

Decision No. 28281

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Investigation
by the Commission on its own motion
into rates, rules, regulations,
charges, classifications, practices,
contracts, operations and schedules,
or any of them of ELLEN J. FREETHY,
doing business under the fictitious
name of G.W. FREETHY.

Case No. 3975

S.J. Cook for Ellen J. Freethy

HARRIS, Commissioner:

O P I N I O N

On March 17, 1926, Ellen J. Freethy doing business under the fictitious name of G.W. Freethy, was granted a certificate of public convenience and necessity to operate vessels for the "transportation of property for compensation on the inland waters of the State of California on the Bay of San Francisco and its tributaries between the points specifically set forth in tariffs issued in the name of G.W. Freethy and lawfully on file with the Commission".¹ Effective April 7, 1926, she adopted the tariffs of G.W. Freethy. These tariffs are still in effect.

The Commission was informed that property was being transported in the equipment formerly operated by respondent at rates lower than those shown by her filed tariffs. It thereupon directed a member of its staff to call at respondent's office and there examine the records to determine if the tariffs were being violated.

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Decision 16214 of March 17, 1926, on Application 12457 in re Application of Ellen J. Freethy, an individual, for a certificate, etc. unreported.

This informal investigation failed to disclose where any transportation was being performed by respondent. On the other hand the shipments involved appeared to have been transported by G.V. Freethy, respondent's son.² The Commission thereupon instituted an investigation into the rates, rules, regulations, charges, classifications, practices, contracts, operations and schedules or any of them of Ellen J. Freethy, and ordered her to appear before it and show cause, if any she had, why any or all operating rights possessed by her should not be revoked and annulled and tariffs on file with the Commission cancelled.

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Public hearings were had at San Francisco.

G.V. Freethy appeared and testified that he bought the business formerly conducted by his mother, Ellen J. Freethy, on March 1, 1930. This property included the tug "Liberty", barge "Freethy No. 4" and barge "Freethy No. 6". Thereafter, although an application had not been made to this Commission for authority to purchase the operative right and business, G.V. Freethy operated said equipment in his own name, ostensibly under the authority theretofore granted to Ellen J. Freethy. Following the sale, Ellen J. Freethy discontinued operations.⁴ Section 51 (a) of the Public Utilities Act provides

² The investigation did disclose as shown by Exhibit 61 and 62 that shipments were transported at rates lower than those published in respondent's tariffs. Moreover copies of these tariffs were not maintained in Freethy's office.

³ This proceeding was consolidated with Case 3824, In re Investigation into operative rights of common carriers operating vessels between points on San Francisco, San Pablo and Suisun Bays, San Joaquin, Sacramento and Napa Rivers and Petaluma Creek and their tributaries. This latter proceeding is being disposed of in a separate decision.

⁴ The following is a quotation from the testimony of G.V. Freethy:

- Q - "Will you explain in a little more detail how the operation is carried on now? Are you in full charge of the Company?" A - "I am in full charge."
- Q - "What if any interest does your mother have in it aside from holding the mortgage on the equipment?" A - "That is the only interest, the mortgage."
- Q - "As I understood your testimony, Mr. Freethy, all the shipments that you transport at the present time are transported by George V. Freethy?" A - "Yes, Sir."
- Q - "You are not carrying on two businesses, one under your own name, and one on behalf of your mother, are you?" A - "No, Sir."

that the sale or transfer of property necessary or useful in the performance of its duties to the public, or franchise or permit by a public utility is void unless an order authorizing it is first secured from the Commission. Consequently G.V. Freethy's operations were not conducted under the certificate of public convenience and necessity held by Ellen J. Freethy.

It should be observed that not only had Ellen J. Freethy been before this Commission in a proceeding involving the acquisition of a right to operate vessels upon the waters here involved but that G.V. Freethy operated a transportation service upon these waters prior to March 17, 1926 and by appropriate authority of this Commission transferred and sold such rights as he held to Channel Lighterage Company.⁵ Thus both Ellen J. Freethy and G.V. Freethy having possessed operative rights and having been before the Commission in proceedings dealing with the acquisition or disposition of operative rights must have been apprised of the requirements of the Public Utilities Act respecting transfers of property and operative rights. Ellen J. Freethy having discontinued all operations in 1930 must be held to have abandoned the operative right heretofore created by the issuance of a certificate of public convenience and necessity. The tariffs on file should be cancelled.

The following form of order is recommended:

O R D E R

This matter having been duly heard and submitted,

IT IS HEREBY ORDERED that the certificate of public convenience and necessity heretofore granted to Ellen J. Freethy, by Decision 16214 in Application 12457, be and it is hereby revoked

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Decision 12477 of March 27, 1926, in re Application Channel Lighterage Company, etc., unreported.

and annulled and that all tariffs now on file in her name be and they are hereby cancelled.

This order shall become effective twenty (20) days from the date hereof.

The foregoing Opinion and Order are hereby approved and ordered filed as the Opinion and Order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 14th day of October, 1935.

Leon A. Wiley

M. B. Lewis

Arthur H. Jones

Frank R. Healy

Commissioners.