

Decision No. 35731

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

Application of J. C. FREESE CO.)	
for a permit under the For-Hire)	Amended
Vessel Act for the transportation)	Application No. 24185
of bulk petroleum products, etc.)	

Application of J. C. FREESE CO.)	
for a certificate as a common car-)	
rier by vessel for the transporta-)	Application No. 24915
tion of bulk petroleum products,)	
etc.)	

Thelen & Marrin, by Max Thelen, and Hillsbury, Madison & Sutro, by Norbert Korte and L. F. Kuechler, for Applicant.

McCutchen, Olney, Mannon & Greene, by F. W. Mielke, for The River Lines, Protestant.

BY THE COMMISSION:

O P I N I O N

Since 1865 applicant J. C. Freese Co. has been a carrier by vessel on San Francisco Bay and its tributaries. These consolidated proceedings relate to the carriage of bulk petroleum products, a highly specialized service which applicant has developed. Earlier proceedings, more limited in scope, have resulted in conflicting decisions on the question of whether this phase of applicant's transportation activities is that of a for-hire carrier or a common carrier. In order to have the matter of status resolved for the future, and continue this business under such regulation as may be applicable, applicant requests, in the alternative, the issuance of a permit under the For-Hire Vessel Act, or the issuance of a certificate under the Public Utilities Act.

The River Lines protests the issuance of a certificate in so far as transportation to points on the Sacramento and San Joaquin rivers are concerned. As to the request for a permit,

protestant takes the position that Freese Co. has but two valid contracts, and therefore is entitled to a permit to carry to river points for but two shippers.

Prior proceedings. The For-Hire Vessel Act was adopted in 1933, whereupon applicant's manager applied for a permit. Before hearing, and at counsel's request, this application was dismissed. (1)

In 1934 a complaint was filed against Freese Co., alleging unauthorized common carrier operation. The Commission first held that Freese Co. was operating as a common carrier of bulk molasses and gasoline, but on rehearing, and in 1936, the complaint was dismissed. (2)

In 1939 Freese Co. applied for a permit covering the transportation of molasses, and also requested a finding that the transportation of petroleum products was an operation within the scope of Section 22 of the For-Hire Vessel Act, and therefore exempt from regulation under that statute. A permit was issued covering the transportation of molasses, and it was found that the hauling of petroleum products did not fall within the statutory exemption. (3)

Present proceeding. In October of 1940 the Commission instituted an investigation to determine whether Freese Co. was operating any vessels within the meaning of the For-Hire Vessel Act without having obtained a permit. After submission of that matter, before decision therein, and in May of 1941, Freese Co. applied for a permit covering petroleum products. On February 24, 1942, decisions were rendered in both of those proceedings. The investigation was discontinued. (4)

(1) Dec. No. 26732, App. No. 19148.

(2) Calif. Inland Water Carrier's Conference v. Freese Co., Case No. 3770, Decs. Nos. 27808 and 29154.

(3) Re Freese Co., 42 CRC 404. Rehearing denied, Dec. No. 33424, App. No. 19143.

(4) Dec. No. 35077, Case No. 4558.

The application for a permit was denied, it being found that the hauling of petroleum products was a common carrier service. (5)

However, rehearing was granted, whereupon Freese Co. amended its application for a permit and made the alternative request that, if a permit should be denied because of common carrier status, an appropriate certificate be issued. Freese Co. also filed a new application praying for a certificate.

These three matters, the rehearing and the two applications, were consolidated for hearing, and should be the subject of a single decision. As stated, applicant has been in business for a good many years. Its sole aim is to obtain permission to continue that business, under whatever sanction and regulation the Commission may find to be applicable thereto.

The hauling of bulk petroleum products is a highly specialized service, requires specially constructed equipment, must be coordinated with the requirements of the relatively few shippers who need such transportation, and must be an on-call, rather than a scheduled service. Many of the major oil companies operate their own fleets of barges, but have need for additional transportation facilities.

Until about 1900 applicant carried on a general freighting, stevedoring and barging business. During the period 1900-1930, bulk molasses was the principal commodity transported. However, for some two or three years about 1915 or 1916, fuel oil was carried in a small oil barge. In 1931, at the solicitation of Richfield Oil Corporation, applicant began hauling petroleum products for that company. During that year applicant also hauled for The Texas Company and Signal Oil Company. It first used a

(5) Dec. No. 35049, App. No. 24185.

wooden tow barge with six steel deck tanks, having a capacity of 85,000 gallons. As business grew, additional equipment was added.

