

Decision No. 55017

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

The River Lines, Inc., a corporation,)
 Complainant,)

The Atchison, Topeka and Santa Fe Railway)
 Company, Feather River Railway Company,)
 McCloud River Railroad Company, Quincy)
 Railroad Company, Sacramento Northern)
 Railway, Southern Pacific Company, The)
 Western Pacific Railroad Company and)
 Yreka Western Railroad Company,)
 Intervenor,)

vs.

Case No. 5486,
 as Amended.

Thomas Crowley, Thomas B. Crowley, Crowley)
 Launch and Tugboat Co., a corporation,)
 Ace Barge Company, a corporation, Bay Cities)
 Transportation Company, a corporation,)
 California Tugboat Co., a corporation,)
 Harbor Transportation Company, a corporation,)
 The Harbor Tug and Barge Company, a corpora-)
 tion, Oil Terminals Co., a corporation,)
 Shipowners & Merchants Towboat Company, Ltd.,)
 a corporation, The Shipowners and Merchants)
 Tugboat Company, a corporation,)
 United Towing Co., a corporation, Mrs. Henry)
 Bowles, Mrs. Caspar Escher, Mrs. Gustave)
 Koven, A. Hooper & Co., United Transporta-)
 tion Co., Harbor Lighterage Co., Harbor)
 Tours, Inc., Tank Barge 5, Inc., Tank Barge)
 10, Inc., Tank Barge 12, Inc., Tank Barge 14,)
 Inc., Tank Barge 15, Inc., Tank Barge 16,)
 Inc., Tank Barge 21, Inc., Tank Barge 22,)
 Inc., Tug Sea Duke, Inc., Tug Sea Fox, Inc.,)
 Tug Sea Horse, Inc., Tug Sea Lark, Inc.,)
 Tug Sea Lion, Inc., Tug Sea Prince, Inc.,)
 Tug Sea Queen, Inc., Tug Sea Ranger, Inc.,)
 Tug Sea Wolf, Inc., H. Sightseer, Inc.,)
 H. Tourist, Inc., and Harbor Sightseeing,)
 Inc.,)
 Defendants.)

Appearances

Ray Vandervoort, Gerald H. Trautman and Allan P. Matthew,
for the River Lines, Inc., complainant.

John M. Smith, for The Atchison, Topeka and Santa Fe
Railway Company, Feather River Railway Company,
McCloud River Railroad Company, Quincy Railroad
Company, Sacramento Northern Railway, Southern
Pacific Company, The Western Pacific Railroad Company,
and Yreka Western Railroad Company, intervenors.

Vaughan, Paul & Lyons by Reginald L. Vaughan and John G.
Lyons, for Ace Barge Company, Harbor Lighterage Co.,
Harbor Sightseeing, Inc., Harbor Tours, Inc., Harbor
Transportation Company, The Harbor Tug and Barge
Company, A. Hooper & Co., H. Sightseer, Inc., and
H. Tourist, Inc., defendants.

Douglas Brookman, for Bay Cities Transportation Company,
Tank Barge 12, Inc., Tank Barge 14, Inc., Tank Barge, 15,
Inc., Tank Barge 16, Inc., and Tank Barge 22, Inc.

Frank Loughran, for Thomas Crowley, Thomas B. Crowley,
Crowley Launch and Tugboat Co., California Tugboat Co.,
United Transportation Co., Oil Terminals Co., Shipowners &
Merchants Towboat Company, Ltd., The Shipowners and
Merchants Tugboat Company, United Towing Co., Mrs. Henry
Bowles, Mrs. Caspar Escher, Mrs. Gustave Koven, Tank
Barge 5, Inc., Tank Barge 10, Inc., Tank Barge 21, Inc.,
Tug Sea Duke, Inc., Tug Sea Fox, Inc., Tug Sea Horse, Inc.,
Tug Sea Lark, Inc., Tug Sea Lion, Inc., Tug Sea Prince, Inc.,
Tug Sea Queen, Inc., Tug Sea Ranger, Inc., Tug Sea Wolf, Inc.

ORDER DISMISSING COMPLAINT

On August 20, 1953, The River Lines, Inc., filed its complaint against the defendants. Answers were filed on October 13, 1953, on behalf of the following defendants: Thomas Crowley, Thomas B. Crowley, Crowley Launch and Tugboat Co., Ace Barge Company, Bay Cities Transportation Company, California Tugboat Company, Harbor Transportation Company, The Harbor Tug and Barge Company, Oil Terminals Co., Shipowners and Merchants Towboat Company, Ltd., The Shipowners and Merchants Tugboat Company and United Towing Co. The first amendment to the complaint was filed June 30, 1954, and the answer thereto was filed July 22, 1954. Two other amendments were filed September 29, 1954, and December 1, 1954, respectively.

