

ORIGINAL

Decision No. 45876

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)	
Coggeshall Launch Company for a)	
certificate of public convenience)	
and necessity to operate a towboat)	Application No. 32224
service between all points on)	
Humboldt Bay.)	

Appearances

Kenneth D. Sevier, for applicant.
Don V. Metcalf, for Pacific Lumber
Company, interested party.

O P I N I O N

Coggeshall Launch Company operates as a common carrier by vessel for the transportation of passengers and property between points on Humboldt Bay. Its principal passenger operations are conducted between Eureka and Samoa and Fairhaven. Regularly scheduled launches are operated in this service. Between Eureka and other points, including vessels anchored in Humboldt Bay, a launch service is provided on a special trip basis. Small freight shipments are also transported on the passenger launches. Other freight shipments are moved on scheduled barges. Freight weighing more than 4,000 pounds per piece is not handled. By this application, the company seeks a certificate of public convenience and necessity authorizing the operation of "on call" towboat service for the towing of logs, lumber loaded on barges and floating cranes, dredgers, pile drivers and monitors between specified points on Humboldt Bay and for the service of turning ships by towboat.

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The points specified in the application are: Eureka, Eureka Slough, Daby Island, Bracut, Jacoby Creek, Arcata, Mad River Slough, Samoa, Big Tree, Fairhaven, Coast Guard Station, Southport Landing, Salmon Creek, Fields Landing, Buhne's Point, Hookton Slough, Elk River Bridge and Pacific Lumber Company Log Pond.

Public hearing of the application was held at Eureka on May 17, 1951, before Commissioner Mitchell and Examiner Jacopi. Evidence was introduced by applicant's president and by a representative of a lumber company. No one appeared in opposition to the granting of the sought operative authority.

The record shows that towing service is used by lumber and plywood mills situated at various points on Humboldt Bay. Because of insufficient suitable waterfront space near the mills, these concerns maintain storage ponds for logs at shoreline points located substantial distances from the mill sites. The logs cut in the forests are moved to the ponds where they are grouped into log rafts. The rafts are towed by towboat to the receiving ponds at the mills. At times, surplus logs are towed from the mill ponds to other ponds maintained for storage purposes. Subsequently, these logs are towed back to the mills as they are needed. The mills often sell particular types of logs to other mills. These transactions involve towing the logs from one mill to another.

The record also shows that towing service is used for the movement of floating cranes, dredgers, monitors and pile drivers and of lumber loaded on barges, which are not equipped with means of propulsion. The towboat service of "turning ships" involves the pulling of departing vessels away from docks to provide sufficient clearance so that they can proceed under their own power.

Applicant's president testified that his company has provided the foregoing towing and ship-turning services by vessel between points on Humboldt Bay continuously for the past forty years. He stated that, except for instances involving operations beyond the capacity of applicant's equipment, towing service has always been and still is being performed for anyone requesting it. Assertedly,

² Applicant operates four diesel-powered towboats in the service. They range in burden from six tons net register to fifteen tons net register. The record indicates that two of these boats are sometimes also used to perform passenger service.

it was believed by applicant's officers that the towing operations were not subject to the Commission's jurisdiction and the services have been conducted in good faith based on that understanding. According to the witness, the establishment of additional lumber and plywood mills at points on the Bay in the last year or so has resulted in an increase in the scope of the towing service to a point where it might be considered as common carriage by vessel and therefore within the Commission's jurisdiction. The towing of logs comprises about ninety percent of the service now performed. The witness stated that the instant application was filed to avoid the possibility of unintentional violation of the statutory provisions requiring a common carrier of property by vessel to obtain a certificate of public convenience and necessity before commencing operations between points in this State.³

The rates which applicant proposes to charge for the towing service and the governing rules and regulations are set forth in the application. The rates range from \$6.00 per hour to \$8.00 per hour depending upon the horsepower of the towboat's engine. The time charged for under the rates is computed from the time of departure of the towboat from its terminal to the time of return thereto. The proposed rates and the governing rules are those which applicant has observed for the past three years.

