

Decision No. 32677

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of  
MARINE SERVICE CORPORATION, a corpora-  
tion, for a certificate of public  
convenience and necessity to operate  
motor vehicles for the transportation  
of property between San Francisco,  
Hamilton Field and Novato, by an  
extension of its present operating  
rights from San Rafael to Hamilton  
Field and Novato.

**ORIGINAL**

Application No. 21442

In the Matter of the Investigation on  
the Commission's own motion into the  
rates, rules, regulations, charges,  
classifications, contracts, practices,  
operations and service, or any of them,  
of MARINE SERVICE CORPORATION, a  
corporation.

Case No. 4267

BEROL & HANDLER, by Marvin Handler, for  
applicant and respondent.

NORTHWESTERN PACIFIC RAILROAD COMPANY, by  
E. W. Hobbs, interested party in Case  
No. 4267.

NORTHWESTERN PACIFIC RAILROAD COMPANY and  
PACIFIC MOTOR TRUCKING COMPANY, by E. W.  
Hobbs, protestants in Application No. 21442.

ROBERT G. ANDERSON, doing business as PETALUMA  
AND SANTA ROSA EXPRESS CO., an express cor-  
poration, by Douglas Brookman, protestant in  
Application No. 21442.

PACIFIC GREYHOUND LINES, by H. C. Lucas and  
E. D. Richards, protestant in Application  
No. 21442.

BY THE COMMISSION:

O P I N I O N

Marine Service Corporation, a corporation, applicant and  
respondent herein, is now providing a service as a highway common

carrier between San Francisco and San Rafael and intermediate points via Sausalito. It is also providing a common carrier vessel service between San Francisco and San Rafael, and between San Francisco and Marin Meadows <sup>(1)</sup> as well as between other points upon the inland waters of the state of California. In addition, said corporation is operating for-hire vessels between points upon the inland waters of the state of California under permits issued by this Commission.

In Application No. 21442, applicant seeks a certificate of public convenience and necessity for an extension of its present highway common carrier service beyond San Rafael to include Hamilton Field, Ignacio, Novato and intermediate points. Applicant also seeks authority to use U. S. Highway No. 101 between Manzanita and San Rafael as an alternate route to that which it now uses between said points. Applicant also requests authority to substitute truck service for vessel service between San Francisco and San Rafael under certain conditions, and also to substitute truck service for vessel service between San Francisco and Marin Meadows (Hamilton <sup>(2)</sup> Field).

On November 2, 1937, the Commission instituted a general investigation into the operations, practices, rates, service, etc. of Marine Service Corporation's operations as a common carrier of

---

(1) Hamilton Field, at which a United States Government air base is located, is situated at Marin Meadows.

(2) Since the submission of these proceedings, applicant has filed its Application No. 23177, in which authority is requested to transfer its highway common carrier operative rights to a new corporation named Marin Express Service. In view of this circumstance, applicant's request in Application No. 21442 for authority to substitute truck service for vessel service between San Francisco and San Rafael need not be further considered herein.

property by vessel and its operations of for-hire vessels, between points upon the inland waters of the state of California, and its operation as a highway common carrier between San Francisco, San Rafael and other points.

Separate public hearings were held in each of the above matters, which were submitted upon briefs. While the record in these proceedings was not consolidated, such proceedings will be disposed of in one decision because of the close relationship thereof and the issues involved.

Pacific Greyhound Lines, Pacific Motor Trucking Company, and Northwestern Pacific Railroad Company, / Robert G. Anderson, doing business as Petaluma and Santa Rosa Express Co., an express corporation, opposed the extension of applicant's service to Hamilton Field, Ignacio and Novato.

APPLICATION NO. 21442

Applicant advances two reasons in support of its proposal to serve Hamilton Field. The first relates to the alleged inadequacies of present common carrier service between San Francisco and Hamilton Field. The second is based upon the proposition that applicant now possesses a vessel operative right to serve Hamilton Field (Marin Meadows) and is herein seeking authority to substitute the truck service in lieu thereof.<sup>(3)</sup>

Evidence was adduced that since January, 1938, shipments of property have been transported to Hamilton Field over the

---

(3) Applicant's vessel operative rights between San Francisco and Marin Meadows and between San Francisco and San Rafael were defined by the Commission in Decision No. 29778, on Cases Nos. 3824 and 4012 (40 C.R.C. 493).

facilities of Northwestern Pacific Railroad Company; that in many cases such shipments moving from San Francisco require three to four days in transit; that prior to January, 1938, the facilities of applicant had been used until applicant had been informed by members of the staff of the Commission that a certificate of public convenience and necessity was needed for such operation; and that applicant had been providing an adequate daily service. It was further shown from the testimony of public witnesses that an adequate daily highway common carrier service is needed between San Francisco and Hamilton Field and intermediate points.

