

28283

Decision No. 28283.

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Investigation by the
Commission on its own motion into the op-
erative 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, Sac-
ramento and Napa Rivers and Petaluma Creek
and their tributaries.

Case No. 3324.

- A. L. Whittle and E. J. Foulds, by Mr. Myers, for Petaluma and Santa Rosa Railroad Company, Southern Pacific Golden Gate Ferries, Ltd., Southern Pacific Company and Northwestern Pacific Railroad Company.
- L. N. Bradshaw, for The Western Pacific Railroad Company.
- A. R. Woodress, for Martinez, Benicia Ferry & Transportation Company.
- Robert Brennan and L. E. Siebert, for The Atchison, Topeka and Santa Fe Railway Company, respondent.
- McCutchen, Olney, Mannon & Greene, by Allan P. Matthew and F. W. Mielke, for The River Lines and carriers operating under that name and style.
- Gwyn H. Baker and E. M. Wade, for Island Transportation Company, Berkeley Transportation Company, Richmond Navigation and Improvement Company, Napa Transportation and Navigation Company, Heringer & Scott, Island Oil Transportation Company, Weyl-Zickerman Company, Anderson Transportation Company and Marine Service Corporation.
- J. Richard Townsend, for Freighters, Inc., interested party.
- P. F. Wood, for Wood & Seitz.
- A. F. Johnston, in propria persona.
- E. V. Rideout, for E. V. Rideout Company.
- A. E. Gibson, for California Inland Water Carriers Conference, an interested party.
- L. V. McKim, for The Harbor Tug and Barge Company.
- L. A. Feeny, for Bayshore Freight Lines.
- H. E. Chambers, for Bay Transport Company.
- S. J. Cook, for Ellen J. Freethy.
- Martin Schmidt, Carl Anderson, in propria persona.
- Glensor, Clewe, Schofield & Van Dine, by E. W. Glensor, for Alameda Transportation Company, respondent.
- Senborn & Roehl, by Clair MacLeod, for Crowley Launch and Tug-boat Company.
- Peter tum Sudez, for Mare Island Ferry Company.

HARRIS, Commissioner:

O P I N I O N

Approximately sixty carriers have had on file with the

Commission for some time tariffs naming rates, rules and regulations governing the transportation of property, and in certain instances passengers, between various points on the inland waters of San Francisco, San Pablo and Suisun Bays and the San Joaquin, Sacramento and Napa Rivers and Petaluma Creek and their tributaries. From the records in several formal proceedings and from information brought before the Commission informally it became apparent however that in many instances these tariffs provided for operations greatly in excess of the carriers' lawful operative rights. The Commission therefore instituted this investigation into the operative rights of these carriers for the purpose of determining the extent thereof.

The majority of the carriers involved appeared and testified at public hearings had at San Francisco March 12, 13 and 14, April 10 and 11, and May 28, 1935. Certain of them did not appear. The Commission thereupon instituted another investigation (Case 4012) and directed those carriers that had not appeared to show cause:

"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."

The rights of carriers that were made respondents in Case 4012 will be disposed of in a separate report. This proceeding will be dismissed as against these particular respondents.¹

¹ They are: Channel Lighterage Company, Peter Christensen, Chris Johansen, Juhl Bros., M. Lange Launch Company, Mare Island Ferry, Miller Launch Company, Fred Olsen, Osborn and Bornholdt, Vehmeyer Transportation Company and Jim Wilder.

Before discussing the record made at the hearings it will be necessary, in order that a clear understanding of the situation may be had, to review briefly the law applicable to and the history of the operations of these carriers.

For many years prior to August 17, 1923, any one "owning, controlling, operating or managing any vessel regularly engaged in the transportation of persons or property for compensation upon the waters of this State or upon the high seas over regular routes between points within this State" was a common carrier² and required to file with the Commission tariffs and annual reports and submit to such other regulation as was provided for common carriers generally. It was not however until the 1923 amendment of the Public Utilities Act,³ effective August 17, 1923, that a certificate of public convenience and necessity from this Commission was required as a condition precedent to the commencement of the operation of vessels on the inland waters of this State. As to carriers then operating the Act as amended provided:

"But no such certificate shall be required of any corporation or person which is actually operating vessels in good faith, at the time this act becomes effective, between points exclusively on the inland waters of this state under tariffs and schedules of such corporations or persons, lawfully on file with the railroad commission."

With minor changes the foregoing statutory provisions are in effect today.⁴

Certain of these respondents were operating vessels long before the enactment of the Public Utilities Act. Others commenced to operate after the Public Utilities Act was in effect but before they were required by law to secure a certificate of public convenience and necessity from this Commission. Those carriers not holding

² Section 2(1) Public Utilities Act of the State of California, approved December 23, 1911, in effect March 23, 1912.

³ Section 50(d).

⁴ In 1923 this portion of the Act was amended to read: " * * * but 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."

certificates of public convenience and necessity or holding such certificates for a portion of their operations only, claim rights by virtue of their operations on August 17, 1923. It is necessary therefore that we determine as of August 17, 1923, the nature and extent of the "good faith" operations "under tariffs and schedules * * * lawfully on file with the Railroad Commission" of all carriers claiming prescriptive rights, the nature and extent of any rights conferred after August 17, 1923, by certificates of public convenience and necessity from this Commission, and the extent of any revocation or abandonment of rights either established by operation in good faith under tariffs on file with the Commission on August 17, 1923, or by subsequent certificates of public convenience and necessity.

In some instances respondents maintained tariffs in their own names; in others they participated in tariffs filed on behalf of a number of carriers by an association. The tariff of this latter class with which we are particularly concerned is Bay & River Boat Owners' Association Local Freight Tariff No. 4, C.R.C. No. 2, of John S. P. Dean, Agent, hereinafter referred to as "the Dean tariff". Twenty-three of the respondents in this case and their predecessors were parties to this tariff when it became effective on February 28, 1923; three others were added by Supplement No. 1, effective June 6, 1923, and one by Supplement No. 2 filed August 16, 1923, and effective August 17, 1923. On October 1, 1924, this tariff was cancelled and other tariffs established by the individual carriers in lieu thereof.

It is appropriate here to point out that whatever significance in the way of indicating the extent of a carrier's offer to serve the public might ordinarily attach to the publication and filing of a tariff of a certain scope and character, here largely loses its force by reason of the fact that, as stated in a previous proceeding, "although

the territory served by some members of the association was very limited, the scope of those tariffs was broad enough collectively to embrace each individual member's operations".⁵ Even the tariffs filed by individual carriers, when viewed in the light of this record, in many instances definitely appear to have been patterned after tariffs of other operators and in the absence of supporting evidence to the contrary, cannot be said to reflect a holding out to perform service commensurate therewith.

In determining the extent of the rights acquired by prescription however we have as a guide the decision of the Supreme Court of California in Golden Gate Ferry Company vs. Railroad Commission, 204 Cal. 305. In discussing this identical statutory provision in connection with a contention made by the Southern Pacific Company that its operation on August 17, 1923, of passenger boats between Alameda and San Francisco carried with it under the exemption in Section 50(d) hereinbefore quoted, a right to establish a vehicular ferry between the same points, the Court in that proceeding used the following language:

"Nor can it be said that a certificate of public convenience and necessity was unnecessary to inaugurate this service because the Southern Pacific Company was 'actually operating vessels in good faith under tariffs and schedules lawfully on file with the Railroad Commission', within the meaning of the Public Utilities Act. The briefs on file herein present three possible interpretations of the language just quoted: One, a legislative purpose to exempt a corporation operating vessels in any type of service on the inland waters of this State from securing a certificate; two, a legislative purpose to exempt a corporation that is operating a similar service to the one sought to be inaugurated from securing such a certificate; and, three, a legislative purpose to exempt a corporation that is operating, at the time the act becomes effective, a

⁵ Decision 16219 of March 17, 1926, in Applications 12284 and 12285, in re Application of Crowley Launch and Tugboat Company, etc., 27 C.R.C. 734.

service which is later to be continued, from securing such certificate.

"We are of the opinion that the third alternative is the one which was intended by the legislature, i.e., that a corporation is exempted from obtaining the certificate if it was, at the effective date of the act, actually operating a service in all respects substantially the same as the service to be rendered after the act became effective.

"The safe, definite rule, and the one supported by the reason and purpose of the Public Utilities Act, would seem to us to be to construe the language, 'operating vessels in good faith', to mean operating them in good faith in the essential and inherent features of the service sought to be continued after the effective date of the act. It seems apparent from the admitted facts that the Southern Pacific Company was not operating such a service at the date mentioned. A different type of vessel is to be used by the Southern Pacific Company from that used at the date of the act; a different route is to be taken, and a different class of service rendered."

The principle thus established was followed by this Commission in Decision 26424 of October 16, 1933, in Application No. 18498, in re Application of Larkin Transportation Company and Higgins Transportation Company, etc. In determining the "essential and inherent features" of respondent's operations the Commission in that proceeding held that where a carrier demonstrated that it has transported in good faith and under tariffs on file with the Commission on August 17, 1923, all or substantially all commodities then offered for transportation in the territory it served, it should not be deprived of the right to haul such other articles of commerce as might be offered later, but that where the articles transported clearly indicate that the carrier has restricted its operations to commodities of a certain class or of a limited number of classes, the carrier must be regarded as holding itself out to transport only commodities in that class or classes and cannot later without express authority change the essential and inherent nature of its service by transporting other

commodities.

In order that the time of the Commission and of all parties to the proceeding might be conserved to the fullest extent consistent with the development of a full and complete record, the Commission requested each respondent to prepare and submit at the hearing a statement (Form A) of all shipments handled by it during the first three days of each month in 1923, or if records for 1923 were not available, for the first year for which records were available, together with like information for 1934. Realizing that certain commodities or movements might not be embraced in such a showing, it was also requested that there be listed on a separate exhibit (Form B) shipments transported since January 1, 1923, which differ either as to commodity, origin or destination from those shown on Form A, and that each item of this second exhibit be accompanied by a statement explaining the approximate frequency of the movement involved. Together these two exhibits should then show between what points respondents operated and what commodities they transported.

Due to the extent of the territory involved in this proceeding it is necessary to group certain wharves and landings. As a convenience these groups will be described below and whenever these terms are used in the opinion that follows they will be understood to include all wharves and landings located in the group to which reference is made.⁶ We shall now consider the evidence presented by the

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San Francisco Bay Terminals:

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.

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.

respondents.

ALAMEDA TRANSPORTATION COMPANY

Alameda Transportation Company is a California corporation.

It holds a certificate of public convenience and necessity authorizing

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

San Francisco Bay:

All wharves, docks or landings on San Francisco Bay or navigable waters tributary to San Francisco Bay south of San Pablo Bay.

Lower San Francisco Bay:

All landings on San Francisco Bay and navigable waters tributary to San Francisco Bay south of San Francisco Bay terminals.

Upper San Francisco Bay:

All landings on San Francisco Bay and navigable waters tributary to San Francisco Bay north of San Francisco Bay Terminals, but south of San Pablo Bay.

San Pablo Bay:

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

Suisun Bay:

All landings on Carquinez Straits east of Carquinez Bridge; Suisun Bay and navigable waters tributary to Suisun Bay, Sacramento and San Joaquin Rivers to but not including B. B. Ranch Landing west of Collinsville and not including Middle Slough and New York Slough.

Lower Sacramento River:

All landings on the main stream of the Sacramento River below Sacramento to and including B. B. Ranch Landing west of Collinsville.

