

Decision No. 28282

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Investigation upon
the Commission's own motion into the le-
gality and extent of operations, legality
of filing of present tariffs, and nature
and extent of operative rights, if any
exist, of Channel Lighterage Co. or Com-
pany, Peter Christensen, Chris Johansen,
Juhl Bros. or Brothers, Henry A. Juhl,
H. Juhl, M. Juhl, M. Lange Launch Co. or
Company, Mathais Lange, Mare Island Ferry,
Miller Launch Company, E.W. Miller, Gus-
sie I. Miller, Fred or Frederik Olsen,
Osborn and Bornholdt, R.J. Osborn, J.
Bornholdt, Vehmeyer Transportation Co.
or Company, R.E. Vehmeyer, Freighters,
Inc. and Jim Wilder.

Case No. 4012.

Peter tum Suden for Mare Island Ferry.

McCutchen, Olney, Mannon & Greene, by
Allan P. Matthew and F.W. Mielke,
for the River Lines.

J. Richard Townsend, for Freighters, Inc.

A.L. Whittle for Southern Pacific Company,
Northwestern Pacific Railroad Company and
Petaluma and Santa Rosa Railroad Company.

HARRIS, Commissioner:

O P I N I O N

The Commission having instituted an investigation on its
own motion into the matter of the operating rights of common carriers
engaged in transporting property by vessel between points on San
Francisco, San Pablo and Suisun Bays, and on the San Joaquin, Sacra-
mento and Napa Rivers and Petaluma Creek and their tributaries, caused
copies of the order instituting said investigation to be served upon
the respondents thereto, notifying each of them of the time and place
of public hearing thereon.¹ Certain of the respondents failed to

¹ Case 3824, Order instituting investigation, etc., dated April 19, 1934.

appear. The Commission thereupon issued its Order Instituting Investigation and Order to Show Cause, dated April 29, 1935, directing each of the respondents herein, among whom were those who failed to appear in Case 3824, to appear and show cause, if any they had, first, why they should not be ordered to cease and desist any operation now performed by them in violation of law; second, why any or all operative rights under which any of them may be operating should not be revoked for unlawful operation; and third, why any of their tariffs now on file with the Commission should not be cancelled because of absence of the right to operate between any of the points named in their respective tariffs.

Public hearing was had at San Francisco. Respondents Channel Lighterage Co. or Company, Fred or Frederik Olsen, Osborn & Bornholdt, R.J. Osborn and J. Bornholdt failed to respond to the Order to Show Cause.

CHANNEL LIGHTERAGE CO. OR COMPANY

Witnesses for the Commission testified that Channel Lighterage Company holds a certificate of public convenience and necessity for the operation "of vessels for the transportation of property, for compensation, on the inland waters of the State of California, on the Bay of San Francisco and its tributaries, between the points and under the rates, rules and regulations specifically set forth in tariffs issued by and in the name of George V. Freethy and lawfully on file with this Commission"; that pursuant to the authority granted in that decision respondent filed Local Freight Tariff No. 1, C.R.C. No. 1, and Demurrage Tariff No. 1, C.R.C. No. 2, in the name of Channel Lighterage Company, effective April 2, 1926. Local Tariff No. 3, C.R.C. No. 3, and Demurrage Tariff C.R.C. No. 2 as amended, remain in the Commission's files at the present time. It was further testified that this respondent filed annual reports for the years 1926 to 1933 inclusive

but that no report for the year 1934 had been filed up to the time of the hearing. Attention was also directed to the fact that in the years 1926 and 1927, at which time respondent operated a gas tug and two lighters, its reports showed a revenue in excess of \$6,000. In 1928 the gas tug according to the annual report was "sold, destroyed or abandoned", and thereafter the operating revenue did not exceed \$2000 during any one year. The reports show that respondent was engaged in freighting and towing, but there is no evidence in this record from which to determine what portion of the reported revenue accrued from towing operations.

Channel Lighterage Company had notice and an opportunity to be heard in Case No. 3824, supra. It failed to avail itself of the opportunity thus afforded. In addition, the order herein directed it to appear and show cause, if any it had, why the certificate of public convenience and necessity held by it should not be revoked and its tariffs on file with the Commission cancelled. No evidence was presented tending to sustain the burden cast upon respondent by the Order to Show Cause. Thus, Channel Lighterage Company has been placed on notice twice, but has made no response.

