

Decision No. 28728.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of  
JOHN BYRNE, AGENT  
under Powers of Attorney and Concur-  
rences on file with the Commission, for  
the following carriers:  
Chamberlin Steamship Co. Ltd.;  
Christenson-Hammond Line  
(Hammond Shipping Co. Ltd.);  
Los Angeles-San Francisco Navigation Co.;  
McCormick Steamship Company; Nelson  
Steamship Company and Pacific Steamship  
Lines, Ltd., for an order authorizing the  
publication, on one day's notice, of a  
rule and notes limiting certain freight  
rates to direct vessels.

ORIGINAL

Application No. 20365

In the Matter of the Application of  
JOHN BYRNE, AGENT  
under Powers of Attorney and Concur-  
rences on file with the Commission, for  
the following carriers:  
Chamberlin Steamship Co. Ltd.;  
Christenson-Hammond Line  
(Hammond Shipping Co. Ltd.);  
Los Angeles-San Francisco Navigation Co.;  
McCormick Steamship Company; Nelson  
Steamship Company and Pacific Steamship  
Lines, Ltd., for an order authorizing the  
cancellation of certain rates to and  
from Berkeley, California.

Application No. 20366

In the Matter of the Application of  
SAN DIEGO-SAN FRANCISCO STEAMSHIP COMPANY  
for an order authorizing, on one day's  
notice, change in application of rates.

Application No. 20367

Gwyn H. Baker, for Berkeley Manufacturers Association  
and Berkeley Chamber of Commerce.  
H. C. Cantelow and H. W. Hendrick for all applicants.  
Fred C. Hutchison, City Attorney, Berkeley, California.  
Edwin G. Wilcox, for Oakland Chamber of Commerce.  
R. M. Grose, for Marine Terminal Association.  
Eel Remington, by Walter A. Rohde, for San Francisco  
Chamber of Commerce.  
Thomas M. Carlson, for the City of Richmond and Richmond  
Chamber of Commerce.  
William Gissler, for Los Angeles-Long Beach Despatch Line.  
Charles A. Bland, for Board of Harbor Commissioners of  
Long Beach.

BY THE COMMISSION:

O P I N I O N

By Application No. 20365 John Byrne, acting on behalf of applicants and their connecting carriers, seeks authority under Sections 15 and 63 of the Public Utilities Act to limit, for a period of twelve months, the applicability of rates to and from the ports of Alameda, Oakland and Richmond to vessels serving those ports by direct call, excepting that transshipment may be performed under certain emergency circumstances.<sup>1</sup> By Application 20366 the same applicants seek authority to cancel present transshipment rates from and to Berkeley. By Application 20367 the San Diego-San Francisco Steamship Company seeks authority to make the same limitations and cancellations for its own account.

These proceedings were heard before Examiner Freas at San

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<sup>1</sup> The proposed rule to govern these emergency circumstances reads as follows:

"1. Except as otherwise provided in paragraph 2 hereof, the rates, rules and regulations named in this tariff applicable at Alameda, Oakland and Richmond, California will apply only via ocean vessels scheduled to call direct at such ports.

"2. Carriers may trans-ship, at rates named herein, cargo destined to or originating at ports named in paragraph 1 hereof which has been accepted by carrier for forwarding via ocean vessel scheduled, in the regular course of business, to call direct thereat, under the following conditions:

(a) When the scheduled sailing of vessel has been cancelled after the shipment has come into the carrier's possession, provided

(b) that the scheduled call of vessel has been cancelled as a measure of operating economy to meet unforeseen conditions beyond the carrier's control, such as a disability to ship, cancellation of substantial booking, restoration of schedule broken by delayed vessel.

Expires with (a date which will be 12 months after the effective date of this rule), unless sooner cancelled, changed or extended."

Francisco on March 4 and 17, 1936. They were consolidated, and submitted on briefs filed April 6, 1936.

The rates herein involved apply between East Bay ports<sup>2</sup> on the one hand and southern California ports on the other via two principal routes, as follows: (1) by direct call of applicants' vessels (except as to Berkeley, which is at present a shoal-water port); (2) via applicants' vessels between southern California and San Francisco in connection with transshipment carriers between San Francisco and East Bay ports. It is the second route which would be eliminated by these applications.<sup>3</sup> East Bay shippers or consignees whose traffic is switched by rail car to and from the wharves may also take advantage of tariff items<sup>4</sup> which provide in effect that applicant carriers will absorb the difference between the cost of transporting carload freight via San Francisco and via East Bay ports.