Sacramento Delta:

All landings on navigable waters in the territory west of the Sacramento River having outlet into the Sacramento River above Collinsville, also landings on Georgiana Slough and landings on Three Mile Slough located between the Sacramento River and Seven Mile Slough.

San Joaquin River:

All landings on the main stream of the San Joaquin River and the Stockton Deep Water Channel below Streckers and above B. B. Ranch Landing, west of Collinsville, and landings on New York Slough and Middle Slough, but excluding territory herein described as Stockton.

San Joaquin Delta:

All landings on navigable waters tributary to the San Joaquin River below Stockton, as hereinafter described, and above Antioch but not including landings on Georgiana Slough and landings on Three Mile Slough.

Delta:

All landings in the territory described above as Lower Sacramento River, Sacramento Delta, San Joaquin River and San Joaquin Delta.

Upper Sacramento River:

All landings on the Sacramento River and navigable waters tributary to the Sacramento River north of Sacramento.

Sacramento:

All landings on Sacramento River within the city limits of Sacramento.

Stockton:

All landings on the Stockton Channel from the head of the Channel to the first intersection with the San Joaquin River approximately three miles west of the head of the Channel.

it to operate the gas power boat "Jessie Matsen for the transportation of freight between San Francisco and all points on the Oakland Estuary including all shipyards, and between San Francisco, Avon, Bay Point and Richmond".⁷ This certificate was granted to the corporation upon the surrender by W. D. Heryford, an individual doing business under the firm name and style of Alameda Transportation Company, of his prescriptive rights. Applicants had requested authority to transfer the operating rights of W. D. Heryford to the corporation if the Commission concluded that such transfer was permissible under the then existing law.⁸ In the event the Commission concluded that the transfer was not permissible the corporation sought a certificate de novo. The certificate was granted and the corporation filed a tariff effective April 5, 1926, covering the service it was authorized to perform. There is thus no occasion to inquire into operations prior to 1926 in determining the extent of this respondent's right.

Respondent testified and Exhibit No. 1 indicates that daily trips were being made between San Francisco and the Oakland Estuary but that operation has not been conducted over that portion of its certificate authorizing service to and from Avon, Bay Point and Richmond.⁹ It has served Goat Island (Yerba Buena) intermittently and has made individual trips to Alcatraz and Angel Islands for the transportation of contracting equipment. Since the construction of the Bay Bridge it has included in its operations between San Francisco and the

⁷ Decision 16211 of March 17, 1926, in Application 12437, in re Application of Alameda Transportation Co., etc., 27 C.R.C. 732.

⁸ Prior to the 1927 amendment of Section 51 of the Public Utilities Act the transfer of rights to operate vessels on the inland waters of this state had not been authorized.

⁹ It did transport a lot of stevedoring gear from San Francisco to Avon in 1932 but not at its tariff rates.

Oakland Estuary, Goat Island and what is known as the Outer Harbor territory.

Since respondent holds no prior rights its present operations may not be more extensive than those authorized by its certificate, less such portions thereof as may have been abandoned. Unauthorized service establishes no claim to an operative right. It must be concluded therefore that respondent's existing operative right is confined to the transportation of freight between San Francisco on the one hand and all points on the Oakland Estuary including all shipyards on the other.¹⁰

W. J. ALBACH

W. J. Albach is an individual operating under the name of W. J. Albach Freight Line. He filed with the Commission, effective March 12, 1923, Local Freight Tariff No. 1, C.R.C. No. 1, which publication as amended by Supplement No. 3 is now in effect. Mr. Albach did not appear at the hearings nor did he furnish the Commission with a statement of his operations. His only response to notification of this investigation was his letter of March 4, 1935, addressed to the Commission and made a part of the record in these proceedings, in which he requested the Commission to cancel his tariff as water carrier.

Obviously any right which this respondent may have possessed has been abandoned.

CARL ANDERSON

Respondent is an individual operating and filing tariffs with this Commission in his own name. He holds no certificate of public

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

convenience and necessity. His first tariff, filed in 1917, was followed by association tariffs. On August 17, 1923, he was a participating carrier in the Dean tariff. After the cancellation of the Dean tariff, rates were again published in tariffs issued in his own name. All of these publications listed rates on a wide range of commodities. Exhibit 9 shows however that his operations in 1923 were limited to the transportation of hay and straw in substantial lots in "on call" service from Delta, Suisun Bay and San Pablo Bay points to San Francisco, South San Francisco and Oakland, and of the same commodities between points on the San Francisco waterfront. One shipment of lumber from San Francisco to Sonoma Creek is included in the exhibit, but a check of the effective tariff discloses no rate to cover this movement. It must be concluded that this shipment was not moved under a tariff on file with the Commission.

The lowest minimum weight shown in respondent's effective tariff for the transportation of hay and straw under commodity rates in carload quantities is 100,000 pounds.

From the record here made it must be concluded that respondent's right is limited to the transportation of hay and straw in lots of 100,000 pounds or more in "on call" service from Delta, Suisun Bay and San Pablo Bay points to San Francisco, South San Francisco and Oakland, and between points on the San Francisco waterfront.¹⁰

ANDERSON TRANSPORTATION COMPANY

Respondents, Denis O'Donoghue, E. H. Warren and David L. Peters, are copartners. They acquired their equipment and rights from John Anderson, who operated under the fictitious name of Anderson Transportation Company beginning May 24, 1925.¹¹ Prior to

¹⁰ See footnote, page 10.

¹¹ Decision 19450 of March 10, 1928, in Application 14251, in re Application of John Anderson, unreported.

that time John Anderson operated under his own name. Respondents do not hold a certificate of public convenience and necessity. Tariffs have been filed since 1917, first in the name of John Anderson, then by participation in association tariffs, again in the name of John Anderson, and finally in the name of Anderson Transportation Company. On August 17, 1923, the rates were contained in the Dean tariff. What shipments were transported in 1923 or between what points they moved the record does not disclose. The first full year under the present ownership was 1926, and records prior to that time are not available. Mr. O'Donoghue testified that he knew nothing about the operation prior to the partners' acquisition of the business. Exhibit 63 shows that hay was the only commodity transported during the first three days in 1926 and 1934. In 1926 hay was moved from San Pablo Bay, Suisun Bay, Sacramento Delta, and Lower San Francisco Bay points to San Francisco and between points on the San Francisco waterfront, while in 1934 the only movements shown are from San Pablo Bay points to San Francisco.

The witness also testified that a Form B exhibit was not furnished because it would have been identical with Form A except for grain, and that the grain moved from Stockton to San Francisco, one shipment in 1935, the other approximately three or four years ago. About five shipments of lumber were remembered by Mr. O'Donoghue as being moved across the bay, all within three months. These subsequent movements cannot be urged as establishing a prescriptive right to such service. All of respondents' services have been "on call" and have been confined to shipments of substantial size. The lowest minimum shown in connection with carload commodity rates in respondents' tariff now in effect for the transportation of hay is 100,000 pounds.

The transportation of freight for the United States Government on government bills of lading between San Francisco and Benicia was also shown. However, this freight is not moved under rates on file with the Commission and consequently is not considered in determining the prior right of respondents.

The most extensive right that can be conceded to respondents on this record is one for an "on call" service for the transportation of hay in lots of not less than 100,000 pounds between points on the San Francisco waterfront and from Lower San Francisco Bay, San Pablo Bay, Suisun Bay and Sacramento Delta points to San Francisco.¹⁰

BAY CITIES TRANSPORTATION COMPANY

Bay Cities Transportation Company is and since 1916 has been a California corporation operating a scheduled freight service between San Francisco on the one hand and Oakland and Alameda on the other. At the present time it makes one trip at noon and one at night in each direction.¹² It holds a certificate of public convenience and necessity authorizing the operation of vessels upon inland waters of California between San Francisco and Encinal Terminals in the City of Alameda on the Oakland Estuary. On August 17, 1923, it had on file with the Commission a tariff naming class and commodity rates between San Francisco and Oakland and one naming rates between San Francisco and Richmond. This latter tariff was cancelled however on November 24, 1923, upon authority of this Commission granted pursuant to an application filed by respondent in which it was recited that service to and from Richmond had not been established.¹³ The first year for which respondent could locate its records was 1930. The showing made (Exhibits 4 and 4-A) for the years 1930 and 1934 indicated that this respondent's water operations were confined entirely to transportation between San Francisco on the one hand and Oakland and Alameda on the other, but that between these points it transported a very extensive variety of commodities. The witness moreover testified that the company had always held itself out to transport anything that was offered and never refused any shipment unless it was too large or bulky to go on the barge.

¹⁰ See footnote, Page 10.

¹² Decision 14416 of December 30, 1924, in Application 10643, in re Bay Cities Transportation Company, unreported.

¹³ Applications 15-11571 and 63-4233 of November 22, 1923.

On this record respondent should be held to possess an operative right to transport property between San Francisco on the one hand and Oakland and Alameda on the other.¹⁰

BAY SHORE FREIGHT LINES, INC.

Bay Shore Freight Lines, Inc., is a California corporation, incorporated in 1933. At that time it succeeded to the rights of a copartnership operating under the name of Bay Shore Freight Lines. The copartnership in turn had succeeded to the operative rights of South Shore Port Company, Inc. On August 17, 1923, South Shore Port Company, Inc. was operating boats in daily service between San Francisco and Port South Shore under tariffs on file with the Commission. On May 14, 1925, it acquired a certificate of public convenience and necessity to operate vessels between Oakland and Alameda on the one hand and Port South Shore on the other.¹⁴ Both the prior and the certificated rights were later transferred, first to the copartnership and still later to the corporation.¹⁵ Tariffs filed to cover these operations named both class and commodity rates. Exhibits 2 and 2-A, while covering operations for 1928 (the first year for which records are available) and 1934 are said to be typical of respondent's earlier operations. They show that between San Francisco and Port South Shore respondent transported a very extensive variety of commodities, while between Oakland and Alameda and Port South Shore the commodities transported were much more restricted. Particularly is this

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See footnote page 10.

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Decision 14923 of May 14, 1925, in Application 10902, in re Application of South Shore Port Company, Inc., 26 C.R.C. 458.

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Decision 18821 of September 20, 1927, in Application 13962, in re Application of A. A. Peters as trustee, etc., 30 C.R.C. 395. Decision 25631 of February 14, 1933, in Application 18687, in re Application of Frank Chapman Willson, William Quimby Wright and Godfred Thuesen as trustees, etc., unreported.

true as to traffic moving to or from Alameda. However, since this is a certificated operation there is no question about respondent's original right and there is not on this record any evidence of abandonment. It should be found therefore that respondent has a prescriptive right for the transportation of property without restriction between San Francisco and Port South Shore and a certificated right between Oakland and Alameda on the one hand and Port South Shore on the other.^{10 16}

BAY TRANSPORT COMPANY

Bay Transport Company, a California corporation, had on file with the Commission on August 17, 1923, a tariff naming rates for the transportation of sugar and refinery supplies between San Francisco and the California & Hawaiian Sugar Refining Company dock at Crockett. On November 13, 1933, it secured a certificate of public convenience and necessity for the transportation of sugar in packages from Crockett to Mare Island.¹⁷ Exhibit 2 filed by this respondent shows an extensive movement of sugar and refinery supplies from Crockett to San Francisco, Oakland and Richmond and of miscellaneous refinery supplies from San Francisco to Crockett. The witness testified however that all of the sugar transported to Oakland and Richmond was moving under through bill-

¹⁰ See footnote, page 10.

