

Decision No. 28285

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the Application of R.E. ANDERSON and A. NYSTROM, a copartnership doing business under the name and style of NAPA TRANSPORTATION & NAVIGATION COMPANY for the definition and confirmation of rights to operate vessels engaged in the transportation of freight between points on the inland waters of the State.)

Application
No. 19468

[Faint circular stamp]

Gwyn H. Baker, for R.E. Anderson and A. Nystrom, applicants.

F.W. Mielke, for The River Lines.

Clyde E. Brown, for San Francisco, Napa and Calistoga Railway Company.

J.E. Lyons and A.L. Whittle, for Southern Pacific Company, Pacific Motor Transport Company and Southern Pacific Golden Gate Ferriers.

G.E. Duffy, for The Atchison, Topeka and Santa Fe Railway Company.

HARRIS, Commissioner:

O P I N I O N

Applicants R.E. Anderson and A. Nystrom, copartners doing business under the name and style of Napa Transportation and Navigation Company, by their original application herein petitioned the Commission to define and confirm their right to operate vessels for the transportation of freight upon the inland waters of this State and to approve certain rates, rules and regulations they proposed to establish. Later they filed an amended application whereby they "seek confirmation and definition of their operative rights****"

- (a) Locally between Napa, California, landings on the Napa River, Napa Bay, Napa Slough, Sonoma Creek, South Slough, Dutchman's Slough and sloughs tributary thereto where suitable provision for docking is available, including Vallejo, South Vallejo and Mare Island, California, except that no traffic is to be transported locally between Napa and Vallejo;

and

- (b) Between, on the one hand, points and/or landings included in Section (a) above, and San Francisco, on the other hand."

and "a certificate authorizing them to transport property as a common carrier by water:

- (c) Between points named in Section (a), on the one hand, and South San Francisco, Oakland, Alameda, Richmond and Petaluma, on the other hand, except that no traffic will be transported between these points unless the revenue on any one voyage amounts to \$15.00 or more;

and

- (d) Between, on the one hand, points and/or landings included in Section (a), but not including Vallejo, South Vallejo, or Mare Island, California, and, on the other hand, all landings on the navigable waters of San Francisco Bay, San Pablo Bay, Suisun Bay, Sacramento River below but not including Sacramento, California, San Joaquin River below Streckers including Stockton, California, Old River, Middle River and Wokelumne River below New Hope including landings on sloughs, cuts, canals, creeks and tributaries thereto, but not including local traffic between such landings, except that no traffic will be transported to and from Stockton, California, except grain and/or grain products, as described in Exhibit "A" attached to the original application."

In addition to the foregoing, they seek "authority to publish the rates, rules and regulations set forth in exhibits" attached to the original and amended applications.

The matter was submitted on concurrent briefs at public hearings had at San Francisco.

Applicants commenced operating in June, 1923. Their first Tariff, C.R.C. No. 1, was filed with the Commission to become effective August 2, 1923. In it are contained rates for the transportation of property ¹ between San Francisco and Napa and

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The tariff contains 372 items for which rates are named when in l.c.l. quantities and provides carload rates on all traffic.

directly intermediate points. This tariff remained in effect until July 19, 1924, when it was superseded by C.R.C. No. 2 which in turn was superseded by other issues. Since April 4, 1933, applicants' rates have been contained in Local Joint and Proportional Freight Tariff No. 7, C.R.C. No. 7. This tariff provides rates (1) on substantially all articles of commerce for movement (a) locally between San Francisco and Napa and intermediate points, (b) jointly with the Berkeley Transportation Company between Berkeley and Emeryville, on the one hand, and Napa on the other, and intermediate points via San Francisco, (c) jointly with the Bay Cities Transportation Company between Oakland and Alameda, on the one hand, and Napa on the other, and intermediate points, via San Francisco; (2) on Grain and grain products jointly with the Sacramento Navigation Company between Sids, Butte City, Colusa and Sacramento, on the one hand, and Napa on the other, and intermediate points, via San Francisco, and (3) a proportional rate on Canned Goods originating at points beyond Napa and destined to San Francisco, Alameda, Oakland, Berkeley and Richmond.² The points intermediate to San Francisco and Napa on applicants' route according to the "Index of Points from and to which Rates Apply" and "Geographical List of Points Served" contained in their tariff are South Vallejo, Russ Island, Green Island, Cutting Wharf, Stanley Wharf and Oleum.

It was testified that when applicants first commenced operating in 1923 they went "anywhere" but that in recent years they have "trimmed down" their operations so that the hauling now is mainly to and from Napa. Documentary evidence of what service was performed prior to 1930 has not been submitted. It seems clear on this record however, that since 1923 applicants have continuously trans-

² There is no question as to the propriety of said joint rates. Under Sec. 22 of the Public Utilities Act a common carrier by water has the right to enter into joint rate agreements with other carriers in the same class. See also In Re Investigation into lawfulness of joint rates, etc., 39 C.R.C. 121, 122

ported property in on-call service between San Francisco and Napa and that in connection with this operation they were in a position to, held themselves out to, and in fact on numerous occasions did transport property between San Francisco, on the one hand, and points south of Napa to and including South Vallejo on the other.

