

Decision No. 29864.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
RIO VISTA LIGHTERAGE COMPANY, INC., )  
a Corporation, for a permit to )  
operate "For-Hire Vessels" for the )  
transportation of property, for )  
compensation, between points on the )  
inland waters of the State of Cali- )  
fornia. )

**ORIGINAL**

Application No. 20496.

Sanborn & Roehl and Clair MacLeod, for applicant.  
McCutchen, Olney, Mannon & Greene, by F. W. Mielke,  
for The River Lines, protestant.  
A. L. Whittle and James E. Lyons, for Southern  
Pacific Company, Pacific Motor Transport Company,  
Northwestern Pacific Railroad Company, and Peta-  
luma and Santa Rosa Railroad Company, protestants.  
J. L. Amos, Jr., and L. N. Bradshaw, for The Western  
Pacific Railroad Company and Sacramento Northern  
Railway, protestants.

BY THE COMMISSION:

O P I N I O N

Applicant seeks a permit to operate "for-hire vessels" on the inland waters of this state between Suisun on the one hand and San Francisco, Oakland and Alameda on the other hand, for the transportation of whole grain and rice. It alleges that it proposes to operate as a private carrier under a single contract with Adams, Schwab & Adams; that it will operate vessels of the type specified in the For-Hire Vessel Act; and that the proposed operation will not be over the whole or any part of a route operated by applicant as a common carrier. A list of the equipment it proposes to operate and a statement of the rules and regulations to be charged and observed are contained in Exhibits "A" and "B" attached to the

application.

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

J. L. Lauritzen, secretary and manager of applicant, testified that his company is now engaged in the operation of vessels as a common carrier between certain points on the inland waters of this state under tariffs on file with the Commission; that although these tariffs name rates for the transportation of property from Suisun to San Francisco Bay terminals<sup>1</sup> his company does not claim common carrier rights between such points. He pointed out that the decision of this Commission in re Investigation of Operative Rights of Inland Water Carriers (Decision No. 29283, dated October 14, 1935, in Case No. 3824) tentatively defining the nature and scope of the common carrier operative rights of applicant, did not embrace transportation between these points.<sup>2</sup> The witness stated that all transportation charges will be billed to Adams, Schwab & Adams and that transportation will be performed solely for its account.

Based upon a study of estimated costs and revenues (Exhibit No. 1) the witness expressed the opinion that the proposed rates<sup>3</sup>

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<sup>1</sup> Local Freight Tariff No. 1, C.R.C. No. 2, on file with the Commission, names rates on whole grain, minimum weight 80,000 pounds, from Suisun to San Francisco Bay Terminals of 7½ cents per 100 pounds not subject to transit privileges and 12 cents subject to transit privileges. Local Freight Tariff No. 3-C, C.R.C. No. 6, also on file with the Commission, names a rate of 7½ cents per 100 pounds on paddy rice in lots of not less than 100,000 pounds from Suisun to San Francisco Bay Terminals.

<sup>2</sup> Subsequent to the submission of the application here under consideration an order was issued by the Commission fixing applicant's common carrier operative rights and requiring applicant to amend its tariffs on or before August 22, 1937, to conform to those which applicant was therein found to possess (Decision No. 29778 dated May 24, 1937). These did not include the transportation of the commodities and between the points which applicant is here seeking to serve as a for-hire vessel carrier.

<sup>3</sup> Rates of \$1.30 on whole grain and paddy rice and \$1.50 on rice, other than paddy, in straight or mixed lots of 200 tons, are proposed.

would be compensatory but admitted that the estimated revenue was founded on the volume of grain transported by applicant as a common carrier from Suisun to San Francisco during 1934 and 1935 and that applicant had no guarantee as to the amount of the tonnage which would be tendered in the future by Adams, Schwab & Adams. In developing estimated costs the witness assumed that the traffic would be transported by two tow boats and two barges and that one of the two boats would be available during nine months of the year for towage of equipment other than that owned by applicant for which service he estimated applicant would receive approximately \$6,000 per year. Costs were based on 1934 and 1935 experience corrected to reflect current conditions. On the basis of this study the proposed rates would produce a net income of \$8,086.51 after payment of all expenses including insurance, depreciation and overhead, the latter being computed on the basis of 20% of the gross revenue.