¹⁶ By Decisions Nos. 27560 of December 3, 1934, and 27781 of February 26, 1935, in Application 19726, Bay Shore Freight Lines, Inc. was authorized to substitute an auto truck operation for its boat service during a temporary period. Still later by Decision 28040 of June 17, 1935, in Application 20001, the Commission authorized suspension of all operations until June 1, 1936. This does not affect its right to operate vessels after the period of authorized suspension has expired.

Bay Shore Freight Lines, Inc. also holds a permit under the For-Hire Vessel Act for transportation between Redwood Harbor and San Francisco, Oakland and Alameda (Decision 27249 of August 6, 1934, in Application 19216). Such operations, however, are not here in issue.

¹⁷ Decision 26517 of November 13, 1933, in Application 19034, in re Application of Bay Transport Company, etc., unreported.

ing to transcontinental destinations. He further testified that the company had occasion to transport only one shipment from Crockett to Mare Island since the time the certificate was issued. Between Crockett and San Francisco respondent operates a scheduled service of five trips per week.

From the record it must be concluded that respondent has a prescriptive right for the transportation of sugar and refinery supplies between San Francisco and the dock of California-Hawaiian Sugar Refining Corporation, Ltd., at Crockett, and a certificated right for the transportation of sugar in packages from Crockett to Mare Island.¹⁰

BERKELEY TRANSPORTATION COMPANY

Berkeley Transportation Company is a fictitious name under which John M. Atthowe operates vessels for the transportation of property. He holds a certificate of public convenience and necessity authorizing such transportation between San Francisco and San Quentin prison.¹⁸ He also claims a prior right to serve Emeryville, Oakland, Encinal Terminals, Richmond, and Redwood Harbor from and to San Francisco.

Exhibit 52, covering operations for the first three days of each month of the years 1929 to 1934 inclusive and a portion of 1935, shows a substantial movement between San Francisco and Emeryville, Berkeley and San Quentin. There was some movement to or from Oakland in 1929 and again in 1932, 1933 and 1934. Encinal Terminals apparently was served only in 1932 and Richmond only in 1933. In 1934 and 1935 large quantities of cement were transported from Redwood Harbor. In 1923 respondent was a party to the "Dean" tariff and also had on file in his own name a tariff (C.R.C. No. 4) naming class and commodity

¹⁰ See footnote, page 10.

¹⁸ Decision 13810 of July 18, 1924, in Application 10218, in re Application of J. M. Atthowe, etc., 25 C.R.C. 177.

STATE OF CALIFORNIA
DEPARTMENT OF CORRECTIONS
PRISON INDUSTRY AUTHORITY

**Certificate of Individual Microfilm or
Other Photographic Reproduction**

Section 14756, Government Code

I, the undersigned, hereby certify to the following in connection with the accompanying microfilm (photographic reproduction):

That I, Thomas Coupe', Industrial Supervisor, P.I.A. Micrographics or C-91693 an employee in the charge of Mr. Coupe', have been provided with access to the records, documents, instruments, plans, books or papers (hereinafter referred to as "records") of PUBLIC UTILITIES COM. at CME, for the purpose of microfilming; that such access was provided with the consent of said person or entity; that such records are reproduced in the accompanying microfilm; and that each Department of Corrections P.I.A. of the State of California reproduction includes the following identifying symbol, roll number Vol. 309.

That pursuant to delegation of the Department of Corrections P.I.A., I am authorized to direct and control the reproduction of documents and records of the Department or of other persons and entities in the manner authorized by Section 14756 of the Government Code, and Section 1551 of the Evidence Code; to execute certificates as required by Section 1531 and 1551 of the Evidence Code; and to certify under the official seal of the Department.

That this microfilm of the above described records was taken under my direction and control on the date hereof and that it is a complete, true and correct copy thereof;

That the microfilming or other photographic processes were accomplished in a manner and on film which meet with the standard specification of the United States National Bureau of Standards and A.N.S.I.

That this certificate was made at the time of the taking of this microfilm.

WITNESS my hand and the seal of the Department of Corrections Prison Industry Authority

26, day of Aug, 1985

Thomas R. Coupe'
(name)

california



prison
industry
authority

STATE OF CALIFORNIA
DEPARTMENT OF CORRECTIONS
PRISON INDUSTRY AUTHORITY

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26, day of Aug, 1985

Thomas R. Coupe'
(name)

california



prison
industry
authority

rates between San Francisco and Berkeley and Emeryville. As originally filed this tariff named rates between San Francisco and Berkeley only. However by Supplement No. 1, effective December 24, 1922, Emeryville was added, with a notation reading, "To correct title page of original tariff so as to conform to actual service performed. No change in rates or service". This tariff was at all times subject to the Western Classification. While he now maintains regular termini at San Francisco, Berkeley and Emeryville, the record does not show when these termini were established.

Upon the record, respondent's rights should be restricted to the operation of vessels for the transportation of property between San Francisco on the one hand and San Quentin Prison, Berkeley and Emeryville on the other.¹⁰

FRANK BROWN

Frank Brown is an individual operating a small boat and barge under his own name. He maintains no regular schedule and holds no certificate of public convenience and necessity. On August 25, 1921, he adopted a tariff filed in 1917 by Ray Cooper Launch and Barge Line. This tariff has never been changed. At the present time his business is extremely light. Exhibit 54 shows however that in 1923 he transported various articles, principally agricultural implements, live stock, hay and grain, between various Delta points. His tariff names rates on these commodities and also on "General Mdse. N.O.S."

Respondent on this record should be found to possess a prescriptive right to transport property between Delta points, rendering only an "on call" service.¹⁰

THE CALIFORNIA TRANSPORTATION COMPANY

The California Transportation Company is a California corpo-

¹⁰ See footnote, page 10.

tion operating vessels for the transportation of freight and passengers as one of the component members of The River Lines, to which reference will be made hereinafter. Respondent holds a certificate of public convenience and necessity granted by this Commission.¹⁹ In that proceeding the Commission authorized The California Transportation Company to operate "vessels as a common carrier between the points set forth in the tariffs of California Transportation Company and California Navigation and Improvement Company, to which reference has been made in the foregoing opinion * * *". This order followed a recital in the opinion reading:

"The points between which the California Transportation Company is now operating are set forth in its 'Local and Joint Freight Tariff No. 10-E, C.R.C. No. 47, effective July 1, 1922;' in 'Local and Joint Freight Tariff No. 9-D, C.R.C. No. 54, effective March 1, 1927;' in 'Local Passenger Tariff No. 6-C, C.R.C. No. 54, effective October 10, 1925;' and supplements thereto now on file with the Commission.

"The points between which California Navigation and Improvement Company is now operating are set forth in its 'Local and Joint Freight Tariff No. 8-D, C.R.C. No. 14, effective March 1, 1927;' and in 'Local Passenger Tariff No. 7-A, C.R.C. No. 5, effective June 18, 1925', now on file with the Commission."

It is not practicable to enumerate in this opinion all the points shown in the tariffs just referred to. It appears however that as to freight operations they embrace service to and from Stockton, San Francisco, Oakland, Crockett, South Vallejo, North Vallejo, Port Costa, Benicia, Martinez, Bay Point, Pittsburg and Antioch, and all navigable waters of the Sacramento, San Joaquin, Mokelumne, Old and Middle Rivers and their tributaries; and as to passenger operations, San Francisco, Sacramento and all directly intermediate points, and San Francisco and

¹⁹ Decision 18218 of April 11, 1927, in Application 13636, in re Application of California Transportation Company and California Navigation and Improvement Company, etc., 29 C.R.C. 655.

Stockton and directly intermediate points. Exhibits 16, 17 and 18 cover transportation during 1934 of a wide range of commodities in the general territory hereinbefore described. There is no evidence of an abandonment by this respondent of any portion of its certificated right.

On this record the Commission should find that The California Transportation Company holds an operative right for the transportation of property as a common carrier between the points set forth in the tariffs of respondent and of California Navigation and Improvement Company, to which reference has been made.

In addition to the foregoing, respondent was authorized to acquire from the Central Pacific Railway Company and Southern Pacific Company the operative rights and properties comprising their Sacramento River steamer line.²⁰ The decision approving this acquisition contains the following recitals:

"The application shows that Central Pacific Railway Company is the owner of, and Southern Pacific Company, as lessee, is in possession of, and is operating as a common carrier of passengers and freight, a line of river boats plying on San Francisco Bay and Sacramento River, between San Francisco and Sacramento, including two steamers named 'Navajo' and 'Cherokee'. The points it serves, and its rates and charges are set forth in its Local Freight Tariff No. 930-C, C.R.C. No. 2820, and its Local Passenger Tariff B.C. No. 1, C.R.C. No. 2929, and Excursion Notice No. 6508, C.R.C. No. 5104.

"The California Transportation Company, likewise, is the owner of, and is in possession of and operating as a common carrier of passengers and freight, a line of river boats plying between San Francisco and Sacramento and Stockton. The points it serves, and its rates and charges are set forth in its Local and Joint Tariff No. 10-F, C.R.C. No. 55, its Local and Joint Tariff No. 9-D, C.R.C. No. 54, and its Local Passenger Tariff No. 6-D, C.R.C. No. 55.

"It appears that The California Transportation Company is engaged in operating on a through schedule two river steamers named 'Delta King' and 'Delta Queen', for handling

²⁰ Decision 21973 of January 2, 1930, in Application 16138, in re Application for an order authorizing sale by Central Pacific Railway Company, etc., 34 C.R.C. 153.

passengers and freight daily between Sacramento and San Francisco, and, in addition thereto, is operating two steamers named 'Pride of the River' and 'T. C. Walker' between San Francisco and Sacramento on a local or intermediate schedule, giving service in direct competition with the Southern Pacific Company's steamers 'Navajo' and 'Cherokee', which also operate on a local or intermediate schedule between San Francisco and Sacramento."

The records showing the nature and extent of these operations in 1923 are no longer available. It appears however that the operative rights acquired by The California Transportation Company in the last mentioned proceeding were competitive with and were no more extensive than those which The California Transportation Company then possessed. Our finding respecting the rights of this respondent should embrace the rights it acquired through the purchase of this additional
10
line.

COLBERG MOTOR BOATS

Colberg Motor Boats is the name under which respondents William Colberg and Henry J. Colberg operate boats in twice daily service over and along the following routes:

1.

Stockton	Venice Island
Wright Tract	Webb Tract
Black Slough	Bouldin
Rindge Tract, Camps 7 to 19	Empire Tract
McDonald Island, Camps 1 to 8	Stockton
Medford	

2.

Stockton	Woodwards
Wright Tract	Orwood
Black Slough	Fay Island
Rindge, Camp 7	Palm Tract
Harts Landing	Holland Tract
McDonald, Camps 11 to 24	Rhode Island
Jones Tract	Quimby Island
Mandeville Island	Franks Tract
Bacon Island	

¹⁰ See footnote, page 10.

Deviations from these routes up to two miles are made as occasion requires. The Colbergs hold no certificate of public convenience and necessity but claim to have operated a service of this nature since 1898, and under tariffs on file with the Commission since 1911. They transport both passengers and express, the express being limited to pieces or packages weighing not more than 250 pounds per piece or package. Passenger and express transportation is performed with the same equipment.