Public hearings were held before Commissioner Potter and Examiner Cline on September 29 and 30, October 1, 6, 7 and 8, and December 1, 1954. Briefs were filed on behalf of all the defendants

herein and the matter was taken under submission on March 30, 1955. On August 16, 1955, the Commission issued its order setting aside submission and allowing the filing of supplemental briefs. Supplemental briefs were filed and the matter was again taken under submission on March 12, 1956.

The Complaint, as Amended

In its complaint, as amended, the complainant alleges as follows:

The defendants Thomas Crowley, Thomas B. Crowley, Mrs. Henry Bowles, Mrs. Caspar Escher and Mrs. Gustave Koven, referred to as the Crowley Group, through the use of various corporations which they own and control, are engaged in California in the business of towing, chartering of barges, the carriage of cargo by barge and the operation of terminal facilities for petroleum products. The other defendants, all of which are corporations and are referred to as the Crowley Companies, are owned and controlled by the Crowley Group and used in carrying on its said business.

The members of the Crowley Group are associated formally, informally and by family ties, and they conduct their said business through the Crowley Companies as a single enterprise, without regard to corporate divisions.

The Crowley Group is a common carrier under Section 211(b) of the Public Utilities Code. Through Bay Cities Transportation Company and the Harbor Tug and Barge Company the Crowley Group has been granted certain common carrier rights by this Commission, including rights for the transportation of certain property between and among certain points on San Francisco Bay and its adjacent waters. Contrary to the provisions of the For-hire Vessel Act the Crowley Group has obtained also, through United Towing Co., permits under the For-hire Vessel Act for operation between and among the same points. The Crowley Group is holding itself out to perform and is performing

other common carrier services between points on San Francisco Bay and its adjacent waters for which no appropriate certificate of public convenience and necessity is held and for which no applicable tariffs are on file with the Commission. Such common carrier service is performed by the Crowley Group for a shipper by having one of the Crowley Companies furnish a barge to carry cargo and another Crowley Company provide towing service.

Some of the Crowley Companies acting singly, including specifically Bay Cities Transportation Company, are holding themselves out to perform and are performing common carrier services between points on San Francisco Bay and its adjacent waters for which they hold no appropriate certificate of public convenience and necessity and for which no applicable tariffs are on file with the Commission.

The Harbor Tug and Barge Company has not transported any property to or from points on the upper Sacramento River for at least 25 years, and has not transported any substantial amount of cargo to or from Sacramento during that same period, and whatever rights it may have had to or from points on the upper Sacramento River and to or from Sacramento have been abandoned. In the first amendment to the complaint complainant alleges that The Harbor Tug and Barge Company has filed its Application No. 35245 for a certificate of public convenience and necessity as a common carrier of property by vessel between upper Sacramento River points and Sacramento (including Meridian), on the one hand, and all points on San Francisco, San Pablo and Suisun Bays, San Joaquin, Sacramento and Napa Rivers, Petaluma Creek and their tributaries, on the other hand, and that complainant has filed its protest in that proceeding. This amendment further alleges that on or about May 24, 1954, The Harbor Tug and Barge Company filed with the Commission a revised tariff sheet in which it publishes for the first time a rate on diesel oil, gasoline, stove oil and refined oil N.O.S. in bulk from Group 1 points (San Francisco,

Oakland and Richmond) and from Group 2 points (Oleum, Port Costa, Martinez, Amarco and Avon) to Meridian on the upper Sacramento River, and that said proposed rate of The Harbor Tug and Barge Company to Meridian on the upper Sacramento River is improper and unlawful and should be cancelled by the Commission.

United Towing Co. is holding itself out to perform and is performing common carrier services in the transportation of petroleum products in bulk by soliciting the business of transporting such products and transporting such products for most or all of the major oil companies in the Bay area and several of the smaller oil companies, but it does not hold any certificate of public convenience and necessity authorizing such services.

The Crowley Group, through Oil Terminals Co., is holding itself out to perform the services of a public utility at terminal facilities for liquid petroleum products in bulk at Crescent City, Eureka and Alviso, California, and at a similar facility which is being constructed at Meridian, California. No tariffs have been filed for any of these terminals, and there has been no compliance with any of the provisions of the Public Utilities Code with respect to operations thereat.

The Crowley Group, through the Crowley Companies, has been soliciting and is soliciting most or all of the oil companies to use the proposed terminal facility at Meridian and to employ Crowley Companies to transport liquid petroleum products in bulk to the said terminal. In so doing the Crowley Group, through the Crowley Companies, has held itself out to perform common carrier services for which neither it nor any of the Crowley Companies holds a certificate of public convenience and necessity but for which a tariff has been filed improperly and unlawfully with the Commission.