The application was opposed by The River Lines, Southern Pacific Company, Pacific Motor Transport Company, Northwestern Pacific Railroad Company, Petaluma and Santa Rosa Railroad Company, The Western Pacific Railroad Company and Sacramento Northern Railway. Protestants contend that applicant is here proposing to operate as a for-hire vessel carrier over a part of the same route over which it now operates as a common carrier<sup>4</sup> and that the granting of the permit under the rates proposed would disrupt the common carrier grain rate structure established following the Commission's decision in The River Lines vs. Rio Vista Lighterage Company, Inc. and related proceedings (Decision No. 26406, dated October 9, 1933, in Case 3617 and related cases), particularly between points in the Sacramento

<sup>4</sup> Section 13 of For-Hire Vessel Act reads: "No permit shall be issued to any person or corporation for the operation of for-hire vessels over the whole or any part of any route operated by the applicant as a common carrier."

Valley and Delta points on the one hand and San Francisco Bay points on the other hand, thereby destroying the benefits said to have resulted from the stabilization of rates following the Commission's decision in said cases.

There appears to be no doubt that the proposed operation will be private in nature and that the vessels to be operated are of the type specified in the For-Hire Vessel Act. This leaves for determination the disputed questions. May a permit properly issue under Section 13 of the Act? Are the proposed rates proper?

Protestants contend that the greater portion of the route over which the proposed for-hire vessel service would be operated is identical with applicant's common carrier route between points beyond Suisun Bay on the one hand and San Francisco Bay Terminals on the other hand and that applicant's proposed for-hire service would be competitive with its common carrier service from the Delta to the same points of destination by reason of the fact that traffic originating at inland points may move via either of these gateways.<sup>5</sup> These circumstances, they urge, prohibit the granting of the permit sought by applicant. However, applicant urges that similar contentions were rejected by the Commission in Application of Marine Service Corporation.<sup>6</sup>

In re Application of Marine Service Corporation, supra, the Commission in construing Section 13 of the For-Hire Vessel Act said:

"It is contended by protestants that the proposed operation between Selby and South San Francisco is over a part of the route used by applicant as a common carrier between San Francisco,

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<sup>5</sup> It is claimed by protestants that the grain sought to be handled by applicant from Suisun originates at points in the Sacramento Valley and moves to Suisun by truck, and that similarly grain from the same general territory to San Francisco Bay Terminals moves via Delta points.

<sup>6</sup> Decision No. 27819, dated March 18, 1935, in Application No. 19705.

San Rafael and Marin Meadows. There is no doubt that a part of the route from Selby to South San Francisco is through a channel which is also used as a part of the route from San Francisco to San Rafael and Marin Meadows. It does not necessarily follow that both will use the same portion of the channel. But suppose they did. A route is a road or way between certain points. These points are the dominating feature of the route. In this case there is no point to be served on the Selby-South San Francisco route that is to be served on the common carrier route from San Francisco to San Rafael and Marin Meadows. There will therefore be no competition between the applicant as a common carrier and as an operator of For-Hire Vessels. No doubt this is what the legislature intended to prevent by the provision under consideration." (Underscoring ours)

It is clear that under the construction placed on Section 13 of the For-Hire Vessel Act in the Marine Service Application an applicant under the For-Hire Vessel Act is prevented from competing both as a common carrier and an operator of for-hire vessels between the same points. This, however, applicant does not propose to do. It may be that the proposed for-hire vessel service from Suisun might divert a certain portion of grain traffic originating at inland points and now moving via rail or highway to Delta points thence via inland water carriers including applicant's common carrier vessel service to San Francisco Bay Terminals, but it would require too broad a construction of the For-Hire Vessel Act to hold that it prohibits such an indirect form of competition.