On this record it should be held that respondents possess a prescriptive right to transport passengers and property over and along the routes described above. The rights to transport property however should be restricted to articles carried upon its passenger equipment and weighing not more than 250 pounds per piece or package.¹⁰

CROWLEY LAUNCH AND TUGBOAT COMPANY

Crowley Launch and Tugboat Company is a California corporation operating vessels on certain of the waters here involved. On March 17, 1926, as a result of applications seeking a "certificate of public convenience and necessity and defining and validating certain operative rights" the Commission granted respondent a certificate of public convenience and necessity for the operation "of vessels for the transportation of persons and property for compensation on the inland waters of the State of California between the points shown in Exhibits "A" of the applications, and points on the Oakland Estuary located in the city of Alameda".²¹ Exhibits "A" consisted of proposed freight

¹⁰ See footnote, page 10.

²¹ Decision 16219 of March 17, 1926, in Applications 12284 and 12285, in re Application of Crowley Launch & Tug Boat Company, etc., 27 C.R.C. 734.

and passenger tariffs, which were later published as Crowley Launch and Tugboat Company Local Freight Tariff No. 3, C.R.C. No. 5, and Local Passenger Tariff No. 3, C.R.C. No. 3. Generally the freight tariff named both class and commodity rates for transportation between points on San Francisco, San Pablo and Suisun Bays, Carquinez Straits, Sacramento, San Joaquin, Mokelumne, Old and Middle Rivers, including arms and tributaries. Except for rates on fumigating gear and lumber, on which charges were published on a "per trip" and "per thousand feet board measure" basis respectively, and ships' stores between San Francisco on the one hand and vessels in the stream and Oakland on the other, the tariff provided no rates for shipments moving in lots of less than 30 tons. The passenger tariff, although indicating on the title page that it applied on San Francisco, San Pablo and Suisun Bays and on the Sacramento and San Joaquin Rivers and arms and tributaries thereof, provided fares only for special passenger service between the San Francisco waterfront on the one hand and vessels in the stream, Southern Pacific, Western Pacific and Key Route moles and Parr Terminal on the other, and for working parties (stevedore gangs) between San Francisco waterfront on the one hand and vessels in the stream, Points Orient and San Pablo, Sausalito, California City, Richmond and points in Oakland Harbor, including Alameda Estuary points.

Respondent testified that at all times it was ready to transport any traffic which was offered under its tariffs, rendering an "on call" service only. An exhibit filed indicates that during 1930, the first year for which records were available, its transportation of property was confined to U.S. Navy stores moving between San Francisco and Mare Island, ores, concentrates and lead between San Francisco and Selby, petroleum products between San Francisco and Oleum and Martinez, and flour and mill products between San Francisco and South Vallejo. With one exception none of these shipments weighed less than 300 tons.

The showing for the first three months of 1934 embraces the identical commodities between the same points, and again shows that except for one lot the smallest shipment exceeded 300 tons. Exhibit Form B, which was suggested for the purpose of showing movements different from those covered by the first three days of each month, bears the notation, "Nothing to submit". However a supplemental exhibit was submitted covering operations for the years 1927 to May, 1935, inclusive, indicating that a large variety of commodities was transported in substantial quantities between points on San Francisco Bay, San Pablo Bay and Suisun Bay, as well as between San Francisco and Pittsburg.

The record contains no evidence of operation prior to 1930 on any of the inland waters except those already mentioned on the three bays and between San Francisco and Pittsburg. It seems quite apparent that all rights on the inland waters here under consideration above Suisun Bay and Pittsburg have been abandoned.

On this record it should be concluded that respondent possesses operative rights to render an "on call" service for the transportation of property in lots of 30 tons or over between points on San Francisco, San Pablo and Suisun Bays and between San Francisco and Pittsburg. A right is also held for the transportation of passengers between San Francisco on the one hand and vessels in the stream, Southern Pacific, Western Pacific and Key Route moles and Parr Terminal (Oakland) on the other; also to transport working parties (stevedore gangs) between San Francisco on the one hand and vessels in the stream, Point Orient, Point San Pablo, Sausalito, California City, Richmond, Oakland and Alameda on the other.¹⁰

DELTA TRANSPORTATION CO.

Respondent, Benjamin Walters, an individual doing business as

¹⁰ See footnote, page 10.

Delta Transportation Co., has on file with the Commission Local Passenger Tariff No. 2, C.R.C. No. 3, naming rates for the transportation of passengers between various points located on the inland waters of this State. Annual reports of respondent on file with the Commission show that no passenger service was rendered during the years 1924 to 1934 inclusive. Obviously therefore any rights respondent may have had as a common carrier of passengers in 1923 have been abandoned.

Respondent now has no freight tariffs on file with the Commission. Its final tariff was cancelled on March 22, 1935, at which time this operation is said to have been merged with that of other carriers and rates published in Freighters, Inc. Tariff No. 1, C.R.C. No. 1. While respondent would not admit that the line had been wholly abandoned, its annual reports show no freight operations from 1928 to 1934 inclusive. Under these circumstances the conclusion that this carrier has abandoned whatever common carrier right it may have had in 1923 is inescapable.

EMPIRE BARGE COMPANY

This respondent, William A. McCauley, operates a barge transportation service under the name of Empire Barge Company. His rates have been on file with the Commission since 1919, in tariffs issued in the name of Empire Barge Company, and in association tariffs. Respondent does not hold a certificate of public convenience and necessity. The bulk of his freight in 1923, as shown by Exhibit 33, consisted of potatoes and onions originating in the Delta region and transported to Stockton and Sacramento. Form B of this exhibit shows a movement of onions from Liberty Farms to Middle River. The evidence shows that he transported other commodities between Delta points. One shipment of barley moved from Victoria 3 to Port Costa, a shipment of beans moved from Sacramento to Stockton and a shipment of wagons was handled from Stockton to Sacramento. A search of the applicable tariff discloses no

rates for the transportation of beans or wagons between Sacramento and Stockton, thus leading to the conclusion that they were not transported by him as a common carrier. In 1934 respondent's operations were considerably curtailed. During that year he moved celery from Delta points to Terminous, empty crates from Terminous to Delta points, and potatoes from Delta points to Stockton.

On this record it is found that the respondent has an operative right to transport property in "on call" service between Delta points and between Delta points on the one hand and Stockton and Sacramento on the other; also a right to transport grain in lots of not less than 80,000 pounds from San Joaquin Delta to Port Costa.¹⁰

ERIKSON NAVIGATION COMPANY

Respondent is a California corporation operating a common carrier freight service on the inland waters of the State of California. It holds a certificate of public convenience and necessity to operate certain boats and barges specifically named in the decision "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".²² On August 18, 1925, respondent was authorized to operate "vessels for the transportation of property, for compensation, on the inland waters of the State of California between points located on the

¹⁰ See footnote, page 10.

²² Decision 13566 of May 17, 1924, in Application 10001, in re Application of Erikson Navigation Company, etc., 24 C.R.C. 922.

Sacramento and San Joaquin Rivers and tributaries and points on the San Francisco Bay on the one hand and the Encinal Terminal wharves, located in the City of Alameda, on the Oakland Estuary, on the other hand; also to handle freight, not otherwise specified, between San Francisco Bay points and Alviso, Redwood City, Mare Island and the intermediate points". In granting this certificate the Commission said: "In issuing this authority the Commission does not authorize or enlarge any of the operating privileges of applicant except to the extent of the service to Encinal Terminals in Alameda and between the San Francisco Bay points".²³

There is testimony to the effect that the Erikson Navigation Company service was the same as that previously given by John Erikson. Exhibit 36, compiled from records for 1925 (the first year for which any were available) and thereafter, shows that respondent transported a wide range of commodities between most of the territory here involved. There is no showing of any transportation upon Upper Sacramento River nor of property in quantities of less than 20,000 pounds between San Francisco Bay Terminals on the one hand and Stockton and Sacramento on the other.

On September 29, 1927, respondent was authorized to acquire the operative right and equipment of Henry A. Ball and Fred F. Ball.²⁴ On May 23, 1931, Local Freight Tariff No. 2, C.R.C. No. 2 of Fred F. Ball was cancelled. After the cancellation of this tariff, rates were carrier in Erikson Navigation Company Local Freight Tariff No. 1, C.R.C. No. 1.

²³ Decision 15320 of August 18, 1925, in Application 11324, in re Application of Erikson Navigation Company for a certificate, etc., 26 C.R.C. 934.

²⁴ Decision 18840 of September 29, 1927, in Application 13983, in re Application of Erikson Navigation Company to acquire, etc., 30 C.R.C. 408.

Exhibit 72, a photostatic copy of "Statement of traffic during calendar year ending December 31, 1923", submitted to U.S. Engineers by Fred F. Ball, shows a movement between Delta points and includes an item shown as "General Merchandise 500 Ton".

On the record it is concluded that Erikson Navigation Company possesses an operative right to render an "on call" service for the transportation of property between Delta points. It is further concluded that it holds an "on call" right to transport property between all points on the inland waters here under consideration, Sacramento and south, with the restriction that said service may be rendered only in accordance with the certificate granted in Decision 13566, and with the further restriction that between San Francisco Bay Terminals on the one hand and Sacramento and Stockton on the other, property shall not be transported in quantities of less than 20,000 pounds.¹⁰

FAY TRANSPORTATION COMPANY

N. Fay and N. A. Fay are copartners operating as Fay Transportation Company. They hold no certificate of public convenience and necessity. On August 17, 1923, the rates of N. Fay and Son, the predecessor of respondents, were published in their Local Freight Tariff No. 13, C.R.C. No. 13. Exhibit 20 shows that in 1923 respondents transported grain and beans in large lots from Upper Sacramento River points, Delta points, Sacramento and Port Costa to San Francisco, Oakland, Stockton, Sacramento, Port Costa, Petaluma, Vallejo and Rio Vista. N. A. Fay testified that he recalled having transported some seed potatoes, bags, seed grain and lumber in the reverse direction but has no record of it and does not know when this traffic moved. The exhibit shows a 30,000 pound shipment of barley from San Francisco to Rio Vista and a

¹⁰ See footnote, page 10.

4,700 pound shipment of wool from Dozier to Stockton. The witness' testimony that variation of crops in the different sections served, as well as the different houses for which work was performed, caused his business to vary considerably, is not convincing that they offered a common carrier service in 1923 for commodities other than those shown in the exhibit.

On this record it is concluded that respondents possess a prescriptive right to transport beans in lots of not less than 20,000 pounds, grain in lots of not less than 80,000 pounds, and wool. Beans may be transported between Delta points, from Delta points to San Francisco and Sacramento, and from Sacramento and Upper Sacramento River points to San Francisco. Grain may be transported between Delta points, from San Francisco to Lower Sacramento River points, from Port Costa to Petaluma and San Francisco Bay Terminals, and from Upper Sacramento River, Sacramento and Delta points on the one hand to Port Costa, Petaluma, Vallejo, Stockton, Sacramento and San Francisco Bay Terminals on the other. Wool may be moved from Dozier to Stockton.¹⁰

S. FREDRICKSON

On May 27, 1924, a certificate of public convenience and necessity was issued to S. Fredrickson "as managing owner for the co-partnership of C. Erikson, executrix of the estate of John Erikson, deceased, Barbara Denning and S. Fredrickson" for the operation of the gasoline power boat "Mathilda" "as a common carrier of freight upon the inland waters of the State of California, limited to the bays of San Francisco, Suisun and San Pablo and tributaries thereto".²⁵ This right was transferred to Gustaf Olsson after the instant proceeding

¹⁰ See footnote, page 10.

²⁵ Decision 13608 of May 27, 1924, in Application 10041, in re Application of S. Fredrickson, etc., 24 C.R.C. 948.

had been instituted.²⁶ Since the transfer S. Fredrickson has not operated any vessel. Nor has he any records showing the nature and extent of the service he previously performed. He testified however that he "transported barley, hay, things like that, corn, and that is the only thing I transported". He stated that only an "on call" service for shipments moving in substantial quantities from points in the Delta, particularly "Grand Island Canal and Union Island, Roberts Island, Isleton, Bradford Island" to Port Costa, Petaluma and San Francisco was given. Later he recalled having transported lumber from San Francisco to Petaluma and Delta points.

