

LRM

Decision No. 18840.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
ERIKSON NAVIGATION COMPANY )  
to acquire rights of H.A. Ball and ) Application No. 13983  
Fred F. Ball to operate vessels and )  
to issue notes. )

Sanborn and Roehl and DeLancey C. Smith,  
by H.H. Sanborn, for applicant.

BY THE COMMISSION:

**ORIGINAL**

OPINION

In this application Erikson Navigation Company asks permission to acquire the operative rights of H.A. Ball and Fred F. Ball and to issue notes in the amounts and for the purposes hereinafter set forth.

A public hearing in the matter was held before Examiner Fankhauser. Although notice of the hearing was given by publication, no one appeared in protest to the granting of the application.

It is of record (Exhibit D) that on November 15th, 1926, Henry A. Ball and Fred F. Ball signed an agreement under the terms of which they agreed to sell to the Erikson Navigation Company all of their right, title and interest in and to Barge No. 3, Barge No. 4 and Barge No. 5, including all rights of whatever kind and character they had to operate tugs, barges and other vessels as a common carrier of property, or otherwise. The consideration to be paid is \$15,500.00 payable as follows;- \$1,250. upon execution of agreement and the balance in monthly installments of \$300. each. The present application was filed on August 10th. It will be noted that H.A. Ball and Fred F. Ball do not ask permission to sell their properties nor have they joined in the application. The agreement, (article six), provides that the parties will, from time to time, join in any pro-

ceedings or applications before any public authority in the State of California or elsewhere, necessary in the judgment of Erikson Navigation Company to effectuate the purpose of the agreement. It is alleged that neither Henry A. Ball nor Fred F. Ball are available to sign the application. In our opinion the properties which Henry A. Ball and Fred F. Ball have agreed to sell cannot be sold without permission from the Railroad Commission. If the agreement to sell has already been executed, it is inoperative until authorization is secured from this Commission. While we will authorize this sale, the authority herein granted to execute such agreement will not become effective until Henry A. Ball and Fred F. Ball or their representatives duly authorized to act for them have either joined in the application or furnished us with an affidavit showing that they will enter into a proper agreement covering this proposed sale.

On May 27, 1919, Fred F. Ball filed with the Railroad Commission a tariff entitled as follows:-

FRED F. BALL  
Barging and Towing  
Antioch, Calif.

LOCAL FREIGHT TARIFF NO. 2  
Cancels Local Freight Tariff No. 1  
Showing Regular Haul Rates and Minimum Special Trip Rates  
between  
ALL POINTS ON THE SACRAMENTO AND SAN JOAQUIN RIVERS AND  
THEIR TRIBUTARIES  
and  
POINTS ON SAN FRANCISCO BAY

The tariff does not designate in particular any points between which Fred F. Ball operates. The rates charged are based on the distance of the haul.

By Decision No. 13566, dated May 17, 1924, in Application No. 10001 the Railroad Commission declares -

"The Railroad Commission of the State of California hereby declares that present and future public convenience and necessity require the operation by the Erikson Navigation Company of only such boats and barges as are hereinafter specifically set forth, for the transportation of freight, for compensation, between all points on San Francisco, San Pablo and Suisun Bays and tributaries and upon all rivers, waterways and sloughs of the Sacramento and San Joaquin Valleys serving the same points or landings as are at present served by the Estate of John Erikson, deceased, the rates to be charged for such service and the rules and regulations

"governing the same to be the same as those of the Estate of John Erikson, deceased, now on file with the Railroad Commission. The boats and barges which the Erikson Navigation Company may operate under the authority herein granted are as follows:-

Towboat 'Erikson No. 15', 110 horsepower gas engine; gross tons, 13; net tons, 10.  
Towboat 'Mt. Eden', 80 horsepower gas engine; gross tons, 12.16; net tons, 8.27.  
Towboat 'Mildred', 30 horsepower gas engine.  
Gasoline Steamer 'Crockett', 25 horsepower gas engine; gross tons, 62; net tons, 52.  
Gasoline Steamer 'H. Eppinger', 35 horsepower gas engine; gross tons, 96; net tons, 71.  
Gasoline Steamer 'Montezuma', 85 horsepower gas engine; gross tons, 73.3; net tons, 69.24.  
Gasoline Steamer, 'Albertine', 50 horsepower gas engine; gross tons, 50.74; net tons, 48.21.  
Barge 'E-2', length, 110 feet; beam, 30 feet; depth, 7 feet; 6 inches.  
Barge 'Pyramid', length over all, 160 feet; beam moulded, 37 feet; depth moulded, 6 feet.  
Scow schooner barge 'St. Thomas' length, 71.4 feet; beam, 25 feet; depth 5.5 feet; gross tons, 62.47 net tons, 59.36."

The above are the only vessels which the Erikson Navigation Company is now authorized to operate.

It is urged that upon the acquisition of the operative right of Fred F. Ball the Erikson Navigation Company will possess the right to operate vessels between all points designated on the tariff of Fred F. Ball. It should be noted, however, that the Erikson Navigation Company will obtain no greater right than that possessed by Fred F. Ball, if it acquires the operative right of said Fred F. Ball, and that the charges made for any service rendered by virtue of having acquired said operative right must, until a change is authorized by the Commission, be at the rates which Fred F. Ball has on file.