Since 1931 Freese Co. has hauled for seven of the eight major oil companies, although not for all of those shippers during any one year. ⁽⁶⁾ In 1931 Freese Co. was the only non-proprietary

carrier of bulk refined petroleum products on the Bay and tributaries. There was no real competition until 1941, when the protestant, The River Lines, placed a new barge in operation. On July 30, 1940, The River Lines and the Shell Oil Company entered into a comprehensive contract of affreightment, made in contemplation of the construction of a new oil barge for The River Lines, and the construction by Shell of certain storage facilities near Sacramento. ⁽⁷⁾

Freese Co. suggests that there is considerable doubt whether The River Lines has any operative rights for the transportation bulk petroleum, and also, if the latter has such rights, whether such hauling is performed within the scope thereof. No certificate therefor has ever been issued, such rights as The River

(6) Applicant has hauled for The Texas Company and for Richfield Oil Corporation every year from and including 1931 to date; for Union Oil Company in 1932 and each year from and including 1939 to date; for General Petroleum Corporation in 1934 and each year from and including 1936 to date; for Standard Oil Company in 1932 and each year from and including 1934 to date; for Signal Oil Company between 1931 and 1938, both inclusive; and for Shell Oil Company between 1937 and 1940, both inclusive.

(7) Under the contract The River Lines agrees to carry, as a common carrier, all of Shell's requirements from the latter's Martinez Refinery or other refineries in the vicinity, "to Rio Vista, Courtland, Sacramento and intermediate points on the Sacramento River, * * *." The River Lines agrees to provide and maintain sufficient and proper equipment. Among many other things, the agreement contains detailed provisions relating to rates, filing thereof with the Commission, options to terminate the contract under certain circumstances in the event of rate suspension and disapproval, the filing of tariff changes, and numerous operating details. The term of the contract is until 1945, subject to one-year extensions at the option of Shell, but not beyond 30 years.

Lines may have being of a prescriptive character. But determination of these questions is not essential here. The material facts of particular interest in these proceedings are these. The River Lines did not publish rates on any bulk petroleum products until 1932, when it filed a rate on fuel or "black" oil from Oleum to Sacramento. As to refined petroleum products, a rate on gasoline, between certain points only, was first filed in 1940, and the first transportation of gasoline in bulk was in 1941. (8) In 1940, when The River Lines entered into the contract with Shell Oil Company, it operated one barge, acquired in 1936, having a capacity of 2,200 barrels, and which was equipped and used only for the transportation of "black oil." As a result of the Shell contract, a much larger barge was constructed, with a capacity of 9,500 barrels. This barge was placed in operation in January of 1941. A second barge, of like capacity, was placed in service on April 17, 1942.

J. C. Freese Co. will operate five pieces of equipment.

(8) In 1932 the tariff of The River Lines (CRC No. 1) provided, under the caption "Freight Not Accepted" (Item 75 of Rules and Regulations), that the rates named did not apply to freight in bulk. On Oct. 11, 1932 (CRC No. 8) it filed for the first time a separate tariff naming a bulk rate on fuel oil from Oleum to Sacramento only. On Jan. 26, 1937 (CRC No. 41) it added Diesel oil and named Port Costa and Avon as originating points. On August 14, 1940 it filed a new tariff (CRC 48) which named gasoline for the first time. This tariff was applicable only between Martinez and Avon AND Rio Vista, Courtland and Sacramento. On Sept. 22, 1941 (CRC No. 5) it filed a tariff change, relating solely to fuel and Diesel oil, which added Martinez as a point of origin, and San Francisco and Oakland as destination points. On the same day it filed a new tariff (CRC No. 6) naming rates on gasoline, kerosene, stove oil and Diesel fuel oil between Oleum and Stockton and Sacramento. On September 20, 1941 it had filed another new tariff (CRC No. 8) naming rates on gasoline, kerosene, stove oil and Diesel fuel oil from AVON to San Francisco. On Oct. 9, 1941 (CRC No. 9, canceling Nos. 5, 6 and 8) it filed a tariff naming rates on petroleum and petroleum products between a number of points. As to gasoline, a number of new points are mentioned, such as Stockton from points other than Oleum (theretofore named in CRC No. 6), and San Francisco, Oakland from Rio Vista, Courtland, Sacramento, Stockton. On March 4, 1942 (CRC No. 11) San Francisco, Oakland and Richmond were added as origin points of gasoline shipments.

Four are intended to be used in the transportation of refined petroleum products, and these have capacities of 5,000 barrels, 4,500 barrels, 2,000 barrels, and 2,350 barrels, respectively. The fifth, having a capacity of about 1,700 barrels, is intended to be used in the transportation of fuel oil.

Two issues are presented, whether the carriage of bulk petroleum products by applicant constitutes for-hire vessel or common carrier operation, and whether the record warrants the issuance of a permit or certificate therefor. Regarding status, this specialized service, by its very nature, can be utilized by only a relatively few petroleum producers and refiners. Such concerns constitute all that portion of the public that could possibly be interested in such a transportation service. The applicant holds itself out to serve all who may require that type of transportation, giving an on-call service between points on the Bay and its tributaries. We think it clear that such a service is that of a common carrier.

