

Decision No. 27088

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

In the Matter of the Application of the SOUTH COAST STEAMSHIP COMPANY for authority to operate vessels engaged in the transportation of freight between Avon, Crockett, Martinez, Mare Island, Redwood City and South Vallejo, on the one hand, and Los Angeles Harbor (San Pedro) on the other hand.

Application No. 19301.

In the Matter of the Application of McCORMICK STEAMSHIP COMPANY, for a certificate of public convenience and necessity to operate vessels for the transportation of freight for compensation via the High Seas between points within the State of California.

Application No. 19318.

In the Matter of the Application of CHRISTENSEN-HAMMOND LINE, for a certificate of public convenience and necessity to operate vessels for the transportation of freight for compensation via the High Seas between points within the State of California.

Application No. 19319.

In the Matter of the Application of NELSON STEAMSHIP COMPANY, for a certificate of public convenience and necessity to operate vessels for the transportation of freight for compensation via the High Seas between points within the State of California.

Application No. 19320.

In the Matter of the Application of CHAMBERLIN STEAMSHIP CO., LTD., for a certificate of public convenience and necessity to operate vessels for the transportation of freight for compensation via the High Seas between points within the State of California.

Application No. 19321.

In the Matter of the Application of  
PACIFIC STEAMSHIP LINES, LTD., for  
a certificate of public convenience  
and necessity to operate vessels  
for the transportation of freight  
for compensation via the High Seas  
between points within the State of  
California.

Application No. 19322.

In the Matter of the Application of  
LOS ANGELES-SAN FRANCISCO NAVIGA-  
TION CO., for a certificate of  
public convenience and necessity to  
operate vessels for the transporta-  
tion of freight for compensation  
via the High Seas between points  
within the State of California.

Application No. 19323.

In the Matter of the Application of  
LOS ANGELES STEAMSHIP CO., for a  
certificate of public convenience  
and necessity to operate vessels  
for the transportation of freight  
for compensation via the High Seas  
between points within the State of  
California.

Application No. 19324.

In the Matter of the Application of  
LOS ANGELES-LONG BEACH DESPATCH  
LINE, for a certificate of public  
convenience and necessity to oper-  
ate vessels for the transportation  
of freight for compensation via the  
High Seas between points within the  
State of California.

Application No. 19350.

In the Matter of the Application of  
SUDDEN STEAMSHIP COMPANY, for a  
certificate of public convenience  
and necessity to operate vessels,  
as a common carrier, for hire, be-  
tween points in the State of Cali-  
fornia via the High Seas and Inland  
Waters.

Application No. 19353.

Lillick, Olson & Graham, by Theodore M. Levy, for applicants  
in Applications 19318 to 19324, both inclusive.  
Cwyn H. Baker, for applicants in Applications 19301 and  
19353.  
Thomas S. Louttit, for Stockton Port District.  
M. J. McCarthy and Stanton & Berry, for Port Costa Warehouse  
Company.  
F. A. Somers, for Grangers Business Association.

Hal Remington, for San Francisco Chamber of Commerce.  
James E. Lyons and A. L. Whittle, for the Southern Pacific  
Company.  
Berne Levy and Leo Sievert, for The Atchison, Topeka and  
Santa Fe Railway Company.  
Wm. Gissler, Jr., for applicant in Applicant 19350.  
A. J. Hunsader, for San Diego-San Francisco Steamship  
Company.  
Edwin G. Wilcox, for the Oakland Chamber of Commerce.  
R. M. Grose, for California Steamship Company.

SRAVEY, Commissioner:

### O P I N I O N

Applicants are common carriers engaged in the business of transporting property by vessel between various points in this State. They seek certificates of public convenience and necessity authorizing them to operate vessels for the transportation of property between Port Costa, Crockett, Avon, Martinez, Mare Island, Redwood City, South Vallejo, Oleum, Selby, Nichols, Port Chicago and Antioch on the one hand and Los Angeles Harbor, Long Beach and San Diego on the other.<sup>1</sup>

The ten separate proceedings were heard at San Francisco March 14, 15 and 22, 1934, upon a common record. They will be disposed of by one decision.

Applicants propose generally to serve the points here involved with vessels they now operate between the San Francisco Bay region and Southern California. At Antioch Sudden Steamship Company

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<sup>1</sup> Each of the ten applicants seeks to serve Port Costa, Crockett, Avon, Martinez, Mare Island and Redwood City. All excepting Sudden Steamship Company also ask to serve South Vallejo. Los Angeles-Long Beach Despatch Line moreover seeks to serve Oleum, Selby, Nichols and Port Chicago, and Sudden Steamship Company, Antioch, Selby and Oleum. All but Los Angeles-Long Beach Despatch Line and Sudden Steamship Company now serve Los Angeles Harbor; all but South Coast Steamship Company, Long Beach, and all but South Coast Steamship Company and Christenson-Hammond Line, San Diego. The Southern California points which these applicants now serve are not to be changed.