The record shows that Hamilton Field is located in an area known as Marin Meadows and that a boat landing had been maintained thereat by applicant. It further shows that the channel leading from San Francisco Bay to Marin Meadows had become silted to such an extent that it is no longer possible for applicant to reach the Marin Meadows landing.

Public witnesses testified in regard to the need for highway common carrier service to and from Ignacio and Novato as proposed by applicant.

Protestants urge that the application should be denied because of alleged unlawful operations prior to the filing of the instant application and urged further that all of the points involved are now adequately served by common carriers. Public witnesses were produced by protestants who testified that there are sufficient common carrier facilities to meet their needs.

The alleged unlawful operations of respondent in Case No. 4267 will be discussed hereinafter.

CASE NO. 4267

To reach a determination as to whether respondent is operating beyond the scope of its operative rights a review of such rights first will be made.

Henry Hansen filed his local freight Tariff No. 1, C.R.C. No. 1, effective March 1, 1917, in which rates were published for the transportation of property between San Francisco and San Rafael, and intermediate points, via Sausalito. The only points specifically named in such tariff were San Francisco, Sausalito and San Rafael.

The Commission, by Decision No. 9225, dated July 12, 1921, on Application No. 6971, authorized A. H. Marx to acquire the prescriptive right of Henry Hansen as evidenced by Hansen's local Tariff No. 1.

By Decision No. 9126, dated June 21, 1921, on Application No. 6665, A. H. Marx, doing business as San Rafael Freight and Transfer Co. was authorized to acquire from F. J. McSherry an operative right created by Decision No. 7694, dated June 8, 1920, on Application No. 5581.<sup>(4)</sup> Decision No. 7694 granted a certificate for the establishment and operation

"...of an automobile express service as a common carrier of express and light freight between Santa Rosa and Sausalito and intermediate points."

The application and the exhibits in this proceeding indicated that the route was via Mill Valley. (See Decision No. 10579, Case No. 1601, for subsequent definition of this right, *infra*.) By Decision No. 10579,

---

(4) The right created by Decision No. 7694 was a certificate granted to Paris P. Lawson from whom acquisition by McSherry was authorized by the Commission in its Decision No. 8422, dated December 2, 1920.

dated June 14, 1922, on Cases Nos. 1601 and 1608, the Commission defined the operative right between Santa Rosa and Sausalito and intermediate points as created by Decision No. 7694, supra, in the following language:

"IT IS HEREBY ORDERED that the order in Decision No. 7694, Application No. 5581, dated June 8, 1920, be amended and modified by adding to it the following:

"The terms 'express and light freight' as used in this order shall be deemed to mean: newspapers, ice cream, dairy products, and package merchandise. No single article termed 'package merchandise' shall have a weight in excess of 60 pounds.

"IT IS HEREBY FURTHER ORDERED that the San Rafael Freight and Transfer Company shall carry on its operations as a transportation Company in conformance with the terms of Decision No. 7694, as modified herein."

The Commission, by Decision No. 12519, dated August 22, 1923, on Application No. 9135, authorized A. H. Marx, et al, to transfer the foregoing described operative rights to San Rafael Freight and Transfer Co., a corporation. No consolidation of the rights was authorized.

By Decision No. 20312, dated October 10, 1928, upon a complaint filed in Case No. 2429, the Commission ordered San Rafael Freight and Transfer Co., a corporation, to cease and desist from transporting single articles of merchandise weighing in excess of sixty pounds, between San Francisco and points north of Sausalito and San Rafael, to and including Santa Rosa. This decision is construed as affecting the operative right created by Decision No. 7694, as defined and modified by Decision No. 10579, and had no effect upon the operative right between San Francisco and San Rafael created by Henry Hansen and acquired by A. H. Marx under the authority of the Commission in Decision No. 9225. Later, by Decision No. 22792, dated August 13, 1930, on Case No. 2652, the Commission again ordered San Rafael Freight and Transfer Co.