In view of the circumstances and upon this record an order should be entered herein revoking the certificate of public convenience and necessity heretofore granted, cancelling respondent's tariffs and directing it to cease and desist transporting property as a common carrier by vessel on the inland waters involved in this proceeding.

FRED OR FREDERIK OLSEN

On August 17, 1923, Frederik Olsen was a participant in Bay and River Boat Owners' Association Bay and River Local Freight Tariff No. 4, C.R.C. No. 2 of John S.P. Dean, Agent (hereinafter referred to as the Dean tariff). Later a tariff was filed by Olsen in his own name, designated as Local Freight Tariff No. 1, C.R.C. No. 1, which is

still in effect. In 1922 an annual report was filed in the name of Fred Olsen showing freight revenue accruing from operations "between any point on San Francisco Bay tributaries". From 1923 to 1933 inclusive annual reports were filed in the name of Frederik Olsen showing operating revenue for the years 1923 to 1927 inclusive as well as for 1930 and 1931. Reports for 1928, 1929, 1932 and 1933 bear the following notations: "Not operating in 1928; boats leased to other party"; "did not operate in 1929"; "no operation, no boats owned or leased 1929"; "not operating, boat destroyed by fire January 1932"; "no operating 1933, no revenues, no expenses". No report has been filed for 1934.

In view of the fact that the evidence clearly indicates that all common carrier operations have been discontinued and that respondent failed to avail himself of the opportunity afforded by the Order to Show Cause, it must be concluded that no operative right is now possessed by respondent to engage in business as a common carrier by vessel on the inland waters here under consideration. Tariffs on file in the name of respondent should be cancelled.

OSBORN & BORNEOLDT, R.J. OSBORN, J. BORNEOLDT.

Osborn & Bornholdt do not hold a certificate of public convenience and necessity. Their Tariff No. 2, C.R.C. No. 5, was on file with the Commission on August 17, 1923, and named rates for towing, barge, launch and lighter hire. They also adopted a tariff originally filed by Christenson & Swansson (Local Freight Tariff No. 1-A, C.R.C. No. 3), naming rates for the transportation of various commodities between numerous points here involved. Neither of these tariffs has been reissued or amended since December 19, 1921.

Although given due notice, respondents failed to appear and sustain the burden cast upon them by the Commission's Order to Show Cause. They should be ordered to cease and desist operating as a

common carrier on the inland waters here involved. The tariffs now on file with the Commission should be cancelled.

PETER CHRISTENSEN

Respondent testified that during the years 1932, 1933 and 1934 he was not engaged in common carrier transportation of freight. His annual reports for these three years bear the notation "Did not operate during the year. No revenue or expenses". Prior to 1932 he transported sugar and potatoes from San Francisco to Mountain View and canned goods from Mountain View to San Francisco. He has not owned a boat since March, 1926, at which time he sold the schooner "Frank Lawrence". Such transportation as he may have performed thereafter has been in vessels leased from other parties.

If any prescriptive right existed by virtue of operations conducted in good faith under tariffs on file on and prior to August 17, 1923, and continuously maintained thereafter, it must be concluded from the record that such right has been abandoned. Respondent's tariffs should be cancelled.

FREIGHTERS, INC.

Respondent is a California Corporation operating vessels on the inland waters here under consideration as a common carrier. It acquired the property and such operative rights as were held by several individuals, partnerships and corporations.² Obviously, the operative

² By Decision No. 27592, dated December 17, 1934, in Application No. 19728, unreported, Freighters, Inc., was authorized to acquire the property and operative rights theretofore owned by, or operated under the firm names and styles of the following:

Delta Transportation Company
Eiggins Transportation Company
Island Oil Transportation Company
Island Transportation Company
Larkin Transportation Company
Stockton Transportation Company
Vehmeyer Transportation Company
Wood and Seitz

rights held by Freighters, Inc., can be no broader than the rights it thus acquired. The character and extent of these rights were not determined by the Commission at the time it authorized respondent to acquire them. As to the rights acquired by Freighters, Inc., from all of its predecessors except Vehmeyer Transportation Company such a determination is now being made in the Commission's decision in Case 3824, supra. The operative right formerly held by Vehmeyer Transportation Company will be considered and treated elsewhere in this report.

The right possessed by Freighters, Inc. is conceded to be the equivalent of the combined rights formerly held by its predecessors.

