

Decision No. 23989

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
HENRY A. JUHL for a permit to operate)
for-hire vessels, the transportation) Application No. 20469.
of property for compensation between)
points on the inland waters of the)
State of California.)

Gwyn H. Baker, for applicant.

A. L. Whittle, for Southern Pacific Company.

BY THE COMMISSION:

ORIGINAL

O P I N I O N

Applicant seeks a permit under the For-Hire Vessel Act to operate vessels on the inland waters of this State from San Francisco and Oakland to Rio Vista, Clarksburg and Walnut Grove, for the transportation of forest products and lumber. He alleges that the proposed operation is that of a private carrier under a single contract with Pacific Lumber Company; that he will operate vessels of the type specified in the For-Hire Vessel Act; and that applicant is not operating as a common carrier over the whole or any part of the route over which he proposes to operate as a for-hire carrier. A description of the equipment proposed to be used in said service and the rates to be charged are specified in the application.

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

Applicant testified that he has a verbal contract with the Pacific Lumber Company to transport its lumber from San Francisco to Rio Vista, Clarksburg and Walnut Grove. He stated that the equipment

proposed to be used is the same as that now operated in common carrier service by Juhl Bros., a co-partnership consisting of himself, his mother Henrietta Juhl and his brother M. Juhl, but that the other members of the co-partnership will have no interest in the proposed for-hire vessel service "except that he will pay a rental to his mother Henrietta Juhl for the use of the tug 'Peerless', owned by her and will probably employ his brother M. Juhl." He asserted that he believed he could operate profitably as a for-hire carrier under the proposed rates provided sufficient tonnage were handled. He admitted, however, that he had made no study to determine the revenues and expenses which would result under the proposed operation and that he could neither state what amount of tonnage he considered sufficient to make the proposed operation profitable nor offer any estimates as to the probable tonnage which would be handled for the Pacific Company.

Southern Pacific Company opposed the granting of the application. It contended that applicant is here proposing to operate a for-hire vessel service over the same route and between the same points over and between which he now operates as a common carrier;¹ that the proposed rates are unduly low and that if they are established they will be unprofitable to applicant and will force a reduction in the rail carrier's rate on lumber from San Francisco to Walnut Grove.

The record shows that applicant Henry A. Juhl, as a member of a co-partnership, is engaged in the transportation of hay and whole grain as a common carrier between certain points on the Sacramento and San Joaquin Rivers and their tributaries, including Rio Vista, Clarksburg and Walnut Grove to San Francisco Bay Terminals, including

¹ Section 13 of the 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."

San Francisco and Oakland under rates on file with this Commission. The points served in this common carrier operation include all of those which applicant here proposes to serve as a for-hire vessel carrier. From the evidence there appears to be little distinction between applicant's relationship with his partners in their common carrier enterprise and that here proposed.

Applicant argues that irrespective of whether he is held to be now engaged in operating as a common carrier between the points he is here seeking to serve as a for-hire vessel carrier, he is not prohibited, under the For-Hire Vessel Act, from operating in this dual capacity provided he does not transport the same commodities in both services, citing Application of Marine Service Corporation Decision No. 27879, dated March 18, 1935, in Application No. 19705), wherein 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, 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. 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)

Under the construction placed on Section 13 of the For-Hire Vessel Act in the Marine Service Application an applicant under this Act is prevented from competing both as a common carrier and an

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Local Freight Tariff No. 3, C.R.C. No. 3, issued in the name of Juhl Brothers (Henry A. Juhl, H. Juhl and M. Juhl, co-partners).

operator of for-hire vessels between the same points. Inasmuch as the proposed service is for the transportation of lumber in the reverse direction from that which applicant is now operating as a common carrier for the transportation of hay and whole grain, it is apparent that there will be no competition between these services.

Applicant proposes a rate of \$1.50 per 1,000 feet board measure to Rio Vista and \$2.00 per 1,000 feet board measure to Clarksburg and Walnut Grove, both rates to be subject to a minimum of 100,000 board feet. These rates are below the level of those which now apply for the transportation of lumber from and to the same points by common carriers including those operating by vessel.³ In view of the protests of record that the proposed rates, if established, will disrupt the existing rate structure of common carriers, including those operating by vessel, engaged in the transportation of lumber from and to the points here sought to be served by applicant as a for-hire vessel operator, and the absence of convincing evidence that the proposed rates would return to applicant the cost of performing the service, there appears to be no justification for authorizing the establishment of rates lower than those currently applicable by common carriers for like transportation service.

On this record we conclude and find that the application should be granted subject to the condition that applicant file rates no lower than those which are currently in effect for the transportation of lumber from and to the same points via common carriers.

ORDER

This matter having been duly heard and submitted,

IT IS HEREBY ORDERED that a permit issue to applicant Henry A. Juhl to operate the barge "EDITH" and the tug "PEERLESS" as for-

³ Local Freight Tariff No. 3, C.R.C. No. 3, filed with the Commission by George V. Freethy names rates on Lumber, viz.: rough or surfaced; also flooring, lath, shakes, shingles and railroad ties from San Francisco to Rio Vista of \$1.75 per 1,000 feet board measure and to Clarksburg and Walnut Grove of \$2.25 per 1,000 feet board measure, both of which rates are subject to a minimum of 57,000 feet board measure.

hire vessels from San Francisco and Oakland to Rio Vista, Clarksburg, and Walnut Grove for the transportation only of forest products, viz.: lumber, rough or dressed; lath; piling; poles; posts; shakes; shingles; stakes and ties, for the Pacific Lumber Company, subject to the following conditions:

1. Applicant shall file his written acceptance of the permit herein granted within a period not to exceed fifteen (15) days from date hereof.
2. Applicant shall file in duplicate with his 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 the application modified to provide rates no lower than those which are applicable for the transportation of the same commodities from and to the points involved via the lines of common carriers, or rates and rules satisfactory to the Railroad Commission.
3. The applicant shall, in instances where the vessel or vessels used under the authority here granted are also used in common carrier service, maintain records that will disclose clearly the revenues and expenses attributable to the for-hire operation.
4. This permit and the rights and privileges exercisable thereunder shall not be sold, leased, transferred nor 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 27th day of July, 1937.

Walter H. ...

James R. ...
Ray ...

Commissioners.