

Decision No. 26929.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of LARKIN TRANSPORTATION COMPANY, a corporation, and HIGGINS TRANSPORTATION COMPANY, a corporation, for an order of the Railroad Commission (a) authorizing the unified operation herein described; (b) approving proposed increases in freight rates and changes in rates, rules and regulations applicable to terminal services; and (c) authorizing the proposed changes in rates, rules and regulations to be made effective on less than statutory notice.

Application No. 18498.

BY THE COMMISSION:

ORIGINAL

FIRST SUPPLEMENTAL OPINION AND ORDER

By petition filed April 2, 1934, applicants seek a rehearing and/or modification of Decision No. 26860 of March 12, 1934, in the above entitled proceeding. By this decision an agreement for the unified operation of the services conducted by each applicant separately was approved, in so far as it involved operating rights applicants were found to possess. Applicants now allege that the decision (a) deprives them of property without due process of law and denies them the equal protection of the law, (b) is erroneous and unlawful in that it does not find that they have unlimited operative rights between points on San Francisco and San Pablo Bays, and (c) is contrary to law and to the evidence, erroneous and ambiguous.

Applicants claim practically unlimited rights between all points on the San Francisco Bay and on the waters flowing therein.

Protestants do not dispute that either one or both of them have certain fairly extensive rights within the Delta territory and between the Delta territory on the one hand and Sacramento, Stockton and San Francisco on the other. They also concede that Larkin Transportation Company has a right to transport miscellaneous local freight between points on the San Francisco and San Pablo Bays. Other than this they challenge applicants' rights and oppose the granting of the application.

Substantially all of the extensive evidence, testimony and argument produced throughout this protracted proceeding deals with operations between the San Francisco Bay termini and the termini of Sacramento and Stockton. There is little in the record from which to determine the extent of applicants' collective rights in the territory west of the confluence of the Sacramento and San Joaquin Rivers. The extent of these rights should undoubtedly be definitely determined. However a large number of other carriers whose rights appear to be equally questionable publish rates in this territory, and it is not shown on this record that anyone would be seriously harmed should applicants merge their operations to this extent. Without passing therefore upon the extent of these particular rights and pending a determination of the rights of all carriers similarly situated, we believe the proposed unified operation should as to this territory be approved without prejudice to the rights of any one to assail them in the manner provided by the statutes. We further believe that any uncertainty that may result from the use of the words "specifically published" appearing on page 7 of the typewritten copy of Decision 26860, should be removed. Therefore, good cause appearing,

IT IS HEREBY ORDERED that Decision No. 26860 of March 12, 1934, be amended as follows:

1. By inserting after the sentence, "As to this territory the Commission should find that applicants' rights are coextensive with the rates specifically published between the points shown in their tariffs and continuously maintained thereafter," appearing on page 7 of the typewritten copy of Decision 26860 an explanatory note reading as follows:

"The term 'rates specifically published' as here used is to be construed to embrace rates to or from specifically designated points, to or from clearly defined territorial groupings, or rates applicable through the intermediate application of rates from more distant points, but to prohibit rates published in the manner described on page 6 of the typewritten copy of Decision 26860 from applying to or from Sacramento."

2. By inserting on page 7 of the typewritten copy of Decision 26860, between findings 1 and 2, finding 1½ reading:

"That between points involving movements wholly west of the confluence of the Sacramento and San Joaquin Rivers, the record is not sufficiently definite to determine the extent of applicants' collective rights."

3. That that portion of the order appearing on pages 7 and 8 of the typewritten copy of the decision reading: "IT IS HEREBY ORDERED that in so far as it relates to the operating rights applicants are found to possess * * * " be and it is hereby amended to read:

"IT IS HEREBY ORDERED that in so far as it relates to the operating rights applicants are found to possess and to those they now exercise within the territory wholly west of the confluence of the Sacramento and San Joaquin Rivers. * * * "

IT IS HEREBY FURTHER ORDERED that in all other respects

applicants' petition for rehearing and/or modification be and it is hereby denied.

Dated at San Francisco, California, this 9th day of April, 1934.

Ch. Seavey
Leon Whitely
W. A. P.
M. B. Lewis
W. B. Lewis
Commissioners.