Coming now to the request of Erikson Navigation Company to issue notes, it appears that under the contract with Henry A. Ball and Fred F. Ball, the corporation agrees to pay for the operative right and the three barges, the sum of \$15,500.00. Of this sum, \$1,250.00 was paid on the execution of the agreement and the balance is payable in monthly installments of \$300.00, starting December 15, 1926, with interest at the rate of seven percent per annum. In addition, the corporation found it necessary to install a new motor in

one of its launches and accordingly on December 21, 1925, entered into an agreement with Atlas Imperial Engine Company to purchase, for \$10,000.00, a 125 h.p. 4-cylinder Diesel engine. Of the purchase price, \$1,000.00 was allowed on an old engine, \$500.00 was payable on July 1, 1926, and the balance is payable in monthly installments of \$350.00, starting August 1, 1926, with interest at the rate of six percent per annum.

Both agreements provide for final payments later than one year after the dates of execution and therefore in our opinion are evidences of indebtedness coming within the provisions of Section 52 of the Public Utilities Act. Applicant, Erikson Navigation Company, did not obtain the permission of the Commission to execute these evidences of indebtedness, but has made payments on both. There is now \$11,550.00 due under the agreement with Henry A. Ball and Fred F. Ball and \$3,600.00 under the agreement with Atlas Imperial Engine Company. Officers of Erikson Navigation Company testified that they did not know that the execution of the agreements had to be authorized by the Commission until their attention was called to it by the Commission and that thereafter they took immediate steps to have the above entitled application filed.

#### ORDER

Application having been made to the Railroad Commission for an order authorizing the transfer of operative rights and the issue of notes, a public hearing having been held, and the Railroad Commission being of the opinion that the application should be granted, as herein provided, and that the money, property or labor to be procured or paid for through the issue of the notes, is reasonably required for the purposes specified herein, and that the expenditures for such purposes are not in whole or in part reasonably chargeable to operating expense or to income,

IT IS HEREBY ORDERED that Erikson Navigation Company be, and it is hereby, authorized to acquire the operative right and equipment of Henry A. Ball and Fred F. Ball, referred to in Exhibit "D" and to issue to said Henry A. Ball and Fred F. Ball its promissory note in the sum of not exceeding \$15,500.00, provided that the authority herein granted will not become effective until Henry A. Ball and Fred F. Ball have joined in the application, or until they or their duly authorized representatives have filed an affidavit showing that they will sell the properties described in said Exhibit "D" for the consideration therein mentioned, nor until the Commission has entered its supplemental order authorizing the sale of said properties.

IT IS HEREBY FURTHER ORDERED that Erikson Navigation Company be, and it is hereby, authorized to issue to Atlas Imperial Engine Company its promissory note for not exceeding \$9,000.00 payable in monthly installments of \$350.00, with interest at the rate of six per cent per annum, for the purpose of financing in part the cost of acquiring the equipment referred to in Exhibit "E".

The authority herein granted is subject to the following conditions:-

1. Fred F. Ball, or his duly authorized representative, shall unite, immediately, with Erikson Navigation Company in common supplement to the tariffs on file with the Commission, Fred A. Ball, on the one hand, withdrawing and Erikson Navigation Company, on the other hand, accepting and establishing such tariffs and all effective supplements thereto.
2. Fred F. Ball, or his duly authorized representatives, shall withdraw immediately all time schedules filed in his name, and Erikson Navigation Company shall file immediately, in duplicate, time schedules covering the service heretofore given by Fred F. Ball, which time schedules shall be identical with those now on file with the Railroad Commission in the name of Fred F. Ball, or time schedules satisfactory to the Railroad Commission.

3. The rights and privileges, the transfer of which is herein authorized, shall not hereafter be transferred, assigned, leased or sold, or operations thereunder discontinued, unless the written consent of the Railroad Commission has first been secured.
4. The price at which the transfer herein authorized is made shall not hereafter be urged before this Commission or other public body or court having jurisdiction as a measure of value of the operative rights, equipment and properties for the purpose of fixing rates, issuing stock or other securities or for any purpose other than this transfer.
5. Erikson Navigation Company shall keep such record of the issue of the notes herein authorized as will enable it to file within thirty(30) days after such issue a verified report, as required by the Railroad Commission's General Order No. 24, which order, insofar as applicable, is made a part of this order.
6. The authority herein granted to issue notes is subject, among others, to the condition that Erikson Navigation Company pay the minimum fee prescribed by Section 57 of the Public Utilities Act, which fee is Twenty-five (\$25.00) Dollars.
7. Except as otherwise stated herein the authority granted by this order will become effective twenty(20) days after the date hereof.

DATED at San Francisco, California, this 29<sup>th</sup> day of September,

1927. Fee \$25.00  
 RAILROAD COMMISSION  
 STATE OF CALIFORNIA  
 SEP 29 1927  
 [Signature]  
 Fee # 22578

[Signature]  
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 Commissioners.