

Decision No. 20117.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

In the Matter of the Application of
GEORGE V. FREETHY for certificate of
public convenience and necessity to
operate tugs and barges for trans-
portation of lumber, building mater-
ials, hay and grain for compensation
between points upon the inland waters
of the State of California.

Application No. 20485.

Carrol Single, for applicant.

McCutchen, Olney, Mannon & Greene, by F. W. Mielke,
for The River Lines and Napa Transportation &
Improvement Company.

H. W. Hobbs, for Southern Pacific Company and North-
western Pacific Railroad Company.

Gerald E. Duffy, Berne Levy and George Lupton, for
The Atchison, Topeka and Santa Fe Railway Company.

BY THE COMMISSION:

O P I N I O N

George V. Freethy, an individual, seeks a certificate of public convenience and necessity authorizing the operation of vessels in "on call" service upon the inland waters of this state.

A public hearing was had before Examiner E. S. Williams at San Francisco.

The commodities to be handled, the points to be served, the rates to be charged, and the rules and regulations governing the rates are set forth in Exhibit No. 1, which was amended at the hearing and substituted for Exhibit "A" attached to the application.

By the amended exhibit he seeks authority to transport (1) brick between Port Costa and San Francisco, Sausalito and San Rafael; (2) building materials between Angel Island and Alcatraz Island on the one hand and San Francisco on the other hand; (3) coal between Angel Island and Alcatraz Island on the one hand and San Francisco on the other hand; (4) freight not otherwise specified, between Oakland, Alameda and Mare Island on the one hand and San Francisco on the other hand; (5) hay between vessels in San Francisco Bay and San Francisco; (6) lumber between various points on San Francisco Bay and tributary bays and rivers to and including Stockton and Sacramento on the one hand and San Francisco on the other hand; between Oakland and Alameda; and between points on the San Francisco waterfront; and (7) salt between South Bay points and San Francisco.

Applicant represents that the proposed service is essential to needs of shippers; that he proposes to use a barge equipped with a derrick having a very long boom by means of which cargo can be handled safely, quickly and economically on river banks where there is no wharf, or at points where wharves or landings are high above the level of the water; and that from long experience he is especially fitted to perform the proposed service. He further alleges that there is no other carrier having equipment capable of handling such freight as quickly and economically as his, operating on San Francisco Bay.

The record shows that in March 1930 applicant purchased from his mother Ellen J. Freethy her inland water carrier business including the tug "Liberty" and the barge "Freethy #6". Although he never obtained the authorization from this Commission to transfer the property and operative right as required under Section 51(a) of the Public Utilities Act he operated the equipment under his own name. By Decision No. 28284 dated October 14, 1935, in re Investi-

gation of Ellen J. Freethy, unreported, the Commission found that George V. Freethy's operations were not conducted under the certificate of public convenience and necessity held by Ellen J. Freethy and that said Ellen J. Freethy had discontinued all operations in 1930 upon the sale of her equipment to George V. Freethy. The certificate theretofore issued to Ellen J. Freethy was accordingly revoked and the tariff filed with the Commission ordered cancelled. Applicant George V. Freethy thereupon filed an affidavit announcing his intention to file an application to legalize his operations. This he did by the filing of the instant application on April 16, 1935. In the mean time he continued operating a limited service without authority.

Applicant's showing of public convenience and necessity was confined largely to brick and lumber. There is a considerable movement of brick from the plant of the Port Costa Brick Company at Port Costa to San Francisco and other destinations at which this company maintains yards. The brick is loaded on so-called pallets (somewhat similar to flats or skids), each pallet holding from 500 to 1000 brick. Shipments transported by applicant are received at carriers' tackle at the dock at point of origin, at which point shipper furnishes the necessary labor to sling the pallets. At destination the pallets are discharged onto the dock by the barge tackle, where they are received by shipper and unslung. By this method of handling applicant performs no shore labor either in loading or unloading. Lumber generally moves between ships' tackle at San Francisco and various points on San Francisco Bay and tributary bays and rivers, at which points it is picked up or delivered at shippers' wharf facilities or along the river bank. Applicant claims that by reason of the long boom maintained on his barge it is possible to load and unload lumber located a considerable distance from the barge, which lumber is inaccess-

ible to carriers not having such equipment.

