

Decision No. 27819

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application
of MARINE SERVICE CORPORATION, a
corporation, for a permit to
operate "For Hire Vessels" for the
transportation of property for
compensation between points in the
inland waters of the State of
California.

Application No. 19705.

ORIGINAL

Gwyn H. Baker, for applicant.

James E. Lyons and A. L. Whittle, for protestants,
Southern Pacific Company, Northwestern Pacific
Railroad Company, Petaluma & Santa Rosa Railroad
and Pacific Motor Transport Company.

A. E. Gibson, for California Inland Water Carriers.

HARRIS, Commissioner:

OPINION

Applicant asks for a permit under the "For-Hire Vessel Act," Chapter 223 California Statutes 1933, to operate For-Hire Vessels for the transportation of property for compensation between points exclusively on the inland waters of California, to-wit:

- (1) Between San Francisco and South San Francisco, and
- (2) Between Selby and South San Francisco.

The service proposed is that of a private carrier under a single contract with W. P. Fuller & Company, a firm dealing in paint, paint products and materials entering into paint products. Between San Francisco and South San Francisco applicant is to carry for the Fuller Company any and all articles which the latter desires to ship between those points. Between Selby and South San Francisco it is to carry lead.

The application for a permit is in writing. It specifies the points as above set out between which applicant proposes to operate, shows the rates, fares, tolls, rentals and charges

applicable to the service proposed to be rendered, shows the commodities proposed to be transported, specifying lead between Selby and South San Francisco and "Freight, all kinds" between San Francisco and South San Francisco, and sets forth rules and regulations governing the proposed service. The application meets the requirements of Section 4 of the Act.

Applicant is now operating as a common carrier between San Francisco and Marin Meadows and San Rafael. The proposed For-Hire operation will not use vessels engaged in the common carrier operation but proposes to use a Diesel power vessel of over 50 ton register, the "Mary E," and also asks permission at a later date, if it desires, to substitute for it barges and tugs suitable for the proposed service.

This Commission, in the matter of the application of the Bay Shore Freight Lines, Inc., 39 C.R.C. 243, construing the For-Hire Vessel Act, held that a permit must be issued to

- (1) Any private carrier whose application
- (2) Complies with the requirements of the Act (See Section 4).
- (3) Who proposes to operate on the inland waters vessels of the type provided by the Act.
- (4) Whose proposed operations shall not be over the whole or any part of a route operated by it as a common carrier.

Does the applicant come within these requirements?

It has been said above that the application complies with the requirements of Section 4 of the Act. This is denied, however, by protestants who claim that the provision of that Section, that the application "shall show the commodities proposed to be transported" requires an itemized listing and that applicant's term "Freight, all kinds" is not sufficient. There seems to be no merit in this contention. The Act does not limit For-Hire Vessels to the carrying of certain commodities or articles. They may carry any or all. If applicant proposes to carry all, a declaration to that effect would seem to be sufficient. There is, of course, a

necessary ostensible limitations, namely that it proposes to carry "Freight, all kinds" offered for shipment by W. P. Fuller & Company.

It is contended by protestants that the proposed operation between Selby and South San Francisco is over a part of the route used by applicant as a common carrier between San Francisco, San Rafael and Marin Meadows. There is no doubt that a part of the route from Selby to South San Francisco is through a channel which is also used as a part of the route from San Francisco to San Rafael and Marin Meadows. It does not necessarily follow that both will use the same portion of the channel. But suppose they did. A route is a road or way between certain points. These points are the dominating feature of the route. In this case there is no point to be served on the Selby-South San Francisco route that is to be served on the common carrier route from San Francisco to San Rafael and Marin Meadows. There will therefore be no competition between the applicant as a common carrier and as an operator of For-Hire Vessels. No doubt this is what the legislature intended to prevent by the provision under consideration.

There is no similarity between this application and one for a certificate of convenience and necessity. Evidence as to adequacy of existing service or for the necessity for the proposed service has no place in these hearings.

As conclusions from the foregoing, I find: That the proposed service is private in nature; that the application complies with the requirements of the Act and sets forth all the matters named in Section 4; that the vessel to be operated by the applicant is of the type prescribed by the Act; that the operation is to be on the inland waters of California; that the proposed operation is not over the whole or any part of the route operated by applicant as a common carrier.

I recommend the following order:

O R D E R

The Commission adopts as its findings the statements of fact and findings in the preceding opinion. Pursuant to said findings,

IT IS ORDERED that a permit issue to applicant, Marine Service Corporation, to operate that certain vessel, the "Mary E" between Selby and South San Francisco, such service to be limited to the transportation of lead for W. P. Fuller & Company; and also to operate said vessel between San Francisco and South San Francisco, such service to be limited to the transportation of "Freight, all kinds" for said W. P. Fuller & Company. Hereafter applicant may upon filing with the Commission descriptions of barges and tugs that come within the provisions of the Act substitute the same for the "Mary E."

IT IS ORDERED that such permit be issued subject to the following conditions:

1. Applicant shall file its written acceptance of the Permit herein granted within a period of not to exceed fifteen (15) days from date hereof.
2. Applicant shall file in triplicate with its acceptance of the Permit a tariff containing rates and rules which in volume and effect shall be identical with the rates and rules shown in application.
3. It shall also file with the above a description of the vessel "Mary E."
4. This Permit and the rights and privileges exercisable thereunder may not be sold, leased, transferred or assigned unless the consent of this Commission thereto has first been secured.

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 18th day of March, 1935.

John A. White
W. H. C.
W. B. Lavin
Walter J. ...
Frank R. ...
Commissioners.