A representative of a lumber company urged that the sought operative authority be granted. He asserted that applicant tows logs from his company's storage ponds to its sawmill, that there were no other practicable means of moving the logs to the sawmill, and that continuance of the service was absolutely necessary for his company's operations.

The first question to be decided is whether the towing services by vessel performed by applicant are within the Commission's

³ The witness was referring to Section 50(d), Public Utilities Act.

jurisdiction. The provisions of the For-Hire Vessel Act (Statutes 1933, Chapter 223) are not applicable to the operations in question. The operative authority provided for therein can be issued only to private carriers as distinguished from common carriers (Decision No. 27249 of August 6, 1934 (39 C.R.C. 229, 231). This record shows that applicant is engaged in performing towing service by vessel as a business and that it holds itself out to perform the service for anyone choosing to employ it. On this showing, applicant may not be regarded as a private carrier.

The provisions governing the issuance of operative authority to common carriers are contained in the Public Utilities Act (Statutes 1915, Chapter 91, as amended). The term "common carrier," as defined in Section 2(1) of the Act, includes, among others, every corporation, or person, owning, controlling, operating or managing any vessel, as hereinafter defined, engaged in the transportation of persons or property for compensation between points upon the inland waters of this State, or engaged in the transportation of persons or property for compensation upon the high seas between points within this State. Section 50(d) of the Act provides that no corporation or person shall operate any vessel for the transportation of persons or property between points in this State without first obtaining from the Commission a certificate declaring that public convenience and necessity require such operation.

The term "transportation of property" is defined in Section 2(f) of the Act as follows:

"The term 'transportation of property,' when used in this act, includes every service in connection with or incidental to the transportation of property, including in particular its receipt, delivery, elevation, transfer, switching, carriage, ventilation, refrigeration, icing, dunnage, storage and handling, and the transmission of credit by express corporations." (Emphasis supplied.)

⁴Section 2(y) of the Act defines the types of vessels that are included in the term "vessel" and specifies those that are excluded therefrom. Applicant's vessels are not of the excluded types.

It will be noted that the foregoing definition does not specifically deal with the towing of property. This Commission held in Re Crowley Launch and Tugboat Company, (1926) 27 C.R.C. 734, 737, that the towing of pile drivers, barges, and lighters and various accessorial services performed by towboat between points on San Francisco Bay and its tributaries were operations that were not within its jurisdiction and authorized the cancellation of a tariff naming charges for such services that was on file with the Commission. The towing of logs, however, was not involved in the proceeding.

Since that time, the question of whether the towing of logs by towboat as a business was common carriage has been considered by the United States Supreme Court in State of Washington v. Kuykendall, (1927) 275 U.S. 207, 72 L.ed. 241. The decision shows that the Washington statutes declared that towboats operated "for the public use in conveyance of persons or property for hire over and upon the waters within this state" are common carriers. Pursuant to the statute, a towboat company had filed a tariff with the Commission naming charges for towing ships, scows and logs between points on Puget Sound. A log shipper contended that a towboat was not a common carrier; that the towing of logs on Puget Sound was not affected with a public interest; and that private carriage cannot be made common carriage by legislative fiat.

The Court held that the towboat company was engaged in the general towboat business and held itself out as a common carrier in that line of business; that its towboat was devoted to the public use, among other things, for the transportation of logs; and that it became a common carrier by its own choice. (Emphasis supplied.) In reaching these conclusions, the Court said:

"It cannot reasonably be said that the operators of towboats may not become common carriers in the towing of logs in Puget Sound and adjacent waters. The manufacture of lumber at mills located by these waters is one of the principal industries of the state. The forests are tributary to the sound and waters connecting with it. Large

quantities of logs are floated from the forests to the mills. Towboats are commonly used for that purpose. In all essential particulars that service is like the carriage of freight in vessels. The reason for rate regulation is the same in one case as in the other. Within settled principles, one who undertakes for-hire to transport from place to place the property of others who may choose to employ him is a common carrier." (pp. 211-212, U. S. Report) (Emphasis supplied.)

The Court also pointed out that the rule that towboats not having exclusive control of the vessels towed are not to be held to the strict liability of common carriers did not affect the question under consideration. It said that a common carrier is such by virtue of his occupation and not by virtue of the responsibilities under which he rests.