"...to cease and desist and thereafter to abstain from transporting package merchandise weighing in excess of 60 pounds per package between San Francisco and points

on the public highway north of San Rafael to and including Petaluma and Santa Rosa,..."

Subsequently, by Decision No. 25183, dated December 15, 1930, on Application No. 15227, the Commission modified Decisions Nos. 7694 and 10579 by adding the following language;

"Eggs may be transported in standard cases only, regardless of the weight thereof."

This decision restated the cease and desist provisions of Decision No. 22792.

By Decision No. 25185, dated December 19, 1932, on Case No. 3150, all operative rights of San Rafael Freight and Transfer Co. between San Rafael and Santa Rosa and intermediate points as acquired by Decision No. 12519 or otherwise were revoked and annulled.

By Decision No. 26452, dated October 23, 1933, on Application No. 19133, Marine Service Corporation was authorized to acquire from San Rafael Freight and Transfer Co. the operative rights hereinbefore described. By Decision No. 30076, dated August 28, 1937, on Application No. 21424, Marine Service Corporation was authorized to use the Golden Gate Bridge as an alternate route of operation. No enlargement of its operative rights was authorized by said Decision No. 30076.

Based upon the finding of the Commission in Decision No. 29778, dated May 24, 1937, in Cases Nos. 3824 and 4012 (40 C.R.C. 493) Marine Service Corporation was ordered to cease and desist and thereafter abstain from transporting persons or property as a common carrier on the inland waters of the state of California, involved therein, except to the extent that it is lawfully entitled to engage in such transportation as shown by Appendix "A" attached thereto. With reference to Marine Service Corporation it was recited in said Appendix "A" that said corporation possessed

"...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 these points to San Francisco."

Respondent is also engaged in the transportation of property between points upon the inland waters of the state of California as a for-hire vessel operator under permits issued by this Commission.

Henry Hansen testified that he had established, during the year 1917, a highway common carrier service between San Francisco, San Rafael and intermediate points; that in the course of his operations his usual route was the old Corte Madera Grade road, that portion over the grade being replaced by the present U. S. Highway No. 101; that he also used the Greenbrae cut-off for full loads destined to and from San Rafael, said cut-off being an entirely different road than the present U. S. Highway No. 101 between Greenbrae and San Rafael. Hansen also testified that he provided service to and from Lansdale and Fairfax which he assumed to be a part of San Anselmo; that he never provided service to or from Belvedere or Tiburon; that he did not operate into Alto; that he occasionally served Mill Valley; that he never had a delivery to Greenbrae; and that he rarely gave service to San Quentin.

The testimony of Hansen was uncontroverted.

Evidence was adduced which was directed, first, to a showing that respondent had published rates in its local Tariff No. 1, C.R.C. No. 1, effective October 2, 1937, to points in excess of its operative rights and had made deliveries of property to such points and, secondly, that respondent had failed to make C.O.D. remittances

---

(5) Exhibit No. 5.



to shippers within the time required by the Commission's General Order No. 84-A.

Additional evidence was adduced which shows that respondent, during the latter part of October, 1937, transported shipments of property from San Francisco to Tiburon, Belvedere, Novato and Hamilton Field. Copies of freight bills, photographs of respondents equipment, and other documents were offered in evidence, <sup>(6)</sup> indicating that respondent held itself out to serve such points.

G. C. Burbank testified that he and E. E. Royburn, as inspectors for the Railroad Commission, examined the office records of respondent from which it was determined, as set forth in Exhibit No. 4, that during the period August 2, 1937, to and including October 5, 1937, respondent failed to make C.O.D. remittances within the ten-day time limit requirement of the Commission's General Order No. 84-A. The longest time elapsed between receipt of the shipment by respondent from the shipper and the time of the return of the remittance to said shipper was approximately three weeks. It was also shown from the testimony of witness Burbank that the route of operation used by respondent was over and along U. S. Highway No. 101 between San Francisco and San Rafael and county roads connecting with points served by respondent. It was further shown from the testimony of witness Burbank that the records of respondent showed that shipments were accepted for transportation to San Quentin, Tiburon, Novato and Manor.