It seems obvious on this record and the Commission should find that S. Fredrickson did not hold himself out to transport property of all descriptions but that he voluntarily and intentionally confined his operations to the transportation in "on call" service of hay and straw in lots of 100,000 pounds or more, and grain in lots of 80,000 pounds or more from points in the Delta to Port Costa, Petaluma and San Francisco, and lumber from San Francisco to Petaluma and Delta points in lots of 20,000 pounds or more. The right which Olsson acquired must obviously be identical with that which Fredrickson possessed at the time of the transfer.¹⁰

ELLEN J. FERGUSON

This respondent's rights will be considered by the Commission in Case No. 3975, and a separate report rendered thereon.

FRANK FOPPIANO

Frank Foppiano, an individual, operates a freight and pass-

²⁶ Decision 27792 of March 4, 1935, in Application 19779, in re Application of Sven Fredrickson and Barbara Demming, unreported.

¹⁰ See footnote, page 10.

enger service in his own name. Such rights as he may have are those which he acquired from the heirs of Harry Johnson,²⁷ who conducted a business under the name of Johnson Launch Company. The initial tariffs filed with the Commission by respondent, effective May 3, 1933, did not name rates for all of the services provided for in the Johnson Launch Company tariffs. If Johnson Launch Company had any operative rights other than those for which rates were named in respondent's initial tariffs, such rights have obviously been abandoned.

Respondent's testimony indicates that his present freight service is confined to the handling of ships' stores from San Francisco waterfront to vessels in the stream. His passenger operation is likewise restricted to service between San Francisco waterfront and vessels in the stream.

On the record it is found that the operative right of Frank Foppiano is limited to transportation of property and passengers between the San Francisco waterfront and vessels in the stream.¹⁰

PETER HANSEN

Respondent, an individual, operates under his own name under tariffs on file with the Commission. On August 17, 1923, Peter Hansen became a participating carrier in the Dean tariff, and later issued his own tariffs. He does not hold a certificate of public convenience and necessity. The evidence adduced reveals that although rates were named on numerous commodities in respondent's tariffs, his operations in 1923 were limited to an "on call" service for the transportation of grain, feed, flour, hay, straw, lumber, farm implements and tractors in large lots. These commodities were moved extensively in the terri-

²⁷ Decision 25827 of April 17, 1933, in Application 18541, in re Application of Charles S. Love, Arthur O. St. Clair and Harry Mayo, to sell, etc., unreported.

¹⁰ See footnote, page 10.

tory here being considered with the exception of Sacramento, Upper Sacramento River and Lower San Francisco Bay points. Exhibit 12 shows that lumber was handled only from San Francisco Bay Terminals to San Pablo Bay and Stockton and that farm implements and tractors moved between Delta points.

The conclusion reached from the record is that respondent possesses a right to operate an "on call" service for farm implements and tractors in lots of 20,000 pounds or more between Delta points; lumber in lots of 20,000 pounds or more from San Francisco Bay Terminals to San Pablo Bay points and Stockton; and hay and straw in lots of not less than 100,000 pounds, and grain and mill stuffs in lots of not less than 80,000 pounds, between all points on the inland waters here under consideration except Sacramento, Upper Sacramento River and Lower San Francisco Bay points.¹⁰

THE HARBOR TUG AND BARGE COMPANY

This respondent is a California corporation operating on the inland waters as a common carrier of freight and passengers. The only rights claimed by this company are those granted by this Commission on February 15, 1926,²⁸ "to own, manage, operate and maintain a general launch, barge, tug and towboat business upon San Francisco Bay and in the navigable waters of the United States contiguous thereto, said business, in so far as under the jurisdiction of the Railroad Commission, however, to be limited to and between such points as are now mentioned in the tariffs of said Henry C. Peterson Inc., and American Dredging Company (Oakland Launch and Tugboat Company)".

Mr. Charles Rogan, testifying for respondent, stated that

¹⁰ See footnote, page 10.

²⁸ Decision 16004 of February 15, 1926, in Application 12461, in re Application of The Harbor Tug and Barge Company, etc., 27 C.R.C. 609.

on the river his company had never attempted to handle less than carload lots. He also testified that both freight and passenger services of his company were "on call" and not on schedule. An exhibit introduced showing freight business conducted during 1934 indicates that respondent did not restrict its carload operations to any localities or any particular commodities in the territory covered by its certificate.

From this record it is concluded that The Harbor Tug and Barge Company possesses a right to operate a "general launch, barge, tug and towboat business" in "on call" service for the transportation of passengers between points on San Francisco and San Pablo Bays and for the transportation of property between points on San Francisco, San Pablo and Suisun Bays and for the transportation of property in lots of not less than 20,000 pounds between all other points here involved.¹⁰

HERINGER AND SCOTT

Respondents Howard Heringer and A. F. Scott, copartners, acquired the property and rights of the former partnership of P. F. Heringer and A. F. Scott.²⁹ Tariffs have been on file with the Commission since 1918. An "on call" service was rendered prior to August 17, 1923. Respondents do not hold a certificate of public convenience and necessity. The evidence shows that respondents have not transported property as a common carrier since January 1929. Beginning in March 1929 they hauled large lots of steel, rock and sugar beets under contract or charter and towing arrangements. Notwithstanding their expressed readiness to furnish "on call" service,

¹⁰ See footnote, page 10.

²⁹ Decision 26911 of April 2, 1934, Application 19364, in re Application of P. F. Heringer and A. F. Scott, co-partners, etc., unreported.

under the circumstances here it must be held that respondents have withdrawn from common carrier operations and that the prescriptive rights of Heringer and Scott have been abandoned.

HIGGINS TRANSPORTATION COMPANY

This respondent is a California corporation claiming an operative right for an "on call" service for the transportation of freight. The initial tariff of this organization was filed in the name of John W. Higgins Freight Line and became effective August 5, 1921. This publication was adopted February 2, 1926, by Higgins Transportation Company which had acquired the rights of John W. Higgins. On March 22, 1935, the rates were transferred to tariffs of Freighters, Inc. Exhibit 37 indicates that in 1923 the essential business of this carrier was confined to the transportation of produce, equipment and supplies between Delta points and between Delta points on the one hand and Stockton and San Francisco Bay Terminals on the other. In 1923 no service was given in the territory Sacramento or north, San Pablo Bay, or points south of San Francisco Bay Terminals. Nor does the record disclose any movements between San Francisco and Stockton or Sacramento.

On this record it is found that this respondent's rights permit operation of an "on call" freight service between Delta points, between Delta points and Stockton and between Delta points and San Francisco Bay Terminals.¹⁰

ISLAND OIL TRANSPORTATION COMPANY

Island Oil Transportation Company is the name under which Benjamin Walters conducts an "on call" service for the transportation of fuel oil in bulk. He holds no certificate of public convenience and necessity. Island Oil Transportation Company Local Freight Tariff No. 1,

¹⁰ See footnote 10, page 10.

C.R.C. No. 1, was filed with the Commission effective July 18, 1923, and remained in effect until March 22, 1935, when rates were transferred to Freighters, Inc. Local Freight Tariff No. 2, C.R.C. No. 2. The Island Oil Transportation Company tariff names rates for the transportation of fuel oil in bulk from and to certain points specified in the tariff, thus indicating that the "on call" service offered for this particular commodity was limited to the points specifically named. Exhibit 26 submitted by the respondent lists movements of bulk fuel oil between points for which rates are provided in the tariff, both prior and subsequent to August 17, 1923.

From this record it is found that Island Oil Transportation Company possesses a prescriptive right to render an "on call" service to transport fuel oil in bulk from Oleum, Pittsburg, Martinez and Port Costa to Stockton, Sacramento, San Joaquin River and tributaries below Roberts Island Bridge, Mokelumne River and tributaries below New Hope Landing, Old River and tributaries below Orwood Bridge and Sacramento River and tributaries below Sacramento and from Oleum to Pittsburg, Napa and Rodeo.¹⁰

ISLAND TRANSPORTATION COMPANY

Benjamin Walters, an individual, does business under the name of Island Transportation Company. A passenger tariff and various freight tariffs have been filed with this Commission. The passenger tariff is Island Transportation Company Local Passenger Tariff No. 1, C.R.C. No. 1, effective April 26, 1919, and still unchanged. Walters, testifying in his own behalf, stated that he had not transported passengers for a good many years, and then only as an accommodation. No passenger revenue has been reported to the Commission since 1922. Obviously any right this respondent may have had as a common carrier of

¹⁰ See footnote, page 10.

passengers has been abandoned. Freight rates of Island Transportation Company have been filed with the Commission in its own issues and in association tariffs beginning in 1917 and continuing to March 22, 1935, when they were transferred to tariffs of Freighters, Inc. Respondent has rendered an "on call" service only. On April 15, 1925, a certificate was granted for freight operations between Encinal Terminals and points upon the inland waters served by Island Transportation Company.³⁰ This is the only certificate held by the respondent. Island Transportation Company Local Freight Tariff No. 5, C.R.C. No. 5, in effect from May 3, 1923, to January 15, 1934, does not name class rates between San Francisco Bay Terminals and Sacramento and Stockton. Less than carload commodity rates are named for only a few commodities, although respondent testified that he was ready and willing to transport all less carload freight offered. No showing was made of any less than carload movement between San Francisco Bay Terminals and Sacramento, and the evidence submitted indicates that the movement from San Francisco to Stockton has been limited to bags.

On this record it must be found that respondent possesses a right to render an "on call" service for the transportation of property between San Francisco Bay Terminals on the one hand and Sacramento and Stockton on the other, in lots of 20,000 pounds or more; but in lots of less than 20,000 pounds respondent's right is restricted to the transportation of bags from San Francisco to Stockton. Between Delta points and Stockton on the one hand and Port Costa, Petaluma and Vallejo on the other, the right of respondent is restricted to the transportation of grain and mill stuff in lots of not less than 80,000 pounds; between Delta points and between Delta points and Stockton and Sacramento, respondent possesses an unrestricted right to transport

³⁰ Decision 14803 of April 15, 1925, in Application 10851, in re Application of Benjamin Walters (Island Transportation Company) for a certificate, etc., 26 C.R.C. 323.

property of all kinds.¹⁰

A. F. JOHNSTON

Respondent, an individual, has been filing tariffs with the Commission in his own name since 1917. These tariffs name commodity rates in most of the territory involved in this proceeding. Respondent holds no certificate of public convenience and necessity. The exhibits and testimony show that in 1923 this operator was furnishing an "on call" service for the transportation of freight in large quantities including grain, beans, potatoes and onions from Upper Sacramento River and Delta points to San Francisco, Sacramento and Port Costa, as well as an "on call" service on these and other commodities in Delta and Upper Sacramento River territory. No service was rendered from or to Stockton in 1923. Operations subsequent to 1923 are indicated in the exhibits as being substantially the same as in 1923, except for certain enlargements of the territory served. Such enlargements in service can not be urged as establishing an operative right.

On this record it should be found that A. F. Johnston possesses a prescriptive right to render an "on call" service for the transportation of:¹⁰

1. Grain, paddy rice, beans, hay, potatoes and onions from Upper Sacramento River points to Sacramento in lots of not less than 20,000 pounds.
2. Grain, paddy rice, potatoes and onions from Delta points to Sacramento in lots of not less than 20,000 pounds.
3. Grain in lots of not less than 80,000 pounds, beans, potatoes and onions in lots of not less than 20,000 pounds from Upper Sacramento points and Delta points to San Francisco and Port Costa.