63 Corpus Juris 799 defines "transporting" as follows: "As commonly understood, one is transporting an article when he is conveying it from one place to another. Transporting includes towing."

The record in this proceeding shows that the service of towing logs by towboat performed by Coggeshall Launch Company is substantially similar to that involved in State of Washington v. Kuykendall, supra. This Commission is of the opinion that the principles employed by the Court and those set forth in Corpus Juris, supra, also apply to the towing of floating cranes, dredgers, pile drivers, monitors and barges loaded with lumber performed by Coggeshall. Upon consideration of the facts and circumstances involved, the Commission is of the opinion and hereby finds that the foregoing towing services constitute "transportation of property" within the meaning of that term as used in the Public Utilities Act and are within the Commission's jurisdiction conferred upon it by the Act.

There remains for consideration the service of "turning ships" by towboat. As previously indicated, these services usually involve the pulling of vessels away from docks to provide clearance so that they can proceed under their own power. At times, no more

is necessary than the turning of vessels to head in specified directions. These services are performed for the harbor pilot and applicant's charges are paid by him. Such services appear to represent assistance given to the harbor pilot in the navigation of vessels by him rather than "transportation of property" as that term is used in the Act. The evidence of record leads to the conclusion that the services in question are not within the Commission's jurisdiction and we so find.

We turn now to applicant's request for a certificate of public convenience and necessity to operate a towing service by vessel. The record is convincing that there is a public need for towing service between points on Humboldt Bay. For a number of lumber and plywood mills, towing is the only practical means of transportation in connection with some of their regular operations. Applicant possesses the necessary equipment and is qualified by experience to render the service. According to the record, no one else operates such a service between points on the Bay. The evidence shows that applicant's operations are not competitive with rail and highway carrier service provided in the Bay territory for the reason that the points of origin and destination are difficult to reach by land routes. Upon careful consideration of all of the facts and circumstances of record, the Commission finds as a fact that public convenience and necessity require the establishment of the proposed towing service by vessel except as it relates to the service of "turning ships." To this extent the application will be granted.

Applicant is placed upon notice that operative rights, as such, do not constitute a class of property which may be capitalized or used as an element of value in rate-fixing for any amount of money in excess of that originally paid to the State as the consideration for the grant of such rights. Aside from their purely permissive aspect, they extend to the holder a full or partial monopoly

of a class of business over a particular route. This monopoly feature may be changed or destroyed at any time by the State, which is not in any respect limited to the number of rights which may be given.

O R D E R

Based on the evidence of record and on the conclusions and findings set forth in the preceding opinion,

IT IS HEREBY ORDERED:

(1) That a certificate of public convenience and necessity be and it is hereby granted to Coggeshall Launch Company, a corporation, authorizing the establishment and operation of an "on call" common carrier service by vessel within the meaning of Sections 2(y) and 50(d) of the Public Utilities Act, for the towing of logs, floating cranes, dredgers, monitors and pile drivers, and barges loaded with lumber between the following points situated on Humboldt Bay: Eureka, Eureka Slough, Daby Island, Bracut, Jacoby Creek, Arcata, Mad River Slough, Samoa, Big Tree, Fairhaven, Coast Guard Station, Southport Landing, Salmon Creek, Fields Landing, Buhne's Point, Hookton Slough, Elk River Bridge, Pacific Lumber Company Log Pond.

(2) That in providing services pursuant to the certificate herein granted, applicant shall comply with the following service regulations:

(a) Applicant shall file a written acceptance of the certificate herein granted within a period of not to exceed thirty (30) days after the effective date hereof.

(b) Applicant shall, within sixty (60) days from the effective date hereof and upon not less than

one (1) days' notice to the Commission and to the public, establish the service herein authorized and file, in triplicate, and concurrently make effective tariffs satisfactory to the Commission.

IT IS HEREBY FURTHER ORDERED that in all other respects the application be and it is hereby denied.

The effective date of this order shall be twenty (20) days after the date hereof.

Dated at San Francisco, California, this 21st day of June, 1951.

P. F. [Signature]
Justice J. Craven
Harold P. Huls
Constance P. [Signature]
John L. [Signature]
Commissioners