By stipulation it was admitted by respondent that it had transported freight from San Francisco to Hamilton Field. Mr. Lloyd, president and general manager of respondent, testified that such

---

(6) Exhibits Nos. 1, 2, 3, 5 and 6.

operations had been conducted in good faith under the mistaken belief that it was authorized to provide such service by truck when it was no longer able to provide vessel service to Marin Meadows because of the silting of the channel. (Marin Meadows is the boat terminal at Hamilton Field.) He stated that no service had been rendered to Hamilton Field after it was pointed out to him by members of the staff of the Commission that such truck operation was unlawful. Subsequently, he stated, respondent had filed its Application No. 21442 requesting a certificate to serve Hamilton Field, by truck. He also stated that steps were being taken by respondent to correct its tariffs to conform to its operative rights.

Mr. Lloyd further testified that some of the delays in making C.O.D. remittances were caused by the inability of respondent to make deliveries of C.O.D. shipments to consignees; and that in some cases consignees asked for delays in receiving C.O.D. shipments which consequently delayed remittances to the shippers.

As justification for the service performed to and from Tiburon, Belvedere, Manor, San Quentin and Novato, Mr. Lloyd testified that rates to and from such points had been published by the predecessor in interest of respondent and he assumed that respondent's predecessor had been lawfully providing service to and from such points. Mr. Lloyd freely admitted that respondent had been providing a highway common carrier service to and from points in excess of its operative right based upon such assumption. From the record it appears that such points were Tiburon, Belvedere, Manor, San Quentin and Novato. Mr. Lloyd claims that such operations were conducted in good faith and under a mistaken apprehension of the scope of respondent's operative rights.

CONCLUSION IN RE APPLICATION NO. 21442

It was shown in the record on the application that applicant had been providing a highway common carrier service to and from Hamilton Field without any lawful authority therefor; and that there appears to be some justification for respondent's misapprehension as to its right to provide automotive service to and from said Hamilton Field. While the Commission cannot condone respondent's action in providing service to and from Hamilton Field without an operative right therefor, the record is clear that such operation was conducted in good faith and discontinued upon learning of its unlawfulness.

The evidence in the record on said application indicates a public need for a highway common carrier service between San Francisco and Hamilton Field; that the service now provided between such points is inadequate to meet the present public convenience and necessity; and that a certificate therefor should be issued to applicant.

The record with respect to applicant's proposal to serve Ignacio and Novato is not persuasive that there is a public need therefor. The application to serve such points will be denied.

The record also shows that applicant should be authorized to use U. S. Highway No. 101 between Manzanita and San Rafael as an alternate route of operation only, without authority to provide any service to or from points along such alternate route located intermediate to Manzanita and San Rafael.<sup>(7)</sup>

Based upon such conclusions a certificate of public convenience and necessity will be issued.

---

(7) Applicant is now lawfully operating over U. S. Highway No. 101 between San Francisco and Manzanita.

CONCLUSIONS IN RE CASE NO. 4267

From a review of the record made in Case No. 4267, it is clearly shown that respondent has been providing a highway common carrier service to and from Tiburon, Belvedere, Manor, San Quentin and Novato, on the one hand, and to and from San Francisco, on the other hand, without any certificate of public convenience and necessity or any other operative right therefor. Based upon such conclusion respondent should be ordered to cease and desist such operations until it has obtained a certificate therefor.

It is also shown from such record that respondent had been providing an unlawful highway common carrier service to and from Hamilton Field upon the assumption that it could lawfully provide such service; and that respondent had abandoned such service when it learned that such service was unlawful.

It is further shown from the record in such case that respondent has unlawfully established its highway common carrier operations over U. S. Highway No. 101 between San Rafael and Manzanita without proper authority from the Commission. In view of the situation as developed in this record and applicant's request in Application No. 21442 for authority to lawfully establish its operation over such highway, we are of the opinion that a cease and desist order would not be appropriate with respect to operations over this route.

The record is not clear with respect to the failure of respondent to comply with the provisions of the Commission's General Order No. 84-A. However, respondent should be admonished that in the future it should exercise care and diligence to comply with the provisions of such general order with respect to remittances to consignors of collections thereunder.

\* \* \* \* \*

An order of the Commission directing the suspension of an operation is in its effect not unlike an injunction by a court. A violation of such order constitutes a contempt of the Commission. The California Constitution and the Public Utilities Act vest the Commission with power and authority to punish for contempt in the same manner and to the same extent as courts of record. In the event a person is adjudged guilty of contempt, a fine may be imposed in the amount of \$500 or he may be imprisoned for five days, or both. C.C.P. Sec. 1218; Motor Freight Terminal Co. v. Bray, 37 C.R.C. 224; re Ball & Hayes, 37 C.R.C. 407; Wermuth v. Stamper, 36 C.R.C. 458; Pioneer Express Company v. Keller, 33 C.R.C. 371.