On brief applicants claim the right to transport "merchandise of every class and character between San Francisco, on the one hand, South Vallejo, Russ Island, Green Island, Cutting Wharf, Stanley Wharf, Oleum, Napa and intermediate points on the Napa River on the other hand". This is the service covered by applicants' original, as well as by their subsequent tariffs. On this record it is found to be the extent of their present operative rights.

We turn now to the question of public convenience and necessity. Four shipper witnesses were called by applicants who testified briefly as follows:

Poultry Producers of Central California use at Napa several hundred tons of poultry food annually and large quantities of grain. The poultry food comes from Stockton; the grain originates at various points, many of which are in the territory applicants seek to serve. The following excerpts from the record show the use the first witness would make of the proposed service if it were authorized:

"Q. Now, if the Commission authorizes the Napa Transportation Company to haul grain into Napa from river points and from Stockton will you be able to use that service?

A. Occasionally, yes, sir.

Q. By "occasionally" what do you mean? A. Well, Napa, there is not large sales there and it would depend on where the grain was to come from as to how much we would use the Napa Transportation Company. Some years we would use it more than others.

Q. Would you use it from Stockton? A. Well, we have not made any direct boat shipments from Stockton, that I recall right now, into Napa, but there is a possibility we would.

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Although, as has been seen, the rights claimed in the application are considerably more embrasive, it is conceded in applicants' brief that the prior rights of a carrier of this class can be no more extensive than the tariff on file at the time Section 50(d) of the Public Utilities Act became effective.

Q. Why would you use the water or Napa Transportation Company? A. For convenience more than anything else." ⁴

Russ Island, which formerly produced grain and hay and more recently sheep, is without direct transportation facilities other than those furnished by applicants. In addition to an out-bound movement of livestock, which is destined primarily to San Francisco and some times to South San Francisco and Napa, and form-⁵erly grain to San Francisco, Oakland and Petaluma, there is an in-bound movement of stock from Napa, feed from San Francisco, and probably seed grain from Stockton.⁶ Excepting for applicants' service, shipments to or from this island would probably have moved through Vallejo, a point four miles distant and on the other side of the Napa River. It is the testimony of the owner of this island that the service heretofore performed by applicants is necessary to the operation of his business.

Napa Fruit Company packs and ships dried fruit, a considerable portion of which is exported through the terminals at San Francisco, Oakland and Alameda. Some of it has heretofore been transported by applicants and some by the rail lines. The witness for this company testified that applicants' boats leave Napa as late as 4:00 or 5:00 o'clock and make delivery at the San Francisco Bay Terminals the following morning, which, he says, "is about the quickest way and surest way we would have of getting it there."

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Transcript Pages 93 and 94

⁵ No grain has been grown on the island for the last four years. Prior to that time the second witness made shipments to San Francisco. However he also sold to other people who he knows shipped to Oakland and Petaluma.

⁶ The witness thought they handled seed grain from Stockton once.

Other testimony in this regard was as follows:

"Q. How is your rail service? A. Well, we get a good rail service. They usually--I think the shipment that goes out today is supposed to be delivered next day.

Q. Well, why do you use the Napa for that particular service, because--A. It is more convenient, particularly on concentrations. We might have a shipment that is going to catch two or three different foreign steamers sometimes it may be split up into small parcels and may be it would be a hundred boxes for this steamer or 200 or 50 for that, and it is very convenient to assemble it all and let them deliver it.

Q. Any more certainty that you are going to get it definitely the next morning? A. Yes, I think there is a little because we have, at times, had rail cars that missed the boat.

Q. Well now, would you say that the service from Napa to Oakland and Encinal Terminal, East Bay terminals, is a necessity in your business? A. It is certainly very convenient.

Q. Very convenient, and one you would like to see continued?

A. One we would like to see continued, yes, sir.

Q. One which is to your advantage? A. Yes, sir."

Sawyer Tanning Company receives a substantial quantity of hides and heavy chemicals at Napa, mainly via applicants' line. The points of origin in California are San Francisco and Los Angeles. It ships large quantities of leather, most of which moves to or through San Francisco.

The record, moreover, details numerous commodities which applicants have transported, admittedly without an operative right, in the territory here involved. Whether this property was diverted from other carriers, or whether it was obtained because other suitable transportation was not available, the record in many instances does not disclose. The mere fact that such commodities moved over applicants' line, of course, does not prove that there is a public need for the service proposed. Such unauthorized services should be discontinued.

The San Francisco, Napa & Calistoga Railway, Southern Pacific Company, Northwestern Pacific Railroad Company, Petaluma & Santa Rosa

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The witness first testified that he did not think any of the heavy chemicals came from the East Bay, but later stated he believed some were purchased there.

