

Decision No. 32659

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
J. C. FREESE CO. for (1) a permit )  
under the "For-Hire Vessel Act," for )  
the transportation of bulk molasses; )  
and (2) a declaration of applicant's )  
status in connection with the trans- )  
portation of liquid or fluid petrol- )  
eum products in bulk. )

Application No. 19148

(Supplemental)

ORIGINAL

BY THE COMMISSION:

Appearances

Pillsbury, Madison and Sutro, by Hugh T. Fullerton,  
for Applicant;  
McCutchen, Olney, Mannon & Greene, by F. W. Mielke,  
for The River Lines; also R. T. Dooley for  
The River Lines;  
A. L. Whittle, for Southern Pacific Company, North-  
western Pacific Railroad Company and Petaluma &  
Santa Rosa Railroad Company.

O P I N I O N

In this application, as amended, Constance Mogan and Ruth Freese Conway, a copartnership doing business as J. C. Freese Co., seek (1) a permit under the For Hire Vessel Act to transport molasses in bulk from Point San Pablo to Sausalito and Collinsville and from ships of Matson Navigation Company on San Francisco Bay or its tributaries to Point San Pablo, under contracts with American Distillery Corporation, B. B. Company and Matson Navigation Company, and (2) an order declaring that, under the provisions of Section 22 of the For Hire Vessel Act, J. C. Freese Co. is not required to obtain a permit to transport petroleum products in bulk, between points on San Francisco Bay and tributaries thereto, under contracts with Standard Oil Company of California, Shell Oil Company, Richfield Oil Corporation, The Texas Company, Signal Oil Company and General Petroleum Corporation.

A public hearing was held in San Francisco before Examiner Preston W. Davis, and the matter was submitted upon the filing of a brief by applicant.

In support of the prayer for a permit to transport molasses, applicants' manager testified that the transportation was proposed to be performed under private contracts with the three shippers hereinbefore specified; that service would be afforded only from Point San Pablo to Sausalito and Collinsville and from Matson ships on San Francisco Bay or its tributaries to Point San Pablo; and that the equipment intended to be used was a tank barge having a capacity of approximately 400 tons. This witness stated, further, that the rates which would be charged under the permit, if granted, were 80 cents per ton, minimum 400 tons, for transportation from Point San Pablo to Sausalito; \$300 per delivery for transportation of quantities approximating 350 tons from Point San Pablo to Collinsville; and 50 cents per ton, minimum 10,000 tons per year, for transportation from Matson ships to Point San Pablo. According to applicants' manager, no other company is engaged in the transportation of bulk molasses by vessel between points on San Francisco Bay or its tributaries.

With reference to the request for a declaration that J. C. Freese Co. does not require a permit for the transportation of petroleum products, it was shown that applicants' have been engaged for several years in transporting petroleum products in bulk in tank vessels and tank barges, between points on San Francisco Bay and its tributaries, under contracts with the Standard Oil Company of California, Shell Oil Company, Richfield Oil Corporation, The Texas Company, Signal Oil Company and General Petroleum Corporation. It was also shown that, with the exception of Signal Oil Company, all of the oil companies mentioned operate tank vessels or tank barges of their own for the transportation

of petroleum products, although only the Standard Oil Company, Shell Oil Company and Richfield Oil Corporation operate vessels or barges on San Francisco Bay or its tributaries. The Signal Oil Company was not shown to have any vessel equipment of its own, its products being transported mainly by Standard Oil Company.

In contending that no permit was necessary for the transportation by them of petroleum products in bulk, applicants relied strongly upon Section 22 of the For Hire Vessel Act. That section reads as follows:

"Sec. 22. The provisions of this act shall not be deemed applicable to persons or corporations, their lessees, trustees or receivers who furnish water transportation service between points in this State for their affiliated companies or for the products of other persons or corporations, their lessees, trustees or receivers engaged in the same industry, if and so long as such water transportation service is furnished in tank vessels or barges specially constructed to hold liquids or fluids in bulk, and provided further, that such service is not furnished to others not engaged in the same industry."

It will be noted that, under the conditions specified in the aforesaid section, no permit is required for transportation of the products of other companies engaged in the same industry as that in which the company performing the transportation is engaged. It is applicants' position that J. C. Freese Co. and the oil companies for which it performs transportation services are all engaged in the same industry, to wit, the transportation of petroleum products by vessel, and that, hence, J. C. Freese Co. comes within the statutory exclusion quoted.