#### O R D E R

Separate public hearings having been had in the above-entitled proceedings, the matters having been duly submitted, and the Commission now being fully advised:

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA HEREBY FINDS, in Case No. 4267, that respondent Marine Service Corporation, a corporation, has been providing a highway common carrier service between San Francisco, on the one hand, and Tiburon, Belvedere, Manor, San Quentin and Novato, on the other hand, without a certificate of public convenience and necessity or any other operative right therefor, and based upon such finding and the opinion hereof,

IT IS HEREBY ORDERED that Marine Service Corporation, a corporation, shall cease and desist and hereafter abstain from providing a highway common carrier service between San Francisco, on the one hand, and Tiburon, Belvedere, Manor, San Quentin and Novato, on

the other hand, until it shall have first obtained from the Commission a certificate of public convenience and necessity therefor.

IT IS FURTHER ORDERED that Marine Service Corporation shall immediately cancel all rates governing a highway common carrier service between San Francisco, on the one hand, and Tiburon, Belvedere, Manor, San Quentin and Novato, on the other hand, now on file with the Railroad Commission.

The Secretary of the Railroad Commission is hereby authorized and directed to cause a certified copy of this decision to be served upon defendant.

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA HEREBY FINDS AND DECLARES, in re Application No. 21442, that public convenience and necessity require the establishment and operation by Marine Service Corporation, a corporation, of an automotive service as a highway common carrier, as that term is defined in section 2 3/4 of the Public Utilities Act, for the transportation of property for compensation between San Rafael and Hamilton Field, and intermediate points, as an extension and enlargement of the operative rights heretofore acquired by said Marine Service Corporation under the authority of the Commission's Decision No. 26452, dated October 23, 1933.

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA HEREBY FURTHER FINDS AND DECLARES, in re Application No. 21442, that public convenience and necessity require the establishment and operation, of an automotive highway common carrier service, by applicant Marine Service Corporation over and along U. S. Highway No. 101, between Manzanita and San Rafael, and county roads connecting such route with said applicant's present lawful route of operation, by which it serves Manzanita, Corte Madera, Fairfax and San Rafael, and other points

thereon, as an alternate route of operation, provided, however, that no service may be given along said U. S. Highway No. 101 at any point located intermediate to Manzanita and San Rafael.

IT IS ORDERED that a certificate of public convenience and necessity therefor is hereby granted to Marine Service Corporation, subject to the following conditions:

1. Applicant shall file a written acceptance of the certificate herein granted within a period of not to exceed thirty (30) days from the effective date hereof.
2. Applicant shall commence the service herein authorized within a period of not to exceed thirty (30) days from the effective date hereof, and shall file in triplicate, and concurrently make effective on not less than ten days' notice to the Railroad Commission and the public, a tariff or tariffs constructed in accordance with the requirements of the Commission's General Orders and containing rates and rules which in volume and effect shall be identical with the rates and rules shown in the exhibit attached to the application in so far as they conform to the certificate herein granted, or rates and rules satisfactory to the Railroad Commission.
3. Applicant shall file, in duplicate, and make effective within a period of not to exceed thirty (30) days after the effective date of this order, on not less than five days' notice to the Railroad Commission and the public, a time schedule or time schedules covering the service herein authorized in a form satisfactory to the Railroad Commission.
4. The rights and privileges herein authorized may not be discontinued, sold, leased, transferred nor assigned unless the written consent of the Railroad Commission to such discontinuance, sale, lease, transfer or assignment has first been obtained.
5. No vehicle may be operated by applicant herein unless such vehicle is owned by said applicant or is leased by applicant under a contract or agreement on a basis satisfactory to the Railroad Commission.
6. Applicant shall, prior to the commencement of service authorized herein and continuously thereafter, comply with all of the provisions of this Commission's General Order No. 91.

IT IS FURTHER FOUND that Marine Service Corporation possesses a prescriptive right as a highway common carrier between San Francisco and San Rafael and intermediate points, including Sausalito, Manzanita, Mill Valley, Corte Madera, Larkspur, Kentfield, Ross, San Anselmo, Yolanda, Lansdale and Fairfax.

IT IS FURTHER ORDERED that Application No. 21442 is in all other respects hereby denied.

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 November, 1939.

Raymond  
Frank Miller  
Ray Rice  
H. Baker

COMMISSIONERS