¹⁰ See footnote, page 10.

LARKIN TRANSPORTATION CO., INC.

Respondent is a California corporation operating an "on call" freight service. It holds no certificate of public convenience and necessity. The exhibit it submitted relates to 1927 and 1934 traffic. Records prior to 1927 were not available but F. J. Larkin, testifying in his company's behalf, explained that the difference between the traffic handled in 1923 and that of 1927 was due to changed conditions, competing forms of transportation having taken the fresh fruit and asparagus enjoyed by his company in 1923. Respondent's rates were filed with the Commission beginning June 1, 1920, by participation in association tariffs and later by tariffs of its own issue. They were transferred to Freighters, Inc. Local Freight Tariff No. 1, C.R.C. No. 1, effective March 22, 1935. The evidence shows that between Delta points and between Delta points and Sacramento, Stockton and San Francisco Bay Terminals, respondent handled a wide range of commodities. The record does not show service to points above Sacramento, and an examination of the recent tariffs of Larkin Transportation Co., Inc., reveals the fact that rates are named on only a few commodities in the territory south of San Francisco and Alameda on San Francisco Bay. Between points on San Francisco and San Pablo Bays, the tariffs and exhibits lead to the conclusion that this operator's service was confined to transportation of property in substantial quantities. The record shows no movement between San Francisco Bay Terminals and Stockton of any commodity for which rates were published in 1923 and maintained continuously thereafter and none but grain between San Francisco Bay Terminals and Sacramento. A movement of grain in large lots is shown from Delta points, Stockton and Sacramento on the one hand to South Vallejo, Petaluma and Port Costa on the other.

The Commission should find that respondent possesses an oper-

ative right to render an "on call" service for the transportation of:¹⁰

1. Property between Delta points and between Delta points on the one hand and San Francisco Bay Terminals, Stockton and Sacramento on the other.

2. Property in lots of not less than 20,000 pounds between points on Upper San Francisco Bay, between points on San Pablo Bay and between points on Upper San Francisco Bay and San Pablo Bay.

3. Grain and mill stuff in lots of not less than 80,000 pounds between Delta points, Stockton and Sacramento on the one hand and Port Costa, Petaluma and Vallejo on the other.

4. Grain in lots of not less than 80,000 pounds between San Francisco Bay Terminals and Sacramento.

THE L-H LINES (LARKIN-HIGGINS TRANSPORTATION COMPANY)

Larkin Transportation Co., Inc., and Higgins Transportation Company were authorized by the Commission on October 16, 1933, to conduct a unified operation of the services being conducted by each organization separately.³¹ Tariffs were filed with the Commission by The L-H Lines but by application filed April 17, 1934, applicants sought and secured permission³² of the Commission to cancel their Local and Joint Freight Tariff No. 2, C.R.C. No. 2, the only tariff in effect on the date when this latter application was made. F. J. Larkin testified in this case that The L-H Lines were never formed and claimed no operative right.

On the record it is held that this respondent has no opera-

¹⁰ See footnote, page 10.

³¹ Decision 26424 of October 16, 1933, in Application 18498, in re Application of Larkin Transportation Company, a corporation, and Higgins Transportation Company, a corporation, etc., unreported.

³² Decision 26980 of April 23, 1934, in Supplemental Application 18498, in re Application of Larkin Transportation Company, etc., unreported.

tive right.

MARINE SERVICE CORPORATION

Respondent, a California corporation, acquired the operative rights of San Rafael Freight and Transfer Company, Inc.,³³ which had acquired said rights from A. H. Marx and R. H. Clarke, copartners, doing business as San Rafael Freight and Transfer Company.³⁴ Said rights embraced operation of motor trucks between some of the points involved, as well as a vessel service. A certificate of public convenience and necessity is also held to transport property by vessel between all points served on the one hand, and Marin Meadows on the other.³⁵ On August 17, 1923, rates were published in San Rafael Freight and Transfer Company Local Freight Tariff No. 1, C.R.C. No. 1. This tariff named commodity rates, including a rate on Freight N.O.S. between San Rafael and San Francisco and intermediate points. Leslie M. Rudy, testifying for respondent, stated that his company operates between San Francisco on the one hand and San Rafael, Sausalito and Tiburon on the other. The service between San Francisco and San Rafael has been rendered under schedule. Transportation service between San Francisco on the one hand and Tiburon and Sausalito on the other has been rendered by this company by vessel to and from San Rafael and thence by truck to and from Tiburon and Sausalito. As a matter of operating convenience its vessel has on occasion called at Sausalito, but this

³³ Decision 26452 of October 23, 1933, in Application 19133, in re Application of the San Rafael Freight and Transfer Company, a corporation, etc., unreported.

³⁴ Decision 12519 of August 22, 1923, in Application 9135, in re Application of A. H. Marx, an individual, and A. H. Marx and R. H. Clarke, copartners, etc., 23 C.R.C. 807.

³⁵ Decision 22062 of January 30, 1930, in Application 16194, in re Application of San Rafael Freight & Transfer Company, etc., unreported.

has occurred only once or twice a year.

Exhibit 67, being a tabulation of shipments handled by this respondent, shows no movement between San Francisco and Sausalito, but does show movement from San Francisco to Tiburon. The record shows however that service to Tiburon is rendered via San Rafael by truck and not direct by vessel.

It has been shown that this company has transported almost all commodities named in its classification without regard to quantity.

On this record it is found that respondent holds a certificated right to render an "on call" service for the transportation of property by vessel between San Francisco and San Rafael on the one hand and Marin Meadows on the other, and a prescriptive right to transport property by vessel between San Francisco and San Rafael.¹⁰

MARTINEZ, BENICIA FERRY & TRANSPORTATION COMPANY

Respondent, a California corporation, operates a common carrier service between Martinez and Benicia. Tariffs have been filed with the Commission since September 8, 1913, naming rates for the transportation of passengers and property, including vehicles. It has been shown that passengers, vehicles, and freight loaded on vehicles have been regularly transported between Martinez and Benicia, but the record contains no evidence of transportation of deck freight.

On this record it is concluded that Martinez, Benicia Ferry & Transportation Company possesses a prescriptive right between Martinez and Benicia for the transportation of passengers, vehicles, and property loaded on vehicles.¹⁰

JOHN W. MYER TRANSPORTATION COMPANY

John W. Myer is an individual doing business as John W. Myer Transportation Company. He does not hold a certificate of public convenience and necessity. He has had tariffs on file with the Commission

¹⁰ See footnote, page 10.

since 1921, naming rates on various commodities including potatoes and onions. The suggestion made that exhibits be prepared showing service performed in 1923 and 1934 was not followed by respondent. However, Mr. Myer testified that from 1923 to 1933 inclusive the only commodities he handled were potatoes and onions, and that they moved from Delta points to Stockton. In 1934 he also transported celery from Delta points to Terminous. Obviously this latter service cannot be considered as establishing a prescriptive right.

On the record it is held that John W. Myer possesses a prescriptive right for the transportation of potatoes and onions from Delta points to Stockton.¹⁰

NAPA TRANSPORTATION & NAVIGATION COMPANY

R. E. Anderson and A. Nystrom, copartners doing business as Napa Transportation & Navigation Company, have filed an application with the Commission whereby they "seek confirmation and definition of their operative rights".³⁶

A determination of the character and extent of respondent's rights will be made in the Commission's opinion and order in said application proceeding. This proceeding should be dismissed as to the Napa Transportation & Navigation Company.

NICKOLS TRANSPORTATION COMPANY

John and Henry Nickols operate a common carrier freight service under the name of Nickols Transportation Company. Tariffs have been on file with the Commission since 1920. No certificate of public convenience and necessity has been issued.

¹⁰ See footnote, page 10.

³⁶ Application 19468, filed June 4, 1934, and Amended Application 19468, filed November 21, 1934, in re Application of R. E. Anderson and A. Nystrom, a copartnership, etc., unreported.

John Nickols testified that Exhibit 34 showed "the main commodities and the landings and tonnages". The witness also testified that other traffic was transported, but this evidence is too vague to be of probative value. Consequently the exhibit alone must be used to determine what service respondent rendered on and prior to August 17, 1923. It shows movements of potatoes from Delta points to Sacramento and San Francisco and between Delta points and Stockton. Grain is shown to have moved from Delta points to Petaluma, Stockton, Port Costa and Oakland, but only in large quantities. Live stock is shown to have moved from Delta points to San Francisco and Sacramento.

Upon the record it should be concluded that respondents possess a prescriptive right to render an "on call" service for the transportation of: ¹⁰

1. Potatoes from Delta points to Sacramento and San Francisco and between Delta points on the one hand and Stockton on the other.
2. Grain from Delta points to Petaluma, Stockton, Port Costa and Oakland in quantities of not less than 80,000 pounds.
3. Live stock from Delta points to San Francisco and Sacramento.

OAKLEY AND ALLEN BOAT COMPANY

Frank Oakley and Egbert Allen, operating under the name of Oakley and Allen Boat Company, conduct an "on call" freight service. They do not hold a certificate of public convenience and necessity.

Their Local Freight Tariff No. 1, C.R.C. No. 1, effective July 9, 1923, and Supplement 1 effective October 11, 1923, are still

¹⁰ See footnote, page 10.

in effect. The fact that respondents have not found it necessary to make a change in the tariff for a period of over eleven years, during which time extensive and numerous rate revisions have been made by competing agencies, leads to the conclusion that the service rendered has been that of a contract or for-hire carrier rather than that of a common carrier. Egbert Allen testified that in 1923 and 1924 his firm was hauling mostly produce, and that from that time on most anything was handled. Exhibit 69, a statement of property transported during 1934, shows the most frequently moving commodities to have been cement and lumber. This exhibit and the witness's testimony that the only equipment now operated by his company is a derrick barge suitable for heavy lifting of anything in the building material line, lends further support to the conclusion already drawn. While there is testimony in the record that respondents transported produce in 1923 from the Delta region to Stockton, San Francisco and Petaluma, no exhibit was offered to show the extent of these operations. It seems clear that the present operations of this company essentially differ in character from those of 1923, and upon this record it must be concluded that any prescriptive rights this company may have possessed because of operations in good faith in 1923 have been abandoned.

PETALUMA AND SANTA ROSA RAILROAD COMPANY

Respondent is a California corporation operating a common carrier service on the inland waters of this State between San Francisco and Petaluma, transporting passengers and property on a regular schedule. Between Port Costa and South Vallejo on the one hand and Petaluma on the other an "on call" service is offered for the transportation of grain and mill stuffs. It holds a certificate of public convenience and necessity for the transportation of grain and mill stuffs in carload lots between Oakland, Alameda, Berkeley and

Richmond on the one hand and Petaluma on the other.³⁷

The Petaluma-San Francisco service was inaugurated in 1904 by the Petaluma and Santa Rosa Railway Company, predecessor of the Petaluma and Santa Rosa Railroad Company. The movement of grain and mill stuff between Port Costa, South Vallejo and Petaluma began in 1917. Tariffs were on file for many years prior to 1923.

Exhibits 6 and 7, as introduced and explained by H. S. Graham, indicate that the traffic transported by his company between San Francisco and Petaluma includes both carload and less than carload shipments of an extensive variety of commodities.

It has been shown that grain and mill stuff have been transported between Port Costa and South Vallejo on the one hand and Petaluma on the other in substantial quantities.