Applicants allege that during the past several years they have been confronted with steadily increasing operating costs but that they have been unable to advance the intrastate freight rates to reflect these increased costs because of competitive truck and rail rates. On the contrary they state that the freight rates have declined

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<sup>2</sup> The East Bay ports referred to throughout this decision are Alameda, Oakland, Richmond and Berkeley.

<sup>3</sup> The transshipment routes sought to be eliminated, as shown by current tariffs of the applicants, are as follows:

Under Application No. 20365, Bay Cities Transportation Company between San Francisco on the one hand and Alameda, Oakland and Richmond on the other, and Richmond Navigation & Improvement Company between San Francisco and Richmond.

Under Application No. 20366, Berkeley Transportation Company between San Francisco and Berkeley.

Under Application No. 20367, Bay Cities Transportation Company and Alameda Transportation Company between San Francisco on the one hand and Oakland and Alameda on the other; Richmond Navigation & Improvement Company between San Francisco and Richmond; and Berkeley Transportation Company between San Francisco and Berkeley.

<sup>4</sup> Items 15 and 20 of Pacific Coastwise Freight Tariff Bureau Terminal Tariff No. 3-L, C.R.C. No. 20 of John Byrne, Agent, and Item 15 of San Diego-San Francisco Steamship Company Terminal Tariff No.2, C.R.C.No.7.

substantially during this period. These circumstances, they contend, have made vessel operations between the San Francisco Bay district and southern California ports very unprofitable. In support of this allegation they pointed out that six intrastate steamship lines have either discontinued or suspended operations since the fall of 1934,<sup>5</sup> and that the only solely intrastate line which survived<sup>6</sup> suffered operating losses both in 1934 and 1935 as shown by annual reports on file with the Commission. According to the annual reports, only one of these applicants made an operating profit in 1934. Only three reports have been filed for 1935; all of them show operating losses. It is alleged that as a consequence of the impairment of applicants' financial resources their capacity to continue the maintenance of efficient and adequate services has been likewise impaired; and that it is therefore essential in the public interest, as well as in the interest of applicants, that every reasonable economy in operation be adopted at the earliest practicable date. It is said that important economies will result from the proposed changes through the elimination of joint-rate arrangements which require a division with the connecting carriers of through revenue which might otherwise accrue entirely to the applicants.

The City of Berkeley, the chambers of commerce of Oakland and Berkeley, and the Berkeley Manufacturers Association appeared as protestants.

The Oakland Chamber of Commerce offered no objection to any of the applications as originally filed. It opposed Applications 20365

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<sup>5</sup> San Diego-San Francisco Steamship Company, South Coast Steamship Company, Los Angeles-Long Beach Despatch Line, Sudden Steamship Company, California Steamship Company and Los Angeles Steamship Company.

<sup>6</sup> Los Angeles-San Francisco Navigation Company, Ltd.

and 20367 as amended at the initial hearing<sup>7</sup> on the ground that the granting thereof would permit the diversion of tonnage from the deep-water docks on the east side of San Francisco Bay "which normally and properly should move over those facilities".

The Berkeley interests, through various witnesses, alleged that the granting of these applications would (1) increase the transportation costs of Berkeley shippers, (2) result in delay to their shipments, (3) place them at a disadvantage compared with shippers located in Richmond and Oakland, (4) be detrimental to Berkeley in its solicitation of new industries, and (5) handicap the city in its plans for development of a deep-water harbor.

One witness<sup>8</sup> testified that the granting of these applications would increase the transportation costs of Berkeley shippers but admitted that the applicant carriers were receiving "hardly any" of his intrastate tonnage. Another Berkeley shipper<sup>9</sup> stated that so far as his company was concerned it cost no more to transport traffic from or to the Oakland wharves than from or to Berkeley wharf. Both of these witnesses said that they could save approximately 24 hours by moving their shipments through Berkeley rather than through Oakland. The record indicates however that they do not rely upon the applicant carriers for the movement of any substantial portion of their tonnage and it is therefore at least questionable whether this saving in time is of practical importance to them.

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<sup>7</sup> Under Applications 20365 and 20367 as originally filed the carriers sought to suspend the absorption items identified in footnote 3 hereof. By the amendments they eliminate this feature of the applications.