Railroad Company, Pacific Motor Transport Company, The River Lines and The Atchison, Topeka & Santa Fe Railway Company appeared in opposition to the granting of the application.⁸ The Southern Pacific Company, Northwestern Pacific Railroad Company, Petaluma & Santa Rosa Railroad Company, Pacific Motor Transport Company, urge that insofar as territory which they serve is concerned applicants have failed to show that public convenience and necessity require the operations for which a certificate is sought and that the record shows that the territory is already adequately served.

It is well established that the requirements of the statute are not met by a mere showing of public convenience or of a desire on the part of applicants to engage in certain service. An affirmative showing of public necessity is an essential requisite to the granting of a certificate.⁹ Here, aside from the testimony with respect to transportation between Russ Island on the one hand, and San Francisco, South San Francisco and Napa on the other, there is no such showing. Under these circumstances the application excepting insofar as it pertains to service between Russ Island on the one hand, South San Francisco and Napa on the other must necessarily be denied.¹⁰

No one testified with respect to the rates, rules and regulations sought to be established. For the new service herein authorized applicants should be permitted to establish the rates, rules and regulations they propose. It must be held, however, that insofar as other changes from its established tariff are concerned the application has not been justified.

I recommend the following form of order:

⁸ The protest of the San Francisco, Napa & Calistoga Railway insofar as it pertained to local traffic between Napa and South Vallejo and that of The River Lines was withdrawn upon applicants stipulating that it would not seek a right to operate between Napa and South Vallejo and not to or from Stockton excepting in this latter instance for the transportation of grain and grain products.

⁹ Atlanta & St. Andrews Bay Railway 71 I.C.C. 784, 792.
In re Application of San Francisco Parlor Car Tours, Inc. 27 C.R.C. 850, 856.
In re Application of S. Brice Cowan, 33 C.R.C. 389, 391.

¹⁰ Applicant has already been found to possess a right between San Francisco and Russ Island.

ORDER

This matter having been duly heard and submitted and the Commission being fully advised,

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA HEREBY DECLARES that R.E. Anderson and A. Nystrom, co-partners doing business under the name and style of Napa Transportation and Navigation Company, possess a prescriptive right to operate vessels on the inland waters of the State of California for the transportation of property between San Francisco, on the one hand and South Vallejo, Russ Island, Green Island, Cutting Wharf, Stanley Wharf, Oleum, Napa and Intermediate points on the Napa River on the other hand, by virtue of having operated vessels between said points in good faith under tariffs lawfully on file with the Railroad Commission on and prior to August 17, 1923, and continuously maintained thereafter.

IT IS HEREBY ORDERED that R.E. Anderson and A. Nystrom, co-partners doing business under the name and style of Napa Transportation and Navigation Company, be and they are hereby directed to supplement and/or reissue their tariffs now on file with the Commission within thirty (30) days after the effective date of this order and on not less than five (5) days' notice to the Commission and to the public in such manner as to bring such tariffs in conformity with the finding made herein as to their prescriptive right to operate vessels on the inland waters of this state.

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA HEREBY FURTHER DECLARES that public convenience and necessity require the operation by R.E. Anderson and A. Nystrom, co-partners doing business under the name and style of Napa Transportation and Navigation Company, of vessels for the transportation of property between Russ Island, on the one hand, South San Francisco and Napa on the other, and

IT IS HEREBY ORDERED that a certificate of public convenience and necessity be and it is hereby granted to said R.E. Anderson and A. Nystrom, co-partners doing business under the name and style

of Napa Transportation and Navigation Company, for the operation of vessels for the transportation of property between Russ Island on the one hand and South San Francisco and Napa on the other, subject to the following conditions:

1. Applicants shall file their written acceptance of the certificate herein granted within a period of not to exceed fifteen (15) days from the date hereof.
2. Applicants shall file in duplicate and make effective within a period of not to exceed thirty (30) days from the date hereof, on not less than ten (10) days' notice to the Commission and the public, a tariff constructed in accordance with the Commission's rules and containing rates, rules and regulations which in volume and effect shall be identical with the rates, rules and regulations set forth in the exhibit attached to the application insofar as they conform to the certificate herein granted.
3. The rights and privileges herein authorized may not be discontinued, sold, leased, transferred nor assigned unless the written consent of this commission to such discontinuance, sale, lease, transfer or assignment has first been secured.
4. No boat or vessel may be operated by applicants unless said boat or vessel is owned by said applicants or is leased by them under contract or agreement on a basis satisfactory to the Railroad Commission.

IT IS HEREBY FURTHER ORDERED that in all other respects the application be and is hereby denied.

For all other purposes the effective date of this order shall be twenty (20) days from the date hereof.

Dated at San Francisco, California, this
day of October , 1955.

^{14th}
Leon Whitely
M. B. Dennis
Walter M. ...
John R. ...