In support of their position, applicants cite cases holding that various occupations, including mercantile and express businesses, constitute "industrial pursuits" under the terms of incorporation statutes, and argue that, by the same reasoning, the furnishing of water transportation constitutes an industry under the terms of Sec-

tion 22, supra. They point out, moreover, that one company can engage in two or more distinct industries simultaneously.

Applicants contend that a reading of the statute in question makes it clearly evident that all transportation of petroleum products was intended to be exempted; that an interpretation holding that both the company performing the transportation and the company for whom the transportation is performed must be engaged in the production of petroleum would render the section discriminatory and hence invalid; that statutes should be so construed as to support their constitutionality, if possible; and, finally, that exemptions in regulatory statutes must be construed liberally in favor of the exemption.

A permit for the transportation of molasses, as sought, will be granted. However, the interpretation placed by applicants upon Section 22 of the For Hire Vessel Act is, in our opinion, untenable. The clear intent of that section, we think, is to exempt from the provisions of the Act transportation of the type specified only when performed by an oil company for other affiliated or unaffiliated oil companies. There appears to be no good reason why the determination of whether or not transportation performed by an exclusive vessel carrier for an oil company is subject to the For Hire Vessel Act should depend upon whether or not that oil company operates vessels of its own. On the other hand, it may well be that transportation of the products of a given industry, when performed by a member of that industry for himself, members affiliated with him, or independent members, is so inherently different from ordinary for-hire transportation as to justify exemption from supervision and regulation by the State.

If applicants' interpretation were to be adopted, incongruous results would follow. Transportation performed by J. C. Freese for an

oil company having no vessel equipment of its own would be subject to the Act; transportation performed for an oil company having no vessel equipment on San Francisco Bay, but operating vessels around Los Angeles Harbor, or, so far as that goes, on any waters no matter how far removed from San Francisco Bay, would be exempt. Transportation performed by one oil company for another would be subject to the Act, unless the company for which the transportation was performed was similarly engaged in performing water transportation, in which event the transportation would be exempt.<sup>1</sup>

The wording of the section in question is entirely consistent with the foregoing manifest intent if the term "same industry" is read as referring to the industry in which the products transported are produced. We so construe the section. It follows that J. C. Freese & Co. is not exempted from the provisions of the For Hire Vessel Act in connection with the transportation of petroleum products.

In addition to arguing concerning the interpretation of Section 22, applicants challenged on brief the constitutionality of the For Hire Vessel Act itself. As the agency charged with administration of this statute, however, it is not within our province to pass upon its validity. (Scott v. W. P. Ry. Co. 2 C.R.C. 626).

#### O R D E R

A public hearing having been held in the above entitled application and based on the evidence received at the hearing and upon conclusions and findings contained in the preceding opinion,

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<sup>1</sup> Both of these types of transportation would be exempt, of course, if it were to be held that the term "same industry" refers both to the petroleum industry and to the water transportation industry. Applicants have not argued that Section 22 is susceptible of this interpretation.

IT IS HEREBY ORDERED that a permit be issued to Constance Mogan and Ruth Freese Conway, a copartnership doing business as J. C. Freese Co. to operate as a for-hire vessel carrier for the transportation of molasses, in bulk, under contracts with American Distillery Corporation, B. B. Company and Matson Navigation Company from Point San Pablo to Sausalito and Collinsville and from ships of Matson Navigation Company on San Francisco Bay or its tributaries to Point San Pablo, subject to the following conditions:

1. Applicant shall file written acceptance of the permit herein granted within a period of not to exceed fifteen (15) days from the date hereof.
2. Applicant shall file in duplicate with its acceptance of the permit a tariff specifying the shippers to be served as herein authorized and containing rates and rules which in volume and effect shall be identical with those referred to in the preceding opinion or rates and rules satisfactory to the Commission; and such tariff shall be made effective on not less than five (5) days' notice to the Commission and to the public.
3. 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.

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

Dated at San Francisco, California, this 19<sup>th</sup> day of December, 1939.

Ray Bevalacqua  
Frank Powell  
W. H. Hall  
Justin J. Caenen  
Commissioners.