

Decision No. 29996

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
MARTIN SCHMIDT and NELS SCHEMIDT, co-
partners doing business under the name
and style of MARTIN SCHMIDT, for an
order authorizing the temporary sus-
pension of service as a common carrier
by vessel on the inland waters of the
State of California.)

Application No. 21266

In the Matter of the Application of
MARTIN SCHMIDT and NELS SCHEMIDT, co-
partners doing business under the name
and style of MARTIN SCHMIDT, for a
permit under the For-Hire Vessel Act
of the State of California to operate
a vessel for the transportation of
property for compensation on the in-
land waters of the State of California.)

Application No. 21267.

BY THE COMMISSION:

OPINION AND ORDER

Applicants are copartners doing business as Martin Schmidt, having on file with the Commission tariffs naming rates for the transportation of property as a common carrier by vessel on the inland waters of the state. By Application No. 21266 filed June 16, 1937, they seek authority to discontinue for one year their operation as a common carrier, and by Application No. 21267 filed on the same date, they ask for a permit to operate a "for-hire" vessel under the For-Hire Vessel Act (Chapter 223, Statutes of 1933).

In Decision No. 29778 of May 24, 1937, in Case No. 3824, applicants were found to possess the right to transport only hay and

straw between a limited number of points. Applicants allege that said operative rights are so restrictive that they will be unable to serve the customers whose business they have handled for a number of years and that they will be forced to retire from business if required to operate as a common carrier thereunder. They believe that their present operation is such that it could be conducted as a "for-hire" vessel service, rather than as a common carrier service, but do not want to surrender their common carrier rights until they have had an opportunity to determine whether such "for-hire" vessel operation will be satisfactory.¹ They anticipate that within one year they will be in a position to resume their common carrier operation or abandon it entirely.

If the sought "for-hire" permit be granted applicants will use the motor vessel "CHARLES W.", which has a capacity of 170 tons. They expect to transport property for four shippers only and in any event will limit their service to not more than six shippers during any year. They will not hold themselves out to transport for the public generally.

The rates which applicants propose to charge, the commodities which they propose to handle and the points which they propose to serve are those set forth in Exhibit "A" attached to application No. 21267 and with a few exceptions are the same as those named in Martin Schmidt's Local Freight Tariff No. 3-A, C.R.C. No. 5, on file with the Commission. They also propose to adopt the rates on file with the Commission in Martin Schmidt's Demurrage Tariff No. 1, C.R.C. No. 4.

¹ For-Hire Vessel Act (Statutes of 1933, Chapter 223) provides: "Section 13. 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."

Certain common carriers by railroad have protested the granting of these applications. They argue with considerable logic that applicants should be required to elect at this time whether they will continue to render a common carrier service. In view of the fact that applicants' operation under assumed rights was allowed to go unchallenged for a number of years, however, it appears proper to allow a reasonable period during which they may readjust their operating practices and determine whether or not common carrier operation under their rights as restricted will be feasible.

The granting of the application to discontinue temporarily common carrier operation will not deprive the public of means of transportation as the territory is served by other carriers.

It appears that these are matters in which a public hearing is not necessary and that the applications should be granted. Applicants are hereby notified that they will be expected to resume their operations as a common carrier within a period of one year or forfeit all rights thereunder. Therefore, good cause appearing,

IT IS HEREBY ORDERED that applicants Martin Schmidt and Nels Schmidt, copartners doing business as Martin Schmidt, be and they are hereby authorized to suspend until July 26, 1938, their service as a common carrier by vessel upon the inland waters of this state, provided they supplement their tariffs on file with the Commission to show that their service has been suspended as authorized herein.

IT IS HEREBY FURTHER ORDERED that a permit issue to applicants Martin Schmidt and Nels Schmidt, copartners doing business as Martin Schmidt, effective on the date of suspension of their common carrier service as authorized in the preceding paragraph of this order, to operate that certain motor vessel "CHARLES W.", as a "for-hire" vessel upon the inland waters of this state, subject to all the terms and conditions of the For-Hire Vessel Act (Chapter 223, Statutes of 1933), for the transportation of the following commodities and between the following points:


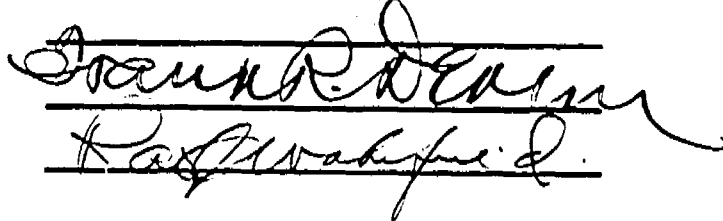
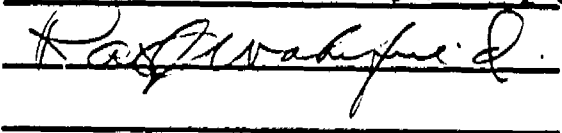
1. Cereals and Cereal Products, as defined in Item No. 70 of Exhibit "A" attached to Application No. 21267 - Between any and all points on San Francisco Bay, San Pablo Bay, Suisun Bay, the Sacramento River, the San Joaquin River and their respective tributaries and sloughs, with the exception of Sacramento, points on the Sacramento River north of Sacramento and points on any tributary of the Sacramento River at or north of Sacramento.
2. Hay and Straw - Between any and all points on San Francisco Bay, San Pablo Bay, Suisun Bay, the Sacramento River, the San Joaquin River and their respective tributaries and sloughs.
3. Lumber, all kinds - Between any and all points on San Francisco Bay, San Pablo Bay, Suisun Bay, the Sacramento River, the San Joaquin River and their respective tributaries and sloughs.

IT IS HEREBY FURTHER ORDERED that such permit be and it is hereby made subject to the following conditions:

1. Applicants shall file their written acceptance of the permit herein granted within a period of not to exceed fifteen (15) days from the date hereof.
2. Applicants shall file in duplicate with their acceptance of the permit tariffs containing rates and rules which in volume and effect shall be identical with the rates and rules set forth in Exhibit "A" attached to Application No. 21267 and in Martin Schmidt's Demurrage Tariff No. 1, C.R.C. No. 4.
3. Applicants shall file a description of the vessel "CHARLES W."
4. This permit and the rights and privileges exercisable thereunder may not be leased, transferred or assigned unless the consent of this Commission thereto has first been secured.

This order shall become effective twenty (20) days from the date hereof.

Dated at San Francisco, California, this 28th day of July, 1937.

Commissioners.