for authority to make  
certain changes in its rates, rules  
and regulations, and for a Certificate  
of Public Convenience and Necessity  
defining and validating certain oper-  
ative rights owned and exercised by  
applicant for the transportation of  
property for compensation by vessels  
between points upon the inland water-  
ways of the State of California.

APPLICATION NO. 12284

In the Matter of the Application  
of Crowley Launch & Tug Boat Company,  
a corporation, for authority to make  
certain changes in its fares, rules  
and regulations applicable to the  
transportation of persons by vessel  
upon the inland waterways of the  
State of California, and for a  
Certificate of Public Convenience and  
Necessity defining and validating  
certain operative rights owned and  
exercised by applicant for the trans-  
portation of passengers for compensation  
by vessels between points upon the inland  
waterways of the State of California.

APPLICATION NO. 12285

Sanborn & Roehl and DeLancey C. Smith, by A.B. Roehl,  
for Applicant.

BY THE COMMISSION:

OPINION

These are applications filed by the Crowley Launch &  
Tugboat Company, a corporation, requesting the Commission under  
the provisions of Section 50(d) of the Public Utilities Act for

a certificate of public convenience and necessity validating and confirming the right to operate vessels for the transportation of persons and property between points on San Francisco, San Pablo and Suisun Bays and their arms and tributaries, including points on the Sacramento River and its tributaries, Sacramento and west; the San Joaquin River below Streckers; Mokelumne River below New Hope, and Old and Middle Rivers. Permission is also requested to cancel entirely Local Towing and Special Service Tariff No.1, C.R.C.No.3, and to cancel on one day's notice the rates, rules and regulations published in Demurrage Tariff No.1, C.R.C.No.4; Local Freight Tariff No.2, C.R.C.No.2, and Local Passenger Tariff No.2, C.R.C.No.2, and to publish in lieu thereof the rates, rules and regulations shown in Exhibits "A" of the applications.

The petition sets forth, (a) that prior to September 15, 1923, the date when section 50(d) of the Public Utilities Act became effective and ever since that time, applicant was and has been actively engaged in the business of transporting persons and property for compensation between points on the inland waterways of the State of California under tariffs lawfully on file with this Commission and is therefore entitled to continue its operations by virtue of said section; (b) that its Local Towing and Special Service Tariff No.1, C.R.C.No.3, names rates, rules and regulations governing special service, such as towing, rental of equipment, etc., over which this Commission has no jurisdiction and (c) that many of the rates, fares, rules and regulations published in Demurrage Tariff No.1, C.R.C.No.4; Local Freight Tariff No.2, C.R.C.No.2 and Local Passenger Tariff No.2, C.R.C.No.2,

are not used by applicant in its common carrier operations and should, therefore, be cancelled and that the rates, fares, rules and regulations shown in Exhibits "A" of the applications are those that apply to its operations and, except for minor modifications, are reproduced from the tariffs for which authority is requested to cancel.

A public hearing was held at San Francisco January 22, 1926 before Examiner Geary and the applications having been duly submitted are now ready for our opinion and order.

#### APPLICANT'S OPERATIVE RIGHTS

The extent to which applicant is entitled to operate as a common carrier upon the inland waters of this State must be determined by the scope of its activities on September 15, 1923 and prior thereto, when by the enactment of Chapter 387, Statutes 1923, section 50(d) of the Public Utilities Act became effective. That section of the act reads, in part, as follows:

"No corporation \* \* \* \* 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 \* \* \* \* 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 \* \* \* \* lawfully on file with the Railroad Commission."

(underscoring ours)

Applicant first filed tariffs with this Commission in the latter part of 1917. At that time the Public Utilities Act did not require water carriers to secure a certificate of public

convenience and necessity before beginning operations, but it did require them to file their tariffs with the Commission. The tariffs filed in 1917 remained in effect until June 1, 1920, when they were cancelled by schedules issued by the Bay and River Boat Owners Association, hereinafter referred to as the Association, an organization composed of approximately thirtyfive bay and river boat operators, including the applicant. The Association issued freight and passenger tariffs in which all its members were named as participating carriers. Although the territory served by some members of the Association was very limited the scope of those tariffs was broad enough to collectively embrace each individual member's operations, and named rates and fares between practically all points on San Francisco, San Pablo and Suisun Bays and the navigable portions of the Sacramento, San Joaquin, Mokelumne, Old and Middle Rivers. In 1924 the Association was dissolved and, effective October 1, 1924, applicant published its individual tariffs and is now conducting its common carrier operations thereunder.

The evidence indicates that on September 15, 1923, the date section 50(d) of the Public Utilities Act became effective, applicant was operating vessels in good faith under tariffs lawfully on file with this Commission. Applicant's General Superintendent testified that it is not now the intention to enlarge the past or present operations, but specific authority is requested to continue in effect a service that was rendered prior to September 15, 1923 and has been rendered since that time between practically all points on the Bays of San Francisco, San Pablo and Suisun, including service to, from and between points on the Oakland estuary, located in the cities of Oakland

and Alameda and on the Sacramento, San Joaquin, Mokelumne, Old and Middle Rivers, with the exception that no service has ever been rendered on the Sacramento River north of Sacramento. The service from, to and between points in Alameda was rendered under the assumption that the term "Oakland" used in the tariff included all points within the Oakland Harbor on both the Oakland and Alameda sides. With this latter contention we are not in accord. The term "Oakland" as used in applicant's tariff embraces all points in the City of Oakland on the estuary, but it cannot be construed to include points located in the City of Alameda. However, the evidence shows that applicant was and is lawfully serving points in the estuary on the Oakland side, and to exclude it from serving points in Alameda, situated only a few feet therefrom, because of a tariff technicality, would be manifestly unjust.