<sup>8</sup> William Casselman, Western Traffic Manager of Colgate-Palmolive-Peet Company, witness on behalf of Berkeley Manufacturers' Association.

<sup>9</sup> L. M. Fites, Division Traffic Manager of Durkee Famous Foods, witness on behalf of Berkeley Manufacturers' Association.

The allegation that the proposed changes would place Berkeley shippers at an undue disadvantage compared with shippers located in Richmond and Oakland was not supported by evidence. The cancellation of rates to and from Berkeley may handicap the city in its solicitation of new industries and in its efforts to develop a deep-water harbor. However, in the absence of a showing of unreasonableness or undue discrimination this fact alone does not justify an order requiring applicants to maintain an unprofitable service.

Protestants did not dispute that applicants' intrastate operations have been unprofitable, that it is in the public interest and in the interest of applicants that economies be adopted, and that economies will result if the proposed changes are authorized. With the suspension of transshipment routes from and to Oakland, Alameda and Richmond, vessel service, at no increase in charges, will still be available when applicants' vessels are scheduled to call direct. Moreover, shippers and consignees located at these points may, if they choose, have their carload shipments switched to or from San Francisco wharves under the absorption provisions already mentioned. With the cancellation of rates from and to Berkeley, the Berkeley shippers may deliver and receive their shipments at the Oakland wharves, and this record indicates that their switching or draying costs will not be materially greater than those of Oakland shippers, many of whom are located equally distant from the wharves. Various common carrier services other than those of applicants are available between points affected by these applications.

If upon the development by Berkeley of harbor and terminal facilities sufficient for the accommodation of deep-draft vessels applicants herein fail voluntarily to accord to that port

treatment similar to that then accorded the ports of Oakland, Alameda or Richmond on like traffic under similar conditions, the matter should then be brought to the attention of the Commission for such investigation and order as may appear necessary.

The applications should be granted:

O R D E R

These applications having been duly heard and submitted,

IT IS HEREBY ORDERED that the applicants in these proceedings be and they are hereby authorized to publish the rules and make the changes and cancellations in accordance with Exhibits "A" of the applications, as amended, on not less than five (5) days' notice to the Commission and the public.

IT IS HEREBY FURTHER ORDERED that the authority herein granted be and it is hereby subject to the express condition that none of the parties to these proceedings will ever urge before this Commission in any proceeding under Section 71 of the Public Utilities Act, or in any other proceeding, that the opinion or order herein constitutes a finding of fact of reasonableness of any particular rate, and the acceptance by applicants of the benefits of this order will be considered as consent by the respective carriers to this condition.

The effective date of this order shall be ten (10) days from the date hereof.

Dated at San Francisco, California, this 13<sup>th</sup> day of April, 1936.

M. B. Harris  
Leon A. White  
H. J. Carr  
Walter H. H. H.

Commissioners.

I dissent from the foregoing Opinion and Order for the following reasons:

Section 19 of the Public Utilities Act provides:

"No public utility shall, as to rates, charges, service, facilities or in any other respect, make or grant any preference or advantage to any corporation or person or subject any corporation or person to any prejudice or disadvantage. No public utility shall establish or maintain any unreasonable difference as to rates, charges, service, facilities or in any other respect, either as between localities or as between classes of service. The Commission shall have the power to determine any question of fact arising under this section."

The result of the above Order is to accord to Oakland, Alameda and Richmond the right of a joint rate to and from San Francisco different and less than that accorded to Berkeley.

Such a preference is unquestionably warranted so far as deliveries made by the deep water vessels to Oakland, Alameda and Richmond are concerned, due to the fact that these three cities are deep water ports and Berkeley cannot at this time claim to be within that classification. When, however, trans-shipment is made by barge from San Francisco to Oakland, Richmond, Alameda or Berkeley, it seems to me that these four communities are unquestionably upon a parity and entitled to the same rates and services for such barge deliveries.

This is denied Berkeley and shippers located there, under the foregoing Order. I am in agreement with the general purposes of the Order aiding the steamship companies under existing conditions and probably what I conceive to be the evil of the Order is somewhat reduced, due to the fact that the Order provides for a one year period. Nevertheless I feel that it creates a definite and unreasonable discrimination against Berkeley as a community and against shippers doing business there.

*Frank R. DeWitt*  
*Commissioner*