The complainant in its complaint requests that the Commission enter upon an investigation into the practices of the defendants complained of and that the Commission:

1. Revoke any operative rights which The Harbor Tug and Barge Company may have had heretofore on the upper Sacramento River and to or from Sacramento;

2. Revoke the permits heretofore granted to United Towing Co. under the For-hire Vessel Act;

3. Declare that United Towing Co. is operating as a common carrier in the transportation of liquid petroleum products in bulk;

4. Declare that the Crowley Group, through the Crowley Companies, is operating as a common carrier where service to a shipper is provided by having one Crowley Company furnish a barge and another Crowley Company provide towing service;

5. Declare that the terminals in operation or under construction by Oil Terminals Co., or other Crowley Companies, at Eureka, Crescent City, Alviso and Meridian are or will be operating as public utilities;

6. Order the Crowley Group and all of the Crowley Companies to cease and desist from soliciting business or operating as common carriers except in accordance with appropriate certificates of public convenience and necessity and in accordance with applicable tariffs on file with the Commission;

7. Order the Crowley Group and the Crowley Companies, including Oil Terminals Co., to cease and desist from soliciting business for or operating at the terminal facilities at Eureka, Crescent City and Alviso, or at the proposed facility at Meridian, except in accordance with the provisions of the Public Utilities Code and in accordance with applicable tariffs on file with the Commission, and

8. Make such other and further orders as the Commission may deem proper.

By the first amendment to the complaint, complainant requests:

9. That the rate of The Harbor Tug and Barge Company to Meridian on the upper Sacramento River be canceled by the Commission and that the Commission enter its interim order suspending said rate to Meridian pending final determination of this proceeding.

Amendments to Public Utilities Code

Subsequent to the filing of the complaint and the public hearings thereon the Legislature in 1955, amended certain Sections of the Code (Stats. 1955, pp. 1162 and 2075). Amended Sections 238, 239 and 242 read as follows (underlining has been added):

"238. (a) 'Vessel' includes every species of water craft, by whatsoever power operated, which is owned, controlled, operated, or managed for public use in the transportation of persons or property, except rowboats, sailing boats, and barges under 20 tons dead weight carrying capacity, and other water craft propelled by steam, gas, fluid naphtha, electricity, or other motive power under the burden of five tons net register.

"(b) Nothing in this code except those provisions relating to the regulation of rates shall apply to the transportation by water carrier of commodities in bulk when the cargo space of the vessel in which such commodities are transported is being used for the carrying of not more than three such commodities. This subsection shall apply only in the case of commodities, in bulk which are loaded and carried without wrappers or containers and received and delivered by the carrier without transportation mark or count. For the purpose of this subsection two or more vessels while navigated as a unit shall be considered to be a single vessel.

"(c) Nothing in this code except those provisions relating to the regulation of rates shall apply to the transportation by water

of liquid cargoes in bulk in tank vessels designed for use exclusively in such service."

"239. (a) 'Warehouseman' includes:

"Every corporation or person owning, controlling, operating, or managing any building or structure in which property, other than liquid petroleum commodities in bulk, is regularly stored for compensation within this State, in connection with or to facilitate the transportation of property by a common carrier or vessel, or the loading or unloading of property, other than liquid petroleum commodities in bulk, and other than a dock, wharf, or structure, owned, operated, controlled, or managed by a wharfinger.

"(b) Every corporation or person owning, controlling, operating, or managing any building, structure, or warehouse, in which merchandise, other than secondhand household goods or effects, and other than liquid petroleum commodities in bulk, and other than merchandise sold but retained in the custody of the vendor, is regularly stored for the public generally, for compensation, within this State, except warehouses conducted by any nonprofit, cooperative association or corporation which is engaged in the handling or marketing of the agricultural products of its members and warehouses conducted by the agents, individual or corporate, of such associations or corporations, while acting within the limitations imposed by law on their principals."

"242. 'Wharfinger' includes every corporation or person owning, controlling, operating, or managing any dock, wharf, or structure used by vessels in connection with or to facilitate the receipt or discharge of freight, other than bulk liquid commodities, or passengers for compensation within this State."

Request for Dismissal of Complaint

By letter to the Commission dated April 17, 1957, which letter is hereby made a part of the formal file in this proceeding, the attorney for complainant at the direction of his client requested that the complaint herein be dismissed without prejudice.

Good cause appearing,

IT IS HEREBY ORDERED that the above-entitled case be dismissed without prejudice.

Dated at San Francisco, California, this 21st day of May, 1957.

John E. [Signature]
 President

[Signature]

[Signature]

[Signature]

[Signature]
 Commissioners