Upon the facts of record, we find that public convenience and necessity require the operation by applicant of vessels for the transportation of persons and property for compensation on the inland waterways of the State of California between the points as shown in Exhibits "A" of the application and also from, to and between points on the Oakland estuary in the City of Alameda to the same extent that service is rendered from, to and between points on the Oakland estuary in the City of Oakland.

THE OPERATIONS OF APPLICANT UNDER LOCAL TOWING  
AND SPECIAL SERVICE TARIFF NO.1, C.R.C.No.3.

The charges shown in this tariff cover the service for towing, moving pile drivers, barges, lighters, fumigating goars and vessels; running lines and anchors for vessels; rental of launches, barges, lighters and other equipment.

Applicant contends that this accessorial service was and is rendered under special contracts and that the charges vary according to the circumstances existing at the time the contracts are made, such as the condition of the equipment to be towed or rented, weather, tidal and other hazards which at the particular time enter into the charge. This towing service, applicant maintains, not being a common carrier transportation of persons or property for compensation does not come within the purview of its activities as a common carrier and, therefore, is not subject to the jurisdiction of this Commission.

The term "common carrier" insofar as it relates to applicant is defined in section 2(1) of the Public Utilities Act as:

"A corporation \* \* \* \* owning, controlling, operating or managing any vessel engaged in the transportation of persons or property for compensation between points upon the inland waters of this state."

(underscoring ours)

The United States Supreme Court in *Concester Ferry Company vs. Commonwealth of Pennsylvania*, 114 U.S. 196, said:

"Transportation implies the taking up of persons or property at some points and putting them down at another."

Applicant in rendering a towing service does not come into the custody of the persons or property to be transported; hence can only be the indirect means whereby the transportation service is rendered. The vessel towed may itself be a common carrier, but whatever its status the duty of transporting the persons or property is vested with it and not with the tower. In

a well known case, Thomas McNally vs. Steam Tug I.P. Dayton, et al., 120 U.S. 337, the United States Supreme Court held that:

"As between the tow and its tug \* \* \* \* the contract of towage involves a responsibility for loss upon the tug only by reason of the want of ordinary care; for a tug is not a common carrier \* \* \* \*".

(underscoring ours)

The court also held the same view in The Steam Tug Margaret vs. Charles Bliss, et al., 94 U.S. 494; The J.P. Donaldson, 167 U.S. 599 and the Eastern Transportation Line vs. Patrick F. Hope, 95 U.S. 297.

We conclude and find that the service performed by applicant under the rates, rules and regulations shown in Local Towing and Special Service Tariff No. 1, C.R.C. No. 3, is not within the jurisdiction of this Commission.

CANCELLATION OF LOCAL FREIGHT, PASSENGER  
AND DEMURRAGE TARIFFS

Applicant maintains that the rates, fares, rules and regulations in the present tariffs, being a continuation of the rates, fares, rules and regulations originally published in the tariffs of the Bay and River Boat Owners Association, do not now in all respects apply to its operations. As previously stated, the tariffs of the Association were not intended to cover a single water carrier, but were published to cover collectively the operations of all members. As a result, the tariffs of applicants contain many rates, fares, rules and regulations not applicable to its operations and for which authority is now requested to cancel. The revised rates, fares, rules and regulations

shown in Exhibits "A" of the applications are for the most part the same in volume as those in the present tariffs.

Applicant's General Superintendent testified that the increases resulting from the elimination of various items were purely technical, they never having been used, and that the re-adjustment would not in any manner increase the operating revenue.

We conclude and find that applicant should be authorized to cancel the rates, rules and regulations in Demurrage Tariff No.1, C.R.C.No.4, Local Freight Tariff No.2, C.R.C.No.2, and Local Passenger Tariff No.2, C.R.C.No.2, and to substitute in lieu thereof the rates, rules and regulations shown in Exhibits "A" of the applications.

#### O R D E R

A public hearing having been held in the above entitled applications, evidence having been submitted by the applicant, 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 applicant, Crowley Launch & Tugboat Company, a corporation, of vessels for the transportation of persons and property for compensation on the inland waters of the State of California between the points as shown in Exhibits "A" of the applications, and points on the Oakland estuary located in the city of Alameda. This authority does not enlarge the operative rights of applicant conducted under Local Freight Tariff No.4, C.R.C.No.2, and Local Passenger Tariff No.2, C.R.C.No.1, of Bay and River Boat Owners Association reissued as applicant's Local Freight Tariff No.2.



C.R.C.No.2 and Local Passenger Tariff No.2, C.R.C.No.2, respectively, except as to the service from, to and between points in the City of Alameda, herein specifically authorized, and

IT IS HEREBY ORDERED that a certificate of public convenience and necessity to cover such operations be and the same is hereby granted.

IT IS HEREBY FURTHER ORDERED that applicant, Crowley Launch & Tugboat Company, a corporation, be and it is hereby authorized to cancel the rates, rules and regulations published in Local Towing and Special Service Tariff No.1, C.R.C.No.3.

IT IS HEREBY FURTHER ORDERED that applicant, Crowley Launch & Tugboat Company be and it is hereby authorized to cancel on ten (10) days' notice to the Commission and to the public, the rates, rules and regulations published in Demurrage Tariff No.1, C.R.C.No.4; Local Freight Tariff No.2, C.R.C.No.2, and Local Passenger Tariff No.2, C.R.C.No.2, and to publish in lieu thereof the rates, rules and regulations shown in Exhibits "A" of the applications.

Dated at San Francisco, California, this 17<sup>th</sup> day of March, 1926.

H. B. Brundage  
C. C. Deane  
E. J. Gaudin  
Leon C. White

Commissioners.