On this record it is held that respondent possesses the following rights as a common carrier on the inland waters of this State:¹⁰

1. A prescriptive right to transport passengers and property between San Francisco and Petaluma.
2. A prescriptive right to transport grain and mill stuff in "on call" service between Port Costa and South Vallejo on the one hand and Petaluma on the other in lots of not less than 80,000 pounds.
3. A certificated right to transport grain and mill stuffs in carload lots in "on call" service between Oakland, Alameda, Berkeley and Richmond on the one hand and Petaluma on the other.

REMCO STEAMSHIP COMPANY

This company was made a respondent through inadvertence. A

³⁷ Decision 27384 of September 24, 1934, in Application 19521, in re Application of Petaluma and Santa Rosa Railroad Company for certificate, etc., unreported.

¹⁰ See footnote, page 10.

further check of the Commission's records discloses that Remco Steamship Company has not filed any tariffs for the transportation of property between points exclusively on the inland waters. As to this respondent therefore the proceeding should be dismissed.

THE RICHMOND AND SAN RAFAEL FERRY AND
TRANSPORTATION COMPANY

Respondent is a California corporation operating a ferry service between Point Richmond and Point San Quentin. Service is maintained on a fixed schedule and tariffs have been filed with the Commission since 1915. They provide rates for transportation of passengers, vehicles, freight on vehicles and freight not on vehicles. Respondent does not hold a certificate of public convenience and necessity. The evidence shows that passengers, vehicles and freight loaded on vehicles have been regularly transported. "Deck freight" is rarely offered but is occasionally transported.

On this record it is held that The Richmond and San Rafael Ferry and Transportation Company possesses a prescriptive right to transport passengers, property, vehicles and property loaded on vehicles between Point Richmond and Point San Quentin.¹⁰

RICHMOND NAVIGATION AND IMPROVEMENT COMPANY

Richmond Navigation and Improvement Company is the name under which the partnership of G. B. Lauritzen, H. P. Lauritzen and N. P. Bush operate a regular freight service between San Francisco and Richmond for the handling of all classes of freight. In 1917 this partnership acquired the interests and rights of H. P. Lauritzen. No certificate of public convenience and necessity is held. Tariffs have been on file with the Commission since 1914.

The record shows that since 1923 this company has been en-

¹⁰ See footnote, page 10.

gaged in transporting all classes of freight between San Francisco and Richmond. It is concluded that respondents possess a prescriptive right to transport property between San Francisco and Richmond.¹⁰

E. V. RIDEOUT

Respondent is an individual operating under his own name. He holds a certificate of public convenience and necessity to transport property between San Francisco and Mare Island Navy Yard.³⁸ Tariffs issued by E. V. Rideout, and association tariffs in which he participated, have been filed with this Commission since 1911. Respondent testified that no records were available prior to the latter half of 1929. This evidence indicates that an "on call" service between San Francisco and points on San Pablo and Suisun Bays was rendered. An extensive variety of commodities was handled, both in carload and less carload quantities.

On this record it should be concluded that E. V. Rideout possesses a certificated right to transport property between San Francisco and Mare Island Navy Yard and a prescriptive right to transport property in an "on call" service between San Francisco on the one hand and Vallejo and points on San Pablo and Suisun Bays on the other hand, except that no service shall be rendered to or from points other than Vallejo on the waters tributary to San Pablo and Suisun Bays.

RIO VISTA LIGHTERAGE COMPANY, INC.

Respondent, a corporation, acquired the property and interest of the copartnership of John Barr, Frank Rossi, Minnie Christensen

¹⁰ See footnote, page 10.

³⁸ Decision 14296 of November 28, 1924, in Application 10425, in re Application of E. V. Rideout, etc., unreported.

and K. I. Jones, doing business as Rio Vista Lighterage Company.³⁹ Tariffs have been on file with this Commission since 1920. No certificate of public convenience and necessity is held.

Exhibits 27 and 28 show that a wide range of commodities was transported in 1923 between points on the inland waters involved in this proceeding, including a movement between Upper Sacramento River points and Delta points. It is noted, however, that no service was given to or from points on San Francisco Bay other than San Francisco Bay Terminals, and that less than carload shipments were not handled between San Francisco Bay Terminals and Stockton and Sacramento. Only an "on call" service has been rendered.

Upon the record it is concluded that Rio Vista Lighterage Company, Inc., possesses a prescriptive right to transport property in "on call" service between Delta points; between Delta points on the one hand and Upper Sacramento River, Sacramento, Stockton, Suisun Bay, San Pablo Bay, Petaluma, and San Francisco Bay Terminals on the other; between San Francisco Bay Terminals on the one hand and Stockton and Sacramento on the other in quantities of not less than 20,000 pounds.¹⁰

THE RIVER LINES

"The River Lines" is the name under which The California Transportation Company, Sacramento Navigation Company and Fay Transportation Company file tariffs and operate a single unified transportation service for the transportation of freight and passengers.⁴⁰

³⁹ Decision 19547 of April 2, 1928, in Application 14454, in re Application of Rio Vista Lighterage Company, a copartnership, etc., 31 C.R.C. 432.

¹⁰ See footnote, page 10.

⁴⁰ Decision 24420 of January 25, 1932, in Applications 17898 and 17910, in re Application of The California Transportation Company, etc., 37 C.R.C. 96.

The rights of these three carriers are separately considered elsewhere in this opinion. The River Lines' rights can be no broader than the combined rights of its component members, except to the extent that additional rights may have been acquired since the issuance of our authority to conduct the unified operation.

On May 23, 1932, respondent was authorized to lease from Hunt-Hatch Transportation Company with an option to purchase on or before June 30, 1933, all its "transportation properties, franchises and operating rights".⁴¹ The decision authorizing this lease recites: "The record shows there are no points now served by Hunt-Hatch Transportation Company that are not served at the present time by The River Lines". The character and extent of the right or rights of Hunt-Hatch Transportation Company were not determined in that proceeding. The records of Hunt-Hatch Transportation Company for 1923, 1924 and 1925 were destroyed by fire. Its tariff, on file on August 17, 1923, named class and commodity rates between Oakland on the one hand and landings on the Sacramento, San Joaquin, Mokelumne, Old and Middle Rivers on the other, and special commodity rates on lumber; celery, fish, fruits and vegetables, canned or pickled; cereals, flour and grain; and marl fertilizer from River Landings to San Francisco.

Exhibits 21 and 22 show that the shipments transported by the Hunt-Hatch Transportation Company in 1926 consisted largely of fresh fruits and vegetables, canned goods, barley, sulphur, sugar, salt, shock and less carload shipments of merchandise not further described, and a few shipments of seed, machinery and lubricating oil. The territory in which these shipments were transported appears to be more extensive than that shown by the tariff on file in 1923. No

⁴¹ Decision 24790 of May 23, 1932, in Application 18094, in re Application of Hunt-Hatch Transportation Company and The River Lines, etc., 37 C.R.C. 522.

service is shown on the Upper Sacramento River or between San Francisco Bay Terminals on the one hand and Sacramento and Stockton on the other.

A certificate of public convenience and necessity was also held by Hunt-Hatch Transportation Company to transport property between Encinal Terminals on the one hand and landings on the Sacramento, San Joaquin, Mokelumne, Old and Middle Rivers and tributaries thereof on the other.⁴² The option to purchase the Hunt-Hatch Transportation Company rights was exercised by The River Lines on June 10, 1933.

On July 9, 1930, Hunt-Hatch Transportation Company was authorized to acquire from Mrs. E. C. Jensen such operating right as she then had.⁴³ The extent of this right was not determined in that proceeding. However, the opinion recites that she made claim by virtue of operations prior to August 17, 1923, under filed tariffs "for the transportation of freight on San Francisco Bay, Sacramento River, San Joaquin River and tributaries". Her principal business was that of transporting property for the Consolidated Motor Freight Lines, Inc., under an agreement which terminated during August, 1929. Thereafter no goods were offered to her for shipment, and on September 17, 1930, she sold the gasoline schooner "Fidelity", the only vessel she then possessed. Obviously any right possessed by Mrs. Jensen has been abandoned.

On this record it appears that the operative right of Hunt-Hatch Transportation Company which The River Lines purchased permits the transportation of property between Delta points on the one hand and Oakland and Alameda (Encinal Terminals) on the other, and for the

⁴² Decision 14801 of April 15, 1925, in Application 10842, in re Application of Hunt-Hatch and Company for a certificate, etc., 26 C.R.C. 319.

⁴³ Decision 22645 of July 9, 1930, in Application 16581, in re Application of Mrs. E. C. Jensen, etc., unreported.

transportation of celery; canned or pickled fish, fruits and vegetables; cereals, flour, grain and marl fertilizer from Delta points to San Francisco.

A certificate is also held by The River Lines to transport property by vessel between Mare Island on the one hand and all landings upstream therefrom, including all landings on the Sacramento and San Joaquin Rivers and their respective tributaries, to the head of navigation thereof, respectively, on the other hand.^{10 44}

SACRAMENTO NAVIGATION COMPANY

Sacramento Navigation Company is a California corporation operating vessels for the transportation of property as one of the component members of The River Lines. No certificate of public convenience and necessity is held. Tariffs have been on file with the Commission since 1920, naming class and commodity rates between San Francisco and points on the Sacramento River to and including Fremont and Monroeville; between Sacramento and Fremont, Monroeville and intermediate points, and also commodity rates on grain and grain products to Port Costa and Vallejo from Sacramento River points.

Exhibit 19 shows that a wide range of commodities was transported in 1923 between points north of Sacramento covered by its tariff on the one hand and Sacramento and San Francisco on the other. It is also shown that property of all kinds was transported between San Francisco and Sacramento. Grain has been moved in substantial quantities from Upper Sacramento River points to Port Costa and Vallejo. The record shows this service has been continued under the name of The River Lines.

On this record it is found that respondent possesses a pre-

¹⁰ See footnote, page 10.

⁴⁴ Decision 26449 of October 23, 1933, in Application 19013, in re Application of The River Lines, etc., unreported.

scriptive right to operate as a common carrier of property between San Francisco and Sacramento on the one hand and Upper Sacramento River points to and including Fremont and Monroeville on the other; between San Francisco and Sacramento; but from Upper Sacramento River, Fremont, Monroeville and below, to Port Costa and Vallejo respondent's right to transport property is restricted to the transportation of grain in lots of not less than 80,000 pounds.¹⁰

MARTIN SCHMIDT

Martin Schmidt and Nels Schmidt, copartners, operate a freight service under the name of Martin Schmidt. No certificate of public convenience and necessity is held. Rates were filed with the Commission on February 28, 1923. While their tariffs name rates on a large variety of commodities between points in the territory under consideration, the evidence shows that the only commodity transported in 1923 was hay, which moved in "on call" service in substantial quantities. The evidence shows that this commodity was transported from Delta points to San Francisco and Mountain View in 1923, and from Delta points to Gallinas Creek and Redwood City in 1934.

On this record respondent's operative right permits only an "on call" service for the transportation of hay in lots of not less than 100,000 pounds from Delta points to San Francisco, South San Francisco and Lower San Francisco Bay points.¹⁰

SOUTHERN PACIFIC GOLDEN GATE FERRIES, LTD.

Southern Pacific Golden Gate Ferries, Ltd., is a California corporation operating ferry boats between the following termini:

¹⁰ See footnote, page 10.