CHRIS JOHANSEN

Chris Johansen holds no certificate of public convenience and necessity but claims a prescriptive right by virtue of operations conducted in good faith under tariffs on file with the Commission in 1923, at which time he was a party to the Dean tariff. His annual reports filed with the Commission for the years 1922 to 1934 inclusive, show that he owned and operated the motor vessel "Undine" during this entire period and that transportation revenue ranged from \$1,238.23 in 1933 to \$8,754.68 in 1924. The 1923 report bears a notation, "irregular, no special termini".

Respondent testified that he rendered an "on call" service for the transportation of hay and grain. At one time he also transported lumber, but has not transported this commodity for a number of years and does not now hold himself out to engage in such transportation. The only recent movement recalled by the witness is that of hay

and grain from points on Sonoma Creek to Transport Docks, San Francisco, for which his tariffs provided rates. These rates have been maintained continuously since 1923.

From the evidence of record it must be concluded that respondent possesses a prescriptive right confined to the transportation in "on call" service of hay in lots of not less than 100,000 pounds and grain in lots of not less than 80,000 pounds from Sonoma Creek to San Francisco. Respondent's tariff should be amended accordingly.

JUHL BROS. OR BROTHERS, HENRY A. JUHL,
H. JUHL, M. JUHL

Respondents, Henry A. Juhl, E. Juhl and M. Juhl, copartners, operate vessels for the transportation of property. The extent of the rights of respondents has not heretofore been determined. Their first tariffs were filed effective May 24, 1922. These tariffs, together with supplements thereto, the last of which became effective July 29, 1933, are still in effect. Henry A. Juhl, the managing partner, testified that an "on call" service was rendered for the transportation of hay, grain and lumber.

The record does not disclose what commodities were transported in 1923, or between what points they moved. However, the witness stated that the character of their business in 1923 was correctly reflected by Exhibit No. 1, which he prepared and presented. This exhibit is a statement of movement by commodities from and to various points between which prescriptive rights are claimed and shows that hay was transported from Knights Landing, Sacramento, Stockton and Delta³ points to points on San Francisco Bay. It also appears that

³ The term "Delta" whenever used in this opinion shall be understood to include all wharves and landings on the Sacramento River and tributaries below Sacramento to and including B. B. Ranch Landing, west of Collinsville and on the San Joaquin River and tributaries below Streckers and Stockton and above B. B. Ranch Landing; also Middle Slough and New York Slough.

respondents have been transporting grain on the same equipment in the same general territory.

While the record contains some evidence of isolated instances in which a few other commodities have been transported, it is clear that the only commodities transported in 1926 that were also handled in subsequent years were hay and grain. In fact the witness stated he confined his efforts in soliciting business to contacting buyers and shippers of hay and grain.⁴

An examination of respondents' tariffs shows that rates on hay have been continuously maintained from Sacramento, Stockton and Oakland, Delta points to San Francisco, Berkeley and Alameda. Rates have also been continuously maintained on grain from Sacramento, Stockton, points on the San Joaquin River below Stockton, and points on the Sacramento River below Sacramento to San Francisco, Oakland, Berkeley and Alameda.

On this record it is concluded that respondents possess a prescriptive right to render an "on call" service for the transportation of hay in lots of not less than 100,000 pounds from Sacramento, Stockton and Delta points to San Francisco, Oakland, Berkeley and Alameda. This right also permits of the transportation of grain in lots of not less than 80,000 pounds from Sacramento, Stockton, points on the San Joaquin River below Stockton and points on the Sacramento River below Sacramento to San Francisco, Oakland, Berkeley and Alameda.

M. LANGE LAUNCH CO. OR COMPANY,
MATHAIS LANGE

Respondent Mathais Lange, an individual operating under the name of M. Lange Launch Company, testified that he did some towing, but

⁴ The witness's testimony in this regard was:

"Well, I go around in the summer time * * * when the hay season comes in or the grain season comes in, I go to these people and see if there is any hauling to be done." "I go to the people who * * * sell hay, deal direct with the fellow that buys hay * * *."

that he had not handled any freight or passengers under his tariffs on file with the Commission for more than three years and that he did not intend to resume his common carrier operations but proposed to retire therefrom.

It should be held that any right that may have existed by virtue of operations on and prior to August 17, 1923, has been abandoned. The tariff should be cancelled.