Traffic representatives of three of the oil companies testified concerning their transportation needs and past experience. Operating witnesses of both carriers also testified in great detail as to their respective services, operating details, etc. Many exhibits were introduced, including contracts for transportation; detailed statements of both carriers, showing, by years, products handled, deliveries, where transported, number of trips, elapsed time of trips, etc.; storage facilities at Sacramento and Stockton; rate comparisons, etc. The record contains much testimony dealing with the relative efficiency of large and small craft in meeting the needs of shippers. The Port Director, Twelfth Naval District, has indicated by letter that in his opinion the service performed by Freese Co. is necessary to the United States Navy. Both of the carriers involved, together with private

petroleum barge operators, at the request of the Navy, are members of a pooling agreement relating to the carriage of petroleum products on the Bay and the two rivers.

Union Oil Company operates two boats, one on the lower Bay and to Stockton, and the other to Sacramento, but also needs and uses other transportation facilities. This need will be greater in the near future because of the anticipated removal of one of these boats to another port, whereupon it is contemplated that the boat used in the Sacramento service will be transferred to operation mostly in the lower Bay. Union Oil has limited storage facilities at Sacramento, and even smaller storage facilities at Stockton. This company has found that the Freese Co. barges are more adaptable to its needs than larger barges. At times Union can take larger quantities from larger barges, and has used River Lines' barges when Freese Co. service was not available. Generally speaking, however, deliveries from smaller barges are more convenient.

In 1928 The Texas Company, contemplating the operation of its own vessel equipment on the Bay and rivers, installed marine facilities at Napa, Stockton and Sacramento. Several years later facilities were installed at Petaluma. Sacramento and Stockton are trans-shipping points, from which petroleum products are shipped by commercial transport type trucks and trailers for the servicing of more distant bulk distributing plants. Texas Company first carried refined products in its own vessels in 1931. In 1930 or early 1931 Texas Company approached Freese Co. concerning transportation requirements. This company considers the Freese service essential to its business, and particularly so at Sacramento and Stockton, where storage facilities, as at Petaluma, have been revised or "constructed around" the capacity of the

Freese barges. Such barges are particularly adaptable to service required at those points, more so than larger barges. In the opinion of the Texas witness, large barges of the type operated by The River Lines "would not be adapted to our service."

Richfield Oil Corporation has used Freese Co. service since 1931, and has terminal and storage facilities at Sacramento, and other points. Sacramento storage facilities of this company were built to be served by Freese Co. equipment. Richfield's traffic manager considers the Freese Co. service essential to its business, the smaller barges permitting of a greater flexibility of service, and does not believe that a 9,000 barrel barge could take care of Richfield's requirements if no smaller barges were available.

The record is convincing that a public need exists for the Freese Co. service as a whole, and that a certificate therefor should be issued. The protest of The River Lines is directed to the rendering of service to points on the Sacramento and San Joaquin rivers. But the record shows a need for the Freese service there, as well as at other points. Furthermore, applicant's operations have been conducted as a unit, that is, "we more or less pivot off of" the Sacramento and Stockton business. Without that business it is likely that other essential operations would be affected adversely.

O R D E R

Evidence on the rehearing of Decision No. 35049 in Application No. 24185, on Amended Application No. 24185, and on Application No. 24915 having been taken by Examiner Cassidy at a public hearing, briefs having been filed, and based upon the record and upon the factual findings contained in the above opinion, and it now appearing, and the Commission hereby finding, that public

convenience and necessity so require,

IT IS ORDERED that a certificate of public convenience and necessity, under Section 50(d) of the Public Utilities Act, be and it hereby is issued to J. C. Freese Co., authorizing the operation of vessels, as defined in Section 2(y) of the Public Utilities Act, as a common carrier in the transportation of petroleum and petroleum products, in bulk, between San Francisco, Oakland, Richmond, Oleum, Martinez, Avon, Port Costa, Amoreco, and intermediate points, and Alameda, Emeryville, San Rafael, Napa, Fetaluma, Vallejo, Mare Island, Sacramento, Stockton, Redwood City, Treasure Island, South San Francisco, Newark, U. S. Government vessels, U. S. Government Depots, Vessels (San Francisco, Oakland, Richmond), and intermediate points.

Such certificate is conditioned upon the filing of a written acceptance thereof before the effective date of this order. Said acceptance shall stipulate that J. C. Freese Co., its successors and assigns, will never claim a value for the authority hereby issued in excess of the actual cost thereof.

IT IS FURTHER ORDERED that J. C. Freese Co., within ten days from the date of this order, file a tariff containing rates, rules and regulations substantially identical with those set forth in Exhibit No. 22 in these proceedings.

This order shall become effective ten days from the date hereof.

Dated, San Francisco, California, this 1st day of

September, 1942.

Justus J. Caseman
Francis K. Havens

Commissioners