(Application 19353) proposes to establish rates of the volume of those now applying from and to Stockton; at the other points rates of the volume of those applying from and to San Francisco and points grouped therewith are proposed by all the applicants. The South Coast Steamship Company (Application No. 19301) and Sudden Steamship Company (Application No. 19353) propose to give direct service for shipments of 100 tons or over. The other applicants offer to serve these ports directly only for shipments of 300 tons or over excepting where rates with lower minimums are already in effect.

The granting of these applications is opposed by the Southern Pacific Company and The Atchison, Topeka and Santa Fe Railway Company. Moreover the other eight applicants object to the proposal of the South Coast Steamship Company and Sudden Steamship Company to perform direct service on shipments of less than 300 tons.

Prior to the August 1933 amendment of Section 50(d) of the Public Utilities Act<sup>2</sup> the services here proposed could have been established without securing certificates of public convenience and necessity. Failure to do so applicants claim was due to inadvertence. They did in fact publish rates on particular commodities and made occasional calls at several of the ports involved. The extent thereof is immaterial for applicants are not relying on rights predicated on prior operations.

No testimony whatsoever was introduced to show that there was a need for or that convenience would be served by operations

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<sup>2</sup> This section as amended prohibits the operation of vessels between points within this State unless authorized by a certificate of public convenience and necessity from the Commission, provided that "no such certificate shall be required as to termini between which any such corporation or person is lawfully operating vessels in good faith under this Act as it existed prior to this amendment, under tariffs and schedules of such corporations or persons, lawfully on file with the Railroad Commission".

to and from Oleum, Selby, Nichols, Port Chicago or Antioch. As to the other points the showing of public convenience and necessity is confined largely to the testimony of eight witnesses representing the most important, if not the sole shippers there located. In addition to affirmative answers to questions such as, "In your opinion, is it necessary or essential to your company that it have available to it as much service as possible by water to the southern part of the State?" the testimony of these witnesses may be summarized as follows:

Their principals ship particular commodities in varying amounts. A number of them now use both rail and water carriers. They have little complaint to make against the existing rail service but desire the lower rates and improved service which they anticipate will go with competitive operations. They would use the proposed services to varying extents.

The Los Angeles Steamship Company maintains a passenger schedule which will not permit calling at the ports it here seeks to serve. It has available, however, freighters which could be put into service if its application were granted and the necessary tonnage offered. The schedules of the other applicants are sufficiently flexible to enable them to call at one or more of these ports. In the event that shipments were offered at several of the outports at the same time it would be applicants' purpose to persuade shippers to hold their offerings for a subsequent sailing or to turn it over to a friendly competitor.

The Southern Pacific Company and The Atchison, Topeka and Santa Fe Railway Company, either or both of which serve all the points here involved, contend, among other things, that applicants have not shown that public convenience and necessity require the

proposed service, but merely that there is some desire for additional service on a few specific commodities at certain points; that existing lines now furnish adequate service and will render additional service if necessary to accommodate traffic sought to be moved; that the evidence does not show that applicants can conduct the proposed service at a profit or that they are willing to guarantee to transport shipments when tendered. In addition to these two rail lines the California Steamship Company is offering its service at substantially all of the points here involved under tariffs on file with the Commission and a number of these applicants publish rates and transport certain commodities between some of the points.

There can be no question under this record that various shippers desire and evidence a need for available water transportation. It is also clear that that need has only been shown to the approximate extent that certain points and shippers have been served in the past by certain of these applicants, rates for which service it has been shown were not filed within the statutory time through inadvertence. While the evidence here is not of great strength, still it is affirmative in character and under the circumstances where inland navigable waters are maintained generally by the government for the public benefit, we believe such benefit should be made available where there is any reasonable showing.

The certification of these carriers to the extent of the showing here made will not deprive the protestants of business they have had in the past but quite probably will prevent so-called tramp steamers from taking not only the tonnage previously carried by applicants but additional tonnage now carried by the rails.