MARE ISLAND FERRY

Mare Island Ferry, a California corporation, had on file with the Commission on August 17, 1923, a tariff naming fares for the transportation of passengers between Vallejo and Mare Island. Witness for respondent testified that it has a contract with the United States Government to transport freight and passengers between Vallejo and Mare Island. It is also shown that this company has rendered a common carrier service for many years prior to August 17, 1923, and now operates a scheduled service for the transportation of passengers between those points.

The record fully justifies a finding that respondent possesses a prescriptive right to transport passengers between Vallejo and Mare Island.

MILLER LAUNCH COMPANY, E. W. MILLER,
GUSSIE I. MILLER

E. W. Miller and Gussie I. Miller, copartners operating under the name of Miller Launch Company, were granted a certificate of public convenience and necessity⁵ to operate vessels for the transportation of salt between Mt. Eden, San Francisco, Petaluma, Mare Island and Vallejo. A witness testifying for respondents stated that they were engaged in

⁵ Decision 18733 of August 18, 1927, in Application 13677, in re Application of Edward Miller and Gussie I. Miller, copartners, etc., 30 C.R.C. 293.

transporting salt from Alvarado and Coyote Slough to San Francisco under contract with the Leslie Salt Company and had not rendered any service under their tariff on file with the Commission for some time. They do not hold themselves out as common carriers between the points named in the tariff, it being no longer possible to reach Mt. Eden due to the shallow water of the slough.

Upon this record the certificate of public convenience and necessity heretofore granted respondents should be revoked and annulled and their tariff ordered cancelled.

VEHMEYER TRANSPORTATION CO. OR COMPANY,
R. H. VEHMEYER

Respondent, R. H. Vehmeyer, doing business as Vehmeyer Transportation Company, was authorized to transfer his operative right and property to respondent Freighters, Inc., a California corporation, and upon commencement of operations by Freighters, Inc., to discontinue his common carrier services.⁶ On March 22, 1935, he accordingly withdrew his tariff concurrent with the filing of a tariff by Freighters, Inc. He testified that he rendered an "on call" service for the transportation of freight of all kinds under tariffs on file with the Commission. Exhibit 2 submitted by him correctly reflects, according to his testimony, the operations that have been conducted. This exhibit indicates that during 1923 service was rendered between Delta points, between Delta points and Stockton and Sacramento without restriction as to commodity or quantity. No movement of freight is shown between San Francisco Bay Terminals⁷ and Sacramento. Between San Francisco Bay Term-

⁶ Decision 27592 of December 17, 1934, Application 19728, in re Application of Freighters, Inc., a corporation, etc., unreported.

⁷ The term "San Francisco Bay Terminals" when used in this opinion will be understood to include:
All wharves, docks and piers in San Francisco and South San Francisco.
All wharves, docks and piers located in Oakland between the Key Route mole and the Western Pacific mole; and on the Oakland side of the Oakland Estuary, between the Western Pacific mole and the Fruitvale Avenue Bridge.

inals and Stockton, the exhibit shows shipments in substantial quantities and small shipments of bags. He also transported grain in large lots between Delta points and Stockton on the one hand, and San Pablo Bay⁸ points on the other, and from Delta points to Petaluma.

Upon consideration of the record it must be concluded that respondent possessed a prescriptive right to transport property between Delta points; between Delta points on the one hand, and Stockton and Sacramento on the other; between San Francisco Bay Terminals and Stockton; between Delta points and Stockton on the one hand and San Pablo Bay points on the other, and from Delta points to Petaluma. Respondent's right between San Francisco Bay Terminals and Stockton is restricted to the transportation of property in quantities of not less than 20,000 pounds, except that bags may be transported in any quantity. His right between Delta points and Stockton on the one hand and San Pablo Bay points on the other, and from Delta points to Petaluma is restricted to the transportation of grain in lots of not less than 80,000 pounds. Inasmuch as the right respondent has herein been found to have possessed has been transferred to Freighters, Inc., and his tariff cancelled, no order will be entered against him.

This finding is further conditioned upon a tariff having been lawfully filed with the Commission at the time the right was acquired, naming the rates for the transportation service authorized and having continuously maintained said rates thereafter. To the extent such tariff and/or supplements thereto and/or reissues thereof fail

7 (continued)

All wharves, docks and piers within the city limits of Alameda on the Alameda side of the Oakland Estuary, between the Southern Pacific mole and the Fruitvale Avenue Bridge.

Berkeley Municipal wharf.

All wharves and docks located within the city limits of Richmond from Point San Pablo to the Inner Harbor, both inclusive.