San Francisco,	Ferry Building,	and	Oakland mole.
"	"	"	" Broadway, Oakland.
"	"	"	" Alameda pier.
"	"	"	" Richmond pier.
"	"	Hyde Street,	" Sausalito.
"	"	"	" Berkeley pier.
"	"	Ferry Building,	" Sausalito.
"	"	"	" Tiburon.

Wharf near Ferry Building, San Francisco, and Vallejo.

Respondent holds a certificate of public convenience and necessity to operate vessels "across the inland waters of the State of California, between the Ferry Building in the City and County of San Francisco and the present Southern Pacific pier in the city of Alameda, the operation of said vessels to be limited to the transportation of vehicles, together with occupants therein and the freight thereon".

It was also authorized "to acquire the ferries, operative rights, properties and equipment" of several other companies then operating the other eight routes.⁴⁰ The following is an excerpt from the opinion preceding the order granting these authorities:

"The Southern Pacific service to Oakland Mole, and to the foot of Broadway, Oakland; The Golden Gate Ferry Company service to Sausalito; the Northwestern Pacific Railroad Company service to Sausalito and Tiburon; and the Monticello Steamship Company service to Vallejo were being given prior to August 16, 1923, the effective date of section 50(d) of the Public Utilities Act. The Southern Pacific service to Richmond was authorized by Decision No. 14020, dated September 8, 1924, in Application No. 10408, while The Golden Gate Ferry Company service to Berkeley Pier was authorized by Decision No. 17097, dated July 7, 1926, in Application No. 12661 (Volume 28, Opinions and Orders of the Railroad Commission of California, page 390). The order herein will authorize the several companies to transfer to Southern Pacific Golden Gate Ferries, Ltd., such rights as they may have to operate vessels. Whether any of the terminals can be changed without the consent of the Commission is not a matter at issue in this proceeding.

"The Southern Pacific Alameda service is being given by virtue of the fact that the Commission extended the

⁴⁰ Decision 20925 of April 1, 1929, in Application 15428, in re Application of Southern Pacific Golden Gate Ferries, Ltd., etc., 32 C.R.C. 803.

effective date of Decision No. 20044, dated July 12, 1928, in Case No. 2275, to April 2, 1929. By Decision No. 20044 the Commission ordered the Southern Pacific Company to cease and desist from its operation of a vehicular ferry service between the city and county of San Francisco and the city of Alameda, unless and until it shall have obtained from this Commission a certificate declaring that public convenience and necessity required and will require such operation. As said, the effective date of Decision No. 20044 has been extended to April 2, 1929. The Southern Pacific Golden Gate Ferries, Ltd., asks for such certificate of public convenience and necessity or other authority requisite to the acquisition and operation of each and all the ferries and properties described in the application, which are now being operated. It is our opinion that only in the case of the San Francisco-Alameda service is it necessary for the Commission to grant a certificate of public convenience and necessity. The other services are now being rendered under rights that are transferable. The acquisition of such rights by applicant Southern Pacific Golden Gate Ferries, Ltd., carries with it the right to operate vessels, in accordance with the rights acquired."

Respondent performs a scheduled service over each of these nine routes under tariffs and time schedules on file with the Commission. In each instance respondent transports vehicles, passengers in vehicles, and freight on vehicles. In addition thereto deck freight and foot passengers are carried over the following routes:

Between San Francisco and	Oakland pier,	newspapers only.
"	"	" Broadway, Oakland, deck freight and foot passengers.
"	"	" Richmond, foot passengers, newspapers.
"	"	" Berkeley pier, deck freight.
"	"	" Tiburon, deck freight.
"	"	" Vallejo, deck freight and foot passengers.

It is found that the respondent has an operative right to continue the services hereinbefore described.¹⁰

STOCKTON TRANSPORTATION COMPANY

Stockton Transportation Company is the name used by the

¹⁰ See footnote, page 10.

partnership of Elmer M. Gormsen and H. E. Hansen in conducting their common carrier freight service. They acquired the rights of Woodbridge Transportation Company and in 1922 adopted the Woodbridge Transportation Company tariff. On March 22, 1935, their rates were transferred to Local Freight Tariff No. 1, C.R.C. No. 1, of Freighters, Inc. No certificate of public convenience and necessity is held.

Records prior to 1929 are not available. However, Elmer Gormsen testified that their operations in 1923 were substantially the same as those of 1929. Exhibit 35, showing the traffic handled in 1929, discloses the movement of various commodities between Delta points and between Delta points on the one hand and Stockton and San Francisco on the other. An "on call" service has been rendered.

On this record it should be concluded that respondents possess a prescriptive right to render an "on call" freight service between Delta points, and between Delta points on the one hand and Stockton and San Francisco on the other.¹⁰

SUCCESS TOWAGE AND TRANSPORTATION COMPANY

Mrs. Adelia Peterson, doing business as Success Towage and Transportation Company, operates a freight service on San Francisco Bay and tributaries. Her tariff has been on file since April 14, 1921.

Exhibit 68 shows that in 1923 respondent's operations were confined to the transportation of salt in large quantities from Lower San Francisco Bay points to San Francisco.

It is concluded from this record that respondent possesses a prescriptive right to transport salt in quantities of 30,000 pounds or more from Lower San Francisco Bay points to San Francisco.¹⁰

¹⁰ See footnote, page 10.

THIEMANN AND JOHNSTON

Respondents H. J. Thiemann and S. Johnston, copartners, have filed with the Commission their Tariff No. 1, C.R.C. No. 1, effective August 10, 1921. It names rates on various commodities between many points in the territory involved in this proceeding. No changes have been made in the 14 years this tariff has been in effect. No certificate of public convenience and necessity is held. Respondents did not prepare a statement to show 1923 or 1934 business, and H. J. Thiemann testified that very little business was done. The testimony indicates that towing and rental of barges are the principal activities of this organization. On April 5, 1924, this firm wrote the Commission: "We have not been handling freight in the year 1923".

Upon consideration of the record it is concluded that respondents possess no operative rights.

H. A. TROBERG

Respondent is an individual operating an "on call" service for the transportation of hay between points on the inland waters. He holds a certificate of public convenience and necessity to operate "the gasoline motor boat Frank Lawrence for the transportation of hay between points on the Sacramento and San Joaquin Rivers and their tributaries west of Sacramento and Stockton on the one hand, and on the other, points on the Bay of San Francisco and its tributaries."⁴¹

In the absence of evidence of abandonment and upon this record it is concluded that H. A. Troberg possesses a certificated right as a common carrier as heretofore granted by the Commission.¹⁰

GEORGE WALLENROD

George Wallenrod, George Wallenrod Estate and George Wallen-

⁴¹ Decision 16639 of May 4, 1926, in Application 12646, in re Application of Henrik Artur Troberg, an individual, etc., 28 C.R.C. 119.

¹⁰ See footnote, page 10.

rod Company have had tariffs on file with the Commission since 1917. In annual reports for the past several years earnings are reported for "Towing and Switching". No freight revenue has been reported. These reports show W. P. Dwyer as President of the George Wallenrod Company. Counsel for Dwyer stated; "I am authorized to state by Mr. Dwyer, who has some official connection with the Wallenrod Transportation Company, that that company will withdraw its service as a common carrier - the service has already been discontinued - and that the operating rights of that carrier, such as they may have been, will drop out of the picture - if that statement will suffice".

It is held that any rights that may have been possessed by respondent have been abandoned.

WEYL-ZUCKERMAN AND COMPANY
(MERCHANTS TRANSPORTATION COMPANY)

The transportation business of Weyl-Zuckerman and Company, a corporation, was acquired from the partnership of E. G. Zuckerman, M. Zuckerman and R. C. Zuckerman. Respondent and its predecessor in interest conducted their transportation business under the name of Merchants Transportation Company. Tariffs have been on file with the Commission since 1919. No certificate of public convenience and necessity is held. Witnesses for respondent testified that movements between Delta points and San Francisco once represented a substantial part of their transportation business but that changed conditions had diverted this traffic to other destinations, principally to Stockton.

Exhibits covering 1928 and 1934 show no movement from or to San Francisco. The wide range of farm supplies, feed, equipment and other commodities handled by this carrier between Delta points and between Delta points and Stockton indicates that they have handled in "on call" service whatever freight was offered.

On the record it is concluded that Weyl-Zuckerman and Company

(Merchants Transportation Company) possesses a prescriptive right to operate as a common carrier in "on call" freight service between Delta points and between Delta points and Stockton.¹⁰

M. S. DOROTHEA (WOOD & SEITZ)

Respondents, P. F. Wood and R. W. Seitz, copartners, operate under the name of M. S. Dorothea (Wood & Seitz). They have filed their rates with the Commission since 1921. On March 22, 1935, their rates were transferred to Freighters, Inc. tariffs. No certificate of public convenience and necessity is held. P. F. Wood in his testimony explained that his exhibits substituted 1926 for 1923, due to the fact that records prior to 1926 had been destroyed.

The witness stated that the bulk of their service was performed in the Delta region in 1923, but since that time there has been a tendency toward heavier movements between Delta points and San Francisco Bay Terminals. There is no evidence of movement of property by respondents in the territory north of Sacramento or in the territory south of San Francisco and Alameda. Between Delta points, and between Delta points on the one hand and San Francisco Bay Terminals, Stockton and Sacramento on the other, this respondent has handled in "on call" service a large variety of commodities both in carload and less carload quantities. One shipment of bags weighing three tons was handled from San Francisco to Stockton.

On this record it should be held that respondents possess a prescriptive right to operate a common carrier "on call" service for the transportation of property between Delta points; between Delta points on the one hand and San Francisco Bay Terminals, Stockton and Sacramento on the other; and between San Francisco and Stockton, respondents' prescriptive right permits of the transportation of bags.¹⁰

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See footnote, page 10.

This proceeding should be dismissed as to Channel Lighterage Company, Peter Christensen, Ellen J. Freethy, Chris Johansen, Juhl Bros., M. Lange Launch Company, Mare Island Ferry, Miller Launch Company, Napa Transportation and Navigation Company, Fred Olsen, Osborn and Bornholdt, Remco Steamship Company, Vehmeyer Transportation Company and Jim Wilder.

As to the other respondents a final order should not be entered without opportunity being afforded to make a further showing in respect to the extent of their operative rights. Because of the nature and scope of this proceeding, its importance to the respondents, and the fact that it involves some 60 carriers whose rights in the main have never been entirely clarified, submission will be set aside and this proceeding reopened for further hearing. At such further hearing respondents will be expected to appear and make such showing as they may desire why an order consistent with the findings and conclusions reached herein should not be entered.

O R D E R

This proceeding having been duly heard and submitted,

IT IS HEREBY ORDERED that this proceeding be and it is hereby dismissed only as to Channel Lighterage Company, Peter Christensen, Ellen J. Freethy, Chris Johansen, Juhl Bros., M. Lange Launch Company, Mare Island Ferry, Miller Launch Company, Napa Transportation and Navigation Company, Fred Olsen, Osborn and Bornholdt, Remco Steamship Company, Vehmeyer Transportation Company and Jim Wilder.

IT IS HEREBY FURTHER ORDERED that submission is hereby set aside as to respondents other than those named in the preceding paragraph, and this proceeding is reopened for further hearing before

Commissioner Harris in the Court Room of the Railroad Commission,
Fifth 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 such respondents are directed to appear and
make any showing desired by them as to why an order should not be en-
tered defining the scope and extent of their operative rights in ac-
cordance with the findings and conclusions set forth in the above
opinion.

The foregoing opinion and order are hereby approved and or-
dered 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.

John A. White

M. B. Harris

W. L. ...

Frank ...

Commissioners.