Two shipper witnesses testified in support of the application. E. M. Moore, Secretary of the Port Costa Brick Company, testified that his company had used applicant's service for several years for the transportation of brick from its Port Costa plant to its yard at San Francisco and had found it satisfactory. Brick moving by barge is loaded direct from the kiln to pallets which are hoisted onto trucks and moved to the dock or wharf, where it is delivered to carrier's tackle. At San Francisco it is received at carrier's sling and moved to various locations in the brick company's yard. From these locations it is frequently delivered direct to the job without unloading from the pallets. By this method of handling the brick is frequently transported direct from the kiln at Port Costa to the job at destination without intermediate handling, thereby avoiding damage through shipping and breakage, which usually occurs in transporting it by other means of transportation. To provide the necessary equipment, including the pallets, hoists, trucks and special slings necessary to this operation, the brick company has invested in excess of \$7,000. This witness urges that applicant be authorized to continue the transportation service now being rendered to San Francisco and also expressed a desire to use applicant's service in connection with shipments to its yards at Sausalito and San Rafael. Otherwise he states his company will be forced to handle shipments by truck, involving an outlay of a considerable sum of money in new trucking equipment.

F. D. Dittle, President of the Sterling Lumber Company, testified that his company had used applicant's service in the transportation of lumber from San Francisco to Petaluma, where it maintains a yard. The lumber is received at ship's tackle and is delivered at

the municipal wharf at Petaluma, where it is received by the lumber company and transported by truck to its yard. He states that the rate charged by applicant in the past and as proposed has enabled his company to meet competition of lumber companies shipping direct from northwest mills to Petaluma. Unless the proposed service is authorized he states his company will perform the transportation by its own trucks.

It was stipulated that C. R. Moore, business secretary of Petaluma Box Corporation, and Mr. Thayer of Marine Lumber and Supply Company, would testify to the same effect as witness Dittle with respect to the necessity for applicant's service for the transportation of lumber between San Francisco on the one hand and Petaluma and Sausalito on the other hand.

The granting of the application was protested by The River Lines, the Napa Transportation & Improvement Company, Southern Pacific Company, Northwestern Pacific Railroad Company and The Atchison, Topeka and Santa Fe Railway Company. Witness for protestant The River Lines testified that it was fully equipped to handle lumber by mechanical means similar to that employed by applicant between ship's tackle at San Francisco and its terminals at Stockton and Sacramento, at which latter points it maintains derricks for loading and unloading, but that such equipment was not available at other points.

After careful consideration of the record in this proceeding we are of the opinion and find that public convenience and necessity require the "on call" service proposed by George V. Freethy for the transportation of brick from Port Costa to San Francisco, Sausalito and San Rafael, and lumber between San Francisco on the one hand and Petaluma and Sausalito on the other hand. Applicant made

no affirmative showing as to commodities other than brick and lumber or as to lumber between points other than those just mentioned.

George V. Freethy is hereby placed upon notice that "operative rights" do not constitute a class of property which should be capitalized or used as an element of value in determining reasonable rates. Aside from their purely permissive aspect, they extend to the holder a full or partial monopoly of a class of business over a particular route. This monopolistic feature may be changed or destroyed at any time by the State which is not in any respect limited to the number of rights which may be given.

O R D E R

A public hearing having been held on the above entitled application, the matter having been duly submitted and the Commission being fully advised,

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA HEREBY DECLARES that public convenience and necessity require the operation by George V. Freethy of an "on call" common carrier vessel service for the transportation of brick from Port Costa to San Francisco, Sausalito and San Rafael, and for the transportation of lumber between San Francisco on the one hand and Petaluma and Sausalito on the other hand.

IT IS HEREBY ORDERED that a certificate of public convenience and necessity therefor be and it is hereby granted to George V. Freethy, subject to the following conditions:

1. Applicant shall file a written acceptance of the certificate herein granted within a period of not to exceed fifteen (15) days from date hereof.

2. Applicant shall file in duplicate within a period of not to exceed thirty (30) days from the date hereof, effective on not less than ten (10) days' notice to the Railroad Commission and the public a tariff or tariffs constructed in accordance with the requirements of the Commission's Tariff Circular and containing rates and rules which in volume and effect shall be identical with the rates and rules shown in Exhibit No. 1 submitted at the hearing, as amended, in so far as they conform to the certificate herein granted, or rates and rules satisfactory to the Railroad Commission.
3. The rights and privileges herein authorized may not be discontinued, sold, leased, transferred nor assigned unless the written consent of the Railroad Commission to such discontinuance, sale, lease, transfer or assignment has first been obtained.

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

The effective date of this order shall be twenty (20) days from the date hereof.

Dated at San Francisco, California, this 21st day of September, 1936.

M. B. Davis
Leon Whittell
W. J. Conroy
Walter H. ...
Commissioners.