We turn now to a consideration of the propriety of the rates proposed by applicant. Applicant's cost study is convincing that the proposed rates would be profitable should the expected tonnage be developed and retained. However, the record is not convincing that the proposed rate of \$1.30 per ton will attract the same volume of grain tonnage from Suisun to San Francisco as applicant enjoyed in 1934 and 1935 as a common carrier from and to the same points under a rate of \$1.00 per ton. In River Lines vs. Rio Vista Lighterage Company and related proceedings, supra, the Commission in considering the reasona-

bleness of the \$1.00 per ton rate on grain maintained by the applicant herein, said: "The Rio Vista Lighterage Company apparently believes that the maintenance of this rate will attract sufficient tonnage to make a profitable operation possible. But the continuation of the \$1.00 rate will bring about acute competition from other carriers at Suisun and other points which will split the traffic to such an extent that none will be able to operate profitably." Defendants and respondents in these proceedings were ordered to maintain for the future a rate not less than 7½ cents per 100 pounds on whole grain from Suisun to San Francisco and related adjustments were ordered between certain other points on the inland waters. What was said in the prior proceedings with respect to applicant's rate of \$1.00 per ton applies with equal force to the rate proposed by applicant. There is no justification on this record for establishing rates on whole grain between Suisun and San Francisco Bay Terminals lower than the minimum rates prescribed by this Commission for common carriers between these points. No evidence was offered by applicant with respect to the level of the rice rates necessary to return to applicant the cost of its transportation. However, it is apparent that such rates should be no lower than those which are here found proper for whole grain.<sup>7</sup>

On this record we conclude and find that the application should be granted subject to the condition that applicant establish for the transportation of grain and rice between the points sought to be served rates no lower than the minimum rates prescribed by this Commission for the transportation of grain by common carriers between the same points in River Lines vs. Rio Vista Lighterage Company, supra.

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<sup>7</sup> In Pacific Rice Growers Assn. vs. A.T. & S.F. Ry., 19 C.R.C. 249, the Commission prescribed rates on paddy rice between points in California on basis of 125% of the rates applicable on whole grain.

O R D E R

This matter having been duly heard and submitted,

IT IS HEREBY ORDERED that a permit issue to applicant, Rio Vista Lighterage Company, Inc., to operate the barges "R.V.L. No. 3" and "R.V.L. No. 7" and the tow boats "R.V.L. No. 1" and "R.V.L. No. 3" as for-hire vessels between Suisun on the one hand and San Francisco, Oakland and Alameda on the other hand for the transportation only of whole grain and rice for Adams, Schwab & Adams, subject to the following conditions:

1. Applicant shall file its written acceptance of the permit herein granted within a period of not to exceed fifteen (15) days from date hereof.
2. Applicant shall file in duplicate with its acceptance of the permit, on not less than five (5) days' notice to the Commission and the public, a tariff containing rates and rules which in volume and effect shall be identical with the rates and rules set forth in Exhibit "B" attached to the application, modified to provide rates on whole grain and rice from Suisun to San Francisco, Oakland and Alameda no lower than the minimum rates on whole grain prescribed by the Commission for application by common carriers in Decision No. 26406, dated October 9, 1933 (River Lines vs. Rio Vista Lighterage Company and related proceedings), or rates and rules satisfactory to the Railroad Commission.
3. Applicant shall file with the above a description of the barges "R.V.L. No. 3" and "R.V.L. No. 7" and the tow boats "R.V.L. No. 1" and "R.V.L. No. 3."
4. This permit and the rights and privileges exercisable thereunder shall not be sold, leased, transferred or assigned unless the written consent of the Railroad Commission to such sale, lease, transfer or assignment has first been obtained.

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

Dated at San Francisco, California, this 27<sup>th</sup> day of

July, 1937.

William H. Sparre  
Leon O. Whitell  
Robert W. Johnson  
Commissioners.