8

The term "San Pablo Bay" when used in this opinion will be understood to include:

All landings on San Pablo Bay and navigable waters tributary to San Pablo Bay west of Carquinez Bridge, but excluding Petaluma.

to name rates for the transportation service authorized such right must be found to have been abandoned.

JIM WILDER

W. F. Wilder, managing owner of the business formerly operated by Jim Wilder, deceased, appeared in response to the Order to Show Cause and testified that prior to 1927 an "on call" service was rendered for the transportation of freight. Although tariffs were filed prior to August 17, 1923, naming rates for the transportation of passengers as well as property, the witness stated that no passenger service had been rendered for a number of years. Furthermore, the witness stated that all common carrier transportation service by vessel on the inland waters here under consideration has been abandoned.⁹ Respondent's tariffs should be ordered cancelled.

As to Freighters, Inc. and Vehmeyer Transportation Co. or Company, R. H. Vehmeyer, submission will be set aside and this proceeding reopened for further hearing. Final order should not be entered as to Freighters, Inc. until the entire scope of its operative rights has been determined. Vehmeyer, together with several of the respondents in Case 3824, have transferred such rights as they may possess to Freighters, Inc. The latter will be expected to appear at the further hearing in this matter and to make such showing as

⁹ The following is a quotation from the record: (Tr. 563)

Q - "According to your annual reports on file with the Commission, you do not report any revenue for the transportation of freight since 1927 with the exception of 1933 and 1934, 1933 being marked "All towage", and 1934, "Towing and Barge rentals". Is the Commission to understand from those reports that, except for that towing and barge rentals, you have not operated under your tariffs since 1927?"

A - "That would be correct. I have been operating under barge rental and towage."

Q - "But not under your tariff as a common carrier?" A - "No."

it may desire why an order consistent with the opinion herein and with the opinion issued today in Case 3824 should not be entered.

The following form of order is recommended:

O R D E R

This matter having been duly heard and submitted,

IT IS HEREBY ORDERED that respondents Channel Lighterage Co. or Company, Chris Johansen, Juhl Bros. or Brothers, Henry A. Juhl, H. Juhl, M. Juhl, Mare Island Ferry and Osborn and Bornholdt, R. J. Osborn, J. Bornholdt, be and they are hereby required and directed on or before the effective date of this order to cease and desist and thereafter abstain from transporting persons or property as common carriers on the inland waters here involved excepting to the extent they are lawfully entitled to engage in such transportation as shown by the opinion which precedes this order.

IT IS HEREBY FURTHER ORDERED that respondents Chris Johansen, Juhl Bros. or Brothers, Henry A. Juhl, H. Juhl, M. Juhl and Mare Island Ferry be and they are hereby directed to amend their tariffs within sixty (60) days from the effective date of this order on full statutory notice so as to conform to the operative rights found to exist in the opinion which precedes this order.

IT IS HEREBY FURTHER ORDERED that all tariffs and schedules filed by respondents Channel Lighterage Co. or Company, Peter Christensen, M. Lange Launch Co. or Company, Mathais Lange, Miller Launch Company, E. W. Miller, Gussie I. Miller, Fred or Frederik Olsen, Osborn and Bornholdt, R. J. Osborn and J. Bornholdt and Jim Wilder, be and the same are hereby cancelled.

IT IS HEREBY FURTHER ORDERED that certificates of public

convenience and necessity granted Channel Lighterage Co. or Company, E. W. Miller and Gussie I. Miller, copartners operating under the fictitious firm name of Miller Launch Company, be and the same are hereby revoked and annulled.

IT IS HEREBY FURTHER ORDERED that as to Freighters, Inc. and Vehmeyer Transportation Co. or Company, R. E. Vehmeyer, submission is hereby set aside and this proceeding reopened for further hearing before Commissioner Harris in the Court Room of the Railroad Commission, 5th Floor, State Building, San Francisco, California, at 10 o'clock A.M. on Tuesday the 12th day of November 1935, at which time and place said respondents are directed to appear and make any showing desired by them as to why an order should not be entered defining the scope and extent of their operative rights in accordance with the findings and conclusions expressed in the above opinion and in the opinion in Case 3824.

The effective date of this order shall be thirty (30) days from the date hereof.

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 14th day of October, 1935.

Leon Ouellet

M. B. Harris
M. J. Anderson
Dr. R. K. [illegible]
Commissioners.