The following form of order is recommended:

O R D E R

These applications having been duly heard and submitted and the Commission being fully advised,

IT IS HEREBY ORDERED that certificates of public convenience and necessity for the transportation of property by vessel be and they are hereby granted to the applicants herein to the extent and subject to the conditions shown below:

<u>Applicant</u>	<u>Commodity</u>	<u>Points</u>
	( Grain and Grain { products {	From Port Costa to Los Angeles Harbor, Long Beach and San Diego.
McCormick Steamship Company )	( Sugar { {	From Crockett to Los Angeles Harbor, Long Beach and San Diego.
Nelson Steamship Company )	( Petroleum and { Petroleum { products	From Avon to Los Angeles Harbor, Long Beach and San Diego.
Chamberlin Steamship Company )	( Petroleum and { Petroleum { products	From Martinez to Los Angeles Harbor, Long Beach and San Diego.
Pacific Steamship Lines, Ltd. )	( Unrestricted { {	Between Mare Island and Los Angeles Harbor, Long Beach and San Diego.
Los Angeles-San Francisco Navigation Co. )	( Cement, Shell & { Shell products {	From Redwood City to Los Angeles Harbor, Long Beach and San Diego.
Los Angeles Steamship Company )	( Grain and Grain { products {	From South Vallejo to Los Angeles Harbor, Long Beach and San Diego.
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	( Grain and Grain { products {	From Port Costa to Los Angeles Harbor.
South Coast Steamship Company )	( Sugar { {	From Crockett to Los Angeles Harbor.
	( Petroleum and { Petroleum { products	From Avon to Los Angeles Harbor.
	( Petroleum and { Petroleum { products	From Martinez to Los Angeles Harbor.

	(Unrestricted (	Between Mare Island and Los Angeles Harbor.
South Coast Steamship ) Company )	(Cement, Shell & ( Shell products	From Redwood City to Los Angeles Harbor.
	(Grain and Grain ( products	From South Vallejo to Los Angeles Harbor.
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	(Grain and Grain ( products	From Port Costa to Los An- geles Harbor and Long Beach.
	(Sugar (	From Crockett to Los An- geles Harbor and Long Beach.
	(Petroleum and ( Petroleum ( products	From Avon to Los Angeles Harbor and Long Beach.
Christenson-Hammond ) Line )	(Petroleum and ( Petroleum ( products	From Martinez to Los An- geles Harbor and Long Beach.
	(Unrestricted (	Between Mare Island and Los Angeles Harbor and Long Beach.
	(Cement, Shell & ( Shell products	From Redwood City to Los Angeles Harbor and Long Beach.
	(Grain and Grain ( products	From South Vallejo to Los Angeles Harbor and Long Beach.
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	(Grain and Grain ( products	From Port Costa to Long Beach and San Diego.
	(Sugar (	From Crockett to Long Beach and San Diego
	(Petroleum and ( Petroleum ( products	From Avon to Long Beach and San Diego.
Los Angeles-Long Beach ) Despatch Line )	(Petroleum and ( Petroleum ( products	From Martinez to Long Beach and San Diego.
	(Unrestricted (	Between Mare Island and Long Beach and San Diego.
	(Cement, Shell & ( Shell products	From Redwood City to Long Beach and San Diego.
	(Grain and Grain ( products	From South Vallejo to Long Beach and San Diego.
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	(Grain and Grain {* products	From Port Costa to Los Angeles Harbor and San Diego.
	(Sugar	From Crockett to Los Angeles Harbor and San Diego.
Sudden Steamship Company	(Petroleum and { Petroleum products	From Avon to Los Angeles Harbor and San Diego.
	(Petroleum and { Petroleum products	From Martinez to Los Angeles Harbor and San Diego.
	(Unrestricted	Between Mare Island and Los Angeles Harbor and San Diego.
	(Cement, Shell & { Shell products	From Redwood City to Los Angeles Harbor and San Diego.

CONDITIONS

1. The certificates herein granted are limited to the transportation of property moving in lots of 300 tons or more.
2. Applicants shall file their written acceptances of the certificates herein granted within a period of not to exceed fifteen (15) days from the date hereof.
3. Applicants shall file in duplicate and make effective within a period of not to exceed thirty (30) days from the effective date of this order, on not less than ten (10) days' notice to the Commission and the public, tariffs constructed in accordance with the Commission's rules and containing rates and rules which in volume and effect shall be identical with those proposed for the service herein authorized.
4. Applicants are hereby placed upon notice that "operative rights" do not constitute a class of property which should be capitalized or used as an element of value in determining reasonable rates. Aside from their purely permissive aspect, they extend to the holder a full or partial monopoly of a class of business over a particular route. This monopoly feature may be changed or de-

stroyed at any time by the State which is not in any respect limited to the number of rights which may be given.

IT IS HEREBY FURTHER ORDERED that in all other respects these applications be and they are hereby denied.

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 21<sup>st</sup> day of May, 1934.

C. C. Deane  
Leon Whisler

M. J. Lee  
M. B. Harris  
Robert W. ...  
Commissioners.