

Decision No. 29800

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of  
MARINE SERVICE CORPORATION, a cor-  
poration, for a permit under the For-  
Hire Vessel Act of the State of  
California to operate vessels for the  
transportation of stevedore gear,  
etc., for compensation on the inland  
waters of the State of California. )

**ORIGINAL**

Application No. 21650

Berol and Handler by Marvin Handler, for applicant.  
Gwyn H. Baker, for Bay Cities Transportation Company  
and Richmond Navigation & Improvement Company,  
protestants.

BY THE COMMISSION:

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 the state between San Francisco on the one hand and Oakland, Alameda and Richmond on the other hand for the transportation of stevedore equipment as described in the application. It alleges that the proposed service will be performed for only a limited number of selected shippers, not more than six during any year, and that freight will not be solicited from the public generally; that the equipment proposed to be operated is of the type specified in the Act; that the proposed operation will not be over the whole or any part of any route operated by applicant as a common carrier and that such operations will not in any way interfere with the common carrier operations or the other "for-hire vessel" operations of applicant.<sup>1</sup> The equipment applicant proposes to operate

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<sup>1</sup> In Operating Rights of Inland Water Carriers (Decision No. 29778 dated May 24, 1937, as amended, in Cases Nos. 3824 and 4012), applicant's common carrier operating rights by vessel were defined as follows:

and the rates, rules and regulations it proposes to charge and observe are set forth in Exhibit "A" and Schedule "B" attached to the application.

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

Eugene C. Lloyd, applicant's president and acting manager, testified that the proposed transportation would be for account of stevedore companies who require a specialized service such as applicant is prepared to perform.<sup>2</sup> He further testified that applicant expected to serve the Associated-Banning Company, Schirmer Stevedoring Co., Ltd., Pacific Stevedoring & Ballasting Co., and General

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1 (Cont'd)

"A certificated right to render an 'on call' service for the transportation of property by vessel between San Francisco and Marin Meadows; a prescriptive right to transport property by vessel between San Francisco and San Rafael; and a prescriptive right to render an 'on call' service for the transportation of machinery and machinery parts from San Francisco to Sausalito, Tiburon, and vessels in the stream at those points, and of canned fish from Sausalito, Tiburon and vessels in the stream at those points to San Francisco."

By Decision No. 27819 dated March 18, 1935, in Application No. 19705, applicant was granted a permit "to operate that certain vessel, the 'Mary E' between Selby and South San Francisco, such service to be limited to the transportation of lead for W. P. Fuller & Company; and to also operate said vessel between San Francisco and South San Francisco, such service to be limited to the transportation of 'freight, all kinds' for said W. P. Fuller & Company." Subsequently applicant notified the Commission that it proposed to substitute for the "Mary E" the barge "M.S.C. No. 8," carrying capacity 350 tons, and the tug "Rover," Diesel motor, gross tonnage 45, net tonnage 25 tons, which substitution was permitted under the terms of the decision.

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Upon the reporting by a lookout maintained by the San Francisco Chamber of Commerce of the arrival of a vessel, the time of the arrival at the dock is estimated and the carrier is notified in order that the stevedore equipment may be transported to the point at which it is to be used. The stevedore companies require that equipment be transported and delivered to the dock at which it is to be used in vessel loading and unloading operations not later than one hour prior to the arrival of the vessel and that it be removed not more than one hour subsequent to completion of the loading or unloading operations.

Stevedore & Ballast Co., that there was an understanding that applicant would transport for these companies whatever stevedoring equipment they might offer and whenever they might offer it but that no special contract or definite agreement had been entered into or was contemplated. He stated that the business of the particular firms mentioned was insufficient to keep applicant's equipment busy at all times and that applicant therefore also proposed to transport stevedore equipment for any other shipper who requests such service, subject to the limitation that the service would be performed for not more than six shippers in any one year.

Bay Cities Transportation Company and Richmond Navigation & Improvement Company opposed the granting of the application. They contended that applicant had failed to show that the proposed operation was that of a private carrier. They argued that the testimony of witness Lloyd and the nature of the alleged tentative contracts indicated that applicant proposed to operate a common carrier service requiring the obtaining of a certificate of public convenience and necessity under the Public Utilities Act and not a for-hire vessel permit as applied for in its application.

From the circumstances surrounding applicant's proposal and the manner in which the service is to be performed, it must be concluded that applicant intends to hold itself out to transport stevedore equipment between the points involved for the public generally, and that this holding out is circumscribed only by the capacity and efficient use of applicant's equipment. For these reasons the application must be denied. Applicant should bring the proposed operation into conformity with the For-Hire Vessel Act or if it desires to perform a common carrier service apply for

an application for such service as required under Section 50(d) of  
the Public Utilities Act.

O R D E R

This matter having been duly heard and submitted,

IT IS HEREBY ORDERED that the above entitled application  
be and it is hereby denied.

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

June, 1938.

Walter A. Mason  
Leon C. Whalley  
Frank R. Smith  
Raymond W. Smith  
W. L. Kelley  
Commissioners.