

ORIGINALDecision No. 48548

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of JAMES J. CRIEL, doing)
 business as HUMBOLDT BAY TUGBOAT CO.,)
 for permission to operate a tugboat) Application No. 34014
 within the confines of Humboldt Bay)
 under authority of "For-Hire Vessel)
 Act".)

Michael McHugh, for applicant.
Kenneth D. Sevier, for Coggeshall Launch Co.,
 protestant.

O P I N I O N

James J. Criel, doing business as Humboldt Bay Tugboat Co., herein requests a for-hire vessel permit to transport logs in rafts, and barges loaded with lumber, logs, pile drivers or cranes between points on Humboldt Bay. Applicant has under lease and will use in the proposed service the tugboat Bran Leo, eight tons net register.

The application was filed on January 13, 1953 and a public hearing was held in Eureka before Examiner Gillard on March 31, 1953, on which date the matter was submitted for decision. Coggeshall Launch Company, which holds a certificate of public convenience and necessity to operate a common carrier service by vessel on Humboldt Bay, protested the application upon the ground that applicant actually proposes and intends to operate a common carrier service.

The application alleges that applicant proposes to operate for specific customers on contract, to-wit: Leach Towboat Company, Mutual Plywood Corporation, Eureka Redwood Lumber Company, Eureka Plywood Company, R. H. Emmerson & Son and Mercer-Fraser Co., Inc., and for any other customers who may be acceptable to applicant.

Protestant pointed out in its testimony that the foregoing list of concerns constitutes all but one of the substantial users of water transportation for logs or barges on Humboldt Bay.

However, applicant testified that he did not have contracts with any except one of the listed concerns and that he had not approached any of these in an attempt to secure their business. The firms listed in the application represent those firms applicant would solicit and from which he would accept business. He stated he did not want to be responsible to the public generally and except for the firms mentioned would do no other work except small odd jobs for others where a proper contract could be negotiated. He pointed out that he had only one tugboat and was not in a position to serve all the firms mentioned or to be a common carrier.

Applicant has a contract dated December 26, 1952, with R. H. Emmerson & Son to tow all its logs within Humboldt Bay. Operations under the contract were terminated by applicant when he was advised he needed operative authority from this Commission. In the past protestant has not done any work directly for R. H. Emmerson & Son. Relative to the other five firms named in the application, one does all of its own towing and protestant performs all the services required by the other four. Protestant has had no complaint concerning its service or rates.

Under the circumstances presented the issuance of a permit herein would enable applicant to serve one shipper - R. H. Emmerson & Son. In addition, applicant has testified that he has no intention of becoming a common carrier. The record indicates that protestant, which owns and operates four tugboats, is serving satisfactorily the major shipping concerns and that applicant, with one tugboat, is in no position to undertake to render such services.

In view of applicant's declared intention and his limited facilities, the Commission at this time, in advance of operations by applicant, cannot declare that he intends to dedicate his property to public use and to become a common carrier. If operations by applicant under the permit authorized by the order herein should become inconsistent with private carriage and amount to unlawful operation under the permit, then Section 4537 of the Public Utilities Code, providing for revocation of permits for unlawful operations, and Section 4604 of the same Code, making violations of the For-hire Vessel Act a misdemeanor, provide adequate corrective and punitive procedures.

Accordingly, we find that applicant is entitled to the requested permit. We note, however, that the proposed rates set forth in the application are different from the rates set forth in the contract with R. H. Emmerson & Son. Under Section 4571 of the Public Utilities Code, applicant's schedule of rates to be filed with the Commission must conform to those specified in the application, unless changed by the Commission. No adequate reason appears why we should change these rates. Applicant's attention therefore is directed to the provision (Section 4572, Public Utilities Code) that he may not perform services for any rate other than that specified in his schedule of tariffs on file and in effect at the time.

O R D E R

A public hearing having been held and based upon the findings and conclusions set forth in the foregoing opinion,

IT IS ORDERED:

(1) That a for-hire vessel permit be and it is hereby issued to James J. Criel, doing business as Humboldt Bay Tugboat Co., to operate the tugboat "Bran Lee" for the towing of logs in rafts,

barges, and barges loaded with lumber; logs, pile drivers or cranes, between the following points situated on Humboldt Bay: Mad River Slough, Arcata, Eureka, Eureka Slough, Daby Island, Bracut, Jacoby Creek, Samoa, Big Tree, Fairhaven, Fields Landing, Elk River Bridge, Pacific Lumber Company Log Pond.

(2) That in providing the service authorized herein, applicant shall comply with and observe the following service regulations:

- a. File written acceptance of the permit herein granted, within thirty days after the effective date hereof;
- b. Within sixty days after the effective date hereof, and upon not less than five days' notice to the Commission and the public, file in triplicate a tariff containing rates, charges and regulations conforming with those filed with the application.

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

Dated at San Francisco, California, this 28th day of April, 1953.

R. J. [Signature]
President

Harold P. [Signature]

[Signature]

[Signature]

Commissioners